| Chapter 7 |

The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)

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ABSTRACT

The International Covenant on Economic, Social, and Cultural Rights (ICESCR), adopted in 1966, is a part of the International Bill of Rights, alongside the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights. It codifies key economic, social, and cultural rights (ESCR), such as the right to work, health, education, and an adequate standard of living, while emphasising their progressive realisation. Despite its significance, the ICESCR faces challenges in enforcement, with the absence of strong, binding mechanisms.

Chapter 1 outlines the significance of the International Bill of Rights, while Chapter 2 explores René Cassin's vision of integrating all human rights, including ESCR, into the UDHR and compares it to the ultimate separation in the Covenant, examining the challenges surrounding ESCR, such as debates on justiciability.

Chapter 3 discusses the adoption, relevance and implementation of the ICESCR, showing its widespread ratification and exploring different aspects and measures of implementation, including the process and circumstances regarding the adoption of the Optional Protocol in 2008. Chapter 4 compares the ICESCR with the European Social Charter, the European Convention on Human Rights and the EU Charter of Fundamental Rights.

Chapter 5 breaks down the structure of the ICESCR, detailing rights-based obligations imposed by part I and III and the general obligations stemming from part II of the Covenant. Procedural obligations regulated by part IV are discussed in Chapter 6, where the role of the Committee on Economic, Social, and Cultural Rights (CESCR) in monitoring the ICESCR is analysed. Although its decisions are non-binding, studies of cases from the Individual communications' procedure illustrate its impact on housing, social security, and health rights.

As no cases involving Central or Eastern European countries have been published under the Individual communications' procedure, Chapter 7 highlights selected recommendations from the Concluding Observations on the periodic reports of Montenegro, Slovenia, and Czechia.

Despite its limitations, the ICESCR remains a cornerstone of global human rights advocacy, influencing both national legislation and international norms.

KEYWORDS

ICESCR, economic, social and cultural rights, progressive realisation, CESCR, monitoring

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1. The Significance of the International Bill of Rights

Distressed by the atrocities of the two World Wars and having faced devastating economic and social crises, countries brought into existence a new international organisation, the United Nations (UN), constructed to strive for peace and prevent another world war. A transnational consensus emerged that a set of universally accepted and respected human rights should be enacted. Article 55 of the UN Charter[1] declared that the UN should promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion' and Article 56 required Member States to take action to achieve that purpose. In 1946, the Commission on Human Rights (HR Commission) was established to elaborate an international bill of rights. As it turned out, the time was not right to adopt a treaty, so a declaration was proposed instead.[2] The Universal Declaration of Human Rights (UDHR) was adopted by resolution 217 A (III) of 10 December 1948 by the General Assembly, with no dissenting and only eight abstaining votes. It encompassed civil and political rights (CPR) as well as economic, social and cultural rights (ESCR).[3]

After the adoption of UDHR, the HR Commission worked on preparing a binding treaty. However, increasing ideological disputes prevented the adoption of a unified instrument, leading to the adoption of two covenants in December 1966: the International Covenant on Civil and Political Rights (ICCPR)[4] and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).[5] The two Covenants and the UDHR together form the International Bill of Rights.[6]

The International Bill of Rights holds extensive significance. First and foremost, it represents a global consensus on the fundamental rights and freedoms that all individuals are entitled to. The universal nature of the rights detailed in these documents underscores the idea that human rights are intrinsic to every person by virtue of their humanity, rather than being granted by states. As a crucial tool for human rights advocacy, it provides a cohesive set of principles and language that has empowered non-governmental organisations (NGOs) and activists in their efforts to drive change.[7]

Secondly, while the UDHR is not legally binding, its principles have been widely adopted into national constitutions, laws, and policies. Its provisions are considered

1 Signed on 26 June 1945, entered into force on 24 October 1945.
2 Winter and Prost, 2013, pp. 237–238.
3 Riedel, Giacca and Golay, 2014, pp. 5–6; Baderin and McCorquodale, 2007, p. 3; Odello and Seatzu, 2013, pp. 4–5; Ó hAdhmaill and McCann, 2020, pp. 31–33.
4 Adopted by the UN General Assembly (GA) Resolution 2200A (XXI), 16 December 1966. Entry into force: 23 March 1976.
5 Adopted by the UN General Assembly (GA) Resolution 2200A (XXI), 16 December 1966. Entry into force: 3 January 1976.
6 Sepúlveda, 2003, p. 1.
7 Ó hAdhmaill and McCann, 2020, p. 38; Hertig Randall, 2018, pp. 7–9, 26–27.

part of customary international law, which grants them significant legal authority.[8] On the other hand, the ICCPR and the ICESCR are international treaties that are legally binding for the states that have ratified them. These states are required to implement the rights outlined in the Covenants, establishing a legal framework that enables individuals to assert their rights.[9] The monitoring mechanisms of both covenants are essential in ensuring the implementation of the rights. The Human Rights Committee (HR Committee) and the Committee on Economic, Social and Cultural Rights (CESCR) have played a pivotal role in shaping international norms and guiding national legislation.[10]

Another key function of the International Bill of Rights is that it provides a shared foundation for dialogue and cooperation on human rights issues, influencing the adoption of not only the European Convention on Human Rights,[11] but also the African Charter on Human and Peoples' Rights.[12] Its principles have been incorporated into various United Nations treaties and resolutions, further strengthening the global human rights system.[13]

However, the International Bill of Human Rights faces various challenges and criticisms. A key challenge is the absence of strong enforcement mechanisms. The HR Committee and the CESCR as the quasi-judicial monitoring bodies are limited to issuing 'Views' with recommendatory force rather than binding judgements.[14] Additional criticism arises from the separation of CPR and ESCR, a topic that will be discussed in Chapter 2.[15]

Although it encounters various challenges, the International Bill of Human Rights plays an essential role in promoting and protecting human rights worldwide. It has significantly impacted international norms, shaped national laws, and served as a cornerstone for advocacy and accountability initiatives.[16]

2. The ICESCR Versus René Cassin's Concept

René Cassin, as one of the main authors of the Universal Declaration of Human Rights, was committed to place economic and social rights alongside civil and political rights

8 Ssenyonjo, 2009, pp. 7–9; Ó hAdhmaill and McCann, 2020, pp. 31–34; Odello and Seatzu, 2013, pp. 11–14.
9 Ó hAdhmaill and McCann, 2020, pp. 34–35; Hertig Randall, 2018, pp. 14–17.
10 Ó hAdhmaill and McCann, 2020, pp. 36–37; Hertig Randall, 2018, pp. 23–26.
11 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950.
12 African Union, 27 June 1981. Winter and Prost, 2013, pp. 238–239; Sepúlveda, 2003, pp. 48–49, 51–52.
13 Sepúlveda, 2003, pp. 46–58.
14 Riedel, Giacca and Golay, 2014, p.10; Odello and Seatzu, 2013, pp. 21–23 and 154.
15 Sepúlveda, 2003, p. 45; Ssenyonjo, 2009, pp. 3–4 and pp. 9–17; Ó hAdhmaill and McCann, 2020, p. 38.
16 Ó hAdhmaill and McCann, 2020, p. 38.

in the UDHR. One of the reasons for his commitment was his involvement in veterans' movements, thus he was in daily contact with the International Labour Organisation (ILO), especially during his work in Geneva in 1920s. He trusted that disabled men have rights to justice, not to charity, regardless of the army they fought for.[17] Cassin was successful in his efforts, which is evident from the adopted UDHR, Articles 22–26.

The 1966 Covenants on the other hand do not follow the same logic, as there are two: ICESCR only includes economic, social and cultural rights, while the civil and political rights are covered by ICCPR. There are various reasons behind this, explained through historical context.

At the second session of the HR Commission, in 1947, it was decided that it should draft (next to a declaration and measures of implementation) one binding human rights treaty. However, some states expressed their unwillingness to sign a Covenant which would include ESCR. The disagreements at the time were touching upon the technical nature of those rights and the obligations of states in relation to them. Consequently, the General Assembly requested the HR Commission to draft two covenants, one containing CPR and the other ESCR. Nevertheless, the connection between the two instruments was underlined in that same resolution by stating that both Covenants will be approved by the General Assembly simultaneously and opened for signature at the same time. The HR Commission was instructed to include as many similar provisions as possible in the Covenants to emphasise the unity of the aim and to ensure respect for and observance of human rights.[18]

The disagreements in the period of drafting of the Covenants continued to haunt the development of ESCR, to a certain extent. The discussion is framed as a debate on the nature of the human rights of the first generation (CPR) and of second generation (ESCR) and as a discussion on the justiciability of ESCR. The next paragraphs address some of the main arguments.

The adoption of the ICESCR itself should negate the earlier arguments that ESCR were not human rights but only aspirational societal goals. It was argued that CPR depend mostly upon negative obligations of the states, while ESCR require positive action and are costly. Their progressive implementation depends on the availability of resources. However, certain positive obligations stem from CPR as well and certain ESCR are of immediate effect, as the right of everyone to form and join a trade union, guaranteed in Article 8 ICESCR or the obligation of states to adopt legislation against forced evictions, stemming from Article 11 ICESCR.[19] The Covenant contains both obligations of conduct and result. Although the full realisation of rights may be achieved progressively, states should take deliberate, concrete steps, targeted clearly towards meeting the ICESCR obligations. In other words, states are obligated to move as expeditiously and effectively as possible towards the full realisation of the ESCR.[20]

17 Winter and Prost, 2013, p. 221.
18 GA Resolution 543 (VI), 5 February 1952.
19 See: Subchapter 5.2.1. Strban and Kogej, 2026, pp. 266–267.
20 Ibid.

