

**SEMINAR TO MARK
THE 10TH ANNIVERSARY
OF THE REVISED CHARTER**

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GENERAL REPORT

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I am well aware of the provisions of Article 2§1 of the Revised Charter that all have the right to reasonable working hours. So for all your sakes, and in particular for the sake of our interpreters, I’m going to be very brief this evening.

The Council of Europe Human Rights Commissioner referred to himself unjustly as a flamingo as he was prevented from participating in the whole seminar (because of a meeting with the Ministers’ Deputies). This echoed the comments of one of the participants who described the Council of Europe as a flamingo, resting on one human rights leg (civil and political rights) without using the second one (economic and social rights). In contrast, my task today has been that of an elephant, in other words, to sit here and to listen to and memorise what has been said, without saying much myself. Now, I have to try to give some coherent account of everything that we have discussed today, which I think is an impossible job, given the range, complexity and rigour of much of today’s discussion. All I can do at the close of our day is to give a flavour of what we have debated, bring our discussions together and perhaps send you on your way home with some lasting sense of some of the practical steps that could be implemented – as agreed without changes in the treaties - in order to enhance the Social Charter’s impact in Member States and within the activities of the Council of Europe.

Our core theme today I think has been very simple: how to maintain the momentum brought about by the introduction of the revised Charter ten years ago. We all know the difficulties that exist at present with the Charter process, and they have been highlighted extensively in our discussions. In particular, we are all aware that the public profile of the Charter is not what we would all wish it to be, and the emphasis on social economic rights that all the European national governments have committed themselves to respecting would suggest that it should be. We have been looking for ways to try and cope with this problem of profile, and to try and give new life and new effectiveness to the Charter process.

It is very important that we are having this discussion now: the first rapporteur this morning, Ms Zorlin, emphasised the point that we live in times of changing social and economic patterns. We live in an era of globalisation, and of quite dramatic social change. Governments need flexibility to cope with these changes, or to make reforms which they see as necessary in response to evolving economic and social trends. Indeed, this era of globalisation and rapid economic transformation makes it all the more important that we have a firm floor of basic protection of social, economic rights in place. It is precisely in these times of flexibility and change that there is a need for an effective mechanism to ensure that the core social and economic rights recognised by the majority of European Governments are recognised and respected. It is also worthwhile pointing out that the discussion of how best to protect these

social rights is not just being had here in Europe; it is taking place in South America, in North America, in South Africa. It is even taking place in the rapidly modernising China. This is a global issue. But for us here in Europe, the challenge is how do we give better effect to the Charter mechanism, our own system that has been in place since 1961, for protecting this basic floor of rights.

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I'm going to, out of our discussions, identify five major themes:

The first theme is the issue of relations with national governments.

Speaker after speaker has emphasised the importance of the control mechanism of the Charter – the European Committee on Social Rights (ECSR) – dialoguing closely with Governments that must implement the Charter. The ECSR should provide clearer information in its Conclusions within the reporting system and in its decisions relating to collective complaints: What is a breach? Why is a situation in breach? Why is a situation in conformity? Governments should have clear guidelines on how to bring the situations into conformity. A priority should be the further and better elaboration of the reasoning behind conclusions and decisions of ECSR.

There is also a need for a dialogue and a sharing of information, and there have been various suggestions made as to how this dialogue can be improved and enhanced this dialogue. The drafting of the Form for submission of reports by the ECSR could improve this dialogue as it would assist Governments by indicating more precisely what information the ECSR needs in order to assess a situation. It could also reduce the number of questions posed by the ECSR which might please the national governments.

It's also worthwhile I think to point out that several speakers, and Professor Luis Jimena Quesada in particular, emphasised how important it is that the dialogue also extends to include regional and federal authorities, and also across all the different levels of Government structures who may have some responsibility implementing the requirements of the Charter.

Mrs Jane Dinsdale this morning, along with Professor Jean-François Akandji-Kombe, Professor Olivier de Schutter and others, identified a number of practical proposals which should be taken into consideration. First of all, there may be a good case for greater use of national impact assessments as to the extent to which the Charter's provisions are being complied with, and where areas of possible improvement might exist. There may also be a case for the development of databases, surveying how different Charter findings are implemented in different states, who implements them, and who takes responsibility for securing compliance. It could also be important to conduct have a comparative study as to how different national Governments implement the Charter. This could be useful for both the ECSR, and the national governments themselves. There is also a need for additional training, and for more formal and informal opportunities for structured dialogue between the ECSR and the national governments.

