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STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

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**DRAFTING GROUP ON SOCIAL RIGHTS  
(CDDH-SOC)**

**Working document**  
**for the “second report” to be submitted to the CDDH**  
**identifying good practices and making proposals with a view to**  
**improving the implementation of social rights in Europe**

## INTRODUCTORY REMARK

It is recalled that the CDDH-SOC, in its 2<sup>nd</sup> meeting (2–4 May 2018), finalised the Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (first report)<sup>1</sup> and transmitted it to the CDDH. The CDDH, at its 89<sup>th</sup> meeting (19–22 June 2018), adopted that Analysis with a few amendments.<sup>2</sup>

On this basis, the CDDH-SOC, in accordance with its mandate, shall further “identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights”<sup>3</sup> in a second report.

The present document has been drawn up in accordance with the instructions given by the CDDH-SOC in its 2<sup>nd</sup> meeting, at which it charged the Secretariat “to provide basic preparatory work for the structure and essential content of the second report for the 3<sup>rd</sup> meeting of the CDDH-SOC (5–7 September 2018), taking into account possible further instructions given by CDDH in its 89<sup>th</sup> meeting in June 2018. It asked the Secretariat, in particular, to draw up a working document combining the draft overview over the possible contents of the second report presenting proposals with a view to improving the implementation of social rights (document CDDH-SOC(2018)08) with elements of the Summary (CDDH-SOC(2018)07) and of the Short analysis of the replies to the questionnaire (CDDH-SOC(2018)06) and including also the conclusions drawn from the Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe”<sup>4</sup> (now document CDDH(2018)R89add1 as adopted by the CDDH). The CDDH-SOC further considered that the “second report should be prepared on the basis of the “Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe” as well as other relevant sources, such as ... the interventions of the President of the ECSR before the Committee of Ministers”.<sup>5</sup>

The structure of the present document follows the preliminary draft table of contents as set out in document CDDH-SOC(2018)11. It is stressed that the present working paper only aims at collecting, and structuring under the different headings of the preliminary draft table of contents, the proposals and ideas expressed by different stakeholders in the previous working papers of the CDDH-SOC specifically mentioned by the Drafting Group in its 2<sup>nd</sup> meeting. It is for the Drafting Group to decide which of these proposals and ideas shall be discussed in more detail in its future second report and which proposals it finally decides to make with a view to improving the implementation of social rights in that report.

<sup>1</sup> Document [CDDH-SOC\(2018\)R2 Addendum](#).

<sup>2</sup> Document [CDDH\(2018\)R89add1](#).

<sup>3</sup> See the CDDH’s terms of reference for the biennium 2018–2019 adopted by the Committee of Ministers at its 1300<sup>th</sup> meeting of 21–23 November 2017, document [CM\(2017\)131-addfinal](#).

<sup>4</sup> See the Report of the 2<sup>nd</sup> meeting of the CDDH-SOC, § 15, document [CDDH-SOC\(2018\)R2](#).

<sup>5</sup> See the Report of the 2<sup>nd</sup> meeting of the CDDH-SOC, § 14, document [CDDH-SOC\(2018\)R2](#).

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## EXECUTIVE SUMMARY

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## INTRODUCTION

### 1. Terms of reference and methodology

#### Terms of reference:

At its 1300<sup>th</sup> meeting of 21–23 November 2017, the Committee of Ministers adopted the CDDH's terms of reference for the biennium 2018–2019 in which it charged the CDDH with the following task in the field of social rights:

*“On the basis of the analysis of the legal framework of the Council of Europe for the protection of social rights in Europe, identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights (deadline: 31 December 2019).”<sup>7</sup>*

#### Methodology:

- See the CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH(2018)R89add1):

293. In accordance with the mandate given by the Committee of Ministers to the CDDH for the biennium 2018–2019 in the field of social rights, the CDDH, on the basis of the present Analysis as well as other relevant sources, is called upon to identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights.<sup>8</sup> These issues shall be addressed in a further report.

<sup>7</sup> Document [CM\(2017\)131-addfinal](#).

<sup>8</sup> See Document [CM\(2017\)131-addfinal](#).

• See the Report of the 2<sup>nd</sup> meeting (2–4 May 2018) of the CDDH-SOC (document CDDH-SOC(2018)R2):

**Item 5: First exchange of views on the structure and essential contents of the second report**

13. The Group proceeded to a first exchange of views on the structure and essential contents of the second report on the basis of a draft overview over the possible contents of the second report (document CDDH-SOC(2018)08).

14. The discussion showed the following:

- In accordance with the CDDH's terms of reference for the 2018–2019 biennium, the second report should identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitating in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights;
- The second report should be prepared on the basis of the “Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe” as well as other relevant sources, such as the replies to the questionnaire (see Item 4) or the interventions of the President of the ECSR before the Committee of Ministers;
- The second report should focus on the Charter system and address the grounds why Member States have not to date given it a more important role and how these grounds could be addressed; in this context, the importance to give reasons to the Member States for ratifying the Revised Charter and accept the collective complaints procedure, notably to promote social cohesion, was equally stressed;
- The complexity of the system of the State reporting procedure under the Charter and how it could be improved, as well as the positive aspects and added value, but also the issues raised by the collective complaints procedure, should equally be addressed in the second report;
- The following further particular aspects could be discussed in the second report: the level of acceptance of different articles of the European Social Charter; the universality and indivisibility of human rights; the scope of application of the European Social Charter *ratione personae*; the relationship between the European Social Charter organs and the Committee of Ministers; the synergy between the European Social Charter and the European Union's and the United Nations' (in particular the International Labour Organisation's) systems and instruments of protection of social rights; awareness-raising and training activities; and the national implementation of social rights;
- The Group further agreed that the ECSR and the Department of the European Social Charter should be asked for technical assistance in the preparation of the second report and thanked them for having declared their readiness to provide such assistance.

15. The Group instructed the Secretariat to provide basic preparatory work for the structure and essential content of the second report for the 3<sup>rd</sup> meeting of the CDDH-SOC (5–7 September 2018), taking into account possible further instructions given by CDDH in its 89<sup>th</sup> meeting in June 2018. It asked the Secretariat, in particular, to draw up a working document combining the draft overview over the possible contents of the second report presenting proposals with a view to improving the implementation of social rights (document CDDH-SOC(2018)08) with elements of the Summary (CDDH-SOC(2018)07) and of the Short analysis of the replies to the questionnaire (CDDH-SOC(2018)06) and including also the conclusions drawn from the Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe<sup>9</sup>.

**• See the Report of the 89<sup>th</sup> meeting (19–22 June 2018) of the CDDH (document CDDH(2018)R89):**

### 5.1 Social rights (CDDH-SOC)

...

25. The CDDH also exchanged views on the content of the future second report. In this context, the Steering Committee:

- (i) approved the approach proposed by the CDDH-SOC for the preparation of the future report;<sup>10</sup>
- (ii) noted that the future second report should include proposals based on the challenges identified in particular in the first report as well as in the replies to the above-mentioned questionnaire and focus on the question of how the current system for the protection of social rights could be strengthened and made more efficient. On the other hand, the reasons for not having a larger number of Member States that have ratified the Revised Charter or the Additional Protocol to the European Social Charter providing for a system of collective complaints should be analysed;
- (iii) invited participants to make written proposals on the content of the future second report until the end of August 2018.

**• See the Short analysis of the replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)06):**

2. Good practices on the implementation of social rights at national level have been described by the Member States in reply to a questionnaire prepared by the CDDH's Drafting Group on Social Rights (CDDH-SOC)<sup>11</sup> and have been summarised.<sup>12</sup>

<sup>9</sup> Document [CDDH-SOC\(2018\)R2 Addendum](#), adopted by the CDDH-SOC, was subsequently adopted by the CDDH with a few amendments, see document [CDDH\(2018\)R89add1](#).

<sup>10</sup> The CDDH referred to §§ 14-15 of the report of the 2nd meeting of the CDDH-SOC ([CDDH-SOC\(2018\)R2](#)), see above.

<sup>11</sup> See for the questionnaire document [CDDH-SOC\(2018\)02](#) and for the replies to the questionnaire related to the good practices on the implementation of social rights at national level document [CDDH-SOC\(2017\)04](#).

3. The present short analysis of the replies to the said questionnaire shall identify the main issues and suggestions emerging from the Member States' replies. It shall further help the CDDH-SOC to identify and draft proposals with a view to improving the implementation of social rights, in line with the CDDH's mandate.

...

5. On a general note, it may be observed that 31 out of the 47 Member States of the Council of Europe submitted a reply to the questionnaire. This high number of replies, which is to be welcomed, can be seen as testifying of the Member States' interest and involvement in the topic.

## 2. Review of the background

• See the Report of the 2<sup>nd</sup> meeting (2–4 May 2018) of the CDDH-SOC (document CDDH-SOC(2018)R2):

14. The discussion showed the following: ...

- The following further particular aspects could be discussed in the second report: ... the universality and indivisibility of human rights; ...

• See the CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH(2018)R89add1):

### (...) Indivisibility and interdependence of human rights

29. The Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly on 10 December 1948, is a catalogue of all the fundamental rights recognised by the international community so as to ensure the dignity of every individual. It contains both civil and political rights and social, economic and cultural rights (see Articles 22–26 of the Declaration) in the same instrument.<sup>12</sup>

30. Within the Council of Europe, however, the Universal Declaration has been implemented through the creation of two separate treaties: the Convention (1950) and the Charter (1961).

31. The same distinction was drawn at the United Nations level where two separate International Covenants were adopted in 1966, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It is worth recalling the adoption in 2008 of an Optional Protocol to the ICESCR which reaffirmed the indivisibility and interdependence of all human rights and, as does the First Optional Protocol to the ICCPR, provides for the possibility for individuals to submit communications alleging violations of the rights set forth in the respective Covenant.

<sup>12</sup> See for the summary of the replies to the questionnaire document [CDDH-SOC\(2018\)07](#).

<sup>13</sup> See [General Assembly Resolution 217 A](#).



32. At the 1993 World Conference on Human Rights held in Vienna, the international community reiterated its commitment to the principles contained in the Universal Declaration of Human Rights which “is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.”<sup>14</sup> The Conference reaffirmed in paragraph 5 of the Vienna Declaration:

*“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”<sup>15</sup>*

33. The principles of indivisibility and interdependence of human rights have been highlighted regularly within the Council of Europe.<sup>16</sup> The indivisibility of human rights has expressly been referred to, in particular, in the Preamble to the Revised European Social Charter (4<sup>th</sup> Recital):

*“Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need ... to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural ...”<sup>17</sup>*

### 3. Main results of the Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe

- See the CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH(2018)R89add1):

#### CONCLUSIVE REMARKS

285. Since the entry into force of the European Convention on Human Rights in 1953 and of the European Social Charter in 1965 which was subsequently revised in 1996, the protection of social rights within the legal framework of the Council of Europe has constantly evolved.

286. On the one hand, the European Committee of Social Rights, in the State reporting and collective complaints procedures, has contributed to the development of the protection of social rights in a number of Council of Europe Member States. The rights covered by the (revised) Charter notably relate to employment and health, education and social protection and welfare.

<sup>14</sup> [Vienna Declaration](#) and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, 8<sup>th</sup> preambular paragraph.

<sup>15</sup> [Vienna Declaration](#) and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

<sup>16</sup> See, for example, the [Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter](#), adopted by the Committee of Ministers on 12 October 2011 at the 1123<sup>rd</sup> meeting of the Ministers' Deputies.

<sup>17</sup> See [European Social Charter \(revised\)](#) of 3 May 1996, ETS No. 163.

The (revised) Charter further provides for specific protection for a number of groups including young persons, employed women, families, persons with disabilities or migrants.

287. On the other hand, the European Court of Human Rights has provided for an evolving protection of the – few – aspects of social rights directly guaranteed by the Convention, namely the prohibition of slavery and forced labour (Article 4), the right to freedom of assembly and association, including the right to form and join trade unions (Article 11), and the right to education (Article 2 of Protocol No. 1). Moreover, the Court, which has interpreted the rights laid down in the Convention “in the light of present-day conditions”,<sup>18</sup> today grants an indirect protection of a number of particular aspects of different social rights by its case-law on Convention rights which are not social rights in the first place.

288. Both the implementation of the ECSR’s conclusions and decisions and the implementation of the Court’s judgments in the field of social rights have entailed a number of amendments in national law and practice which led to an enhanced social rights protection in the Council of Europe Member States.

289. However, certain limitations of the framework of protection of social rights within the Council of Europe equally became apparent. The impact of the treaty system of the European Social Charter, which contains a comprehensive catalogue of social rights, is limited by the “à la carte” system of acceptance of its provisions, which allows States to choose to a certain extent the provisions they are willing to accept as obligations under international law. Moreover, the (revised) Charter is not in force in all of the 47 Member States of the Council of Europe: four Member States have neither ratified the Charter nor the Revised Charter, nine Member States are bound only by the original 1961 Charter and 34 Member States are bound by the 1996 revised Charter. As regards the supervisory procedures under the (revised) Charter, only 15 States are currently bound by the 1995 Additional Protocol Providing for a System of Collective Complaints. It has also been advanced that the impact of the Charter system for the protection of social rights is restricted by the limited scope of application of the Charter in terms of the persons protected by it (see paragraph 1 of the Appendix to the Charter). However, it has not been analysed if and to what extent this restricts the effective protection of social rights in view of the protection under other instruments. In addition, and from a different perspective, it is to be noted that recommendations addressed to individual States by the Committee of Ministers following the ECSR’s finding of non-conformity of a situation with the Charter remain rare.

290. The Convention as interpreted by the Court in its binding judgments, executed by the 47 Contracting Parties under the supervision of the Committee of Ministers, is essentially designed to protect civil and political rights and thus covers only some aspects of the different social rights.

291. Against the background of a growing political awareness of the need to uphold and promote social rights in a global environment affected by the economic crisis, the Secretary General launched the “Turin Process” in 2014, which is aimed at strengthening the treaty system of the European Social Charter within the Council of Europe and in its relationship with the law of the European Union. Since the start of this process, a number of Council of Europe organs and institutions as well as civil society actors, in addition to a number of measures they have taken in the field of social rights, have repeatedly called for an enhanced role of the Charter. Member States have been invited, in particular, to ratify the Revised Charter and

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<sup>18</sup> See, *inter alia*, *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 68 and 146, ECHR 2008; and *Stummer v. Austria* [GC], no. 37452/02, § 129, ECHR 2011.

accept further provisions and the collective complaints procedure, albeit with limited success.<sup>19</sup> Moreover, they have been called upon to implement the decisions and conclusions of the ECSR.

292. As regards Member States' compliance with the social rights laid down in the (revised) Charter, in its recent conclusions on the rights laid down in the Charter, the ECSR found a majority of situations in the Member States in conformity with the Charter, but also numerous cases of non-conformity in the past years. Whereas positive developments were observed in some areas (for instance with regard to the right to protection in cases of termination of employment, the right of workers to the protection of their claims in the event of the insolvency of the employer and the right of access to education), problems remained in other areas (for instance with regard to discrimination in employment, insufficient integration of persons with disabilities into the ordinary labour market and the right to equality of opportunities for women and men). In the collective complaints procedure, the ECSR found one or more violation(s) of the (revised) Charter in the vast majority of its decisions.

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<sup>19</sup> Since the beginning of the "Turin Process", only Greece ratified the Revised Charter (in March 2016). Belgium and Ukraine have accepted further provisions thereof.

## I. THE MEMBER STATES' COMMITMENT UNDER THE RELEVANT INSTRUMENTS

### 1. Ratification of the (revised) Charter and of the 1995 Additional Protocol and acceptance of additional provisions of the (revised) Charter

#### (a) Current challenges<sup>20</sup>

##### Background

• See the Report of the 2<sup>nd</sup> meeting (2–4 May 2018) of the CDDH-SOC (document CDDH-SOC(2018)R2):

14. ...

- The following further particular aspects could be discussed in the second report: the level of acceptance of different articles of the European Social Charter; ...;

16. ... Professor Palmisano ... argued that the following issues needed to be addressed regarding the Charter system: 1) the fact that the Revised European Social Charter has not been ratified by all Member States of the Council of Europe as well as the “à la carte” system of the Charter; 2) the fact that the 1995 Additional Protocol providing for a system of collective complaints has not been ratified by all Member States; ...

• See the CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH(2018)R89add1):

#### (...) The Council of Europe's further action for social rights

10. The Secretary General of the Council of Europe launched the “Turin Process” in 2014, which is aimed at strengthening the treaty system of the European Social Charter within the Council of Europe and in its relationship with the law of the European Union and has been pursued, *inter alia*, by a number of high-level conferences since then. As to the follow-up given to date to the process by the Council of Europe Member States, it was noted that only Greece ratified the Revised Charter since then; no further State ratified the 1995 Additional Protocol Providing for a System of Collective Complaints. Belgium and Ukraine, however, accepted new provisions of the Revised Charter after the launch of the Turin process.

...