They are therefore required to realise the full entitlement to an ESCR over time or immediately, but in neither of the cases are they entitled not to act at all.[21]

Furthermore, ESCR have been scrutinised as vague and non-justiciable, because one could not claim them against a state in the same way as CPR. The critique of vagueness was connected to the fact that they were not yet elaborated to the extent that the CPR were. However, this has changed since the adoption of ICESCR and the work of the CESCR. The vague formulation and thus uncertain content are also commonly addressed when discussing the issue of direct applicability. Assertions against the judicial enforceability of ESCR are based on the argument that (quasi)judicial institutions cannot adjudicate on ESCR because they are dependent on the policy decisions for which legislative and executive branches of states are competent. This argument can no longer be sustained in international law. (Quasi)judicial institutions adjudicating ESCR are not competent to take over the policy making but are called to review the decisions of the states to ensure that they are consistent with fundamental human rights.[22]

The debate on justiciability is closely connected to the discussion on implementation and supervision of the ICESCR. While ICESCR only foresaw a state reporting obligation, the ICCPR provides for Individual communications and state complaint procedures from the outset. The debate has changed since the adoption of the Optional Protocol to the ICESCR (OP),[23] which introduced the Individual communications procedure and emphasised the equal importance of CPR and ESCR.[24] This is in line with Cassin's view of the concept of state sovereignty and position of the individual in international law. Anyone should have a right of individual complaint against violations of human rights against the state they live in.[25]

Although human rights are divided into two Covenants, the Preambles of both affirm their interconnection and interdependence.[26] This principle is also reflected in the 1968 Proclamation of Tehran,[27] reaffirmed in the 1993 Vienna Declaration on Human Rights,[28] and emphasised in the legal doctrine[29] as well as interpretations by international bodies and national courts. Although the process of implementation and supervision may differ, all human rights include obligations to respect (refrain

21 Langford and King, 2008, pp. 486–487; Baderin and McCorquodale, 2007, pp. 10–14.
22 Baderin and McCorquodale, 2007, pp. 10–12; Nussberger and Landau, 2023, p. 13.
23 Adopted by the UN GA Resolution A/RES/63/117, 10 December 2008. Entry into force: 5 May 2013.
24 Riedel, Giacca and Golay, 2014, p. 7.
25 Winter and Prost, 2013, p. 221.
26 'In accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.' Preambles of the ICESCR and the ICCPR.
27 Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, UN Doc. A/CONF.32/41.
28 Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14 to 25 June 1993, UN Doc. A/CONF.157/24.
29 Nussberger and Landau, 2023.

from interfering directly or indirectly), to protect (ensure others do not interfere) and to fulfil (provide the rights).[30] Despite human rights being divided into two Covenants, Cassin's concept of placing ESCR alongside political rights is followed through the interpretation. What is more, as Cassin foresaw, the Covenants along with various UN instruments and other human rights acts such as the European Convention on Human Rights, expand the UDHR with legally binding norms. His goal of creating a basic document on which later generations could build was successfully achieved.[31]

3. Adoption, Relevance, Implementation

The drafting of the ICESCR and ICCPR lasted almost twenty years and involved several UN bodies. In addition to the HR Commission, which was composed of members voted on by governments, the process involved the Economic and Social Council (ECOSOC), the Committee on Social, Humanitarian and Cultural Questions and the General Assembly (GA). NGOs and specialised agencies of the UN, such as the ILO, the World Health Organisation (WHO), the Food and Agriculture Organisation (FAO) and the UN Educational, Scientific and Cultural Organisation (UNESCO) were also instrumental.[32] The HR Commission worked on drafting a single Covenant from 1949 to 1951. Political, legal and economic disagreements (as further explained in Chapter 2) led to the GA resolution requesting the HR Commission to prepare two Covenants, one on CPR and the other on ESCR.[33] The GA adopted the ICESCR unanimously, without abstentions, by a resolution of 16 December 1966, simultaneously with the ICCPR.[34] In accordance with Article 27, it entered into force three months after the date of being deposited with the Secretary-General of the UN of the thirty-fifth instrument of ratification or instrument of accession. The conditions set out in that Article were met on 3 January 1976.

The ICESCR has provided a strong ground for the protection of ESCR and created an important frame of reference in human rights protection. That is evident from the wide support of the instrument from across all regions and all economic and political systems of the world.[35] As of September 2024, there are 172 parties to the ICESCR, compared to the 174 parties to the ICCPR. Comoros, Cuba, Palau and the United States of America have signed, but not ratified the ICESCR.[36]

The Covenant does not prohibit or regulate the formulation of reservations and declarations, and some states made use of that option. A few states have made

30 Odello and Seatzu, 2013, p. 7; Langford and King, 2008, pp. 484–486; See: Subchapter 5.1. Strban and Kogej, 2026, pp. 274–275.
31 Winter and Prost, 2013, pp. 238–239.
32 Baderin and McCorquodale, 2007, p. 5.
33 GA Resolution 543 (VI), 5 Feb 1952.
34 UN Doc. A/RES/2200 (XXI).
35 Baderin and McCorquodale, 2007, pp. 3–4.
36 United Nations, 2024.

objections within 12 months of communications on the reservations.[37] The possibility to make reservations to international treaties stems from the principle of state sovereignty and allows states to refuse the binding effect of certain provisions. Since ICESCR is a treaty under international law, the 1969 Vienna Convention on the Law of Treaties is applicable. According to Article 19, the states may formulate a reservation unless prohibited by the treaty and unless incompatible with the object and purpose of the treaty. The object and purpose of the Covenant is to establish clear obligations for the full realisation of ESCR. Reservations to human rights instruments raise complex questions since the effect of a reservation is either to weaken protection for or fail to guarantee the protection of certain rights to individuals within a state.[38]

The ICESCR is legally binding for the States Parties and the discussion on the nature of the obligations does not affect this conclusion.[39] When looking at the implementation of the Covenant in the ratifying states, the question whether a legal system in place is monist or dualist is crucial. In the monist states, no special act needs to be passed to incorporate the Covenant in national law, while such a law needs to be passed in the dualist systems. Nevertheless, the *de facto* impact of the ICESCR on the respect of ESCR varies between states and is not necessarily correlated with the legal status of the treaty within the national system. The international treaties can have the same status as statutory legislation or a status between the national and constitutional law.[40] The States Parties' constitutions normally include the ICESCR rights, and the Covenant impacts the interpretation of the constitutions.[41]

The principal obligation of contracting states is the implementation of the Covenant at the domestic level, not only by actions but also abstentions of the competent state organs. The CESCR, competent to supervise the enforcement of the ICESCR, recommended the states to incorporate the Covenant into domestic law in a way to allow it to be directly invoked before the domestic courts, so as to ensure effective legal remedies. States should take appropriate measures for implementation, encompassing not only legislative measures but also non-legislative, for instance social measures and administrative, financial and educational campaigns.[42] The CESCR has emphasised the importance of the national level monitoring, underlining the role of ombudspersons and national human rights commissions.[43]

International measures of implementation are crucial for relevance of the Covenant. There are three possible avenues: judicial, quasi-judicial and political. The first includes judgements, which need to be executed at the national level. This possibility is not used with regard to ICESCR. The political approach is, however, adopted in all

37 Ibid.
38 Ssenyonjo, 2009, pp. 203–243.
39 Odello and Seatzu, 2013, p. 11.
40 Nussberger and Landau, 2023, pp. 13–15.
41 Ibid.
42 General comment No. 3: The nature of States Parties' obligations (Art. 2 para. 1 of the Covenant), fifth session (1990), E/1991/23; Odello and Seatzu, 2013, pp. 21–23.
43 Langford and King, 2008, pp. 495–496.

human rights treaties and encompasses a state reporting procedure. Each States Party is obligated to report on the accomplishment of ESCR in the domestic system. CESCR reviews the reports, but its recommendations are not legally binding, although of great importance for the evolution and interpretation of the Covenant. They may also influence policy and legislative changes, administrative practice and jurisprudence of the national courts. Quasi-judicial approach, on the other hand, includes monitoring of individual communications, which leads to recommendations in the form of opinions. It gives the right to individuals or groups of individuals to allege violations of their rights against a state. The treaty body does not have the competence to issue judgements, but only views with recommendatory force. Concerning the ICESCR rights, this possibility was only introduced in 2008, with the Optional Protocol to the Covenant.[44]

The discussion on the possibility of individual complaints mechanism was closely connected to the debate on enforceability and justiciability of ESCR (see Chapter 2). In 1990, Philip Alston, a member of the CESCR, proposed that the Committee conduct a study on the feasibility of implementing an individual complaint procedure. He was tasked with preparing a discussion note outlining the key issues that could emerge from establishing such a procedure. By 1991, the initial report was approved, but additional analysis on the matter was requested. The Committee submitted a comprehensive "analytical paper" in support of developing an optional protocol to the 1993 World Conference on Human Rights. The HR Commission was encouraged to continue exploring optional protocols to the ICESCR in collaboration with the CESCR. At its fifteenth session, the CESCR presented a proposal for an optional protocol, which was approved by the HR Commission in 1997 and subsequently circulated to governments, intergovernmental organisations, and NGOs for their feedback.[45]

In 1998, the HR Commission adopted a resolution requesting Member States to share their opinions on the draft. Only a few governments responded – some voiced support, while others opposed its adoption. In February 2001, the Office of the High Commissioner for Human Rights organised a workshop titled 'The Justiciability of Economic, Social, and Cultural Rights, with Particular Reference to a Draft Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights'. The experts concluded that ESCR should be justiciable and that a complaints procedure would be an appropriate platform for consideration. However, not all delegations agreed; some raised concerns about the lengthy timeframes required for working groups to fulfil their responsibilities and felt it was premature to submit a draft optional protocol to a working group process.[46]

In 2002, the Commission concluded to establish an Open-ended Working Group at its next session to explore options for drafting an optional protocol to the ICESCR. In 2005, the Working Group mandated its chairperson, Catarina de Albuquerque, to

44 Riedel, Giacca and Golay, 2014, p. 10; Odello and Seatzu, 2013, pp. 21–23 and p. 154.
45 Odello and Seatzu, 2013, pp. 46–47; De Albuquerque, 2010, pp. 147–150.
46 Odello and Seatzu, 2013, pp. 46–51.

prepare a report to facilitate discussions on the Optional Protocol (OP). By resolution 1/3 on June 29, 2006, the Human Rights Council modified the Working Group's mandate, authorising it to begin negotiating the text of the OP. In 2008, the Open-ended Working Group reached a consensus to forward the draft text of the OP to the Human Rights Council for approval. The revised text was approved without a vote by the Council members on 18 June 2008 and was then submitted to the Third Committee of the General Assembly. On 10 December 2008, the General Assembly unanimously adopted the OP. It is open for signature by any state that has signed the Covenant[47] and can only be acceded to or ratified by a state that has ratified the Covenant.[48] The OP came into force on May 5, 2013, three months after the tenth instrument of ratification or accession was deposited with the UN Secretary-General, in accordance with Article 18(1).[49]

The relevance of the ICESCR extends even to the states which are not party to it. Some provisions of the ICESCR reflect the norms of customary international law, and certain part of its rules could be recognised as reflecting the general principles of law recognised by civilised nations. Even in states, which are not party to the Covenant, courts have used the General Comments of the CESCR[50] to interpret ESCR included in the national constitutions.[51]

The relevance of the ICESCR is evident when various UN bodies, regional frameworks, and national parliaments reference it as a fundamental universal standard. The Covenant serves not only as a benchmark for evaluating human rights compliance in states but also as a foundation for developing international human rights instruments.[52]

4. Comparison with Other Relevant Regional Documents

Regional instruments related to the protection of human rights play a fundamental role in the process of clarification and interpretation of ICESCR rights. In the European context, the regional instruments include the European Convention on Human Rights (ECHR), the European Social Charter (ESC),[53] and the EU Charter of Fundamental Rights (EU Charter).[54] The comparison considers the legal status of the

47 Art. 17(1) of the OP.
48 Ibid., Article 17(2).
49 Ibid. See also: de Albuquerque, 2010, pp. 144–178.
50 On the General Comments see: Subchapter 6.2.2. Strban and Kogej, 2026, pp. 282–283.
51 Odello and Seatzu, 2013, pp. 11–14.
52 Ibid. On the influence of the ICESCR in Europe see: Müller, 2018, pp. 215–242.
53 Council of Europe, adopted on 18 October 1961. In this paper, the term European Social Charter is used to represent a set of several instruments: the original 1961 European Social Charter, the 1988 Additional Protocol, the 1991 Protocol, the 1995 Additional Protocol providing for a system of collective complaints, and the Revised European Social Charter (1996).
54 OJ C 326, 26.10.2012, pp. 391–407.

instrument, the types of rights it covers (whether it focuses solely on ESCR, CPR, or both), and the supervisory mechanisms.

