

## **European Social Charter: the Turin Process**

Strasbourg, 4 December 2014  
Palais de l'Europe

Seminar in honour of  
Luis Jimena Quesada, President of the European Committee of Social Rights (2011-2014)  
Rüçhan Isik, Alexandru Athanasiu, and Jarna Petman, Members of the Committee

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## Programme

**14.30 Opening remarks**

Philippe Boillat, Director General DGI – Human Rights and Rule of Law

**14.45 First Section: The Turin Conference – starting point for the Process**

**General Report of the Conference**

Michele Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe

**The contribution of the Academic Network to the Conference**

Jean-François Akandji-Kombé, Coordinator of the Academic Network on the European Social Charter and Social Rights, Professor, Sorbonne Law School, Pantheon-Sorbonne University

**15.45 Second Section: Exchange of views on two series of proposals made during the Conference**

**15.45 - 16.45**

**The taking into account of the European Social Charter at the national level (by parliaments, governments and courts)**

Olivier De Schutter, Member of the UN Committee on Economic, Social and Cultural Rights, Professor, University of Louvain, Centre for Philosophy of Law

**Reflections of the Committee**

Colm O’Cinneide, General Rapporteur

Discussion

**16.45 - 17.45**

**The Social Charter and the law of the European Union: after the conflicts, synergies**

Giovanni Guiglia, Professor, University of Verona, Department of Law

**Reflections of the Committee**

Colm O’Cinneide, General Rapporteur

**Discussion**

**17.45 Concluding remarks**

Christos Giakoumopoulos, Director of Human Rights, Council of Europe

## Opening address

### Philippe Boillat, Director General DGI - Human Rights and Rule of Law

Excellences,  
Ladies and Gentlemen,  
Dear Friends,

I am very pleased to be here this afternoon to open this workshop. I extend a particularly warm welcome to all the members of the European Committee of Social Rights, to the persons who will be addressing the workshop, in particular the Rapporteur of the Turin Conference, Mr Michele Nicoletti, and to the *keynote speakers*, as we say in French: Professor Jean-François Akandji-Kombé, Professor De Schutter and Professor Giovanni Guiglia. I would also like to welcome the Ambassadors and other representatives of Council of Europe member states, who, through their presence, are demonstrating the importance they attach to the Social Charter and to the development of social rights. We are particularly pleased to see them here today.

Ladies and Gentlemen, today's workshop is continuing a tradition, which I consider to be a "good practice", and that is the holding of an informal meeting to pay tribute to the members who are leaving the European Committee of Social Rights. These workshops therefore offer the perfect opportunity to compare ideas, once again, in an informal manner, on subjects relating to the European Social Charter, and I think I can say that to date these workshops have always been stimulating and fruitful.

I would now like to pay a special tribute to the outgoing President of the European Committee of Social Rights, Professor Luis Jimena Quesada.

Mr Jimena Quesada has had the privilege of presiding over the Committee for a four-year period of office, starting in 2011 and ending in 2014.

I would briefly like to underline some of the highlights of his presidency.

Firstly, with regard to the reform of the monitoring mechanisms, there was the organisation of the celebrations to mark the 50<sup>th</sup> anniversary of the 1961 Charter. On this occasion the Committee of Ministers recognised and supported the Charter by adopting a solemn declaration on 12 October 2011. Then, there was the proposal to reform the Committee's reporting system, which finally led to the reform decided by the Committee of Ministers in April this year. Thirdly, I would mention the revision of the Committee's Rules of Procedure, which was adopted with a view to improving the collective complaints procedure, in particular through the extension of the possibility of intervention for third parties and of immediate measures. The many meetings with States parties to both the Charter and the revised Charter as well as with states which have not yet ratified the Charter; I would draw particular attention to the latter because we very much hope that these states will join the revised Charter very soon (I am thinking in particular of Switzerland and Monaco). I would also mention the opening of institutional dialogue with the European Commission on the subject of the relationship between EU law and the European Social Charter, as well as with the Court of Justice of the European Union. At the last Conference in Turin we saw how important it is that this co-operation and these exchanges between Strasbourg, Brussels and Luxembourg continue and be strengthened. I would in particular draw your attention in this

context to the adoption of a specific working document on the relationship between EU Law and the Charter.

Of course, I have not forgotten the strengthening of dialogue with the United Nations, in particular on the subject of procedures for individual petitions, such as those established by the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Finally, I would mention the close co-operation with the Parliamentary Assembly by means of the selection of conclusions of non-conformity on which to take action in the form of standard-setting initiatives or other parliamentary activities at national level.

And, finally, this very important regular dialogue with the Committee of Ministers of the Council of Europe in the form of annual exchanges of views, and, given that you have already taken part in these exchanges, I do not really need to tell you, Mr President, how highly the Committee of Ministers esteems your Committee.

I think you will agree with me that this is an impressive list of achievements and I would like, in my own name and on behalf of all the participants in this seminar, to extend our warmest gratitude to Mr Jimena Queseda and to wish him all the very best. Thank you very much.

I would now like to pay tribute to 3 other persons who will be leaving the European Committee of Social Rights: Mr Isik and Mr Athanasiu, who is unfortunately unable to be here today for health reasons, and Ms Jarna Petman.

I would like to underline both the human and the professional qualities of these three outgoing members. You are bequeathing a rich legacy to the European Committee of Social Rights through the work you have done over the years and you too deserve our gratitude. We in the Secretariat hope that the four persons who are today leaving the Committee will not forget it and that they will continue to be active ambassadors of the Charter and of social rights in general, and that they will be able to take part in the activities that the Council of Europe organises to raise awareness of the Charter in member states and also in the training that we provide in universities. We would particularly appreciate it if they continued to contribute to the literature on the Charter through their publications. Please accept our warmest thanks.

I would now like to talk very briefly about the specific objectives of this afternoon's workshop. As I already mentioned, it follows on from the high-level conference on the Charter which recently took place in Turin in October, and, of course, this workshop will concern the Turin Process, as this is what we have decided to call it from now on. The Charter restarts in Turin, was the slogan of the Turin Conference.

As you no doubt already know, political decision-makers of our member States and their institutions and of the institutions of the European Union attended the Turin Conference to discuss the strengthening of the Charter with a view to a more effective implementation of its provisions. This process is in direct line with the strategic vision which the Secretary General of the Council of Europe has just presented to the Committee of Ministers at the beginning of his second term of office, and, as you know, the strengthening and promotion of the Charter is one of the Secretary General's strategic objectives.

But I believe that we must now put our words into action, move on from the exciting ideas that were presented and discussed in Turin to concrete achievements. And today's meeting gives us the opportunity to discuss the Turin Process, taking as a basis the results of the Conference which will shortly be presented to us by Mr Michele Nicoletti, who made a

brilliant and concise summary of all the debates that took place in Turin. We are looking forward to a very informative initial discussion on possible reforms.

I now declare this workshop open and wish you very fruitful discussions and interesting debates.

**Régis Brillat**

Head of Department of the European Social Charter, Executive Secretary of the European Committee of Social Rights

Thank you very much, Director General, for these introductory remarks which bring us directly to the theme of today's meeting.

I would now like to start with the first section of our workshop and immediately to give the floor to Professor Nicoletti, Vice-President of the Parliamentary Assembly, who was the General Rapporteur of the Turin Conference.

## Section I: The Turin Conference – starting point for the Process

### General Report of the Conference

Michele Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe

Dear member of the European Committee of Social Rights,  
Distinguished Ambassadors,  
Ladies and Gentlemen,

First of all, I would like to thank you for inviting me to take part in this workshop in honour of Mr. Quesada Mr Isik, Mr Athanasiu, and Ms Petman, on the occasion of their last session as members of the Committee. I am conscious that this workshop represents a timely opportunity to reflect in the context of our Organisation on the follow-up of the High-level Conference on the European Social Charter held in Turin just a few weeks ago.

At the Conference, in his opening speech, the Secretary General of the Council of Europe, Mr Jagland, observed that the Conference is a very important milestone, but it is merely the beginning of a long process, a process that could appropriately be called the Turin Process. I reiterated this idea in my final speech and it is true that the Conference set a benchmark for continued action in respect of the Social Charter. Let me add now that I also agree with the Secretary General on the idea that the success of Conference will be defined by the quality of its follow-up.

I was entrusted with a challenging task of preparing the General Report of the Conference. It was a pleasure and an honour for me. I am currently drawing up this document with the intention that it will be circulated to all participants before the end of the year. The report could constitute an important driving force for the Turin Process. When promoting the Report, I shall remind Altiero Spinelli's remark: "The road forward is neither easy nor safe but must be pursued, and will be". I personally consider the Conference a success. I am saying this in relation to the importance of the actors involved, the quality of the ideas and proposals put forward and, above all, because I am convinced, the Conference has fully achieved its objectives.

The Conference gathered approximately 350 people, including delegations from 37 European States, including such political representatives as Ministers and Secretaries of State from 15 countries. The Council of Europe and the European Union were represented at the Conference by several top-level representatives. This degree of involvement constitutes evidence of the importance placed by national and European decision-makers on the Charter and its implementation.

As you know, the decision to organise a High-level Conference on the Charter stemmed from the conviction that this fundamental treaty of the Council of Europe is facing a number of major challenges which impact the effectiveness of its implementation and require political decisions to be taken by the States Parties, the Council of Europe political bodies and, to some extent, the European Union. The Conference's objective was therefore to put the Charter at the centre of the European political scene, allowing it to fully express its potential alongside the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union, in the name of the principles of indivisibility and interdependence of fundamental rights.

It is good to remind ourselves here that the Conference has been the outcome of a long series of activities and measures. It represented a combination of a process involving a

number of key events. In this respect, let me refer to the emblematic decisions adopted by the European Committee of Social Rights in 2012-2013 through the collective complaints procedure concerning Greece and Sweden, and the political declaration adopted by the Committee of Ministers on the occasion of the Charter's 50<sup>th</sup> anniversary in 2011; but also to the work of the Parliamentary Assembly and the Commissioner for Human Rights as well as to the role played by the Academic Network on the Charter which has succeeded in awakening an interest in this crucial treaty and fostering knowledge and research concerning it. In this context, the Charter's key importance and relevance were also highlighted by the Secretary General who, as you know, has firmly placed the question of respect for social rights and reinforcement of the Charter at the heart of his second term of office.

The Conference constituted an opportunity to pay heed to the social suffering of our time. Over the two days of proceedings, the themes of poverty, unemployment and inadequate access to healthcare, housing or education were raised many times in the debate, and the demonstrations being held in the vicinity of the Conference venue in Turin have also enabled us to physically witness the workers' protests and to appreciate difficulties of many citizens.

The Conference started from the idea that when resources are available, a democratic system has the obligation to take care of the everyday fundamental needs of people, while respecting dignity unconditionally. In this regard, participants agreed on the principle that social and democratic issues are closely linked and that, independently from the contents of the policies, the construction of Europe must always, and in any case, deal with the rights connected to these needs. Europe should make the best possible use of its standard-setting systems to promote innovative social policies aimed at preventing situations where antisocial, anti-European, racist movements, which ignore the needs of society, although simply founded on political exploitation of social egoism, can endanger the principles which the Council of Europe has always defended and promoted: democracy, the rule of law and human rights.

In accordance with the programme, participants agreed to compare the points of view with respect to three challenges.

The first challenge, discussed under theme 1, on the 17 October, refers to the upholding of the rights guaranteed by the Charter, following the far-reaching social and economic changes which have occurred since 2008, sometimes having a dramatic impact on the satisfaction of individuals' everyday needs, and respect for their connected fundamental rights. Starting from the assumption that the implementation of these rights has no political colour but represent a constitutional need, the Conference provided the opportunity to discuss the way in which, through the reconciliation of the demands of growth with the need for social justice, the effective achievement of these rights can actually contribute to weakening or even neutralising the negative effects of the crisis.

In this context of crisis, the Charter has been recognised as a living, integrated system of guarantees whose implementation at national level has the potential to reduce economic and social tensions, promote political consensus and, where appropriate, draw on this to facilitate the adoption of the necessary reforms. The Charter thus is an instrument at the service of economic development that can, as it must, also be socially sustainable.

Thanks to the exchanges of views, the presentations and the statements, the idea has forcefully emerged that rights written in the Charter are part of human rights, without the slightest shadow of doubt. They are not flexible rights, depending on optional criteria, rights that cannot be exercised in periods of austerity for lack of resources and that serve no purpose in periods of economic prosperity. These rights, social rights, belong to all human beings in the same way as civil and political rights.