## CONCLUSIVE REMARKS

289. However, certain limitations of the framework of protection of social rights within the Council of Europe equally became apparent. The impact of the treaty system of the European Social Charter, which contains a comprehensive catalogue of social rights, is limited by the “à la carte” system of acceptance of its provisions, which allows States to choose to a certain extent the provisions they are willing to accept as obligations under international law. Moreover, the

<sup>20</sup> For each challenge, the document could present (a) the background; (b) the reasons given by the relevant stakeholders (Council of Europe Member States / representatives of the monitoring bodies / Secretariat); (c) the analysis thereof.

(revised) Charter is not in force in all of the 47 Member States of the Council of Europe: four Member States have neither ratified the Charter nor the Revised Charter, nine Member States are bound only by the original 1961 Charter and 34 Member States are bound by the 1996 revised Charter. As regards the supervisory procedures under the (revised) Charter, only 15 States are currently bound by the 1995 Additional Protocol Providing for a System of Collective Complaints. ...

### **Reasons given by the relevant stakeholders**

**• See the Report of the 2<sup>nd</sup> meeting (2–4 May 2018) of the CDDH-SOC (document CDDH-SOC(2018)R2):**

14. ...

- The second report should focus on the Charter system and address the grounds why Member States have not to date given it a more important role and how these grounds could be addressed; in this context, the importance to give reasons to the Member States for ratifying the Revised Charter and accept the collective complaints procedure, notably to promote social cohesion, was equally stressed;

**• See the Report of the 89<sup>th</sup> meeting (19–22 June 2018) of the CDDH (document CDDH(2018)R89):**

#### **5.1 Social rights (CDDH-SOC)**

...

25. The CDDH also exchanged views on the content of the future second report. In this context, the Steering Committee: ...

(ii) noted that ... the reasons for not having a larger number of Member States that have ratified the Revised Charter or the Additional Protocol to the European Social Charter providing for a system of collective complaints should be analysed;

**• See the CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH(2018)R89add1):**

*(...) See for Member States' reaction to the ECSR's interpretation of the personal scope of application of the (revised) Charter I.2.a below*

• See the Short analysis of the replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)06):

**C. Main obstacles concerning the ratification of the Revised Charter, or the acceptance of further provisions thereof, and the acceptance of the system of collective complaints**

13. The responding States relied on the following reasons for not ratifying the Revised Charter or not accepting further provisions thereof: conflicts between certain provisions of the Revised Charter and national labour or tax law; their economic or financial situation which led to them not being in a position to accept a higher level of commitments; the lack of political consensus; and the complexity of the examination and ratification process.

14. As for the main obstacles to the acceptance of the collective complaints procedure, the reasons given by the responding States which have not accepted that procedure were that it required further technical or political evaluation or was incompatible with the national legal system which was based on individual complaints. Some States further referred to the necessity to adopt a gradual approach to the improvement of the implementation of social rights and to concentrate first on the full implementation of their already existing obligations in that field.

15. It is equally to be noted that several States reported that work was ongoing for the ratification of the Charter or the acceptance of further provisions of the revised Charter.

• See the Summary of the Member States' replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)07Rev:

**C. Instruments relating to the European Social Charter and ratifications**

**C.1. European Social Charter**

*Could you describe the main obstacles (political, legal, administrative...), if any, that your country faces: a) to ratify the 1996 European Social Charter (revised) (ETS No. 163); b) to accept new provisions of the European Social Charter; and c) to ratify the Protocol amending the European Social Charter (ETS No. 142)*

43. Some of the States that have not signed or ratified the 1996 European Social Charter (revised) (ETS No. 163)<sup>21</sup> stated that the conflict between certain provisions of the Revised Social Charter and various provisions of the existing national (labour, tax) legislation<sup>22</sup> was an obstacle to the ratification. Some others<sup>23</sup> have indicated that they were not in a position to accept a broader or higher level of international commitments on social rights prior to ensuring full compliance with the already existing commitments (i.e. under the 1961 Social Charter), notably on account of the economic and financial situation of the States<sup>24</sup>. Further States pointed to the heavy workload of the domestic relevant institution(s) habilitated to examine the possibility of accepting new provisions/instruments on social

<sup>21</sup> Croatia, Denmark, Finland, Iceland, Poland, Spain and Switzerland.

<sup>22</sup> Finland.

<sup>23</sup> The Czech Republic and Poland.

<sup>24</sup> Bulgaria, Georgia, Republic of Moldova and Ukraine.

rights<sup>25</sup>, the lack of political consensus or will<sup>26</sup> or the complexity of the ratification proceedings<sup>27</sup>. Finally, information had been also provided on the on-going work in view of the acceptance of further provisions<sup>28</sup> or on the ratification<sup>29</sup> of the Social Charter.

## C.2. Collective Complaints Procedure

*Could you describe the main obstacles (political, legal, administrative...), if any, that your country faces in order to ratify the Additional Protocol of 1995 to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158)?*

*What are the reasons why your country does not allow national NGOs (while the national social partners are allowed to do so) to use the collective complaints system?*

44. Ten States<sup>30</sup> out of the twenty-eight<sup>31</sup> respondents have ratified the 1995 Additional Protocol to the European Social Charter providing for a System of Collective Complaints and two further States are bound by the Revised Charter and have accepted the procedure of collective complaints provided for in the said Protocol<sup>32</sup>. Certain of the other respondent States declared being open to the possibility of accepting/ratifying the Additional Protocol of 1995<sup>33</sup> although this process might first require adequate financial resources<sup>34</sup> or a closer examination of the existing experiences of the practical functioning of the collective complaints procedure.<sup>35</sup> Some other States declared that this topic was not on the agenda<sup>36</sup>. The collective complaints procedure was considered as problematic<sup>37</sup> by some States because it required additional technical/political evaluation or even as incompatible with the national legal system<sup>38</sup> which favoured individual complaints. Other States preferred adopting a cautionary approach, i.e. ensuring first a full implementation of the existing obligations, while trying to address problems that arose during the economic crisis, and adopt a careful, gradual approach to the improvement of social rights<sup>39</sup>.

45. As for the reasons for not allowing national NGOs to use the collective complaints procedure, some States did not see a particular need in extending the collective complaints procedure<sup>40</sup> either because the existing legal framework already offered the possibility for an NGO to join social partners for lodging collective complaints<sup>41</sup> or because offering such a competence to national NGOs would be inefficient under the current national legal framework.

<sup>25</sup> Bulgaria and Iceland.

<sup>26</sup> Latvia.

<sup>27</sup> Belgium, Finland, Poland and the Slovak Republic.

<sup>28</sup> Armenia, Azerbaijan, Croatia, Georgia, Ireland, Norway and Poland.

<sup>29</sup> Switzerland.

<sup>30</sup> Belgium, Croatia, Czech Republic, Finland, France, Greece, Ireland, Italy, Netherlands and Norway.

<sup>31</sup> Albania, Armenia, Azerbaijan, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Netherlands, Norway, Poland, Slovak Republic, Slovenia, Spain, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

<sup>32</sup> Bulgaria and Slovenia.

<sup>33</sup> Albania and Armenia.

<sup>34</sup> Georgia.

<sup>35</sup> Armenia and "The Former Yugoslav Republic of Macedonia".

<sup>36</sup> Azerbaijan, Slovak Republic, Spain and Turkey.

<sup>37</sup> Albania.

<sup>38</sup> Austria.

<sup>39</sup> Lithuania and the Republic of Moldova.

<sup>40</sup> Croatia, Estonia and Latvia.

<sup>41</sup> The Netherlands.

## Analysis of the reasons given by the relevant stakeholders

...

### (b) CDDH proposals

**• See the Report of the 2<sup>nd</sup> meeting (2–4 May 2018) of the CDDH-SOC (document CDDH-SOC(2018)R2):**

14. ...

- ... the importance to give reasons to the Member States for ratifying the Revised Charter and accept the collective complaints procedure, notably to promote social cohesion, was equally stressed;

...

16. ... Professor Palmisano stressed, in particular, that the Charter was the most wide-ranging instrument specifically devoted to the protection of social rights and that it was important to strengthen its role, and thereby the European model. ...

**• See the Short analysis of the replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)06):**

#### **D. Main proposals made with a view to encouraging the acceptance of the system of collective complaints**

16. The responding Member States made, in particular, the following proposals with a view to encouraging the acceptance by more Member States of the system of collective complaints: a strict application of the admissibility criteria of collective complaints; no extensive interpretation of the substantive rights of the (revised) Charter; a thorough analysis of the situation in the Member States concerned; more adversarial proceedings before the ECSR; and a simplification of the procedures before the ECSR in general, resulting in a reduced workload for the States.

**• See the Summary of the Member States' replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)07Rev):**

### **Suggestions**

*Which improvements could, according to your country, be made to the system of collective complaints, in particular in order to encourage more ratifications of the Additional Protocol?*

46. In order to encourage more ratifications of the Additional Protocol, the improvements suggested by the Member States include stricter admissibility and examination criteria for collective complaints and



their strict application by the ECSR and a better analysis of each national situation<sup>42</sup>; stricter criteria for international NGOs for being included in the list of INGOs having the right to submit collective complaints, as well as limitations in their number in the lists<sup>43</sup>.

47. States further considered it helpful to have a reduced amount of work in relation with the procedures before the ECSR<sup>44</sup>, peer-to-peer dialogue and the sharing of experiences<sup>45</sup>. At the procedural level, proposals included improved monitoring rules and follow-up procedures<sup>46</sup>; more adversarial proceedings, with the possibility for the State concerned to discuss with the ECSR the draft decision and a more systematic organisation of meetings with the complainant organisations and the States involved<sup>47</sup>.

**• See the Preliminary draft overview over the possible contents of the “second report” presenting proposals with a view to improving the implementation of social rights (document CDDH-SOC(2018)08):**

## **1. Proposals concerning the Council of Europe Member States**

In accordance with the principle of subsidiarity, under which the Council of Europe Member States have the primary responsibility to safeguard the human rights laid down in Council of Europe instruments at the national level, the Member States could be encouraged to

- ratify the Revised Charter or all provisions thereof;
- ratify the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (or accept the procedure pursuant to Article D § 2 of the Revised Charter), a powerful bottom-up tool for the enforcement of social rights at national level;
- ratify the (Turin) Protocol amending the European Social Charter of 21 October 1991 in order to allow for the members of the European Committee of Social Rights (ECSR) to be elected by the Parliamentary Assembly and thereby contribute to strengthening the position, status and composition of the ECSR;
- pending the entry into force of the said Amending Protocol, authorise the Parliamentary Assembly to elect the members of the ECSR or involve the members of the Parliamentary Assembly in the process of the election of the members of the ECSR by the Committee of Ministers;

## **2. Proposals concerning the European Committee of Social Rights and/or the Department of the European Social Charter**

The European Committee of Social Rights (ECSR) and/or the Department of the European Social Charter could be encouraged to

<sup>42</sup> Armenia, France, Poland, Slovak Republic and Slovenia.

<sup>43</sup> Bulgaria.

<sup>44</sup> Estonia.

<sup>45</sup> Finland.

<sup>46</sup> The Netherlands, Slovenia.

<sup>47</sup> Poland.

- bear in mind the importance of legal certainty for the Member States as to the scope of their obligations under the Charter;

#### **4. Proposals concerning the Committee of Ministers**

The Committee of Ministers could be encouraged to

- pursue its engagement with regard to strengthening social rights in Europe and keep regularly inviting the Member States who have not yet done so to consider ratifying the Revised Charter<sup>48</sup> or accept additional provisions thereof, as well as the system of collective complaints;

#### **5. Proposals concerning the Secretary General**

The Secretary General could be encouraged to

- encourage Member States to consider ratification of the Revised Charter or further provisions thereof and of the 1991 and 1995 Protocols to the Charter in his bilateral meetings with State representatives.

#### **6. Proposals concerning the Parliamentary Assembly**

The Parliamentary Assembly could be encouraged to

- ... keep calling on the Member States to contribute strengthening the Charter as a normative system, in particular by ratification by the Member States of the Revised Charter or all of its provisions and of the 1991 and 1995 Protocols to the Charter;
- transfer the competence to deal with Social Charter issues to the Committee on Human Rights;

#### **8. Proposals concerning the Commissioner for Human Rights**

The Commissioner could be encouraged to

- ... keep promoting the ratification of the Revised Charter and/or all provisions thereof as well as of the system of collective complaints;

#### **9. Proposals concerning the Conference of INGOs**

The Conference of INGOs could be encouraged to

- ... engaging in activities to encourage wider ratification of the Revised Charter and/or all provisions thereof and to make the case for the acceptance of the system of

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<sup>48</sup> See also the Reply adopted by the Committee of Ministers on 13 December 2017 on Parliamentary Assembly Recommendation 2112 (2017) on "The 'Turin Process': reinforcing social rights in Europe", document [CM/AS\(2017\)Rec2112-final](#).

collective complaints, to give the right to lodge a complaint to all INGOs enjoying participatory status or to increase the number of INGOs on the list of organisations authorised to lodge complaints, to encourage NGOs to participate in the reporting system and to further develop co-operation between NGOs and Governments in the interest of a better social rights protection in Europe;

**• See the Speech of the President of the ECSR, Professor G. Palmisano, before the Committee of Ministers on 21 March 2018.<sup>49</sup>**

...

Traditional and consolidated high standards in the protection of social rights, and some basic features of the welfare state – which are essential for the enjoyment of such rights, and of which European States should be proud – are indeed in crisis and under stress.

Increasing poverty and unemployment rate – in particular youth unemployment –; social and economic inequalities; lack or shortcomings in migrant integration; job insecurity for many categories of employees; regressive changes in social security schemes and benefits, notably with respect to old age benefits; increases in the cost of healthcare: these are among the most worrying signals about the state of health of social rights worldwide and in Europe. But by consequence they also tell us that reinforced attention must be paid to the need for effectively protecting social rights at the European level, as well as to the need for ensuring access to remedies in case of violation of social rights.

With regard to such needs, which as you know underpin both the so-called Turin Process launched in 2014 by the Secretary General of the Council of Europe, and the more recent EU Pillar of Social Rights, let me recall that the European Social Charter still represents today the most important and widely accepted frame of reference for identifying what are social rights, and what their protection and progressive realization mean and require for European States. And it is also the only living legal instrument providing for a system, at the European level, of monitoring and remedies in case of violation of social rights, which is open to the beneficiaries and social stakeholders of these rights.

...

But apart from the possible future improvements in the reporting procedure, let me point out once again that the most important step forward in the direction of improving and strengthening the Charter's system and the protection of social rights at the European level, would be enlarging the States' participation to the collective complaints procedure.

In fact, as you know, this procedure presents many advantages in comparison to the reporting exercise. In particular, and primarily, it has the advantage of putting the normative prescriptions of the Charter to the test of specific, concrete situations; it is able to identify – by way of a precise, objective assessment and a quasi-judicial procedure – what a State actually has to do, or must avoid to do, or has to prevent in order to guarantee, in specific situations, the social rights established by the Charter.

In addition, in comparison to the reporting procedure, it is also much more convenient for the State authorities in terms of domestic overall inter-ministerial preparatory workload.

<sup>49</sup> See the following link to the [ECSR President's speech of 21/3/2018](#).

Furthermore, the acceptance of the collective complaints procedure by a large majority, or all, the States Parties to the Charter would be of extremely important value from the standpoint of the equality of treatment of States and the uniform standard of monitoring of social rights in Europe. From such a standpoint, it is in fact hardly acceptable that only 15 States are concerned by this keen mechanism for monitoring State respect for social rights, in addition to the reporting procedure, and that national and European trade unions and international NGOs can trigger such a mechanism with respect to situations or cases concerning only certain States and not the others.

For all these reasons, and to conclude my intervention, I really hope that in the near future the Committee of Ministers could take concrete and effective initiatives to achieve the goal not only of simplifying and better reorganizing the reporting procedure, but also of considerably enlarging participation of States in the collective complaints mechanism.

**• See the Speech of the President of the ECSR, Professor G. Palmisano, before the Committee of Ministers on 22 March 2017:<sup>50</sup>**

...

Having said this, let me add that if it is true that taking advantage of the Social Charter system's potential represents indeed a major tool for building up a more social Europe, it is also true that such system has to be strengthened, improved and even updated if we want it to adequately meet the challenges that confront, today, the protection of social rights in Europe. I refer in particular to such challenges as the negative impact of the continuing economic crisis, the generalized increase in poverty and unemployment, the social integration in host countries of millions refugees and migrants, the rising of violent extremism, radicalization and populism.

In this regard, I would like to share with you some ideas about desirable steps to be taken in order to enhance the effectiveness and improve the efficacy of the Social Charter system.

Firstly, enhancing the Social Charter's effectiveness entails seeking to apply it as uniformly as possible throughout the regional space of the Council of Europe. This means bringing about greater acceptance of the Revised Social Charter: in fact, I remind you that 9 State parties to the Charter have not ratified yet the Revised Social Charter, but are still bound by the "old" Charter of 1961. Furthermore, as you know, a number of States have not accepted many important provisions of the Charter. Such States should be encouraged gradually to accept the outstanding provisions, beginning - of course - with those that form the core of the Charter. And the same goes for those States (28 out of 43) that have not accepted the collective complaints Protocol yet.