The European Social Charter, adopted in 1961 and revised in 1996, is one of the key documents under the auspices of the Council of Europe, specifically focused on ESCR. The Charter guarantees the protection of 31 fundamental rights, such as the right to just conditions of work, the right to social and medical assistance, and the right to protection against poverty and social exclusion. While both the ICESCR and the European Social Charter recognise many of the same rights, such as the right to work, the right to social security, and the right to an adequate standard of living, there are notable differences in their approach. The ICESCR is more focused on establishing broad, globally applicable standards and requires states to progressively achieve the full realisation of the rights it protects. The Charter, however, is more specific in its obligations, setting out more detailed standards for the protection of social and economic rights within the context of European states.[55]

The European Social Charter is monitored by the European Committee of Social Rights, which assesses state compliance based on periodic reports submitted by States Parties. The reporting obligation is therefore similar to the one under the ICESCR. For countries which accepted the Additional Protocol providing for a system of collective complaints (1995), monitoring is extended by the Collective Complaints procedure.[56] It complements the judicial protection of civil and political rights provided by the ECHR. Unlike the Individual complaints under the Optional Protocol to the ICESCR,[57] complaints under the ESC should address a state's general non-compliance with its laws or practices, rather than individual situations. The procedure allows complaints to be lodged without the prior exhaustion of domestic remedies, and the complainant does not need to be a direct victim of the alleged violation. Complaints can be submitted by representative trade unions, employers' organisations, European social partners, and certain international non-governmental organisations with participatory status in the Council of Europe. States may also permit representative national non-governmental organisations to lodge complaints. When violations are identified, countries are required to report on the steps they have taken to address them. Much like the 'Views' adopted in the Individual complaints' procedure before the CESCR, the decisions of the European Committee of Social Rights are not legally binding; however, they are influential and can lead to political and legal pressure on states to comply with their obligations under the Charter.[58]

On the other hand, *the ECHR,* adopted in 1950 by the Council of Europe, primarily focuses on civil and political rights. It provides for a robust enforcement mechanism through the European Court of Human Rights (ECtHR), which allows individuals, groups, and states to bring cases directly before the Court alleging violations of the

55 Odello and Seatzu, 2013, pp. 11–14; Sepúlveda, 2003, pp. 48–29; Council of Europe, 2024b.
56 Kresal, 2020, p. 418; Council of Europe, 2024a.
57 See: Subchapter 6.2.3. Strban and Kogej, 2026, pp. 283–284.
58 Sepúlveda, 2003, pp. 29–48.

rights protected by the Convention. The ECtHR's decisions are legally binding on the States Parties to the ECHR. When the Court finds a violation, the state concerned is obliged to provide appropriate remedies, including compensation and, where necessary, changes to national laws or practices. This strong enforcement mechanism makes the ECHR one of the most effective regional human rights instruments, ensuring that CPR are upheld within the Member States of the Council of Europe. However, while it is true that the ECtHR primarily protects first-generation rights, it is important to emphasise that all human rights are universal, indivisible, interdependent, and interrelated. ECtHR held that many of the CPR have implications of a social or economic nature and that 'there is no water-tight division separating that sphere from the field covered by the Convention'.[59] Therefore, the ECHR, together with the practice of the ECtHR, importantly contributes to the justiciability of the ESCR, guaranteeing an individual right to a judicial remedy before an international or supranational court.[60]

As Mišič and Strban note, the ECHR can be applied to fundamental social rights in at least three distinct ways. Firstly, it indirectly protects social rights by safeguarding essential CPR, thereby establishing a broader legal framework for the implementation of the European Social Charter (and therefore ESCR), such as upholding democratic principles, the rule of law, and prohibiting discrimination. Secondly, ESCR can be directly protected when they are connected to CPR. Lastly, certain provisions of the ECHR possess a significant social dimension.[61]

Mikkola points out several articles that have been particularly significant in the ECtHR's practice for protecting ESCR. The Court has safeguarded the right to human dignity through Article 2 (right to life) and Article 3 (prohibition of torture). Article 2 imposes an obligation on states to protect the health and life of individuals, leading to the requirement that states provide an adequate healthcare system accessible to anyone at risk of life-threatening health deterioration.[62] Article 3 offers protection to vulnerable groups, such as the elderly and children. A violation was identified in a case where a state failed to protect children living in grossly inadequate conditions by implementing proper child welfare measures.[63]

Additionally, Article 8 of the ECHR, which guarantees the right to respect for private and family life, can be employed to protect labour and social rights more comprehensively than Articles 2 and 3. The scope of Article 8 has expanded beyond merely requiring states to protect privacy and family life from excessive interference

59 *Airey v. Ireland*, Application No. 6289/73, Judgement of 9 October 1979, para. 26.
60 Mišič and Strban, 2021, p. 529; Eide, 2000, p. 119; Končar, 2010, p. 152; Vienna Declaration and Programme of Action, adopted on 25 June 1993, by the World Conference on Human Rights in Vienna; Sepúlveda, 2003, pp. 48–49, 52–53.
61 Mišič and Strban, 2021, pp. 526–527.
62 *Cyprus v. Turkey*, Grand Chamber judgement, Application No. 25781/94, 10.5.2001; *Pentiacova v. Moldova*, Application No. 14462/03, 4.1.2005.
63 *Z and Others v. United Kingdom*, Application No. 29392/95, 10 May 2001; Mikkola, 2010, pp. 82–86; Kogej, 2024, pp. 311–312.

by public authorities. The evolving case law now also obligates states to actively support family life, for example, by taking measures to prevent social insecurity for individuals and families.[64]

Other important provisions for the protection of labour and social rights include Article 4 (prohibition of slavery and forced labour),[65] Article 5 (right to liberty and security),[66] Article 11 (freedom of assembly and association),[67] Article 14 of the ECHR and Article 1 of Protocol 12 (prohibition of discrimination), Article 2 of the Additional Protocol (right to education) and Article 1 of the Additional Protocol (protection of property).[68]

The EU Charter, proclaimed in 2000 and becoming legally binding in 2009 with the entry into force of the Treaty of Lisbon, encompasses a wide range of civil, political, economic, social, and cultural rights, making it more extensive than the ICESCR, which is limited to ESCR. However, the Charter's applicability is restricted to 'the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.'[69] Therefore, in this respect, its application is narrower than that of the ICESCR.

The enforcement of the EU Charter is overseen by the Court of Justice of the European Union (CJEU), which has the authority to hear cases brought by individuals, companies, or Member States alleging violations of the Charter's provisions. Decisions of the CJEU are legally binding on all EU Member States and EU institutions, providing a strong mechanism for ensuring that the rights enshrined in the EU Charter are respected and protected throughout the EU. This strong enforcement mechanism is a significant aspect that the ICESCR lacks, as the 'Views' of the CESCR are not legally binding.[70]

In conclusion, while the regional instruments such as the European Social Charter, the ECHR, and the EU Charter provide overlapping protections for ESCR, each has distinct features and enforcement mechanisms that reflect their specific legal and political contexts. The European Social Charter focuses on detailed standards for ESCR within European states, monitored through both periodic reporting and a collective complaints procedure, albeit without legally binding decisions. The ECHR primarily safeguards CPR but has evolved to address ESCR indirectly through its robust enforcement mechanism via the ECtHR, whose decisions are legally binding. Meanwhile, the EU Charter encompasses a broad range of rights but is applicable only within the specific context of EU law, with enforcement through the CJEU providing strong legal oversight. Together, these instruments illustrate a complex landscape

64 Mikkola, 2010, pp. 86–88; Kogej, 2024, pp. 311–312.
65 In the case of *Siliadin v. France*, Application No. 73316/01, 26 May 2005, the work of a woman in a household (where she also lived with her employer) was identified as a form of modern slavery.
66 In particular on the protection of juvenile offenders.
67 Particularly important for the protection of collective labour law rights.
68 For more, see: Mikkola, 2010, pp. 82–94.
69 Art. 51 of the EU Charter.
70 European Union, 2024.

of human rights protection in Europe, where various legal frameworks and institutions contribute to the progressive realisation and enforcement of both civil-political and economic-social rights, albeit with varying degrees of enforceability and scope. As Nussberger and Landau note, for European states, the treaties established under the Council of Europe are even more important than the UN Covenants, not because the rights they guarantee differ significantly, but due to the more effective enforcement mechanisms.[71]

5. Analysis of Its Structure

The ICESCR encompasses 31 Articles structured into five parts, preceded by a Preamble. The Preambles of ICESCR and ICCPR are identical in their content, as the UN GA resolution 543(VI) instructed the HR Commission to include as many similar provisions as possible in the Covenants to underline the unity of the aims and the interconnection and interdependence of human rights.[72] The Preamble recognises the inherent dignity of the human person and the equal and inalienable rights of all people. Underlining the interconnection of human rights, it is emphasised that 'the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.' It expresses the obligation of states under the Charter of the UN to promote fundamental rights, and responsibilities of the individual to strive for the promotion and observance of the rights recognised in the Covenant.[73]

Obligations imposed by the ICESCR can be divided into (a) rights-based obligations imposed by part I (Article 1) and III (Articles 6–15), (b) general or basic obligations imposed by part II (Articles 2–5) and (c) procedural obligations imposed by part IV (Article 16–25).[74]

Obligations under points (a) and (b) will be discussed in the sections below, while the procedural obligations of part IV will be discussed in Chapter 6. According to the provisions of Articles 24 and 25, the ICESCR must not be interpreted as impairing the provisions of the Charter of the UN and of the constitutions of the specialised agencies which define the respective responsibilities of the various organs of the United Nations and of the specialised agencies in regard to the matters dealt with in the Covenant. The provisions of the ICESCR should not neither be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources. Part V (Articles 26–31) contains provisions on signature, ratification, accession, entry into force, the process of amendment of the Covenant,

71 Nussberger and Landau, 2023, pp. 13–15.
72 See: Subchapter 2.
73 Odello and Seatzu, 2013, p. 9.
74 Sepúlveda, 2003, p. 251.

and the extension of the ICESCR to all parts of federal states without any limitations or exceptions.

