

## “HOW TO MAKE THE BEST USE OF THE COLLECTIVE COMPLAINTS PROCEDURE UNDER THE EUROPEAN SOCIAL CHARTER”

22 September 2015

### SUMMARY

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In the framework of the **Turin Process for the European Social Charter (ESC)**, an awareness-raising and training for non-governmental organisations took place in Brussels on 22 September, organised by:

- The Conference of INGOs of the Council of Europe
- Social Platform

With the support of:

- The European Economic and Social Committee (consultative body of the EU),
- The Academic Network on the European Social Charter and Social Rights (ANESC)

### **This initiative achieved the following objectives**

- It informed INGOs about the collective complaints procedure (CCP) under the European Social Charter, including the relationship with other international monitoring procedures concerning human rights;
- It highlighted the key role of INGOs in the application of the CCP in order to better protect social rights at a pan-European level;
- It strengthened the capacity of INGOs to introduce collective complaints under the European Social Charter
- It brought together different institutional perspectives, in particular between the INGOs working at EU level and those acting at the Council of Europe level.

The discussions during the workshops were organised on the following themes and articles selected by the Conference of INGOs and the Social Platform on the basis of the indications from the invited INGOs:

- Employment and equal opportunities – focus on youth 1§2; 4§1; 7§§5,6; 9; 10§2;
- Right to social protection and health :11, 13, 14, 19§§2,4c; 30
- Rights of children and their families 7; 16; 17;
- Employment and equal opportunities – focus on gender 1§2; 4§§1,3; 8; 20; 27.

## Global overview and debate

The Turin process aims to promote the opportunity that the CCP presents for the direct involvement of NGOs and social partners in the monitoring activities of the ESC, and to highlight the fact that it represents, in this sense, a more transparent, open and democratic system in comparison to the one based on national reports (reporting system).

The multi-stakeholder perspective of the training course highlighted that the Turin process should also be carried by INGOs to increase the progress of social rights in member states. It was mentioned that the collective complaints procedure can also be a part of an NGO's advocacy strategy. If the collective complaints procedure was accepted by more states - only 15 have accepted the relevant Protocol so far - this could help to reduce the number of cases before the European Court of Human Rights (ECtHR); and contribute to restoring the rights of vulnerable groups.

The independence of the ECSR was also underlined. The Committee of Ministers of the Council of Europe cannot reverse the legal assessment made by the ECSR; ultimately, it is up to the ECSR to determine whether the situation in a country has been brought into compliance with the Charter;

The implementation of decisions of the ECSR is confronted with the complexity of national legislation. Sometimes it is constitutionally impossible for a state to decide 'from one day to another' to stop the application of a law because of a decision of the ECSR. This has a direct impact on service providers, including NGOs, and access to rights by the population. That's why the immediate measures under the ESC are important and useful for the INGOs which are concerned by the urgent crises in the states of the Council of Europe.

### **During debates and workshops, participants expressed particular interest in the following aspects :**

- the relative short duration of the CCP in comparison to the procedure before the ECtHR;
- given its collective nature, a complaint before the ECSR is likely to reduce the number of applications before the ECHR;
- the conditions of admissibility of complaints were less restrictive than those before the ECtHR;
- complaints may be lodged without domestic remedies having been exhausted;
- the complementarity of the reporting system and the CCP, conclusions based on reports, may be a stepping stone for a solid collective complaint;
- it was important to value those two systems of monitoring for their complementarity and added value;
- country by country information relating to the implementation of the Charter available in national reports / ECSR conclusions in the framework of the reporting system;
- ECSR conclusions / decisions set out the law - national authorities were required to take measures to give them effect under domestic law;
- courts can declare invalid, or set aside, domestic legislation if the ECSR rules that it is not in compliance with the Charter;
- Committee of Ministers cannot reverse legal assessment made by the ECSR; it falls to the ECSR to determine whether a situation has been brought into compliance with the Charter;
- the CCP does not lock States Parties in opposition ; acceptance of the CCP by States Parties and their direct involvement in the procedure allows for participation and contribution to the establishment of ECSR related case-law;
- contrary to the ECtHR's system, there is no victim, no sanction, but rather a possibility for finding solutions to major political problems together, in a collaborative manner, with the support of all actors based on dialogue and cooperation;
- the necessity of explaining that States may find solutions before the end of the proceedings and change their policy/law/practice, which may be taken into consideration and avoid a negative decision by ECSR;
- the importance that complainant INGOs establish a direct contact with the States concerned in view to the implementation of the ECSR's decisions;
- detailed information on ECSR case-law in respect of on-going / processed complaints / national reports can be found in the HUDOC data base, the ECSR's Digest (updated version to be published before the end of 2015) and Council of Europe/Charter's website (new version to be published before the end of October 2015).

