Seminar on the Reform of the European Social Charter
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The European Committee of Social Rights and the collective complaints procedure: present and future

Intervention by Luis Jimena Quesada, President of the European Committee of Social Rights

Madam President, Madam Deputy Secretary General, Ladies and Gentlemen,

I feel very honoured to participate in this seminar and wish to express my gratitude to the Finnish authorities for their initiative on the occasion of the 50th anniversary of the European Social Charter to launch a constructive reflection on the future of this treaty and its supervisory mechanism. The initiative of Finland is certainly in line with its longstanding commitment to the Charter: as we know, Finland was among the first countries to ratify the Revised Charter and the collective complaints procedure and it is the only country having recognized the competence of national NGOs to lodge collective complaints.

My presentation will focus on two aspects: firstly, the present status of the European Committee of Social Rights in the light of the collective complaints procedure and the real impact of this mechanism in terms of effectiveness of social rights; and, secondly, some proposals for strengthening the Committee's judicial profile while improving the visibility of the system of collective complaints. In both cases, I will take a comparative approach and try to situate the Committee and the complaints procedure in the international human rights framework.

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What is, therefore, the current situation of the Committee and how is the Committee perceived?

The collective complaints procedure has profoundly changed the image of the Committee, whose functions are becoming more and more judicial. The independence and impartiality of the Committee and of its members, its methods of interpretation, the format of its decisions, the external impact of its case law and the examples of implementation of its decisions confirm this increasingly judicial image.

The non-permanent status of the Committee and its members is not necessarily a barrier to its judicial dimension, especially if we consider the support given by the Secretariat of the Committee. It is worthwhile recalling that the European Court of Human Rights was not permanent until the entry into force of Protocol No. 11, and the Inter-American Court of Human Rights, which has a limited competence in the field of social rights, especially through the 1988 San Salvador Protocol, is still not permanent.

The collective complaints procedure is adversarial in nature and guarantees due process of law. It also provides for the possibility of holding public hearings. By the end of 2010, 63 complaints had been registered (since the entry into force of the procedure in 1998). The average duration of the admissibility stage was 4-5 months, while the average duration of the phase on the merits was less than 11 months. This represents a very reasonable duration of the procedure. Unfortunately, it is evident that in many cases, including cases of serious violations of fundamental rights, it may take a substantial amount of time before actual measures are taken to remedy the situation.

The increasing number of collective complaints is the result of the still more active involvement of trade unions and civil society organizations. Organizations entitled to intervene in the collective complaints procedure have a crucial role to play in filing serious complaints that, in turn, induce the respondent governments to take a serious approach and to provide pertinent responses.

The interpretative methods and techniques used by the Committee have also reinforced its judicial image. These methods and techniques of interpretation are similar to those used by the European Court of Human Rights (positive obligations, national discretion in the manner the obligations are implemented, non-discrimination clause, having regard to other international human rights instruments, etc.). As a result, the Committee's decisions, which are of a binding character, generate greater acceptance and compliance by States Parties.

The impact of the case law of the Committee has increased considerably. For example, the European Court of Human Rights referred to the Committee's work in important cases revealing synergy or convergence of reasoning (*Judgment Sørensen and Rasmussen v. Denmark* of 2006) or in cases involving an evolutive interpretation of the European Convention on Human Rights in line with the Charter (*Judgment Demir and Baykara v. Turkey* of 2008).

Correspondingly, in developing its case law, the Committee is often inspired by the case law of the European Court of Human Rights, and in some areas it also takes into account the case law of the Court of Justice of the EU as well as the judgments of the Inter-American Court, the General Comments of the UN Committee of Economic, Social and Cultural Rights and the work of the ILO Expert committee.

This shows a mutual enrichment in the context of a global judicial dialogue in which the Committee participates. The Committee also systematically takes into consideration the work done by other institutions and monitoring bodies, especially those within the Council of Europe (Commissioner for Human Rights, ECRI, etc.).

In addition, it should be noted that the practice shows significant examples of national implementation by *legislative authorities* (European Roma Rights Centre v. Bulgaria, Complaint No. 48/2008: amendment of the Social Security Act in order not to suspend or suppress access to unemployment benefits to people in precarious situations), *executive authorities* (Interights v. Croatia, Complaint No. 45/2007: withdrawal from the educational system of textbooks containing discriminatory statements on the grounds of sexual orientation) *or judicial authorities* (International Federation of Human Rights Leagues v. France, Complaint No. 14/2003: enjoyment of the right to medical assistance by children of illegal immigrants).

These examples give visibility and credibility to the work of the European Committee of Social Rights and they demonstrate that the Charter is a binding and living instrument.

However, it is necessary to take further steps in order to improve the follow up of the decisions taken by the European Committee of Social Rights to ensure their proper and actual implementation.

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Now, Ladies and Gentlemen, what ideas or proposals for the future could be made?

The position of the Committee and its members could be strengthened by giving the members a permanent or semi-permanent status (at least, in respect of some of its members: for example, members of the Bureau); this would allow them to cope with their increasing and more and more complex workload.

In parallel, it is obvious that the status of the staff of the Secretariat should be improved in qualitative terms (professional consideration through a grading that corresponds to their real responsibilities) and in quantitative terms (more staff are indeed needed).