Indeed, it was rightly observed that for years, social rights have been regarded as secondary rights, so to speak, supplementary rights. Regarding them as such, forget that access to vital resources of human life, guaranteed in the substance of social rights (food, clothing, shelter, health, education and so on), constitutes both at theoretical and historical standpoint, the precondition to be able to assert and bring to fruition one's fundamental civil and political rights. As was observed by Norberto Bobbio, a philosopher and jurist from Turin, "the recognition of certain fundamental social rights is the presupposition or precondition for the effective exercise of rights to freedom. The educated individual is freer than an uneducated one, and an individual in employment is freer than one who is unemployed. An individual in good health is freer than one who is sick".

As underlining of my speech at the end of the Conference, it was clear to 19<sup>th</sup> century aristocrats that the enjoyment of social rights was a precondition for enjoyment of political rights. At the time, only those who owned property and had received education had the right to vote and to be elected to the parliament. This, of course, is unacceptable for us, for democratic regimes, and goes against the principles of our Organisation. But the relationship between poverty, education and political rights is important. This was why measures were taken over one hundred years ago to promote State education systems, labour policies, health care and all the rest which we now sometimes take for granted.

Do we want a sudden return to 19-century conditions of social exclusion, which also becomes political exclusion?

It is clear to everyone that social rights obey dynamic which is different from that of civil and political rights, since they require active policies and economic resources. But what right, to tell the truth, does not require them?

Nonetheless, this does not mean that respect for these rights can be left to arbitrary decision-making of governments or technical bodies. Respect for these rights in the very capacity as preconditions is one of the constitutional duties of democracies. In a democracy, public resources cannot be allocated in a manner that this regards the need for everyone to have access to them. This concerns both the distribution of public resources and the regulation of social relations in the belief that fighting inequality is a factor of economic development and that, as the Secretary General so aptly said, social justice is a source of productivity.

It is absolutely true, and this theme came to the forum of discussions, that austerity policies can also be based on reasons of intergenerational justice, so as to avoid passing on social costs to future generations, the previous practices of living well at the expense of our children has been widely rejected by societies in today's climate of austerity. However, it is also true that there are yardsticks that can never be disregarded in terms of minimum standards of living with dignity.

The second challenge discussed at the Conference still in the framework of theme 1, relates to the improvement of the supervisory mechanism for the application of the Charter on the basis of collective complaints. In this respect, the Conference enabled participants to make is clear that, if the collective complaints procedure was accepted by more States, this could help to reduce the number of pending cases before the European Court of Human Rights. Broader acceptance of the procedure would also have the advantage of reducing the workload of the national administrative departments involved in the Charter's reporting procedure by focusing on specific issues.

Taking this approach would also avoid the situation in which, because of the limited number of States which have accepted the complaints procedure to date and because these States are also still subject to the reporting procedure, the latter procedure becomes unduly more

urgent for some States than for others. In this area, as you know, some progress has already been made, where reaffirming the paramount role of the Charter in guaranteeing and promoting social rights on our Continent, in its declaration of 2011, the Committee of Ministers expressed its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and the collective complaints procedure.

Probably in order to achieve this objective, in April last year, the Committee of Ministers agreed to simplify the national reporting mechanism for States Parties having accepted the collective complaints procedure. One can hope that this development represents just a first step of a greater reform of the Charter's monitoring system allowing it to be fully in tune with the social and democratic needs of our time.

The third challenge discussed in the context of theme 2 of the Conference on 18 October relates to the changing relationship between the European Union and the Charter law. In this connection, consensus was gathered around the idea that it has to be ensured that fundamental rights written in the Charter are fully respected by decisions of the States Parties resulting, directly or indirectly, from changes in the European Union law. This is a major political challenge.

The Conference made it clear that there is an urgent need to find pragmatic and effective solutions to settle potential or imagine conflicts between the two sets of interests of States and individuals. A number of references were made to harmonisation of the systems which would ease the compliance for member States of the European Union. Reference was made to the working document put forward by the Committee in order to contribute to the discussion concerning this challenge. Given that this document represents an extremely valuable contribution to the challenge at stake, I shall append it to the Conference General Report, together with other documents adopted by a number of international bodies for, or on the occasion of, the Conference.

I believe that to contribute to achieving a success in the challenges discussed at the Conference, the Council of Europe should implement a communication policy able to provide a clear message on the legal nature of the Charter, the scope of the decisions of the Committee and the importance of the monitoring system for the effectiveness of social and economic rights in Europe. In this field, the Secretary General may consider the possibility of implementing a communication policy comparable to the one dedicated to the European Convention of Human Rights. The communication on the Charter should be regular, systematic and, above all, proportionate to the importance of the rights that the Charter guarantees. I think that this would put an end to a number of misunderstandings that continue to circulate in relation to the Charter. Furthermore, it would enable the fruitful participation of civil society and reach out to citizens. An increased parallelism between the Charter and the Convention in communication policies within the Organisation would also help to enhance the Council of Europe's role as the guardian of all fundamental rights at the continental level.

Over and above the Council of Europe and the European Union, the Conference put forward the question of giving consistency and substance to the very concept of Europe and of making it a reality, a Europe which must kick itself up, which can make a new start without ever again overlooking its humanist dimension or its social responsibility, which must make the focus of all its activities. It is now for each of the institutions involved in the life of the Charter to participate in the joint effort to develop it and to enhance its status through appropriate measures based on the proposals put forward in Turin whose prompt translation into law and practice remains essential.

As highlighted at the Conference, debating social rights forces us endlessly to rediscover the social nature of rights, that is the fact that human rights have to do with human relationships,

that no one is an island and that one cannot realise oneself without respect for and recognition of others. For this reason, we must fight to ensure respect for social rights, since without these rights we are stripped of our social dimension, our relationship with others and, in the end, our capacity to be ourselves.

In the Action Plan for the Turin Process that I shall include in the General Report, the ideas and proposals put forward during the Conference, will take the form of a list of priority measures divided following their contents, the responsible actors and the timetable for their implementation. This plan must represent a message, loud and clear, to those for whom the Charter is intended, to the demonstrators outside the Conference venue, to the non-voters in the European elections, those who exploit social dissatisfaction stimulating social egoism and withdrawal, and to all citizens of Europe.

We cannot expect or even wish that these people will change their minds. As said in Turin, it is for us to reach out to them, and in this process, the re-launching of the Charter – of their Charter – is of great importance. It will be essential that our commitment is not abandoned. We can be certain that the peoples of Europe will judge the future of the Europe political actions at national and European level by the success or failure of the implementation of the rights of the Charter.

Let me conclude by saying that European reconstruction cannot be considered successfully achieved without guaranteeing social rights and protecting against their violation. For this reason, as highlighted at the Conference, it is essential that Europe focus on the fundamental values which are central to its mission to bring together States and their citizens and primarily on using the Charter to achieve a fair, more sustainable Europe. The Charter, which is a genuine social constitution for Europe, must now be at the forefront so that Europe can once again count on the full support of citizens and the commitment of States based on the values of democracy, the rule of law and respect for all human rights. Thank you.

**Régis Brillat**

Head of Department of the European Social Charter, Executive Secretary of the European Committee of Social Rights

Thank you, Professor Nicoletti, for this very dense and very clear presentation which highlighted the importance of the Turin Conference and the richness of its outcome. It also highlighted that the road ahead will be difficult and there is still a lot to be done in the coming months and years, and this is why we are extremely pleased and honoured to count on your participation in our work.

I would also like to thank, through you, the Parliamentary Assembly for its involvement in the Turin Process.

Let me also use this opportunity to thank Ambassador Jacoangeli, Permanent Representative of Italy to the Council of Europe, for the involvement of the Italian authorities in the Conference and in its follow-up.

To continue with our programme, I give the floor to Professor Jean-François Akandji-Kombé, who is the Co-ordinator of the Academic Network on the European Social Charter, a very important network for the Charter, which is expanding in all Council of Europe member States.

## The contribution of the Academic Network on the European Social Charter and Social Rights to the Conference

Jean-François Akandji-Kombé, Coordinator of the Academic Network on the European Social Charter and Social Rights, Professor, Sorbonne Law School, Pantheon-Sorbonne University

I first wish to thank you very much for having invited me to this informal session and I wish to begin by saying that it is a great honour for the Academic Network on the European Social Charter and Social Rights (ANESC) to be able to participate in meetings of this kind and to be involved in monitoring the commitments entered into in Turin. It is also a particular pleasure to be here, and may I briefly pay tribute, in my own name and on behalf of the entire network, to all the outgoing members of the Committee, in particular its President Luis Jimena Quesada, but also Mr Isik, Mrs Petman and Mr Athanasiu.

Luis Jimena Quesada was one of the Academic Network's founders, and we together determined its objectives, as they now appear in its statutes, which stipulate that its primary aim is to promote the European Social Charter and social rights in Europe, take all kinds of initiatives to foster knowledge of the European Social Charter and other European instruments for the protection of social rights and enhance the implementation and protection of such rights at the level of the Council of Europe and in that organisation's member States. We drew up these objectives together before Luis Jimena Quasada became a member of the European Committee of Social Rights.

Promoting the Charter, fostering knowledge of it and enhancing implementation and protection of the rights it safeguards are also key objectives for the European Committee of Social Rights, which means that we have a shared purpose but our positions with a view to achieving this common purpose differ, as do the means we utilise, and perhaps also our criteria.

There is no need to underline the work done by the Committee as a whole, in both its current composition and its former compositions, since under all its presidents it has taken vigorous action, which is known and recognised at the level of the European institutions themselves. As the General Rapporteur said earlier with regard to legal circles – and we can testify to the situation within the Network – the Social Charter has penetrated not only the most prestigious institutions, but also those most representative of European identity and culture. I am thinking here of the universities. Today, the Charter is taught at university level, and this is due not just to the work of the Network, which we three represent here, but also to the work done by the Committee, to its rigorous legal approach and its profound decisions.

This work is generally well received, but we are also aware that sometimes the reception may not be entirely positive and the courageous positions taken in some cases can prove problematic in certain specific contexts. That is why I wished to take a few minutes to pay this tribute, because it is a tribute to courage, a specific trait necessary for members of the European Committee of Social Rights. The courage to adopt legal stances in difficult legal, political and ideological circumstances, the courage to stay on course and also the courage to explain, so as to persuade others of the need and the clear reasons for the stances adopted. We are aware of this and thankful to you for it. For our network this justifies what I have just said. We will be sorry to see the current members leave the European Committee of Social Rights, but, as you will also understand, their departure is good news for us as an academic network and we look forward to welcoming them in the future, as new members of our organisation, with a view to pursuing our joint work, as mentioned earlier.

This brings me to the second part of my address in which I wish to revert to my initial theme, the contribution made by the Academic Network on the European Social Charter and Social Rights to the high-level conference in Turin.

I do not have to remind you that this conference was first and foremost intended as a turning point, at least that is how we perceived it within the network, and the results bear out our analysis.

In any case it was in this spirit that the network decided to contribute to the proceedings in Turin by analysing the situation of social rights in Europe, and also by making proposals. For us, this exercise involved an approach that was imposed on us, since we naturally had to fit in with the structure which the organisers had chosen to give the conference. However, it so happened that this imposed context embraced all the issues we consider essential for the Charter's development and also for the effective protection of social rights in Europe as a whole.

That is why our proposals followed the structure which the General Rapporteur presented earlier. In particular we focused our proposals on three main areas:

- Enhancing the effectiveness of the Charter mechanisms;
- Developing the Charter rights;
- The Charter's response to anti-crisis measures, whether austerity measures or fiscal policy measures adopted by States.

Under these three heads many questions were raised:

- The manner in which the Charter is taken into consideration by courts, a question which will be discussed later on. Our network regards this as an important current and future issue, to the point where the Academic Network has decided to make this the common theme for the activities of all its sections over the coming year;
- The manner in which the Charter is taken into account in law-making and policy-making at national level, an issue which joins up with the previous point, so as to permit a global approach to the ways and means of making the Social Charter effective within the States parties' national territories;
- The issue of ratification of the Protocol on the system of collective complaints, as mentioned earlier. Optimising the functioning of the collective complaints procedure, in particular through improved access to it, publication of the Committee's decisions and monitoring of their execution, the question of interaction between the European Social Charter and European Union law, and behind this question of interaction between the sources and the laws there is naturally also the matter of interaction between the interpretations and live applications made of them by the bodies responsible for applying them;
- Lastly, in this document setting out our positions and proposals we also discussed the issue of respect for the European Social Charter guarantees in times of financial and economic crisis and debt crisis.