...

Of course, the need to improve the reporting procedure's efficacy is made more evident and relevant due to the fact that for many States it is still the only available supervision mechanism, since they have not accepted the collective complaints procedure, which is much more efficient in terms of capacity to identify specific problems in the implementation of the Charter, as well as appropriate solutions for such problems.

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<sup>50</sup> See the following link to the [ECSR President's speech of 22/3/2017](#).

Therefore, I cannot but insist again on the need to promote the acceptance by States of the collective complaints mechanism, also by means of further simplifying the reporting obligations for the States parties to the collective complaints procedure. ...

## 2. Personal scope of application of the (revised) Charter

### (a) Current challenges

#### Background

• See the Report of the 2<sup>nd</sup> meeting (2–4 May 2018) of the CDDH-SOC (document CDDH-SOC(2018)R2):

14. ...

- The following further particular aspects could be discussed in the second report: ... the scope of application of the European Social Charter *ratione personae*; ...

16. ... Professor Palmisano ... argued that the following issues needed to be addressed regarding the Charter system: ... 4) the limited personal scope of application of the Charter in accordance with the Appendix to the Charter; ...

• See the CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH(2018)R89add1):

289. ... It has also been advanced that the impact of the Charter system for the protection of social rights is restricted by the limited scope of application of the Charter in terms of the persons protected by it (see paragraph 1 of the Appendix to the Charter). However, it has not been analysed if and to what extent this restricts the effective protection of social rights in view of the protection under other instruments. ...

#### Reasons given by the relevant stakeholders

• See the CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH(2018)R89add1):<sup>51</sup>

#### (...) Persons protected by the Charter (personal scope)

73. The first paragraph of the Appendix to the Charter extends the scope of most of the Articles of the Charter (in addition to nationals) to “foreigners only insofar as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned”. By introducing this provision, the States Parties had in mind a limited personal scope of the Charter, and still do so, given the lack of a favorable response to a letter of 13 July 2011 of the President of the ECSR, by which the Parties were invited to abandon the provision.

<sup>51</sup> See also I.1.(a) above.

...

### (...) Examples of ECSR decisions and conclusions

...

133. In these decisions, the ECSR referred to instruments including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the UN Convention on the Rights of the Child, none of which, just as the Convention, provides for any restriction similar to the one in the above-mentioned Appendix. In its *DCI v. Belgium* decision of 2012, the ECSR highlighted the principles of its interpretation of the rights which must be guaranteed:

*“The Committee nonetheless points out that, the restriction of the personal scope included in the Appendix should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity (Defence for Children International v. the Netherlands, Complaint No. 47/2008, ibid, §19; International Federation of Human Rights Leagues v. France, ibid, §§ 30 and 31).*

(...)

*In the light of the latter observations and of the mandatory, universally recognised requirement to protect all children – requirement reinforced by the fact that the United Nations Convention on the Rights of the Child is one of the most ratified treaties at world level, the Committee considers that paragraph 1 of the Appendix should not be interpreted in such a way as to expose foreign minors unlawfully present in a country to serious impairments of their fundamental rights on account of a failure to give guarantee to the social rights enshrined in the revised Charter.*

*However, although the restriction of personal scope contained in the Appendix does not prevent the application of the Charter's provisions to unlawfully present foreign migrants (including accompanied or unaccompanied minors) in certain cases and under certain circumstances, the Committee wishes to underline that an application of this kind is entirely exceptional. It would in particular be justified solely in the event that excluding unlawfully present foreigners from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental rights (such as the right to life, to the preservation of human dignity, to psychological and physical integrity and to health) and would consequently place the foreigners in question in an unacceptable situation, regarding the enjoyment of these rights, as compared with the situation of nationals and of lawfully resident foreigners.”<sup>52</sup>*

134. It should be noted that the Committee of Ministers, in its resolutions concerning *FEANTSA v. the Netherlands* and *CEC v. the Netherlands*, explicitly recalled that the powers entrusted to the ECSR were firmly rooted in the Charter itself and recognised that the decisions of the ECSR raised complex issues in this regard and in relation to the obligation of States

<sup>52</sup> See *DCI v. Belgium*, Complaint No. 69/2011, §§ 28–39.

Parties to respect the Charter. It further recalled the limitation of the scope of the European Social Charter (revised), laid down in paragraph 1 of the Appendix to the Charter.<sup>53</sup>

### **Analysis of the reasons given by the relevant stakeholders**

...

#### **(b) CDDH proposals**

• See the Preliminary draft overview over the possible contents of the “second report” presenting proposals with a view to improving the implementation of social rights (document CDDH-SOC(2018)08):

##### **1. Proposals concerning the Council of Europe Member States**

...

- remove paragraph 1 of the Appendix to the (revised) Charter which stipulates that the rights embodied in the Charter do not extend to certain foreign nationals, so that the Charter applies to everyone, or, alternatively, to encourage the Member States to extend the scope of the (revised) Charter in terms of the persons protected, as foreseen in paragraph 1 of the Appendix;

...

##### **2. Proposals concerning the European Committee of Social Rights and/or the Department of the European Social Charter**

The European Committee of Social Rights (ECSR) and/or the Department of the European Social Charter could be encouraged to

- bear in mind the importance of legal certainty for the Member States as to the scope of their obligations under the Charter;

<sup>53</sup> CM/ResCh S(2015)4 and CM/ResCh S(2015)5.

## II. THE MONITORING PROCEDURES UNDER THE TREATY SYSTEM OF THE EUROPEAN SOCIAL CHARTER

### 1. State reporting procedure

#### (a) Current challenges

##### Background

• See the Report of the 2<sup>nd</sup> meeting (2–4 May 2018) of the CDDH-SOC (document CDDH-SOC(2018)R2):

14. ...

- The complexity of the system of the State reporting procedure under the Charter and how it could be improved ... should equally be addressed in the second report; ...
- The following further particular aspects could be discussed in the second report: ... the relationship between the European Social Charter organs and the Committee of Ministers; ...

...

16. ... Professor Palmisano ... argued that the following issues needed to be addressed regarding the Charter system: ... 3) the workload and effectiveness of the State reporting procedure; ... 5) the need to reinforce the ECSR by an increase in the number of its members as well as the reinforcement of the Department of the European Social Charter ...

• See the CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH(2018)R89add1):

##### *State reporting procedure*

...

87. The third stage of the reporting procedure takes place before the Committee of Ministers. Once it has received the report of the Governmental Committee, it adopts, by a two-thirds majority of the votes cast, a resolution which brings each supervision cycle to a close and may contain individual recommendations addressed to the States concerned, directing them to remedy the situations of non-conformity, as indicated by the Governmental Committee and taking into account *inter alia* social and economic policy considerations. Only States Parties to the Charter are entitled to vote on resolutions and recommendations.<sup>54</sup> It is to be noted, however, that so far in practice, recommendations addressed to individual States by the

<sup>54</sup> Part IV, Article 29 of the Charter.



Committee of Ministers following the ECSR's finding of non-conformity of a situation with the Charter remained rare.<sup>55</sup>

...

89. In 2007, following a decision by the Committee of Ministers, the provisions of the Charter were divided into four thematic groups of substantive undertakings: Group 1: Employment, training and equal opportunities; Group 2: Health, social security and social protection; Group 3: Labour rights; and Group 4: Children, families, migrants. Every year, States are to submit a report on one of these four thematic groups. Consequently, each provision of the (revised) Charter is reported upon every four years.<sup>56</sup>

90. In 2014, the Committee of Ministers adopted further changes to the Charter reporting and monitoring system, with the aim to simplify the system of national reports for those States (currently 15) which have accepted the collective complaints procedure. Every two years, instead of the ordinary thematic report, these States must now submit a simplified national report in which they explain the follow-up action taken in response to decisions of the ECSR on collective complaints brought against them.<sup>57</sup> Depending on the case, the ECSR may then conclude that the national situation has been brought into conformity with the Charter. For the other States, it will come into force one year after their acceptance of the 1995 Protocol providing for the collective complaints procedure.

91. In 2014, it was also decided that all States must submit additional reports on conclusions of non-conformity for repeated lack of information one year after adoption of such conclusions by the ECSR.<sup>58</sup> Thereby, the Committee of Ministers intended to encourage States to seriously and swiftly consider the ECSR's findings.

### Reasons given by the relevant stakeholders

**• See the Speech of the President of the ECSR, Professor G. Palmisano, before the Committee of Ministers on 21 March 2018:**

...

Considering the way in which it is organized and implemented, the reporting exercise – on the one hand – requires each year an excessive workload on the part of State authorities that have to present detailed reports on policies and practices, legislative and judicial activities, and national social trends, spanning across many different areas, such as work and employment, social security, social assistance, health care, housing, family protection, and so on. And, on the other hand, the reporting procedure entrusts the European Committee of Social Rights with the impossible task of examining carefully all the reports and to assess the situation in all member States relating to such wide and different areas, in the light of the Social Charter's provisions.

<sup>55</sup> See on this issue, for instance, Olivier de Schutter and Matthias Sant'Ana, *The European Committee of Social Rights (the ECSR)*, in: Gauthier de Beco (ed.), *Human Rights Monitoring Mechanisms of the Council of Europe*, 2012, pp. 81–82.

<sup>56</sup> See, *inter alia*, O. Dörr, *ibid.*, paragraph 23.61 with further references.

<sup>57</sup> The 15 States currently concerned by the simplified reporting procedure have been split into two groups according to the number of complaints lodged against them (from the highest to the lowest number).

<sup>58</sup> For example, when the ECSR finds that a situation is not in conformity owing to a lack of information after examination by Thematic Group 1, the State concerned must submit the information required when it comes to its report on Thematic Group 3.

This way of proceeding cannot lead to a satisfactory outcome: in particular, it is not suited to timely identifying the real and most serious problems concerning the implementation of the Charter in each State and, by consequence, it is not sufficiently useful in helping European States to actually improve themselves in their respect for social rights.

In addition, let me say that the changes to the reporting system that were adopted by the Committee of Ministers on April 2014, also with the objective of simplifying the mechanism for those States Parties to the Charter that have accepted the collective complaints procedure, have not proved to reach the goal; on the contrary, they have aggravated the problems of the reporting exercise. As you know, following these changes, the system now comprises two new types of reports, in addition to the “ordinary” reports on a thematic group of Charter provisions. I refer, first, to the reports on follow-up to collective complaints for States bound by the collective complaints procedure, which do not have to submit in the same year the “ordinary” report on the thematic group of provisions under consideration. And the second new type of additional reports relate to the conclusions of non-conformity for repeated lack of information adopted by the Committee the preceding year.

I see therefore an urgent and crucial need to rethink and really simplify the reporting exercise, in order to make it more efficient, more meaningful and more useful for an effective protection of the rights enshrined in the Charter.

In this respect, I would say that the budgetary restrictions, which I referred to before, could and should represent not a challenge, but an opportunity to reorganize and improve the reporting procedure, and to ease its not entirely useful burden on both state authorities and the European Committee of Social Rights.

### **Analysis of the reasons given by the relevant stakeholders**

...

#### **(b) CDDH proposals**

**• See the Preliminary draft overview over the possible contents of the “second report” presenting proposals with a view to improving the implementation of social rights (document CDDH-SOC(2018)08):**

#### **1. Proposals concerning the Council of Europe Member States**

...

- provide sufficient data/information in the proceedings before the ECSR (despite the costs and some difficulties to which this may give rise and with due safeguards for privacy), in order to permit the ECSR to establish (i) whether a concrete situation is or is not in conformity with the Charter and (ii) whether a finding of non-conformity has been remedied by the concerned State or not;<sup>59</sup>

<sup>59</sup> See also ECSR, *ERRC v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 27; and *ERRC v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 23.

## **2. Proposals concerning the European Committee of Social Rights and/or the Department of the European Social Charter**

The European Committee of Social Rights (ECSR) and/or the Department of the European Social Charter could be encouraged to

- ensure, as far as possible, a harmonious interpretation of the provisions of the Charter with those of the Convention;
- participate in simplifying the reporting procedure under the Charter so as to create a less heavy workload both for the States and for the ECSR without reducing the efficiency of the system;

## **4. Proposals concerning the Committee of Ministers**

The Committee of Ministers could be encouraged to

- further reform and simplify the State reporting procedure under the Charter, especially for States having accepted the collective complaints procedure, in order to reduce both the State authorities' and the ECSR's workload and to permit the ECSR to timely identify the most serious problems concerning the implementation of the Charter in each State.<sup>60</sup> It is recalled that the reporting procedure has already been simplified in 2014 for States having accepted the collective complaints procedure. Nevertheless, States are emphasising the need to simplify this procedure still further so that the ECSR can focus its follow-up on the most pressing issues;
- increase the number of Members of the ECSR in order to ensure a better overall balance of representation of the different legal traditions and social models in Europe within this Committee as well as to better cope with the workload;<sup>61</sup>
- ensure that the Department of the European Social Charter is sufficiently staffed with appropriately qualified lawyers to be able to perform its work thoroughly.<sup>62</sup>

<sup>60</sup> See for detailed proposals in this respect the [2018 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers' Deputies on 21 March 2018.

<sup>61</sup> See in this respect the [2017 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers' Deputies on 22 March 2017; and the [2016 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers' Deputies on 30 March 2016.

<sup>62</sup> See also the [2018 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers' Deputies on 21 March 2018.

**• See the Speech of the President of the ECSR, Professor G. Palmisano, before the Committee of Ministers on 21 March 2018:**

...

I see therefore an urgent and crucial need to rethink and really simplify the reporting exercise, in order to make it more efficient, more meaningful and more useful for an effective protection of the rights enshrined in the Charter.

...

Let me share with you some initiatives and proposals about this.

First of all, I can inform you that, starting from the current year, the Committee in agreement with the Secretariat has decided to change the method for drafting its conclusions. We will no more elaborate long, analytical, text examining and discussing all the data and information provided for in each state report, but we will focus only on the most problematic issues concerning the implementation by the State of the Charter provision under examination. This will lead us to the production of much shorter texts for each conclusion, with the advantage of better highlighting, for each examined State, the problems which deserve priority and careful attention, as well as the positive or negative measures required to bring the national situation in conformity with the Charter.

Then, speaking on the basis of my experience and reflections on the problem as President of the Committee, I would like to submit to your attention 4 very pragmatic proposals, aimed at simplifying the reporting obligations and burden for the States Parties to the Charter.

- First, when the Committee in its annual conclusions finds that the situation in a given State is in full conformity with a provision of the Charter, in the next cycle of supervision this State should be exempted, in my view, to report on the same provision; and in the following cycles it should just inform the Committee about possible relevant changes regarding its legislation or practice. In those cases where the Committee finds that, pending receipt of some kind of information, the situation seems to be in conformity with the Charter, in the next cycle of supervision the State should provide only the information requested, without submitting a complete report concerning the Charter provision in question.

- Second, the new reporting procedure, established by the Committee of Ministers in 2014, concerning the cases where the European Committee of Social Rights adopts conclusions of nonconformity for lack of information, in my view, should be abolished. This means that the Committee should no longer adopt “non-conformity” conclusions on the ground that it has not been established that the situation is in conformity with the Charter, and thus that States should no longer submit additional reports as a follow-up to this type of conclusions.

- Third, for those States Parties to the Charter that have accepted the collective complaints procedure, the reporting exercise should be further simplified. In my view, they should only submit every 4 years a synthetic and global report on the implementation of all the provisions of the Charter as a whole; and not – as the other States do – specific, analytical, reports on each of the thematic group of provisions of the Charter.

- In addition, and this is my fourth proposal, the obligation of such States – I mean, the States Parties to the collective complaints procedure – to submit every two years reports on follow-up to collective complaints, should be limited to only two cycles, and not ad infinitum as it is now. After this period of two cycles, should the Committee still find that the situation has not been brought into conformity with Charter, the case should be referred to the Committee of Ministers,

which should adopt a final resolution or recommendation addressed to the State, thus closing once and for all the procedure.

I am convinced that these changes, that I have briefly outlined, could simplify considerably the reporting exercise and the bureaucratic reporting burden for the States Parties to the Charter, while at the same time improving the efficacy of the reporting procedure, in terms of impact of the Committee's conclusions and findings.

Whatever may be the value and interest for you of my proposals, it is really necessary and urgent that we rethink and reorganize the reporting procedure, in order to ease the reporting burden on State authorities, but also to alleviate the workload for the Committee, making it feasible in light of the limited staff and resources of the Secretariat, the limited number of the Committee members, and the budget restraints that the Council of Europe is currently facing. And this, of course, seeking also to improve the efficacy and impact of the procedure. ...

**• See the Speech of the President of the ECSR, Professor G. Palmisano, before the Committee of Ministers on 22 March 2017:**

...