5.1. Rights-Based Obligations

The ICESCR seems to cover three main categories of rights. Economic rights relate to the participation in the economic life of the community, while social rights are connected to the conditions under which people work and live. Cultural rights are correlated with the right to participate freely in the cultural life. However, since the rights are interrelated, no strict division is followed. The rights encompassed in the Covenant have been interpreted and clarified by its monitoring body, the CESCR, through the reporting process, the Individual complaints mechanism and the adoption of General Comments.[75]

Article 1 contains the inalienable right to self-determination. It is the right of all people to freely determine their political status and freely pursue their economic, social and cultural development. Articles 6–15 outline ESCR and freedoms, each article beginning with a general declaration of the right, followed by a detailed description of its aspects and any applicable limitations or restrictions. The right to work (Article 6) and to the enjoyment of just and favourable conditions of work (Article 7) is followed by collective labour law rights (Article 8). Article 9 governs the right to social security, while Article 10 focuses on the protection of families, mothers, children and young people. The right to an adequate standard of living protected in Article 11 includes the right to adequate food, clothing and housing and the right to be free from hunger. Article 12 encompasses the right to the enjoyment of the highest attainable standard of physical and mental health, while Articles 13 and 14 include the right to education. Article 15 recognises the right to take part in cultural life, to enjoy the benefits of scientific progress and its applications, to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production and the freedom indispensable for scientific research and creative activity.

When discussing state obligations, various typologies are used. Differentiation of the obligations of result and of conduct has already been mentioned, while the notions of immediate obligations and those to be realised progressively will be explained below. Another widely accepted typology, both in literature and as established by General Comment No. 12 from the CESCR,[76] distinguishes between the obligations to respect, protect and fulfil ESCR. While this typology has faced criticism for the lack of clear distinctions between the categories, the CESCR has countered this argument, clarifying that all types of obligations can coexist simultaneously or in combination.[77] Before examining the general obligations imposed by part II, this typology will be explained in brief.

75 OHCHR, 2024c; Riedel, Giacca and Golay, 2014, pp. 8–10.
76 General Comment No. 12 on the right to adequate food (Art. 11), twentieth session (1999), E/C.12/1999/5.
77 Riedel, Giacca and Golay, 2014, pp. 18–20.

The obligation to respect requires that states refrain from interfering with ESCR directly or indirectly. Legislation that fails to treat similar situations equally would indicate a violation of the state's obligation to uphold the prohibition of discrimination, unless it can provide justification for such actions. The obligation to protect, on the other hand, requires states to ensure that private third parties do not infringe on human rights of their citizens. To fulfil this obligation, they may adopt legislation which imposes duties to respect basic human rights and provide remedies if those duties are breached.[78]

The obligation to fulfil requires states to take on an active role and adopt legislation or administrative, budgetary, judicial and other measures. It can be split into obligations to promote, facilitate and provide. To fulfil the first obligation, states can for instance adopt campaigns to raise awareness or inform the population. The obligation to facilitate requires the state to take measures to enable and assist individuals and communities to enjoy a right, while the obligation to provide calls for the state to fulfil a specific Covenant right when the people or groups concerned are unable to attain it by the means at their disposal for reasons beyond their control. Examples of the obligation to provide include providing social assistance or establishing non-contributory schemes, ensuring access to schools and essential medicines.[79]

5.2. General Obligations

Part II encompasses provisions relevant to the generality of the substantive rights contained in Parts I and III of Article 2 focuses on the fundamental obligations to respect and uphold the rights outlined in the Covenant, ensuring that appropriate measures are adopted to give full effect to these rights and freedoms, with the primary goal of achieving an adequate standard of living for all individuals. It also mandates the provision and enforcement of effective remedies in cases of significant rights violations. Article 3 commits States Parties to guarantee equal rights for men and women in accessing the rights and freedoms outlined in the ICESCR. Articles 4 and 5 address general limitations, which should be interpreted narrowly in the light of the general rule.[80] Article 5 addresses not only states, but also groups or persons. They hold an obligation not to engage in any activity or perform any act aimed at the destruction of any of the rights or freedoms recognised in the Covenant. The next section will further analyse the obligations imposed by Article 2(1).

First paragraph of Article 2 reads

> 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view

78 Ibid.
79 Ibid.; General Comment 19 on the right to social security (Art. 9), thirty-ninth session (2007), E/C.12/GC/19.
80 Odello and Seatzu, 2013, pp. 9–10.

to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'.

The language used in Article 2(1) of the ICESCR is often considered more ambiguous than other human rights obligations, which can lead to challenges in clearly defining the extent of state responsibilities and identifying specific violations of the Covenant. This vagueness has been a focal point of scrutiny by both the Committee and legal scholars. In response to these concerns, the CESCR issued General Comment No. 3 in 1990 to clarify the nature of state obligations under the Covenant. Concurrently, the academic community developed interpretative frameworks like the Limburg Principles[81] and the Maastricht Guidelines.[82] Although these guidelines are not legally binding, they serve as valuable tools for interpreting the Covenant, drawing on the insights and writings of esteemed legal scholars.[83]

Article 2(1) of the ICESCR outlines several key obligations that states must fulfil to ensure the realisation of the Covenant's provisions: obligation to 'take steps…by all appropriate means'; progressive realisation; minimum core obligations; maximum available resources; international assistance and cooperation

Those obligations will be analysed in the following paragraphs.

5.2.1. Obligation 'To take steps… by all appropriate means'

Article 2(1) of the Covenant obligates states 'to take steps (…) by all appropriate means, including particularly the adoption of legislative measures' towards the full realisation of the ICESCR rights. In the General Comment 3 on the nature of States Parties' obligations, the CESCR clarified that while the full realisation of the rights may be achieved progressively, initial steps must be taken within a reasonably short time after the Covenant's entry into force. These steps should be deliberate, concrete, and clearly aimed at fulfilling the obligations recognised in the Covenant.

Despite Article 2(1) recognising the progressive realisation of the ESCR, the ICESCR contains certain obligations of immediate effect. This is especially the case with negative obligations requiring non-interference, such as ensuring non-discrimination (Article 2(2)). However, the progressive nature of other rights requiring positive obligations with significant direct resource implications does not negate the need for prompt action. The states are required to take steps without deliberate regressive actions, which would decrease national investments in healthcare, primary education and social services. A case-by-case approach is recommended when evaluating State compliance. Nevertheless, the Committee has made it clear that obligations cannot be limited by social, cultural, or economic conditions. States must address the

81 Limburg Principles on the Implementation of the ICESCR, 1987.

82 Masstricht Guidelines on Violations of Economic, Social and Cultural Rights, 1997. The CESCR later reissued both the Limburg Principles and the Maastricht Guidelines as UN document E/C.12/2000/13.

83 Odello and Seatzu, 2013, pp. 14–21.

needs of vulnerable populations, such as children, the elderly, and nursing mothers, in line with Article 12 of the Covenant. This interpretation limits the risk of states using the progressive clause to avoid obligations and clarifies the extent of their responsibilities.[84]

Article 2(1) of the Covenant specifies that states must use 'all appropriate means,' particularly legislative measures, to fulfil their obligations. The Committee acknowledges that legislation is often crucial, and in some cases, indispensable, especially in combating discrimination and addressing key areas like health, the protection of children and mothers, and education. It should outline clear targets, methods for achieving them, such as collaboration plans, institutional responsibilities, monitoring mechanisms, and remedies.[85]

However, legislative measures are not enough to ensure the full realisation of ESCR. 'Other measures which may also be considered "appropriate" for the purposes of Article 2(1) include, but are not limited to, administrative, financial, educational and social measures.'[86] States are required to provide accessible, affordable, timely, and effective remedies for any violations of ESCR.[87] These remedies can include restitution, compensation, rehabilitation, satisfaction, or guarantees of non-repetition. Effective implementation of ESCR might also involve improved macroeconomic policies, such as reducing foreign debt and inflation and enhancing export capacity.[88]

5.2.2. Progressive Realisation

States are required to make continuous efforts to advance ESCR progressively. This approach reflects the understanding that achieving full realisation of ESCR takes time and resources. However, as it was already underlined, there are certain obligations under ICESCR which require immediate action, such as the prohibition of discrimination.[89]

To comply with the progressive realisation of ESCR, states must develop strategies, policies, and programmes, using indicators and benchmarks to measure progress. Monitoring must involve collecting reliable quantitative and qualitative data, disaggregated by categories like gender, race, and socioeconomic status, to understand the situation of vulnerable groups. This data helps measure compliance with the Covenant, and the UN and its specialised agencies provide guidance and tools, such as indicators developed by the WHO for health rights.[90]

84 Ibid., pp. 15–16; Ssenyonjo, 2009, pp. 52–54; General Comment No. 3.
85 General Comment No. 3; Ssenyonjo, 2009, pp. 54–56.
86 General Comment No. 3.
87 General Comment 9, The domestic application of the Covenant, nineteenth session (1998), E/C.12/1998/24.
88 Ssenyonjo, 2009, pp. 56–58.
89 General Comment No. 3; Ssenyonjo, 2009, pp. 58–61.
90 On health indicators see: WHO, 2024; General Comment No. 3; Ssenyonjo, 2009, pp. 58–61.