Two of the questions included on this long list will be discussed later. I will therefore not dwell on them here.

I merely wish to use my remaining speaking time to make two points.

The first is general in nature and takes the form of a question: in what spirit did the Network approach this conference?

I consider this very general question to be extremely important and perhaps decisive, since it relates to the elements of common ground that must exist between us before we can move forward. The Network's attitude can be summed up as follows.

As regards the substance of the questions raised in Turin, the network started from three assumptions, which it considered useful to establish even if, legally speaking, they were sometimes evident from the outset.

The first is that the European Social Charter partakes of the values of European democracies. We are very pleased that our views coincide with the General Rapporteur's conclusions regarding all the work done in Turin, as exposed earlier. The network started from a historical perspective to establish its assumptions, which were based simply on a fresh reading of the Statute of the Council of Europe and the fact that its member States commit themselves to an organisation which seeks to realise the ideals and principles which are the common heritage of European States and to facilitate such States' economic and social progress – here I am merely citing the Statute of the Council of Europe – in particular through the maintenance and further realisation of human rights and fundamental freedoms. This was our first initial assumption.

The second takes the form of an observation: today the European Social Charter can be regarded as a key reference instrument in Europe. That is indisputable. One need but look at the preparatory work on the Charter of Fundamental Rights of the European Union, or on other legal instruments, and one need also simply bear in mind the case-law of the European Court of Human Rights and the references made therein to the European Social Charter. This no longer needs to be demonstrated, but from time to time it is worth restating the obvious.

The third assumption is that the European Social Charter qualifies as a treaty. Under international law, this is naturally so clear for legal specialists that it goes without saying, but in our present context we deemed it useful to reiterate the Social Charter's legal status and to point out that this status refers to a system of international law, the law of treaties, and also entails an obligation for States which decide to bind themselves, the obligation to honour in good faith the commitments they enter into.

These are the network's initial assumptions of substance.

Regarding the form of its approach, the Network considers that its contribution could not be confined to a mere legal or academic analysis of the situation regarding social rights in Europe and that its role was also to sketch out avenues for their further realisation, and even for a way out of the social rights crisis, avenues for overcoming the stumbling blocks that might be encountered and for establishing a dialogue, where necessary, between the different European systems within a complex system of standards. The network also decided to call upon the relevant public authorities, at the European and national levels, so as to permit progress to be made along the lines it proposed.

I would say that this is the first pillar of the Network's position. The second pillar is, I would repeat, the fact that the network makes itself available to these public authorities and institutions, whether they are European or national, so as to work towards the fulfilment of the commitments entered into in Turin, according to a time-table of which we will soon be aware, once we have read the General Rapporteur's report.

Lastly, the Network reasoned on the basis of constant treaty law. For the network there was no need to revise the European Social Charter itself or the procedural instruments seeking to take social rights forward and to achieve effective protection of the substantive rights themselves through more effective procedures. Hence, we engaged in a reflection based on constant treaty law.

And what did we arrive at? I will conclude here since my colleague will present the content of our proposals concerning relations with the European Union later on, and Professor De Schutter will also give a presentation on our proposals concerning the application of the Charter by national courts.

Here I briefly wish to reiterate a number of the proposals made by the Network.

Concerning application by national courts, I said earlier that there was, in a way, a dual aspect to this – the action of the courts but also the Charter's integration in national policy-making. We are convinced that this is an extremely important driver, before considering the question of the action of the courts and the European Committee of Social Rights. A number of the rights protected by the Charter are rights which must be implemented in domestic law, and the Network called for the Council of Europe and the European Union to be able to support the States' efforts to that end.

The network also made a number of proposals concerning the collective complaints procedure. It would like to see more declarations recognising the Committee's jurisdiction in respect of complaints lodged by national non-governmental organisations. The network regards this as a means of embedding the Charter's application in European society, of making it part of European citizens' habits and of those of the national organisations working closest to the citizens.

The Network also suggested eliminating the current waiting period for publishing the decisions of the European Committee of Social Rights, both for legal reasons and also for practical reasons which are set out in our report.

The network also deemed it useful to propose that monitoring of the implementation of the decisions of the European Committee of Social Rights be placed on an equal footing with monitoring of the execution of judgments of the European Court of Human Rights. In this context, it also suggested that the Committee's membership should be increased in future, without going so far as the one member per State solution applied at the European Court of Human Rights. It might be helpful for the future of social rights to reinforce this body and, consequently, to reinforce its Secretariat.

Concerning the substantive proposals, our discussions within the Network showed that there is undoubtedly one to which we attach particular importance. This is the issue of the Social Charter and protection of social rights in times of crisis.

Here, the network decided to adopt a position of principle. We could have proceeded directly to making practical proposals but we preferred to take a stance, which I wish to repeat here: "The importance of the protection of social rights increases when whole populations are fragilised and workers' bargaining power is weakened. This is especially the case in times of economic crisis. Social rights must not be a variable to be adjusted to suit the economic and social policies developed in response to financial and economic crises and, today, the sovereign debt crisis of some States."

This is a long citation, but it was of crucial importance to our line of reasoning. The Network went on to propose that a specific follow-up be given to the decisions of the European Committee of Social Rights concerning measures taken in response to the financial and

economic crisis. Today this mainly concerns the decisions handed down in the cases brought against Greece. The network proposes to the Committee of Ministers in particular that a specific follow-up of these aspects be instituted. Lastly, it wished to react concerning the strategy followed by certain States, consisting in invoking the European Convention on Human Rights to neutralise their obligations under the European Social Charter in this area, or the temptation that exists for States to do so. In this connection, the network considered that it could be useful to reassert something self-evident, which is that the European Convention on Human Rights must not be used to justify violations of social rights, and that could be done quite simply.

This is therefore the bulk of the proposals made by the Academic Network on the European Social Charter and Social Rights.

We are well aware that the monitoring of the Turin process cannot solely depend on our own analyses and recommendations. We will therefore pay particular attention to the General Rapporteur's report, setting out all the results of the meeting in Turin, so as to see what lies ahead and, I reiterate, the network is available to think things through and to provide assistance and advice, to carry out studies and also to identify good practices. We can discuss all this throughout the Process.

Thank you.

**Régis Brillat**, Head of Department of the European Social Charter, Executive Secretary of the European Committee of Social Rights

Thank you Professor Akandji-Kombé for this very detailed, comprehensive presentation of the network and the role it played at the Turin Conference, as well as the role it will assume in the Turin process. Let us now move on to the second part of this workshop, which will consist in detailed presentations, again with the participation of the network and certain of its members, on a number of matters that were raised at the conference in Turin and which we will now address at greater length.

The first concerns the account taken of the European Social Charter at national level by parliaments, governments and courts. I give the floor to Professor Olivier De Schutter, who is a member of the United Nations Committee on Economic, Social and Cultural Rights and a Professor at Louvain University.



## Section II: Exchange of views on two series of proposals made during the Conference

**The taking into account of the European Social Charter at the national level (by parliaments, governments and courts)**

**Olivier De Schutter, Member of the UN Committee on Economic, Social and Cultural Rights, Professor, University of Louvain, Centre for Philosophy of Law, CPDR**

I wish to thank Régis Brillat for chairing this meeting and for inviting me to address you. I also thank all of you for your presence here this afternoon, I naturally share in the tributes paid to Mr Luis Jimena Quesada, Mr Rūçhan Isik and Ms Jarna Petman, and we regret, while understanding, the absence of Alexandru Athanasiu. My thanks go to all of you for having done so much to make the European Social Charter, this now key instrument, better known and to ensure its vitality. I also thank Régis Brillat, whose role as Executive Secretary does not cease when his working day ends and who has constantly worked in a very pedagogic and active manner to ensure that the European Social Charter would gain the visibility that it is now acquiring.

It is an even greater pleasure for me to take the floor this afternoon because I am becoming a member of the United Nations Committee on Economic, Social and Cultural Rights and, when we meet in Geneva, we will have to draw inspiration from the European Committee of Social Rights, in other words bring about a gradual change of culture, moving away from an approach based on the submission of periodic national reports, followed by evaluation of progress achieved, so as to encourage States to go faster and further, where possible, adopting an approach founded on complaints, on one hand, and communications, on the other hand, which are collective or individual but will in any case each time require an ad hoc evaluation of the situation regarding a specific right in a given State in the light of national legislation and policy and in relation to individual bodies. For the Committee on Economic, Social and Cultural Rights this will entail a far more binary approach in terms of violations or non-violations.

For the European Committee of Social Rights the application of such an approach did not constitute a revolution, since the conclusions it adopts assess a national situation's compliance or non-compliance with the Charter. However, the committee did have to make an effort to combine the two approaches, and this can certainly offer a source of inspiration for the United Nations Committee on Economic, Social and Cultural Rights.

At the same time, both committees work to further international human rights law, as we all do, and it is a known fact that international human rights law increasingly functions via mutual borrowing of concepts, with the bodies concerned drawing on each other's work, and via the development of a common language and common approaches, which may in future become increasingly important means of ensuring the vitality of the legal instruments concerned, which must constantly be adapted to take account of governments' changing expectations and societal developments.

I believe that this work on the gradual clarification of social rights cannot be carried out without the States' co-operation. In my opinion it is absolutely essential to sustain confidence in the instrument and ensure the on-going involvement of the governments, parliaments and national courts in the interpretation of social rights instruments, particularly the European Social Charter. Of course the governments firstly have a role to play through the Committee of Ministers of the Council of Europe, which is responsible for following up the findings of the

European Committee of Social Rights. However, the European Social Charter cannot be left in Strasbourg. It must be repatriated to the capitals, and I think that this is a huge undertaking on which work has not yet really begun.

I think that this work could be planned both upstream and downstream from the proceedings of the European Committee of Social Rights. Upstream, I consider it self-evident that laws debated at national level during the legislative process should be examined to verify their compatibility with the Social Charter requirements. At the same time, many national parliaments are not equipped to do so, since they have no ad hoc committee that is sufficiently prepared to perform this task, and it must be acknowledged that the national institutions responsible for protecting and promoting human rights that presently exist in Europe and elsewhere very often make civil and political rights their priority and are not ready to work on the European Social Charter, although it is generally their duty to draw the attention of their respective governments to the need to take fuller account of their international commitments. In some States there are bodies, such as the Belgian Conseil d'Etat, with a section responsible for screening national legislation proposed for adoption to verify its compatibility with the State's international commitments, in particular, and with national constitutional standards. The European Social Charter should be more systematically borne in mind during these procedures, but for the moment that is far from being the case.

The proposal is that the Academic Network on the European Social Charter should conduct a comparative study of the manner in which this upstream verification of compatibility with the Charter is carried out, so that good practices could gradually be brought to the fore and all the States parties to the Charter could be informed of the best of those practices.

There is also a key role that national bodies can play downstream from the conclusions or decisions of the European Committee of Social Rights. I consider it essential that the States should gradually put in place task forces, interministerial working groups, to monitor the Committee's conclusions or to ensure the execution of the Committee's decisions in response to collective complaints. This is because, very often, a representative of the Employment and Social Affairs Ministry visits Strasbourg to discuss the situation with the Committee's members, as do representatives of other ministries such as Education, Health, Internal Affairs – just think of all the cases concerning the housing of Roma, for example, or their eviction, think about all the social rights issues arising in the case of asylum seekers – and other ministries must also be involved.

Frequently what then happens is that the government representative who presents the State's position is very much alone when he or she returns home and has to convince other ministerial departments of the need to implement the recommendations, and he or she has little authority to do so. It is frowned upon to interfere in the business of other ministerial departments, and in certain countries I have noted that this poses great difficulties when it comes to following up the Committee's findings.

Another difficulty encountered in federal or decentralised States is the capacity of the federal government, which, in accordance with the principle of national unity, represents the country at international level, to transmit certain recommendations concerning autonomous communities, regions, provinces or Länder, for example, in fields coming within the latter's competence. What is needed, therefore, are mechanisms to promote dialogue and the appropriation of the findings, conclusions and decisions of the European Committee of Social Rights at national level, failing which their implementation will be very slow and difficult, encountering many obstacles.