As for the issue of improving the efficacy of the Social Charter's system, I wish to refer to the need to change and simplify the reporting procedure. This procedure has indeed many merits and it is still a key weapon in the Social Charter's arsenal. However, considering the way in which it is organized and implemented, it risks sometimes to reduce itself to a mere bureaucratic and routine exercise, and the conclusions of my Committee risk becoming quite slow and ineffective if, e.g., changes in domestic legislation and practices have intervened between each supervision cycle. Furthermore, the reporting procedure, as it works now, requires each year a heavy workload on the part of State authorities and administration, that have to present detailed reports on policies and practices, legislative and judicial activities, and national social trends, spanning across many different areas, such as work and employment, social security, social assistance, health care, housing, family protection, and so on. And, on the other side of the coin, this procedure entrusts the European Committee of social rights, that is only fifteen experts assisted by a small - albeit excellent - Secretariat, with the impossible task to assess the situation in all member States relating to such wide and different areas, in the light of the Social Charter's provisions. So, despite the States' commitment in drafting complete reports, and the exceptional efforts made by the Committee and the Secretariat in examining the different national situations, this cannot clearly lead to an entirely satisfactory outcome. Let me therefore draw your attention on the need to rethink and simplify this procedure, with a view to make it more apt to identify the real and most serious problems concerning the implementation of the Charter, and by consequence to help European States to actually improve themselves in their respect for social rights. Needless to say, my Committee is at your disposal for a dialogue and tentative proposals on this issue.

Lastly, and to conclude, let me say that considering the increasing workload involved in the supervisory activities on social rights, and the importance attached to the Social Charter system, it would be indeed crucial both to strengthen the staff of the Secretariat of the Social Charter, and to increase the number of members of the European Committee of Social Rights. In this last respect, increasing the number of the Committee's members would be useful not only to cope with our increasing workload, but also to ensure a better overall balance in the Committee of the different legal traditions and social models in Europe. And this would also provide a much-

needed opportunity for a revision of the distribution of States in the groups for the election process. ...

## 2. Collective complaints procedure

### (a) Current challenges

#### Background

• See the Report of the 2<sup>nd</sup> meeting (2–4 May 2018) of the CDDH-SOC (document CDDH-SOC(2018)R2):

14. ...

- ... the issues raised by the collective complaints procedure, should equally be addressed in the second report;

...

16. ... Professor Palmisano ... argued that the following issues needed to be addressed regarding the Charter system: ... 5) the need to reinforce the ECSR by an increase in the number of its members as well as the reinforcement of the Department of the European Social Charter ...

• See the CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH(2018)R89add1):

#### *Collective complaints procedure*<sup>63</sup>

...

110. As with the reporting procedure, it is for the ECSR to determine whether the national situation has been brought into conformity with the Charter. This may be done by the ECSR on the occasion of new complaints and/or in the reporting system in which the State provides information, in a simplified report, on the steps it has taken in response to the decisions taken in respect of that State.<sup>64</sup> This mechanism illustrates the complementary nature of the two procedures to monitor the application of the Charter, which allows for a more regular follow-up to the decisions of the ECSR, as it is no longer necessary to await the next State report on the question(s) at issue in the collective complaints leading to the finding of a violation or violations of the (revised) Charter. In the present situation follow-up reporting in the collective complaints procedure can go on indefinitely, even in spite of the closure of the case by the Committee of Ministers.

<sup>63</sup> See for a summary on the procedure <http://www.coe.int/en/web/turin-european-social-charter/conference-turin>: information note in preparation for the Turin I conference.

<sup>64</sup> See Rule 40 of the Rules of the ECSR.

## Reasons given by the relevant stakeholders

• See the Short analysis of the replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)06).<sup>65</sup>

### D. Main proposals made with a view to encouraging the acceptance of the system of collective complaints

16. The responding Member States made, in particular, the following proposals with a view to encouraging the acceptance by more Member States of the system of collective complaints: a strict application of the admissibility criteria of collective complaints; no extensive interpretation of the substantive rights of the (revised) Charter; a thorough analysis of the situation in the Member States concerned; more adversarial proceedings before the ECSR; and a simplification of the procedures before the ECSR in general, resulting in a reduced workload for the States.

• See the Summary of the Member States' replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)07Rev.<sup>66</sup>

### Suggestions

*Which improvements could, according to your country, be made to the system of collective complaints, in particular in order to encourage more ratifications of the Additional Protocol?*

46. In order to encourage more ratifications of the Additional Protocol, the improvements suggested by the Member States include stricter admissibility and examination criteria for collective complaints and their strict application by the ECSR and a better analysis of each national situation<sup>67</sup>; stricter criteria for international NGOs for being included in the list of INGOs having the right to submit collective complaints, as well as limitations in their number in the lists<sup>68</sup>.

47. States further considered it helpful to have a reduced amount of work in relation with the procedures before the ECSR<sup>69</sup>, peer-to-peer dialogue and the sharing of experiences<sup>70</sup>. At the procedural level, proposals included improved monitoring rules and follow-up procedures<sup>71</sup>; more adversarial proceedings, with the possibility for the State concerned to discuss with the ECSR the draft decision and a more systematic organisation of meetings with the complainant organisations and the States involved<sup>72</sup>.

## Analysis of the reasons given by the relevant stakeholders

...

<sup>65</sup> See also I.I.1. above.

<sup>66</sup> See also I.I.1. above.

<sup>67</sup> Armenia, France, Poland, Slovak Republic and Slovenia.

<sup>68</sup> Bulgaria.

<sup>69</sup> Estonia.

<sup>70</sup> Finland.

<sup>71</sup> The Netherlands, Slovenia.

<sup>72</sup> Poland.

## (b) CDDH proposals

- See the Preliminary draft overview over the possible contents of the “second report” presenting proposals with a view to improving the implementation of social rights (document CDDH-SOC(2018)08):

### 1. Proposals concerning the Council of Europe Member States

...

- provide sufficient data/information in the proceedings before the ECSR (despite the costs and some difficulties to which this may give rise and with due safeguards for privacy), in order to permit the ECSR to establish (i) whether a concrete situation is or is not in conformity with the Charter and (ii) whether a finding of non-conformity has been remedied by the concerned State or not;<sup>73</sup>

### 2. Proposals concerning the European Committee of Social Rights and/or the Department of the European Social Charter

The European Committee of Social Rights (ECSR) and/or the Department of the European Social Charter could be encouraged to

- bear in mind the importance of legal certainty for the Member States as to the scope of their obligations under the Charter;
- ensure, as far as possible, a harmonious interpretation of the provisions of the Charter with those of the Convention;

### 4. Proposals concerning the Committee of Ministers

The Committee of Ministers could be encouraged to

- extend its involvement in the follow-up to ECSR decisions, in the light of the utility of “peer pressure” in cases of non-compliance with the Charter;<sup>74</sup>
- highlight the indivisibility of human rights by resuming consideration of Social Charter issues within the GR-H;
- allow for a reimbursement of the costs of complainant organisations in the collective complaints procedure before the ECSR in certain circumstances;<sup>75</sup>
- increase the number of Members of the ECSR in order to ensure a better overall balance of representation of the different legal traditions and social models in Europe within this Committee as well as to better cope with the workload;<sup>76</sup>

<sup>73</sup> See also ECSR, *ERRC v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 27; and *ERRC v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 23.

<sup>74</sup> See also the [2017 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers’ Deputies on 22 March 2017.

<sup>75</sup> See in this respect the [2017 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers’ Deputies on 22 March 2017.



- ensure that the Department of the European Social Charter is sufficiently staffed with appropriately qualified lawyers to be able to perform its work thoroughly.<sup>77</sup>

## 8. Proposals concerning the Commissioner for Human Rights

The Commissioner could be encouraged to

- inform social partners and NGOs about the collective complaints procedure and submit, where appropriate, written observations in connection with collective complaints (see Rule 32A of the ECSR's Rules).

## 9. Proposals concerning the Conference of INGOs

The Conference of INGOs could be encouraged to

- where appropriate, submit written observations on collective complaints (Rule 32A of the ECSR's Rules).

**• See the Speech of the President of the ECSR, Professor G. Palmisano, before the Committee of Ministers on 22 March 2017:**

...

Let me start by mentioning the ongoing exchanges with both the Governmental Committee and the agents of the Governments before the Committee, which is testified to by two fruitful meetings, held on last January and, respectively, July 2016. The aim of such meetings was, ... in the other case, to deal with procedural and practical issues relating to the collective complaints mechanism, with a view to improving the functioning and fairness of this procedure.

With regard to this last procedure, let me draw your attention to the letter I sent to the Committee of Ministers two months ago, concerning the question of reimbursement of costs in collective complaints. As you know, the complaints procedure is of a quasi-judicial nature and the preparation of a complaint and subsequent submissions are often time-consuming and costly for a complainant organisation. By lodging complaints, complainant organisations are making a valuable contribution to ensuring the proper application of the European Social Charter and this contribution should be recognized and encouraged. This is why the European Committee of Social Rights considers that reimbursement of costs is justified and appropriate under certain circumstances, and an important factor in enabling the complaints procedure to attain its objectives. Therefore, the Committee is at the disposal of the Committee of Ministers for a dialogue on the issue of reimbursement of costs and we really hope that you can take a positive stand on the conditions and circumstances under which reimbursement of reasonably incurred costs would be appropriate.

...

<sup>76</sup> See in this respect the [2017 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers' Deputies on 22 March 2017; and the [2016 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers' Deputies on 30 March 2016.

<sup>77</sup> See also the [2018 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers' Deputies on 21 March 2018.

... for the States parties to the collective complaints procedure.

As for improving the efficacy of this last procedure, let me respectfully say that the Committee of Ministers could and should play a more incisive role in order to contribute to the good functioning of the system and, what is most important, to improve respect for social rights in Europe. I refer in particular to those cases where, after repeated findings of violation by the European Committee of Social Rights, the situation of violation continue to go unremedied for several years, and the State concerned fail to respond and take remedial action. In such cases, as you all know, creating peer pressure among States Parties can indeed be crucial to make more effective the system of protection of social rights provided for by the Charter. This means, for example, that States within the Committee of Ministers could step in - more often than they actually do - to invite or urge another member State to act in conformity with a decision of the Committee of Social Rights, in the same way as they do this for judgments delivered by the European Court of Human Rights. And in cases where the Committee of Social Rights finds that the Charter has not been applied in a satisfactory manner, the Committee of Ministers could and should indeed make use of its power to address a recommendation to the State Party concerned, as it is expressly provided for by Art. 9 of the Protocol on collective complaints. To improve the situation in this respect, it could maybe be useful to reconsider the process of involvement of the Committee of Ministers in the follow-up of the Committee's decisions on collective complaints.

Lastly, and to conclude, let me say that considering the increasing workload involved in the supervisory activities on social rights, and the importance attached to the Social Charter system, it would be indeed crucial both to strengthen the staff of the Secretariat of the Social Charter, and to increase the number of members of the European Committee of Social Rights. In this last respect, increasing the number of the Committee's members would be useful not only to cope with our increasing workload, but also to ensure a better overall balance in the Committee of the different legal traditions and social models in Europe. And this would also provide a much-needed opportunity for a revision of the distribution of States in the groups for the election process. ...

### III. THE AWARENESS, VISIBILITY AND ESTEEM OF THE CHARTER SYSTEM

#### 1. Current challenges

- See the Report of the 2<sup>nd</sup> meeting (2–4 May 2018) of the CDDH-SOC (document CDDH-SOC(2018)R2):

14. ...

- The following further particular aspects could be discussed in the second report: ... awareness-raising and training activities; ...

...

16. ... Professor Palmisano ... argued that the following issues needed to be addressed regarding the Charter system: ... 5) ... the reinforcement of the Department of the European Social Charter ...

- See the CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH(2018)R89add1):

#### (...) Training and awareness-raising on the Charter

159. Every year, a number of seminars and training events on the Charter and ECSR decisions and conclusions are held in various countries<sup>78</sup> with the participation of former or current members of the ECSR; some of them are organised by the Conference of INGOs in association with the Charter Department. The ECSR is also regularly represented at international conferences and events on human rights.<sup>79</sup>

160. In addition, a course on labour rights<sup>80</sup> has been developed for the European Programme for Human Rights Education for Legal Professionals in the 28 EU Member States ("HELP in the 28"), with the objective of assisting them in the national implementation of the European Social Charter, the Convention and the EU Charter of Fundamental Rights. In the context of this HELP programme, for instance, a European Seminar on Labour Rights was held on 26 and 27 September 2016, organised by the Council of Europe Human Rights National Implementation Division in association with the Judicial Training Centre of Slovenia.

161. Finally, a number of books and articles on the Charter have recently been published.<sup>81</sup>

<sup>78</sup> Examples from 2016: Training event for NGOs on the collective complaints procedure (Brussels, 22 January 2016), conference on Charter implementation in Andorra (Andorra la Vella, 28 April 2016) and seminar on the collective complaints procedure for representatives of various Serbian institutions working on social rights (Belgrade, 25 October 2016). All the training and awareness-raising events on the Charter that took place in 2016 are listed in the [ECSR's Activity Report 2016](#), Appendix 3.

<sup>79</sup> A list of these events can equally be found in the annual activity reports, see, for instance, the [ECSR's Activity Report 2016](#).

<sup>80</sup> <http://www.coe.int/en/web/help/help-courses>: This course comprises the following modules: right to work; employment relationship and working time; pay and insolvency; termination of employment; discrimination and equal opportunities; collective labour rights; and health and safety (physical and mental) at work. Events organised under this programme included a course on capacity-building for labour rights on 9 November 2016 in Greece, a seminar on how labour rights need more protection in times of crisis and austerity on 29 September 2016 in Slovenia, a course on labour rights for judges and lawyers on 12 September 2016 in Lithuania and a trainer training session on labour rights on 3 and 4 March 2016 in Strasbourg.

<sup>81</sup> A list of these publications can also be found in the annual activity reports, see [ECSR's Activity Report 2015](#), Annex 13 and [ECSR's Activity Report 2016](#), Appendix 5.

• See the Summary of the Member States' replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)07Rev:

## **D. Training and awareness-raising actions on social rights**

### **D.1. Promotion of the Charter**

*What promotion is made at domestic level concerning ECSR decisions and/or conclusions (notification to relevant authorities, including parliamentary and judicial, social partners, NGOs, NHRIs, observatories, other stakeholders)? Are the decisions and/or conclusions of the ECSR translated into your national language(s)? Do you encounter any particular difficulties in this area?*

48. Twenty-seven<sup>82</sup> States out of twenty-nine respondents submitted information<sup>83</sup> on this question. One State<sup>84</sup> declared that it did not make any specific promotion regarding the Charter.

49. The majority of States promote ECSR decisions and/or conclusions at domestic level, including by notifying them to the relevant authorities or local administration bodies, but also to social partners<sup>85</sup>. Other States periodically disseminate the conclusions and decisions of the ECSR to relevant Human Rights / Social Rights institutions<sup>86</sup>. In the Netherlands, for example, the ECSR decisions are included in the Annual Report on International Human Rights. Some other States involve social partners in the law-drafting procedures<sup>87</sup>.

50. In order to facilitate access to information, some States publish it on websites (ministries, departments, institutions)<sup>88</sup> while some others ensure the translation of documents and data in their national languages<sup>89</sup>.

51. As for an example of the difficulties encountered, one State<sup>90</sup> mentioned the high fluctuation of civil servants in the ministries, involving a frequent change of the persons responsible for reporting on the implementation of the revised European Social Charter.

<sup>82</sup> Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, "The former Yugoslav Republic of Macedonia" and Ukraine.

<sup>83</sup> Belgium and Latvia have not provided information on this point.

<sup>84</sup> Denmark.

<sup>85</sup> Croatia and Iceland.

<sup>86</sup> Albania, Armenia, Austria, Bulgaria, Croatia, Czech Republic, Estonia, France, Iceland, Italy, Republic of Moldova, Norway, Poland, Portugal, Slovak Republic; Slovenia and "the Former Yugoslav Republic of Macedonia".

<sup>87</sup> Croatia.

<sup>88</sup> Finland, Spain, "the Former Yugoslav Republic of Macedonia" and Ukraine.

<sup>89</sup> Armenia, Azerbaijan, Bulgaria, Czech Republic, "the Former Yugoslav Republic of Macedonia", Estonia, Italy and the Republic of Moldova (unofficial translation).

<sup>90</sup> Republic of Moldova.

## D.2. Promotion of the collective complaints procedure

*Do your authorities regularly inform the social partners, NHRIs and NGOs of the possibilities offered by the collective complaints procedure (submission of complaints and/or submission of comments)?*

52. Thirteen States out of the twenty-one respondents<sup>91</sup> did not yet accept the collective complaints procedure<sup>92</sup>. Among the States that did not accept the collective complaints procedure, a few<sup>93</sup> declared to conduct cooperation activities with social partners and NGOs.

53. Among the States which accepted the collective complaints procedure, some States<sup>94</sup> declared to communicate and co-ordinate with social partners and/or with NHRIs and NGOs on the possibilities offered by the collective complaints procedure. Other States<sup>95</sup> declared that the authorities did not communicate with the social partners, NHRIs and NGOs on this particular topic.

