



# **THE COUNCIL OF EUROPE SOCIAL CHARTER 50 YEARS ON: WHAT NEXT?**

**PARIS, 23 SEPTEMBER 2011**

Compiled on the basis of written texts submitted by the authors  
and in the absence of a text on the basis of the stenographic records

# Economic, Social and Environmental Council

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**The conference opened at 9.10 a.m. with Mr Jean-Paul DELEVOYE in the Chair.**

*Opening addresses*

**Mr DELEVOYE** – It is with great pleasure that I welcome you here today to the Palais d'Iéna, the headquarters of the French Economic, Social and Environmental Council.

I am also very glad to welcome a friend, the European Commissioner, Mr Michel Barnier, whom I admire immensely and who has done some very important work, particularly in the areas he intends to talk about today.

At a time when the world is doubtful about its future, it is perhaps important for Europe to seize an opportunity offered, paradoxically, by the crisis, which is to give back to the peoples of Europe and the world the hope which fuelled the democratic aspirations of the post-war period, and apply it to the current period, in which scepticism about the European project is so very widespread.

I am also pleased to be able to welcome my friend, Staffan Nilsson, the President of the European Economic and Social Committee, with which we have already established extremely close ties and we wish to set up some very useful co-operation arrangements.

I also welcome the representative of the Secretary General of the Council of Europe and I know that a little later on we will be seeing a video of the Secretary General.

My greetings also go to Mr Yves Veyrier, the Head of the European Section in the French Economic, Social and Environmental Council.

I hope that this event will be an opportunity to address the questions raised about the fact that we have written charters which are not always respected and are not always applied. Sometimes these texts can even compete somewhat with one another, adding further layers of complexity or duplication. The main issue, however, is the fact that the economic crisis we are currently experiencing is destroying all our certainties about the strength of banks and states, the lasting nature of their ability to overcome debts and the assumption that progress is synonymous with happiness. Instead upwellings of democracy are giving rise to resistance movements.

The greatest problem we have to face may lie in our cultures and in our heads. I am among those who think that we are running today's societies with yesterday's tools, that we have to rethink our calculations and dare to question ourselves.

This is made all the more urgent and important by the fact that our society has become much more sensitive, making people more apt to be irritated by the economic and social problems that they encounter. The temptation for people to turn in on themselves and adopt nationalist attitudes is strong and if we do not heed the danger, this could happen much more quickly than we imagine. If nothing is done to counter them, these suicidal democratic expressions could prevail over mobilisation around, and collective commitment to, a European project.

Furthermore, as we saw in Johannesburg, economic development has limits deriving from environmental constraints. Today, the global financial crisis shows the limits of an economic system built on human suffering. It is impossible to build a stable economic system on the despair of individuals and human degradation. We cannot afford to trample on human dignity and human rights, and any system which does so will ultimately be swept away.

To believe that development equates with reducing social rights or failing to protect environmental rights is just plain wrong. Perhaps Europe, which seemed in many respects to be ultra-liberal and old-fashioned,

is now more modern than we thought and more advanced than we are when it comes to finding the answers. The current crisis has shown us that not everything is permitted in an ultra-liberal system just as not everything was prohibited in the collectivist system.

Europe has a power, which it possibly does not fully exploit. Perhaps above all, it has a model it can adopt and through which it would now be worth attempting to strike the necessary balance between economic power, social rights and due regard for the environment. The consumer society, everyone for themselves and individualism have gone far enough. What we are moving on to now is, above all, a society of sharing and respect – respect for capital for those that possess it, respect for labour for those that provide it and respect for the environment for those that live in it.

This is perhaps a model for action which matches European thinking, aspirations and hopes.

I would single out the word “hopes” here, and this will be one of my concluding points, because if you agree with me that people's actions are nurtured by three feelings – fear, humiliation and hope – then we are at a turning point in a history, where there is no more collective hope, no more hope for collectivism and no more hope for liberalism, and politics is finding it hard to provide any inspiration for the future.

If we do not offer our people reasons to hope, we leave the door open to those who will exploit our fears and our humiliations and encourage populism and extremism. We do not pay enough attention to the latent forces which are beginning to bubble up in our society. Appeasing the markets is fine but it is far better to appease our young people!

We have an absolute duty to remember that proclaiming rights may salve our conscience but it is not enough. We have to make sure that they are applied, complied with and known, and that we have a system to punish those who do not implement them. When promoting economic development, we have to remember that progress must be a factor conducive to individual and collective fulfilment and that the management of non-material aspects in the business world and society may be one of the components of economic modernity.

I wish you a good conference and a good discussion.

Without any further delay, I will call the representative of the Secretary General of the Council of Europe, then the European Commissioner and, lastly, Mr Nilsson.

**Mr GIAKOUMOPOULOS** – Mr Delevoye, Mr Barnier and Mr Nilsson, I would like to begin by thanking the institutions you represent for helping the Council of Europe to organise this conference on the European Social Charter, a conference which coincides with the fiftieth anniversary of the Charter but also with a time of worry and major challenges for human rights and European projects centring on human rights protection.

The Council of Europe welcomes this promising co-operation. Unfortunately, the Secretary General, Thorbjorn Jagland, has had to stay in New York for the United Nations General Assembly for longer than was planned. Though he cannot be physically present today, he wanted to share some thoughts with us through a recorded video message, which I hope we will be able to watch immediately. Thank you.

*(Video screening)*

**Mr Thorbjørn JAGLAND, SECRETARY GENERAL OF THE COUNCIL OF EUROPE**

Recording video message for the 50th Anniversary of the European Social Charter,

Ladies and gentlemen,

I am pleased to address you today on one of the main challenges of our time: the realisation of fundamental social rights.

Since 1949, the Council of Europe has promoted a Europe based on democracy, human rights and the rule of law. The European Social Charter, which celebrates its 50th anniversary next month, and the European Convention on Human Rights are our most important achievements, and stand out as the pillars of a common legal space in all of Europe.

We know that this Organisation considered including both civil and political rights and economic and social rights in a single treaty.

This was not to be. The Human Rights Convention was adopted in 1950. But difficult negotiations on a separate social rights treaty dragged on until 1961 when the European Social Charter was adopted. This compromise was improved in the 1990s with the adoption of the Revised Social Charter and of the collective complaints mechanism, but social rights still do not receive the same recognition as civil and political rights.

One of the aims of this conference is therefore to discuss how to take social rights forward. I believe a first important step would be for member states to take the Charter seriously in their lawmaking. If more states were to accept the collective complaints procedure, and social partners and NGOs would display a more diligent use of this procedure, we would have come far.

One of my key priorities is to secure the accession of the European Union to the European Convention on Human Rights. Once this is achieved, we should consider EU accession to the European Social Charter as a way to ensure greater coherence and complementarity of all human rights in Europe.

On your agenda is also the current economic crisis in Europe. This is an important opportunity to discuss how we can do better. It would be an unacceptable step backwards for our democracies if social rights were to be sacrificed on the altar of austerity budgets. The crisis has already brought more poverty, more discrimination, and more xenophobia. We need more action – not less.

And let us always remember that social justice and freedom from want are fundamental preconditions for socially cohesive and economically stable societies and ultimately for maintaining peace and stability.

I wish you good luck and some fruitful discussions today.

**Mr Staffan NILSSON, President of the European Economic and Social Committee.**

### **Opening speech by Mr NILSSON**

Colleagues,

I am deeply honoured, on behalf of the European Economic and Social Committee, to participate in the opening of this joint conference on the Council of Europe's European Social Charter.

There are also present delegations from economic and social councils and I have the pleasure to introduce the Presidents of the Groups, Henri Malosse, Luca Jahier and Georges Dassis who will spend the day with us.

Human rights and fundamental social rights are clearly intertwined. They are the hallmarks both of the French Republic and of the European idea. It is most opportune, therefore, to celebrate and to reflect upon the European Social Charter here in the Economic, Social and Environmental Council of France and with the Council of Europe.

The European Social Charter has, of course, been a source of inspiration for furthering fundamental social rights throughout Europe for the last 50 years. The Charter is, without doubt, the twin pillar to the Council of Europe's much-applauded European Convention of Human Rights. In many ways, both represent the best of the European democratic and social model.

At a time of deep social unrest and uncertainty arising from the consequences of the financial crisis, it is vital for the European social dimension to remain a visible and credible guarantor and stabiliser of social democracy. If fundamental social rights exist only on paper and not in practice, our democratic model can rightly be called into question. This is why it is important, not only to take stock of the undoubted achievements and progress resulting from the European Social Charter these last 50 years, but also – especially now – to examine, secure and indeed improve its application.

In the first instance, awareness-raising is paramount. Historically, of course, the European Social Charter was clearly a rallying call and stimulus for the promotion of basic social rights not only within the countries which first ratified it, but also for the peoples in Europe aspiring to a democratic identity during and after the Cold War. The pioneering work of the Council of Europe in this context is well recognised. Ratification of the revised Charter has rolled on and the scope for collective action by the social partners and civil society has similarly developed. This is clearly of key interest to the European Economic and Social Committee in our quest to assist participatory democracy through the work and actions of organised civil society in Europe. The current financial crisis and corresponding social gloom in Europe, the increasing euro-scepticism and fears for the future, must spur us into renewed action at all levels. Civil society must play its part. The European Social Charter, more than ever, is a benchmark, a measuring stick of our attachment to social rights. Together, we must make it relevant to the lives and aspirations of citizens today. Together, we can look to new forms of awareness-raising and class-action, for example through the collective procedures for organised civil society set out in the Council of Europe's Social Charter protocol, or through possible citizens' initiatives now open under the EU Treaty.

At the same time, today's conference and analysis will inevitably focus on the enforcement machinery of the Council of Europe's Social Charter which, unlike its parallel instrument – the European Convention of Human Rights, has no European Court or legally-binding infringement procedures, but relies instead on supervision, reporting and eventual recommendations to Member States.

It would be inappropriate of me to comment on the effectiveness of this machinery, for which the Council of Europe is responsible. However, I would like to make the link with the role that the European Union can play in promoting and guaranteeing basic social rights, including the participatory input of the European Economic and Social Committee. Indeed, I am delighted that there will be more in-depth discussion later this afternoon on the complimentary actions that the EU and the Council of Europe can undertake in implementing their respective Social Charters.

Suffice, at this stage, to draw your attention to a few relevant points and markers in the development of EU-wide basic social rights and the role of the European Economic and Social Committee.

Both the Preamble and Article 151 of the EU Treaty make explicit reference to the European Social Charter and to the Community Charter of the Fundamental Social Rights of Workers as the sources for the EU's "attachment to fundamental social rights" and commitment to promoting employment, improving living and working conditions, assuring social protection, developing social dialogue and combating social exclusion. Article 153 of the EU Treaty in turn provides the juridical framework for possible EU legislative actions on basic social rights, especially relating to health and safety, working conditions, social and contractual protection of workers, information, consultation and participation of workers, employment conditions for third-country nationals, labour market integration and gender equality. Most (though not all) of such possible directives may be adopted by the EU through qualified majority voting. The European Economic and Social Committee must be consulted on all draft proposals going through the ordinary legislative procedure. In other words, the EU Treaty has established a legally-binding framework, enforceable through EU Court of Justice rulings, for the promotion of union-wide basic social rights.

Of course, not all domains mentioned are the subject of intensive EU law-making. Increasingly, the European social and civil dialogues, together with inter-governmental benchmarking and the "open coordination" method are the sources of social improvement, good practice and convergence. Nonetheless, a comprehensive portfolio of Community law on basic social rights does exist and is enforceable by law.

This EU social acquit, rooted in the Treaty and in the two Social Charters both of the Council of Europe and European Community, didn't just "happen". It came about through political design and leadership, especially on the part of Jacques Delors (who sadly can't join us today) and - I am proud to say - with the very specific contribution of the European Economic and Social Committee.

For, it was to the Committee that Jacques Delors turned, as President of the European Commission, asking us to give an exclusive input to the components of a "Community Charter of Basic Social Rights". This was on 24 November 1988, a time when the EC "social dimension" was in decisional crisis at the political level. The Committee swiftly drew up this first "exploratory" opinion. The rapporteur was François Staedelin – many in this room no doubt recall him. His opinion set out a comprehensive draft of



EC-wide basic social rights, referring extensively to the pioneer European Social Charter of the Council of Europe and arguing crucially that such rights required Treaty instruments and procedures to "ensure" their legal application in the Member States. The "Staedelin" opinion was successfully adopted on 22 February 1989 by an overwhelming majority of the EESC and – most importantly - of each of our three constituent Groups. This overall support was vital, enabling President Delors to carry the project forward into the political arena, together with a proposed set of legal instruments. On 9 December 1989, the resulting Community Charter of the Fundamental Rights of Workers was adopted by the Heads of Government (except by the UK up until 1997). Crucially and at the request of the Committee, the Charter was accompanied by a European social action programme of legislative and accompanying measures.

Proposal-by-proposal, the European social action programme was adopted and legally implemented. The Community Social Charter had teeth.

Throughout the next decade, European social policy was firmly established with the adoption of directives establishing EU-wide rights for workers as regards, for example, fixed-term or temporary employment, agency work, working time, protection of pregnant women at the workplace, parental leave, protection of children and young people at work, proper employment contracts, posted workers, information and consultation of workers, European Works Councils, burden of proof in cases of discrimination based on sex, health and safety at the work-place, transferable pension rights, etc. In due course, the UK and new Member States accepted the "Social Charter" and rights deriving from it. The "Charter" became an integral part of the Treaty, and the "social chapter" was continually reinforced with the Maastricht, Amsterdam Nice and Lisbon Treaties. The "European social model" came into being.

In the last decade, however, despite some notable progress in terms of anti-discrimination measures at work and the adoption in 2000 of the EU Charter of Fundamental Rights (which I know will be discussed later this afternoon), EU-wide basic social rights are no longer prominent in policy making. Indeed, in the EESC view, "The European social acquis achieved as a result of the 1989 Social Action Programme has not kept pace with the current-day economic and social challenges posed by globalisation, climate change and demographic development. These challenges have become even more acute by the slow down in economic growth and financial turmoil. (...)There is even a sense among some groups and citizens of European social policy stalemate when compared to the progress of internal market policies."

This view was borne out by various "going local" consultations by the EESC of civil society stakeholders throughout the EU Member States. Responding to a request from the French EU Presidency, the EESC's message delivered directly to the Informal EU meeting of Ministers for Employment and Social Affairs in Chantilly on 10-11 July 2008, was as follows: "Contrary to Euro-sceptic demands for "less Europe", we in our EESC consultations and citizens' forums during this last year have repeatedly heard the deafening call for "more social Europe". From Stockholm, to Edinburgh, from Dublin to Wrocław, each time, we have heard citizens speaking up for a Europe of solidarity, a Europe of values, a Europe which embraces globalisation, but not in a race to the bottom, not putting profit before people, a Europe of inclusion and opportunity, of innovation and entrepreneurship, of decent working conditions and secure living standards. There is a steady and vocal call for a new and progressive social consensus. – Europe should listen and Europe should act."

The EESC, for its part did act, by campaigning for renewed application of the EU Social Charter and the need for a new European Social Action Programme. In our "Programme for Europe", we clearly declared:

"The economic crisis ought not to have become a social crisis... the critical state of the world economy must prompt the European Union to re-assert its social policy goals and ambitions. To restore grassroots confidence in a united, solidarity-based Europe, the European institutions must set in motion a new social action programme, responsive to citizens' needs as they face up to the challenges of globalisation, and underpinned by joint efforts to reinforce solidarity, respect for workers, fundamental social standards and economic competitiveness. All the instruments and tools provided for under the treaties must be brought together effectively in order to put in place a roadmap that comprises legislative action, the open method of coordination, social dialogue, and civil dialogue that incorporates grassroots initiatives".

Colleagues, the crisis in Europe today requires bold measures, not only in terms of European economic governance, but also through more European social solidarity. We here in this conference can play our role. For, the Council of Europe's Social Charter and the EU Social Charter are complementary standard-bearers and mutually reinforcing instruments for a more social Europe. I am convinced that we can strengthen each other's role in this context by working more closely together. Indeed, I very much hope that today's conference will set in motion a renewed and dedicated commitment by "both Europes", the Council of Europe and the European Union, to work as one towards the fulfilment of the fundamental rights and ideals enshrined in the European Social Charter.

**Mr Michel BARNIER, European Commissioner, Mr Michel Barnier.**

**Mr BARNIER** – Thank you, Mr President, dear Jean-Paul, and greetings to all of you with all your diverse responsibilities in the spheres of organised labour, civil society, business, politics and administration.

I am very moved and glad to be here again at the headquarters of the French Economic, Social and Environmental Council, to which I have a strong attachment, alongside Jean-Paul Delevoye. We have been friends for a long time and understand one another's way of thinking. For many years, we have shared the same humanist approach to our work.

I am very pleased, Mr Giakoumopoulos, to have heard the message from the Secretary General of the Council of Europe and to meet up again with Mr Nilsson. We also have some outstanding co-operation and dialogue with the European Economic and Social Committee and Mr Nilsson knows how closely I follow its debates. I salute the many members of this Committee here in Paris today.

A fifty-year anniversary is of course a time to mark the occasion, to emphasise how far we have come, to salute the courage or daring of some of the founders of the European Social Charter and, as you did, Mr Nilsson, to point out how, year after year, particularly through the impetus of President Jacques Delors, this Charter has become an integral part of the regular legislative activities of the European Union, within the compass of the Council of Europe.

I do not think, however, that an anniversary should be a moment for nostalgia or melancholy, particularly in current times!

It is a time to look back and remember but also to raise questions and take action since, as I sincerely believe, the situation is so extremely serious and uncertain because of the crises which have been arising one after the other and growing over the last three or four years, beginning with the financial crisis that arose in the United States with subprimes, then the banking crisis resulting from the collapse of Lehman Brothers and moving on today to the sovereign debt crisis.

Behind all these financial crises, it is ordinary men and women who suffer first and foremost from the destabilisation of our economies and the destruction of jobs, especially those who are weaker than all the rest.

This is why I think that we do not have the right or the time to indulge in nostalgia or melancholy; instead we should be raising questions, as Mr Nilsson just did, and taking action.

Just under two years ago, I returned, with the support and trust of the French President and President Barroso, to the European Commission. I made a choice to leave, though not to abandon, national politics, and commit myself to the European project.

I returned with the following beliefs:

- As a French citizen – though I think this could apply to all European citizens – a conviction that my country's future lies with Europe and that France's political project must be a European one;

- A further conviction that today's world is clearly not that of fifty years ago or even that of twenty years ago, when, it should never be forgotten, Jacques Delors launched the Single European Act, initiating cohesion policies which it was my honour to manage for five years during my first term of office as Commissioner. I know just how much this cohesion policy, making use of the European Social Fund and the Structural Fund, helped to bring people on the ground closer together. However, this world has changed considerably.

- A final conviction that Europe's political project must have sufficient strength, if not to impose its viewpoint, then to take part in a new world order; Europe must be political while remaining humanist.

These are the beliefs with which I returned to the European Commission.

Ladies and gentlemen, these are worrying times, because in all these crises with so many human and economic consequences, there is a relatively broad-ranging and somewhat new trend that is emerging in Europe's political landscape.

At no other moment in the history of the last fifty years, has there been such an upsurge of populism in so many European countries. We have to monitor and attempt to understand these populist movements and investigate why people are sometimes tempted by a vote for the extreme right or the extreme left. It is a vote which derives from anti-European movements whose clearly stated aim is to focus on identity and nationality and, as President Delevoye said, sometimes even to turn to nationalism, which carries with it the idea of at best halting European construction and at worst "dismantling" Europe.

I believe that if it was victorious, if it succeeded in stalling the process and triggering a step backwards rooted in a national or nationalist standpoint in a number of European countries, this populist movement would most certainly cause major damage to the European project. If this did happen, it would, as always, be the weakest who would suffer most.

If we take the purpose of politics to be to foster progress and peace rather than to nurture conflict and egoism, this means that what we have done over the last sixty years has made the European project the most successful political project that has ever been carried out at the level of an entire continent.

This is what European construction is. Destroying this project or undermining it clearly entails a return, which is of course what some people want, to strict national sovereignty and also, in some respects, to a passive, *laissez-faire* approach.

An anniversary, ladies and gentlemen, is most certainly a time to take stock and evaluate. If we look at matters very objectively and very frankly, fifty years ago we were right in the middle of the cold-war period between the Soviet Union and the United States. This time has now passed. Since the 1990s, the world has opened up and seen genuine progress for democracy in Europe, Latin America, progressively in sub-Saharan Africa and today, much to our satisfaction, in North Africa and the Middle East – and this movement is not over.

Hundreds of millions of men and women have escaped extreme poverty and there has been progress in the communications field, but at the same time, in this great movement of globalisation, outreach and exchange, everything has gone too quickly. There has been too much deregulation and we have allowed something to develop which I view as a caricature of liberalism and capitalism. We have removed governance tools where they existed and been persuaded that the market can regulate itself. Even as an economic liberal, I do not believe in all of this and I think we are now paying for it.

The heads of state and government of the G20 drew the right conclusions about all of this three years ago in the various meetings held at Europe's initiative right at the beginning of the crisis.

In our various spheres of responsibility, including my own, we must now apply these lessons and do what it has been decided must be done to rectify or repair the situation.

I have described my beliefs and my ambitions to you. The current period is not one for gloom-mongering or a sense of fatality. Moreover, there can be no fatality if there is no fatalism. As Jean Monnet would have said, this is a time for decisive action.

The time is right, if Europe's heads of state and government and we, the main players, are willing to do so, to set Europe on a new course.

I take this approach at the European Commission having noticed – which will bring me on to more practical considerations – that, in all our great speeches on competitiveness, it is hard to find the words “cohesion” and “social” (as growth has too often been our main, not to say exclusive, focus over the last fifteen years, even in Brussels – as was the case with the Lisbon Agenda for example).

This desire for Europe to be competitive is also justified in the current context by the fact that none of the other main players, neither the Chinese, nor the Brazilians, nor the Indians, nor the Americans will wait for us, and none of them will be asking us for permission to expand, take action and win market shares. We must therefore be competitive.

To win this battle for competitiveness, which is the main battle in the war for growth, there are many prerequisites, but the main one is social cohesion. We cannot win the battle for competitiveness and growth and we cannot keep up a lasting economic performance without social cohesion.

Nor can we sustain our economic performance without innovation or investment in research.

Nor, finally, can we achieve this if we are not united at European level. This is our only means of being heard and respected.

I spend lots of time in meetings with leaders from other regions of the world, focusing in particular on matters relating to financial regulation, especially with the Chinese and Americans.

I know therefore why we are still respected.

It is not because of our common foreign policy, which is still a work in progress. It is not because of our European defence policy, which remains an aspiration. It is because of our market! It is the fact that we have 50 million consumer citizens and 22 million companies acting together in a coherent market, as Jacques Delors intended, with rules and standards that are being harmonised, including the rights of citizens and employees.

This is why we are respected by today's great powers, namely the “continental” countries of China, India, the United States and Brazil.

The moment has most certainly come to revitalise this market, relying on the three prerequisites I referred to just before: social cohesion, investment in research and the unity of Europeans.

Now, when you have the kind of convictions that I described to you quite plainly before, you have to implement them directly in the work that you have been given.

European Commissioners are not Brussels super technocrats. They are not stateless senior civil servants. They are politicians. I speak to you as a politician, who is passionately patriotic and steadfastly European. I will tell you what I am currently trying to do in two different spheres, under the authority of the President of the Commission, Mr Barroso, and with my colleagues, to illustrate how we are trying to put into practice the beliefs which I have just outlined and which I defend every day and every inch of the way, because it is by no means easy, in the administration and the Commission in Brussels.

My goal is to put the financial markets back into the service of the real economy and to restore order, rules, transparency and, ultimately, some moral standards, to a place from which they have been absent for fifteen to twenty years. It is also to reinject some long-term thinking into a place where the only thing that mattered – and still does – is to make as much profit in as little time as possible. This is the G20's agenda, which I have adopted as my roadmap.

You have to look carefully at what we are doing, which is taking time, because the time needed for democratic processes is of course much longer than that in which the markets can act. One year ago, on 15 September 2010, I tabled two draft European laws, one on the regulation of short selling and the other on the regulation of derivatives. When we look into the trading of these products, which are very complex and sometimes highly toxic, we see that some 600 000 billion dollars are exchanged every year in the greatest possible obscurity and no-one can be held responsible. It is impossible to tell who does what. We are going to put the spotlight on these people who would prefer to remain in the dark. All of this takes time. Here we are at the end of September 2011 and maybe, in a few weeks, the European Parliament and the Council of Ministers will vote on the text - one year later!

We have set up European supervisory authorities, which are now doing their work. We have introduced a first set of rules on bonuses and I intend to go further and establish rules that would apply to certain other unjustifiable and nebulous forms of remuneration.

We are intending to table a motion on the taxation of financial transactions in a few days' time.

We will also be introducing rules on the activities of credit rating agencies. Whilst it is not the thermometer which brings on the fever, the thermometer must work properly and must not accentuate the fever.

Ladies and gentlemen, my course is clearly traced out. No single financial market, financial player or financial product will be able to escape effective regulation and intelligent supervision once the process is complete (I hope in about two to three years). Not one!

This is my roadmap. The goal is not to prevent markets from operating but to know who is doing what and to ensure that these markets are working for the real economy rather than the opposite, as has been the case for the last fifteen years. It is a very difficult task and the texts involved are very complicated but this will be my priority in this field.

Once we have got the markets working for the real economy or, in other words, for human progress and growth, my aim is to move on very quickly – and I am already working on this – to a form of regulation which will facilitate and contribute proactively to progress and growth. What I mean here is progress for citizens, consumers and businesses and, in particular, for small and medium-sized businesses, which have had the feeling, over the last twenty years since the introduction of the Single Act, that the single market was not made for them, that it was made for the big companies and the major players rather than for Europe's small businesses, consumers and citizens.