There exist several possibilities of meetings between the ECSR and Governments:

- Meetings in order to prepare for the ratification of the Revised European Social Charter or to prepare the first national reports (financed by Joint Programmes with the EU);
- Meetings on non accepted provisions of the Revised European Social Charter (five years after the ratification) (financed by the CoE budget);
- Plan of Action meetings on guaranteeing social rights (financed by the 3rd Summit Plan of Action).

In addition, informal meetings between the ECSR and governments on specific issues may be useful.

Therefore, governments could look at some of these proposals and see if they could make good use of them in order to increase dialogue with the ECSR.

We have also discussed how important it is to spread knowledge of the Charter among the judiciary of our different countries, as well as among lawyers, practitioners, and other people involved in national legal system. We need, as discussed earlier today extensively, judges, practitioners, commentators, politicians, NGOs and civil society in general to take up Charter arguments, to give the Charter more visibility in legal and political argumentation, and in the application of legal instruments. It is only by the Charter having more life in national legal systems and in national political systems that the Charter will gain the visibility and the prominence that the European Convention on Human Rights has very successfully acquired.

The second theme is the question about the Council of Europe itself: what can the Council do better?

There was discussion interestingly today about the role of the Parliamentary Assembly. The Parliamentary Assembly is an absolutely essential tool for promoting compliance with and awareness of the Charter in the form of questions, reports, and reviews.

More specifically the Parliamentary Assembly could increase its role by:

- encouraging ratifications, in particular of the collective complaints procedure;
- encouraging acceptance of new provisions;
- following up decisions of the Conclusions and decisions of the ECSR through its monitoring procedures and through Parliamentary questions.

The role of the Human Rights Commissioner is also important and we have heard him outline his views on the Charter and what he sees as his role. The Commissioner has already indicated that he hopes to encourage increased ratifications of the Revised Social Charter and of the collective complaints protocol.

It would be interesting to think further perhaps, to think of a few additional ideas, just to throw into the pot of ideas that we are stirring today. Could the Commissioner intervene in collective complaints, or even make observations on national reports? Could the Commissioner at a future date refer questions to the Committee? These are merely suggestions that were discussed today that are valuable in helping broaden our horizon of possibilities.

It is also essential that the Committee of Ministers play its role in supervising enforcement and compliance with the Charter. Several speakers – both from the academic network and from the ECSR, and from governments themselves – made the point today that perhaps the

Committee of Ministers needs to be more active in securing the implementation of decisions and conclusions.

In particular, the Committee of Ministers should encourage, assist and put more pressure on states party in breach of the Charter to bring the situation into conformity both under the reporting system and collective complaints procedure. As a priority attention should be given to long standing conclusions of non conformity.

The ECSR itself perhaps also has a role to play in enhancing the prominence of the Charter. We had a discussion on the structure of the Committee, the composition of the Committee, the method of election – all of these different issues were discussed.

In particular further consideration should be given to how the ECSR is elected, there is possibly a role for both the Parliamentary Assembly and the Committee of Ministers. In addition there could be a hearing for candidates for the ECSR as there is for candidates for the judges of the European Court of Human Rights.

The third theme is the relationship between the Charter and the ECHR.

There was an extensive discussion of the relationship between the ECHR and the Charter, to which Professor Akandji-Kombe contributed with his detailed and incisive paper. Both human rights instruments are rooted in the same soil, and both protect fundamental rights. The Convention tends to overshadow the Charter, and yet there are ways in which both instruments can cross-fertilise the other. There are ways in which the Convention can be used to give some effect to social rights, and the Court could perhaps make more reference to the conclusions and decisions of the ECSR. One way to encourage cooperation could be to facilitate informal meetings between the Court and/or its registry and the ECSR and/or its secretariat.

The fourth theme is the role of the European Union, and the relationship between the European Union and the Social Charter.

You heard Professor Olivier de Schutter who gave a very extensive, detailed and persuasive account of how the European Union needs to take up the Charter with greater enthusiasm than has been the case. The EU bodies perhaps should recognise the Social Charter as the primary instrument for defining the ‘social rights’ increasingly recognised in the EU legal order, while the decisions and conclusions of the ECSR should be cited as a major reference point, especially in carrying out impact assessments on the impact on fundamental rights of EC legislation and evaluating the application and results of Directives.

The fifth theme is the role of civil society.