I have mentioned the national parliaments and the role the governments could play in ensuring improved conformity of national law and practices with the Charter requirements.

I now wish to say more about the national courts. This is another area where considerable work can be done, and it is first necessary to dispel two misunderstandings.

A first misunderstanding results from the opening paragraph of Part III of the Appendix to the revised European Social Charter, which reads "It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof" (the reporting procedure and, for States which have ratified the additional protocol concerning collective complaints, collective complaints or the decisions concerning such complaints).

This does not in fact mean that the national courts have nothing to do. It simply signifies that the States undertake to submit themselves to the supervision of the European Committee of Social Rights, without bringing their disputes before other international dispute settlement bodies, and agree that the Charter is to be supervised in accordance with the mechanism it itself establishes for that purpose. This does not prevent national courts from relying on the Charter, taking it into account or applying it in proceedings brought before them. I shall come back to this matter.

The second, even more commonplace, misunderstanding is the belief that social rights cannot be invoked in the courts. This idea is frequently encountered, but it is probably outmoded and human rights specialists have long abandoned it. However, it is unfortunately still present in people's minds. The United Nations Committee on Economic, Social and Cultural Rights attempted to refute the presumption of the non-justiciability of social rights by relying on the idea that all rights – whether civil, political, economic, social or cultural – impose on States an obligation to respect, protect, promote and realise them.

This approach may have been replicated to some extent in proceedings before certain constitutional courts, for example. However, the Committee on Economic, Social and Cultural Rights will pay particular heed to the future action of the European Committee of Social Rights, as the Committee on Economic, Social and Cultural Rights will have to render legally enforceable the rights established by the International Covenant on Economic, Social and Cultural Rights, which it has so far not had to apply in the context of individual communications, that is to say in a quasi-judicial context.

What will the Committee on Economic, Social and Cultural Rights be required to do? According to Article 8§4 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the UN committee will have to consider the reasonableness of the steps taken by States to discharge their obligations under the International Covenant on Economic, Social and Cultural Rights. It will ask whether these measures are, in essence, reasonably such as to guarantee the effective realisation of the economic, social and cultural rights recognised in the Covenant. In doing so, we will unquestionably be able to utilise the case-law of the European Committee of Social Rights, which has done some pioneering work in these matters and which is clearly a source of inspiration for all the international or national courts which will gradually have to begin to deal with social rights.

The Committee on Economic, Social and Cultural Rights will also be extremely attentive to the manner in which the European Committee of Social Rights has utilised the non-discrimination clause, Article E of the revised Charter, to give substance to Charter law, including for the adoption of measures requiring budgetary investments, which have to be phased in and cannot necessarily be immediately adopted. I am thinking of decisions such as that in the case of *Autisme Europe v. France*, where the non-discrimination clause permitted the committee to find, while hailing the very considerable efforts made by France to integrate people with disabilities, that the efforts had not sufficiently benefited one category of persons with disabilities, adults and children with autism, and for that reason – its

failure to take account of the needs of this particularly vulnerable group – France was not in conformity with the revised European Social Charter. The essential idea is that, although a State can advance at its own rhythm and even if it has the choice of the means it uses to discharge its international obligations, it must do so while heeding the non-discrimination rule and targeting its efforts at the most vulnerable groups, taking into account the fact that measures which affect the poorest and most vulnerable people in society are sometimes the least costly and have the most spectacular effects in terms of the realisation of social rights.

These misunderstandings therefore have to be eliminated. Doing so – and Jean-François Akandji-Kombé drew our attention to this – simply amounts to discharging international obligations. He pointed out that the European Social Charter is an international treaty. This means that it must be implemented in good faith, and Article 27 of the Vienna Convention on the Law of Treaties makes it very clear that a State cannot shelter behind its national law so as to circumvent or fail to perform its international obligations. This is obvious. However, when a State says that its courts are not competent to hear social rights cases, or are not equipped to guarantee compliance with the European Social Charter, it is in essence sheltering behind its national law so as to circumvent its international obligations.

It is true that, like other international treaties, the European Social Charter does not impose a requirement to produce results, or rather it does entail such an obligation but does not predetermine the means States must employ to comply with it. It does not impose an obligation of conduct, to re-employ an old distinction drawn at one point by the International Law Commission. But sometimes – I would be tempted to say often – affording a judicial remedy is an indispensable means of effectively safeguarding social rights. In its General Comment No. 3 of 1990, the Committee on Economic, Social and Cultural Rights very clearly indicated that, unless a State succeeded in showing that access to a court was not essential to ensure compliance with the International Covenant on Economic, Social and Cultural Rights, States should make a broader range of judicial remedies available so as to enhance guarantees that the Covenant will be upheld in national law.

I would say that this development is not just a result of international law and the duty of States to implement their international commitments in good faith. It will become increasingly common for pragmatic reasons of judicial policy. Firstly, this is simply because the best way for a State to avoid being brought before the European Committee of Social Rights in Strasbourg, is to prevent the risk of a violation of Charter rights, particularly by permitting its courts to intervene when such violations come to light. This is a kind of insurance, a sort of precaution the State takes to avoid being accused of a violation at international level. The best advice a State can be given is to equip itself internally so as to avoid any violations being raised at an international level.

Secondly, I consider that the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in what is indeed a very different context, since it is global and involves States which find themselves at very differing degrees of development, will encourage the emergence of international case law on social rights and, doubtless, gradually provide further inspiration for the national courts.

At a more general level, in the coming years we will see a situation where more and more international bodies will have to give consistency and substance to social rights and to draw mutual inspiration from one another. This is already partly the case. The European Committee of Social Rights was in the vanguard here. It refers to the International Convention on the Rights of the Child, it naturally draws on the instruments of the International Labour Organisation, and gradually the interpretation given to these instruments by the various bodies which implement them will result in a sort of *jus comune* of international human rights law, something which already exists in the case of civil and political rights but on which progress is still needed regarding social rights.

What are the priorities so as to make this a reality? I can identify four such priorities.

Firstly, of course, lawyers, judges, non-governmental organisations and trade unions have to be trained. The Academic Network has offered some training possibilities, which need to be extended and continued. I think this is essential to promote an understanding of the European Social Charter system.

Secondly, national human rights institutions need to play a greater role in the Charter's implementation by assuming their responsibilities in this area. For the moment they have insufficient resources and expertise. Here too more initiatives should be encouraged. These institutions often hold joint meetings at regional or international level, and social rights should figure more prominently on their agendas.

Thirdly, I really believe in the importance of improved dissemination of the case law of the European Committee of Social Rights. The General Rapporteur, Michele Nicoletti, has reiterated that the Council of Europe has a responsibility here and that communicating on the European Social Charter is very important. I think that many legal practitioners at present have difficulties in accessing the Committee's conclusions, and even its decisions on collective complaints. There are linguistic issues which arise here and there is the matter of the clarity of the case-law. Perhaps the national courts need to be better equipped. This is the approach taken by the European Court of Human Rights, which brings out thematic factsheets describing the case law in certain fields. This should perhaps become a more systematic practice. I also think that a useful service a body like the Academic Network can render the European Social Charter is to prepare brief summaries of the progress made by the Charter in different areas of its activity.

Fourthly and finally, perhaps the European Committee of Social Rights could from time to time adopt general observations (Statements) summarising the conclusions it has reached in certain fields, as does the United Nations Committee on Economic, Social and Cultural Rights. Such summaries currently exist as part of the conclusions and are very useful, but they are more or less drowned in the rest of the information and these explanations could perhaps be given in a more effective manner. Through such a pedagogic approach, aimed at allowing appropriation at national level, more could be achieved. Attention must be drawn here to the fact that there is, in essence, a whole range of possibilities enabling national courts to become partners of the European Committee of Social Rights and that would make it possible to arrive at, to borrow a term used in the context of the European Convention on Human Rights, a shared responsibility between the European Committee of Social Rights and national courts. There is of course a more extreme option, that of direct application of the European Social Charter, accorded the status of quasi-constitutional law, at national level. However, I would simply point out that pure direct application does not exist. It is an illusion. International instruments are only ever applied at national level through national host structures which determine the remedies available, the time-limits, the forms and methods of proof, and the reparation that can be made in the event of a violation.

However, at the other extreme there is nothing – no taking into account of the international instruments. While pure direct application is an illusion, doing nothing is unacceptable and breaches the commitments entered into by the States, since the national courts are State bodies which engage the State's responsibility.

So what can the national courts do? Many techniques for giving consistency to social rights and taking them into account are emerging, but without causing a form of judicial revolution since they are consistent with the national courts' routine procedures.

I shall cite three examples.

Interpreting national law in a manner consistent with the State's international obligations. When several interpretations of national law are possible, choosing that most in conformity with the Charter's requirements would seem to make good sense and is generally an extremely easy practice to follow.

The second technique concerns combination with the anti-discrimination rule, as I already referred to earlier. This consists in saying that, regardless of the State's discretion with regard to the implementation of social rights, their implementation must be consistent with the prohibition on discrimination, and the courts can very well examine whether the manner in which the State is making progress does not result in an unjustifiable difference in treatment between different categories of people and verify whether the State has not failed to apply appropriate differences in treatment when different situations so require.

Thirdly, the concept of normative justiciability is increasingly emerging. This is what Article 52§5 of the Charter of Fundamental Rights of the European Union says, specifying that that Charter contains certain rules which are principles – this is the terminology used in the Charter – rather than being full subjective rights which can be invoked independently and that these principles can be invoked in the courts in combination with the rules implementing them (legislation, regulations) in order to assess either whether their implementation is satisfactory and appropriate or whether the manner of their implementation constitutes a regression in the realisation of social rights, in which case it should be censured as unsatisfactory.

There is accordingly a whole range of judicial techniques, falling between the extremes of direct application of international human rights law and complete passivity and ignorance, the national judicial system's imperviousness to social rights, which are today being developed and which national courts can use to breathe life into the European Social Charter and permit States to avoid being held liable for violations at international level.

How can the process be initiated? How should it be supported? There are many avenues that could be explored as a part of the Turin process that was launched on 17 and 18 October last.

One might imagine the holding, in a few years' time, of a new conference, the equivalent of an Interlaken or a Brighton for the European Social Charter, a high-level meeting on the Charter which would result in firm commitments by the governments. This would be based on the results of the first stage launched one month ago in Turin. Everything being said today concerning the European Convention on Human Rights and its implementation at national level can be transposed, *mutatis mutandis*, to the European Social Charter. If this is not obvious at present, believe me, my friends, it will be obvious 5 to 10 years from now.

Secondly, and more immediately, one might imagine organising annual meetings, perhaps between the bodies implementing social rights, members of the United Nations Committee on Economic, Social and Cultural Rights, and members of the European Committee of Social Rights. Informal meetings between these groups already exist, although they are cumbersome to organise for procedural reasons. However, I consider that meetings also involving the national courts – the labour courts, the supreme courts and the constitutional courts – could lead to mutual understanding and agreement on the shared responsibility we have for implementing social rights. I believe that the European Social Charter could only benefit from a multiplication of such exchanges of views.

I wish to end here. I thank you for your attention and I again thank Régis Brillat for his efforts.

**Régis Brillat**, Head of Department of the European Social Charter, Executive Secretary of the European Committee of Social Rights

Thank you, my dear Professor De Schutter, for having informed us about all these links that exist between the different players and institutions and also for having sought to make proposals for building new bridges and using them in future.

I now briefly give the floor to the General Rapporteur of the European Committee of Social Rights, Colm O’Cinneide, so we can hear his initial reaction concerning these proposals.

## Reflections of the Committee

**Colm O’Cinneide**, General Rapporteur of the European Committee of Social Rights

Dear Colleagues, it is with a great pleasure, speaking on behalf of the European Committee of Social Rights, that I have the opportunity to listen to the contributions we have heard so far this afternoon and to welcome Professor Nicoletti, Professor Akandji-Kombé and Professeur De Schutter here, to share their expertise and wisdom with us.

I would also personally like to welcome this opportunity to say farewell – this is a little bit of a contradiction: welcome the opportunity to say farewell – but I would like to take this opportunity to say farewell and considerable sadness to four of our colleagues, three of whom are sitting in a very convenient role here at my left, who are leaving us. All four colleagues have made an extraordinary contribution to the work of the Committee, to the rigour of our conclusions and to our well-being as a group of individuals. I would like to record my personal pleasure for having worked so closely with them over the last few years. And in particular, I would like to register my gratitude to Luis Jimena Quesada for his wonderful chairing of the Committee over the last few years, which, let me assure you, is not always an easy and pleasant task.