I have set myself the goal, though I will probably need more time for this, to reconcile Europe's consumer citizens with the single European market, which is our greatest asset. When citizens use their public services, which need to be preserved, or buy something, they have to know what they are buying and be protected and informed about the quality of what they are consuming and its prices. There is work to be done here.

I am currently carrying out a thorough investigation of French and European banks to find out what all these charges and levies on individual bank accounts, amounting to dozens of euros, actually correspond to.

This is what I mean by protecting consumers, citizens or economic operators who have savings accounts or shares, and protecting small, medium-sized and sometimes larger businesses which invest, export and innovate.

In all these areas, we will continue to introduce and flesh out the European rules on protection and information.

Ladies and gentlemen, to show you that these are not just words, I have a table here, which can also be consulted on the Internet and is the product of some very thorough work by the entire European Commission. It was approved by the College of European Commissioners, which means that we are bound by it. What it shows is the twelve levers to boost growth that we have identified. I am beginning to know them well. I have had the opportunity to present them to the European Economic and Social Committee, together with fifty specific measures introducing legislation to facilitate and contribute proactively to growth, innovation, mobility and exports

This agenda is ours now and is entirely in keeping with Europe's treaties along with its social rights, which are now the rule. All of the proposed legislation will be subject to social impact studies prior to enactment. Many of the proposals will directly affect men and women in their day-to-day lives, relating to matters such as public services which need preserving, the social entrepreneurship which we wish to encourage, the social innovation we wish to facilitate, social cohesion with the public services and, in many of these areas, the use of public procurement contracts. I am responsible for public procurement in Europe, which accounts for 17% of Europe's GDP. We will use public procurement to foster social cohesion, innovation and environmental protection.

I also intend to drastically reduce the administrative restrictions which currently prevent small and medium-sized businesses from participating in the European public procurement market.

This is the agenda for the single market to which the entire European Commission is committed. What we need now is to be assigned clear responsibilities and for everyone to take them on. We are expected to propose texts and implement them. The institutions, which were democratically elected for the purpose, now need to adopt these texts or improve them.

I was struck the other day by the controversy that blew up over food aid. This at least had the initial merit of reminding those who had forgotten or had not passed on the information that the *Restos du Coeur* in France and many other associations attract European funding. Nobody had pointed this out before.

Ladies and gentlemen, when people accuse "Brussels", it cannot be the Commission. The Commission did its work to take account of the Court of Justice's decision and propose that food aid should be entered under another budgetary heading so that we could have the €500 million we need, and the amount could even be increased.

The governments which take these decisions have to accept their responsibilities. Here as well, it may be worth trying to educate people a little.

We need all of the institutions to get to work, particularly those which vote, namely the European Parliament and the Council of Ministers. Subject to this reasonable proviso, we will implement our dual agenda, which is to put the financial markets back in the service of the real economy and get the single market, which underlies it, acting as its foundation and its base camp, working again for progress and growth. My final conviction – and my final point today – is that this growth cannot be the same as it was before.

We will not get out of these crises by acting in the same way as we did when we got into them. The growth that we promote must be more fairly distributed, and I will be working on this. It will inevitably be more measured where it comes to levels of pay, bonuses and dividends and the use that is made of natural spaces and resources. It will clearly be more green, more ecological and more low-carbon. These are also issues which we wish to address.

Ladies and gentlemen, I would like to finish where I began, by emphasising how close my views are to those of our host, Mr Delevoye. I wish to continue to work on these projects, which are the guiding thread of my political commitment and my personal dream, namely new growth in Europe, the increased political strength of Europe, on which each of our people's fates depends, and this humanist vision of society.

**Mr DELEVOYE** – Thank you Mr Barnier. Without further delay, I call **Mr Jean-François Akandji-Kombé**, whose task it is to chair the next round-table session, and would ask the speakers to come to the front so that the moderator can open the first part of the discussion, which is on the European Social Charter in everyday practice.

# 1. The European Social Charter in everyday practice

**Chair / Moderator and introductory remarks:**

**Professor Jean-François AKANDJI-KOMBE, Professor of Law at Université of Paris I, Co-ordinator of the Academic Network on the European Social Charter.**

**Mr AKANDJI-KOMBE** - Ladies and gentlemen, we shall begin our work with the first Round Table.

Before coming to the framework of this general Round Table, I would just like to go back over a number of facts which I consider justify our meeting to celebrate the 50th anniversary of the European Social Charter, if such justification were needed.

The Secretary General of the Council of Europe mentioned in his address that the European Social Charter is a treaty which was signed in Turin in 1961 and was subsequently reworked and updated in 1996 as the Revised European Social Charter. It was also enriched and made more effective with the reform of its supervisory mechanisms, which gave rise to the collective complaints procedure, with its manifold consequences.

At the time of drafting, Committee of Ministers of the Council of Europe immediately designated this treaty as the counterpart of the European Convention on Human Rights, which specific designation has both political and legal conclusions.

The expression "counterpart of the European Convention" means that, like the Convention, the Social Charter is at the centre of the European democratic ideal which the Founding Fathers wished to reactivate in creating the Council of Europe at the end of the Second World War. Therefore, the fact that these two instruments were concluded at different times cannot justify continuing to draw distinctions, in both their conception and their implementation, between two texts which are both geared to protecting human rights.

Like the other speakers, I consider the European Social Charter as a founding element and a vehicle for the European idea of democracy.

On this point I would refer to the case-law of the European Court of Human Rights, to this vital affirmation which informs the Court's whole case-law, to the effect that the European Convention of Human Rights is an instrument of European democratic society. European democracy is political, but since the two instruments are linked, it is inconceivable for Europe to be based on anything other than political democracy. With its values, political democracy must also be complemented with social and economic democracy. That is the aim of the European Social Charter.

The organisers of this conference did me the honour of asking me to moderate the first Round Table. I was foolhardy enough to agree to moderate the whole day's proceedings.

The first Round Table concerns the Social Charter in everyday practice.

This theme must have confused quite a few people. Some might even have found it iconoclastic. The fact that the Social Charter adopted in Turin in 1962 is a practical tool might come as a surprise in the light of doctrinal, majority opinions to the effect that this text only contains objectives, indeed wishes, in terms of social policy. And to think that the practice of the Charter, if practice there be, might be an everyday matter could well astonish a fair number of observers.



And yet the subject is well worth considering, even for the next hour-and-a-half.

The reason for this, an extremely compelling reason in my view, is the status of the Social Charter. It is an international treaty, and as such, i.e. as a binding prescriptive instrument, it necessarily involves down-to-earth practice. One of the masters of the French school of international law, Paul Reuter, pointed out in his introductory handbook to treaty law, which is worth going back to from time to time, treaties are concluded in order to be executed. He added that their execution, especially where they establish rights and obligations for individuals, calls for their application by the national courts.

But let's not get ahead of ourselves; we might just observe, personally, that in terms of execution, or, better, of application, the Charter encompasses a wide-ranging problem which transcends purely legal considerations.

First of all, application might consist of legislative action to implement the provisions for which such action is necessary. Such intervention is needed where the States undertake, as stipulated in Article 7 para. 1 of the Charter, "to provide that the minimum age of admission to employment shall be 15 years", or, as laid down in Article 12 § 1, "to establish or maintain a system of social security", or again, as provided for in Article 31 § 1, to take measures designed "to promote access to housing of an adequate standard". And these are only a few of the possible examples.

Truth to tell, while it is almost natural in such a "legicentric" country as France to immediately think of the legislator when provisions of the kind mentioned require implementation, this is not prescribed by the Social Charter. Rather, it adopts a neutral position vis-à-vis national procedures for implementing laws. We might remember here that the Charter and the Revised Charter comprise an article, namely Article I of the latter, entitled "Implementation of the undertakings given", which lays down that the provisions of this instrument "shall be implemented by: laws or regulations; agreements between employers or employers' organisations and workers' organisations; a combination of those two methods; (or) other appropriate means". This means that the States Parties have a free choice of methods. However, it also means that depending on the relevant components of national law, the government, the social partners, or any other standard-setting authority can be required to implement the undertakings, on the same basis as the legislator.

The players involved in this first implementation procedure, or to use the terminology of this Round Table, involved in this means of putting the Charter into practice, are therefore potentially many and varied.

Another component of the "everyday practice" issue is that suggested in Article A of the Revised European Social Charter. This Article A is entitled "Undertakings". Under this title it specifies the conditions for ratification and approval of the text and for its entry into force, but also the effect of the undertakings given. It is here that Article A lays down that "Each Party shall maintain a system of labour inspection appropriate to national conditions". How are we to interpret this provision in such a context? It is hard to say. Is this a substantive requirement hidden among the final clauses? Is it a case, in view of the apparent link between this requirement and the purpose of the said article (which is to specify the effects relating to the Social Charter) of saying that the administration of labour and labour inspection procedures within this administration are also responsible for ensuring respect for the Charter provisions geared to protecting employees? We cannot know. However, we cannot overlook the fact that if this second interpretation were to prevail, the labour administration institution would also have to be included among the bodies responsible for implementing the Charter; we would also have to consider that this would open new perspectives which we do not always think of, because supervision by the labour inspectorate of the implementation of the Charter presupposes that the reference standard is sufficiently

precise and capable of governing relations among private individuals.

This brings us to the final component of the problem of applying the Charter, namely the actual supervision of application. A distinction is required here between European and national supervision.

As we know, European supervision takes place within two different frameworks. First of all there is periodic supervision, every two years, based on implementation reports drawn up by the States. Secondly, there is the collective complaints procedure introduced under the 1995 Protocol, which is now fairly famous, or notorious, in France. These also provide frameworks for an approach to implementing the Charter which is no less important for not being an everyday practice. The primary actors here are the European Committee on Social Rights and the States Parties. It will, however, be noted that the 1995 Protocol added the trade unions as potential complainants, or more precisely the organisations representing employers and workers at the national, European and international levels. And both national and international non-governmental organisations are authorised to submit complaints under this procedure. Experience, particularly in France, has highlighted the energy of these new actors. Some of these organisations are represented here, and they will be explaining their practice to us, especially the future thrust of their action. I am thinking in particular of ATD Fourth World, which has lodged several complaints geared to protecting the right to housing, but also the CGT, CFDT and CFE-CGC, which have lodged various complaints in defence of employees, including the iconic one concerning the conformity of the annual working days system with the provisions of the Charter.

In comparison with European supervision, national supervision is liable to considerably broaden the circle of Social Charter “practitioners” by opening it up to all citizens and, obviously, to their legal representatives. For the time being, however, this is all more potential than actual. In order to move on from potentiality to actuality, the national courts must acknowledge the judicial availability of the European instrument. But the fact is that the latest developments in litigation in France, especially concerning the provisions on trade union representation under the Law of 20 August 2008 and, even more recently, the annual working days system, show that the road to such judicial availability is still fraught with many pitfalls.

Obstacles to the practicability of the Charter have also emerged. While the problems which we have just mentioned concerning judicial applicability are among the most acute, the other less difficult ones should not be overlooked. The latter include the problem of how European (Council of Europe and European Union) standards should be linked up both with each other and with the international social rules, particularly those issued by the ILO.

Our Round Table is devoted to all these issues relating to the practical interest of the Social Charter and its potential in terms of protection, but also the difficulties with its implementation and the solutions to these difficulties.

The Round Table will comprise contributors from a variety of backgrounds: a member of an EU body, the European Economic and Social Committee; a representative of one of the foremost NGOs promoting the effectiveness of the Charter, ATD Fourth World; a member of the Social Chamber of the Court of Cassation, which is in fact the only French supreme court which has so far agreed to consider seriously the question of the applicability of the Charter; and lastly, a member of our host institution today, the French Economic, Social and Environmental Council, although the most important fact for us is that he is a trade unionist.

So the scene is set for voicing a wide variety of viewpoints and engaging in a wealth of exchanges.

I shall now give the floor to our first speaker, specifying that the word “moderator” is not really suited to the duties which I shall be discharging. I must not only “moderate” but also properly allocate speaking time. The time allotted to each speaker is ten minutes, because it is vital that we leave enough time for exchanges, allowing all the participants to express their views.

I would now ask Mr de Lamaze, member of the European Economic and Social Committee, to speak.

### **1.1 Personal accounts of using the European Social Charter in different national contexts and results obtained by the social partners, the executive, the legislature and the judiciary**

**Mr Edouard de LAMAZE, Law firm CARBONNIER LAMAZE RASLE, Member of the European Economic and Social Committee**

**Mr de LAMAZE** - The subject chosen for this Round Table concerns first-hand accounts of the use of the European Social Charter in the different national contexts and the results obtained by the social partners, the executive, the legislator and the courts.

At the beginning of the 3rd millennium we have a whole series of anniversaries to celebrate. Today is the fiftieth anniversary of the Social Charter, but it is also, we should remember, the 60th anniversary of the Universal Declaration of Human Rights. It is also the sixtieth anniversary of the Council of Europe and the fiftieth of the European Court of Human Rights.

The European Social Charter is a Council of Europe convention which was signed in 1961 and revised in 1996, setting out rights and freedoms and establishing a supervisory system which guarantees compliance by the States Parties. The Revised Charter came into force in 1999, gradually replacing the 1961 treaty.

The European Charter is the counterpart of the European Convention on Human Rights applicable to the field of economic and social rights. The Charter guarantees the enjoyment, without discrimination, of the fundamental social and economic rights established under a social policy which the Parties undertake to pursue by all possible means.

You know the rights that are guaranteed. I would just say as an introduction that the celebration of the anniversary of the European Social Charter is an opportunity for assessing its application, but also, and I feel that this is the main point, for looking to the future.

There are two ways of looking to the future: the pessimistic and the optimistic way. I personally would opt for the optimistic way, while stressing the difficulties, as Mr Barnier has advised. It is important to convey some degree of optimism as witnesses and users of the Charter, otherwise our words will serve no purpose.

I am surrounded by eminent specialists in the field of international and European law. I shall not venture into the field of comparative law, but rather, drawing on my position as a French lawyer and adviser to the European Economic and Social Committee, I would like to paint a panorama of the main use of the Charter in France in a firmly established field, viz social law. Before that I would like to briefly outline the material and legal effects of this Charter in Europe.

In connection with the effects of the Charter, we should firstly note that this text is divided into two parts. The first sets out the fundamental social and economic rights vis-à-vis the parties, which recognise them as a goal to be achieved. The second part imposes obligations on the contracting parties which they undertake to respect in accordance with the provisions of Article A of Part III of the Revised Charter.

Compliance with the undertakings set out in the Charter is subject to supervision by the European Committee, in accordance with the Turin Protocol. The Committee thus adjudicates on the conformity of national situations with the Charter and adopts conclusions which are geared to assessing the States' practices. Under the collective complaints procedure it adopts decisions on the various national situations.

The social partners and non-governmental organisations can apply to the Committee under the collective complaints procedure. I would like to remind you that France has not yet allowed the NGOs to submit complaints to the Committee, which is perhaps rather regrettable.

Where the legal effects of the Social Charter in France are concerned, the issue of the enforceability of the social rights set out in the European Charter, which is somewhat similar to the direct judicial availability of social rights, arises in France in respect of Article 55 of the 1958 French Constitution, which provides that "Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party".

Thus the economic and social rights resulting from international instruments become effective via the direct application of the treaties. They thus complement the guaranties provided under national law, but above all they supply new legal bases for interpreting domestic rules and regulations.

Beyond the actual conventions, litigants can also rely on the whole case-law of the supervisory mechanisms before the national courts.

Nevertheless, and this is the pessimistic note struck by Mr Akandji-Kombé in his introduction, the Conseil d'Etat does not recognise any direct effect of the European Social Charter vis-à-vis litigants. This situation has provided us with several interesting Conseil d'Etat decisions.

I shall quote the decision of 20 April 1984 in the case of the Ministry of the Budget against Ms X: "in order to ensure the effective exercise of the right to a fair wage: the co-contracting parties undertake to recognise the right of all workers to a reasonable period of notice for termination of employment, and (that) this clause does not produce any direct effect vis-à-vis nationals of Contracting States". Therefore, the applicant can in no case usefully adduce a violation of the Article 4.4 clause.

A judgment of 7 June 2006 similarly reads: "considering that by virtue of Articles 9 and 10 of the International Covenant on Economic, Social and Cultural Rights, as well as Articles 11, 12, 13 and 17 of the Revised European Social Charter, the Parties undertake to adopt appropriate measures to ensure the effective exercise, respectively, of the right to health protection, social security, social and medical assistance, and the right of children and young people to social, legal and economic protection". To which the Conseil d'Etat adds: "these stipulations, which produce no direct effect vis-à-vis individuals, cannot be usefully relied upon in support of the conclusions favourable to the annulment of the decrees complained of".

This is what we practitioners are up against in French law. These decisions are the basis of our work and our application of this Charter.

I would like to mention another more recent decision of 24 August 2011, which concerns the right to education: “considering the foregoing comments, these stipulations, which in fact produce no direct effect in the domestic legal system, therefore cannot be usefully adduced against the decree complained of”.

In fact, legal practitioners can appraise the concept of direct application of the European Social Charter in a variety of ways.

Such direct invocation of the European Social Charter, leading to the development of a case-law norm, only produces an effect, under French domestic law, between the parties to proceedings, unlike the “self-executing effect” relied upon by the advocates of direct application. The case-law norm deriving from the judgments of the Court of Cassation has no general, permanent effect: a judgment given by the Court of Cassation based on the European Social Charter is perfectly capable of being challenged by dint of a case-law reversal.

And yet we can nonetheless consider that the prescriptive practice of the Court of Cassation, like the judgments based on the Charter, can be seen as an embryonic mode of direct application.

In the field of social law, for instance, the Charter protects social rights: elimination of hazards, occupational environment, etc. The Charter has originated a number of common conceptions which are very broadly respected. It not only safeguards these situations but also promotes joint efforts to achieve dynamic social policies.

So it is difficult to gauge the influence of a social convention on the States’ domestic legislation.

On the one hand, the Charter is not the only convention in the social field. On the other, the application of a European norm in domestic law to a large extent depends on national political acceptance by each State.

Nevertheless, it constitutes an essential instrument for governments, which take advantage of it, with varying degrees of success. The Charter’s sphere of influence is undeniably increasing, and not only in geographical terms, as might immediately be thought.

To take the example of France, the substantive scope of the Charter is also gradually and inexorably growing in our country. The influence of the Charter can be felt in many legal fields, notably thanks to positive intervention by the Court of Cassation, whose judicial work in French law social is particularly intense. If the States must be proactive in applying the Charter in domestic law, it is primarily for the judges of each country to implement it.

## **Mr Eugen BRAND, Director General of the International Movement ATD Fourth World**

**Mr BRAND -**

### **I) The poorest, partners of the European Social Charter**

The aim of the European Social Charter, which was adopted in 1961, was to ensure that everyone could enjoy their human rights and economic and social rights without discrimination.

It must be acknowledged that back then this ideal did not take account of families living in poverty, as Western Europe seemed to ignore their existence. It was generally believed that post-war reconstruction, growth and full employment would soon allow everyone to become a member of the consumer society. As for so called “social cases”, who were considered to be responsible for their own predicament, they were only offered support but no real solution for the future.

It took the persistence of Joseph Wresinski, who founded ATD Fourth World in 1957, to highlight the existence of widespread endemic family poverty in Western Europe. He proved that such poverty was not limited to isolated cases and that an entire population was being excluded, from one generation to the next.

He then proceeded to show that poverty constituted a violation of human rights, in the same way as racism and torture. ATD Fourth World has fought this battle together with families living in very difficult conditions, with other NGOs and with institutions such as the Council of Europe, the Economic, Social and Environmental Council and the National Consultative Human Rights Commission in France. In doing so, it has relied on human rights instruments such as the Universal Declaration of Human Rights, the European Convention on Human Rights and the European Social Charter.

Despite proclaiming the grand ideals of humanity, these international instruments did not, at first, really help to improve the lives of the very poor. As Joseph Wresinski remarked at the Council of Europe in 1981, “Why do our deepest convictions not apply to those on the lowest rung of the social ladder? How can it be that an entire sector of the population should find itself on the outside of our social structures, outside the law, outside of society and on the outside of democracy?” (Joseph Wresinski, *“Fourth World and Human rights”*, opening address at the seminar on : *“The right of families to live in dignity”* at the Palais de l’Europe in Strasbourg, from 9 to 11 December 1981 <http://www.joseph-wresinski.org/IMG/pdf/>).

In 1982, he appealed for extreme poverty to be recognized as a human rights violation under international instruments. The appeal, which was signed by thousands of people across the world, was submitted to the UN Secretary General and the Secretary General of the Council of Europe.

This call for action was heard by the bodies of the Council of Europe. As Hans-Peter Furrer, then Director of Political Affairs, remarked in 1989: “At the Council of Europe, we believe it is high time to establish a genuine partnership, to listen to the poor and their representatives, and to recognise them as legitimate interlocutors demanding and enforcing their own rights vis-à-vis their fellow citizens and the authorities which, all too easily, claim for themselves the right to think and act on the poor’s behalf. Recognition is the very foundation of joint action.” (Hans-Peter Furrer, *“New gestures for human rights in Europe”*, *Revue Quart Monde*, No. 131 – *Une démarche Wresinski pour l’Europe*).

Between 1989 and 1998 ATD Fourth World took an active part in the Council of Europe's "Human dignity and social exclusion" project, based on the approach taken in the Wresinski report for the French Economic and Social Council entitled "Extreme poverty and economic and social insecurity".

The partnership between the most deprived in Europe and the Council of Europe has contributed to a better understanding of the indivisible and universal nature of human rights. It led to Article 30 of the revised European Social Charter, an essential provision on the right to protection against poverty and social exclusion:

"With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- to review these measures with a view to their adaptation if necessary."

## **II) Effectiveness of the rights**

But what can be said about the implementation of the rights enshrined in the Social Charter and their effectiveness? Let me give you an example: for over 20 years, France has enacted ambitious laws to combat poverty and social exclusion. In practice, however, these laws have failed to address the difficulties experienced by individuals and families living in extreme poverty. In 2006, given this impasse and the worsening situation we were observing, we filed a collective complaint against France concerning the right to family life, the right to protection against poverty and the right to housing in conjunction with the principle of non-discrimination on the basis of social origin. (Collective complaint No. 33/2006, *ATD Quart Monde v. France*; see also CM Resolution of the Committee of Ministers ResChS (2008) 7 adopted on 2 July 2008).

On 4 February 2008, the Committee of Social Rights of the Council of Europe found in favour of ATD Fourth World and FEANTSA (the European Federation of National Organisations Working with the Homeless), which had also filed a collective complaint.

This result calls for several comments:

\*Families living in extreme poverty were involved in all stages of the procedure. They were invited to describe their experience and give their analysis of their predicament and a thirty of them formed a delegation that participated in the hearing before the Committee of Social Rights. One of the delegates, Cécile Reinhardt, told the Committee: "We have great expectations of this claim. I lived half my life in poor quality housing. When can we ensure that our children will have decent housing? How can we live as citizens if we cannot enjoy our rights as citizens?"

\*The real issue was not for ATD Fourth World to challenge a government or a political ideology, but to introduce the idea that government social housing policies and the fight against poverty are "obliged to deliver results". Policies should be evaluated not only by the fact that they exist and that some individuals benefit from them, but also on the basis of the concrete results they achieve in improving the situation of the very poor. If the poor are not involved in the implementation of such rights, if they are not the measure of the effectiveness of such rights, they will only become more excluded.

\*To increase access to basic rights for those living in extreme poverty, to avoid a “two speed” Europe in terms of human rights, i.e. a Europe that sacrifices the weakest in order to address the economic and financial crisis, it is essential to safeguard rights at European level. Application of the principles would then fall to local and national authorities. (see “*How can we improve access to fundamental rights for persons living in extreme poverty in the European Union?*”, seminar organised by the National Consultative Committee on Human Rights and ATD Fourth World, 28 March 2011 in Paris; Proceedings available on : <http://www.atd-quartmonde.org/Faire-respecter-les-droits.html>).

All European states should therefore ratify the revised Social Charter by accepting Articles 30 and 31.

Furthermore, it is clear that the European Union should now sign up to the European Social Charter and the collective complaints procedure.

\* Finally, it is imperative that a culture of respect for human rights be integrated into the implementation of all European legislation and into institutional practice at national and European level, both in Strasbourg and Brussels. The recognition of extreme poverty as a human rights violation should be standard practice at these institutions. To that end, and as stated by Paul Bouchet, honorary president of ATD Fourth World, it is essential to combine the spirit of these instruments with the principles of equal dignity and non-discrimination or even, in extreme cases, the refusal to accept inhuman and degrading treatment, as many human rights violations against the poor take the form of inhuman and degrading treatment.

### **III) A citizens’ Europe**

Without the genuine participation of the people concerned, practices, policies and research into severe poverty are doomed to failure and subject to lead to the wrong result. However, if the experiences and input of the poor are to guide the design and evaluation of policies, considerable effort must be made to educate both the poor and others. Enabling the poor to exercise their citizenship, their rights and their responsibilities is as essential for them as for democratic institutions. But the poor cannot be full members of society if other members of society do not want them as fellow citizens.

If trust is to be restored between all members of society, it is first necessary to create the conditions that allow them to learn from one another, in particular so that the poorest realise that their life experiences have given them a unique insight they can share.

National and European institutions must support civic and vocational training aimed at forging social ties and establishing dialogue between the most disadvantaged Europeans and decision- makers. For example, since 1999 the European Economic and Social Committee has regularly hosted the European Fourth World People’s University. Such institutions should also encourage initiatives taken by associations to enhance access to rights, such as the community rights committees we set up in co-operation with Amnesty International and Catholic Relief Services.