## D.3. Training at national level

*Can you indicate the training provided at national level over the last two years concerning the social rights guaranteed by the Council of Europe instruments?*

*What are the key factors for their success?*

*Do you encounter any particular difficulties in terms of training in social rights?*

54. Various training activities related to social rights were organised notably in Armenia<sup>96</sup>, Azerbaijan, Belgium, Croatia, Estonia, Finland, France<sup>97</sup>, Georgia<sup>98</sup>, Iceland, Lithuania<sup>99</sup>, Portugal<sup>100</sup>, Slovenia<sup>101</sup>, Spain<sup>102</sup>, the Netherlands, "The former Yugoslav Republic of Macedonia", Turkey<sup>103</sup> and Ukraine<sup>104</sup>.

<sup>91</sup> Albania, Armenia, Azerbaijan, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Iceland, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Norway, Poland, Portugal, Slovak Republic, Slovenia and Ukraine.

<sup>92</sup> Albania, Armenia, Azerbaijan, Denmark, Estonia, Iceland, Latvia, Lithuania, Republic of Moldova, Poland, Portugal, Slovak Republic and Ukraine.

<sup>93</sup> Albania, Estonia, Lithuania, Slovak Republic and Ukraine.

<sup>94</sup> Bulgaria, Croatia, Czech Republic, France and Ireland.

<sup>95</sup> Finland, Italy and Portugal.

<sup>96</sup> For example between 2015 and 2017, the Armenian National Institute of Labour and Social Research conducted several trainings on "protection of Human rights" for civil servants covering a separate topic concerning the European Social Charter and trained 241 civil servants.

<sup>97</sup> France reported some training courses on social rights, as well as conferences and seminars organised in 2016 and 2017 in co-operation with social partners such as the Academic network on the European Social Charter and Social Rights ("RACSE").

<sup>98</sup> In May 2016, for example, training sessions were organised in co-operation with the Council of Europe for the senior Public Defender's staff on the "Fight against Intolerance and Protection of Social Rights"; moreover, trainings on human rights issues are regularly provided by the Education Centre of the Georgian Bar Association, the High School of Justice of Georgia and the Labour Inspector of Georgia in cooperation with national specialists and the experts of the International Labour Organization and human rights NGOs.

<sup>99</sup> In 2015-2017 training activities related to labour rights, social rights, persons with disabilities, minors' related issues, equal opportunities and domestic violence were conducted.

<sup>100</sup> A specific programme for young people has been developed in Portugal, which launched the Intercultural Education School Network (October 2016)<sup>100</sup>. In 2015 – 2016, Municipal Councils supported a game created as part of the ENTERS Project of the Council of Europe, with the aim of disseminating and raising awareness about social rights among young people.

<sup>101</sup> In 2016, a European Seminar on "Labour Rights as Human Rights: Labour rights require more protection in times of crisis and austerity" was held in the framework of "HELP in the 28" Programme.

<sup>102</sup> Spain developed an online training course on equal opportunities for women and men, with a basic level targeted at the general public and an advanced level for the work-related sectors (companies and human resources, social services and the legal sphere), in view of integrating the gender perspective into their labour practice.

55. The main topics concern the protection of various social rights (labour rights, equal opportunities, family, child rights, housing, persons with disabilities, domestic violence etc.), including also non-discrimination aspects and involving participation of specialist researchers, but also career lawyers, judges and prosecutors.

**• See the Speech of the President of the ECSR, Professor G. Palmisano, before the Committee of Ministers on 21 March 2018:**

...

Having said this, I have however to draw your attention on some problems that, notwithstanding the intense commitment of the Committee and the exceptional efforts of our Secretariat, risk jeopardizing the efficiency of the system of the European Social Charter and its capacity to meet the challenge of adequately monitoring State respect for social rights in Europe. These problems are twofold: on the hand, they concern the scarcity of the human resources dedicated to the Charter system, in proportion to the growing workload of both the Committee and the Secretariat. On the other hand, they relate to the reporting procedure and the way in which it is organized and implemented.

As for the first kind of problems, we are all aware of the fact that the Council of Europe is currently facing serious budgetary restrictions. Such restrictions are inevitably having a negative impact on the number of the temporary and regular members of the Department of the Social Charter, which was already understaffed and overloaded with work, as well as on the organization of the working sessions of the Committee.

Let me say very frankly that, starting from the present year, such a situation will make it impossible for the Committee and the Secretariat to perform their tasks in the same thorough and scrupulous way that they are used to do. I know that the current situation makes it unlikely that additional resources will be allocated to the recruitment or assignment of additional qualified staff to the Department of the Social Charter. But, please, be aware that, without this – or, even worst, if the blatantly unfair cuts to the Charter system which have been proposed as an implication of the cessation of Turkey's major contributor status were approved and applied –, the system of the Charter will no more work efficiently, nor produce the outcomes that it is expected to do according to the Charter.

The principal tool for the protection of social rights at the European level will, by consequence, be seriously weakened and the fundamental normative frame of reference of social rights in Europe will lose visibility and importance. I wonder whether such a possible step backwards would be in line either with the priorities of the Secretary General, who – as you know – made the protection of social rights and the strengthening of the European Social Charter one of the imperatives of his second term of office, or with the “Turin process”, and with the growing trend of attention to social rights in the policies of many European States as well as in EU policies.

<sup>103</sup> See, for example, the Project “Improving Social Integration and Employment of Disadvantaged People” (DESIP) for increasing the institutional capacity of the Department of Employment Policies of the Ministry of Labour and Social Security.

<sup>104</sup> Various training activities on human rights are provided in the framework of the Action Plan on the implementation of the “National Human Rights Strategy 2020” and within the framework of the Council of Europe Action Plan for Ukraine 2015-2017.

## 2. CDDH proposals

• See the Short analysis of the replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)06):

### B. Main proposals made with a view to improving the implementation of social rights, in particular those laid down in the (revised) Charter as interpreted by the ECSR

10. There is a broad consensus among the responding Member States that the awareness-raising and training activities on social rights in general should be extended. Different Member States made, *inter alia*, the following specific proposals:

- Training activities should be specifically designed for national institutions (including judges and prosecutors) which implement the decisions and conclusions of the ECSR;
- Teaching, legal research projects and publications on social rights in higher education institutions should be extended;
- The HELP platform should be used more extensively in the training on social rights;
- The Digest of Decisions and Conclusions of the ECSR should be updated;
- The said Digest, or the most important decisions and conclusions of the ECSR as well as further relevant material should be translated into the Member States' national languages;
- A more active press work to promote the Council of Europe's activities in the field of social rights should be carried out;
- Online campaigns and leaflets on social rights could further make the topic more accessible to a broader audience.

• See the Summary of the Member States' replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)07Rev):

#### D.4. Council of Europe trainings and programs

*Would you support the development by the Council of Europe of awareness-raising activities on social rights such as specific trainings (e.g. on line), cooperation activities or programs?*

56. Twenty-five States<sup>105</sup> responded and declared being open to support the development of awareness-raising activities by the Council of Europe on social rights, such as specific trainings (e.g. online), cooperation activities or programs. Some States<sup>106</sup> referred to particular relevance of online training courses. Others<sup>107</sup> declared their openness notably to trainings of a real practical value. One

<sup>105</sup> Albania, Armenia, Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Iceland, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain and Ukraine.

<sup>106</sup> Italy and Portugal.

<sup>107</sup> Latvia and Norway.

State<sup>108</sup> indicated that it would support activities that would involve not only the participation of the members of the Secretariat and experts of the Social Charter but also that of State officials, thus ensuring a more balanced representation. Further ideas put forward included a better follow-up to judgments of the European Court of Human Rights on social rights issues, the development by the European Court of Human Rights (in consultation with the Secretariat of the Charter) of thematic fact-sheets and the creation of a more user-friendly website of the Social Charter<sup>109</sup>.

## Suggestions

*Which other suggestions could be made concerning training and awareness-raising activities on social rights?*

57. Thirteen respondent States<sup>110</sup> mentioned their interest in training and awareness-raising activities on social rights. Some States<sup>111</sup> stressed the importance of such trainings for the members of the legal and judicial bodies. One State<sup>112</sup> supported the practice of the e-learning involving civil society and private bodies, enriched by the exchange of best practices<sup>113</sup>. Another State<sup>114</sup> suggested the organisation of periodical awareness raising (and/or training) events, focusing on different aspects of the European Social Charter and in cooperation with other international standard-setting organisations (for example, ILO)<sup>115</sup>. A progressive and wider participation of the media to ensure a better and more effective information and awareness at all national levels regarding various human rights and social rights activities in relation to the implementation of instruments of the Council of Europe has also been highlighted.

**• See the Preliminary draft overview over the possible contents of the “second report” presenting proposals with a view to improving the implementation of social rights (document CDDH-SOC(2018)08):**

## 2. Proposals concerning the European Committee of Social Rights and/or the Department of the European Social Charter

The European Committee of Social Rights (ECSR) and/or the Department of the European Social Charter could be encouraged to

- pursue and extend cooperation activities with the States;
- pursue the dialogue with the other stakeholders and competent institutions, notably the Committee of Ministers, the Parliamentary Assembly, the Governmental Committee of the European Social Charter, the Government Agents before the ECSR, the European Court of Human Rights, the Conference of INGOs, as well as the Court of Justice of the EU, the European Commission, the European Union

<sup>108</sup> Poland.

<sup>109</sup> Proposals concerned, in particular, access to documents and a balanced description of the procedures and control bodies.

<sup>110</sup> Azerbaijan, Bulgaria, Finland, France, Lithuania, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, “The Former Yugoslav Republic of Macedonia” and Turkey.

<sup>111</sup> Azerbaijan, Bulgaria, Finland, France and Slovenia.

<sup>112</sup> Portugal.

<sup>113</sup> Lithuania.

<sup>114</sup> “The Former Yugoslav Republic of Macedonia”.

<sup>115</sup> Such suggestions have been made by Finland, France and Lithuania.



Agency for Fundamental Rights (FRA), the International Labour Organization (ILO) and the United Nations bodies working in the field of social rights;<sup>116</sup>

- foster the Charter's visibility, for instance, by awareness-raising activities in the Member States, public hearings before the ECSR and press work concerning the conclusions and decisions of the ECSR (subject to the allocation of the necessary resources);
- pursue and widen its training activities disseminating knowledge on the Charter to relevant stakeholders in the Member States, possibly with the help of the CoE-FRA-ENNRHI-EQUINET Collaborative Platform on social and economic rights;
- pursue its training activities disseminating knowledge on the Charter within the Court in seminars for judges and the Registry and/or within the Court's internal training programme. Moreover, short overviews / updates on the decisions of the ECSR in the field of social rights touched upon in the Court's case-law could be provided to the Court's Registry to encourage and facilitate cross-references to the Charter in the Court's judgments;
- train lawyers seconded from the Court's Registry to the Department of the European Social Charter for one-year periods.

### **3. Proposals concerning the European Court of Human Rights and/or its Registry**

The European Court of Human Rights and/or its Registry could be encouraged to

- ensure, as far as possible, a harmonious interpretation of the provisions of the Convention and those of the Charter;
- make more cross-references to the Charter and to the case-law of the ECSR, as a means of emphasising the complementary nature of the Convention and the Charter and, in certain cases, the existing synergy between both instruments;
- engage in a dialogue and discussion with the European Committee of Social Rights and the Department of the European Social Charter to ensure that its members and staff have a better knowledge of the Charter;
- organise / host training events on the Charter in the context of seminars or of the Court's internal training programme;
- provide short overviews / updates on the Court's case-law in the field of social rights on the Court's website to facilitate knowledge of and references to its case-law.

### **6. Proposals concerning the Parliamentary Assembly**

The Parliamentary Assembly could be encouraged to

- strengthen the pan-European dialogue on social rights, *inter alia* by continuing to organise inter-parliamentary seminars and debates on the Charter, also in the

<sup>116</sup> See also the [2018 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers' Deputies on 21 March 2018.

framework of its project “parliaments and social rights”, in order to improve compliance with the social rights standards at the national level;<sup>117</sup>

## **7. Proposals concerning the Congress of Local and Regional Authorities**

The Congress of Local and Regional Authorities could be encouraged to

- pursue its activities aimed at raising awareness on human rights among local and regional authorities and continue giving concrete guidance on how to implement human rights at the local level, *inter alia*, by the preparation of further volumes of the Handbook on Human Rights, a compendium of good practices for local and regional authorities to respond to human rights challenges in different fields in their municipalities and regions.<sup>118</sup>

## **9. Proposals concerning the Conference of INGOs**

The Conference of INGOs could be encouraged to

- keep raising awareness (notably by running training sessions) of the Council of Europe INGOs and INGOs working with the European Union of the contribution which they can make to the collective complaints mechanism and which can potentially improve the enforcement of social rights in Europe;
- contribute to improving the visibility of the Charter in their communication policy;

## **10. Proposals concerning the HELP programme**

The European Programme for Human Rights Education for Legal Professionals (HELP) could be encouraged to

- review the course on labour rights<sup>119</sup> in the programme of human rights education for legal professionals in the 28 EU Member States (“HELP in the 28”) with the objective that this course assisting in the implementation of the Convention, the European Social Charter and the EU Charter of Fundamental Rights could benefit to all Council of Europe Member States under the “HELP in the 47” programme. Further capacity-building seminars on labour rights could be held;
- develop other training courses for all States on topics concerning the Charter and its complementarity with the Convention, thereby illustrating the principles of indivisibility and interdependence of human rights.

<sup>117</sup> See [PACE Resolution 2180 \(2017\)](#) of 30 June 2017.

<sup>118</sup> See for further information [Resolution 427\(2018\) of the Congress of Local and Regional Authorities](#) on Promoting human rights at local and regional level.

<sup>119</sup> <http://www.coe.int/en/web/help/help-courses>: This course comprises the following modules: right to work; employment relationship and working time; pay and insolvency; termination of employment; discrimination and equal opportunities; collective labour rights; and health and safety (physical and mental) at work.

## IV. NATIONAL IMPLEMENTATION OF SOCIAL RIGHTS

### 1. Current challenges

- See the Report of the 2<sup>nd</sup> meeting (2–4 May 2018) of the CDDH-SOC (document CDDH-SOC(2018)R2):

12. The Group welcomed the high number of Member States (31) which had submitted a reply to the questionnaire. It considered that the replies to the questionnaire as well as the summary and analysis thereof shall be used in the work on the future second report containing proposals, as appropriate, with a view to improving the implementation of social rights. This will reflect how member States are implementing social rights, national developments in this respect as well as problems which the States are facing in this respect.

...

14. ...

- The following further particular aspects could be discussed in the second report: ... the relationship between the European Social Charter organs and the Committee of Ministers ...; and the national implementation of social rights;

- See the CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH(2018)R89add1):

#### (...) Implementation of the Charter at national level

##### i) The application of the Charter by national courts

142. It is important to stress at the outset the non-exhaustive and purely illustrative nature of the examples which follow. These will be supplemented at a later stage in particular by an analysis of the replies given by the States to a questionnaire concerning their good practices in the implementation of social rights and in particular of the European Social Charter.<sup>120</sup>

143. The application of the Charter and of the decisions and conclusions of the ECSR by national courts can have a considerable impact on citizens' everyday lives. Therefore, the ECSR encourages:

*“national courts to decide the matter in the light of the principles it has laid down [...] or, as the case may be, [...] the legislator to give them the possibility to draw the consequences as regards the conformity with the Charter and the legality of the provisions at issue.”*<sup>121</sup>

144. It should be pointed out, however, that the application of the (revised) Charter by national courts differs and can take different forms or directions.

<sup>120</sup> See the decision of the CDDH in December 2017, [CDDH\(2017\)R88](#), § 15. See for the States' replies to a questionnaire related to the good practices on the implementation of social rights at national level document [CDDH-SOC\(2017\)04](#), for a summary thereof document [CDDH-SOC\(2018\)07](#) and for a short analysis of the replies document [CDDH-SOC\(2018\)06](#).

<sup>121</sup> Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, decision on the merits of 22 May 2003, § 43, on the obligation to repeal or not to enforce pre-entry closed shop clauses, even if a State traditionally leaves regulation of the labour sector to the social partners alone (§ 28).