5.2.3. Minimum Core Obligations

Even in the most challenging circumstances, all States Parties under the Covenant must guarantee a minimum set of core obligations. This requirement ensures that essential levels of protection are maintained, and fundamental rights as defined in the Covenant are upheld.[91]

The CESCR has emphasised that every States Party has a minimum core obligation to ensure at least the basic essential levels of each right. For example, if a significant number of people in a state are deprived of essential food, primary healthcare, basic shelter and housing, or the most fundamental forms of education, that state is, *prima facie*, failing to meet its obligations under the Covenant.[92]

The Committee has further clarified that these core obligations are non-derogable, meaning they must be upheld even in situations of conflict, emergency, or natural disaster. Additionally, given that poverty is a global issue, core obligations are relevant not only to less developed nations but also to certain individuals and communities within the wealthiest countries. Once a States Party has fulfilled the core obligations related to ESCR, it still has a responsibility to continue progressing as quickly and effectively as possible towards the full realisation of all rights outlined in the Covenant.[93]

5.2.4. Maximum Available Resources

The obligation to utilise "maximum available resources" emphasises the responsibility of states to employ all available resources to progressively realise the ESCR enshrined in the Covenant. The concept of "maximum available resources" is interpreted broadly within the context of the ICESCR. It encompasses not only financial but also natural, technological, and human resources that a state has at its disposal. This broad interpretation implies that states must utilise all possible means – both domestic and those available from the international community – to fulfil their obligations under the Covenant.[94]

The principles of transparency and accountability are key in the use of resources. States are expected to demonstrate how their policies, actions, and budgetary allocations are directed towards the realisation of ESCR. This involves creating mechanisms for monitoring and evaluating the effectiveness of resource utilisation. Furthermore, the equitable distribution of resources is paramount to prevent discrimination and ensure that all segments of society, particularly marginalised and vulnerable groups, benefit from the state's efforts to fulfil its obligations under the Covenant.[95]

The CESCR has developed indicators in its Concluding Observations to determine whether the state is fulfilling its obligations. For example, it examines the proportion of the national budget allocated to ESCR compared to the spending on costly defence

91 General Comment No. 3, Odello and Seatzu, 2013, pp. 20–21.
92 Ibid.
93 Ibid., Ssenyonjo, 2009, pp. 65–69.
94 General Comment No. 3; Ssenyonjo, 2009, pp. 61–65.
95 Ibid.

projects and expensive armaments. Additional criteria have been developed for Individual complaint mechanisms under the 2008 Optional Protocol. These criteria consider factors such as the country's stage of development, the severity of the breach with specific reference to minimum core standards, and the presence of particular conditions like economic recession, recent natural disasters, and the adoption of low-cost solutions.[96]

In certain states, especially in developing countries, which lack the necessary resources to meet their obligations, international assistance and cooperation becomes crucial, which is emphasised by the specific provisions in Articles 11, 15, 22, and 23. Developed countries are encouraged to provide technical and financial support to help developing countries enhance their capacity to fulfil ESCR. This global approach reinforces the interconnectedness of states and the shared responsibility to promote human rights worldwide.[97]

5.2.5. International Assistance and Cooperation

In the General Comment 3, the CESCR underlined that, in line with Articles 55 and 56 of the UN Charter, established international law principles, and the Covenant's own provisions, international cooperation for development is an obligation for all states, while the responsibility is especially pressing for those states capable of assisting others.

States are required to meet three levels of obligations regarding international assistance and cooperation: to respect, protect, and fulfil ESCR. The obligation to respect means that states must not, by any action or omission, hinder the realisation of ESCR in other states. The obligation to protect requires states to take all necessary measures, including legal ones, to ensure that ESCR are not violated by private entities under their jurisdiction. The obligation to fulfil involves developed states taking an active role in providing tangible assistance to less developed states.[98]

The amount and type of resources allocated to international development largely depend on the independent decisions of individual states. Since 1970, the UN has recommended that 0.7% of the Gross National Product (GNP) of developed countries be dedicated to international cooperation to meet the essential needs of populations in developing countries. The CESCR has used this target as a benchmark to evaluate State compliance with their obligations under the Covenant.[99]

96 Odello and Seatzu, 2013, pp. 17–18.
97 General Comment 3; Ssenyonjo, 2009, pp. 61–65.
98 Odello and Seatzu, 2013, pp. 18–20.
99 Ibid.

6. Monitoring: The Committee on Economic, Social and Cultural Rights (CESCR)

6.1. The Establishment of the CESCR

The discussion on implementation and monitoring of the ICESCR was difficult and long, as the debate was connected to the perceived differences between the CPR and the ESCR. During the drafting of the Covenant, there was no consensus on the critical question of whether there should be international mechanisms for implementation. Developed countries strongly advocated for the inclusion of provisions to ensure implementation but opposed any international measures to enforce them. Furthermore, the creation of petition systems was seen as having the potential of turning complaints into international disputes, which could impact peaceful international relations negatively. Among those states that recognised the necessity of international measures, there were significant differences of opinion regarding the most suitable types of measures. Proposals included the introduction of a periodic reporting system that would cover either some or all of the Covenant's provisions, allowing the proposed committee to collect information on all matters related to the observance and enforcement of fundamental rights and to initiate an investigation if deemed necessary. In 1951, an independent Committee on ESCR was unsuccessfully proposed. Under this proposal, it would be granted extensive powers, including the ability to receive petitions from groups, individuals, states, or associations, gather information, and seek resolution through negotiations. Later, it was agreed that implementation would take the form of periodic reports, which would be examined by the ECOSOC, composed of state representatives. A proposal in 1966 to establish a committee of independent experts was not supported.[100]

After the ICESCR came into force in 1976, the ECOSOC established Working Groups composed of governmental experts to assist in reviewing State reports. However, the first such Working Group was not formed until 1979. These Working Groups were widely regarded as an inadequate means of supervision, and little action was taken to address this issue until 1985, when a working group itself proposed transforming into a committee of independent experts. This suggestion was endorsed by ECOSOC, which passed a resolution 1985/17 establishing the CESCR, consisting of independent experts. The mandate of the CESCR is restricted, as it is only able to assist ECOSOC in carrying out its monitoring functions under the ICESCR. Nevertheless, it is important to stress that the CESCR is a permanent body, not an *ad hoc* committee convened to examine each particular case. Even though the CESCR is still subject to ECOSOC's authority to change its structure and functioning, and it lacks the stability of being established as a treaty-based body, most commentators agree that it functions in practice in much the same way as other bodies that oversee compliance with international

100 Baderin and McCorquodale, 2007, pp. 7–8; Langford and King, 2008, p. 478; Odello and Seatzu, 2013, pp. 21, 23–24.

human rights treaties. This is even more true since 2008, when an international right of petition for individuals and NGOs was introduced with the Optional Protocol to the ICESCR.[101]

6.2. The Functioning of the CESCR

The CESCR is comprised of 18 independent experts, elected by States Parties for a term of four years with due consideration to equitable geographical distribution and to the representation of different forms of social and legal systems. Members are individuals of high moral standing and recognised expertise in the field of human rights. They serve in their personal capacity and are eligible for re-election if nominated.[102]

The CESCR is responsible for five monitoring functions under the ICESCR and the 2008 Optional Protocol: reviewing periodic reports submitted by States Parties; drafting General Comments; managing the Individual communication procedure, inter-State procedure and inquiry procedure. Besides these core responsibilities, the CESCR is also required to submit an annual report on its activities under the ICESCR to the General Assembly through the ECOSOC. The annual report should include a summary of its activities under the Optional Protocol as well.[103] In the following sections, those competences will be explored.

6.2.1. Periodic Reports

The establishment of a reporting procedure is central to the international framework for protecting and promoting ESCR and freedoms. Importantly, the obligation to submit a comprehensive report within two years of the ICESCR entering into force for the concerned States Party, and subsequently every five years, is the sole duty that Parties to the ICESCR automatically undertake upon accession or ratification.[104]

States Parties need to report on the 'measures which they have adopted and the progress made in achieving the observance of the rights recognised therein'.[105] Since the ICESCR does not include requirements regarding the content and form of States' reports, the CESCR had adopted reporting guidelines in 1991 to improve the effectiveness of the supervisory mechanism.[106]

States Parties submit their reports to the UN Secretary-General, who then forwards copies to the ECOSOC. If a States Party has already provided relevant information to the UN or any specialised agency, it may simply reference that information in its report. The CESCR can also request the state to provide additional information or address any urgent issues before the next report is due. If the CESCR believes it cannot

101 Baderin and McCorquodale, 2007, pp. 7–8; Odello and Seatzu, 2013, pp. 23–25. See: Subchapter 3.
102 ECOSOC Resolution 1985/17 of 28 May 1985; Odello and Seatzu, 2013, pp. 117–118.
103 Art. 15 OP.
104 Odello and Seatzu, 2013, p. 25.
105 Para. 1 of art. 16 ICESCR.
106 CESCR, Reporting Guidelines, UN Doc. E/1991/23; E/C.12/1990/8, supplement No. 3, Annex IV.

obtain the necessary information (because for instance, the state in question did not submit reports even after reminders were sent), it may require the state to accept a mission from one or two CESCR members. The strictest measure the Committee can take when States Parties fail to submit their reports, despite multiple reminders, is to review the implementation of the Covenant based on all available information, even in the absence of the report.[107]

The review of the reports take place during meetings where government representatives present their report and respond to questions from CESCR members. While NGOs are not allowed to participate directly in the discussion of the report, they can provide relevant information at any point before its examination.[108]

The reporting process begins with the pre-sessional working groups, where the CESCR prepares lists of issues related to the reports of States Parties before the dialogue takes place. States Parties are expected to provide responses to these issues. The CESCR has introduced a simplified reporting procedure on a pilot basis for certain States Parties, based on specific criteria.[109] Under this simplified procedure, the state's response to the list of issues prior to reporting serves as its report to the Committee.[110]

After reviewing the reports from States Parties, the CESCR formulates Concluding Observations in a closed meeting to assist the states in implementing the ICESCR. They highlight positive aspects, key areas of concern, and the Committee's recommendations for addressing the challenges faced by the states. Once finalised, the Concluding Observations are published on the CESCR webpage under the relevant session.[111]

ECOSOC may seek the input of the Commission of Human Rights for the evaluation of and general recommendations on reports submitted by States Parties. Under Article 20 of the ICESCR, States Parties and specialised agencies may provide comments on any general recommendations included in the reports of the Commission on Human Rights. ECOSOC can also submit general recommendations and a summary of the information it has received to the General Assembly.[112]

6.2.2. General Comments

Through the adoption of General Comments, the CESCR provides recommendations on matters related to ESCR that it believes require greater attention from States Parties. Although not legally binding, they are of significant practical importance, as the Committee uses them to communicate its interpretation of ESCR and freedoms to the Contracting States and to outline its working methods. General Comments

107 Concluding Observations of the CESCR: Solomon Islands, UN Doc. E/C.12/1/Add.33 (1999); Odello and Seatzu, 2013, pp. 25–26, 161–163.
108 Odello and Seatzu, 2013, p. 25.
109 List of such states: OHCHR, 2024b.
110 OHCHR, 2024e.
111 Ibid.
112 Odello and Seatzu, 2013, pp. 25–26.

contribute to the development of CESCR jurisprudence and can be valuable for states considering becoming parties to the ICESCR. The contents of the General Comments are shaped primarily by the Committee's experience of reviewing states' reports, so there is an important relationship between both mechanisms.[113]

Up to date, the Committee has adopted 26 General Comments, the last one on Land and ESCR (in 2022).[114] No state has formally objected to the General Comments, indicating the broad acceptance of the Committee's interpretation.[115]

6.2.3. Individual Complaints under the 2008 Optional Protocol

The ICESCR did not initially provide for an individual complaint mechanism; this was later established in 2008 through an Optional Protocol, which entered into force on May 5, 2013.[116] The mechanism is highly significant because it allows individuals or groups of individuals who claim to be victims of a States Party's violation of any ICESCR right to submit communications to a supervisory body, alleging that the States Party has failed to fulfil its obligations under the Covenant.[117]

The CESCR first considers the admissibility of the communication. It will only consider a communication if it has verified that all available domestic remedies have been exhausted, except in cases where the use of these remedies is unreasonably prolonged. A communication will be declared inadmissible if

> 'It is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit; the facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the States Party concerned unless those facts continued after that date; the same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement; it is incompatible with the provisions of the Covenant; it is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media; it is an abuse of the right to submit a communication; or when it is anonymous or not in writing'.[118]

113 Odello and Seatzu, 2013, p. 29; CESCR, The purpose of general comments (1989), U.N. Doc. E/1989.
114 OHCHR, 2024d. Several General Comments are referenced throughout the chapter. General Comment No. 3 on the nature of States Parties' obligations (Art. 2 para. 1) is discussed in the Chapter 5.2. Meanwhile, Chapter 6 discusses General Comment No. 4 on the right to adequate housing (Art. 11 para. 1), 7 on forced evictions (Art. 11 para. 1), 14 on the right to the highest attainable standard of health, 19 on the right to social security (Art. 9) and 22 on the right to sexual and reproductive health (Art. 12).
115 Ssenyonjo, 2009, pp. 29–30.
116 On the process of adoption of the OP see: Subchapter 3. Strban and Kogej, 2026, pp. 266–268.
117 Art. 2 OP; Odello and Seatzu, 2013, p. 80.
118 Art. 3 OP.