It is essential to reject a policy of “creaming off” the least poor, which merely perpetuates poverty and exclusion. The strategy of attempting to reduce poverty by a certain percentage is one example. Those who benefit from such a strategy are obviously those least in need among the ranks of the poor. But what about those who are most in need? They find themselves lagging even further behind, abandoned and, then to add to that, they are considered less “capable” than those who manage to cope, which is completely untrue and unfair.



This is the fundamental difference between a policy designed to reduce extreme poverty and a policy designed to eradicate it. The former is not universal, its starting point is not all-inclusive – it is selective and ignores human rights. The aim of the latter is on the other hand to ensure “access to all rights for everyone, by mobilising everyone.” This is the policy that should be implemented in Europe: a policy based on respect for the equal dignity of all human beings, on the indivisibility and interdependence of human rights. The fiftieth anniversary of the European Social Charter is an opportunity to reaffirm the urgency of this policy. The influence and credibility of Europe in the world depends on this far more than on its financial strength.

I would like to finish with the phrase inscribed at the entrance of the building where we find ourselves today as it sums up my point in its entirety: “To consider the progress of society in terms of the quality of life of the poorest and most excluded is the dignity of a nation (and, I would add, “of a Europe”) based on human rights.”

Thank you for your attention.

**Mr AKANDJI-KOMBE** - Thank you, Mr Brand, for this valuable account of your approach to handling the collective complaints procedure, and also for your interpretation of this procedure and the rights protected.

I have taken note of a number of proposals. One of the advantages of this type of meeting is that they can identify new prospects for the European institutions, helping propose remedies or adjustments for the future. We might come back to this topic this afternoon, as one of these proposals concerns the accession of the European Union.

**Mr Hervé GOSSELIN, Adviser to the Social Chamber of the Court of Cassation**

**Mr GOSSELIN** - On 29 June last the Social Chamber of the Court of Cassation issued a judgment which has attracted a great deal of comment. It stated, in the light of paragraph 11 of the Preamble to the Constitution of 27 October 1946, Article 151 of the Treaty on the Functioning of the European Union, which refers to the European Social Charter and the EU Charter of Fundamental Social Rights, Article L.3121-45 of the Labour Code as interpreted in the light of Articles 17 (1) and 19 of Directive 2003-88 of 4 November 2003, Article 31 of the EU Charter of Fundamental Rights, and lastly, the metalworking industry decision of 28 July 1998, that the agreement on annual working days (forfeit jours) which it had examined under an appeal procedure was devoid of effect because the stipulations of the collective agreement geared to ensuring the protection, safety and health of employees subject to the annual working days system had not been respected.

This judgment is a perfect illustration not only of the inspiration which the Revised European Social Charter provides for judges but also of the problems posed by its implementation.

Let us begin with the inspiration aspect. Since the Jacques Vabre judgment given by its Joint Chamber on 24 May 1975, the Court of Cassation has held that Article 55 of the Constitution confers on international treaties and agreements higher authority than that of legislation.

The parties to proceedings are therefore a priori justified in adducing incompatibility with conventions of a given legal provision or stipulation of a collective agreement, subject to the criteria for the direct applicability of the provisions of the international instrument in question.

In connection with proceedings involving the provisions of the European Social Charter, we first of all note that such proceedings are few and far between. There are only about ten judgments in which the Social Chamber pronounces on the provisions of the Charter, which is not many considering the fact that the Charter is fifty years old.

But it should be borne in mind that in several cases, technical reasons have prevented the Chamber from properly considering appeals based on the Charter. The first finding must be a lack of motivation on the part of the Parties to this instrument.

Which provisions of the Charter have been relied upon?

Apart from a case where Articles 1 to 5, 10 and 12 were invoked in connection with a problem concerning the jurisdiction of an Industrial Tribunal, and another in which an appeal was partly based on the first Article of the Charter vis-à-vis the excessive effects of a non-competition clause on the employee's freedom to work, the only articles adduced by the parties have been Articles 5 and 6 on the rights to organise and to bargain collectively under proceedings relating to the representativeness of trade union organisations. These were recent cases examined subsequently to the Law of 20 August 2008.

It was contended in these cases that the fact of reserving for representative trade unions the right to participate in collective bargaining or of linking the representativeness of the unions to their electoral results (at least 10 % of votes cast in the first round of elections for full members of the works council), or again prioritising trade union delegates among the candidates obtaining a minimum of 10 % of the votes, infringed the freedoms and rights secured under Articles 5 and 6 of the Charter.

This is evidently a judicial transposition of the discussions held during the development and implementation of the Law of 20 August 2008.

In these cases the Chamber ruled that the challenged provisions were not prohibited by Articles 5 and 6 of the Charter, the latter setting out general provisions which were consistent with a national system reserving the right of collective bargaining for representative trade unions.

Nevertheless, it was primarily during the debate on the conformity of the French Law on annual working days, which was originally intended mainly for so-called "autonomous" executives, that is to say essentially persons responsible for organising their own working timetables, that the Charter undeniably inspired the Social Chamber.

The European Committee of Social Rights, having on several occasions considered, in connection with collective complaints from the CFE-CGC and the CGT, that the legislative provisions on annual working days as set out in the Law of 19 January 2000 and the subsequent legislative amendments were not in conformity with Articles 2 (1) and 4 of the Charter. The former article requires reasonable daily and weekly working hours. Paragraph 2 of the latter article entitles workers to an increased rate of remuneration for overtime work.

The Chamber considered whether it would not be useful to verify the compatibility of these provisions with the Charter with a view to concluding agreements on annual working days. It ultimately decided not to supervise such compatibility directly when considering the appeal in question.

However, a reading of the reasons for this decision leaves no doubt as to the fact that the Social Chamber did adjudicate on the case before it in the light of the successive opinions of the European Committee of Social Rights.

By mentioning Article 151 of the Treaty on the Functioning of the European Union, which refers explicitly to the Charter, the Social Chamber showed that it wanted its decision to tally with the position adopted by the European Committee of Social Rights, given not only that Article 2 of the Charter recognises the right to reasonable working hours, but also that Article 3 guarantees the workers' right to health and safety.

Few court cases have involved the provisions of the Charter. It is also striking to note that appellants never assert the articles of the Charter alone. They are systematically accompanied by articles of the European Convention on Human Rights, the EU Charter of Fundamental Social Rights, the EU Charter of Fundamental Rights or EU directives.

This might suggest difficulties with the treatment of the Charter. Although many of them are similar, the provisions of the various instruments are not always strictly equivalent. To take the example of working hours, we note that while Article 2 (1) of the Charter imposes respect for reasonable daily and weekly working hours, Article 31 of the Charter of Fundamental Rights recognises the right to a limitation of maximum working hours, whereas the 2003 Directive lays down a weekly maximum 48 hours, with exceptions, and the EU Charter of Fundamental Social Rights only mentions improving living and working conditions and standardising such improvement of conditions, particularly in terms of working hours and flexitime.

It is easy to understand the parties' hesitations and their decision to rely on all the instruments simultaneously, a choice which the courts can only respect as they are not called upon to establish any order of priority in these instruments or ensure that one takes precedence over another. They therefore consider all of these instruments, as they did in the case of the annual working days system.

So the court obviously endeavours to secure a simplification or harmonisation of the texts or, failing that, a clear statement of principles linking them all up, whether they stem from the European Union or the Council of Europe.

The second difficulty concerns the conditions for supervising the application of the Charter. I would like to mention here the scope of the decisions given by the European Committee of Social Rights. These experts determine the conformity of a domestic legal text with the provisions of the Charter. The collective complaints mechanism provided for in the 1995 Additional Protocol to the Charter, which France has ratified, is highly satisfactory from this angle.

Everyone knows that only the Committee of Ministers is empowered to ask a given signatory State of the Charter to adopt the necessary measures to bring its legislation into line with the Charter. Experience has shown, particularly with the annual working days case, that this system is not very effective, because no amendment has been made to legislation despite the repeated declarations of non-conformity of the French Law on annual working days issued by the European Committee of Social Rights.

If we wish to make the legal rules set out in the Charter more effective, it would probably be useful to consider the relevance of the supervisory methods available to the Council of Europe in order to ensure that the signatory Parties respect the Charter.

Should the European Committee of Social Rights be transformed into a fully-fledged court? Should we transfer jurisdiction for cases relating to the application of the Charter to the European Court of Human Rights? In either case, should we allow anyone with a legitimate interest to submit complaints or should this facility be reserved for NGOs and trade union organisations? These are some of the questions arising in connection with our practice of the Charter.

There is another obvious question to be addressed, one which is far from simple and which directly affects the judge: under what conditions can the latter consider that a given provision of the Charter is directly applicable? In other words, can the parties to proceedings in French courts, ie employers and employees, rely, with some chance of success, on the provisions of the Charter?

This question, with which all judicial and administrative courts responsible for applying international instruments are familiar, has not really been finally decided by the Social Chamber of the Court of Cassation where the Charter is concerned.

The Chamber has dealt with several appeals involving compliance with the provisions of the Charter, particularly Articles 5 and 6, and has dismissed them on the grounds that the provisions of the Charter provide no basis for settling the appellants' complaints. This prevents us from concluding that the Social Chamber has clearly pronounced on the direct applicability of the Charter in domestic law.

In the "annual working days" (forfeit jours) judgment, we note that no such ground of appeal was adduced by the appellant in question. So the Chamber had to examine *ex officio* the ground of appeal based on the application of the provisions of the Charter, particularly Article 2 (1). In such cases the judge always prefers to pinpoint, wherever possible, a different means of securing the same solution.

Courts traditionally consider that a provision of an international instrument which imposes obligations among States can have a direct effect in domestic law where it fulfils the conditions of clarity, precision and unconditionality.

The reasonableness of daily and weekly working hours laid down in Article 2 (1) of the Charter raises few difficulties, as in this case the Chamber directly applies the provisions of ILO Convention 158 or Article 6 (1) of the European Convention on Human Rights, which is based on this concept.

It is more difficult to know whether Article I of Part 5 of the Charter, which concerns the implementation of the undertakings given by specifying that "Compliance with the undertakings deriving from the provisions of paragraph 1 of Article 2 of this Charter shall be regarded as effective if the provisions are applied to the great majority of the workers concerned", does not permit the non-application of such reasonable hours only to employees subject to the annual working days system, even though, according to statistics, the minority of employees subject to this system currently embraces over one-and-a-half million workers.

The reply to this question of direct applicability will have major consequences.

If the court decides to verify compliance with specific provisions of the Charter in the case of disputes between employers and employees, it will, for example, be called upon to declare null and void, or devoid of effect, any agreements on annual working days concluded in breach of these provisions. Unless the public authorities amend the current legislation, employers could appeal to the administrative court for State compensation, in accordance with Conseil d'Etat case-law. An Assembly decision of 8 February 2007 reads as follows: "Considering that State responsibility for the effects of legislation is liable to be incurred on the grounds of its obligations in terms of ensuring compliance with international treaties by the public authorities in order to compensate for all damages resulting from the enforcement of a law adopted in breach of France's international undertaking."

These were all the observations and questions which I wished to submit in connection with the practice of the Social Chamber of the Court of Cassation vis-à-vis the Revised European Social Charter.

**M. AKANDJI-KOMBE** - Thank you very much, Mr Gosselin, for this extremely informative presentation. I have no doubt that it will presently be the subject of highly interesting questions and exchanges. If the oldest member of the Social Chamber of the French Court of Cassation, Ms Marie-France Mazars here present, would like to speak just afterwards to add anything to what has just been said, she will be welcome to do so.

I also note the presence here today of judges who have exercised or are still exercising in the supreme courts of other countries, and I salute them. Mr Justice Stein Evju, a former member of the European Committee of Social Rights and Past President of the Labour Court of Norway, might perhaps also provide some input into the debate.

However, the exchanges are probably going to be sufficiently intense for me to give the floor immediately to Mr Yves Veyrier, who I have already said works for our host institution. He is a foremost member of the CESE with a trade union background, and presides over the European and International Affairs Section of our host institution, but he is also a trade union representative with the ILO under its tripartite system.

He will now, in all these capacities, present his own specific observations on the Charter in everyday practice. Mr Veyrier, you have the floor.

**Mr Yves VEYRIER, Head of the Section for European and International Affairs of the French CESE**

**Mr VEYRIER** - Professor, Moderator, thank you. I must tell the Judge who spoke before me that we did not confabulate at all, but you have addressed questions which I wished to raise in part.

You are correct in supposing that I intend to speak on these several accounts, if only to raise a first question which is that here in the Economic, Social and Environmental Council we do not have any particular practice regarding the European Social Charter. That may be queried, and I shall come back to it at another point of my statement.

However, for the time being I shall confine myself to the area directly linked with labour relations in order to illustrate a number of these questions. The fiftieth anniversary of the Social Charter and this colloquy, being held today in France, could not be more apposite; you have just pointed this out.

The specific example of the annual working days agreement, and hence of the conclusions both of the Court of Cassation and earlier of the European Committee of Social Rights arising from its examination of the national reports, its conclusions or its decisions on collective complaints, somehow illustrate the European Social Charter's soundness and its contribution to the social question. This is true in more than one respect:

- regarding the substance, and you have raised the question of protection regarding hours of work, that is invoking respect for reasonable working time; in a way, the European Committee of Social Rights, in its conclusions, corrects the French legislator's work on the subject;

- regarding the procedures, since here we have a combination of oversight via examination of reports and oversight performed under the collective complaints procedure.

This being so, – as was said this morning at the opening of the colloquy – I shall also take a more prospective than retrospective stance, even though scrutiny of the past may in fact help us to put questions and try to foresee the future. I shall propose a number of questions.

Firstly I shall take the example of working time. This will include several of the questions raised by the court, in this instance from the standpoint of the “user” in the sense of the corporate interlocutor. However, I put myself more in the place of the worker and the trade unionist. At all events, the question of regulation, particularly regarding working time, is of equal concern to employers who are the daily interlocutors of the workers’ representatives regarding collective agreements, whether in enterprises, at the national level, or at the European or international level.

The source of welfare legislation is in fact variable. It has evolved and varies in its origins specifically where working time is concerned. In France, we have moved from a working time, which I would call economic, of 40 or 39 hours, to a reduction of working time to 35 hours offset by greater flexibility of labour. As to the executives eligible for independence in the management of their working time, there has been the introduction of the device of the annual working days agreement providing for 235 days of work per year. These executives, possessed of independence, in fact already exceeded 39 or 40 hours, and thus there was all the more reason to consider them capable of exceeding 35 hours without really being amenable to control. So to make up for it, they were to be guaranteed a certain number of days of rest, the well-known “RTT”, “working time reduction”. However, it was realised that in this way there was no longer any limit imposed on the days of work, and moreover it is uncertain whether the executives actually avail themselves of the days of RTT.

That is the present situation in France. It is also the outcome of a trend at the international level. Let us not forget that working time legislation dates from the 1919-1920 era, firstly with the setting up of the International Labour Organisation. The first ILO convention deals with working time and prescribes the 48 hours per week maximum for reasons of protecting workers’ health and safety.

Next in fact, the European Social Charter in 1961 introduced that concept which is no longer prescriptive but concerns reasonable working time, then came the European Union with a 1993 directive which itself takes up this weekly maximum of 48 hours’ working time with a few possible derogations, the famous “opt-out” clause which has for some years been a subject of debate between the European Confederation of Trade Unions, the legislator and European employers.

The European Committee of Social Rights therefore held, and its conclusions are reiterated by the Court of Cassation, that the annual working days agreement did not allow reasonable working time to be ensured. Proceeding from national law, but also from the European directives that prescribe a rest period of 11 hours per day and 24 hours per week, it calculated that working weeks of up to 78 hours were attained, which was no longer reasonable.

It is observed that the norm is hard to determine. The 78 hours are indicated in the light of a bundle of sources of law, Community in particular, but forgetting that France is among the countries that ratified Convention No. 1 of the International Labour Organisation. To apply Article 55 of the Constitution would mean that the week, for anyone at all, cannot exceed 48 hours subject to the cases of possible derogation provided for in the same convention.

It would probably then be necessary to have a debate on the reciprocity reservation, for it becomes quite complicated. Vis-à-vis which parties does reciprocity apply? Are they the ones which have adopted the convention but which may not have ratified it, or only those having ratified the conventions?

All states, though having adopted the convention in question, have not necessarily ratified it today.

The first question that comes to mind is a double one in a way:

- Which procedures to use?

The parties endeavour to use all possible procedures or elements of legislation.

- Who to turn to?

You have mentioned multiple bodies of law as a source (Community Charter of Social Rights, European Social Charter, European Convention on Human Rights); I should add the ILO conventions.

One naturally comes to wonder about the risk of contradictions piling up. A debate took place at the time of the constitutional treaty of the European Union, and this is a question raised by one of the speakers: should the European Union's accession to the European Convention on Human Rights be secured, or does it incorporate the Charter of Fundamental Rights which it adopted in Nice in 2000 and which is quite closely akin to the European Convention on Human Rights and the European Social Charter?

Finally, it was decided to do both, meaning that the major question whether to give one precedence over the other could not be settled.

This essential question is raised today concerning the right to organise and to bargain collectively, in particular by the recent decisions, now quite well-known, of the European Court of Justice, at all events at the level of the European Union, being the Laval and Viking judgments that made human rights, social rights, especially the right to organise and to bargain collectively, competitors with the economic rights embodied in the Treaty on European Union linked to free movement of enterprises, services and benefits within the European Single Market.

We find ourselves in the situation where the European Court of Justice, in order to decide, cannot do otherwise. Now, it is there with dual jurisdiction. If the Council of Europe had been given precedence, perhaps a ranking could have been established in law between welfare law, human rights and economic rights.

The French Constitution has in its preamble the Declaration of the Rights of Man and the Citizen. The European Union treaties put fundamental rights and economic rights and other responsibilities on the same level.

One is thus confronted with a major difficulty. To adjudicate, the European Court of Justice invoked the principle of proportionality. I am not a jurist, so I shall not get involved in the debates on the principle of proportionality. However, a most interesting fact is that the ILO made a pronouncement on this situation via a case brought by a union of British pilots of British Airways (BALPA). They raised the question of the primacy of social rights, of the rights of the International Labour Organisation, vis-à-vis economic rights.

The conclusions of the International Labour Organisation's Committee of Experts (the equivalent of the European Committee of Social Rights as regards supervision of the application of ILO standards) are of great interest. The Committee of Experts explicitly stated that it had never taken the principle of proportionality into account in the drafting of its conventions. It sees no reason to review its position in that respect.

It is worth noting that the European Social Charter, from this standpoint, has a direct link with the International Labour Organisation, particularly in the matter of reasonable time in connection with ILO Convention 158 laying down a number of standards on protection of employees in the event of dismissal. As it happened, a French trade union, FO., availed itself of Convention 158. CGT in conjunction with CGC invoked the European Social Charter regarding the annual working days agreement. Convention 158 was pleaded for the purpose of challenging (successfully, moreover) the new employment contract introducing a kind of two-year period which the ILO did not consider reasonable in point of workers' protection in the event of dismissal.

There is also the issue of linkage between the European Convention on Human Rights and the European Social Charter. Indeed, the European Convention on Human Rights contains provisions on first-generation rights. On that basis, the Court decided that the right to bargain collectively did not arise from the right to organise. The European Social Charter, on the contrary, introduced the link between the right to organise and the right to bargain collectively; moreover, in the view of the International Labour Organisation, there is an extremely close link between Conventions 87 and 98 given the formation in 1951 of a Committee on Freedom of Association with the responsibility of examining all complaints of violation of Conventions 87 and 98 concerning the rights of freedom of association and collective bargaining.

In 2006, it took the judgment in the case of *Demir and Baykara v. Turkey* to succeed, in the framework of the European Convention on Human Rights, in connecting the rights of collective bargaining with the principle of freedom to form and join a trade union. Here there is also a possible connection with Article H of the European Social Charter.

I shall conclude by saying that the Economic, Social and Environmental Council adopted a fortnight ago an opinion on the G20. The G20 is in the news at present since on Monday and Tuesday a meeting of G20 Ministers of Employment is scheduled in the run-up to the summit which will be held in Cannes. The social question is one very meaningfully currently emphasised by the trade unions and, it is hoped, together with the employers, to be the major question of the world economic pattern today, of what is called "globalisation". That is the question which states, which governments, must imperatively and urgently answer.

Unarguably, the anniversary of the European Social Charter must be used to answer these questions, secure progress and ensure that the European Social Charter together with the Council of Europe is a factor of progress in the social dimension as the first order of international economic construction. Thank you.

### *Discussion*

**Mr AKANDJI-KOMBE** - Thank you very much, Mr Veyrier, for that contribution raising numerous questions which will need to be answered.

In the course of the communications, I have noted a number of elements which I consider worth bringing up for discussion.



Concerning the final point raised by Mr Veyrier, that is the question of linkage of the texts, procedures and interpretations, I would merely point out that in the discussion on this question it is important to make reference to Article H of the Social Charter, worded as follows: “The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.”

There we have a principle of welfare law, familiar in French law under the name of “principe de faveur”, particularly essential as a principle of linkage.

Other questions were raised regarding the possibility of relying on the Charter before a domestic court. It is a fact that the judicial practices in the matter vary according to country and court. These questions are crucial, and I personally believe that in France the social division of the Court of Cassation has brought a new element into the discussion. This is the fact that Article I of the revised Charter is considered one of the parameters for determining the domestic effect of a Social Charter provision. Perhaps we could return to this presently.

Of course, there are also the proposals made by Mr de Lamaze and Mr Eugen Brand.

**Mr Stein Evju, former member of the European Committee of Social Rights and former President of the Norwegian Supreme Labour Court.**

**MR EVJU** – Thank you, Mr Chairman. I ask you to put on your headsets, as I am about to speak in English.

Firstly I wish to take advantage of this opportunity to thank the moderator for his presentation. May I emphasise Mr Veyrier’s observations about the conflict which we are experiencing at present between, on the one hand, European Union law as settled by the Court of Justice of the European Union in this very well-known framework and, on the other, international law.

I shall confine myself to the right to strike and the right to bargain collectively. This is one of the principal questions of labour law in our European countries.

Concerning the relationship between the Social Charter and the various bodies of national legislation, you will permit me, Mr Chairman, to allude to Article H of the Charter and to the very enigmatic Appendix to this instrument.

It should be noted firstly that the Appendix to the Charter provides in particular that it “contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV”, which part concerns, let us remember, supervision of the application of the Charter by the European Committee of Social Rights. This provision has prompted much debate and may be construed in different ways.

To my mind, this provision refers primarily to the supervisory machinery based on reports and collective complaints. Thus there is no doubt that it rests with the European Committee of Social Rights to assess national law and national situations and to decide whether or not they are compatible with the obligations embodied in the Charter.

In that perspective, this clause of the Appendix seems to imply that the provisions of the Charter are not directly applicable and would require national measures for their enforcement. But we know that in a

number of countries (perhaps all), the provisions of the Social Charter have been directly applied by the national judicial authorities.

As you have mentioned that I was a judge, I shall refer to a judgment of the Norwegian Supreme Court which provides an interesting illustration. The European Committee of Social Rights had to determine a collective complaint concerning an arrangement, provided for by collective agreement, allowing trade unions to make levies on workers' wages in return for the service rendered by these trade unions in watching over wages. The Committee had to rule whether or not this compulsory levy was liable to interfere with the right to organise. It happens that the same question was put to the Norwegian Supreme Court in a case in 2009. The Court then held approximately as follows: "In this case, where the guidelines to be followed are concerned, we attach great importance to the opinion expressed by the European Committee of Social Rights regarding the case." It is a fine example of the way in which national courts can make use of the European Social Charter even if it has not been incorporated into national law or has not prompted the adoption of national implementing measures. Domestic judges can always use it as an international instrument for informing the interpretation of national law.

Thank you for your attention.

**Mr AKANDJI-KOMBE** - Thank you very much for those explanations and that contribution.

**Mr Philippe Texier, well known in this establishment as a member of the French Court of Cassation and of the United Nations Committee on Economic, Social and Cultural Rights.**

At this juncture, I would venture to ask the various speakers to be brief. We have only ten or fifteen minutes of discussion remaining.

**Mr TEXIER** - I promise you that I shall be very brief. I wanted to bring in a complication as a member of the Committee on Economic, Social and Cultural Rights: the direct applicability of the International Covenant. The Court of Cassation, in a decision of December 2008, held that the International Covenant on Economic, Social and Cultural Rights was directly applicable. It did so in a very firm manner, on the basis of a pleading which was not even made by the parties and which it therefore raised of its own motion, concerning a local law of Alsace-Moselle. I shall not go into the details of this decision.

Article 55 of the French Constitution, as has been recalled on several occasions, is very plain on this point. International instruments outrank national laws. They must be invoked whenever the national law is in contradiction with them. That was recalled for ILO Convention 158 with reference to the "new employment" contracts.

It seems to me that international legislation, whether it emanates from the European Union, the Council of Europe or the United Nations system, has a subsidiary character. It must be invoked whenever necessary, every time national law or practice is in contradiction. Taking it from there, the question of direct applicability ought not to arise. It is self-evident whenever an international instrument is sufficiently precise.

As it happens, Article 6 is not really precise. The drafters of this judgment will be better placed than I to talk about it. This article was invoked because quite simply nothing was found either in the national legislation or at European level. Article 6, "the right to work", which nevertheless exists at European level, finally allowed this legislation to be countered.

**Mr AKANDJI-KOMBE.**- Thank you for that contribution. But wasn't it a decision of the criminal division?

**Ms MARIE-FRANCE MAZARS, Oldest Member of the social division of the Court of Cassation (France)** - No, it was definitely the social division. True, it took inspiration from the criminal division.

**Mr AKANDJI-KOMBE** - Very well.

Mr Veyrier, you may wish to react.