145. As a matter of example, Belgium's Council of State partially set aside a compulsory retirement decision relating to a civil servant, which followed automatically from two negative assessments and took effect 10 days later. It set aside the effective date, enforcing Article 4 § 4 of the Charter directly, since it held that this period, although admissible in domestic law, did not match the reasonable period of notice guaranteed by the Charter.<sup>122</sup> Other Belgian courts – including the Constitutional Court – are equally applying the Charter.<sup>123</sup>

146. Furthermore, in Spain a labour court overruled national legislation allowing workers to be dismissed during their probationary period without notice or compensation. In doing so, it based its reasoning on the decision of the ECSR in Complaint No. 65/2011 (GENOP-DEI and ADEDY v. Greece), holding that the measures imposed on Greece by the Troika were similar to those taken in Spain.<sup>124</sup> Several other Spanish labour courts have followed this judgment. In the same vein, three judgments by high regional courts in Spain have recently applied the Charter, giving it a binding effect (Article 4 § 4 on the right of all workers to a reasonable period of notice), and have recognised that the ECSR's interpretations can help the Spanish judiciary to interpret its dispositions.<sup>125</sup>

147. The Labour Division of the French Court of Cassation has also accepted the direct applicability of certain (revised) Charter articles such as Article 5 (right to organise) and Article 6 (right to bargain collectively).<sup>126</sup> It has further accepted the applicability of some of the Revised Charter's general provisions in conjunction with Article 5: Article A specifying the extent of States' commitments, Article E enshrining the general principle of non-discrimination and Article G laying down the restrictions permitted by the Revised Charter.<sup>127</sup> France's Conseil d'Etat, for its part, recognised the direct applicability of a Revised Charter article (Article 24 on protection in cases of termination of employment) for the first time in its *Fischer* judgment of 10 February 2014.<sup>128</sup> In a decision of 11 April 2018, the Italian Constitutional Court, for its part, has used Article 5 of the Charter as a criterion for assessing the constitutionality of a provision of domestic law prohibiting military staff to form trade unions.<sup>129</sup>

<sup>122</sup> Belgian Council of State, judgment of 28 April 2008, No. 182.454; and judgment of 6 November 2012, No. 221.273 (concerning Article 6 § 4 of the Charter).

<sup>123</sup> See, for example, the Belgian Constitutional Court's judgment of 4 May 2005, No. 87/2005 (at B.48 and B.49) regarding Article 2 § 1 of the Charter; judgment of 6 April 2000, No. 42/2000 (at B.7.4.) regarding Article 6 § 4 of the Charter; judgments of 14 November 2012, No. 142/2012, and of 15 July 1993, No. 62/1993, on other articles of the Charter. See also Judgment No. 101/2008, which refers to Article 31 of the Charter without reservations (although it is not binding on Belgium and a reservation has been expressed in this field concerning the EU Charter of Fundamental Rights) prior to finding a violation of the Constitution with regard to housing (at B.20 *et seq.*). For other courts referring to Article 6 § 4 of the Charter see, for example, the judgment of 5 November 2009 of the Brussels Labour Court.

<sup>124</sup> Juzgado de lo Social No. 2 of Barcelona, Judgment No. 412 of 19 November 2013.

<sup>125</sup> See High Court of Justice of the Canaries (Las Palmas, Gran Canaria), Chamber for Social and Labour Matters, Judgment 30/2016 of 28 January 2016, App. 581/2015; Judgment 252/2016 of 30 March 2016, App. 989/2015; Judgment 342/2016 of 18 April 2016, App. 110/2016.

<sup>126</sup> French Court of Cassation, Lab. Div., 14 April 2010, Nos. 09-60426 and 09-60429; 10 November 2010, No. 09-72856; 1 December 2010, No. 10-60117; 16 February 2011, Nos. 10-60189 and 10-60191; 23 March 2011, No. 10-60185; and 28 September 2011, No. 10-19113. See also Carole Nivard, "*L'effet direct de la Charte sociale européenne devant les juridictions suprêmes françaises*", *Revue des droits et libertés fondamentaux (RDLF)*, 2012, Chron. 28.

<sup>127</sup> French Court of Cassation, Lab. Div., 29 February 2012, No. 11-60203; and 10 May 2012, No. 11-60235. See also Nivard, *ibid.*

<sup>128</sup> Conseil d'Etat, judgment of 10 February 2014. See also Carole Nivard, "*L'effet direct de la Charte sociale européenne devant le juge administratif – Retour sur la question évolutive de l'effet direct des sources internationales*", *RDLF* 2016, Chron. 22.

<sup>129</sup> See the Italian Constitutional Court's website for the [Constitutional Court's Press release](#).

148. Finally, the ECSR holds exchanges of views with national courts. By way of example, on 28 February 2017, a meeting took place with the Ukrainian Constitutional Court on the effective protection of pension and social security rights in the light of the Charter and the conclusions and decisions of the ECSR.<sup>130</sup>

## ii) Internal reforms further to ECSR decisions or conclusions

149. Some States have undertaken significant reforms following ECSR decisions or conclusions, a few examples of which are given below.<sup>131</sup>

150. In its decision of 19 October 2009 in *ERRC v. France*, for instance, the ECSR found that there had been a violation of Article E taken in conjunction with Article 31 of the Revised Charter, since Travellers were discriminated against when it came to implementing their right to housing.<sup>132</sup> In its assessment of the follow-up to this decision, the ECSR found in 2015 that France had brought its situation in conformity through specific measures taken in the Travellers' interests in the field of housing, such as introducing an assisted rental loan for integration purposes, a reduction in the costs of setting up stopping places, a new inter-ministerial strategy on the situation of Travellers and a long-term plan to combat poverty and promote social inclusion containing provisions relating specifically to their accommodation.<sup>133</sup>

151. Furthermore, in its decision of 18 February 2009 in *ERRC v. Bulgaria*, the ECSR found that there had been a violation of Article 13 § 1 of the Charter, since the amendments to the Bulgarian Social Assistance Act suspended minimum income for persons in need after 18, 12 or 6 months.<sup>134</sup> In its assessment of the follow-up to this decision, the ECSR found in 2015 that Bulgaria had brought its situation in conformity with the Charter following an amendment of this law that now ensured social assistance to these persons without a time-limit.<sup>135</sup>

152. In *DCI v. Belgium*, the ECSR found that there had been a violation of Articles 17 § 1 and 7 § 10 of the Revised Charter as the Belgian Government had not taken the necessary and appropriate measures to guarantee illegally resident accompanied foreign minors and unaccompanied foreign minors who were not requesting asylum the care and assistance they needed and special protection against physical and moral hazards.<sup>136</sup> In 2015, the ECSR, in its assessment of the follow-up to this decision, held that Belgium had brought its situation into conformity with the Charter after having taken measures to provide these two categories of foreign minors with shelter in a reception centre.<sup>137</sup>

153. The ECSR has equally taken note of examples of the implementation of the Charter in the State Parties in its conclusions adopted with regard to State reports – whether in the form of new legislation or by changes in the practice of the application of the domestic law. A few examples are given below.

<sup>130</sup> See the following link for information on the [exchange of views with the Ukrainian Constitutional Court](#).

<sup>131</sup> Similarly to the Factsheets published by the Court's Press Unit, [country-by-country factsheets](#) are published on the European Social Charter's website in respect of the Charter, summarising the States' commitments in respect of, and implementation of the Charter.

<sup>132</sup> See *ERRC v. France*, Complaint No. 51/2008, decision on the merits of 19 October 2009.

<sup>133</sup> See the Social Charter's HUDOC database (<http://hudoc.esc.coe.int/eng#>) on the assessment of the follow-up to Complaint No. 51/2008.

<sup>134</sup> *ERRC v. Bulgaria*, Complaint No. 48/2008, decision on the merits of 18 February 2009.

<sup>135</sup> See the Social Charter's HUDOC database (<http://hudoc.esc.coe.int/eng#>) on the assessment of the follow-up to Complaint No. 48/2008.

<sup>136</sup> *DCI v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012.

<sup>137</sup> See <http://hudoc.esc.coe.int/eng#>.

154. Concerning the right to health, in its Conclusions 2013, the ECSR specifically noted a number of measures taken by Turkey to reduce infant and maternal mortality, which had substantially improved the situation, and several regulations on waiting lists introduced in Slovenia in order to reduce waiting times for care and treatment.<sup>138</sup>

155. Concerning the rights of elderly persons, in its Conclusions 2013 and 2013/XX-2, the ECSR took particular note of the adoption of legislation in the Czech Republic prohibiting age discrimination outside employment and of specific measures taken in France, Malta, the Netherlands and Slovenia to combat the abuse of elderly persons.<sup>139</sup>

156. Concerning the right to organise, in its Conclusions 2014/XX-3, the ECSR noted a positive development in Belgium after the enactment of a law in 2009 enabling victims of discrimination based on trade union membership to claim compensation proportionate to damage actually suffered and prohibiting this type of discrimination at all stages of the employment relationship. Moreover, Romania passed the Social Dialogue Act in 2011 which abolished the nationality requirement for membership of the Economic and Social Council.<sup>140</sup>

157. Concerning the rights of persons with disabilities, in its Conclusions of 2012 the ECSR specifically noted the passing by Estonia of an Equal Treatment Act (entry into force on 1 January 2009) prohibiting all forms of discrimination on the ground of disability in access to vocational guidance and training, and the passing by Poland of the 2010 Equal Treatment Act, introducing into the law on vocational and social rehabilitation and employment of persons with disabilities an expressly worded duty of “reasonable accommodation” for persons with disabilities who were employed, engaged in a recruitment process, undergoing training, on an internship, etc., unless such measures would impose a disproportionate burden on an employer.<sup>141</sup> Moreover, in its Conclusions of 2016, the ECSR noted, in particular, that Armenia adopted a law on employment (entry into force on 1 January 2014) which sets out the measures to be taken to help persons with disabilities integrate into the labour market.<sup>142</sup> Moreover, the Republic of Moldova adopted legislation to ensure equality (entry into force on 1 January 2013) which prohibits all forms of discrimination, including discrimination based on disability, and applies to all individuals and legal persons in the public and private domains.<sup>143</sup> Furthermore, Italy adopted Legislative Decree No. 76/2013, which obliges public and private employers to make reasonable accommodation to ensure compliance with the principle of equal treatment of persons with disabilities at work.<sup>144</sup>

158. Lastly, concerning the right to work, in its Conclusions of 2012 the ECSR particularly noted structural measures adopted by Sweden in the context of the economic crisis with a view to (i) encouraging unemployed persons to actively seek employment, (ii) facilitating labour market re-integration of persons excluded and (iii) achieving better labour market matching by a restructuring of the Public Employment Service. Moreover, the ECSR took note of the adoption by Austria of labour market measures including measures relating to education and training for

<sup>138</sup> See Conclusions 2013 of 06/12/2013 – Turkey – Article 11-1; and Conclusions 2013 of 06/12/2013 – Slovenia – Article 11-1.

<sup>139</sup> See Conclusions XX-2 of 06/12/2013 – Czech Republic – Article 4 of the 1988 Additional Protocol; and Conclusions 2013 – France – Article 23.

<sup>140</sup> See Conclusions 2014 of 05/12/2014 – Romania – Article 5.

<sup>141</sup> See Conclusions 2012 of 07/12/2012 – Estonia – Article 15-1; and Conclusions XX-1 of 07/12/2012 – Poland – Article 15-2.

<sup>142</sup> See Conclusions 2016 of 09/12/2016 – Armenia – Article 15-2.

<sup>143</sup> See Conclusions 2016 of 09/12/2016 – Moldova – Article 15-1.

<sup>144</sup> See Conclusions 2016 of 09/12/2016 – Italy – Article 15-2.

both employees and jobseekers (including a 23.5% increase in the budget for active labour market policy in 2009 by comparison with 2008).<sup>145</sup>

...

## CONCLUSIVE REMARKS

...

289. ... In addition, and from a different perspective, it is to be noted that recommendations addressed to individual States by the Committee of Ministers following the ECSR's finding of non-conformity of a situation with the Charter remain rare.

...

292. As regards Member States' compliance with the social rights laid down in the (revised) Charter, in its recent conclusions on the rights laid down in the Charter, the ECSR found a majority of situations in the Member States in conformity with the Charter, but also numerous cases of non-conformity in the past years. Whereas positive developments were observed in some areas (for instance with regard to the right to protection in cases of termination of employment, the right of workers to the protection of their claims in the event of the insolvency of the employer and the right of access to education), problems remained in other areas (for instance with regard to discrimination in employment, insufficient integration of persons with disabilities into the ordinary labour market and the right to equality of opportunities for women and men). In the collective complaints procedure, the ECSR found one or more violation(s) of the (revised) Charter in the vast majority of its decisions.

• See the Short analysis of the replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)06):

### A. Main good practices reported by the Member States in the implementation of social rights

6. As regards the existence of specific institutions in charge of monitoring social rights, the States' replies revealed that they have set up a large variety of both governmental and independent mechanisms monitoring the implementation of social rights, in particular, in respect of specific groups. Numerous different specialised bodies work in the fields of, *inter alia*, inclusion of elderly people, people with disabilities, women's or children's rights.

7. Moreover, a large majority of the responding States carries out social impact assessments when drafting new laws, which may cover not only the economic, financial or environmental consequences of the draft laws, but also specific assessments of their impact on social rights or on certain social groups. Likewise, in almost all States there is an obligation to verify the compatibility of draft laws with international law, which is carried out either by the drafting ministry alone or in cooperation with other ministries and/or by the national parliaments. In most States there is no separate control mechanism specifically designed for the control of compliance with social rights. Some States also reported the existence of handbooks or guidelines to ensure the compatibility of draft laws with international social rights or stressed that they involved international bodies or experts in the compatibility assessment.

<sup>145</sup> See Conclusions 2012 of 07/12/2012 – Sweden – Article 1-1; and Conclusions XX-1 of 07/12/2012 – Austria – Article 1-1.



8. Furthermore, as for awareness-raising actions on social rights at national level, the majority of States does not only notify the decisions and conclusions of the European Committee of Social Rights (ECSR) to the relevant authorities, but also disseminates them to social partners and human rights institutions. Several States reported translating relevant documents in their national languages. Moreover, many States recently offered training on specific social rights issues notably for civil servants.

9. As regards the question whether the domestic courts rely on the Charter to resolve disputes concerning social rights, it emerges from the States' replies to the questionnaire that there is no uniform practice in the reference or not of domestic courts to the provisions of the (revised) Charter in their case-law. Moreover, the national courts' approaches differ on the question whether or not they consider the (revised) Charter to have direct and binding effect in domestic law.

• See the Summary of the Member States' replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)07Rev:

## **A. National implementation of social rights**

### **A.1. Specific institutions in charge of monitoring social rights**

*Are there specific governmental or independent mechanisms or institutions monitoring the implementation of social rights in your country?*

5. According to the information provided, all Member States confirmed the existence in their national systems of governmental and/or independent mechanisms and/or institutions, exercising to a stronger or lesser degree monitoring competences with respect to the implementation of various social rights.

6. Regarding **governmental mechanisms**, twenty-five States<sup>146</sup> out of thirty-one respondents indicated the existence of such monitoring competences within specialised ministries (for example: of labour, social affairs, health, employment, welfare, education, family, children, youth, sports, etc.) or within various bodies acting either as national public institutions<sup>147</sup> or as bodies/institutions attached to a ministry (e.g. inspectorates<sup>148</sup>, services<sup>149</sup>, agencies<sup>150</sup>, commissions<sup>151</sup>, institutes,<sup>152</sup> councils<sup>153</sup>, etc.) or

<sup>146</sup> Albania, Armenia, Austria, Czech Republic, Denmark, Estonia, Finland, Georgia, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, « The former Yugoslav Republic of Macedonia », Turkey and Ukraine.

<sup>147</sup> For example, the Institute for Equality of Women and Men (*Institut pour l'égalité des femmes et des hommes*) in Belgium ; the Council for the Elimination of Racial or Ethnic Discrimination, as well as the National Council for elderly, disabled persons and Roma people in Spain.

<sup>148</sup> State Labour Inspectorates have been set up notably in Albania, Greece, Lithuania, Spain and Ukraine; in the Netherlands an SZW Inspectorate has been set up.

<sup>149</sup> See, for example, the State Social Service acting under the Albanian Ministry of Labour and Social Affairs; or the State Service for Child Rights protection and Adoption under the authority of the Lithuanian Ministry of Social Security.

<sup>150</sup> See, for example, various Danish Agencies under the Ministry for Children and Social Affairs, the Ministry of Employment and the Ministry of Education; the Georgian Social Service Agency; or the Dutch Social Security Agency.

<sup>151</sup> In Portugal, for example, the Commission for Equality in Labour and Employment and the National Commission for the protection of rights and protection of Children and Young Persons are acting under the authority of the Ministry of Labour, Solidarity and Social Security; Spain has a Government Delegate Commission for Equality Policies; and the National Supervisory Authority for Welfare and Health in Finland is operating under the Ministry of Social affairs and health.



directly to the government<sup>154</sup>, or as entities within a given ministry (e.g. State Secretariats, General Secretariats/Directorates, committees, etc.)<sup>155</sup>, or as inter-ministerial bodies<sup>156</sup>.

7. Eight States<sup>157</sup> indicated that local government authorities/bodies were vested with certain monitoring competences regarding the implementation of social rights<sup>158</sup>. Eight States<sup>159</sup> further indicated that the legislature<sup>160</sup> or the judiciary<sup>161</sup> were vested with such powers.

8. Regarding the presence of **independent institutions / mechanisms** with monitoring competences on the implementation of social rights, all Member States have indicated the existence of at least one such institution / mechanism in their country.