In response – reasonable brief response – to the comments we have heard, I think Professor Nicoletti has wonderfully identified many of the key issues that arise in relation to the protection of social rights in Europe and potential of the Turin Process, to deepen and reinforce respect for social rights in the European context. I think it is particularly important how we identify the respect for social rights as a precondition for the enjoyment of other rights and participation in democratic life throughout Europe. Social rights, in a way, constitute one of the core foundations of the European citizenship and their protection and fulfilment must therefore be a key objective of all European States and various overlapping European legal orders.

A generation ago I think there was some scepticism about social rights, that there were vague, not really rights but more of a sort of aspirations. It has been interesting to me, as a University Professor, as a member of this Committee and as a citizen of our shared European space how that scepticism has dissolved, how there is a recognition that social rights are essential to well-being and democracy. There is a growing political demand across Europe for social rights to be given concrete form, and in the level of international law, we have seen the emergence and the entrenchment of social rights in solid form represented for example in the United Nations Covenant on social economic and cultural rights, recent agreement on the optional protocol to the UN Covenant; represented also by the inclusion of social rights within the framework of the European Union’s Charter of Fundamental Rights.

I was having a discussion recently in London with a leading British judge and he mentioned how unfortunate it was, the enforceable social rights’ working part of the United Kingdom’s legal order, and I pointed out to him, what he was only vaguely aware of, I have to say, that of course the European Union Charter of Fundamental Rights, the social rights are already an enforceable part of the United Kingdom’s legal order, as it is for every other EU State. Indeed, if you look at the constitutional traditions and frameworks of most European States, you will see the idea of social State very prominently embedded there in their constitutional frameworks. So social rights are with us in a political sense, in a legal sense, they are occupying attention in a way perhaps they did not do a generation or so ago.



The Committee of which I am a member, we face the challenge of taking a text like the European Social Charter, full of both principles and quite detailed and dense provisions protecting specific rights. We face the challenge of taking this text and interpreting it with an eye on the purpose of the text in line with the requirements of the Vienna Convention on the Law of Treaties. We also face the challenge of interpreting this text taking into account diverse national contexts around Europe.

There sometimes is a perception of bodies like ourselves sitting in Strasbourg, or Luxembourg, or Geneva, or New-York, sitting on a mountain top, in isolation from developments at national level. I have to say, that is not true. We spend certainly endless amount of time grasping the nuances of how different social and employment systems operate at national level, bringing our comparative expertise to bear, looking for submissions, engaging with developments at national level. We recognise, as does the European Court of Human Rights, that national authorities are in general best place to decide how to implement social rights. The principle of subsidiarity is important here, the notion of margin of appreciation – all of these things is part and parcel of the normative framework of the European Social Charter, as is the case of the European Convention of Human Rights. We also recognise of course that there is a role for international expert human rights bodies like ourselves, to identify problems, blind-spots, areas of inertia, areas of difficulty at national level.

The collective complaints procedure is an invaluable way of addressing the detail of what happens at national level. Speaking as a member of the Committee, it has been very interesting to me how much the collective complaints procedure allows us to understand developments at national level and to understand the national context in a way that other supervision and monitoring processes, as important as they are, do not fully allow us to engage with.

I also have to say, as a member of the Committee, what is absolutely invaluable and we benefit immensely from this, is engagement with national authorities through the collective complaints procedure, through dialogue, through exchange of views, through events like today, where we are very conscious that they are engaged in a common project with the member States of the Council of Europe. I think this is something which is extremely important to emphasise.

We are also very conscious of engaging in a common project with other international bodies and it is particularly pleasant to welcome Mr De Schutter here, just before he takes up his membership of the United Nations Committee on Economic, Social and Cultural Rights, we very much value the stronger links between the two Committees. It is wonderful to have representation here from the Academic Network, again invaluable learning experience for us, which opens up possibilities of exchanging views and spreading awareness that would not otherwise exist.

We also have regular exchanges of views with bodies like the International Labour Organisation, various organisations of the European Union and national governments and again, I would emphasise the value we place in this exchange of ideas, this dialogue et openness. Mr De Schutter in his talk identified four key areas where awareness and engagement with the Social Charter could be further developed. He spoke of training, he spoke of greater engagement with the work and through the work of national human rights institutions, he spoke of broader dissemination of the jurisprudence of the European Committee of Social Rights and awareness of the Social Charter in general, and finally, he spoke about strengthening links both between different international bodies charged with interpreting social rights and also with national institutions. I am happy to say, my task is much easier, that I am in complete agreement with him on all of those four points, and as a Committee, we certainly hope to be able to push forward greater linkages, greater

awareness and dissemination of the Charter and the values it contains, to strengthen the links between us and other international and national bodies. I think, and I would conclude on this point, that the Turin Process offers a unique and hugely important opportunity to lend more momentum to the openness and exchange of views.

As I said in the beginning of my talk and as Professor Nicoletti said, social rights are now looming large, they are part of our common heritage, part of our common European citizenship, and the Turin Process is a way of making that element of our common heritage acquire more concreteness, more substance. We therefore very much welcome the opportunity to have this exchange of views today and to contribute in whatever way we can to bring forward the Turin Process.

Thank you.

**Régis Brillat**, Head of Department of the European Social Charter, Executive Secretary of the European Committee of Social Rights

Thank you very much for these reflections. I now open the floor for the discussion.

## Discussion

**Petros Stangos**, Member of the European Committee of Social Rights

I must say straightaway what a good idea it was to hold this workshop and bring together the Committee, the Secretariat staff, academics and representatives of the member states and politics, like Mr Nicoletti. I trust that there will be a constructive exchange of views and hope to contribute to that with my comments now.

I would refer in particular to the report presented by Mr Nicoletti, from which I have noted one sentence. I know full well that what I am doing is not really appropriate; it does not mean that the rest of Mr Nicoletti's report is less good – quite the contrary. But I picked up a sentence which he used at the start of his report, which said that when resources are available, social rights go hand in hand with democracy. When resources are available, social rights are applied through legislation. When resources are available, the demands and human needs of the holders of social rights can be satisfied.

I am very puzzled, as a jurist, as a member of the European Committee of Social Rights and, in the final analysis, as a citizen. You are very familiar with those words and the concept set out. In terms of doctrine, the concept is linked to the doctrine of social rights as a financial claim. It is linked with the doctrine whereby, if social rights are to be realised, the state must take action and legislate when material resources, or funds, are available. Because, in the final analysis, and unlike the case of civil and political rights, as they say, social rights have a cost. In my opinion, civil and political rights also have a substantial cost.

I believe that the European Committee of Social Rights has helped to give this concept credibility and normative force. I myself and other members of the Committee have approved decisions which give the concept a specific value. In my case, *mea culpa*, for the following reason. Before explaining the reason and before reaching a conclusion, I must also acknowledge that the fact that our Committee has increased the credibility of this concept or doctrine stems primarily from the subsidiary nature of the Charter as a standard-setting instrument in relation to national law and also, as mentioned several times, from the much-cited margin of appreciation which we grant states. That is all linked. In my personal opinion, the basis for all these links lies in this issue of the resources available, which very often determine the effective implementation of social rights.

And that, in my view, is completely wrong.

Of course, there is a problem in determining how states act in this connection. However, this is not a matter of the availability of resources. It is a matter of the allocation of resources. It is a matter of the fair allocation of resources within the member states.

However, we at the European Committee of Human Rights do not have access to those aspects, given the subsidiary nature of the Charter and the margin of appreciation which we grant voluntarily to states – I am not a supporter, but we do grant it voluntarily to states – and it is up to them to allocate the resources and choose the best way of doing so. The real problem is that the way the resources are allocated is not fair or egalitarian. It has many shortcomings and we are unable to intervene or propose corrective measures.

All that I have said is confirmed by the case of Greece, which has been condemned and sanctioned by the Committee. At the moment, Greece is going through one of the many economic, political and social crises of recent years, yet another crisis. You know why. I will explain briefly. It is closely tied up with what I am saying. Because the oft-quoted troika –

the IMF, the European Central Bank and the European Commission – have demanded the following from Greece since 2010, and I will take the example of the social security system: that it reform its system so as to allocate resources more fairly, and correct and eliminate the inequalities which exist, most of which are inequalities arising from absurd situations. That is what the troika is demanding from Greece. It never demanded a reduction in pension levels. It never called for cuts in civil servants' pay. It talks about improved allocation of the available resources. Yet what is the Greek state doing in response to these rational calls? What are politicians doing? They are blindly carrying out drastic across-the-board cuts, which are changing the course of people's lives, pay, pensions and welfare benefits. And we cannot enter into that debate.

In this situation which is so harmful both for the lives of men, women and children and, at doctrinal level or somewhat abstractly, for the implementation of social rights, I once again acknowledge that we, too, at the European Committee of Social Rights are contributing to this dissimulation of reality stemming from the states parties, given the costs of the legal systems I have just mentioned (the margin of appreciation, the subsidiary nature of the legal instrument). But we hoped, Mr Nicoletti, and that is the point I will end on, that national politicians would also shoulder their responsibilities. That is a hope which I wanted to voice. Thank you.

**Jean-Bernard Marie**, Conference of the International Non-Governmental Organisations of the Council of Europe

I would like to take the floor to underline the role which the INGO Conference, with its 350 European NGO members, plays in the context of the Turin Process as it has not yet been mentioned here. On 17 October, at the same time as the Turin intergovernmental conference, the INGOs organised an international encounter in this city to mark World Day for the Eradication of Poverty. A number of people living in situations of exclusion and poverty in various European countries and assisted by NGOs gave accounts of their personal experience at the Encounter, which adopted a Message that was sent to and read out at the High-Level Conference. The Message, which was addressed to European institutions, states and all the actors concerned, contained precise expectations in terms of social rights and the fight against poverty.

The INGOs which are members of our Conference are, on several counts, key players in the process launched in Turin.

As you know, the collective complaints procedure would not work if there were no NGOs to make it work. Of course, it would not work without the experts of the European Committee of Social Rights but, as in the case of the European Human Rights Convention, the mechanism would not be set in motion without applicants. NGOs are therefore at the very heart of the procedure and although they have undoubtedly not made sufficient use of the system, the use that they have made of it has been quite effective, especially if the latest decisions are taken into consideration, in particular those concerning Article 30 of the Charter, which were published in early November.

Civil society, and in particular the NGOs which have participatory status with the Council of Europe, plays an important role, with which you are perhaps not sufficiently familiar, and that is their role in disseminating information and publicising the decisions handed down by the European Committee of Social Rights. This is a daily task which is carried out consistently and with great effectiveness by a large number of NGOs, which publicise your decisions or at least the most significant among them.

The INGOs also play an effective role in lobbying the Council of Europe's different bodies and stressing the importance of economic, social and cultural rights and their interdependence with other human rights. As the representative of the INGO Conference on the Steering Committee for Human Rights (CDDH), I have witnessed a gradual progress by experts towards accepting social rights as fully-fledged rights. I therefore see the positive dimension of this gradual progress but it is by no means definitive as can be seen from the studies that are currently being embarked on in the context of the CDDH, for example the study on the impact of the economic crisis on human rights in general and on social rights in particular.

NGOs, of course, also do important lobbying work at domestic level by making representations to their national parliaments and national human rights institutions. They do not give enough attention to social rights, whereas their mandate in no way prevents them from doing so.

NGOs and civil society therefore generally make a major contribution first to the acceptance and subsequently to the concrete application of social rights in Council of Europe member states. However, I did not wish to take the floor to glorify your contribution but simply to draw your attention to this sometimes little known role. I therefore wanted to reassert this role and the place the Conference plays as one of the pillars of the Council of Europe, alongside the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and, of course, the general secretariat.

Given the current state of affairs, the question that needs to be asked is how the interaction between civil society, between NGOs that have participatory status with the Council of Europe and other bodies of the Council of Europe, and in particular the European Committee of Social Rights, could be enhanced. I would like to take this opportunity to extend our warmest gratitude to Mr Jimena Quesada, its outgoing President, for his constant and always encouraging co-operation with the INGO Conference. I have known Luis for a very long time, first as a senior student, then as an assistant at the International Human Rights Institute, and I also had the honour of sitting on the examination panel for his doctorate, which was at that time already on the subject of social rights.