The Committee may choose not to consider a communication if it does not show that the individual has been substantially and concretely affected by the alleged violation, unless the Committee deems that the communication addresses a serious issue of general importance.[119]

Unless the CESCR deems a communication inadmissible without involving the States Party concerned, it will confidentially notify it of any communications submitted under the OP. The state must then provide written explanations or statements within six months, detailing the issue and any remedies that may have been offered.[120] The Committee will offer its assistance to the parties to help them reach an amicable settlement based on the obligations of the Covenant. Once an agreement is reached, the CESCR will cease consideration of the communication.[121]

The Committee will review the communications in closed meetings. It may consult relevant documents from other UN bodies, specialised agencies, international organisations, and regional human rights systems, as well as any observations or comments from the States Party. When assessing a communication, the Committee will evaluate the rationality of the state's actions in line with Part II of the ICESCR, recognising that the state may choose various policy measures to implement Covenant rights.[122]

After reviewing a communication, the CESCR will share its views and recommendations (if any) with the parties involved. The state shall consider them and submit a written response within six months, detailing any actions taken. The Committee may also request additional information on measures implemented in response to its views or recommendations, which may be included in the state's future reports under Articles 16 and 17 of the ICESCR.[123]

After a final decision is made, either regarding the inadmissibility of the communication or its merits, a summary of the decision is published and included in the relevant annual report of the CESCR.[124]

After receiving a communication and before reaching a decision on its merits, the Committee may request the States Party to take urgent interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim(s) of the alleged violations. Such a request does not imply any decision on the admissibility or merits of the communication.[125]

6.2.4. The Inter-State Complaint Procedure under the 2008 Optional Protocol

The inter-State complaint procedure is the oldest mechanism established by international human rights instruments. This procedure permits States Parties to file complaints with the relevant treaty body concerning alleged violations committed

119 Art. 4 OP.
120 Art. 6 OP.
121 Art. 7 OP.
122 Art. 8 OP.
123 Art. 9 OP.
124 Odello and Seatzu, 2013, p. 83.
125 Art. 5 OP.

by another States Party. It is available under several human rights treaties, including the ICCPR, and was introduced for ICESCR rights through the Optional Protocol.[126]

According to Article 10 of the OP, a States Party to the Protocol can declare that it recognises the CESCR's authority to receive and consider complaints of a States Party alleging that another States Party is not fulfilling its obligations under the Covenant. Only states that have made this declaration can submit such complaints, and complaints can only be made against states that have also made the declaration. Declarations must be deposited with the UN Secretary-General and can be withdrawn at any time. Withdrawal does not affect ongoing communications but prevents any new communication unless a new declaration is made.[127]

A States Party that believes another party is not fulfilling its obligations can send a written communication to that state and inform the CESCR. The receiving state must respond within three months with an explanation or statement, including references to any relevant domestic procedures or remedies. If the matter is not resolved within six months, either state can refer the issue to the Committee.[128]

The Committee will only consider the matter after confirming that all domestic remedies have been exhausted, unless those remedies are unreasonably delayed. It will attempt to facilitate a friendly resolution based on the Covenant's obligations.[129]

The CESCR will hold closed meetings when reviewing communications and may request relevant information from the concerned Parties. They shall have the right to be represented and to make oral and written submissions. The Committee must submit a report on the matter to the concerned states with due expediency.[130]

To date, no inter-State complaint procedures have been conducted under the OP.

6.2.5. Inquiry Procedure under the 2008 Optional Protocol

The inquiry procedure provides a method for addressing cases where individual complaints do not adequately capture the systematic nature of widespread violations of ESCR affecting individuals or groups who are unable to submit complaints due to fear of reprisals or practical limitations.[131] Article 11 of the OP outlines the procedure as follows

> 'A States Party to the Protocol can declare at any time that it recognises the Committee's authority under this article. If the Committee receives reliable information about the grave or systematic violations of ESCR by a States Party, it will invite that state to cooperate in reviewing the information and provide relevant observations'.[132]

126 Odello and Seatzu, 2013, pp. 98–100.
127 Art. 10 OP.
128 Ibid.
129 Ibid.
130 Ibid.
131 Odello and Seatzu, 2013, pp. 100–102.
132 Art. 11 OP.

Based on these observations and other reliable information, it may appoint one or more members to conduct an inquiry and report back urgently. The CESCR has significant discretion in assessing the reliability of the information or its sources. This inquiry, which may include a visit to the state's territory if warranted and with the consent of the States Party, will be conducted confidentially, seeking the state's cooperation throughout the process.[133]

After reviewing the inquiry's findings, the Committee will send these findings, along with any comments and recommendations, to the States Party. The state must submit its observations within a period of six months. Following the completion of the inquiry proceedings, the Committee may, after consulting with the States Party, decide to include a summary of the inquiry's results in its annual report.[134] The Committee may request the States Party to provide details in its report, as required under Articles 16 and 17 of the Covenant, about any actions taken in response to the inquiry.[135]

A States Party that has recognised the Committee's authority may withdraw this declaration at any time by notifying the Secretary-General.[136]

As of the time of writing, no inquiry procedures have been initiated under the OP.

6.3. Relevant Cases of the CESCR

This section seeks to highlight the work of the CESCR by examining some pertinent cases. Although the primary focus is on Individual complaints under the OP, it also incorporates references to various General Comments cited by the Committee in the cases reviewed.

To date, the Committee has adopted 16 decisions on merits ('Views'). Of these, 13 addressed the right to adequate housing, two concerned the right to social security, and one focused on the right to sexual and reproductive health and informed consent. In some of those cases, the Committee also addressed issues related to the prohibition of discrimination, the equal right of men and women to enjoy all Covenant rights, and measures to fully realise the rights outlined in the ICESCR.[137] Although cases involve significant procedural as well as substantive aspects, this section focuses exclusively on the substantive rights. The analysis will begin with complaints concerning housing rights and will then address the other three cases.

6.3.1. The Right to Adequate Housing

Housing-related rights were addressed in the General Comments as early as the 1990s. Before examining the Individual communications, this section will outline the key aspects of both applicable Comments.

133 Art. 11 OP; Odello and Seatzu, 2013, pp. 100–102.
134 Art. 11 OP.
135 Art. 12 OP.
136 Art. 11 OP.
137 See more: OHCHR, Jurisprudence [Online]. Available at: https://juris.ohchr.org/SearchResult (Accessed: 25 August 2024).

General Comment No. 4, adopted by the CESCR in December 1991,[138] aims to define and clarify the right to adequate housing,[139] addressing inadequacies in States' reports. The comment broadens the scope of housing rights to include all family structures, regardless of gender or household type.

CESCR presents a widely recognised seven-dimensional framework for evaluating the extent to which the right has been realised in specific cases. Firstly, legal security of tenure is fundamental, emphasising protection against eviction and harassment irrespective of the type of tenure, with a focus on the quality of protection rather than the form of tenure. Secondly, housing must also provide essential services, including safe drinking water, sanitation, energy, and access to emergency services. Affordability represents the third dimension, stressing that housing should be affordable without forcing residents to forgo other basic needs. Forth, housing must be habitable, meaning it must be structurally sound and protect residents from environmental hazards and health risks. Fifth, accessibility is crucial, ensuring that housing is available to the poor and vulnerable groups, including those with special needs such as disabilities or health conditions. Sixth, the location of housing should facilitate access to employment, healthcare, education, and other social facilities, avoiding areas with pollution or excessive transportation requirements. Seventh, housing should be culturally adequate, supporting cultural identity and accommodating communal and religious practices.[140]

General Comment No. 7, adopted in 1997,[141] focuses on forced evictions, recognising that while they generally conflict with the ICESCR, they may be permissible under strict conditions. Justification for eviction includes non-payment of rent, property damage, or public land use, provided they are legally admissible, meaning that the law must permit eviction for the stated reason, and that the reason aligns with the provisions of the Covenant. Even if an eviction appears to be justified *prima facie,* states must ensure that those facing eviction have the opportunity to challenge the grounds for it, and that all "feasible alternatives" to eviction are thoroughly considered.[142]

Justified evictions must still adhere to strict procedural requirements, including genuine consultation with affected individuals, adequate notice, and proper execution conditions. Importantly, evictions must not lead to homelessness. States must provide suitable alternative accommodation or resettlement options, ensuring that displaced individuals are protected from further human rights violations.[143]

Together, General Comment No. 4 and General Comment No. 7 establish comprehensive standards for ensuring adequate housing and regulating forced evictions,

138 General comment No. 4 on the right to adequate housing (Art. 11(1)), sixth session (1991), E/1992/23.
139 Art. 11 of ICESCR.
140 Donnelly, Finnerty and O'Connell, 2020, pp. 209–219.
141 General Comment No. 7 on forced evictions (Art. 11(1)), sixteenth session (1997), E/1998/22, annex IV.
142 Donnelly, Finnerty and O'Connell, 2020, pp. 209–219.
143 Ibid.

emphasising the need for protection, accessibility, affordability, habitability, and cultural adequacy.[144]

The CESCR has examined numerous cases related to the right to adequate housing, establishing an influential body of jurisprudence. Four of those cases are summarised below.