9. The institution of Ombudsman<sup>162</sup>, present in at least twenty-six States<sup>163</sup>, has monitoring competences with respect to human rights in general, but also supervisory powers as to the implementation of social rights. Some States<sup>164</sup> also have specialised Ombudsman institutions, i.e. for

<sup>152</sup> See, for example, the Institute for Women and Equal Opportunities under the Ministry of Health, Social Services and Equality in Spain; or the National Institute for Rehabilitation under the Ministry of Labour, Solidarity and Social Security in Portugal.

<sup>153</sup> In Armenia, for example, the Public Council is established under the Ministry of Labour and Social affairs.

<sup>154</sup> See, for example, the Government Office for gender equality and human rights and rights of national minorities in Croatia; the Minister for Human Rights, Equal Opportunities and Legislation in the Czech Republic; the Chancellor of Justice of the Government in Finland; or the Bureau for the promotion of equality and elimination of discrimination (UNAR) established under the authority of the Chairmanship of the Council of Ministers in Italy, etc.

<sup>155</sup> In Greece, for example, there are several such Secretariats within various ministries: the Special Secretariat for Roma within the Ministry of Labour, Social Security and Solidarity, the General Secretariat for Gender Equality within the Ministry of Interior, the General Secretariat for Transparency and Human Rights within the Ministry of Justice; in Turkey, the General Directorate of Persons with Disabilities and the Elderly (EYHGM) is an affiliated legal entity of the Ministry of Family and Social Policies.

<sup>156</sup> The Labour Inspectorate in France, for example, is an inter-ministerial body which has the competence to supervise the application of Labour law in business enterprises.

<sup>157</sup> Albania, Denmark, Finland, Georgia, Portugal, Spain, Switzerland and «The former Yugoslav Republic of Macedonia».

<sup>158</sup> In Albania, for example, some of the monitoring/implementation powers are vested in local governments; in Georgia in the local Healthcare and Social Issues Commissions of City or Municipal Assemblies; in Finland in the Regional State administrative bodies; in Denmark in municipalities; in Portugal, such powers are distributed between regional governments (e.g. in Azores and Madeira), regional co-ordination teams and territorial commissions for the protection of children and young persons; in Spain, such powers are vested in the Autonomous Communities and Autonomous Cities of Celua and Melilla; in Switzerland these monitoring powers are vested in the Conference of Cantonal Directors on Social Affairs; and in «The former Yugoslav Republic of Macedonia» in the local (municipal) economic and social Councils and in Local Co-ordinators for equal opportunities of women and men.

<sup>159</sup> Armenia, Bulgaria, Finland, Georgia, Portugal, Switzerland, «The former Yugoslav Republic of Macedonia» and Ukraine.

<sup>160</sup> The Standing Committee on State and Legal Affairs and Protection of Human Rights within the National Assembly (Armenia); the Healthcare and Social Issues Committee of the Parliament (Georgia); the Parliament (Portugal); the Commission of social security and public health of the Federal Parliament (Switzerland); and the Supreme Council (*Verkhovna Rada*) of Ukraine.

<sup>161</sup> The domestic courts were indicated as exercising monitoring powers as regards the respect of social rights in Armenia, Bulgaria and Iceland; Finland mentioned the National Tribunal for non-discrimination and equality.

<sup>162</sup> The institution of Ombudsman may, depending on the State, have various names; for example: Human Rights Defender (Armenia), Public Defender of Rights (Czech Republic, Slovak Republic), Parliamentary Ombudsman (Denmark), Chancellor of Justice (Estonia), *le Défenseur des Droits* (France), Public Defender (Georgia), Althing Ombudsman (Iceland), Seimas' Ombudsmen (Lithuania) or Commissioner for Human Rights (Poland).

<sup>163</sup> The following States have indicated the existence of an Ombudsman (or a similar) institution : Albania, Armenia, Azerbaijan, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Ireland, Latvia, Lithuania, Republic of Moldova, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Switzerland, the former Yugoslav Republic of Macedonia, Turkey and Ukraine.

<sup>164</sup> Armenia, Croatia, Finland, Iceland, Lithuania, Republic of Moldova, Netherlands, Poland, Slovak Republic, Spain, Switzerland, «the former Yugoslav Republic of Macedonia», Turkey and Ukraine.

certain categories of persons<sup>165</sup> or in a specific domain<sup>166</sup> in relation to social rights, or a specific Ombudsman for a particular region<sup>167</sup>.

10. Nineteen States<sup>168</sup> have indicated the presence of monitoring independent bodies such as NGOs<sup>169</sup>, institutes<sup>170</sup>, institutions<sup>171</sup>, centres<sup>172</sup>, commissions<sup>173</sup> or platforms<sup>174</sup> for human rights, but also of specific institutions<sup>175</sup> for certain domains or categories of persons.

11. Finally, ten States<sup>176</sup> have also mentioned social partners<sup>177</sup> as playing a role in monitoring social rights, notably related to labour<sup>178</sup> and business enterprises<sup>179</sup>.

## A.2 Debates & discussions at domestic level on social rights

*Can you mention recent debates/discussions at domestic level concerning social rights, in particular the European Social Charter and the conclusions and/or decisions of the ECSR?*

12. Twenty eight<sup>180</sup> of the thirty-one respondent States have reported the holding, over the recent years,<sup>181</sup> of internal debates regarding various aspects of social rights. Eleven out of these States<sup>182</sup> referred to discussions in relation to the implementation of the European Social Charter and/or the conclusions and/or decisions of the European Committee of Social Rights. Among these, seven States<sup>183</sup> referred to regular discussions in the context of reporting/implementation of the European Social Charter,

<sup>165</sup> Ombudsman for Children (Croatia, Iceland, Lithuania, Republic of Moldova, Netherlands, Poland and Slovak Republic), Ombudsman for Disabled Persons (Croatia and Slovak Republic) or Ombudsman for patients' rights (Poland).

<sup>166</sup> For example, the Commissioner for protection against discrimination (Armenia), the Pensions' Ombudsman (Ireland), the Ombudsman for gender equality (Croatia), the Ombudsman for equality (Finland and Poland), the Ombudsman for non-discrimination (Finland) or the Advocate of the Principle of Equality (Slovenia).

<sup>167</sup> See, for example, the Ombudsman of the Autonomous Community of Castilla y León (Spain).

<sup>168</sup> Armenia, Austria, Bulgaria, Croatia, Denmark, Finland, Georgia, Greece, Iceland, Ireland, Lithuania, Republic of Moldova, Netherlands, Norway, Slovak Republic, Switzerland, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

<sup>169</sup> Armenia, Georgia, Croatia, "The former Yugoslav Republic of Macedonia" and Ukraine have indicated the presence of numerous NGOs with possible monitoring/implementation competences with regard to social rights.

<sup>170</sup> See, for example, the Institutes for Human Rights in Denmark and the Netherlands.

<sup>171</sup> See the National Human Rights Institution (Finland and Norway), and the Human Rights and Equality Institution (Turkey).

<sup>172</sup> See the Human Rights Centre (Iceland), the National Centre for Human Rights (Slovak Republic); the Swiss Centre of Expertise in Human Rights – SCHR (Switzerland).

<sup>173</sup> See the National Commission for Human Rights – E.E.D.A. (Greece); and the Human Rights Equality Commission – IHREC (Ireland).

<sup>174</sup> See, for instance, the Comprehensive Swiss Human Rights portal ([www.humanrights.ch](http://www.humanrights.ch)).

<sup>175</sup> See, for example, the public independent institution which combats discrimination and promotes equal opportunities - UNIA (Belgium); or the Institution of the Ombudsman of Children's Rights (Lithuania).

<sup>176</sup> Armenia, Austria, Croatia, Denmark, Greece, Netherlands, Portugal, Slovak Republic, Spain and Ukraine.

<sup>177</sup> Some States (e.g. Croatia, Denmark, Netherlands, Slovak Republic and Ukraine) only referred to the generic title of "social partners".

<sup>178</sup> For example, the General Confederation of Greek Workers (GESEE).

<sup>179</sup> For example, the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE).

<sup>180</sup> Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Estonia, Finland, Georgia, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Switzerland, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

<sup>181</sup> Some States (Armenia, Azerbaijan, Bulgaria, Estonia, Finland, Georgia, Italy, Latvia, Lithuania) referred to activities that have taken place over the last 24 months; some others (Ireland, Republic of Moldova,) – within the last 5 years; other States did not specify the exact period of the events.

<sup>182</sup> Armenia, Azerbaijan, Finland, Georgia, Republic of Moldova, Netherlands, Poland, Portugal, Slovenia, Switzerland and Ukraine.

<sup>183</sup> Armenia, Croatia, Greece, Republic of Moldova, Slovak Republic, Slovenia and Ukraine.

including the country visits of the European Committee of Social Rights<sup>184</sup>. Three other States<sup>185</sup> provided examples of debates with regard to the collective complaints procedure concerning their respective countries.

13. Furthermore, a few States<sup>186</sup> provided examples of debates related to recent or on-going legislative reforms<sup>187</sup> in relation to the implementation or the ratification of the (revised) European Social Charter<sup>188</sup>. Some other States provided examples of debates concerning national strategies<sup>189</sup> or reforms<sup>190</sup> in various domains related to social rights. Many States also provided examples of thematic conferences<sup>191</sup>, colloquiums<sup>192</sup>, workshops<sup>193</sup> or learning courses<sup>194</sup> on social rights.

14. As it appears from the examples above, the scope of subjects debated is very large. The replies provided examples of debates involving, to a various extent, relevant ministries or ministerial bodies, Ombudsmen institutions, NHRIs, NGOs and social partners, on themes like: combating poverty and social exclusion, promoting equal opportunities (e.g. in Austria, Bulgaria, Greece, Italy and Slovenia); protection of persons with disabilities (e.g. in Greece and Portugal); protection of family and children, right to maternity/paternity leave (e.g. in Albania, Lithuania, Iceland and Turkey); housing costs (e.g. in Finland and “The former Yugoslav Republic of Macedonia”); integration of the homeless (Portugal); rights of minority groups (e.g. Poland), Roma People (e.g. “The former Yugoslav Republic of Macedonia” and Turkey); migration-related issues (Portugal); gender equality (e.g. Austria and Spain); employment policies, labour rights, including labour rights of children; as well as health and safety at work (e.g. Estonia, Greece, Latvia and Portugal).

<sup>184</sup> The ECSR visited Finland in June 2017, a similar visit was expected to take place in the Republic of Moldova in November 2017.

<sup>185</sup> Finland and Norway referred to debates concerning the collective complaints procedure in general whilst the Netherlands provided a recent example of a debate on a collective complaint.

<sup>186</sup> See, for example, Armenia, Finland, Italy and Lithuania.

<sup>187</sup> See, for example, a tripartite debate (Republican Tripartite Committee) of February 2017 concerning the amendments to the Labour Code in Armenia; the discussion within the Parliament (*Seima*) regarding the adoption of Article 23 (a) of the Social Charter (Lithuania); discussions within the Ministry of Economic Affairs and Employment with regard to the preparation of legislative measures in view of improving the impact of cost-competitiveness on labour cost (Finland); or the debate on the adoption (in June 2017) by the Council of Ministers of the legislative Decree on Social Inclusion Income in view of combating poverty and social exclusion (Italy).

<sup>188</sup> Switzerland, for example, mentioned the debate held within the Federal Council as to the possible ratification of the revised European Social Charter.

<sup>189</sup> Georgia, for example, put in place a national Strategy for the protection of Human Rights (2014-2020) foreseeing progressive measures in view of implementing economic and social rights.

<sup>190</sup> In the framework of the National Reform Program in Portugal, for example, the Ministry of Labour, Solidarity and Social Security in cooperation with the Ministry of Planning and Infrastructures held a debate in March 2017 on the theme “Child poverty: which priorities for public policy?”

<sup>191</sup> See, for example, the International Scientific and Practical Conference on Law and Social Policy held in November 2016 in Bulgaria.

<sup>192</sup> See, for example, the Colloquium “One Hundred Years of Social and Labour Policies” organised at the initiative of the Ministry of Labour, Solidarity and Social Security (May 2016, Portugal).

<sup>193</sup> See, for example, the parliamentary workshop on “Promotion of socio-economic rights in Azerbaijan from the perspective of the European Social Charter” (June 2017, Azerbaijan).

<sup>194</sup> In Portugal, for example, the Centre of Judiciary Studies organised in 2014-2015-2016 a specific e-learning course on “Labour law and labour procedure law”; the same Centre organised, in December 2016, in cooperation with the Oporto Catholic University, a training debate session on « The multilevel protection of social rights and national case law ».

### A.3. Government Involvement in relation to the Charter

*To what extent do central and regional/local governments collaborate in the implementation of ECSR decisions and/or conclusions in your country? Can you give us some examples of successful collaboration? In some cases, have you encountered any specific difficulties?*

15. Twenty-seven Member States<sup>195</sup> answered affirmatively regarding the existence of collaboration practices between central and regional/local governments in the process of implementation of decisions and/or conclusions of the ECSR. Out of these, concrete examples of implementation of decisions/conclusions issued in the context of specific collective complaints were provided by France and Greece.

16. In most of the States, the implementing decisions are taken at the central government level<sup>196</sup> in consultation and active co-ordination with local governments, and if need be, with other relevant ministries, NGOs, and/or social partners. Certain States<sup>197</sup> have specified that local government authorities do not implement ECSR decisions or conclusions independently or directly. On the other hand, the Slovak Republic indicated that certain responsibilities being attributed to local authorities (i.e. municipalities), these are in certain cases directly involved in the preparation of responses to conclusions of non-conformity. Indeed, to this end, municipalities co-operate with central State institutions.

17. Several States provided examples of good cooperation between central and local authorities<sup>198</sup> as regards the implementation of social rights in general. Georgia referred notably to the LEPL Social Service Agency – an inter-ministerial body with 69 territorial units across the country – which cooperates with the local authorities in the implementation of various programs, including training-retraining. Italy mentioned that local actors were directly involved in the implementation of measures which were identified in synergy with the central authorities; for example, for the adoption and implementation of housing and social inclusion policies in favour of Roma, Sinti and Traveller populations.

18. Some Member States also referred to cooperation between central government authorities and social partners and/or NGOs in the implementation of social rights<sup>199</sup>. Croatia, for example, referred to government-funded projects in partnership with local communities and NGOs focusing on training activity for people with disabilities, unemployed people from the Roma community, as well as women and unemployed persons with intellectual difficulties. “The Former Yugoslav Republic of Macedonia” mentioned the cooperation with social partners (including relevant trade unions) in the preparation of annual reports and collecting their inputs/contributions, and this, in particular for reports dealing with provisions of the European Social Charter (ESC).

<sup>195</sup> Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, France, Georgia, Greece, Ireland, Italy, Lithuania, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, “The former Yugoslav Republic of Macedonia”, Turkey and Ukraine.

<sup>196</sup> For example, the Committee of Ministers (Albania), the Presidential Administration (Azerbaijan), the Department for Foreign Affairs (Belgium), the Ministry of Defense (Bulgaria), the Ministry of Labour, Health and Social Affairs (Georgia), the Mixed Commission of Government and Territorial collectivities (Poland), the Ministry of Health, Social Services and Equality and the State Secretariat for the Territorial Public Administrations (Spain); or the Ministry of Labour and Social Security (Turkey).

<sup>197</sup> Estonia and Poland.

<sup>198</sup> Armenia, Austria, Czech Republic, Estonia, Georgia, Italy, Netherlands, Poland and Spain.

<sup>199</sup> Croatia, Portugal, “The former Yugoslav Republic of Macedonia” and Ukraine.

#### A.4. Information on national implementation of the Charter

*To what extent do your administrative authorities notify the Secretariat of the Council of Europe or other national bodies or organizations of the national initiatives taken to comply with the ECSR's decisions and/or conclusions?*

19. Twenty-nine out of thirty-one States<sup>200</sup> replied to this question. A vast majority of respondent States have indicated that the information on various national initiatives taken to comply with the ECSR's decisions is provided to the Council of Europe Secretariat on a regular basis, under the annual reporting or follow-up procedure.

20. When referring to the above regular reporting procedure, some States indicated that they transmit their reports also to the relevant ministries, national organisations and/or publish their activity through social media<sup>201</sup>. A few of them further inform the Secretariat of the Council of Europe outside the reporting procedure, for example, in case of the adoption of legislative amendments or implementation of new measures<sup>202</sup>.

#### A.5. Involvement of domestic courts in relation to the Charter

*Do the courts in your country rely on provisions of the Charter, on the conclusions and/or decisions of the ECSR to resolve disputes concerning social rights?*

21. Twenty-nine States<sup>203</sup> replied to this question. Four States<sup>204</sup> out of these indicated not having found or not being aware of the existence, in the domestic case-law, of examples of court decisions relying on the provisions of the European Social Charter. Certain States<sup>205</sup> indicated that such examples were rare or limited to a specific theme. Some others<sup>206</sup> admitted the possibility for the domestic courts to refer to the ESC, as to a ratified international treaty which has prevalence over the national legislation. While certain States confirmed that the Charter applied in disputes concerning social rights<sup>207</sup>, one State indicated that the domestic supreme court (*Cour de Cassation*) did not recognise the direct effect of the ESC, which was rarely invoked by the domestic courts and in all cases, its provisions were not truly binding<sup>208</sup>.