**Mr VEYRIER** - At the level of the social division, some may weave laurel wreaths for us, which we very humbly receive. I very clearly understand that from the standpoint of the application of the Charter, one is inclined to say (and there I agree with Philippe Texier) that the Charter is an international undertaking and must be enforced.

It is easy to see the misgivings that exist not only in France but in many other jurisdictions. It shows that things are not so simple. Indeed, when the stipulations, the provisions, of international instruments are clear and precise, it is plain that they are mandatory. A judge will feel he can rely on them.

But once we have to deal with more complicated provisions that may conflict with provisions of domestic law, which may not be specified or interpreted by the European Committee or the ILO Committee of Experts, things are not so simple.

Philippe Texier's remark suggests another question to me. Can a court rule, as it did this time, on the applicability of the instrument as a whole? There was boldness in this case. Should one not rather opt for a clause by clause approach? If so, the reply may vary from one provision to another.

**Mr AKANDJI-KOMBE** - Thank you. Regarding these questions we are all aware, or if not we should be, that the question of application of the law is one of the most complex, and not only that of international law. Objectively, the position of judges is not straightforward.

What the legislator did not want or was unable to resolve, what international negotiators have been unable to settle, is bound to come before a court one day. The court is under the obligation not to desist, and therefore to rule. What we are concerned with today, the applicability of international treaties in domestic law, is among the awkward questions that the court must settle.

Before addressing the subject, it should at least be agreed what is to be understood by "invokability" of an international instrument, or by the concept of "justiciable quality" applied to the instrument. For my own part I tend to consider quite simply that any rule of law or any legal provision capable of being enforced by a court is "justiciable". Having said that, it will then be necessary to agree on the concept of "judicial application of law". The judges here present will not gainsay that this application actually encompasses numerous possible instances. These may range from putting the international rule in the place of the domestic provision applicable to the dispute, to applying it to the case before the court, up to and including, as was done by the social division on 29 June this year, the interpretation of national law in conformity to international law.

The ability to be invoked or enforced thus covers an extremely broad range. At university, and that includes among the academics, people have got into the habit of bringing everything down to what is called the "direct effect" or the "self-executing effect", in a changeless perspective regardless of passing time, which continues to derive its source from the Foster Elam ruling of the United States Supreme

Court in 1829! Since then there has been a lot of water under the bridge, from the international law standpoint too, and we would be well-advised to consider this question anew, in the light of present times and current conditions.

I propose to address the four statements together.

**A SPEAKER** - I have a brief comment. Now is not really the time to begin a debate on the Charter, on the rights of individuals and self-employed workers, “free lances”. This kind of self-employment is more and more widespread, and many people find themselves in this situation. But they do not by any means have rights, what is more collective rights, particularly the right to bargain collectively. At the European level, should that not be discussed? I recently read the translation of a Spanish law on this subject. “This is not the time to speak of it at the European level”, says the Spanish law.

**Mr Claude-Laurent Genty, Honorary President of the Council of Europe Conference of INGOs**

Could one of the panel members tell us whether all Council of Europe member states, particularly those of the European Union, have now ratified the revised Social Charter of the Council of Europe? If not, which are the non-ratifying countries, and especially those of the European Union?

**Mr BURBAN** - I am a lecturer in political science. I ask a supplementary question: have all member states ratified the much-discussed additional protocol of 1995 on collective complaints, which admittedly was adopted as long as sixteen years ago?

**Mr LORCHER** - Thank you. My name is Klaus Lorcher. I wished to enlarge somewhat on the question of conflicts between international norms. You made reference to Article H, but I wished to add the very important point to my mind that the Constitution of the International Labour Organisation contains comparable provisions to those of Article H.

I also refer to Article 53 of the European Union Charter, to take up a question from a previous speaker. All European Union states have ratified the Charter or the revised Charter. The minimum interpretation for the Union Charter is therefore to be based on the European Social Charter. As the preamble to the Union Charter also contains references to the Council Charters, the conclusion may be drawn that interpretation in the Union framework must be based on the revised European Social Charter. Thank you.

**Mr AKANDJI-KOMBE** - Thank you very much, especially as you have answered one of the questions already asked about ratification.

**A SPEAKER** - I had a special invitation from the European Commission to attend this gathering. I appreciate what you have just said. My question is why does the Union have trouble in the field of social justice? For some months I have had problems over my situation. Since 2005 the French government has refused me payment of what it owes me. In 2009 I was advised to go before the Conseil d'Etat. I was asked what kind of arrangement I had with my lawyer for sharing my money. From then on, I say it in front of you, I have had nothing to eat. This is very hard to bear. That is why I find myself before you today. You have seen me, I speak English, I have a right to the money which I am owed. Thank you.

**Mr VEYRIER** - I heard the question about the clarity of the provisions. As the Moderator mentioned, it is also a matter of how far one goes in intergovernmental, possibly tripartite, negotiation on the content of a given convention. The fact is that at a given point in time, compromises mean that what was valued as an advance was not as definite and prescriptive as certain parties might have wished.

Should we leave the court the responsibility for settling what we are not capable of settling politically?

In my opinion, no! Obviously the court, having a case before it, is under an obligation to deliver judgment and make a determination. However, I fully agree that it is also up to us, the trade unions, employers, associations, NGOs and citizens, whenever possible, to concern ourselves with the existing norms and invoke them as was done, for example, concerning Convention 158 vis-à-vis the new employment contract or as may be done on other issues.

It therefore rests with us to rely on these norms and to make sure the legal and “political” processes somehow complement each other. That is how we can make sure things progress.

**Mr BRAND** - Concerning this question of the link between the various instruments, conventions, etc., I am well aware that there is a very considerable and complex job to do. The question which I should like to ask you is what kind of compass should direct work of this kind in order to arrive at legal frameworks? How can this work on the link between the various instruments and on their encounter with reality be approached?

This is a significant requirement: that the conventions concluded at the European level should be genuinely useful to populations at large in Europe, but also to those in the most difficult situations. That puts me in mind of the humanitarian aid question: millions of people suddenly finding themselves without money. In this debate, we can perfectly well ask ourselves whether or not to continue humanitarian aid. That is just where I shall talk about a compass and come back to the people.

When listening to the people who must go to the food banks, of course they acknowledge the relief status of these arrangements while forcefully telling us they are humiliated. They demand, “When shall we be able to speak with others about the right to schooling, the right to housing, the right to training, the right to live as a family? When will we at last be seen in that communion and not as people who simply need to avoid starving?”

That is where the junction must be achieved. It is not a matter of human rights for the poor and human rights for a Europe as such, but indeed of political acceptance that, if we want a Europe of human rights we must start from the most extreme situations. The law is everybody’s law, and justice is everybody’s justice.

**Mr AKANDJI-KOMBE** - Thank you. This first session is over. I should say in a single sentence that we have begun a work project, perhaps the one for the years ahead. It is the work of reflection, of construction with multiple voices, hands and pens, on the crucial question of co-ordination of standards of protection of social rights.

Thanks again to all speakers in this first session. I now call the participants in the second.

## **1.2 The European Social Charter and the current economic crisis**

**Session chair / Moderator:**

**Mr Keith WHITMORE, President of the Congress of Local and Regional Authorities of the Council of Europe.**

**Panel discussion on “European Social Charter and the current economic crisis”**

Ladies and Gentlemen,

The European Social Charter was the first recognition of social rights put into law. The Charter laid down practical benchmarks for ensuring the well-being of our citizens. To a large extent, the Charter is the first codified acknowledgement of the fact that social rights are integral part of human rights, and a symbol of our practical accomplishment in human rights protection in the economic and social sphere.

However, the current economic crisis has presented a major challenge to the implementation of the European Social Charter and to ensuring that its benchmarks are guaranteed, and that its principles are respected. The crisis has put a strain on national budgets, often pushing the governments into budget cuts in the social sphere. The social sphere is the first to suffer as a result of austerity measures currently implemented across Europe.

In our panel discussion today, let us ask ourselves: are the governments really justified in sacrificing social achievements of which our continent is so proud? For us in the Council of Europe, the answer to this questions is a resounding “no”. In fact, the Council of Europe and its various institutions and bodies, in particular the Congress of Local and Regional Authorities and the Commissioner for Human Rights, have warned on many occasions of the danger of cutting down on social expenditure. On the contrary – the governments must do their utmost to prevent the economic crisis from becoming a social disaster as well. Human rights cannot be compromised on economic grounds, and social rights are an integral part of the human rights universe. The crisis, and the austerity budgets, cannot be used as an excuse for undermining the implementation of the European Social Charter. If anything, measures to maintain the Charter must be strengthened against dire economic circumstances of so many population groups.

We argue that in the time of the crisis, new ways have to be found to support social programmes. In the Congress of Local and Regional Authorities, we are convinced that financial decentralisation and greater budgetary autonomy and decision-making at the grassroots level offer viable solutions to the problem. Local and regional authorities know best the needs of their communities and can ensure the optimal use of available resources. Statistics show that before the crisis, they were showing a much better economic performance than the national level. Government financing for local and regional levels must therefore be revised, and an end must be put to so-called “unfunded mandates” – a transfer of tasks to the grassroots level without the necessary funding. This practice has increased during the crisis, adding to the already precarious economic situation at local and regional levels.

The authorities at the grassroots are the first line of defence for social rights, as they are to a great extent directly responsible for ensuring access to a whole range of these rights – from housing allocations and regulations for local employment to access to health care services and to schooling, and even to higher education in certain regions – I could continue with this list. In fact, the competences of local and regional authorities in the social sphere continue to expand, thanks to the decentralisation of power under the

European Charter of Local Self-Government and its principle of subsidiarity. And yet, local and regional authorities are the first to see their budgets drastically reduced, which creates enormous problems and leaves them to making difficult choices in cutting social expenditure. This is akin to cutting the branch on which you are sitting.

Let us look today at what can be done to prevent this, and how to ensure and maintain the implementation of the European Social Charter in the difficult economic conditions of the crisis. Our first premise in the discussion is that the implementation of the Charter today has become a responsibility shared by all levels of governance and involving various stakeholders – national governments, local and regional authorities, trade unions. They are well represented in our panel today.

I am privileged to present Mr Jean-Michel BELORGEY, President of the Reports and Studies' Section in the Conseil d'État (State Council) of France and former President and General Rapporteur of the European Committee of Social Rights of the Council of Europe;

Mr Jean-Dominique GIULIANI, President of the Schumann Foundation;

Mr Henri LOURDELLE, Adviser to the European Trade Union Confederation and its representative on the Governmental Committee;

Philippe de BUCK, Director-General of Business Europe; and

Kari TAPIOLA, Special Advisor of the Director General of the International Labour Organisation.

So, let us look at the perils of the Charter's implementation against the background of the current economic crisis, and to discuss what can be done to protect the social rights in these circumstances.

It is with great pleasure that I give the floor to our first speaker, Mr Jean-Michel BELORGEY, who will make introductory remarks.

### **Opening remarks:**

**Mr Jean-Michel BELORGEY, Section President, Conseil d'Etat, former President and General Rapporteur of the European Committee of Social Rights, Council of Europe**

**Mr BELORGEY** - This round table is quite different from the previous one where attention focused on the specific legal scope and enforceability of the social rights set out in the Charter, in the light of national judicial practice. We are looking now at the relevance of the Charter as a way of containing the retrenchment that is liable to occur in the social sphere as a result of the economic crisis.

The question is whether the Charter is sufficiently strong and, at the same time, sufficiently flexible to be able to preserve whatever needs preserving while at the same time adapting it if necessary, since it is better to bend than to break.

The lawyer in me cannot quite let this pass without raising a number of public law issues. In France and elsewhere, a theory has been developed, namely the theory of exceptional circumstances. In such circumstances, rather than ceasing to protect freedoms, efforts should be made to protect them in a more flexible, less exacting manner, via different routes. There is an element here of coming to terms with necessity.

Can the same approach be applied in the field of social rights, on the basis of the Charter? Clearly that is the major question that has been exercising the European Committee of Social Rights, as the custodian of the Charter, for some years now, each time it meets.

The fact remains that how we deal with this problem will differ depending on our view of the nature and causes of the crisis. Is the crisis cyclical or structural? Is it primarily or even solely the result of unbridled speculation and the lack of prudential safeguards or do the causes lie far deeper than that, in the free movement of capital, people, goods and services, combined with what Mr Barnier talked about this morning, namely retrenchment of the state and the rollback of public regulations?

Are offshoring and the practice of locating business operations in countries other than western European ones, deindustrialisation and the resulting unemployment, and the erosion or collapse of purchasing power purely temporary phenomena or are they here to stay? Is the same true for the negative shift that has occurred in the distribution of income between capital and labour?

Likewise, in budgetary matters, aren't the constraints resulting from falling tax receipts, and the strain placed on national budgets by the efforts to rescue whole swathes of the banking sector, just temporary phenomena? Or does the view which we now have, for technical or ideological reasons, of what constitutes a balanced national budget mean we are likely to find ourselves in a similar-looking situation for some time to come?

The Social Rights Committee is not made up of economists. Its mission is not an economic one, and is essentially to act as guardian of the Charter. It is not in the business of providing economic diagnosis and would do well to keep out of a debate that, for many reasons, has experts divided. These are all complicated issues. There are different schools of thought and some strong opinions, one way or another. The Committee ought not to get involved in these debates.

If the Charter is to prosper, however, the Committee cannot neglect the task of defending this instrument and the rights enshrined therein. Nor can it afford not to develop what might be termed a philosophy of balance between the social and the economic.

Very briefly, I would like to tell you about the Committee's basic beliefs, beliefs which have remained more or less unchanged since the crisis erupted, no matter who its chairman or members.

The first belief of the Committee is that the crisis should not lead to any withdrawal or dismantling of provision that would be counterproductive. Certain ways of dealing with the management of social welfare systems are clearly procyclical: instead of correcting the effects of cycles, they aggravate them.

It is clearly important that any reduction in social entitlements (remuneration, transfers) should not have the effect of exacerbating the fall in demand and inequalities or contribute to the weakening of the social bond and social cohesion.

Nor should we sacrifice the environment. This is a major issue but one that ties in on many levels with social rights issues, in particular the right to health. The Committee made this point forcefully in a decision on a complaint by the Marangopoulos Foundation concerning Greece and pollution caused by lignite mining.



In the view of the Committee, therefore, there is a need to step up efforts to keep the level of employment as high as possible, because an economy that has high unemployment is an economy where, inevitably, the opportunities for redistribution will tend to be greatly diminished.

Continuing in the same vein, the next step is to take care to maintain an acceptable level of social protection. That means replacement income for the unemployed. And pensions for retirees. While there is something to be said for the notion of moving from passive to active spending so as not to expend the bulk of one's resources paying unemployment benefits, such measures are only beneficial up to a point. If the job market cannot offer suitable forms of integration to job seekers of all categories, there is little point in introducing hastily conceived schemes to force people back to work, as these will quickly prove ineffective.

The Committee also takes the view that there are certain needs that cannot be sacrificed, and that need to be considered, as far as practicable, not only in the present time to safeguard the well-being and dignity of all sections of society including the poorest, but also in the future in order to rebuild society. Everyone knows that spending on health, housing and education is, to some extent, a form of investment.

Lastly, I would echo what the Commissioner said about not succumbing to the temptation of exploiting the "soft underbelly", i.e. those parts of society that are least able to wield power. Nor should we try to find scapegoats.

The Charter lays down two very different yet complementary rules in this regard: equal treatment for nationals of States Parties who are legally present in the country, and non-discrimination on the grounds of gender, actual or supposed ethnic origin, national origin, age, etc. Much to the Committee's dismay, the fact is that just about every country is experiencing new or worsening problems in this respect.

Non-EU migrants who are nationals of Council of Europe states which have signed the Charter, a multilateral instrument that does not require reciprocity in order to be applied, are, in many States Parties, and in flagrant breach of the Charter, being treated in a discriminatory manner. We are also seeing new abuses directed against certain vulnerable groups such as women and the Roma. The European Committee of Social Rights has delivered half a dozen landmark decisions on this subject which contain very worrying findings about the current economic climate being used for political ends to identify "troublemakers". There is a name for this kind of behaviour, it's called scapegoating.

That said, and this is my second point, the European Committee of Social Rights is not one of those who thinks purely in terms of vested rights and fixed arrangements. It is quite apparent to the Committee that, in the current climate, things cannot remain as they are. Even if there had been no crisis, social systems are meant to evolve. The social realm is a living one. Social rights – and this has nothing to do with retrenchment or wholesale attacks on welfare – must reflect this.

Contrary to what some have claimed, therefore, the Committee, in its decisions on French cases involving middle management jobs, has not sought to oppose the notion of labour flexibility in line with current needs and, in many cases too, the aspirations of workers as well as entrepreneurs. It has merely stated that there must be checks and balances.

Where collective bargaining is concerned, it is clear that the excessively low level of trade union membership and changes in the way labour is distributed call for new forms of dialogue. That is not to say that any old form of collective bargaining will do and will be sufficient to ensure that workers' representatives remain independent. Nor does it mean that social public order, of the kind that has traditionally existed in France and a few other countries, can be replaced by a no man's land.

Even in the field of health insurance and, more broadly, social welfare, no country today, whatever its national traditions, finances the various social risks in the same way that it did twenty years ago. Governments today employ a mixture of funding mechanisms: taxation, national insurance contributions, etc. The boundaries vary between social protection linked to occupational activity, insurance and assistance for those who have never been able to obtain occupation-based social protection.

When countries change their health insurance arrangements, as the Netherlands did, in fairly spectacular fashion, the Committee makes no comment, since every country is free to organise its own system as it sees fit, provided it addresses the concerns set out in the Charter. When the Netherlands switched from a risk equalisation system to an employer-based one, the Committee's only concern was whether arrangements had been made for people who had no employer.

Similarly, in the system of negotiating employment contracts that exists in the UK, the Committee is inclined to respect the British government's choices. It is, however, extremely difficult, in its view, to make compliant with the Charter systems where substantial inequality between the contracting parties is alone capable of justifying an individual contract prevailing over collective contracts.

I had not planned on saying what I am about to say, but having heard Mr Whitmore's very interesting comments I feel compelled to do so. I will be as brief as possible.

It is clear to me, from the French experience, to some extent, but also from the Spanish and Italian experience, that decentralised social action can be a way of better identifying needs and, at the same time, of reducing costs through the proximity effect.

Under the Charter system to which Mr Akandji-Kombé referred this morning in his opening remarks, countries are under no obligation to introduce legislation in order to apply it, and it is possible to have collective arrangements. I believe that the system found in northern Europe and Scandinavia, and which is based on collective arrangements rather than on unilateral laws and regulations, also has much to recommend it.

The experience of the European Committee of Social Rights has been rather mixed in this regard, however. While we support any choices that are in keeping with national traditions, even if that tradition changes (as in France, with the move from the Jacobin tradition towards greater decentralisation), we do not like loopholes that allow countries to transfer powers and responsibilities to authorities or peripheral players who then fail to exercise them, because they do not have the means or the inclination, in relation to certain groups such as the poor, the Roma, etc.

On more than one occasion, we have been surprised to hear social partners in various countries – Greece, Italy, Scandinavia – say “There's nothing I can do. It's out of my hands”. Whatever the chosen system, it is quite clear that, whenever a state signs an international undertaking, the local and regional authorities and social partners that come under the sovereignty of that state must comply with the commitments entered into. If they do not, it is the responsibility of the state, as the wielder of legislative and judicial power, to ensure those commitments are honoured.

I should like to make one final point and that is that the crisis has not affected all countries the same way. The Committee is very aware that, if the Charter is not to be seen as a straitjacket and the Committee as a spoilsport, then due regard must be had to the wide range of national situations, including traditional strategies and degree of wealth. The question, however, is what to do in borderline cases?

When it comes to rule on a collective complaint against Greece about the dismantling of the system of collective bargaining and a number of choices made by Greece, possibly not of its own free will, the Committee is going to find itself in a very difficult position. The choices that Greece has made do not appear to be very compatible with the Charter, but whether there is a case to be made here for “exceptional circumstances”, along the lines that I have outlined, remains unclear.

What does seem clear is that, in matters of social rights, there is a line to be drawn between making modifications to the way one protects social rights and dispensing with such protection. I am not sure that, where the application of the European Convention on Human Rights has been suspended in certain countries, the decision made was the proper one. In future, however, the big question will perhaps be for the Charter. It depends on one’s view of the causes of the crisis, and whether the existing structures still allow the Charter to be applied. If they do not, either the structures or the Charter will have to be changed.

Mr WHITMORE.- Thank you very much. You used a very important word just now: investment. Social rights are an investment that is no less important than spending on infrastructure in towns and cities.

**Mr Philippe de BUCK, Director General of Business Europe**

**Mr de BUCK** - I wish to thank the President of France’s Economic, Social and Environmental Council for inviting me to this very interesting colloquy. As a lawyer, I very much appreciated the previous panel discussions.

Business Europe is an organisation that represents the 22 million companies which Commissioner Barnier spoke to us about this morning. We cover several countries, the whole of the European Union and beyond, through national organisations. Since I am in Paris, I will mention only one of these, our French member being MEDEF. We cover all the European employers’ unions, with 41 member organisations in 36 countries (including the 27 EU states).

The task of any employers’ organisation is to ensure that due consideration is given to the interests of business and the interests of the economy in policy-making, at whatever level it takes place. Everyone who works in a company should be at the centre of economic and social policy, as it is important that all the various interests be taken into account.

Our efforts are mainly directed at the European Union, but we also share the Council of Europe’s aim of creating a common democratic and legal area based on the protection of individuals.

That, incidentally, is one of the basic principles of a market economy. A legal, democratic framework where everyone can express themselves and compete in the context of an organised economy.

Our primary objective is to make companies more competitive so as to create jobs and thereby secure Europe’s long-term prosperity.

European employers are actively involved in European social dialogue, not least in order to promote properly functioning labour markets. We are deeply committed to social dialogue, and to European social dialogue in particular because that’s our job. Such dialogue is also forged through national, sectoral and company-wide social dialogue.

It is a process whereby the social partners, workers and employers, exchange views in order to arrive at a shared understanding of the challenges facing them. At European level, we have drawn up agreements on training and inclusion.

It is a process whereby one also tries to build mutual trust through negotiation and the implementation of instruments designed to address the challenges identified. Recent examples include the fight against harassment and violence at work, or the issue of parental leave. Let me say in passing that we have the same problems as those mentioned by the European Commissioner. What we do at European level is not always very visible at national level. Many national conventions and provisions actually have their roots in European social dialogue.

One final point, this social dialogue should also contribute to the development of balanced European policies in the field of employment and social affairs.

When it comes to European social policy, there is a European social model that can be expressed very simply. Implementing it is more complicated, of course. There is a balance to be struck between economic growth and greater solidarity. This is what forms the basis of the European social model.

This model translates – and I'm speaking here for the European Union – into 27 different systems that vary significantly from one country to another, depending on bargaining traditions and the legal framework in place. No two countries have exactly the same social arrangements, whether as regards training, unemployment, pensions or health care. The systems differ but the foundation is the same. It is quite unique in the world today, as the meeting of G20 ministers of labour and employment to be held in Paris next Monday and Tuesday will attest.

Is there some connection between the European Social Charter and the economic situation? The answer is clearly no. The principles that we accept, uphold and defend, and which are enshrined in the Charter, apply whether there is a crisis or not. That tensions should run higher on both sides of industry in times of crisis seems to me fairly obvious, but the basic principles must still be observed.

The economic crisis which we appear to be coming out of, hopefully for good, has clearly led to an increase in unemployment. 22 million European workers are currently without jobs.

Without wishing to diminish its impact, I would like to point out that this crisis has had a less negative effect on employment than previous ones. In many countries and especially in my native Belgium, but also in Germany, the Netherlands and Austria, agreements have been struck between employers, unions and the government to try to keep as many workers employed as possible, so as to be able to speed up the recovery.

There have, of course, been closures and restructurings but in many companies – and I salute them for this – these exercises have been a success. As a result, the recovery in many countries has been faster than anticipated.

The basis for this unique model is the framework provided by the Charter of Fundamental Rights, the European Social Charter, the seventy or so directives and all the agreements reached at European level. This is the framework for a European social policy which will hopefully enable us to improve conditions for companies and workers alike.

The question has arisen as to whether the crisis is cyclical or structural. The answer is clearly both. That is why these dialogues are important.

In all the areas that you have discussed, there is room for negotiations. They are a fact of modern life. This is the job of the social partners, whatever level they operate at.

**Mr WHITMORE** - You mentioned your work at European level. This is something that is not always visible at national level. Of course, the real challenge is generating visibility at local level, something that must be a major concern for you as head of Business Europe. It's also a challenge for governments, regional and local authorities. Thank you very much for your contribution.

**Mr Henri LOURDELLE, Adviser to the European Trade Union Confederation and ETUC representative on the Governmental Committee**

I first wish to thank the organisers of this event for having invited the social partners, in particular the European Trade Union Confederation.

Before continuing, I wish to follow the same approach as my neighbour, the Director General of Business Europe, and to present briefly the European Trade Union Confederation, which I represent here today and which is "the voice of 60 million workers" in 36 countries of Europe.

Mr De Buck also referred to the role played by employee and employer organisations in social dialogue and mentioned a number of agreements signed at European level. However, he made no reference to the most recent of these agreements, signed on 25 March 2010, which is not disconnected from the objectives pursued by the Social Charter, since it concerns the situation of those currently excluded from the employment market. I am referring to the framework agreement on inclusive labour markets, in the negotiation of which I participated along with my colleague Stefan Clauwaert, a co-member of the Charter's Governmental Committee. Under this agreement the European social partners committed themselves and their members to do everything in their power to permit the access (or the return) to employment of those who are today excluded from it, and also to foster the retention and development of those who do have labour market access.