**To strengthen the authority of the CCP, INGOs can contribute by:**

- Recalling the principles of the indivisibility, interdependence and interrelation of fundamental rights, and opposing the idea that social rights are inferior to civil and political rights;
- Creating synergies between European Union law and the ESC;
- Strengthening the CCP by the quantity of collective complaints lodged and considered as admissible.

**INGOs should take the “best way” to reach its aim, by distinguishing between the monitoring mechanisms, depending on if they wish to:**

- Defend the rights of an individual at the ECtHR;
- Contribute to the monitoring process of the Council of Europe conventions/treaties or submit observations or an alternative report on a set of monitored rights;
- Enter into dialogue with the government on the non-respect of the rights of some social groups under the ESC.

**INGOs are encouraged to strengthen their capacity and role by:**

- Fulfilling the accreditation procedure with the ECSR;
- Developing formal and informal exchanges of practices between NGOs, trade unions and academics partners,
- Relying on collaboration with national NGOs, to collect the tangible facts of a violation of some groups of articles set out in the ESC, in the States Parties which have ratified the Additional Protocol on the CCP;
- Reading the national reports presented by the States Parties in the framework of the reporting system of the ESC;
- Introducing the complaint and preparing the relevant answers to the government's arguments.

**The following INGOs were represented at the event:**

European Students' Forum (AEGEE Europe); European Youth Forum (YFJ); European Trade Union Confederation (ETUC); International Federation for Human Rights (FIDH); Journal of Balkan Studies; International Association of Charities (AIC); Social Platform; European Network of Social Integration Enterprises (ENSIE); Defence for Children International (DEI)-Belgium; European Committee for Home-based Priority Action for the Child and the Family - EUROCEF; ATD Fourth World; Advocacy Centre on Council of Europe Standards (ACCESS); European Women's Lobby (EWL); Soroptimist International of Europe; Platform for International Cooperation on Undocumented Migrants (PICUM); European Federation of National Organisations Working with the Homeless (FEANTSA); Disable People International - Region Europe; AGE Platform Europe; SOLIDAR; Churches Commission for Migrants in Europe (CCME); Conference of European Churches (KEK); The European Council of Police Trade Unions (CESP); European Council on Refugees and Exiles (ECRE); European Social Action Network (ESAN); International Planned Parenthood Federation European Network (IPPF EN); Council of Europe INGOs Conference; European Bars Federation (FBE); CARITAS EUROPA; International Alliance of Women; Eurochild (*see list of participants*)

**The following other stakeholders contributed to the event:**

- The European Committee of Social Rights (ECSR), represented by its Austrian member;
- a representative of a State party to the Revised Social Charter and the CCP (the Netherlands),
- The Parliamentary Assembly of the Council of Europe, represented by its Vice-President, who is also General Rapporteur of the High-Level Conference on the European Social Charter, held in Turin on 17-18 October 2014;
- The Academic Network on the European Social Charter and Social Rights, represented by its General Coordinator;
- Members of the Council of Europe secretariat: the : the Department of the European Social Charter,, Directorate General of Human Rights and the Rule of Law and the Civil Society Division , Directorate General of Democracy
- The European Economic and Social Committee of the EU, represented by the President of one of its institutional Groups.