I trust that these exchanges will continue and that our co-operation with his successor and generally speaking, with all the experts who are members of the European Committee of Social Rights, will become even stronger, for our interaction has been profitable not only for the Conference and the NGOs but also, I believe, for the Committee of Experts itself.

There are other ways in which the INGO Conference can contribute to the Turin Process and I can assure you that it will be closely involved and that it intends to make a very active contribution to the development of this process.

Thank you, Mr Chairman.

**Régis Brillat**, Head of Department of the European Social Charter, Executive Secretary of the European Committee of Social Rights

Thank you very much, Professor Marie, for all this very important information. I would like to take this opportunity to confirm the importance of the NGOs' role in the Turin Process. The meetings in Turin did not only concern the European Committee of Social Rights: the Governmental Committee of the Charter was also present, and several committees of the Parliamentary Assembly were represented; the Conference of INGOs was there and played an extremely important role with the adoption of a text which the President of the Conference

of INGOs presented at the Turin Conference. Professor Nicoletti, Rapporteur General, also referred to this text in his final comments.

The fact that dates coincide is also very appropriate: 17 October being World Day to Overcome Extreme Poverty and 18 October the anniversary of the Social Charter. It has provided us over the years with the opportunity to link these two days and these two events: the passage from 17 to 18 October is obviously of great symbolic significance.

I would now like to give the floor to anyone else who wishes to address the meeting.

You have the floor, please.

**Peter Gunning**, Permanent Representative of Ireland to the Council of Europe

Since I am the only speaker from the Committee of Ministers at this point, I too would like to join the appreciation and thanks to Luis Quesada and to his three colleagues leaving the European Committee of Social Rights for their contribution, especially for the dialogue we have enjoyed at the Committee of Ministers at the various occasions he has appeared before us but also for the informal dialogue which we have enjoyed with him and with a number of Committee members.

I speak too as coming from a country that has ratified both the Revised Charter and the collective complaints procedure. We are fairly deeply involved in the proceedings that have been discussed today. I myself have got a great deal to reflect on from what has been said and I hope that perhaps some of these contributions will be later available in written form. They certainly merit further reflection not only by ourselves but back in our capitals.

I wish obviously we take part in the foregrounding of social rights that the Secretary General has sought in his vision statement for his second mandate. We will cooperate to the best of our ability within the governmental side and the Committee of Ministers on that.

Just two points however, perhaps dissent, difference of view, on what is called austerity, what we might prefer to call, as members of governments, the putting right of our public finances. I am not going to comment on the Greek case, but we have a very immediate experience ourselves, perhaps similar in some ways, similar perhaps in some of the requests put to the Irish authorities in the course of what was not a diktat as much as a form of negotiation, even if it had certain deficiencies because of the urgency of the procedure that was required in a situation both economic and financial that pertained.

But we have managed it in Ireland. We are out of the troika supervision.

In order to do that, it was necessary to reduce both payments/entitlements and salaries including in the civil service. Survey has still to be done on whether it was done in a correct way, but what I have seen so far, the survey suggests that it was done progressively. We will see in due time, a lot more data will have to be accumulated. But as I mentioned, it is to say that the phrase "when the resources are available" is in itself an attack or reluctance on the part of member States to implement social rights. I cannot see that in quite the terms that it has been presented by one of the speakers. It is, from our point of view, on the governmental side, which I accept of course, taking into account all the deliberations, merely a reflection of reality, certainly, that is the way it appeared in Ireland in 2008-2009, when the State's ability to finance itself and that is to finance everything the State pays for, was very much in question.

The second point is perhaps a more philosophical or rhetorical one, but the presentation of social rights and the relationship to fundamental rights, I have always found slightly problematic. I have no difficulty with the indivisibility. We are tight into that of course, through the various UN and other documents. But to say as Professor Akandji said, respect for social right is a precondition for the enjoyment of the other rights: civil and political rights. I think this is at least arguable that is putting the sequence in a wrong way. I simply have a difficulty myself and I will listen carefully to any further debate to help me overcome it, to see how arbitrary imprisonment or restriction of the right to express oneself, or the imposition of torture could possibly be seen as secondary. I think they are absolutely fundamental to proceeding to a State, in which social rights can be fully enjoyed.

I have enjoyed very much the contributions, I have found them extremely interesting and stimulating. Once again, thank you for the opportunity and best wishes to those who have served so well the Committee and are leaving now.

Thank you.

**Colm O’Cinneide**, General Rapporteur of the European Committee of Social Rights

Very briefly, in response to Mr Gunning’s very helpful and very interesting contribution. I was very careful as a good lawyer when I said that social rights are a precondition for the enjoyment of other rights; I forgot exactly what I said; but now as I speak, I am recognising of course that freedom from torture and other fundamental civil and political rights are also part of these preconditions. In postulating that social rights are an essential precondition for citizenship and the enjoyment of rights in general, I think that does not exclude the fact that of course enjoyment of civil and political rights also forms part of that set of preconditions.

I just very briefly note that a rather famous Anglo-American political philosopher Jeremy Waldron made this argument about twenty years ago, saying “Give me one of the most fundamental civil political rights”. And it was freedom of conscience, “freedom of hoarse”, the ability to form your deepest concepts, think about the world reflecting your existence. And he famously turned around and said: “That is more or less impossible to do if you are homeless, wet, cold and hungry on a street corner”. So he used that experiment to reflect on interconnectedness of all these rights, about how a certain level of basic material security can be essential to enjoy even the right like freedom of thought, freedom of conscience. It is of course equally true that you are not going to enjoy your right of freedom of conscience if you are being tortured, if you are being abused or a secret police are locking you up, and so on. But I just used that example to illustrate the manner in which the social rights function is a precondition for the enjoyment of other core rights and concepts of citizenship, as do of course – and I think it is important that Ambassador Gunning made this point – other fundamental rights, such as freedom from torture and abuse.

**Régis Brillat**, Head of Department of the European Social Charter, Executive Secretary of the European Committee of Social Rights

I give the floor to Guiglia who is also member of the Network and Professor at the Verona University. He will speak on the Social Charter and the European Union law.

## **The Social Charter and the law of the European Union: after the conflicts, synergies**

**Giovanni Guiglia, Professor, University of Verona, Faculty of Law**

First of all, I would like to thank the Council of Europe for inviting me to contribute to this important seminar. I am particularly honoured to be associated again, after the Turin Conference, to yet another important moment for the Charter, the affirmation of social and economic rights in Europe. This seminar is, on one hand, an opportunity to honour the departure of members of the Committee who, over the years, have contributed greatly to the progress of this fundamental treaty of the Council of Europe, and on the other hand, it gives us the opportunity to strike, while it is hot, the iron of the Conference of Turin in view of implementing the process launched at that occasion.

Ladies and Gentlemen,

Prior to the Turin Conference, the Commissioner for Human Rights referred to the European Social Charter (hereafter “the Charter”) as a cornerstone of the European social model; nevertheless, although the same values and principles are set out in the Charter and in European Union legislation, it has recently been shown that they are sometimes implemented and applied in different ways in the two European standard-setting systems for the protection of social rights. The economic crisis, in particular, has highlighted the fact that there are contradictions between the Charter and EU legislation and has revealed the vulnerability of the European model of social protection.

In his opening speech, the Secretary General of the Council of Europe said that, together with the European Convention on Human Rights, the Charter embodied the best of the European democratic and social model and that there was an urgent need to find pragmatic solutions to settle conflicts between the two sets of standards; strong synergies were needed between the Charter and European Union law, he said, to avoid any legal conflict.

The best response to the contradictions and conflicts between the two legal systems, which may well increase in future, and the most effective remedy for countering the fragmentation of “social Europe”, would be for the European Union to accede to the revised European Social Charter. However, for the time being, this solution presents quite a few problems, particularly from the political standpoint but less so from the legal one, as Mr De Schutter clearly demonstrated in his comprehensive report in July 2014.

Whatever the situation, if we want to consider what will happen after the Turin Conference, we must bear in mind that any solution we choose could have the particular support of European Union member states which are also members of the Council of Europe, along the three lines already suggested by the Commissioner for Human Rights:

- Firstly, all Council of Europe member states should ratify all of the articles of the revised European Social Charter, which continues to be the most comprehensive instrument in this field. As the Secretary General of the Council of Europe also pointed out at the beginning of the Conference, that would assist the further integration of the standard-setting systems of the European Union and of the Council of Europe and would have the advantage of establishing a homogenous European area where all citizens would enjoy comparable social protection. Indeed, with regard to certain social rights, some states have decided not to accept the relevant Charter commitments; however, on the basis of European Union law, they have adopted legal texts and measures which offer protection that is equal or superior to that safeguarded by the provisions of the Charter which they have not accepted.



In other words, while applying the binding laws of the European Union in a field that is covered by the Charter, some states have not accepted the provisions of the Charter establishing legally equivalent safeguards. Greater consistency with regard to European Union member states' commitment to social rights in the context of both standard-setting systems could, in future, help to implement the European Parliament's proposal that the European Union should accede to the Charter;

- Secondly, the collective complaints procedure should be more broadly applied. In this connection, it would be a good idea if the European Union showed more resolve in encouraging its member states to ratify the procedure and, more generally speaking, in taking account of the Charter and the case-law of the European Committee of Social Rights so as to establish a legal area that is more consistent in its application of social rights;

- Finally, national courts and national human rights bodies should make more use of the Committee's case-law.

In addition to these proposals, it is also necessary for the Court of Justice of the European Union to take major consideration of the decisions handed down by the European Committee of Social Rights. To date, the obligation deriving from Articles 6, §1, al. 3, Treaty on European Union and 52, §7 of the Charter of Fundamental Rights taken in conjunction, to take account of the "sources" used for the drafting of the articles of the EU Fundamental Rights Charter – set out in the corresponding "Explanations" – in interpreting the latter, has not been put into practice in the case-law of the Court of Justice by taking account of the Committee's interpretation. The Court has done no more than mention the articles of the European Social Charter as proof of the fundamental nature of the principles it wishes to highlight.

With a view to the EU's accession to the Charter, it is therefore essential to clarify relations between the two standard-setting systems for the protection of social rights by clarifying the relations between the two monitoring bodies concerned: the European Committee of Social Rights and the Luxembourg Court. They hand down their decisions on the basis of the same values and principles, but their decisions sometimes differ, particularly as the result of the differing importance they give to economic freedoms and social rights. In other words, as a result of an erroneous understanding of the principles of the indivisibility, interdependence and inter-relatedness of all fundamental rights, economic freedoms are given precedence over social rights and this unequal weighting gives rise to conflicting decisions: the decisions and judgments handed down in the "Laval" case concerning the austerity measures in Greece are clear evidence of this conflict.

The European Committee of Social Rights, in taking a position on the merits of a complaint lodged in 2012 by the Federation of Employed Pensioners of Greece, pointed out, in particular, that "economic or financial aims" were not listed in Article 31 §1 of the 1961 European Social Charter as grounds for legitimately limiting the rights guaranteed therein. It quoted, in this respect, not only its own positions but also the case-law of the European Court of Human Rights.

One of the main challenges is to ensure that the different monitoring bodies for protecting and promoting social rights inform each other: the endeavour to establish a horizontal dimension between the aforementioned bodies must be expressed initially in terms of "soft" legal provisions and finally in terms of "hard" international law.

With this aim in mind, one tool that could facilitate dialogue could be the establishment of a "permanent advisory committee", with equal representation of women and men, which would

also have authority, with the help of independent experts, to evaluate the economic and financial consequences of the monitoring bodies' decisions.

The European Parliament, in its recent Resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2013/2078(INI)), recommended that the reference to the Charter in Article 151 of the Treaty on the Functioning of the European Union should be used more effectively, for example by including a social rights test in the impact assessments of the Commission and Parliament.

Mr Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe, in his general report on the occasion of the Conference, also suggested that a special mechanism be put in place: a sort of "early warning", to be adopted by the European Union when Community legislation is incompatible with the Charter.

Another instrument may be found in the collective complaints procedure, in which there is a mechanism for calling on third party intervention (Rule 32 the Committee's Rules of Procedure). This may facilitate dialogue between the Charter system and European Union law and also, where appropriate, allow the Parliamentary Assembly and other actors to intervene as a third party. In this connection, it should be pointed out that in 2011 the Assembly quite rightly recommended that the collective complaints procedure provided for in the additional Protocol of 1995 be revised.