This constitutes another way of implementing the social rights laid down in the Social Charter and thereby permitting an improvement in the living and working conditions of those concerned.

We are indeed convinced that, over its fifty years' existence, the Social Charter of the Council of Europe has helped to bring about a qualitative improvement in the lives of the women and men who are citizens of the member states that have ratified this instrument, although, as the representative of the ATD Fourth World Movement told us, much progress still needs to be made, particularly regarding the poorest people. It is for this reason that we encourage our national member organisations to pressure their states to ratify all the relevant instruments, where they have not yet done so.

I will not go back over what Mr Belorgey has just said, but I fully concur with him. I simply wish to draw attention to two or three points, in the light of my own experience, since, along with my colleague from the ETUC, I participate in the meetings of the Charter's Governmental Committee.

However, beforehand, I wish to remind you of the active role assumed by the ETUC, in particular, on the occasion of the 40th anniversary of the European Convention of Human Rights so as to give a new impetus to the Charter. More specifically, I wish to underline the significant efforts made at the time by

my colleague Klaus Loercher, who is here with us today. I also wish to take this opportunity to greet the representatives of the member states who are also present here and who sit with us on the Governmental Committee.

So, in 1990, a committee "CHARTRE RELANCE" (abbreviated to "CHARTRE REL") was established, including not only the contracting states but also other Council of Europe member states. ETUC was present as an (active) observer. We were even included in the working groups. This relaunching process led to the Turin Protocol, the protocol providing for a system of collective complaints and, above all, the revised Charter.

I also wish to underline that the process culminated in the explicit recognition of the right to strike in an international instrument, something we were unable to obtain in the Treaty on the Functioning of the European Union.

I now wish to make a number of brief, more specific observations, even if much has already been said - but as the Latin saying goes "bis repetita placent", that which is repeated pleases.

Firstly, I wish to stress that, in this period of great economic difficulties which are having major social repercussions, the Social Charter, through the commitments entered into by the member states, constitutes a form of ultimate safeguard for workers and the most vulnerable members of the population, guaranteeing an income, access to social protection systems and so on. In the light of the conclusions of the European Committee of Social Rights, we exert strong pressure within the Governmental Committee to ensure that the member states honour their commitments, especially in this time of crisis. Sufficient proof of the need for this can be found in the extent to which the provisions of Labour Codes, for example, are currently being called into question. The most obvious case is that of Hungary - which required our Secretary General and Commissioner Andor, responsible for employment and social affairs, to intervene on the spot with the national authorities - but there are also Greece, Spain, Portugal, the Czech Republic, Romania, and so on. It is not enough to have finely worded declarations about the need to develop more "inclusive" societies, if, at the same time, the very tangible commitments that states entered into on ratifying the Charter are not being implemented.

There is also a need, and this is a particularly important point, for consistency between the Charter's "social" requirements and the directives promulgated at the level of the European Union, which must enforce compliance with the Charter standards as a minimum. My colleague and I have noted - and this has already been mentioned so I will not dwell on the subject - that during Governmental Committee meetings some countries have taken refuge in certain EU directives (such as that on working time) or decisions by the CJEU (rest breaks and working time) so as to evade their commitments to some extent. It would be a good thing if the very states who have signed or ratified the Charter and who also contribute to the drafting of European directives showed some consistency!

Another Charter instrument should be better promoted; this is the protocol on collective complaints. It is an entirely original instrument, in that it permits a form of "participatory democracy". On condition that they are entitled to submit complaints - but the Governmental Committee is not ungenerous in recognising this entitlement - trade unions and civil society representatives (NGOs) can lodge a complaint if they consider that a member state is failing to honour its commitments (for example, this is currently the case with France, which has to face a collective complaint concerning the consideration of rest breaks as time worked). It is true that not all the states which have ratified the Charter have also ratified this protocol. We therefore also encourage our member trade unions to lobby their authorities in this regard. I would also underline at this juncture the remarkable work done by the Charter secretariat, in particular Mr Brillat and his colleagues, to make this protocol an effective reality.

We also appreciate and support the particularly important role played by the European Committee of Social Rights, over which Mr Belorgey himself presided. With the monitoring work done by the ILO, particularly concerning the European Code of Social Security, what we have here are two instruments for monitoring and evaluating the implementation of the commitments entered into, which, as I said earlier, means that we do not have to make do with mere declarations of intent!

In conclusion, I would say that if the public authorities and all the players, in particular those representing civil society, have a genuine political will to promote a social Europe, not only within the European Union member states but also beyond their borders, namely among the 47 member states of the Council of Europe, we have a particularly practical, appropriate instrument for doing so in the shape of the Social Charter. Against the background of our ageing society, the Charter looks like a particularly fit fifty-year-old, which truly has some of its best years still ahead of it. However, we wish to help it live those years to the full. In particular, we are ready to continue contributing as in the past and we want to be involved in all the reforms and the key discussions on the future of the Charter, such as, for example, the issue of EU accession to all the relevant instruments, starting with the European Convention on Human Rights and, at a later stage, the Charter. Moreover, if my information is correct, the European Economic and Social Committee adopted an opinion to that effect a few days ago.

May I conclude by quoting Commissioner Barnier, himself citing Jean Monnet this morning, who told us that we are (again) at a crucial moment.

You may rest assured that ETUC, which I represent, is for its part fully determined to continue to strive towards these goals.

Thank you for your attention.

**Mr WHITMORE** – Thank you Mr Lourdelle. You are entirely correct when you say that it is not just a matter of adopting a document, a Charter in a nice environment. It concerns practical problems; important ones and often underestimated.

In an age like ours of budgetary cuts (in the United Kingdom in fact we are suffering from a 25% reduction on our budget) there is an important tension weighing on our personnel in all councils. It is not just good to celebrate a Charter, but one must engage in a practical manner. This is the role which local and regional authorities must play. Thank you for this opportunity.

## **Mr Jean-Dominique GIULIANI, President of the Schuman Foundation**

**Mr GIULIANI** - Thank you very much, Mr Chairman. I will be very brief, in view of our schedule, and apologise for not being able to attend all the proceedings this morning.

The Robert Schuman Foundation is a think-tank that examines the state of the European Union and all its policies. As an observer of the European project and its policies, and as head of a centre for research on the European Union, I would go a little bit further than my neighbour as regards the basic principles. Standing back for a moment, I would endorse what you said about the Charter being a symbol, a reference point and a vital means for Europe to overcome the present crisis, whose seriousness cannot be overstated. All this has already been said, of course. In the Charter we find the values on which the European model is based.

For me, these values and the Charter are part of this legal corpus which effectively means that individual rights (and one naturally thinks here of the European Convention on Human Rights), whether civil, collective, economic or social, are better protected in the European Union and Europe at large than anywhere else in the world.

The Charter has permeated the case-law and policies of the European Union: the work of the Court of Justice is proof of this, providing confirmation that, as the founding fathers always maintained, social rights and the social market economy have been part of the European integration project from the outset.

Indeed, the Charter, the values derived therefrom, its procedures and working methods and the social dialogue to which it contributes at European level are part of the *acquis communautaire* in the broad sense. Even though there is room for improvement (as you have already pointed out), we need this symbol, this reference point, this instrument more than ever today, given the extremely difficult and painful economic measures mentioned by our Chair and which are essential if we are to overcome the sovereign debt crisis in Europe.

A sovereign debt crisis that originated, incidentally, in the excesses of a financial economy that does not in fact feature much in the text of the Charter, still less in its spirit.

The European Union is facing a much more serious threat today than anything you might have read about in the press. That is what I personally believe. There is a feeling that within states themselves, there is no longer the same desire to co-operate and work together to resolve specific problems, e.g. lack of confidence on the financial markets. This is evident in relations between member states, between non-EU European states and also within member states. The rich are no longer willing to pay for the poor. Look at Italy and Spain and other member states. You can see it even in the smallest social communities across Europe.

Europe was built as a bulwark against nationalism. Today it is not nationalism but egoism that is threatening to bring down the whole European edifice. In this context, a document such as the Charter which enshrines in law certain principles and values, including, as you have pointed out, the right to strike, is extremely important, bearing in mind that back in the 1980s, our own European institutions (I'm thinking of the Commission. Commissioner Barnier knows how I feel about this and agrees with me, I think) became somewhat engulfed in a liberal credo whose limitations have become wholly apparent and which is in any case no longer relevant.

Allow me to make one further point. Namely, that in this betrayal, as it were, of the European ideal, its origins and its original values (I'm thinking of the 1980s and 1990s), the enlargement process did not



exactly help. While the Charter is part of the *acquis communautaire*, the methods of negotiating enlargement remain unchanged: it is basically a question of ensuring that countries which want to join the European Union, and so which recently joined the Council of Europe, meet formal legal criteria with regard to civil and political freedoms, but also economic criteria, at the risk of overlooking the whole *acquis communautaire*, the political achievements, the cultural achievements and of course the legal *acquis* of instruments such as the Charter.

The enlargement policy needs to be looked at again so as to incorporate in it all this cultural and political *acquis* which has a legal underpinning and which has, from the very beginning, embodied the spirit of the European integration process, something we have tended to forget. There has been much talk about “Nordic Europe” and the “British model” when the fact of the matter is that there are people in Europe who want to create a Europe “à la carte”, who want the single market but not rights, who want free movement but certainly not common political institutions, including social dialogue and common social practice. This is an attitude that we no longer want and can no longer afford. Even the financial markets are now criticising us for it.

Various solutions have been proposed, in one quarter or another, whether it be more federalism or some other suggestion. It seems to me that what is needed is a determination to work together to resolve concrete problems, namely human problems in companies, on the ground, in support of the poorest members of society, in order to preserve a social model and rekindle the kind of solidarity that is implicit in all the articles of the Charter, solidarity between states, between citizens, between rich and poor, between the haves and the have-nots; a whole range of values that have their basis in the Charter and, above all, constitute European added value in an increasingly globalised economy which needs it more than ever.

**Mr WHITMORE** - Thank you very much, Mr Giuliani, for your excellent contribution to the discussion.

**Mr Kari TAPIOLA, Special Adviser to the ILO Director General**

**Mr WHITMORE** - Our last speaker this morning is Mr Kari Tapiola, Special Adviser to the ILO Director General. Mr Tapiola, I know you're pressed for time.

**Mr TAPIOLA** - Thank you, Mr Chairman. I have already cut my presentation in half. I would like to thank the organisers for inviting the ILO to this colloquy. The rights defended by the International Labour Organization and indeed the whole notion of social justice are values that the ILO shares with the Council of Europe.

The original Social Charter was adopted during a period characterised by tripartite co-operation on social dialogue in Europe, a core principle of the ILO since 1919 and which was used in Europe to aid reconstruction after the second world war. The differences between the Charter and ILO standards are few and far between and are mainly differences of direction and scope rather than core philosophy.

Another similarity can be observed in the practice of supervising and monitoring implementation. The Social Charter and the international labour standards have a sophisticated and unique level of supervision based on reports and complaints.

This is also what makes the Social Charter and the international labour standards living, breathing instruments. They are systems that can be applied both in periods of growth and in more challenging

times, when there is a risk of economic and social tension. They are public goods that can be used by all those directly involved.

The international labour standards and the Social Charter were designed to avert social crises and to deal with the effects of crisis in a fair and equitable manner. Although generally rigorous, they nevertheless encourage consensus-seeking and compromise when applying basic rules. That is how these instruments are meant to be understood. Fuzzy rules or rules that are not clear, combined with rigid, bureaucratic implementation, are a recipe for disaster.

The Charter covers wider social rights than those directly related to labour and extends to health, medical and social assistance, protection of the family and the issue of poverty. These wider rights are in any case directly related to the ILO concept of labour and it is, of course, essential that they be observed when dealing with economic and social crises.

Thanks to its system of supervision, the ILO can make a relatively swift impact in specific situations. The European Commission, with its system of trade preference and other negotiations relating to economic co-operation, pays close attention to the ILO's findings on, say, trade union freedom in countries such as Belarus and Georgia.

We currently have a high-level mission in Greece to look at how the crisis is affecting the implementation of labour standards ratified by this country.

The ILO is a tripartite organisation. Supervision depends to a large extent on the action of employers' and workers' organisations. Such organisations represent those who are in the front line when it comes to dealing with the issues of employment and industrial relations. It is also vital to secure co-operation in order to resolve these issues.

The ILO is not shut off from the rest of the world. Still, it is difficult to imagine that, if there were a serious problem with labour law, trade union organisations would not deal with it if necessary in co-operation with the relevant NGOs. If the real problems cannot be addressed by trade unions and employers, then there is a deeper problem of democracy.

With regard to the current crisis in Europe, the fact is that we were already in crisis well before 2008. Indeed, as far as employment is concerned, in terms of quantity, quality and job security, we could even be said to have had a "crisis before the crisis". For years now the ILO has been arguing that the way to solve the problems of poverty, exclusion, lack of stable growth and insecurity in societies is by creating decent jobs for all. That means jobs that meet the basic standards of the ILO and the Social Charter.

Last week, the Director-General of the ILO spoke at the plenary session of the European Parliament. Among other things, he pointed out that observing fundamental labour rights and principles was not negotiable. It is important to make this clear, especially in countries where austerity measures are being introduced. The crisis must not and cannot be used as an argument to ignore or undermine international labour standards or the Social Charter.

The path to recovery does not lie in flouting social rules and basic labour standards. This legacy is crucial for establishing a social protection floor, the basis for social protection in every society. When it meets for its conference next year, the ILO will be asked to adopt an instrument, a recommendation, on a social protection floor, meaning a minimum level of social protection for the whole population of every country in the world.

I would like to end with a reminder that in 2009 the International Labour Conference unanimously approved a “global employment pact”. This pact was negotiated by governments, employers’ and workers’ representatives. It is essentially a toolbox that can be used in every country and every situation. It contains suggestions as to how to develop, through negotiations and social dialogue, fair and effective measures for managing the crisis and its impact. There is also a great deal of flexibility. What is not negotiable here, however, is the requirement to observe basic standards and uphold democracy, i.e. the shared values, the social justice embodied in the Social Charter and international labour standards.

Thank you.

**Mr WHITMORE** - Thank you very much, Mr Tapiola.

Dear speakers, I’m sorry but I’m not going to ask you to draw conclusions.

I would like to thank the interpreters for kindly agreeing to work a little longer, and I also wish to thank all the speakers for their input this morning. I suggest we go for lunch. I would like to applaud the speakers.

## **2. What improvements has the Social Charter brought and how can we do better?**

**Session chair / Moderator:**

**Professor Emmanuel Decaux, Professor of law at the University of Paris II and Vice-President of the French National Consultative Commission on Human Rights**

**Mr DECAUX** – I suggest that we start on the second part of the day. The subject we have been asked to discuss today, namely the improvements that the Social Charter has brought and how we can do better, is absolutely fascinating.

One of the speakers this morning said that the purpose of anniversaries was to look not to the past but to the future. This is completely right.

Personally, I would like to pay tribute to the lawyer who first introduced me to the Social Charter when I was studying at Sciences Po, Pierre Laroque, who was the first president of the Committee of Experts. This was the first time I had heard anyone talking about the Charter and I was enthralled by what I heard.

My main task here, however, is to represent the French National Consultative Commission on Human Rights and to highlight its attachment to these issues and to the social aspects of human rights.

I will not dwell on our views or our routine activities. We recently published quite a substantial study on companies and human rights.

More particularly, in 2008 in Strasbourg, on the occasion of the sixtieth anniversary of the Universal Declaration of Human Rights, we and the Council of Europe took stock of the achievements of the

Universal Declaration under the sub-heading of moves towards the enforceability of economic, social and cultural rights. Naturally, the Social Charter played a prominent part in this discussion along with the Covenant on Economic, Social and Cultural Rights.

Drawing on these fundamental ideas and in-depth studies, the National Consultative Commission pursues specific objectives.

Our first aim is to encourage France and as many other states as possible to ratify the Optional Protocol to the Covenant on Economic, Social and Cultural Rights. The French diplomatic service played some part in the preparation of this instrument and the time has come to take the next step and sign and ratify the instrument, fully espousing its ideas and rendering them enforceable to some extent at international level.

Another of our goals is to incorporate a social dimension into the work of the EU Fundamental Rights Agency. Currently, the focus of the Agency's five-year work programme is public freedoms. Throughout, from the very moment that the EU Charter of Fundamental Rights was being drawn up, the Consultative Commission considered that the only real benefit of the EU Charter would be for it to truly enshrine economic and social rights. Today, we argue that the work programme of the Fundamental Rights Agency should be brought into full line with the content of the Charter.

There is currently a one-sidedness about the Agency's approach, which is very damaging. A discussion is being prepared on the new work programme, which will begin in 2013, and so this is an opportune moment to make our voices heard. I hope that many other stakeholders will express similar views.

Our third specific objective, on the domestic front, is to make economic and social rights more effective, with a particular emphasis on non-discrimination. A few months ago, we published a very detailed opinion on human rights and social inclusion, for which Nicole Questiaux was the rapporteur.

In a similar vein, last spring, we held a seminar with ATD Fourth World and the Fundamental Rights Agency on the issue of extreme poverty, allowing us to gain a very broad overview of the types of discrimination which can put specific obstacles in the way of the effective enjoyment of human rights.

Our fourth practical aim, which came to mind when I was listening to this morning's statements, is linked to the fact that it would be very useful to interpret Article 1 of the 1995 protocol on collective complaints in such a way as to enable national institutions which have now formed a European network to play a role as a contributor or an *amicus curiae*.

This is a growing trend in the application of the European Convention on Human Rights. Over the last two days, the Commissioner for Human Rights and the Council of Europe have held a meeting in Madrid, co-hosted by the Spanish Ombudsman, on the role of national institutions in the implementation or monitoring of the execution of judgments of the European Court of Human Rights. What is possible for the judgments of the European Court of Human Rights may also be possible for the decisions on the Social Charter by the European Committee of Social Rights.

Our commitment is not just a verbal one. We want real progress. With its diverse membership (including the social partners, NGOs, philosophical and ethical movements and independent experts) the National Consultative Commission on Human Rights is a perfect place in which to focus all of these energies. In a period of crisis, we need this collective impetus.

Following these initial comments, I would now like to give the floor to Professor Luis Jimena Quesada, the President of the European Committee of Social Rights, who will make some further opening remarks before handing over to four more speakers.

### **Opening remarks:**

**Professor Luis JIMENA QUESADA, Professor of constitutional law, University of Valencia, Spain, and President of the European Committee of Social Rights, Council of Europe**

**Mr JIMENA QUESADA** – It is a great honour for me to be here today to represent the European Committee of Social Rights. I would like to thank the French Economic, Social and Environmental Council for hosting this constructive dialogue between all the sectors of civil society, the governments and the Economic and Social Committees of various EU countries.

My opening remarks will relate to the European Social Charter, whose fiftieth anniversary we are celebrating today. I hope we will not have to wait until the celebration of the one-hundredth anniversary to meet again, or wait for a new crisis to emerge.

My statement is not going to be a technical one; instead I will be focusing on attitudes. What is lacking at the moment – and an attitude I would strongly advocate – is a positive commitment on the part of all stakeholders, whether in the spheres of politics, academia, the media or any other field.

This morning there were some questions about the number of states which have ratified or accepted the collective complaints mechanism.

A first improvement to the Social Charter would be directly linked to its role in promoting social Europe, as the ultimate social rights treaty. It is all well and good to talk about the principle of indivisibility but we have to think about its effectiveness and put it into practice. I do not like advocating indivisibility if there are no effective measures.

To be a member of the Council of Europe, states have to accept the European Convention on Human Rights. However, they are not required to accept the European Social Charter. There are still four countries among the 47 Council of Europe member states which have not acceded to the Charter at all, whether the original one of 1961 or the revised one of 1996.

It is customary to say that rights are only worth as much as the means of enforcing them. Currently the main, and most prominent, means used to enforce the European Social Charter is the collective complaints mechanism, but there is still a major discrepancy between the extent to which states have recognised Charter rights, even accepting the revised Charter, and their acceptance of the collective complaints protocol. To date, only fourteen countries have acceded to the protocol.

The two areas in which we can make improvements therefore are our approach to the indivisibility of all human rights, including civil, political, social and economic rights, and the idea that rights are only worth the means of enforcing them. This idea needs to be put into practice.

One of my initial remarks today would be that we must view this positive approach from two angles. Firstly, we have to remember that the Social Charter is not just something that was produced by the Council of Europe and then developed in line with its own ideas. For the Charter to be properly implemented there has to be some interaction between both the internal partners at the Council of Europe and the external partners at national level, including the social partners, NGOs and the state authorities at different territorial levels.

We should approach the Social Charter as an instrument in relation to which we all have the same objective, namely to bring about improvements in an on-going effort to make the social rights enshrined therein effective in our day-to-day existence. We are all working towards this goal.

Combined with this, we need to make a positive undertaking to view the Social Charter as a living instrument. This expression was borrowed by the Committee from the European Court of Human Rights and used in its decision on the first collective complaint (No. 1 of 1998), lodged by the International Commission of Jurists against Portugal and relating to child labour.

The Charter is not made up of the text of the Charter alone. It is fleshed out by the case law of the European Committee of Social Rights and complemented by the activities of all the national and international partners, even at national level.

The solution is not simply for cases to come to Strasbourg. Even though there is no need to exhaust domestic remedies for collective complaints to be brought before the European Committee of Social Rights, the Charter must be respected as an integral part of domestic law so that decisions in Strasbourg can be avoided and regarded as exceptional remedies.

The Social Charter is a treaty, which forms part of domestic law, and therefore it must be observed and complied with. When a collective complaint is lodged against a state, there are adversarial proceedings. This is the procedure which has been adopted to preserve equality of arms. Once the Committee of Social Rights has adopted its decision, it should not be viewed as a decision against anyone. Steps need to be taken to enforce the decision, but what is needed is a positive approach.

When the Committee adopts decisions, it is not just finding against a government. It is providing a source of legitimacy for action by the government to prepare draft legislation or for action by the parliament or the courts. I believe that we should focus on this positive approach.

The desire must lie with governments, parliaments, courts and even with the media. The media have a very important educational role in making the Social Charter known and making it clear that it is not the European Union Charter. Sometimes, I am introduced as a member of the Economic and Social Committee of the European Union, which shows what a very important contribution the media can make to education and the dissemination of knowledge.

By way of an example of this positive thinking, I would like to refer to the resolution of the Parliamentary Assembly of the Council of Europe adopted in June 2011 on the role of national parliaments in the consolidation and development of social rights. In this text, the national parliaments are invited to include, as part of parliamentary debates on human rights, a regular review of the implementation of social rights, ensuring, in particular, that governments take the appropriate measures to follow up on the decisions taken by the European Committee of Social Rights with regard to the implementation of the articles of the European Social Charter.

The positive commitment is not just the text itself. If we want a living instrument, then we have to take account of how it is put into practice and the final legal interpretation made by the European Committee of Social Rights.

The provisions of the Social Charter are now outmoded from a normative, formal viewpoint at the domestic level. Social legislation in individual countries, whether at state or regional level, is more advanced than the treaty's general clauses. Yet there is still a need for the treaty to be put into practice and, in particular, for the changes and improvements that are made to take account of the work of the European Committee of Social Rights.

I would like to give you an example from the Regional Parliament of Valencia. In many decentralised countries, the responsibility for social rights lies with the regions, and in many of these countries (including Germany, Italy and Spain), regional charters of social rights are being drawn up. In Valencia last year we had discussions with parliamentarians from the different political groups who wished to know how to extend the social rights recognised in these regional charters. I suggested to them that they should look at the case-law of the European Committee of Social Rights, in which all the social rights enshrined in the Charter are elaborated upon and their key content is highlighted. This is a positive approach.

We should not be waiting for decisions finding against a state or findings of non-conformity or violations. The case-law of the European Committee of Social Rights should be taken into account not only as a reaction but also by way of prevention. For example, the national, regional or European consultative bodies such as France's Economic, Social and Environmental Council, or the European Economic and Social Committee should take account of developments in the European Social Charter to improve the legislative work of national parliaments and draft legislation. The Charter does have an important preventive role.

I would like to end with an example of a collective complaint which was ruled on by the European Committee of Social Rights in 2009, namely Complaint No. 48 of 2008 by the European Roma Rights Centre against Bulgaria. In its decision, the Committee found that Bulgaria had violated Article 13 of the Charter because Bulgarian legislation had done away with unemployment benefits (and hence the minimum income) for persons who had been unemployed for six months, 12 months or 18 months depending on the circumstances.

The Committee held that, as Bulgaria had accepted the right to social assistance (enshrined in Article 13 of the Social Charter), it could not remove this right. Such a restriction was considered to be completely at odds with human dignity. It was acceptable to reduce benefits but not to do away with them entirely. The Bulgarian Government implemented the Committee's decision and tabled a bill in the Bulgarian parliament. As a result the parliament amended the legislation and reintroduced the benefits. This is an example of a positive commitment by a parliament.

If the Bulgarian government or parliament had not amended the law, a potential lack of positive political commitment could have prompted us to seek another solution. In the event of a clear decision, national courts can and must apply it. Decisions of this sort are immediately or directly enforceable. Others are more difficult to apply and, at any rate, require a positive resolve on the part of the courts concerned.

In conclusion, I would like to emphasise that this positive commitment needs to grow wider. Some reference was made to potential disagreements between different courts. A question was put this morning with regard to Article 53 of the EU Charter of Fundamental Rights. I believe this to be an essential article, which is crucial for dialogue between courts at European level.

It is true that there is potential for a discussion about the EU acceding to the Social Charter. For the time being, however, this is not on the Council of Europe's agenda. We have to seek practical, pragmatic solutions and my view is that Article 53 of the Charter of Fundamental Rights, like Article 53 of the European Convention on Human Rights and Article 32 of the Social Charter, proposes a more favourable solution. The principle behind it is one of securing higher levels of equality, not aiming lower.