The influence and role of NGOs cannot be underestimated. It is very interesting for me as an academic in the UK to see how the impact of NGO advocacy over time made the European Convention the quasi-constitutional instrument it has become in the UK. That is a lesson on what NGOs can do, and how they can transform the public debate. We have discussed today how NGOs and other elements of civil society can better use the Charter mechanisms, and feed into the work of the ECSR. Without that organic link, the Charter is always going to remain underdeveloped and under-exposed. It’s also important – and again Jane Dinsdale made this point this morning – to enhance the role and the relationship with national human rights institutions instruments, to encourage greater visibility of the Charter and to perhaps create greater links between the Council mechanisms and these national institutions. We also now have a European network of academic experts on the European Social Charter, and as a

member of that network I see our role as not alone training future students, but also spreading awareness and knowledge, and bringing an academic perspective to some of the central issues surrounding the Charter to perhaps throw up new solutions, as well as also perhaps throwing up new problems!

Some practical proposals were made. An NGO friendly website could be established: a clear indication of reporting themes and deadlines would enable NGOs to submit shadow reports, while a clear and NGO-targeted presentation of the collective complaints procedure might assist NGOs in preparing such complaints. NGOs themselves should share their experiences and knowledge with other NGOs, in particular those with participatory status. This might increase awareness of the collective complaints mechanism, and highlight its strengths as an easily accessible human rights mechanism, in particular for groups who may have difficulties in accessing the more formal mechanisms.

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So we have discussed five themes in relation to national governments and their responsibilities, Council of Europe mechanisms, the European Union relationship, and links with civil society. I want to conclude by emphasising that we are talking today about something tremendously important, about how best to ensure the indivisibility of human rights, and to ensure the effectiveness of social and economic rights. The Charter has its flaws as a mechanism – every mechanism does – and I have often heard it said that the Charter is a fatally flawed instrument. Interestingly, people said the same thing about the European Convention, in particular citing its absence of a free-standing equality guarantee, fifty years ago. No convention, no rights instrument is fatally flawed. You can breathe life into it, as has been done with the Charter, and use that momentum to push forward effective protection of social and economic rights, and much can be achieved.

One of the first things that was said this morning was that the Charter does not involve imposing a single, ideological, social model upon all member states. That is worth emphasising again. There is real fear in some national governments that this is the case: everyone has been very polite today, but the fear is there. But the Charter is not and cannot be about imposing a single, uniform social model, which would be impossible and counter-productive in a diverse Europe. What the Charter is about is about ensuring that there is adequate protection for the core and essential social and economic rights that every European Government has signed up to at UN level, that there is rigorous and effective protection for these rights, and that these effective protection exists at regional, national, Council of Europe and EU levels. Only through effective implementation of the Charter will we achieve an indivisibility of protection between social and civil-political rights.

APPENDIX: List of Recommendations

– in respect of the ECSR:

- The reasoning behind the Conclusions and decisions of the ECSR should be further and better elaborated, and better reflected in the texts;
- The Form for submission of reports should be drafted by the ECSR;

- The number and types of meetings with national Governments should be increased;
- Links with the National Human Rights Institutions (NHRI) and NGOs should be developed.

– in respect of the Committee of Ministers:

- The Committee of Ministers should encourage, assist and put more pressure on states party in breach of the Charter to bring situations into conformity both under the reporting system and collective complaints procedure, with priority attention given to long standing conclusions of non conformity

– in respect of the Parliamentary Assembly:

- To encourage ratifications, in particular of the collective complaints procedure;
- To encourage acceptance of new provisions;
- To follow conclusions and decisions of the ECSR through its monitoring procedures and through Parliamentary questions.

– in respect of the Human Rights Commissioner:

- The Human Rights Commissioner should encourage increased ratification of the Revised Social Charter and the collective complaints protocol;
- Consideration should be given to his involvement in the collective complaint procedure.

– in respect of the ECHR:

- The ECHR could make more reference to the conclusions and decisions of the ECSR;
- Informal meetings could be encouraged between the Court and/or its registry and the ECSR and/or its secretariat.

– in respect of the EU:

- EU bodies should recognise the Social Charter as the key instrument for defining the ‘social rights’ increasingly recognised in the EU legal order;
- The decisions and conclusions of the ECSR should be taken into consideration as a major reference point, especially in carrying out impact assessments on the impact on fundamental rights of EC legislation and evaluating the application and results of Directives.