Similarly, it should be pointed out that Article 32A (Request for observations), which was added to the Committee's Rules of Procedure in 2013, stipulates that "Upon a proposal by the Rapporteur, the President may invite any organisation, institution or person to submit observations". This article may play a bridging role between the two systems and offer an effective response to the European Parliament Resolution of 19 May 2010 on the institutional aspects of accession by the European Union to the European Convention for the Protection of Human Rights (2009/2241(INI) § 31), in which the Parliament "stresses the need for the Union to be involved in the work of the Commissioner for Human Rights, the European Committee of Social Rights (ECSR), the Governmental Social Committee and the European Committee on Migration, and asks to be duly informed of the conclusions and decisions of these bodies [...]". It would be very useful if similar mechanisms, existing in the context of the European Union, were extended and if the provisions of the Rules of Procedure of the European Committee of Social Rights became international public law provisions (like the additional Protocol on collective complaints).

I also believe that if both monitoring bodies were to use a step-by-step and gradualist approach, it would foster a homogeneous interpretation of the respective rules on social rights, without calling into question the principle of states' international responsibility. Just because social rights need to be implemented gradually does not mean that these rights are not legally enforceable; a step-by-step and gradualist approach does not mean that social rights are not legally binding or that states are not obliged to take immediate steps to ensure that they are applied. The Committee has confirmed that certain rights enshrined in the Charter must be implemented immediately and without further delay as soon as the Charter comes into force in the state in question. On the contrary, other rights may be gradually implemented by the states parties, for example rights whose implementation is particularly complex and may give rise to considerable expenditure. The Committee has, nevertheless clearly indicated the conditions under which such gradual implementation would be in compliance with the Charter; whatever the situation, the time-limit within which the public authorities fulfil their obligations cannot be indefinitely deferred. We would like to see the Court of Justice make clearer interpretations in this respect, as failure to reach uniform decisions is detrimental to citizens' social welfare.

In my opinion, however, the most important principle in avoiding conflicts between the two legal systems – and, of course, between the respective monitoring bodies – which derives from both international law and EU law, is the principle of *favor libertatis*, which corresponds, in particular, to the “most favourable treatment” clause usually included in international human rights instruments and indeed in the Charter and in the primary law of the European Union. It is the best way to properly manage the co-existence between different international instruments which provide varying levels of protection and, consequently, to avoid contradictions between the positions taken by the different bodies called on to give their opinion on the international obligations of states.

Nevertheless, we need to bear in mind the fact that the risk of conflict exists whenever the European Union law imposes harmonising measures or uniform rules in fields which may affect the rules set out in the Charter. It is because of this risk that the European Union Fundamental Rights Agency believes that “the community of values” established by the European Union law “is to be seen in the wider context of a multilevel governance perspective with [] the Council of Europe and European Union Member States all providing their respective shares in a joined-up system of fundamental rights protection”. With this in mind, it believes that one of the greatest challenges for the near future is “how to foster interaction among the different levels of the fundamental rights landscape (vertical dimension)” and that “fundamental rights can only be efficiently protected if the levels are well connected.”

The links between the European Committee of Social Rights and the Fundamental Rights Agency could be strengthened to enable the Committee to use the research carried out by the Agency to improve its knowledge and understanding of the real situation of social rights in European Union member states and consequently of the different levels that need to be linked.

The most practical and immediate means of avoiding conflicts between the two systems is still for EU lawmakers to refer to the revised European Social Charter, as this is the political solution that is most in keeping with the commitments of European Union member states which are also members of the Council of Europe and share the founding values of all European countries. The Luxembourg Court has already said in the past that it applies the terms of an international agreement, even if its provisions are very flexible, when it is invited to do so by the Community lawmakers. Nevertheless, a general reference to the European Social Charter as a source of inspiration, as mentioned in Article 151 of the Treaty on the Functioning of the European Union, is insufficient. Similarly, although several provisions of the Charter of Fundamental Rights of the European Union are based on the provisions of the 1961 European Social Charter or the revised European Social Charter, it would be exaggerated to deduce from this that any violation of the revised European Social Charter by any action or decision taken by the institutions of the Union or of member states coming within the scope of the European Union law would automatically constitute a violation of the Fundamental Rights Charter of the European Union.

References by the European Union lawmakers to the revised European Social Charter could be the outcome of EU member states’ “sincere co-operation” in honouring the commitments they entered into in the context of the 1961 European Social Charter or the revised European Social Charter.

In the fields covered by the Charter, there is still considerable overlap between European and national policies. This must also take the form of increased co-operation in international law, for example through inter-institutional agreements between the monitoring bodies in question, as I previously attempted to illustrate. However, it is co-operation between all European Union institutions and the specialised bodies of the Council of Europe that should

be strengthened to ensure greater consistency and complementarity in the human rights sphere at pan-European level.

At all events, it is necessary to draw up a legal instrument which is not merely subsidiary and to make the principle of “sincere co-operation” between European Union member states binding when they are called on to comply with the Charter, i.e. to comply with international law.

The increasing number of references to the Charter by the European Union legislation as the outcome of sincere co-operation and the uniform resolve of member states, reinforced by inter-institutional agreements would bear witness to the essential nature of a development which is inevitable and also widely desired: the accession of the European Union to the revised European Social Charter.

Thank you.

**Régis Brillat** (Head of Department of the European Social Charter, Executive Secretary of the European Committee of Social Rights):

Thank you very much for your detailed presentation on the links with the European Union. As for the previous subject, I invite Colm O’Cinneide to reply briefly from the Committee’s point of view.

## Reflections of the Committee

**Colm O’Cinneide**, General Rapporteur of the European Committee of Social Rights

I would like to very much welcome Professor Guiglia’s incredibly impressive analysis of the intertwined and interlinked relationship between the European Social Charter and the European Union law. It is a dimension of the Social Charter that after being overlooked until quite recently, and his analysis graphically demonstrates that the very close nature of the relationship between the Social Charter and the EU law and, by extension, the close relationship between the Council of Europe and the European Union, between Strasbourg, Brussels and Luxembourg. I can tell you that the Bureau of our Committee was involved last Monday in an exchange of views in Luxembourg with a certain number of judges from the Court of Justice of the UE. It was a very fruitful and very interesting exchange of views in which it became clear that there was a lot of common ground and of course both the Court of Luxembourg and the Committee, we are dealing with quite similar instruments, in particular the social rights provisions are contained in the EU Charter of Fundamental Rights which are inspired by and drawn directly upon the text of the European Social Charter, so there is a sort of communality of tasks, and a communality of interest and concerns. It was a very interesting and fruitful exchange of views.

And again, this gives me the opportunity to recapitulate the core theme of my earlier contribution which is to emphasise the importance of co-operation, coherence and exchanges of views across the common European space, between different European institutions and between national governments, national parliaments, national courts and the European institutions. This is the way in which to deepen and strengthen protection of social rights and their integration in different European legal systems. Thank you.

**Régis Brillat**, Head of Department of the European Social Charter, Executive Secretary of the European Committee of Social Rights

Thank you very much. I open the floor for comments and questions concerning this issue or any other theme of the workshop.

**Jean-François Akandji-Kombé**, Coordinator of the Academic Network on the European Social Charter and Social Rights, Professor, Sorbonne Law School, Pantheon-Sorbonne University)

I am taking the floor, since there seems to be no great rush to do so at present, to express my full support for the presentation my colleague gave before and then perhaps add one or two points about the issue of co-operation and dialogue, in other words, about the future and ways and means of achieving synergy between the various sources of social rights. I believe – and this is my own academic view – that the means exist, at least the resources do now exist in EU law for achieving that result. In the treaties, there are provisions which lay down fundamental rights, all fundamental rights, in particular those enshrined in the European Convention on Human Rights, but it must be remembered that these are treaty provisions which provide that fundamental rights have the status of general principles of law within the EU legal order. And we know that the case-law of the EU Court of Justice has developed this idea of general principles of law extensively with regard to civil and political rights but only to a very limited extent with regard to social, economic and cultural rights. In my view, one of the main reasons here lies in the central position of states. The fundamental reason why the Court of Justice is developing case-law on fundamental rights

as general principles of law is a political one, related to the member states and constitutional and national courts, in particular the German Constitutional Court and the Italian Constitutional Court. There is therefore a trend whose importance cannot be underlined enough. And when states enter into projects of unification or the pooling of competences for the benefit of the public, they have a duty to prevent or, at least, strive to prevent the development of areas where social rights do not apply. As regards the tool of general principles of law – I wanted to stress the point – there is a provision, Article 51, which was mentioned before, but there is also the EU Charter of Fundamental Rights. On this latter point, I believe that the issue is one of interpretation and the methods of interpretation which the various stakeholders employ.

I will conclude with a final point. In my view, in the process of dialogue that is being carried out, it would perhaps be important to have a clear idea about the nature of the instruments concerned: the European Social Charter on the one hand and the EU Charter on the other; as well as about the nature of the EU project and the nature of the Social Charter. The relationship we are talking about is of the same kind as the one between the EU and the European Convention on Human Rights. On the one hand, we have an entity which is based on the pooling of a number of powers, in other words, a legal entity tasked with developing public policies on behalf of the states as a whole, which must to that end achieve a number of objectives set out in the treaties, and the Court, which is responsible for ensuring the application of the law governing those policies, and it is only normal for the Court to have to decide between objectives that may sometimes clash. As I see it, we are in a system here which resembles the one that exists in nation states, which have powers of regulation and must ensure, through constitutional courts, that the fundamental rights guaranteed are actually upheld. However, the European Social Charter is not the instrument of a legal entity which has regulatory powers. It is a fundamental rights instrument and, as I was always taught at university and now try to teach my own students, fundamental rights are not a source of authority to act, but a measure of competence in a democratic state or of proper public action in a democratic state.

I think these few points are important for the clarity of the positive process in which we are engaging, and it would be most welcome if they perhaps helped to clarify the avenues for dialogue. Thank you.

**Giuseppe Palmisano**, Member of the European Committee of Social Rights

First of all, I would like to thank everyone attending this splendid event and this debate – a very important debate in my opinion. I would like to thank the speakers and the General Rapporteur, Mr Nicoletti, as I appreciated his speech today and what he said in Turin several weeks ago. I must say that I am bearing in mind some passages and proposals from his Report and his speech, including the passages referred to by my esteemed colleague Petros Stangos. I think it was in precisely those passages that Mr Nicoletti made some remarks in line with Mr Stangos's speech, saying that the availability of resources – and economic and macroeconomic conditions or particular financial and economic policies may well determine a decline in these – affects states' implementation, and hence the effectiveness, of social rights and sometimes of social policies. However, this cannot and must never lead to failure beyond certain limits to respect the social rights found in the Social Charter. We cannot have a situation where the welfare state, the European welfare state, and the European civilisation of which the Social Charter provides an important reflection are compromised.

I think that the meaning of the Turin process is exactly as I have just described it. This Turin process did not start with the Turin Conference of a few weeks ago, but presumably from the Turin Conference several decades ago in 1961 – this is the Turin process I am referring to, and this process is the reason we are here. It signifies that the vast majority of European

states have decided to make a commitment to each other to do all that is required to respect social rights and implement social policies appropriate to respect for social rights. This process does not end once the countries have made a commitment. It is clearly not enough to say “yes, we respect social rights” any number of times. It is a process that merits implementation and deserves consideration every day at different levels – including legislation, and judicial and administrative action – on the part of states and European institutions.

It is clearly a complex process – a process that also requires a huge amount of work. This in fact is the process to which the European Committee of Social Rights is contributing. I would like to thank my friends and colleagues Luis, Jarna and Rüşhan, and Alexandru, who could not be here, because they have participated in this process skilfully, intensively and insightfully, with a smile, even though working conditions may not always be easy; I have learnt so much from them. I would like to thank them sincerely, because they have grasped their duties capably and were able to help create a team that has done an excellent job, in my opinion, over the past few years. However, attention needs to be given to the onerous task of this process. In Italy, we say that you can't celebrate weddings with dried figs! Words are not enough to make this process a reality, or to transform it into something more concrete than it already is. I am hopeful, then, that over and above all the rhetoric I have heard from the institutions, the states and the people committed to this process, we can make it a reality. This means concrete results, some of which have been pointed out by my friends and colleagues from the Academic Network and by others, both in Turin and today.