It is true that the most important part of the workload derives, for now, from the reporting system. The reporting procedure has played and continues to play a key role in ensuring compliance with the Charter. Nevertheless, the collective complaints procedure deserves special attention in the international framework for protection of human rights.

In fact, any reform of the Charter will largely depend on the success and further development of the collective complaints procedure and the decisive factor in this respect will be whether this procedure is accepted by more countries.

While the transition from the 1961 Charter to the 1996 Revised Charter by all States is very important (13 States are still Contracting Parties to the 1961 Charter and already 30 are Parties to the 1996 Revised Charter), the main priority should be the acceptance of the collective complaints procedure.

I share the common belief that the success of the European Social Charter lies in the existence of an effective control mechanism. Therefore, one of our main challenges consists in convincing more Member

States of the Council of Europe to accept the complaints procedure either through ratifying the 1995 Protocol or by making a declaration in conformity with Article D of the revised Charter.

I also want to recall that States which have not accepted the procedure are nonetheless affected by the decisions of the Committee in complaints, since the Committee's case law elaborated in the context of this procedure is subsequently applied in the context of the reporting system, and thus binds all States Parties to the Charter. Furthermore, States not having accepted the collective complaints procedure system are not invited to participate in the proceedings which are restricted to the 14 countries bound by the procedure, and they are thus largely deprived of the possibility of having an input.

The indivisibility of all human rights, including social rights, also means the indivisibility of guarantees. The acceptance not only of the Revised Charter, but also of the collective complaints procedure should be required from all the Member States of the Council of Europe, as these instruments reflect the essence of the three pillars founding the organization: *rule of law, democracy* and *human rights*.

In order to enhance the status of the Committee and its members, it is further my view that members should be elected by the Parliamentary Assembly (as it is the case for the judges of the European Court of Human Rights). This is in fact foreseen by the only provision of the 1991 Turin Protocol which is not yet in force. In addition, consideration should be given to adopting a system whereby qualified candidates are pre-selected akin to the system that is in place for the election of the judges of the Court of Justice of the EU.

In addition, one could envisage the possibility of replacing the system of a six-year term, renewable once, by a nine-year term non-renewable, similar to that established by Protocol No. 14 in relation to the European Court of Human Rights.

New developments at the universal level, in particular, the adoption of an individual communication system under the International Covenant on Economic, Social and Cultural Rights through the 2008 Optional Protocol requires once again that consideration be given to introducing a mechanism at the European level allowing individual applications in matters of social rights, either before the Committee or before the Court.

Nevertheless, the aim of the current process of reform in the context of the 50th anniversary of the Charter must be to strengthen the collective complaints procedure.

This procedure has an important preventive nature, since it allows for a very speedy treatment of the situations at stake. Moreover, the Committee's intervention is characterized by a global approach without victim requirements and necessity of exhausting domestic remedies and it thus has potential to avoid a multitude of individual applications to the Court.

This militates in favour of further developing the links between the European Committee of Social Rights and the European Court of Human Rights, stressing once again the indivisibility and complementarity of the organs of the Council of Europe: cases declared inadmissible by the Court which concern social rights could be redirected to the Committee, e. g. suggesting to the applicants that their application could be transformed into a collective complaint.

In practice, contacts, institutionalized or informal, between the Court and the Committee, and/or between their respective Registry/Secretariat are important and may lead to a positive and successful outcome.

These types of synergies should also continue to be developed and extended to other jurisdictions or bodies in the international human rights framework; in the European context, notably in relation to the Court of Justice of the EU.

Finally, the reform of the Charter implies improving the visibility of the collective complaints mechanism, especially in terms of better publicity and execution of the decisions adopted by the European Committee of Social Rights:

- Firstly, the deadline of four months to make public the decisions on the merits of the Committee is unreasonable, especially when considering that all documents constituting the file of each case are immediately published. Consequently, it should be an institutionalised practice to encourage the countries concerned to publish the report of the Committee without delay. The precedents of

other monitoring bodies could be instructive and useful in this respect ;

- Secondly, the Committee of Ministers should play a more active political role in the follow up of the monitoring procedure through supervising the implementation of the decisions of the Committee, preferably in a manner that approaches the role which the Committee of Ministers exercises in the framework of the execution of the judgments of the European Court of Human Rights;
- Thirdly, the Parliamentary Assembly, being an ideal forum to raise awareness and debate on social rights, could intensify its consideration of the Charter and the case law of the European Committee of Social Rights when adopting recommendations or organizing promotional activities of the Charter;
- Lastly, the Charter should be a more prominent reference when defining the priorities of the Council of Europe (fight against discrimination, racism, protection of vulnerable target groups such as Roma communities, children, foreigners, people with disabilities), taking advantage of the wide scope of the Charter and its effective monitoring mechanism.

Madam President, Madam Deputy Secretary General, Ladies and Gentlemen,

In conclusion, let me express my hope that the competent decision-making bodies of the Council of Europe will succeed in adopting the appropriate political and institutional decisions in this year of the 50th anniversary of the European Social Charter and that in doing so it will take into account some of the practical proposals and solutions that I have put before you today.

Thank you very much for your attention.