There is a need for legal practitioners and national and European courts to be aware of the idea and for politicians, governments and legislative bodies at regional, national and European level to bear it in mind when drawing up legislation so that they do not create disparities between "different Europes". We need to work towards a social Europe.

My final remark goes back to the aim of this conference. These improvements that the Social Charter has brought about and this positive commitment in the political, judicial, academic and media spheres are a major responsibility. I tend to agree that the European Convention is very important and it is the Council of Europe's paramount treaty. However, sometimes, the Convention does not need publicity. Sometimes, the emphasis has to be on meticulous, repetitive investigation. The Social Charter also needs more investigation and more commitment on the part of politicians and the judiciary.

The aim of this conference is to make these texts better known and encourage our national partners, who have a role in their implementation, to make better use of them, as it is true that in the current context, charters can provide the foundation for a more social Europe.

## **2.1. Ms Carina OHLSSON, Swedish MP, Member of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe**

**Mr DECAUX** – I am pleased that there is parity between women and men on this panel as that was not exactly the case this morning. I call Ms Ohlsson, who is a Swedish MP and a member of the Social Affairs Committee of the Parliamentary Assembly of the Council of Europe.

**Ms OHLSSON**

What improvements has the Social Charter brought and how can we do better?

Ladies and gentlemen,

It is a great pleasure for me to address you on the occasion of the 50th anniversary of the European Social Charter of 1961 and the 15th anniversary of the Revised European Social Charter.

Social rights are part and parcel of human rights. They are one of the greatest societal achievements of the 20th century, and yet, they sometimes seem in danger now. Social rights are a key element of our democracies and our prosperity. Protecting them is an effective way of boosting our economies, and making our societies stronger and better prepared to meet new challenges.

I had the honour to be the Rapporteur for the Parliamentary Assembly report on the role of parliaments in the consolidation and development of social rights in Europe. This report outlined the latest achievements and challenges as regards the promotion of the Social Charter and its implementation in the Council of



Europe member states. It was debated and adopted only a few months ago, during the June 2011 part-session of the Assembly.

I am convinced that all state branches, whether they are executive, judicial or legislative, are responsible for fully and effectively implementing agreed international human rights norms. Effective implementation, however, is not always achieved. As a parliamentarian, I would like to stress the need to oversee the implementation of policies to protect human rights. Parliaments play an important role as guarantors of human rights, including social rights.

In the past few months, we have seen dramatic changes in our member states' social policies as a result of the economic crisis. The ever-increasing gap between the richest and poorest in Europe, the exclusion of some groups of the population, and the high level of corruption in some of our member states, make our societies more fragile. We should be fighting these developments.

Europe's social achievements must be protected. The strength of European society lies in the social protection of the individual, including through access to decent jobs, education, public health systems and social protection for the elderly. Parliamentarians have an important role to play in ensuring that governments take all necessary measures to secure fundamental social rights.

We need the full commitment of our governments to protecting those rights. Policies need to be reviewed to find the best possible solutions. The European Social Charter provides an excellent mechanism allowing for such reviews to be conducted on a regular basis through the country reporting system. In addition, the collective complaints procedure allows for an independent review of the systemic problems that have an impact on social rights. We should take full advantage of these monitoring procedures.

We need to act decisively to ensure that social rights become a reality for our people. Parliaments should insist on regular reviews of how governments implement social rights. Protecting human rights, including social rights, should be a top priority when we vote on state budgets, to cite but one example.

We need to do our utmost to promote full and immediate ratification by all Council of member states of the Revised European Social Charter. We also need to ensure that the system of collective complaints is applicable in all Council of Europe member states.

The ever increasing role of the European Union as regards the policy-making in the fields of social rights and employment calls for a more direct link between the Council of Europe human rights protection system and relevant European Union policy making.

I believe that European Union citizens would gain greater protection of their social rights if the European Union acceded to the European Social Charter at the same time as to the European Convention of Human Rights. The two conventional instruments are complementary in addressing social, economic and cultural rights, on one hand, and civil and political rights, on the other.

The European Union, through its Charter of Fundamental Rights, has already shown the importance of building the bridge between the two. It takes political courage and commitment to the protection of human rights to make sure that they are indeed protected as indivisible, interdependent and universal rights. I hope that the European Union demonstrates such commitment by acceding to both Council of Europe human rights treaties.

All human rights – social rights included – affect individuals, groups and countries. I would therefore suggest that human rights protection systems be structured to reflect that, and allow for a review and protection which is threefold: individual review and protection, collective review and protection (Roma, people with disabilities), and state progress review.

We have to regard the human rights protection systems – one under the European Convention of Human Rights and one under the Revised European Social Charter – as mutually reinforcing. We should stop dividing human rights protection and start making everything possible to consolidate human rights.

The consolidation and development of social rights requires substantial parliamentary involvement. In my report I stressed that we need to improve external co-operation through the major international organisations and parliamentary networks. The European Parliament, the Inter-Parliamentary Union, the Nordic Council, the Conference of Community and European Affairs Committees or parliaments of the European Union, and the Parliamentary Network of the World Bank are all major partners in our common endeavour to improve people's lives, secure their social rights and strengthen social cohesion. Member states that have signed up to international standards on social rights must continue to uphold them, and take positions on world finance or trade bodies that enable those promises to be respected.

As a case in point, I looked at a series of aspects relating to the right to health, such as the institutional setting and the scope of the right to health as one of the major rights linked to the right to life. I am very happy that Article 11 on the right to health in the revised European Social Charter addresses the issue. However, it is important to complete the charter with an additional protocol on the right to health, including the right to a healthy environment.

The Revised European Social Charter is more relevant than ever. It is one of the most significant human rights treaties of the Council of Europe, aimed at safeguarding the social rights of European citizens.

It is very important to mark this year's celebration of the 50th anniversary of the European Social Charter, and the 15th anniversary of the revised European Social Charter, with a firm commitment to promote the enjoyment of social rights in all Council of Europe member states. All actors should, therefore, join forces to keep track of progress in advancing towards a better life, guaranteeing rights and meeting the concerns of millions of people by:

1. ensuring that all Council of Europe member states and the European Union accede to and apply the Revised Social Charter, including the collective complaints mechanism;
2. ensuring that the implementation of social rights is properly monitored at all levels, including the parliamentary one;
3. continue developing social rights and promote their respect as an integral part of human rights, not only at home, but also at European and international level.

Thank you for your attention.

## 2.2. Mr Antoine FREROT, President of Veolia

**Mr FREROT** – Thank you Mr Decaux, ladies and gentlemen, for giving me this opportunity to give you the viewpoint of someone who makes practical use of the Social Charter, namely the viewpoint of a company.

My company, Veolia Environnement, works as an environmental services operator in the following four specialised fields:

- water service management;
- waste management and environmental services;
- management of local energy services;
- management of transport services.

Veolia Environnement is a large company and the world leader in this sector. This means that its goal is to have a footing throughout the world. Its main sphere of operations is Europe and the European Union; nearly 80% of its activities take place in the European Union, where it employs over 200 000 employees.

Our work as an environmental services operator and a public environment service provider is very closely connected with all the social aspects of community life.

Firstly, our work is highly labour intensive and extremely technically advanced. As a result, managing our employees' social welfare is crucial, both for them personally and for the standard of the service we provide. Veolia has been singled out by the International Labour Office as one of the service-sector companies that performs best in the occupational health and safety field.

Few other industries are so highly labour intensive. High technical standards (supported by vocational training for our employees both at the beginning of their careers and throughout their professional lives because technologies change quickly in this job) is an essential aspect of the role of a company in our line of work.

In addition to our support for our employees, one of the features of our work is its strong connection with the various localities we serve. Our work cannot be relocated and this is a major benefit in today's economy. Coupled with these benefits, we also have duties, especially one of solidarity towards the local communities which help us to survive.

In most cases, it is businesses which provide the lifeblood of communities. In our case, it is the other way around. This gives us a responsibility in the social sphere as we are able to give work to local sub-contractors thus returning a large share of the added value we bring to the local partners connected with local communities.

The third and last aspect of our work is that of access for all to our departments, to the environment and to our essential public services. In Europe, public services are a good example of the aims of the European project and Europe's promise to all its citizens that there will be high-quality public services available to everyone. However, in Europe, there are still many citizens who do not have access to these essential high-quality services.

Furthermore, some, who had access to them until now, are now at risk of being denied access for economic reasons. Finding ways of giving everyone access to these high-quality public services is a prerequisite, in my view, for keeping Europe's promise to its peoples. Vis-à-vis our employees, local communities and the people we serve, the social dimension is one of the key parts of our activity. This is why the European Social Charter is a reference point that is shared, on the one hand, by our customers, the public authorities, and the people we serve and, on the other, by our company.

The theme of this afternoon's round-table session, apart from the anniversary of the Charter, is the improvements that we could all make to the Charter itself and its implementation.

I would like to place these improvements in the very specific practical context of the work that my company does. It seems to me that today, in the sphere of public services, public procurement arrangements have a role to play in the dissemination and implementation of the Charter. Not enough account is taken of social criteria when granting access to public procurement contracts in this field.

Increased commerce between European countries has resulted in a growing number of operators and increasing competition between these operators for access to public procurement contracts. Unfortunately, all too often, contracts are awarded to the cheapest bidders regardless of any social criteria. For activities which are not threatened by a risk of relocation or the risk of competition from emerging countries with significantly different social standards to those of Europe, incorporating social criteria into both the schedule of conditions for the award of contracts and the pre-selection of candidates qualified to submit a bid, using references for example, would make it possible to disseminate and extend the application of the Charter more widely.

The second potential area for improvement is that of job flexibility and job security. This is often referred to as "flexi-security". In the public environment services field, various management methods are possible. Public authorities can opt to perform the services they provide themselves or entrust them to specialised companies like Veolia. The possibility of going back on such decisions should not undermine job security. Yet, currently, legislation requires private operators taking over from state operators to take on all their employees, but the reverse is not true, and this of course affects the possibility of going back on such decisions, the flexibility of the choices available to the public authorities and the job security of the employees doing the work.

The third area for improvement, in my view, is that of vocational training. Five million young Europeans are unemployed and in each of our countries, every year, 10 to 20% of our youngsters leave school without any qualifications. Veolia's highly labour intensive work requires practical qualifications and is well suited to young people who have not succeeded at school but can learn a job in the workplace from other workers or through an apprenticeship course. To provide a solution for those who have failed in, or not taken advantage of, the school system, private operators, the authorities and the entire public service management system should be able to offer a second chance for them to acquire practical training.

Thirty years ago, the ten to twenty per cent of each generation who left school without qualifications could find a job by turning up at a factory gate; now this is impossible. The social time-bomb that this ever-increasing number of young people who cannot find work may trigger off ten years from now is not difficult to imagine. The work we do at Veolia gives them an opportunity, just as all jobs connected with public procurement contracts could also do. By requiring companies bidding for public procurement contracts to provide training for young people without qualifications, it would also be possible to extend the implementation of the Charter.

These are some of the ideas relating to my own professional sphere that I can propose to improve both the content and the dissemination of the Social Charter. Thank you for your attention.

### **2.3. Ms Virág KAUFER, MP, Hungarian National Assembly, member of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe**

**Mr DECAUX** – Thank you for all these ideas. I now call Ms Kaufer, a Hungarian MP, who is also a member of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe.

#### **Ms KAUFER**

What improvements has the Social Charter brought and how can we do better?

Ladies and Gentlemen,

It's a great honour for me to be here. As a young green politician I increasingly find the Social Charter a great source of inspiration and aspiration. Starting my speech about the way forward I think its good to mention a thought provoking experience at the Parliamentary Assembly of the Council of Europe last year. We were discussing a noble report from eminent persons on living together in 21st century Europe. On behalf of the Social, health and family affairs Committee I submitted some amendments in order to incorporate reference to the European Social Charter and call on member states to ratify and implement its mechanisms in order to be able to deliver on the principles and recommendations for all sections of the population. The motion, Ladies and gentlemen was voted against. This made me think. What is this if not double standards in Europe? Are we really interested in taking the next step and put our money were our mouth is?

When we talk about the next steps, I think this is a crucial issue to discuss. Do we really have the political will to take the Charter seriously? In that matter, I think my country Hungary can be an interesting example to study briefly.

Hungary had ratified the European Social Charter on 08/07/1999 and the Additional Protocol to the Charter on 01/06/2005. It ratified the Amending Protocol to the Charter on 04/02/2004, but has not yet ratified the Additional Protocol providing for a system of collective complaints. Hungary ratified the Revised European Social Charter on 20/04/2009 accepting 60 of the Revised Charter's 98 paragraphs. We have submitted 6 reports between 2002-2010, but missed the last one about `Labour rights`. If we look at the record of non-compliance it is all related to the labour market regulations: social rights, labour rights, employment, training and equal opportunities. The latest fact sheet on Hungary that I have found was from December 2010. Since then, the situation with regard to social rights, social security and labour rights had deteriorated significantly as per the analysis of the opposition parties and the ongoing protests of the trade unions, There has been changes applied to the Labour Code, and the collective bargaining system, to the effect that the tripartite system is being diminished as we speak. We also have the New Labour Code being negotiated at the moment. The version we have seen during the summer for consultation breaches a number of the Articles and is a major cause of concern for the social partners. Things look quite bleak and it seems that the current government's strategy is to weaken the position of workers` collective bargaining power and reduce social security to the minimum breaching . Without the ratification of the collective complaints procedure, as a result of the previous social democratic

government it will be really hard for the social partners to settle the dispute in these circumstances. Trade unions have requested an expert opinion from the ILO.

Ladies and gentlemen, I have to admit I am not a lawyer and therefore I do not wish to comment on the development of the text or the legal mechanisms. I am a campaigner at heart and an MP, someone who focuses on spreading information and inspiring people to take action. As a politician who believes in social and economic rights, I am convinced that at this stage we should do everything possible to make people aware of the fact that such great instrument like the European Social Charter exists and is safeguarding their rights. As future steps, I think we need to put a lot of effort into empowering people, the widening group of affected citizens to be able to exercise their rights as at the times of austerity politics people cannot rely any more on the state to fulfil their duties.

I need to agree with the concerns of Mr Brandt and others who pointed out that the Social Charter had failed so far to serve its real purpose: to support those that are excluded from society. And the reasons for that is what I pointed out at the beginning: the lack of real political will to deliver on it. With all due respect to their efforts, I think politicians haven't done enough on their part in this and I am saying this as a politician.

To prove this let us look at the proceedings of the Committee of Ministers the actions taken on the back of the conclusions made by the European Committee on Social Rights. The Committee of Ministers has been reluctant to endorse findings of non-compliance by the ECSR and we have to find the reason for that. This means that the collective complaints system is now the only international human rights mechanism where a governmental body has a decisive say in the outcome of the proceedings, and I think at the moment due to lack of political will it hinders the process.

In my view, which I share with many of the speakers from the morning, the following important steps need to be made to bring the Charter alive:

1. Promotion of the Charter amongst the general population and their representatives as an important toolkit to uphold social and economic rights. We need to empower the people to stand up for their social rights. As the current politics of austerity shows, the ruling political elite is not ready to defend social rights to the sufficient level. Familiarity with international rights and entitlement and the duties of the state should be known by the general public.
2. We as politicians do need to act not just in Strasbourg but also at home when it come to the Social Charter. When it comes to budgeting, austerity measures it is our duty and responsibility to choose where to cut costs. Ms Olsson's report on the role of parliamentarians in promoting social and political rights is a good guide for that. We need to think out of the box and start designing the new social model based on the values of the Charter and decentralisation giving back power to local communities and regions.
3. I agree with those, who believe that the Collective Complaints Protocol should be introduced in the compulsory ratification framework. I believe that the Charter ratified without that is not going to be sufficient in the future as there will be more and more cases where the State parties will have disputes with the social partners.

Ladies and gentlemen, decision makers in the room, the world is changing, and the need for the Charter to lay out and to safeguard social and economic rights is bigger than ever before. But not just in words and in conference rooms. The people will demand their social and economic rights, even if we don't give it to them. Many of the interpreters of the riots in the UK had said that it was a class war, the riot of those who don't have a vision for the future, and seeking solutions outside of democratic systems. I believe that

the example of Hungary can show that international instruments are becoming very important again, sometimes to provide mechanism for protection from the State parties. I recognize, that it take political courage to allow this to happen. I look forward to hearing your views and ideas on the actual steps we can take to deal with this claim in a safe and peaceful way.

#### **2.4. Mr Alexander POCHINOK, former Minister of Labour and Social Development, member of the Federal Council, Russian Federation**

**Mr DECAUX** – Thank you too, and thanks to all the speakers who have kept to the speaking times imposed on them. This will make it possible to hold a short debate after the last statement. I am glad to introduce Mr Alexander Pochinok, the former Minister of Labour and Social Development of the Russian Federation, who played a decisive role in Russia's ratification of the Social Charter.

I give the floor to you, sir.

**Mr POCHINOK** – Ladies and gentlemen, I should say first that, being the last speaker, I will have to keep my statement short. Furthermore, I prepared my speech in Russian but I will try to speak in English. I am an old man, who began his career as a minister twenty years ago. I was the Minister of Social Affairs initially and I acted alone in this field. The European Social Charter is really a very important document for Russians. It guarantees their social protection and the preservation of each individuals' rights and freedoms, which is particularly important in these times of financial crisis.

Russia prepared the ratification of the Social Charter very carefully. It signed it in September 2000 and after that, the long ratification procedure began. Of course, we could have ratified immediately. It would have been easy, but this is not how we do things. We were sure that we could meet all the conditions enshrined in the Charter but we wanted to double-check before committing ourselves.

Since 2000, we have made significant changes to our social legislation and we now have a very modern approach. We have established the necessary employees' and workers' rights while introducing guarantees that they will be implemented and establishing the right to work. We have also established guarantees that workers will be properly paid. We introduced safeguards into our laws but within the space of eight years this new code became outdated, not to say completely obsolescent. We have to prepare a new version of the new Labour Code. I tried to count the number of Articles that need changing and got up to two hundred!

Over this period, Russia increased the average size of each pension by sixteen times, compared to only a ten-times increase in the population's nominal income. Despite the crisis, we have managed to halve the number of very poor people.

The number of unemployed people has also been halved, or reduced by 100%, taking us down to the lowest level of unemployment in Russia's history. Currently, we have about sixty-five million people in work and only 5 million unemployed people. In my view, this is a good result for Russia today and there is also even a shortage of labour in some sectors. This presents us with real difficulties. We are losing workers and we will need more for the next ten years.

In the field of education and training, we have achieved outstanding results. Today practically everyone leaving upper secondary school with a certificate can go to university. We have created more posts in universities than in lower and upper secondary schools.

There have been major successes in all these areas.

Among other things, the number of accidents in industry has been considerably reduced and safety conditions for workers have been improved.

Once we were convinced that it was possible, we ratified the Charter. Even during difficult years, all the principles of the Charter were put into practice, but the global financial crisis has presented us with new problems. All governments' means of satisfying their social obligations have broken down.

Governments attempt to meet their population's needs. As elections approach, they try to fulfil their obligations but the only way they find to do it is to take out loans, run up budget deficits and accept new obligations. The reality though is that it will be extremely difficult to continue doing this in the future. It has to be understood that social obligations are easy to accept but almost impossible to go back on.

If we look at the example of Greece, we see that it is impossible to do away with these social obligations. The markets are suspicious, risks are piling up on the financial markets and the whole world has become unstable. If we want a stable world economy, exceptional measures have to be taken simultaneously. First we have to limit budget deficits and the volume of loans, then governments have to reduce public spending substantially and stimulate greater productivity and consumption. Everyone knows that it is difficult to carry out all these measures together. The easiest option is to reduce social benefits, but that is not the right approach.

It is important to understand that it is only possible to combat the crisis if there is a degree of social stability. The people must have confidence in the future and feel safe and protected. We must provide the maximum protection possible with reduced funds. This seems feasible to me and it is in keeping with the Charter, which makes the following provisions in this respect:

Article 1 implies that production has to be made more efficient. We have to make it easier to set up new businesses and provide protection, but not the type that aims to keep employees in the same workplace. I come from the region of the Ural mountains and I am well aware that there are places here where it is traditional for people to work. Some work in factories where their father, their grandfather or their great-grandfather worked. But this kind of organisation is no longer possible. People can no longer expect to remain in the same place of work. We need new modern industries with high productivity levels and high wages.

Article 2 provides for reasonable working hours while allowing for a degree of flexibility. The aim is to reconcile different concepts including place of work, the working week and the working day. I realise that this is all very complex, but it has to be done.

Article 3: We need to use the latest technologies to reduce the hazards of the working environment. There needs to be proper protection in factories, and workplaces in which working conditions are dangerous need to be closed. Even in Europe, we have around six million unsafe workplaces.

Article 4: Our task should be to establish a minimum wage. If someone has a job, he or she must earn a decent wage for it.



Article 5: We should promote trade unions and employer organisations using every possible means available – and this is currently a problem in many countries.

Article 6: We need comprehensive systems for negotiation between trade unions and employer organisations. This is also a problem in fifteen or sixteen of the states parties.

Article 7: The focus needs to be on the use of education and training programmes. Work for children over the age of 15 must be better suited to their situation.

Article 8: We need a high birth rate. Maternity rights need to be improved.

Article 9: We need to set up a strong, comprehensive vocational guidance system.

Article 10: We need to promote training and re-training programmes. According to teachers, there should be a new syllabus every ten years. In my view, everyone should be updating their vocational skills every two to three years. This is absolutely essential in today's Internet society.

Articles 11, 12 and 13: There has to be a social security system and social assistance system for everyone without an income. I fully understand that we lack funding. But if we don't have the money, we have to invest directly in these people needing social protection.

Article 15: People with disabilities should at least have a job. They should be encouraged to take part in the life of the community. In Russia, 10% of the population is disabled and this poses enormous problems.

Article 16: The state must be committed to safeguarding the role of families.

Article 17: Every child must have a good education. In my opinion, the article should also refer to university education, but is this possible as things stand?

Article 18: The free movement of labour and opening international labour markets is very important for Russia. For the moment these markets are closed and everyone is suffering as a consequence as it is a lose-lose situation.

Article 19: Migrants' rights need to be secured but this poses problems.

Article 20: All forms of discrimination must be eliminated.

Article 22: Effective systems should be set up to improve working conditions.

Article 23: Elderly people should be encouraged to engage in an occupation.

Article 24: Dismissal procedures should be simplified along with recruitment processes. The aim should not just be to protect; we have to seek out new methods and new working environments. This is a difficult task but not an impossible one. It will not work, however, if we have inflexible guarantees. We have to encourage people to experiment with different forms of employment contract.

Article 25: It may be possible to arrange a new system of guarantees protecting workers against loss of income and eliminating any possibility of delays in the payment of wages.

These amendments and changes in the relevant texts are necessary.

The Social Charter seems to me to be a relevant and effective treaty. For the next ten to twenty years, the key to everything is growth. We will see the outcome of this process.

## **2.5. Discussion**

**A FEMALE PARTICIPANT** – Good afternoon. The Committee members know what I am going to say. It has been fifty years, but has anything changed? We have twenty-seven speakers and only three are women! This is an appalling, shocking state of affairs in the third millennium. The subject of our discussion is a charter for the whole of society but women are not fully involved in establishing these principles. When are any serious changes going to be made to this situation?

Our Russian colleague talked of families but we must be under no illusion. It is not men who are the heads of families but women. We raise our children, we feed them, we make sure they are healthy and we protect them from harm. We teach children about their rights but we are not involved in any of the subsequent discussions. We have no part to play and this is intolerable. We cannot help to bring about these changes you talk of and the European Union applies double standards.

I would like to know how we can set an example for the rest of the world when, in so many places, less than 33% of the members of decision-making bodies are women. Are we really going to make changes or just make lofty statements?

**Mr POCHINOK** – Please don't get angry. In Russia, for instance, a woman has been elected as the head of our parliament. Her name is Valentina Matviyenko and she won a unanimous victory, with 134 votes for and none against, making her the Chair of the Federation Council. This is really marvellous.

**Mr DECAUX** – Please put your questions. Afterwards, we will go back to the panel so that everyone has a chance to speak. The organiser also has a right of reply.

**Mr AKANDJI-KOMBE** – Thank you Mr Decaux. I am not exercising a right of reply. I found everything that the speakers had to say very interesting, but I was particularly struck by Mr Frérot's statement. This is I think, the first description since this morning of an entirely new means of disseminating the Charter. Therefore I cannot resist putting one or two questions, simply because I want to know a little more.

In your statement, you referred to a reference framework (“référentiel”), which forms part of your company's practices. Does this mean that you have an internal company charter? If so, how did the idea of taking the Social Charter of the Council of Europe into account come to you and exactly how and in what form is it referred to?

**Mr DECAUX** – If there are no other questions, since this was a direct question, I think it calls for a direct answer.

**Mr FREROT** – Yes, Mr Akandji-Kombé, but rather than reference framework (“référentiel”), I used the term reference points (“repères”), and referred to the reference points we share with our customers, the public authorities on the one hand and the people we serve on the other. The expression to focus on therefore is “reference points”.

We do not have an internal social charter strictly speaking. We have a company code of conduct or charter of ethics but not a social charter.

Why do we use the European Social Charter as a reference point? The reason is that the European market is our domestic market. Up to about fifteen years ago we offered our services in France but now we have gradually extended them to Europe. To achieve this and to prove that we were going to bring our new European customers what we had already invented in France, we sought out a reference point that was shared by all the European Union countries, particularly its political decision-makers. This was important because our clients are local policy-makers. This reference point seemed to be the best bonding agent or the best example of what we could undertake to do in the various countries where we now wished to work.