But action must be taken to produce these results relatively quickly. Otherwise it will be extremely difficult to take useful action to ensure that social rights are respected and that the Social Charter is implemented and known about. You can see that the European Court of Human Rights is not very far from here. The Court and the European Convention on Human Rights have rightfully become very important. However, people, resources and many things are needed in order to move forward with this process. I believe that what we, as a Committee, as the Council of Europe and as the Secretariat of the Social Charter, are currently doing is outstanding. Nevertheless, our work cannot extend to much more than that if no-one supports us. I hope that something can be done to reinforce our efforts and the efforts of everyone who is committed to the Social Charter: this process must not rely solely on the Charter – it must become a reality. Thank you.

**Régis Brillat**, Head of Department of the European Social Charter, Executive Secretary of the European Committee of Social Rights

I invite Professor Nicoletti for his last remarks.

**Michele Nicoletti**, Vice-President of the Parliamentary Assembly of the Council of Europe

This is not a presentation but just a couple of words about this very interesting discussion. Let me express once again my gratitude for your invitation and for all that you have said which would be very useful for my final report. A report is always a mixture of interpretations of what other people and other committees have said in written form, and there is a great richness of contributions from this Committee and from other institutions to the Conference. Of course, there is also an interpretation by the Rapporteur and some of the things that we discussed this afternoon is also due to my personal interpretation of the relationship between civil and political rights and social rights.

Let me say that I am very grateful to all of you who have expressed your appreciation and positive comments but also to those who have raised critical remarks, which are very useful.

Also, as regards integration, I would like to mention the nature of international treaty of the Social Charter which some of you have emphasised, it is very important. Maybe my report was not so clear and I think that this is an important point with important consequences.

I would like to only add something on the question about the preconditions, because this is a crucial point and I am very satisfied that this provocation was accepted by you and the discussion was made by some of you about this point. The point we shared in Turin of course was not an original point: the indivisibility of fundamental rights and social rights. The question is how to interpret this indivisibility. Because it is clear that civil and political rights and social rights are on different level, in front of public authorities and the States, and we have tried to interpret this different conditions with the word of presupposition and precondition. This is not a sort of hierarchy of importance – I do not know if the Ambassador of Ireland is still here – I do not want to say that if I mention that social rights are precondition for political rights and more important than civil and political rights, but I would just like to say what is typical of our interpretation of the moral obligation. Take the case of a child, as our colleague Colm said before, if a child is not able to get some food for him/her, I have a moral obligation to help him/her. This is an absolute obligation if I have some food with me, which is enough for me and for him/her. This is clear among all the different religious and ethical traditions, religious or secular traditions all over the world. In the same time, I can say that I have a moral obligation in front of somebody whom I meet on the street and who has had an accident and is not able to survive alone. It is not only a moral obligation but also a legal obligation in this case and I have to help him/her. The reason is obvious: without my help, or without the help of somebody, he/she cannot survive and cannot enjoy his/her freedom of expression, of conscience, of religion and so on. So this is the precondition and this is also clear from an historical point of view, because from the historical point of view, civil and political rights were the expression of social classes, like the British aristocracy or French bourgeoisie, which have an economic basis, and when during the French Revolution the democratic societies decided to extend the right to vote to everybody, they decided to organise a system of public education for everybody. This is a classical awareness of the fact that, if you want to give the political right and to decide about collective life, you have to give also to everybody the possibility and opportunity to understand what other people say and to interpret what is the best thing to do for the community.

This relationship, I think, there is something that we have to emphasise more in our society. I totally agree with what Professor Stangos has said about the question of allocation and of the responsibility of national States and politicians to ensure a fair allocation of the existing resources. Of course, I think that in our society, there are some resources, we are not completely without resources, and national authorities have the responsibility to justify the kind of allocation, of distribution that they apply in the societies. I think that responsibility means also accountability. So we can of course adopt different policies on the left or on the right, but every political authority has the obligation to justify in front of the citizens how this authority has tried to respect the rights of the citizens, and not only civil rights but also social rights.

This was what I tried to say in my Report. I would like to thank again everybody for their contribution to the discussion and to my Report. Thank you.

**Régis Brillat**, Head of Department of the European Social Charter, Executive Secretary of the European Committee of Social Rights

Thank you very much for these last remarks. We will slowly bring this workshop to an end, but although I know that I should not abuse my current position, I would not like to reach the end this workshop without telling Luis, Jarna, Rüçhan and Alexandru how much it has been a pleasure and an honour to work with them over these years. I remember having



participated in missions together in several member States, always with the desire to convince them to accept more commitments around the Social Charter, to change the legislation, practices, and sometimes with success. I very much hope that we can continue, in a different way, to work together as the “dream team” that we have managed to form over the years.

I now give the floor to Director Christos Giakoumopoulos. On this occasion, I would like to thank him for all his work on the Charter and for his participation in the workshop today.

## Conclusion

### **Christos Giakoumopoulos**

Director of Human Rights – DGI Human Rights and Rule of Law

Mr Palmisano, President of the European Committee of Social Rights,  
Mr Vice-President of the Parliamentary Assembly,  
Dear Members of the European Committee of Social Rights,  
Dear Friends and Colleagues,

I have been asked to present the conclusions of a workshop which itself concerns the conclusions of an extremely important conference. Drawing up conclusions on conclusions is a somewhat complicated task. I will therefore not draw any conclusions on this workshop but tell you what I have gained from it. First of all, however, I would like to thank all the speakers for their exceptional contributions and for the debate to which they gave rise.

I was very frustrated not to be able to go to Turin to take part in the Conference and I know that this frustration was shared by many people here today who were unable to attend.

This workshop is therefore an opportunity for Turin to come to Strasbourg – so to speak – in the person of the General Rapporteur, Vice-President Nicoletti, and gives many of us a direct contact with that extremely important conference.

My thanks also go to the Academic Network, which serves as an indispensable support to and mouthpiece for the Council of Europe, enabling us to broaden the impact of the Charter through Universities. I would like to thank Professor Akandji-Kombé, overall co-ordinator of the Network, for all the work he has done for the Charter for many years.

The Turin Conference yielded many positive results and the Nicoletti Report, which is shortly to be finalised and published, confirms this. Today, we have been engaging in what sportspeople call a warm-up or preliminary training session, but the real competition will be starting shortly and our aim, as Philippe Boillat said, is to shift from the realm of ideas to one of practical achievement. As Professor Palmisano also pointed out, that is where the difficulty lies.

As you already know, the Belgian Chairmanship of the Council of Europe will be holding a follow-up conference to the Turin Conference in Brussels on 12 and 13 February and I would thank them for this.

It should be emphasised that the Turin Process involves the entire Council of Europe. It is not solely the activity of the Social Charter Department or of the Committee of Social Rights but of the Council of Europe as a whole – the shared responsibility of the member states, the Council of Europe – and in particular the Committee of Ministers, which is our executive body – and the European Committee of Social Rights. Obviously certain aspects of this sharing of responsibilities cannot be envisaged solely at the level of the general secretariat and the Human Rights Directorate in particular. However, I can assure you that, the Directorate is already in a position to launch a number of operations and to propose some avenues for discussion in the context of the Turin Process. We are relying very much on the Brussels Conference to initiate these discussions.

As regards facilitating and strengthening a positive approach to the Social Charter on the part of our member states, we have a number of means of doing this and we will ensure that henceforth the training activities that we undertake in the context of the European Human

Rights Convention and in the human rights field in general, include the European Social Charter to a greater extent. That also includes the modules of our training programme for legal experts – the HELP programme – with which some of you are already familiar. The programme will henceforth include a special module concerning the Charter, or several special modules concerning several of the rights enshrined in the Charter. More emphasis could also be placed on collective complaints and on ways of encouraging member states to accept collective complaints or to agree to more provisions.

In addition to this, we can begin considering activities which would be targeted not at the Charter in general or at Charter-related training but at points of non-conformity already noted by the European Committee of Social Rights, and envisage support activities which could facilitate the task of the national authorities when they try to redress some of their practices and bring them into line with Charter. We could do so by sharing our experience or by making our authorities more aware of the problems in this field. These are the options that are open to us and to which we will pay close attention in order to give substance to the Turin Process.

It is not only what member states and the Council of Europe must do that is at stake in this field. Jean-Bernard Marie said a great deal about civil society and NGOs and a lot of thought is currently being given at the Council of Europe to what could be done to enhance the role of NGOs. I believe that the Social Charter would greatly benefit from the strengthening of the NGOs' role at the Council of Europe.

The situation with regard to national human rights institutions is somewhat different. We no longer have a network of national human rights institutions that has regular contact with the Council of Europe. In the past such a network was maintained by means of co-operation programmes funded by extra-budgetary resources. But we have tried, together with the EU Fundamental Rights Agency, to give fresh impetus to such co-operation and in particular to focus on social rights, which is an element on which emphasis should again be placed in the context of the Turin Process.

Finally, there is a part which comes within the remit of the European Committee of Social Rights itself, concerning its working methods, the way in which it is involved in dialogue with member states and its relations, notably with the Court and other national and international judicial institutions.

In addition to what I have just said, the Turin Conference clearly highlighted, and this workshop has confirmed, where necessary, that the Social Charter is undeniably "European". It reaches out beyond the Council of Europe and also concerns the European Union, as is pointed out in the Treaty on the European Union. In this respect, our ambition is indeed to shift from the realm of ideas to one of practical achievement.

I am finally reaching my conclusion, Mr President, which is that the main objective of our meeting here today is to pay tribute to Luis Jimena Quesada, Rüçhan Isik, Jarna Petman and Alexandru Athanasiu. We shall greatly miss their contribution and commitment to the work of the Committee. Indeed I will miss them personally but I know that we can rely on them in the future and that is our consolation at the end of today's workshop.

Luis Jimena's Presidency followed in the tradition of previous presidencies, namely those of Polonca Koncar, Jean-Michel Belorgey, Stein Evju, Matti Mikola and, in the more distant past, the first Presidency of the Committee following its foundation, which was that of Pierre Laroque. It is a grand tradition and one which I trust the Committee will continue to respect.

Dear Luis, you have succeeded magnificently in carrying the banner of the Charter high and we are all eternally grateful for you this. I hope that your health will improve rapidly, that you

will strike a new balance between your professional and family life, as the Charter requires, and that in the years to come, this new balance will enable you to give back to your loved ones the huge amount of time you devoted to the Committee and its Presidency.

To the other members of the Committee, those who are staying on and those who are joining, I wish you every success with the Turin Process. Thank you.

## Photos of the seminar



From left to right : Colm O’Cinneide, General Rapporteur of the European Committee of Social Rights, Rüşhan Isik and Jarna Petman, Members of the Committee, Luis Jimena Quesada, European Committee of Social Rights (2011-2014)



Petros Stangos, Vice-President of the European Committee of Social Rights



Jean-François Akandji-Kombé, Coordinator of the Academic Network on the European Social Charter and Social Rights, Professor, Sorbonne Law School, Pantheon-Sorbonne University



From left to right : Olivier De Schutter, Member of the UN Committee on Economic, Social and Cultural Rights, Professor, University of Louvain, Centre for Philosophy of Law (CPDR); Giovanni Guiglia, Professor, Department of Law, University of Verona, Italy



From left to right : Ambassador Manuel Jacoangeli, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Italy to the Council of Europe; Michele Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe, General Rapporteur of the Turin Process; Philippe Boillat, Director General of DG Human Rights and Rule of Law, Council of Europe; Régis Brillat, Head of the European Social Charter Department, Council of Europe; Christos Giakoumopoulos, Director of Human Rights Directorate, Council of Europe



From left to right: Karin Lucas, Member of the European Committee of Social Rights; Colm O'Connell, General Rapporteur of the European Committee of Social Rights



From left to right: Lauri Leppik, General Rapporteur of the European Committee of Social Rights; Giuseppe Palmisano, President of the European Committee of Social Rights



From left to right: Jean-Bernard Marie, Conference of INGOs of the Council of Europe; Régis Brillat, Head of the European Social Charter Department, Council of Europe; Luis Jimena Quesada, President of the European Committee of Social Rights (2011-2014); Elisabeth Marie, CARITAS Europe, Conference of INGOs of the Council of Europe