The case *I.D.G. v. Spain*,[145] involved an author[146] whose home was foreclosed by a bank in Madrid. Despite attempts to serve notice personally, the bank received permission to publish the notice on a public noticeboard. The author did not see this notice and only learned of the foreclosure when her home was scheduled for auction six months later.

The CESCR recognised that the failure to provide direct notice deprived the author of the opportunity to contest the foreclosure, which impacted her right to adequate housing. The Committee emphasised that public notice should be a last resort after all personal service attempts have failed, due to the significant likelihood that the foreclosure notice would not reach the mortgagor. The Committee determined that it had not been demonstrated that the Spanish authorities had exhausted all available means to effect personal service.

The CESCR issued several recommendations, including one stipulating that the author's home should not be sold until she had been given a fair opportunity to contest the foreclosure proceedings. Additionally, Spain was advised to revise its administrative and legislative procedures to ensure that its foreclosure practices are consistent with the Committee's decision and with General Comments Nos. 4 and 7.

The case *Djazia and Bellili v. Spain*[147] considered a couple and their two children facing eviction for non-payment of rent. The Spanish government's social housing programme was oversubscribed, leading to the family being offered shelter accommodation as an alternative (the mother was placed in a women's shelter together with the children, while the father was placed in a homeless shelter).

The CESCR concluded that the eviction was procedurally and substantively fair, but the failure to provide suitable alternative accommodation constituted a breach of the right to adequate housing. The government's offer to place the family in separate shelters did not meet the requirement to protect family unity and provide adequate alternative housing. Merely having a backlog in social housing provision did not justify the failure of the state to offer adequate alternative accommodation, particularly given that the Spanish government had sold off a significant portion of its social housing stock in the years leading up to the complaint.

The Committee advised Spain to fully assess the family's situation and provide public housing or other measures ensuring adequate accommodation. The

144 Ibid.
145 Communication No. 2/2014, E/C.12/55/D/2/2014.
146 In the Individual complaints' procedure, complainants are referred to as authors.
147 Communication No. 5/2015, E/C.12/61/D/5/2015.

recommendations aimed at addressing the systemic issue of inadequate provision of alternative housing.

In the case *López Albán v. Spain*,[148] the author, residing with her six children in a bank-owned apartment without legal title, applied for social housing but was rejected due to her unlawful occupation. Following eviction, the family experienced severe hardship, living in a series of emergency shelters, while the author was separated from two of her children.

The CESCR found that while Spain had a legitimate interest in protecting property rights, the eviction and the consequent homelessness of the author were disproportionate. The policy that excluded unlawful occupants from social housing applications was deemed unfair, especially given the urgency of the author's housing needs. There should be a provision to evaluate whether an eviction could be delayed or suspended until measures are in place to prevent homelessness. Spanish law did not require such a proportionality assessment, which constituted a breach of the ICESCR.

The Committee recommended establishing a legal framework to assess the proportionality of evictions and called for genuine consultation with those facing eviction. The state should provide for a comprehensive plan for social housing that does not involve excessively harsh exclusions.

The case *Infante Díaz v. Spain*[149] considered a Venezuelan national and her son who have been occupying a bank-owned apartment in Spain since December 2015. Their economic vulnerability was verified by Social Services. An eviction order was issued against them and suspended several times.

The CESCR observed that the author's irregular immigration status in Spain prevented her from applying for social housing or entering the job market. The Committee noted that this irregular status should not automatically disqualify them from accessing public housing services. The author reported her socio-economic vulnerability to social services, though this was done two years after the illegal occupation began, and also informed the judge who issued the eviction order. Consequently, the Committee determined that issuing the eviction order without providing alternative housing violated their right to adequate housing.

The state was instructed to provide the author and her son with effective reparations, including financial compensation for the violations, and to assess their situation to offer them alternative housing.

The CESCR's decisions underscore the importance of fair and adequate processes in housing rights. By emphasising the need for an effective notice and alternative accommodations, the Committee aims to ensure that evictions do not result in homelessness and that housing policies are just and equitable. The decisions reflect a broader commitment to addressing housing inequalities and improving the protection of vulnerable populations under international human rights standards.[150]

148 Communication No. 37/2018, E/C.12/66/D/37/2018.
149 Communication No. 134/2019, E/C.12/73/D/134/2019.
150 Wilson, 2020, pp. 189–192.

6.3.2. The Right to Social Security

In the case *López Rodríguez v. Spain*,[151] the author alleges that the state violated his right to social security under Article 9 of the ICESCR by reducing his non-contributory disability benefit. This reduction, implemented by the Ministry of Andalusia, was to cover his expenses while imprisoned. The author argues that individuals in prison should retain all their rights, including social security benefits received before incarceration, and that the state is responsible for maintaining these benefits for prisoners and their families. Additionally, he claims that this reduction is discriminatory when compared to: (a) other prisoners who do not have to cover their prison upkeep costs; (b) prisoners in other regions where such benefits are not reduced; and (c) individuals not incarcerated but using publicly funded services who receive free meals without a reduction in their benefits.

CESCR recalled General Comment No. 19 on the right to social security of 2008 and underlined the importance of this right in light of the prevention of social exclusion. The CESCR explained that 'benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care'.

The Committee emphasised that while fulfilling the right to social security has significant financial implications for States Parties, they are still obligated to ensure at least the minimum essential levels of this right as outlined in the Covenant. This includes providing access to a social security scheme that guarantees a minimum essential level of benefits, enabling individuals and families to secure essential health care, basic shelter, housing, water, sanitation, food, and basic education.

The Committee reiterated that the Covenant prohibits any form of discrimination, whether direct or indirect, that impairs the equal enjoyment of the right to social security. States must take effective and regularly revised measures, using their maximum available resources, to fully realise this right for all individuals without discrimination.

The CESCR underlined that a non-contributory benefit should not generally be reduced, suspended, or withdrawn simply because the beneficiary is deprived of liberty, unless this action is legally sanctioned, reasonable, and proportionate, and still provides a minimum level of support. The appropriateness of any such measure should be assessed on an individual basis, considering the beneficiary's specific circumstances. A reduction in benefits for prisoners could align with the Covenant if it is legally mandated and if prisoners receive the same level of care through services provided in prison.

For non-contributory benefits that are funded solely through public resources and do not rely on prior contributions from the beneficiary, states have some discretion in how they allocate tax revenue. The Committee considers it reasonable for states to reduce a non-contributory benefit if the beneficiary's needs change, which was

151 Communication No. 1/2013, E/C.12/57/D/1/2013.

initially the basis for determining the benefit amount. In this case, the Committee finds that the author's needs have changed because the state now covers his upkeep in prison, justifying a reduction in his benefit. The Committee notes that replacing cash benefits with in-kind support might constitute a violation of the right to social security if such a measure has a disproportionate effect on the person. However, in this case, there is no evidence that the replacement caused serious harm or impaired the author's basic needs. The author did not provide proof that the change was disproportionate or particularly detrimental due to his disability. Therefore, the Committee concluded that, given the specific circumstances, the reduction in the author's non-contributory benefit does not violate Article 9 of the Covenant.

In the case *Trujillo Calero v. Ecuador*,[152] the author was a voluntary affiliate to the Ecuadorian Social Security system while working as an unpaid domestic worker, managing her household and caring for her three young children. She alleges that due to the Social Security Institute's negligence, she was effectively denied a special pension despite making 305 contributions over 29 years. She argues that the Institute incorrectly recorded only 238 contributions, not meeting the 300 required by law, and failed to inform her promptly that contributions made between August 1989 and February 1995 were invalid. She learned of this issue only in 2007, after a 14-year delay in administrative and judicial proceedings. The author also claims this situation involved discriminatory treatment based on gender and notes that she could not obtain a minimum old-age pension due to the lack of a non-contributory pension scheme in the States Party. She argued that the social security benefits provided by the state were insufficient to meet her basic living needs, thereby violating her rights under Article 9 of the ICESCR, while also alleging that the benefits were inequitably distributed, disadvantaging marginalised groups.

Referring to the General Comment No. 6 (1995) on the economic, social and cultural rights of older persons[153] and General Comment No. 19 on the right to social security, CESCR recalled that Article 9 ICESCR implicitly recognises the right to old-age benefits. States are required to prioritise the promotion and protection of the ESCR of older persons. To achieve this, they must implement appropriate measures to establish general regimes of mandatory old-age insurance.

States have some discretion in deciding how to ensure their retirement pension systems are efficient, sustainable, and accessible to everyone. They can set conditions that the claimants must meet to be eligible for social security schemes, but they must be reasonable, proportionate, and transparent and must be communicated to the public in a timely and sufficient manner to ensure predictability. If failing to meet these conditions results in penalties, such as termination from a social security scheme, the state must prove the penalty is reasonable and proportionate.

152 Communication No. 10/2015, E/C.12/63/D/10/2015.
153 Adopted at the thirteenth session of the CESCR.

National regulations should define the range, qualifying conditions and levels of benefits. If contributions are required, they should be set in advance, be affordable, and should not interfere with the fulfilment of other rights under the Covenant.

States must ensure that access to social security schemes is free from discrimination against women, both legally and in practice. Given that women often spend more time in unpaid work due to persistent stereotypes and structural issues, states should address the barriers that prevent women from contributing equally to social security schemes.

According to the core obligations in connection to the right to social security, states are obligated to provide non-contributory old-age benefits, social services, and other assistance to all older persons who, upon reaching retirement age, do not qualify for a pension based on contributions, lack eligibility for other social security benefits, and have no other source of income. These non-contributory schemes must consider that women are more likely than men to live in poverty, often have sole caregiving responsibilities for children, and are more frequently without contributory pensions.

The author's right to social security was violated by the Ecuadorian Social Security Institute, because it failed to inform the author that her voluntary social security affiliation had ended after she did not pay contributions for six consecutive months. Despite this, the Institute continued to accept her contributions for more than five years, leading her to believe she was fulfilling the requirements for a special retirement pension. Additionally, Institute officials verbally confirmed she met the legal requirements for the pension, prompting her to resign from her job and apply for the pension. After resigning, she was informed that her contributions were invalid, leaving her ineligible for the special retirement pension because she lacked the required 300 months of contributions. At this point, her ability to work and re-enter the labour market was significantly diminished, frustrating her legitimate expectation of receiving a pension. Even if these expectations were not strictly based on the existing legal regulations, they were reasonable given the state authorities' conduct.

Furthermore, CESCR believes that disaffiliation due to non-payment for six consecutive months could be inappropriate and disproportionate, especially for independent workers with irregular income. This penalty is even more disproportionate for the author, who was an unpaid domestic worker at the time.

The violation of the author's right to social security was worsened by the state's failure to provide an alternative measure to ensure an adequate standard of living for her old age. The state lacks a comprehensive non-contributory pension scheme for individuals who cannot receive contributory benefits.