**Mr DECAUX** – Thank you.

**Mr JIMENA QUESADA** – I would like to reply to the question that was raised on women's rights. I agree with you. In the European Committee, there is parity between the sexes at least – sometimes seven of one and eight of the other, sometimes nine and six, sometimes more, sometimes less. I would like to make a suggestion to you, which is that you start filing complaints. I am actually surprised that we do not have more complaints in this sphere. It is very strange. Up to now, seventy-three complaints have been lodged. With this goal in mind, those concerned need to think of the possibility of registering on the list of civil society organisations authorised to lodge collective complaints. This would enable us to build up our case-law in this area.

**Mr DECAUX** – We must have a round table discussion on this issue so that everyone can speak for a few minutes about it. The women on our panel will undoubtedly have a great deal to say about it.

**Ms OHLSSON** – Of course, I entirely agree with you. Before lunch, I counted, and I was eighth on the list of speakers but only the first woman! My view is that we cannot carry on holding seminars with this kind of speaker list.

Fifty per cent of European citizens are women, so they should be represented. We should be asking ourselves how we really want things to be. Do we want them to stay the same or do we want them to change? This does depend of course on political will. It is also a matter that needs to be addressed in the business world with regard, for instance, to equal pay.

I have a very good example to give you. During the lunch break, I called a 33-year-old man who manages a food company in my region and asked him whether he would like to give a speech at a political event we are planning. His response was: “Yes, OK, but I have to look after my children that day because my wife is away. Could I bring them along?” I said yes. This is a very good illustration of how men also have private lives and have to look after their children. These responsibilities should be shared, both at work and at home.

**Mr FREROT** – Equal opportunities in employment is a right and an important social issue. This issue relating to diversity could be given a higher profile in the Social Charter.

I would also like to say, Ms Ohlsson, that this issue of diversity and equal opportunities extends beyond gender equality alone.

In the work that we do in our company, where the jobs are highly labour intensive and involve many blue-collar workers and few white-collar ones, the problems of equal opportunities and equal working

conditions are linked with the employees' backgrounds. In France alone, we employ workers with a hundred different nationalities. Many come from outside Europe and some find it difficult to get into the country. The issue of diversity is a broad-ranging and complex one and there is much progress still to be made.

**Ms KAUFER** – Thank you for your question. As a woman, of course I agree entirely with what you have just said. It is very important to ask “who does what?”. We can discuss the Social Charter but we have to think about who puts it into practice on a day-to-day basis.

As you said, there are people missing from today's meeting. We have to think about ways of getting these people involved in our discussions and taking advantage of their expertise and knowledge. Working methods play a role here, as the way in which decisions are taken and the political debate is structured and organised do not make it easy for women to participate.

In our societies, some thought needs to be given to the way of implementing the social model. In so doing, we should be looking at how women can participate. As someone mentioned before, decision-making in consultation with the people is a crucial condition. In my view, structural changes need to be made in decision-making mechanisms and political activities in general so that everyone, not just women, can feel that they are involved.

This is the key to success in applying social and economic rights in a time of crisis and, in my opinion, the right path to explore. Your question therefore is vitally important. Thank you for putting it.

**Mr DECAUX** – I would argue that our round table is the only one which approaches parity and that this is entirely in keeping with the comments which were made. It has been drawn to my attention that in the French Economic, Social and Environmental Council, there are 47% of women. This is almost perfect parity, which is very good news.

I propose now that we should move on to part three of the conference as it is 4 p.m. and we have a very tight time schedule. Thank you all for your very active participation.

### **3. The Council of Europe and European Union social charters – working complementarily towards a more social Europe**

**Session chair / Moderator:**

**Mr Georgios DASSIS, President of Group II, European Economic and Social Committee**

**Mr DASSIS** - Ladies and gentlemen, I propose that we get right down to business. You may rest assured that I am not going to bore you with another speech. This morning, we heard speeches which were very interesting from a legal point of view and also in other respects.

Before handing over to the panel members, I should like just to give you one or two thoughts. Many people confuse law and justice. If you think about it properly, law has nothing to do with justice in the way that ordinary people, like me, and perhaps like you, understand it. The law is written either by the

winners or by the most powerful. Justice therefore becomes the application of the law written by those who hold power. Down through the centuries, some of the population (the majority) have been oppressed in the name of that law.

The beginnings of a change came with democracy as practised in Athens 25 centuries ago, but it was only a very small change, as you had to be an Athenian to enjoy the benefits of the law of the powerful.

Moving closer to our times, in the first half of the last century, progress was made with the Declaration of Philadelphia, following which the International Labour Organisation was set up. A further stage was the Universal Declaration in 1948, which was followed by the Charter and, lastly, the European Union Charter of Social and Fundamental Rights.

All these developments have enabled citizens, obviously with the assistance of legal experts and academics aware of injustices, to rectify what had often been the law of the most powerful.

We have an example very close to hand; there is no need to move away from the Union to see it. This panel has to make the link between the Council of Europe Charter and the European Union Charter, the Charter of Fundamental Rights.

There was much debate at the time and I had the honour of being on the study group which prepared the European Economic and Social Committee's opinion that served as the basis for the European Commission headed by Jacques Delors to move the latter Charter forward in the Council.

We trade unionists, for that is what I am, and almost all members of the Council and the European Economic and Social Committee agreed that the Charter should be as binding as some of the measures in the form of directives regulating the single market. Indeed, Jacques Delors promised us that the social dimension would go hand-in-hand with the economic dimension.

But that was not to be, the Charter was merely a declaration. Of course, it was called a "solemn declaration", but it was a non-binding declaration. For us and the public at large, it merely placed a moral obligation on member states to respect a series of fundamental social rights of EU citizens.

A further advance lies in the fact that the Charter of Fundamental Rights is now an integral part of the Lisbon Treaty, the treaty which currently governs the European Union. It is regrettable that some countries, headed by the United Kingdom and followed, unfortunately, by Poland and the Czech Republic, have refused to sign up to the Charter.

We must move forward along this very difficult path where people who are in no way responsible for the economic and financial crisis are now being asked to pay the heaviest price in the name of I do not know what kind of justice.

That is the position and, to move on with our discussions, in agreement with my colleagues Henri Malosse and Luca Jahier, I will give the floor first of all to Ms Leila Kurki, President of the Section for Employment, Social Affairs and Citizenship of our European Economic and Social Committee.

Before doing so, I should like once again to express my thanks, including to the representatives of the French Economic, Social and Environmental Council (CESE), and tell them that I am still just as impressed as I was the first time I came here. Thank you.

### **3.1 Leila KURKI, President of the Section for Employment, Social Affairs and Citizenship, European Economic and Social Committee**

#### **The Council of Europe and European Union social charters – working complementarily towards a more social Europe**

#### **Ms Leila KURKI, President of The Section for Employment, Social Affairs and Citizenship European Economic and Social Committee (EESC)**

The Council of Europe and European Union Social charters, working complementarily towards a more social Europe

The Council of Europe and the European Economic and Social Committee have cooperated in the area of human rights on several occasions, for example participating in conferences and hearings on the rights of migrants and ethnic minorities.

The Council of Europe has invited the Committee to take part in the activities of their recently set up Task Force for the Education of Roma (ITFER).

The Committee has offered to translate into all EU languages the current Council of Europe campaign on sexual violence against children entitled "One in Five".

The cooperation between the Committee and the French ESEC is particularly productive, firstly thanks to very active common members, but also through relations at presidential level.

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What are the outcomes of the Committee in working towards a more social Europe?

The Committee has been very productive in the fields of human and social rights. Over the last three years we have adopted over 20 opinions on this theme.

On this occasion I would like to look at some of them in more detail.

Two days ago the Committee adopted an opinion on a Strategy for the effective implementation of the Charter of Fundamental Rights.

This strategy is very important as it determines what the EU institutions should do to implement the Charter.

The main recommendations of this opinion are:

That the Commission should strengthen the Culture of the fundamental rights at the EU level by monitoring the legislative proposals, and all acts adopted, and ensure accordance with the charter.

The legally binding obligation to promote fundamental rights must become the most important element of the implementation strategy.

Fundamental rights are indivisible from civil and political rights.

There is also a need to ensure equality, in particular between men and women, and specifically address all vulnerable groups.

The Committee is currently preparing an own-initiative opinion on how the new horizontal clause (Article 9) of the Treaty is strengthening cohesion and social policy coordination in the EU.

In this opinion, we stress that the application of the horizontal social clause should not be limited in its scope or methods, but that, on the contrary, it must be applied across all relevant Union policies and activities, including economic ones, by both EU institutions and individual Member States.

In the opinion on the future of the European Social Fund after 2013, we argue that the cohesion policy must not simply reduce the disparities between regions, but must also contribute to reducing the social inequalities affecting certain population groups.

Cohesion policy must promote a society of full employment, equal opportunities, social integration and social cohesion and thus, more broadly, the "European social model".

The Committee has been very active in the field of immigration and fundamental rights. For example in an opinion on "Respect for fundamental rights in European immigration policies and legislation" we note that some national and European policies and laws on immigration do not adequately respect fundamental rights.

We also note that certain national migration practices are incompatible with human rights and the rule of law.

This is unacceptable, given that Fundamental Rights should be granted to all, not only the Union's citizens.

In the opinion concerning Integration and the Social Agenda we consider it a priority to strengthen the integration of immigrants and minorities in terms of employment, social inclusion, gender equality, poverty, education and training, healthcare, social protection and the fight against discrimination.

Regarding the Roma population in particular, the Committee adopted two opinions on the subject last June, the first on the key role of women and education in the intercultural dialogue, and the second on the societal empowerment and integration of Roma citizens in Europe.

This second opinion was also the Committee's input into the European strategy for social integration of the Roma that was adopted at the June European Council.

Having seen these examples of the Committee's strong involvement in this field, you will appreciate the important role played by the Committee in the launch of the "Community Charter of Fundamental Social Rights of Workers" and the Action Programme to implement it.

President Nilsson already elaborated this process in his speech, so I want to remind you only some points.

With the benefit of the Committee's opinion on Basic Community Social Rights, the Heads of Government adopted the "Community Charter of Fundamental Social Rights of Workers" on 9 December 1989.

The Committee recommended using the instruments and procedures of the Treaty to ensure the Charter's implementation.

It was thanks to its recommendations that the Commission launched the action programme, which revises previous initiatives and provides for a series of new ones.

As we know, almost all the proposed guidelines were adopted in the following 10 years.

This major European social acquis was later supported by the inclusion of the Charter of Fundamental Social Rights in the Lisbon Treaty.

But the Committee's action was not over. In 2008, at the French presidency's request, we adopted another "proactive" opinion on "A New European Social Action Programme".

This argues that the European institutions must launch a new social action programme so that social developments can keep pace with economic and market developments.

To follow this up, the EU should establish new "well-being" indicators which make it possible to show progress in the area of social development.

This programme should be a roadmap comprising all the instruments and tools available, i.e. legislative action, the open method of coordination, social dialogue, and civil dialogue that incorporates grassroots initiatives and reinforces "participatory democracy".

The EU should follow European Court of Justice judgements and their effects on the social acquis, and, whenever necessary, take political and legal measures to stop encroachments on social rights.

The EU should screen European Union legislation, policies and programmes as to their social consequences. The Commission has particular responsibility for such impact assessments which should closely involve all the actors concerned.

In 2009 the Committee and Notre Europe jointly held a conference to celebrate the 20th anniversary of the "Community Charter of Fundamental Social Rights of Workers".

We took that opportunity to call upon the Commission to launch an updated Social Action Programme based on the one recommended by the Committee, in order to get it finally running at EU level.

This is where the Committee stands today.

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The Committee fully recognises the decisive role of the European Social Charter.

The rights and freedoms guaranteed in it concern all individuals in their daily lives.

The Social Charter has to be interpreted in accordance with the Council of Europe's main pillars, which are the Social State, Social Democracy and Social Rights.



The reasons for the divide between civil and political rights, on one hand, and social rights on the other, are political ones and should be addressed, because, in fact, all these rights are interrelated and "indivisible".

The unification of civil, political and social rights is a consequence of our societies' evolving social conscience and it is therefore an achievement of civil society.

The integration of human and social rights reinforces the vision that people's rights are not only "individual", but "collective".

It is by supporting this principle that we will be able to defend the rights of the groups most in need and to protect our societies from the risk of unfairness.

Although not the only available tool to build social Europe, the Council of Europe's Social Charter is a very complete document governing action in a great number of countries.

While, thanks to its community method, the European Union can make changes over years, the Council of Europe has created a framework in which changes can happen in a larger timeframe.

Today's symposium is a first major step in reflecting on "how we can do better". The reflection process has started, now we need to develop it further.

Targeted initiatives, such as for instance the social action programme already referred to, are definitely needed, but more must be done to build a culture of rights for the European continent, and towards a more social Europe.

**Mr DASSIS** - Thank you Leïla, My Comrade Leïla Kurki, (and I say comrade because she is a Finnish trade unionist) has outlined very quickly a series of activities which we are developing within the Economic and Social Council. Most of these opinions have been voted by a very large majority. There was therefore a consensus amongst employers, workers and a wide range of other interest groups.

We will see today if there is a consensus between me and my friend Henri Malosse, President of the employers group.

Henri, you have the floor.

### **Introductory remarks:**

#### **Mr Henri MALOSSE, President of Group I, European Economic and Social Committee**

**Mr MALOSSE** - Ladies and gentlemen, my friends and I were just saying that we should really congratulate you and applaud you for still being here after four o'clock on a Friday afternoon in such splendid weather.

It is good to be here because it is an anniversary. We at the European Economic and Social Committee celebrated our 50th anniversary a few years ago. In fact, today I am wearing the tie made for the 50th anniversary of the European Economic and Social Committee back in 1998.

More seriously, what I like about this event is the way we are linking the Council of Europe and the European Union. Actually, there is only one Europe, not two. “The Europe of the 27” and “the Europe of the 47” does not mean a thing. There is one Europe. We have a common history. We share common cultures, common identities and, above all, a common future.

I have had the opportunity of working with the Council of Europe on several occasions, most recently with regard to child protection issues. We drew up an opinion initiated by the Employers’ Group. The Council of Europe does very detailed, practical and useful work, for instance to combat cybercrime and counterfeiting. The Council of Europe is a very valuable ally for the European Union.

With regard to the issue of the charters, namely the European Union Charter or the Council of Europe Charter, I believe it is important to ask the same question as Michel Barnier did this morning in his speech. He wondered whether all these instruments were not the instruments of the past which needed adapting and whether we wished to address the issues of the present with tools from the past, instruments dating back 50 years.

I would agree with the comments of our Russian colleague in underlining (regardless of the value of the Council of Europe and European Union charters, which I do not challenge) the need to adapt our values and our major policies to the modern world. It is not the one we knew 50 years ago.

I could give a few examples beginning with the world of business. It is now dominated by small and medium-sized enterprises: four-fifths of new jobs are in small and medium-sized enterprises. There are more and more individuals running microbusinesses in France. A law promoting microbusinesses was passed recently and has been a great success. That changes the nature of the relationship to work.

One of the fundamental social problems today is exclusion, namely the fact that, unfortunately, there are large numbers of people who are unable to access the labour market for a multitude of reasons. They are therefore excluded.

What is to be said about the exclusion of young people from the labour market at a time when demographic trends in our countries are, on the whole, very poor, if not disastrous? In spite of those trends, young people, including graduates, all too often cannot find employment or move from one temporary placement to the next without acquiring many qualifications or earning proper salaries.

This situation in the European Union and indeed Europe as a whole is really worrying. It is the sign of a society that is ageing somewhat and is lacking in prospects, and here I agree with the analysis made by Jean-Dominique Giuliani this morning. More than being in crisis, it is experiencing doubts about its future and about its values.

We need to work on re-establishing our values, drawing on these charters, of course, while also working on restoring hope and asking ourselves some very basic questions.

Solidarity is, of course, a fundamental issue. At our plenary session of the European Economic and Social Committee the day before yesterday, I said how important it was to have this solidarity between the countries of the European Union and how much I detested the egotistical conduct that is emerging in some places today, making distinctions between the countries of the north and the south, and between those who work harder and those who work less hard, in short, all the nonsense which, unfortunately, reminds us of the 1930s and everything that followed.

Solidarity must be accompanied by responsibility. Without responsibility there can be no solidarity. Our great responsibility today is to build a society which offers our children a future, in other words, having sound finances while also offering possibilities of economic development and substantial growth. The European Union, indeed the whole of Europe, must be a place where we produce, where we learn and where we build a dynamic region with dialogue as its vision.

Naturally, I would be the last to reject dialogue. Social dialogue is vital at all levels.

In my view, 50 years down the road, we have now entered a new era and it is no longer just dialogue which is needed. We have to talk about partnerships and working together, not just dialogue. This applies at all levels.

For instance, we are following with great interest all the developments which have been taking place for a number of years in companies, large and small, where there is co-operation and partnership between management and labour, which goes so far as having shareholder employees and involving staff on boards. This happens in many countries. It is also true in society at large. That is why we as employers on the European Economic and Social Committee are particularly happy and we take full advantage of the opportunity offered to us both in the French Economic and Social Council and in the European Economic and Social Committee to engage in dialogue with the other sections of civil society.

I am thinking here of, Luca Jahier, for instance, who is sitting next to me. Then there are consumers, farmers, representatives of women's associations and young people; we can build a whole range of dialogue and partnership with them so as to move society forward. The European Union is a partnership between states and economic and social players seeking to build something together. I believe that is a fundamental approach to social and human relations.

Lastly, the crucial issue in my view is to ask whether in 20 to 30 years we will have a world without Europe, in other words, a world where all the values for which we have fought so hard (trade unionists, employers, the other sections of society and everyone involved in building Europe) have come to naught. I am optimistic and do not think so. We need to continue along the path of European construction. We will not succeed unless we work on the basis of common values and we manage to modernise our values of solidarity and responsibility and move from dialogue to partnership so that Europe as a whole continues to be a benchmark for the world and offers its young people a future.

Thank you for your attention.

### **3.2 Mr Luca JAHIER, President of Group III, European Economic and Social Committee**

**Mr JAHIER -**

Your Excellencies,  
Ladies and gentlemen,  
Friends and colleagues,

It is with great pleasure that I am here with you today to celebrate and to assess the 50 years of the Council of Europe's social charter. Anniversaries such as these are always useful: firstly, because they force us to reflect on what we have achieved. But more importantly, because we have no choice but to critically review what still remains to be done. And in most cases, the latter outweighs the former!

However, before analysing what has been achieved and what challenges remain for the future, I would like to say a few 'philosophical' words, a few idealistic comments – after all, this is what Europe in its various forms is based on: ambition, creativity and idealism.

I would imagine that everyone in this room is proud to be European, to belong to this continent which has contributed so much to intellectual thought over the centuries. It is my firm belief that the three social charters that we are discussing today are the culmination of that intellectual process. The Social Charter of the Council of Europe, the EU's Charter of Fundamental Rights of Workers and the EU's Charter of Fundamental Rights all reflect the type of society that we as Europeans want to create and to live in. And this is a society of undividable social and civil rights, it is a society of active citizens and of participatory democracy, which are directly linked to the identity of Europe. The question that all of us here today are trying to answer is the following: have we succeeded in translating theory into practice and if not, what can be done in the future? Within this context, the first part of my presentation will assess and consider how to better apply the Charters, concentrating in particular on the Charter of the Council of Europe and on the EU's Charter of Fundamental Rights. The second part of my presentation will look towards the future and examine how we can re-energise the debate, how we can raise awareness, visibility and enhance the status of the Charters, by for example, better cooperation between the Council of Europe and the EU.

#### Assessment of the implementation of the Charters to date

According to the '2010 EU Citizenship Review' drafted by the European Commission, less than one third consider themselves 'well' or 'very well' informed about their rights as European citizens. Crucially, between 2007 and 2010, there is only a 1% increase in awareness of European rights. These figures are not surprising and in my opinion they are directly linked to the debate on active citizenship and European identity, to which I will return in the second part of my presentation. However, these figures also indicate that there are outstanding issues relating to the implementation of the Charters which are undermining their effectiveness.

Let us begin by looking at the legal obligations surrounding the charters. Clearly, one of the strengths of the EU's Charter of Fundamental Rights of Workers is the legal obligation of all EU Member States to apply the EU legislation. In stark contrast, in the case of the Council of Europe's social charter any recommendations issued to governments are not binding and remain recommendations. Moreover, it would appear that non-compliance with these recommendations is widespread, with the common practice of unanswered issues being deferred for consideration to the next annual report. If we now consider the EU's Charter of Fundamental Rights, although certainly more comprehensive than the other two charters and although it has been integrated into the Lisbon Treaty, we are all aware that four EU Member States continue to 'opt out' and should be strongly encouraged to 'opt-in'. In addition, we have to recognise that the principal weakness of the Charter of Fundamental Rights is that it only applies to Community legislation and there are many spheres of this Charter which cannot be enforced by the EU simply because there is no relevant Community legislation in this area.

This leads me onto my second recommendation for a more effective implementation, namely: the necessity for increased ownership of the Charter of Fundamental Rights. Unfortunately, in times of economic crisis, although the necessity for social and economic solidarity is greater, in several European countries we are witnessing severe budgetary cuts to the social arena, which are against the spirit of the Charter. We could go a step further and argue that recently there have even been cases of non-application of the Charter. For example, the collective expulsion of Roma and the expulsion of potential asylum seekers by certain Member States, assisted by the FRONTEX agency.

It would appear that not only greater vigilance of application is required, but that the rights enshrined in the Charter of Fundamental Rights should be mainstreamed into policies at the national and European levels. Such mainstreaming could be facilitated by a Fundamental Rights 'Check-List' to be used by the EC and national services and by the promotion of the Charter in policies. At the external level, it is recommended that the EU actively seeks to include the rights of the Fundamental Charter in its external and commercial policies with third countries. The EU's trade relations with the Caribbean region (Economic Partnership Agreement) are exemplary in this regard, as for the first time social and environmental chapters were included in an EU trade agreement.

Before moving on to the second part of my presentation, I would like to comment on the limited role of civil society in monitoring the implementation of the Charters and the impact that this has on their effectiveness. In the case of the Social Charter of the Council of Europe, it is only since 1998 that the social partners and certain international NGOs are entitled to lodge complaints against signatory countries – otherwise referred to as the 'complaints procedure'. However, this procedure is only valid if the governments accept it. To date, only 14 of 47 signatory countries have agreed to this process. The result is that civil society has a limited role in monitoring the implementation of the Charter of the Council of Europe. As regards the EU's Charter of Fundamental Rights, once again, more involvement of European civil society and of the social partners is required. Perhaps this should take the form of involving organised civil society and the European Economic and Social Committee in drafting the EC annual reports on the implementation of the Charter, perhaps by the EESC preparing a yearly opinion on the implementation of the Charter or by setting up a permanent body to monitor its implementation. There is certainly no shortage of ideas...

The way forward: steps towards engaging with European citizens for a more social Europe

This takes me directly to the second part of my presentation which will concentrate on the future and how to raise the profile of the Charters. It is about how to make them more relevant to citizen's lives and aspirations and ultimately, how to make the Charters instruments for a more social Europe.

Unfortunately, like the wider problem of the limited awareness of many EU citizens of the impact of the EU on their daily lives, the Charters of both the Council of Europe and of the EU are little known to European citizens. This is a wasted opportunity, but it is also understandable. Unless the Charters are made more relevant, more tangible, more practical, more accessible and crucially, more responsive to citizens, they will remain the domain of lawyers, civil servants and specialised interest groups. What we need is an instrument to bring these two worlds together.

It is my sincere belief that we do have this instrument, but it has not been made operational yet. I am of course referring to the European Citizens' Initiative (ECI) which was created by the Treaty of Lisbon. Although it will only be launched in April of next year, we have the framework for true participatory democracy which is 'bottom up'. The objective of the ECI is to enable citizens to influence the EU agenda and to develop a transnational civil society. It is about empowering citizens, conferring rights, but also obligations.

In the case of the Charters of the EU and of the Council of Europe, it is hoped that the ECI will result in proposals for initiatives for Community legislation in areas covered by the Charters, but for which there is not yet any EU legislation. If this is achieved, then not only will the EU be able to enforce implementation by the Member States, but also the visibility of the Charters will be increased. In fact, it would be a virtuous circle where the ECI would raise awareness of the Charters, but firstly, awareness needs to be raised of the opportunity of implementing the Charters by using the ECI!

This is not an easy task and it requires planning and cooperation. The European Economic and Social Committee was fully engaged in the battle to secure Article 11 of the Lisbon Treaty and the ECI. Now we are fully committed to helping with its implementation. But we need to move fast to support European citizens, whilst of course remaining objective.

Ladies and gentlemen, 50 years have passed since the Council of Europe adopted its Charter and over those years we have drawn inspiration and strength from each other and we continue to share the same ambition for Europe. The three Charters that are being discussed here today reflect that ambition and we have much to be proud of. Be it 27 or 42 European countries, in both the EU and the Council of Europe we have made commitments for a more social Europe, but also for a more cohesive, inclusive and just Europe. The challenge now is to find ways to better implement those commitments. I believe that visibility and awareness-raising are among the key challenges to that process and this is made worse by the current economic climate and the return to national interests, fears and constraints. But I also believe that the European Citizens Initiative is a wonderful opportunity to think and to act beyond the national arena, to think and to act as a 'European'! Perhaps the fact that 2013 will be dedicated to the European Year of Citizens may also provide some impetus to this process.

Before ending I would like to make one last proposal and that is for greater cooperation between the European Economic and Social Committee and the Council of Europe. Why not make the 50th anniversary a starting point? Why not envisage that we could jointly organise an annual event to review and to monitor the implementation of the Charter of Fundamental Rights? Why not continue to look ahead?

Ladies and gentlemen, I thank you for your attention.

**Mr DASSIS** - I take note and will bear your proposals in mind, as I find them interesting. I hope that we will be able to put some of them into practice.