The Committee concludes that the conditions imposed on the author, an unpaid female domestic worker, were discriminatory, as they invalidated her affiliation and contributions without sufficient explanation from the state to refute the allegations of discrimination.

The state is required to provide the author with an effective remedy, which includes: (a) granting her the pension benefits she is entitled to, based on her contributions to

the Ecuadorian Social Security Institute, or providing other equivalent social security benefits to ensure an adequate standard of living; (b) compensating her adequately for the violations of her right to social security and any related harm; and (c) reimbursing her for the legal costs incurred in pursuing her case.

The CESCR issued general recommendations with a view for the state to take measures to prevent similar violations of the right to social security in the future. This includes ensuring access to information about social security rights, providing timely and accurate information on contributions and affiliation status, ensuring proportionate penalties, offering effective remedies for violations, promoting gender equality in accessing social security benefits, and developing a comprehensive non-contributory benefits plan.

6.3.3. The Right to Sexual and Reproductive Health and Informed Consent

The communication[154] was submitted by *S.C. and G.P.*, Italian nationals who challenged Italy's Law 40/2004 concerning in vitro fertilisation (IVF). The authors visited a private clinic in Italy in 2008 to seek assistance in conceiving a child. During their first IVF cycle, they requested that at least six embryos be produced and subjected to pre-implantation genetic diagnosis to identify possible genetic disorders and that the embryos with such disorders not be transferred into the uterus of S.C. However, the clinic rejected their request due to Law 40/2004, which prohibited the production of more than three embryos, prohibited the pre-implantation genetic diagnosis and 'mandated the simultaneous transfer into the uterus of all embryos, regardless of their viability or genetic disorders'. The authors filed a lawsuit against the clinic and the Court of Florence ordered the clinic to carry out pre-implantation genetic testing. Since all embryos were affected by hereditary multiple osteochondromas, they were not transferred into S.C's uterus.

The authors later underwent a second IVF cycle where they produced ten embryos. Only one embryo was deemed free of hereditary multiple osteochondromas. However, it was deemed "average quality" with a low chance of nesting if transferred into the uterus. Consequently, S.C. declined the procedure, but the clinic personnel insisted on it, stating that the Law 40/2004 regulates that the consent to transfer embryos into the uterus can only be revoked before fertilisation. Because they threatened her with a lawsuit, she agreed to the procedure, but eventually suffered a miscarriage, which she considered traumatising. The clinic refused their subsequent request to use the remaining embryos for scientific research, citing the same law.

When discussing violation of the right to health,[155] the Committee referred to its General Comment No. 22 from 2016 on the right to sexual and reproductive health,[156] where it stated

154 *S.C. and G.P. v. Italy,* Communication No. 22/2017, E/C.12/65/D/22/2017.
155 Art. 12 of ICESCR.
156 E/C.12/GC/22.

> 'the right to sexual and reproductive health is also indivisible from and interdependent with other human rights. It is intimately linked to civil and political rights underpinning the physical and mental integrity of individuals and their autonomy, such as the rights to life; liberty and security of person; freedom from torture and other cruel, inhuman or degrading treatment'.

It recalled that

> 'the right to sexual and reproductive health entails a set of freedoms and entitlements. The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health'.

Furthermore,

> 'violations of the obligation to respect occur when the State, through laws, policies or actions, undermines the right to sexual and reproductive health. Such violations include State interference with an individual's freedom to control his or her own body and ability to make free, informed and responsible decisions in this regard(...) Laws and policies that prescribe involuntary, coercive or forced medical interventions, including forced sterilization or mandatory HIV/AIDS, virginity or pregnancy testing, also violate the obligation to respect'.

The Committee concluded that the forced transfer of the embryo into S.C.'s uterus against her will clearly constitutes a forced medical intervention and means a violation of her right to health. It emphasised that any medical treatment must be based on free and informed consent, and forcing a woman to undergo a procedure without her consent constitutes a violation of her physical and mental integrity.

Regarding the right to gender equality,[157] the Committee found that the law's restrictions on withdrawing consent disproportionately affected women undergoing IVF treatments, violating their right to gender equality. CESCR explained that 'even if, on the face of it, this restriction on the right to withdraw one's consent affects both sexes, it places an extremely high burden on women'.

Regarding the right to enjoy scientific progress,[158] the Committee found that the authors did not substantiate how the prohibition of embryo research directly affected their rights under the Covenant. Therefore, this part of the communication was declared inadmissible.

The Committee recommended that Italy provide the authors with effective remedies, including establishing appropriate conditions so that the right to withdraw their

157 Arts. 12 and 3 of ICESCR.
158 Ibid., Art. 15.

consent to medical treatments will be respected, ensuring the right of S.C. to make free decisions regarding her own body is respected, awarding her compensation for physical, psychological and moral damages suffered and reimbursing the authors for the legal costs related to the communication.

Furthermore, the CESCR provided certain general recommendations to the States Party. It should 'Adopt appropriate legislative and/or administrative measures to guarantee the right of all women to take free decisions regarding medical interventions affecting their bodies, in particular ensuring their right to withdraw their consent to the transfer of embryos into their uterus;' and

> 'Adopt appropriate legislative and/or administrative measures to guarantee access to all reproductive treatments generally available and to allow all persons to withdraw their consent to the transfer of embryos for procreation, ensuring that all restrictions to access to these treatments comply with the criteria provided in Article 4 of the Covenant'.

7. Plus: Cases from the 16 Central or Eastern European Countries

All 16 Central and Eastern European countries have ratified the ICESCR. However, only five of these countries have ratified the Optional Protocol,[159] which introduced the Individual complaints mechanism, the Inter-state complaint procedure, and the Inquiry procedure. At the time of writing, no cases involving these countries have been published under the Optional Protocol. Therefore, the chapter presents certain Concluding Observations adopted by the CESCR during the reporting procedure. The intention is not to offer a comprehensive summary of every observation made, but rather to illustrate the types of issues the CESCR may address through this monitoring tool. Only selected issues and recommendations from the most recent Concluding Observations on the periodic reports of Montenegro, Slovenia, and Czechia are presented.

In November 2014, the CESCR reviewed Montenegro's initial report on the implementation of the ICESCR.[160] In its Concluding Observations, it firstly underlined the positive aspects, which include ratifying certain international human rights instruments, including the Optional Protocol to the ICESCR (on 24 September 2013) and the Convention on the Rights of Persons with Disabilities and its Optional Protocol (on 2 November 2009).

159 Albania ratified it on October 3, 2013; Bosnia and Herzegovina on January 18, 2012, Montenegro on September 24, 2013, Slovakia on May 7, 2012, and Serbia on September 6, 2023. Slovenia signed it in 2009 and North Macedonia in 2013, but they have not yet ratified it.
160 CESCR, 15 December 2014, E/C.12/MNE/CO/1.

In the following section, the CESCR underlined principal subjects of concern and provided recommendations. The problem of corruption was mentioned, as well as discrimination against persons with disabilities, minorities, refugees and displaced persons including persons of Roma, Ashkali and Egyptian origin. The States Party was recommended to intensify its efforts in combating discrimination, particularly in relation to access to employment, social security, housing, healthcare and education. The state was furthermore recommended to reduce the unemployment rate through an effective employment policy including requalification and placement initiatives. Special measures should be adopted to promote employment for marginalised groups. Minimum wage should be increased and periodically reviewed, as well as social assistance benefits, while the enforcement of labour laws should be improved. Healthcare funding should be increased and equal access to healthcare ensured, including for the marginalised groups.

In December 2014, the CESCR adopted Concluding Observations on the second periodic report of Slovenia.[161] Among the positive aspects, the Committee underlined the adoption of the Convention on the Rights of Persons with Disabilities and the Optional Protocol (in April 2008) and of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (in January 2007). Certain legislative and policy measures taken by the state were also welcomed, such as the adoption of the Minimum Wage Act in 2010 and the introduction of the provision on equal pay for equal work or work of equal value into the Employment Relationships Act.

Since the ICESCR has only been invoked in a limited number of cases before national courts, the Committee recommended the state to raise awareness about the Covenant and the justiciability of ESCR. Recommendations focused on improving the anti-discrimination strategy as well, particularly focusing on overcoming the discrimination against Roma in access to employment, housing and health services. The CESCR underlined the problem of the majority of Roma living in informal settlements vulnerable to forced eviction. The state should prioritise the legalisation of Roma settlements or find other solutions in genuine consultation with the Roma communities.

The Committee expressed concern regarding the working conditions of migrant workers, urging the States Party to 'take effective measures to ensure that all migrant workers enjoy the protection of labour laws and can access justice to remedy violations of their rights'. The state was recommended to ensure that all children and adolescents have effective access to psychiatrists across the state. Among other recommendations, the state was encouraged to 'gradually increase its official development assistance with a view to achieving the international commitment of 0.7 per cent of its gross national product (GNP)'.

161 CESCR, 15 December 2014, E/C.12/SVN/CO/2.

CESCR adopted Concluding Observations on the third periodic report of Czechia in March 2022.[162] The Committee commended the state for the measures enhancing ESCR, including the 'Strategic Framework Czech Republic 2030'. Among principal subjects of concern and recommendations, the concern regarding high emissions and pollution was expressed and the state was recommended to enhance its adaptation efforts to address the adverse impacts of climate change on ESCR. When addressing the issues of discrimination, the state was called to redouble its efforts by for instance implementing strategies with intersectoral approach and conducting awareness-raising campaigns, as well as increasing efforts to address the discrimination against Roma persons. Although the CESCR welcomed the adoption in 2021 of the Act related to compensation for persons who were forced to undergo sterilisation between 1966 and 2012, it recommended the state to extend the compensation claim period and provide legal aid.

CESCR underlined that the inclusion of the most disadvantaged groups into the labour market should be promoted, while ensuring that such programmes do not perpetuate their concentration in low-skilled jobs and the informal economy. The Committee was concerned about restrictions on strike rights and high voting thresholds. Recommendations included revising the scope of essential services and reconsidering strike quorum requirements.

The implementation of the minimum wage scheme required improvement, while recommendations also addressed the right to social security. Among other measures, the state was advised to amend the Pension Insurance Act to facilitate access to the national pension scheme for refugees and asylum seekers. To ensure equitable sharing of family responsibilities, an extension of paternity leave was encouraged.

As demonstrated in Chapter 4, European states are committed to frameworks such as the ECHR, ESC and EU Charter, each equipped with its own monitoring mechanisms that contribute to advancing human rights standards. Nonetheless, the ICESCR remains a cornerstone of global human rights advocacy, shaping both national legislation and international norms.

162 CESCR, 28 March 2022, E/C.12/CZE/CO/3.

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