### **3.3 Jean-Marc ROIRANT, Member of the French Economic, Social and Environmental Council, Co-President of the Liaison Group with European civil society organisations and networks**

**Mr DASSIS** - I call Mr Roirant, Co-President of the Liaison Group between the European Economic and Social Committee and the network of NGOs in Brussels.

**Mr ROIRANT** - I am pleased to have been invited to give my views on the subject of complementarity between the Council of Europe and European Union charters.

I will speak on behalf of the associations grouped together in this Organisation, as I have the honour of chairing the group of associations in this venerable institution, but also on behalf of the civil society organisations (co-operatives, mutual organisations and associations) which are part of a liaison group under the aegis of the European Economic and Social Committee.

I will make four points and put forward three thoughts for further discussion.

First of all, I would like to underline the pioneering role played by the Council of Europe in terms of protection of fundamental rights with the European Convention for the Protection of Human Rights and also, subsequently, the Social Charter, an instrument to protect social rights for which, in our view, no equivalent exists in other human rights protection systems.

The second point is that I should like to underline how little-known the Council of Europe Social Charter and also the EU Charter of Fundamental Rights are. Apart from the usefulness of these instruments, which are of symbolic value, they can help organised civil society exert political pressure on states as regards the protection of social rights. That may explain why they are not spoken about much or are even kept secret. In any case, we welcome this initiative by the European Economic and Social Committee, the French Economic, Social and Environmental Council and the Council of Europe on this anniversary day.

The third point is the exemplary nature of the Council of Europe and the way it works with civil society and recognises its full legitimacy. It has paved the way for the European Union which has not, however, introduced an equivalent system for the recognition of non-governmental organisations. Let me explain what I mean.

Last year, the Council of Europe published the outcome of a major project: a code of good practice which identified initiatives in all European countries for recognising the legitimacy of voluntary sector bodies in civil dialogue and the relevance of their action.

The Council of Europe has established a special status in the form of participatory status with the Council of Europe. This is a mark of approval by the Council of Europe, whereas in the EU institutions associations are only invited to join a register of lobby groups. While we are resolutely geared towards the general interest, we are lumped together with other groups.

For over 20 years, we have also been fighting for the recognition of voluntary associations and calling for a European association status. For over 20 years, these proposals have been getting nowhere fast in the institutions of the European Union.

The fourth point is that, apart from the necessary economic concern with the construction of Europe, the charters highlight the necessary social dimension of Europe, which is now coming under attack because of the crisis. It seems to us that welfare systems are being sacrificed at present and that social protection systems are being dismantled, which worries us.

I should like to make three comments in addition to the above points concerning the Social Charter and its role as a unique instrument for the protection of human rights and also the recognition of organised civil society.

The Council of Europe Social Charter promotes the idea of states' legal responsibility for the implementation of economic and social rights. It is an instrument for the protection of social rights which has helped bring about an improvement in welfare systems in European countries. That is very important.

For civil society players, its main special feature probably is the system for supervising the implementation of the relevant rights through the collective complaints procedure, bearing in mind all the reservations mentioned by Mr Jahier. The collective complaints system grants civil society and NGOs in particular a fundamental role. The mechanism promotes the legitimacy of civil society in acting as a watchdog and guarantor of social rights in relation to states.

The fundamental role for us and for the other intermediary bodies is therefore recognised. The Charter legitimises civil society through its supervisory mechanism. Use of the latter opens up a very broad field of action for those involved. The Charter covers a wide range of fields from all areas of life: social protection, health, training, access to welfare services, equal opportunities for vulnerable people and housing, etc.

Several NGOs have already made use of the collective complaints procedure in recent years, beyond the limits pointed out by Mr Jahier. The NGOs in question have included ATD Fourth World concerning the right to housing in France, Autism-Europe concerning the rights of people with disabilities and their access to welfare institutions and the International Federation for Human Rights (FIDH) concerning the issue of forced labour in Greece.

The advantage of the collective complaints lodged by these NGO networks lies in the fact that they help to exert political pressure on the state in question and get it to respond concerning the conformity of its social system with the rights set out in the Charter.

As can be seen with the collective complaints system, it is the effectiveness of the implementation of the social rights set out in the Social Charter which is questioned. That is not always the case with the charters setting out fundamental rights.

By way of example, the European Union Charter of Fundamental Rights was purely symbolic until the adoption of the Lisbon Treaty. It was not legally binding and did not make provision for any supervisory machinery.

The principles of the Council of Europe Social Charter and the various complaints lodged have brought about progress in terms of the social rights of Europe's citizens. Civil society players must make greater use of the possibilities for action and for challenging states offered by the collective complaints procedure.

My second comment is that it is important for us to make use of the European Union Charter of Fundamental Rights and afford civil dialogue its full importance within the European Union. For the time being, the Union has not introduced an equivalent system for the protection of social rights that gives civil society players legitimacy in challenging states and defending social rights.

The Social Charter can be a major source of inspiration for EU institutions. With the entry into force of the Lisbon Treaty and the implementation of the European citizenship initiative, a new form of participation in the development of EU policies is emerging. The initiative is the first step towards institutionalised recognition of civil society's role in bringing challenges within the European Union, but its impact is difficult to assess for the time being.

There is also an important element in the constitutional treaty, namely Article 11, which urges the institutions of the European Union to maintain regular, ongoing dialogue with representative associations and civil society.

Beyond this important initiative, we call on the Commission to introduce a Green Paper on implementation of Article 11 so that we are not just left with declarations of intent. It is time for action!

My last comment concerns the social dimension of Europe, which we believe must be revitalised and deepened. At a time when social protection systems are threatened by the economic and financial crisis and social considerations are often adjustment variables for government policies, the promotion of the social charters leads us to reconsider the relationship between economics and society and to look at the social dimension of the European construction process.

While the Council of Europe has adopted a legally binding instrument, the instruments for protecting social rights implemented by the European Union remain incomplete and give precedence to the



dimension of social integration related to the achievement of the European single market, for instance freedom of movement of workers and recognition of qualifications, etc.

Moreover, the institutional tools for civil dialogue within the European Union are inadequate. Governance of social policies remains in the hands of states and civil society organisations are not involved on a regular basis, even though a more participatory dimension does exist with the implementation of the open co-ordination method. Since the implementation of the Lisbon strategy, the challenge has been to create new links between economic and social aspects and promote a cross-sectoral approach combining the social, environmental and economic dimensions.

The profound crisis affecting Europe also means there is a need to break down barriers between approaches and players and give greater structure to social dialogue, which is very important, and also civil dialogue.

Mr Jahier referred to 2013 as the European year of citizenship. I thought the Commission had said that it would just be the year of mobility.

We need to continue efforts to ensure that the scope is extended and that it is not just the issue of mobility dealt with from the angle of citizenship, but a real year of European citizenship.

In conclusion, the main limitation of the social charters lies in the dependency of the economic and social rights which they promote on states' social policies. Against the current background of debt and crisis in public finances, states seem willing to sacrifice social protection.

As underlined in a recent opinion by the French Economic, Social and Environmental Council, of which I am a member, on the subject of achieving new dynamism for economic, social and environmental progress within the G20, the purpose of economic growth is to improve well-being. That means giving priority to job creation, combating inequality and fighting poverty.

It is only on that condition that the social charters can be used as levers for safeguarding fundamental social rights within the European area and that their impact will extend beyond their symbolic value.

**Mr DASSIS** - We agree on many points. The road to achieving them will be long, however.

### **3.4 Professor Manuel TEROL BECERRA, Professor, University of Seville, Member of the Academic Network on the European Social Charter, Director of the Andalusia Forum for Social Rights**

**Mr TEROL BECERRA**- I should like to thank the Economic, Social and Environmental Council for its invitation to discuss social rights. I also congratulate the Council on its decision to commemorate the 50th anniversary of the European Social Charter.

I am going to make a theoretical speech that is perhaps not very orthodox.

The first main idea when discussing social rights and the Charter is that, from the outset, liberal states did not recognise social rights. The first constitutions in the world did not make any link between possible social rights and human dignity.

However, there was equivalence between human dignity and rights of freedom.

Constitutions talk about “equality before the law”. Yet we know that equality before the law is the opposite of equality. Nowadays, nobody can believe that dignity is linked to freedom alone, as there can be no human dignity unless a minimum standard of living is guaranteed. It is only then that rights of freedom can be considered. Social rights therefore come first and are followed by rights of freedom.

We also know that social rights were first enshrined in law before being included in constitutions. Now almost all countries in Europe have detailed lists of social rights in their constitutions.

Of course, there are countries in Europe which do not have constitutions. In those cases, social rights are safeguarded in declarations and international treaties instead.

We are all committed to the international instruments for protecting rights. These instruments are very important to us legal experts who believe in the idea of legal standards. The standards which they lay down take precedence in all domestic legal orders. In the case of social rights proclaimed without protection machinery being put in place under domestic law, treaties play a major part through the safeguards which they include.

We are Europeans, but that should not prevent us noting that international treaties safeguarding rights of this kind also exist in America: for instance, the American Convention on Human Rights. The Inter-American Court of Human Rights has been particularly dynamic in protecting social rights and not just rights of freedom.

Closer to home, I believe there are two Europes: the European Union and the Council of Europe. The two are quite different. The former is the Europe of trade and the common market. However, the European Union does not exist as a political union. Indeed, I am afraid that it is close to foundering.

The Council of Europe’s strength lies in the fact that it is an institution whose purpose is to protect rights: civil and political rights through the European Court of Human Rights and social rights through the European Social Charter and the European Committee of Social Rights. It is a strong Europe because even Russia and Turkey, which are not on the foundering ship, are members.

I had here a list of European Union social measures, none of which I find credible. For instance, the social Europe is in the process of organising the 64-hour week. Is that a great social advance? No. We will end up like the Chinese. Europe, which built its social model around the 48-hour working week, is now taking up the Chinese model. It is all a matter of productivity, Mercury, the great God of traders and pirates.

What are we doing here? Do we have to say that everything is finished and that building the welfare state in Europe is impossible? As a professor, I believe that we have to talk about social rights often and say that they exist and that the European Social Charter must be applied in all states which have ratified it.

We must be resolute and show the authorities the importance of social rights. They form the basis of all freedoms. Without social rights, there can be no freedom. Without social rights, there is only slavery.

**Mr DASSIS** - Your speech was rather pessimistic or, perhaps, realistic, Professor. You said that the European Union is foundering and mentioned the Council of Europe repeatedly.

I will be just as frank as you were and say that the International Labour Organisation and the trade union movement, fortunately with the support of progressive governments and some employers' organisations, have succeeded in having some major international conventions approved.

Mr Veyrier mentioned the first convention on working hours. Once the drafting processes have been completed, the struggle continues to persuade our governments to ratify the conventions. The conventions must be part of the domestic law of the signatory states of the International Labour Organisation.

We have seen that very many governments approve conventions at the International Labour Conference in Geneva for the sake of their image and then do not follow through.

You referred to the conventions on working hours. I would add the fundamental convention on the right to organise and bargain collectively.

When I said your speech was pessimistic, it was also realistic – especially when you see today how unofficial or official representatives of the European Commission urge governments not to abide by collective agreements signed by employers and labour! Is that the law? In my view, it is wrong.

### **3.5 Discussion**

**Mr GENTY** - I am Honorary President of the Conference of INGOs of the Council of Europe.

Earlier on, a female participant criticised the lack of gender parity here since this morning, barring a few exceptions. For my part, I would criticise the lack of another kind of parity at this round table. The programme includes the heading "The Council of Europe and European Union social charters – working complementarily towards a more social Europe". To my great surprise, almost all of the participants on the panel are members or leaders of the European Economic and Social Committee, not the Council of Europe. I find it hard to engage in dialogue geared towards complementarity if one of the two players in question is absent.

As far as the status which INGOs hold with the Council of Europe is concerned, I would point out that it is no longer the consultative status which existed from 1953 to 2003, but a participatory status. This is a first among international institutions worldwide. Participatory status reflects genuine participation by the INGOs in the Council of Europe's work and activities.

In 2005, the Third Summit in Warsaw for the first time recognised the Conference of INGOs as one of the four institutional pillars of the Council of Europe, alongside the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities.

There has therefore been a very great advance in this area at least, at a time when all there is at the European Union is a register of lobby groups. There is not even consultative status. The Council of Europe has established a genuinely participatory approach and genuinely participatory democracy. I hope one day that will serve as an example to other organisations, in particular the European Union.

**Mr AKANDJI-KOMBE** - I have followed all our discussions in the light of a kind of principle set out by Mr Delevoeye at the start of the day, namely that proclaiming rights is not enough, they have to be put into practice and given real effect, in particular through supervisory and safeguard mechanisms.

This reminds me of a comment I made a few years ago to the members of the Parliamentary Assembly of the Council of Europe when I presented a report on the rights of irregular migrants. The comment was that Europe is running a serious risk of ending up in the rearguard when it comes to protecting fundamental rights, especially social rights.

We occasionally hold self-satisfied speeches in which Europe is presented as the leader in the protection of fundamental rights. We are basically deluding ourselves in so doing. If we open our eyes a little to the rest of the world, we can see great things happening: in Latin America, complex legal systems are developing in which citizens can appeal to the courts, including the Inter-American Court of Human Rights, to protect their rights, including their social rights, while a similar process is under way in South Africa and also in India, countries where the constitutional courts are particularly dynamic in protecting social rights.

In my view, one of the challenges of our meeting is to recognise the above in order to move forward.

With regard to this round table, I agree in part with what has just been said. The issue of the links, relationship and complementarity between the Council of Europe and European Union charters is vital.

Personally, I think there is a kind of paradox or discrepancy between the drafting phase and the implementation phase.

In terms of drafting, there is perfect complementarity.

We only need to look here at the travaux préparatoires for the Charter of the Fundamental Social Rights of Workers. The European Social Charter served as a source of inspiration and, indeed, as a material source for its standards.

On the basis of the Charter of the Fundamental Social Rights of Workers, various directives were adopted by the EU institutions.

When the Council of Europe Social Charter was revised, the European Union directives then served as a model for the inclusion of new rights, which are now enshrined in the revised European Social Charter.

A further positive example came here with the drafting of the European Union Charter of Fundamental Rights. The travaux préparatoires show that the drafters drew on the ILO conventions and also on the revised European Social Charter.

The worrying time for ensuring complementarity is not when the instruments are being drawn up but rather when they come to be implemented.

That is where the efforts need to be made for the future.

**Mr DASSIS** - I was a member of the group which prepared the Charter, so I saw how things were done. I would remind you that in Europe there is a tendency to make declarations of pure form. At the Council of Europe, we fought hard to produce good resolutions, but they are not implemented.

**Mr VERBOVEN**- You and Mr Malosse rightly said that we are proud and even pleased when the Economic and Social Committee manages to issue unanimous opinions and when it discusses the values set out in the Social Charter or the Convention on Human Rights.

I hope we will also have reasons to be proud during the current period of very serious economic and budgetary crisis because we show the same solidarity and are just as unanimous in defending these same values, which are coming under threat from the member states as they implement austerity policies almost everywhere in Europe.

I hope that we will show the same unanimity and solidarity when the European institutions adopt plans calling on member states to make savings which threaten the values set out in all the European charters.

**A SPEAKER from the Italian Economic and Social Council** - Before beginning, I should like to thank Mr Delevoye and Mr Nilsson for joining with the Council of Europe in holding this major forum for discussion, stock-taking and looking forward.

While it is to be hoped that they are properly overcome as quickly as possible, the economic and financial difficulties facing Europe should not lead us to forget the great social progress we have made in only a short period of time.

The first Social Charter, which my country signed up to in Turin 50 years ago, was gradually ratified by a large number of countries. It is not therefore a static document reflecting a long-gone and very different era.

We have established what is described as the European social model, a system of rights, services and benefits which can be given shape and implemented in practice within different states.

Unbridled globalisation, the financial crisis, the burden of government debt and growth that is still too weak all threaten to call this model into question. Indeed, some of the principles of social rights central to the European Community are occasionally even cited as the causes of all these problems.

However, I believe that, as Europeans, we should in a way be proud of the results achieved compared to the situation in other parts of the world, both east and west.

Europe must feel the strength of our commitment to assert its social rights in the international community as a whole.

However, as it is a dynamic process, we must also show balance and experience and look at the world today to see how we can preserve our social principles against a background of objectively limited resources.

In my view, the European Union's 2020 strategy offers responses to this requirement for growth and sustainable development, as well as social cohesion. The real issue is for it not just to remain a mere wish list or a series of commitments set out in documents. The European Union and all member states must commit themselves resolutely and convincingly to implementing it in practice.

That places clear emphasis on social dialogue and opens up a whole environment or space for civil society, civic initiatives and the responsibilities of national societies, not as a replacement for or an alternative to the state but according to a balanced principle of subsidiarity which is also one of the foundations of our European construction process.

Democratic and economic growth and the strengthening of social inclusion are therefore processes which are increasingly closely linked for building strong European citizenship.

For these reasons, I believe that focusing solely on cuts in social expenditure in order to balance national budgets is a serious error.

In particular, account also has to be taken of the fact that severe cuts in social expenditure not only will not bring about the change needed but will actually entail huge social and economic costs.

Social policy is absolutely vital for bringing about a real recovery in economic growth and employment. It can also help to reduce public expenditure deficits.

In conclusion, I would say we need more political unity within the European Union and more economic governance to make finance work for the real economy in order to support an economic and social recovery based on quality, sustainability and decent work and to keep up with world markets.

**Mr DASSIS** - As you represent the Italian Economic and Social Council, I did not interrupt you, but I will interrupt Mr Buffetaud if I have to.

**Mr BUFFETAUD** - We have spoken about many charters, declarations of rights and texts. In my view, this build-up reflects a worrying trend. If we keep on making new texts, it means the previous ones have come to nothing.

The Savoyard philosopher, Joseph de Maistre, said “Why so many laws? Because there is no legislator”.

The truth is that many legal instruments are produced but we never really take the content on board in either our hearts or our policies. The truth is that we have never had so many charters on human rights and on social rights, yet we have never had such an individualistic society. That seems illogical.

What our societies need and what Europe needs is to get back to clear, unambiguous benchmarks. What is the ultimate goal of politics and economics? The human being or, rather, the dignity of the human being.

You may say those are empty words. Not at all. A policy that provides too much support treats men and women like children. That is not desirable. And an ultra-free market policy leaves the most vulnerable behind and is not desirable either.

It is necessary to find a happy medium between the two, between support and freedom. That is the nub of our difficulties.

We forgot that the ultimate goal of our policies was the human being. We created a virtual economy which itself destroys the real economy. Industrial firms are expected to produce double-figure annual returns. That is impossible. They get wiped out on the stock market. They cannot succeed with growth fluctuating between 1.5% and 2,5%.

Forgetting what really matters leads to economic, human and social disaster. We have ended up in a system that is unnatural. There is a proverb which says: “God alone truly pardons; man sometimes pardons; nature never pardons”.

**Mr DASSIS** - How true!

**Mr JAHIER** - With regard to the statement by the President of the Conference of INGOs holding participatory status with the Council of Europe, we will be glad to have you on board. I will be the

rappporteur of the committee on implementation of Article 11 of the Treaty of Lisbon. It is wrong to be so negative with the European Union. It has done a lot for civil dialogue.

Although the European Economic and Social Committee does not represent all of European civil society, it is made up of 350 members who come from all the various components of civil society. It has had a major impact in the European Union's external policies.

Most recently, its efforts led to the inclusion in the trade treaties with the Caribbean and Korea of a social and environmental clause and a participatory clause involving an advisory committee of the social and economic forces of civil society. Those are great advances.

It is obvious that there is great complementarity in the area of drafting. Luckily so. As far as implementation is concerned, things are much more complicated. The institutions are different. The European Union has binding legislative powers in respect of the member states.

The issue is not so much co-ordination of the standards but the approach to take to the hierarchy of standards. A decision will have to be taken here somehow, or we will never get anywhere.

Fortunately, all the drafting work does move forward, but, as far as implementation is concerned, there are entirely different rules and responsibilities which have to be observed. The European Union knows exactly what it is because it has a power to shape national legislation which no other institution shares.

**Mr MALOSSE** - Our colleague asked when agreement would be reached between employers, labour and Group III. In the current crisis, there is a real need to strike a balance between solidarity and responsibility. When we achieve that, all of civil society benefits. Without solidarity, there is no responsibility. And solidarity requires the shouldering of responsibilities by economic and social players and governments.

With regard to complementarity between the Council of Europe and the European Union, I believe that the Council of Europe often plays a pioneering role. It sets the objectives and states do what they can to follow them. The European Union must maintain, preserve and promote its method of common policies.

Unfortunately, like the Lisbon strategy before it, the 2020 strategy will be successful only if we really apply the Community method, in other words, if common policies are put in place.

If the European Union starts operating like the Council of Europe, i.e. on an intergovernmental basis with the open co-ordination method, no results will be achieved because there will be no implementation. So there will be no complementarity if the European Union starts copying the Council of Europe.

**Mr DASSIS** - I will conclude with three points.

The first is addressed to legal experts and other leading figures from the academic world. I would urge them to use their knowledge and their influence to persuade decision makers to take the right action without waiting any longer.

To all of us and everybody everywhere who deals with social policy, I would say that I hope we do not end up one day somewhere paying our last respects to the Social Charter and fundamental social and other rights.

And I would urge policy makers not to wait until millions and millions of citizens come out onto the streets. Because then there will be violence. Policy makers should act now because they should not believe that European citizens will accept having the Chinese model imposed on them. We do not have Stalinist regimes in Europe yet. There would be a revolt, as we saw with various examples last year.

Lastly, I should like to express grateful thanks to Mr Delevoeye for hosting this major event which, regardless of our respective backgrounds, has enabled us all to share our experience, set out our points of view and, above all, voice our concern about the general deterioration in the rights of citizens.

I thank you most gratefully again.

## **4. Conclusions**

**Mr DELEVOYE** - We have taken two decisions with Mr Nilsson and the Council of Europe.

In view of the high standard of today's discussions and, I believe, also the relevance of this type of meeting, along with Mr Nilsson, we are going to attempt to bring all the economic and social councils in Europe together once a year to take stock of implementation of the Social Charter and the Council of Europe's conclusions, the machinery for publicising the Charter more effectively, the difficulties encountered by the various players and the progress achieved. We hope to be able to do so annually.

I believe you are all satisfied with what we have achieved today. I would like to pick up on your comments.

I was once the French ombudsman. Our country has many laws and defends many rights. When laws are poorly implemented, they do not serve much purpose. And when citizens are not aware of their rights, that is even less useful.

Access to rights and information about rights is a very decisive factor, as are the courts to impose penalties on those who flout or do not apply the legislation.

Montesquieu said that states did not have souls, they only had interests.

They sign the charters for the sake of their image. And they do not implement them because of economic interests. It is clear that we have reached a stage where the best defence of social rights depends on our ability to show that the most advanced economies have the most advanced social rights.

Paradoxically, a sudden decline of Europe on the world stage and a decline in social rights are occurring at a time when very worthwhile social rights are developing in the emerging economies. Even China is now adopting quite amazing environmental rights. Very surprising demands for social rights are being made there.

We should realise that the European model, the balance between social rights and economic efficiency, is perhaps the best means of ensuring the long-term future of the Charter. While drafting procedures are slow, things can be destroyed very quickly.

It is clear today that the urgency of the situation is leading to very far-reaching decisions. I was talking with my Greek colleague earlier on. I believe that we do not really appreciate the scale of the decisions being taken in Greece and also in other countries.



Obviously, we must also consider how easy it is to exert or assert our rights. In my report, I also pointed out that the cumbersome nature and cost of proceedings, the tangle of different laws and regulations and the difficulties which the weaker members of society have in understanding things and working with lawyers mean that, in our supposedly advanced societies with their very balanced procedures and great safeguards, the laws intended to protect the weak actually protect those who have money, connections and time and know how to play the system.

We are at an unusual juncture where we have staged revolutions to destroy privileges but are now reintroducing privileges under cover of defending the weakest. We should be aware of these paradoxes which are weakening the defence of rights in the name of defending rights and the preservation of social rights in the name of European integration. We are being torn between the principles we all subscribe to and situations on the ground which belie them.

We are easing our consciences but not solving the problems.

I would like there still to be a capacity for revolt. When people rise up, that means there is still energy. We must be careful that the current crisis does not generate such an economic and psychological depression that our fellow citizens are no longer able to rise up and simply give in or are crushed.

We must take great care to seize the crisis as an opportunity. Europe can recover today. It is quite clear that, if we are not careful, knee-jerk opposition to solidarity – when I do not have much myself, I have no desire to share with others – will gain the upper hand. People have a tendency to turn inwards. If there is no longer any capacity for revolt, we will have a fine mess and a very worrying situation.

It is necessary to take a defensive approach in respecting rights. We need to be proactive in securing an economic model which reconciles environmental rights, social rights and economic efficiency. European initiatives are needed here.

Mr Nilsson and I have often said that the situation at present is too serious and too worrying for civil society not to take action which we wish to support. I know that Mr Nilsson would like a meeting to be held at the beginning of December. I entirely agree that the various economic, social and environmental councils should call on states not to protect themselves within their territorial boundaries but, rather, to show the example of sharing and solidarity so as to achieve joint European success.

The setbacks in Europe today are not the result of social rights. They are the result of the political weakness in not applying the political convergence and the political federalism which the single currency demanded. The players focused on the beauty of an instrument while refusing to sign up to implementation of the objective for which it was designed.

There is a risk of the same thing happening with the charters on social rights. We fight for the instruments while disregarding the true objective. We should focus on the causes again rather than on interests.

De Gaulle said that when people believed in the greatness of France, they achieved great things; when they did not, they achieved very little.

The social rights charters should lead us to achieve great things. We must join forces and take action.