22. Among the above, ten States<sup>209</sup> provided concrete, and for some of them, extensive examples of such case-law. Lithuania, for instance, provided examples of various cases of the Constitutional Court, the Supreme Court, the Supreme Administrative Court, but also of the regional courts of Klaipeda and Vilnius with respect to maternity protection, the right to social support, various rights of persons with disabilities, unlawful dismissals, the right of children and young persons to protection and the right to strike<sup>210</sup>.

<sup>200</sup> Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

<sup>201</sup> See, for example, Greece, Estonia, Turkey and Ukraine.

<sup>202</sup> See, for example, Georgia, Estonia, Latvia and Spain.

<sup>203</sup> Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Ireland, Italy, Lithuania, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Switzerland, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

<sup>204</sup> Austria, Croatia, Republic of Moldova and "The former Yugoslav Republic of Macedonia".

<sup>205</sup> Belgium, Czech Republic, Estonia, Finland, Italy, Poland and Ukraine.

<sup>206</sup> Albania, Armenia, Bulgaria, Croatia, Greece, Lithuania, Republic of Moldova and the Slovak Republic.

<sup>207</sup> Denmark, Georgia, Netherlands, Norway, Portugal, Poland, Slovenia and Turkey.

<sup>208</sup> France.

<sup>209</sup> Bulgaria, Estonia, Iceland, Ireland, Lithuania, Norway, Poland, Portugal, Slovenia and Turkey.

<sup>210</sup> Extensive information has also been provided by Poland, with case-law of ordinary and administrative courts, the Supreme Court and the Constitutional Tribunal.

23. Turkey stated that as of September 2012, the Constitutional Court had jurisdiction, after the exhaustion of legal remedies before the lower courts, to receive and examine individual applications alleging violations of human rights, including social rights. The Constitutional Court's judgments referring notably to the European Social Charter are accessible via Internet<sup>211</sup>.

## **B. Consideration of international standards of social rights in national law and policies**

### **B.1. Social impact studies**

*Do you carry out tests/social impact assessments in your country when developing new laws/policies?*

27. Twenty-three<sup>212</sup> out of twenty-nine respondent States confirmed the existence in their national systems of a legal obligation<sup>213</sup> to conduct regulatory impact assessments (RIA) for any draft law. Two States indicated that such assessments were not mandatory, but were occasionally carried out in certain domains (employment, social inclusion and health)<sup>214</sup> or may take place "when a new regulation or regulatory change is being considered to address particular policy issues, in order to explore alternative options to the use of regulation"<sup>215</sup>. Two other States<sup>216</sup> reported problems in the functioning of the RIA system, notably because the responsible institutions limited themselves to providing purely formal "yes" or "no" answers, thus avoiding to carry out proper impact assessments. One Member State<sup>217</sup> indicated that there was no obligation to carry out such assessments, although these might nevertheless be carried out, e.g. when assessing the need for a new law or policy. Three respondents<sup>218</sup> indicated that no social impact assessments were carried out. Some States<sup>219</sup> further provided examples of impact assessment in relation to the drafting of policies<sup>220</sup>.

28. Social impact assessments which accompany the law or policy drafting processes may be conducted by various (parliamentary, ministerial and /or specialised) bodies<sup>221</sup>, involving, if need be, wider public consultations<sup>222</sup>.

<sup>211</sup> The Constitutional Court found, for example, that the right to freedom of association and organisation was violated when it assessed individual applications submitted in connection to formal reprimands given on the grounds of absence from work for two days in a row in accordance with the decisions taken by the trade union of which the applicant is a member. The Constitutional Court referred in its reasoning not only to the case-law of the European Court of Human Rights but also to the ILO Conventions and the European Social Charter. To access the Constitutional Court's website: <http://www.anayasa.gov.tr/icsayfalar/kararlar/kbb.html>.

<sup>212</sup> Albania, Armenia, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Latvia, Lithuania, Norway, Poland, Portugal, Slovak Republic, Spain, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

<sup>213</sup> Such an obligation is provided for, for example, by the Law on Legal Acts (Armenia); the Law on "Regulatory Governance: Principles, Procedures and Means of Good legislating" (Greece); the Constitution (France); the Law on Legislative Framework (Lithuania); and the "Custa Quanto" (Portugal).

<sup>214</sup> Italy.

<sup>215</sup> Ireland.

<sup>216</sup> Latvia and Slovenia.

<sup>217</sup> Austria.

<sup>218</sup> Azerbaijan, Republic of Moldova and the Netherlands.

<sup>219</sup> See, for example, Armenia, Finland and Spain.

<sup>220</sup> See, for example, the child impact assessment carried out in the framework of the Services for children and families Reform (2016-2018) and the gender impact assessment in the framework of the Government Action Plan for Gender Equality (2016-2019) in Finland.

<sup>221</sup> See, for example, the Healthcare and Social Issues Committee of the Parliament (Georgia); or relevant Government Departments, e.g. the Department of Social Protection (Ireland).

<sup>222</sup> See, *inter alia*, Croatia.



29. Social impact assessments may include a series of assessments of economic, financial (e.g. costs and benefits) and environmental consequences for the various categories concerned by the draft law/policy. Moreover, specific impact assessments can be carried out, such as the assessment of impacts on human rights, social rights, equal treatment and equal opportunities, non-discrimination, as well as impacts on certain social groups (elderly people, people with disabilities, homeless people, women, children or ethnic minorities), gender equality, family-life and public health and safety....

## **B.2. Mechanisms to verify the compatibility with International Law**

*Are there any specific mechanisms in your country to verify the compatibility of draft laws, existing legislation and internal administrative practices with international standards of social rights?*

30. Twenty-six States<sup>223</sup> out of twenty-eight respondents reported the existence in their national systems of the obligation to verify the compatibility of all draft laws with international standards (e.g. binding conventions and agreements). Twenty-two States<sup>224</sup> provided examples of more or less developed mechanisms<sup>225</sup> habilitated to verify the compatibility of all draft laws (including those concerning social rights) with international standards.

31. Such mechanisms, which in certain States<sup>226</sup> are integrated in the regulatory impact assessments (RIA) process, have been developed notably within the law-drafting bodies (e.g. specialised ministries or departments) or in cooperation between the latter and the Ministry of Justice<sup>227</sup>, within the Ministry of Interior<sup>228</sup> or of Foreign Affairs<sup>229</sup>, or by way of intradepartmental quality checks within a ministry<sup>230</sup>, but also within Governments<sup>231</sup> and/or Parliaments<sup>232</sup> (e.g. parliamentary specialised committees or commissions). A few States provided examples of special control mechanisms in the field of social rights<sup>233</sup>.

32. As for the compatibility with international standards of the existing legislation and internal administrative practices, some States indicated either the same mechanisms as those existing for the

<sup>223</sup> Albania, Armenia, Azerbaijan, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Ireland, Latvia, Lithuania, Republic of Moldova, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, "The former Yugoslav Republic of Macedonia", Turkey, Ukraine.

<sup>224</sup> Albania, Armenia, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Ireland, Latvia, Lithuania, Republic of Moldova, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, "The former Yugoslav Republic of Macedonia" and Ukraine.

<sup>225</sup> Some States provided examples of multi-layered compatibility checks within the law-drafting process (e.g. in Albania - 1<sup>st</sup> level verification: within the ministry responsible for the specific domain in question; 2<sup>nd</sup> level: *ex ante*-control carried out by the Ministry of Justice; 3<sup>rd</sup> level: Committee on Legal Affairs, Public Administration and Human Rights and sometimes the Foreign Policy Committee).

<sup>226</sup> See, for example, the Czech Republic and "The former Yugoslav Republic of Macedonia".

<sup>227</sup> Ministries of Justice are involved in quality and compatibility controls of draft laws before their submission to Parliament in States including Albania, Armenia, Bulgaria, Denmark and Estonia.

<sup>228</sup> See, for example, the Netherlands.

<sup>229</sup> See, for example, Estonia.

<sup>230</sup> Intradepartmental quality checks and all-embracing quality checks are conducted by the Ministry of Security and Justice of the Netherlands.

<sup>231</sup> See, for example, the Council of Ministers (Bulgaria); the *Conseil d'Etat* (France), the Government (Georgia); the Advisory Division of the Council of State (the Netherlands), the Presidency of the Council of Ministers (Portugal); or the Government Office for Legislation (Slovenia).

<sup>232</sup> See, for example, the National Assembly (Albania and Bulgaria); the Constitutional Law Committee of the Parliament (Finland); in the Netherlands, the House of Oireachtas (the National Parliament) establishes Parliamentary Committees to discuss draft laws from a human rights perspective.

<sup>233</sup> See, for example, the Department for the Promotion of the Implementation of the International Labour Standards of the Supreme Council of Labour - a tripartite body which examines the compatibility of national law with the provisions of International Labour Conventions (Greece); or the Council for the social dialogue - a mechanism gathering representatives of employers' and workers' organisations to discuss the compatibility of already adopted laws with ratified international conventions and agreements (Poland).

control of draft laws or referred to the ordinary domestic courts<sup>234</sup> or even Constitutional Courts<sup>235</sup> as being vested with such compatibility control competences.

33. For some States, the requirements to ensure such compatibility checks are laid down in their national Constitutions<sup>236</sup>. Some other States adopted special laws on the “law-drafting process”<sup>237</sup> whereas others have even indicated the existence of handbooks<sup>238</sup> and guidance<sup>239</sup> for this purpose. References were also made to the involvement of independent international experts<sup>240</sup> in the compatibility assessment procedure, as well as to cooperation with various international bodies<sup>241</sup>.

## 2. CDDH proposals

• See the Short analysis of the replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)06):

### B. Main proposals made with a view to improving the implementation of social rights, in particular those laid down in the (revised) Charter as interpreted by the ECSR

11. Moreover, Member States agreed that institutional practices should be further exchanged between them and good practices among them be identified. It was proposed that this could be done, for instance, in the context of thematic debates on the implementation of specific provisions of the (revised) Charter. Some States stressed the importance of a better exchange of good practices, in particular, in view of a harmonisation of the (revised) Charter with the European Union (EU) legislation.

• See the Summary of the Member States’ replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)07Rev):

### Suggestions

*What suggestions could be made for a better implementation of the Charter and the ECSR’s decisions and conclusions at the judicial, legislative and executive levels in your country (e.g. technical cooperation activities with the Council of Europe, European projects for the exchange of good institutional practices or on specific topics...)?*

24. As to the possible suggestions for a better implementation of the Charter and the ECSR’s decisions and conclusions, many States mentioned the need for training and awareness raising activities specifically designed for national institutions implementing these decisions and conclusions, including judges, prosecutors and lawyers, but also a larger teaching of social rights in higher education

<sup>234</sup> See, for example, Albania.

<sup>235</sup> See, for example, Armenia.

<sup>236</sup> See, for example, Albania, Azerbaijan, France, Lithuania, Portugal, Slovenia, Spain and Turkey.

<sup>237</sup> See, for example, the “Law on Legal Acts” in Armenia or the „Law on legislative framework” in Lithuania.

<sup>238</sup> See, for example, the “Netherlands Drafting Directives”, a comprehensive handbook on legislative techniques.

<sup>239</sup> See, for example, the “Handreiking Economische en Sociale Rechten” giving guidance on economic and social rights issues by the Ministry of the Interior and Kingdom Relations in the Netherlands.

<sup>240</sup> For example in Albania, Georgia, Greece, etc..

<sup>241</sup> The bodies referred to included the Council of Europe, the International Labour Organisation, the International Organisation for Migration, the European Union, the World Bank, the German Society for International Co-operation, the European Foundation for Education as well as various agencies of the United Nations.



institutions. To this end, some States suggested a broader use of the HELP platform and others highlighted the importance of translating the ECSR's compilation of decisions into national languages.

25. Other suggestions referred to the organisation of thematic debates on the implementation of specific provisions of the ESC in order to enhance exchanges of institutional practices and identifying good practices among the Member States of the Social Charter. Certain States stressed the importance of enhancing exchanges of practices in view of a harmonisation of the ESC with the EU legislation. Some others also mentioned their readiness to consider including social rights aspects in future Action Plans within the EU-CoE Programmatic Co-operation Framework for the countries of the Eastern Partnership Programmes.

26. In general, States declared being in favour of an improved access to information, a better readability and transparency of the information on the website and a more active media coverage for promotion.

...

### Suggestions

*What suggestions could be made in order to allow better national consideration of international standards on social rights and/or greater consistency of international law and/or obligations in this field?*

39. Twelve States<sup>242</sup> made suggestions in order to allow a better implementation of international standards on social rights and/or to ensure greater consistency of international law and/or obligations in this field.

40. Some of them stressed the importance of a further development of the "Turin Process" and pleaded in favour of a better cooperation/collaboration between the respective institutions working in the sphere of social rights at the international level, notably between the Council of Europe and the European Union (in particular, the European Commission)<sup>243</sup>. The others focussed on enhancing technical assistance from experts of international organisations<sup>244</sup> and emphasised the importance of legal research projects to promote the consideration of social rights<sup>245</sup>. Some others suggested strengthening the international control mechanisms<sup>246</sup> or promoting a better exchange of information and experiences between the States to ensure a better implementation of international treaties on social rights<sup>247</sup>.

41. The suggested "tools" for improving the consideration of international social rights standards included training activities on specific international standards on human and social rights (for judges, employees in the public administration and NGOs)<sup>248</sup>, the translation and wider dissemination of various documents laying down these standards, in particular of the ECSR decisions and conclusions, as well as a wider dissemination of the judgments of the European Court of Human Rights on social rights issues also in respect of other States<sup>249</sup>.

42. The importance of a greater presence and a more frequent involvement of the Council of Europe were also emphasised, notably for raising awareness and visibility of its own instruments (including the European Social Charter) at national level among the Member States of the Council of Europe<sup>250</sup>.

<sup>242</sup> Armenia, Azerbaijan, Belgium, Bulgaria, Finland, France, Greece, Latvia, Lithuania, Poland, Slovenia and "The former Yugoslav Republic of Macedonia".

<sup>243</sup> Bulgaria, France, Poland and Slovenia.

<sup>244</sup> Lithuania.

<sup>245</sup> Finland.

<sup>246</sup> Latvia.

<sup>247</sup> Azerbaijan, France and Latvia.

<sup>248</sup> Poland, Slovenia and Turkey.

<sup>249</sup> Poland.

<sup>250</sup> "The Former Yugoslav Republic of Macedonia".

• See the Preliminary draft overview over the possible contents of the “second report” presenting proposals with a view to improving the implementation of social rights (document CDDH-SOC(2018)08):

## 1. Proposals concerning the Council of Europe Member States

...

- share good practices concerning the implementation of social rights and innovative approaches in the field of social cohesion, notably on limiting negative impacts of some State restrictive measures on social rights;<sup>251</sup>
- translate the decisions of the ECSR or at least the most important of those decisions for the State concerned into their national languages.

Furthermore,

- national courts and national human rights structures should be encouraged to increase their use of the conclusions and decisions of the ECSR and to apply them transnationally, without awaiting a decision or conclusions concerning a comparable situation in their own country.

## 6. Proposals concerning the Parliamentary Assembly

The Parliamentary Assembly could be encouraged to

- pursue its activities of assessing the impact of public policies in the Member States on social rights standards.

## 11. Proposals concerning the Council of Europe Development Bank

The Council of Europe Development Bank could be encouraged to

- keep financing projects related to social rights.

• See the Speech of the President of the ECSR, Professor G. Palmisano, before the Committee of Ministers on 22 March 2017:

...

But enhancing the Social Charter's effectiveness and its uniform application in Europe implies also promoting the key role of national institutions, particularly the judicial authorities that, as you know, act as the principal conduit for ensuring respect for social rights at the national level. National judges should be therefore encouraged to take greater account, in their respective judgements and decisions, of the European Social Charter as a legally binding instrument under European and national law. In this respect, let me sincerely thank the Supreme Court of Cyprus

<sup>251</sup> See, for instance, the examples mentioned in the Commissioner for Human Rights' Human Rights Comment on "[National human rights structures can help mitigate the effects of austerity measures](#)" of 31 May 2012, *inter alia* a study on the situation of people who could not pay their mortgages which had helped the authorities adopt measures to increase the protection of these people from the risk of exclusion and poverty; see also CDDH(2015)R84 Addendum IV, § 41.

for organizing, together with the Council of Europe, within the framework of the Cypriot Chairmanship of the Committee of Ministers, the Conference on “Social rights in today’s Europe: the role of domestic and European courts”. The Conference, which took place in Nicosia a few weeks ago, on the 24th of February, provided indeed an excellent opportunity both to examine the role of domestic jurisdictions for ensuring respect for social rights in Europe and, mostly, to encourage their potential contribution to the enforcement of the Social Charter’s provisions.

## V. RELATIONSHIP OF COUNCIL OF EUROPE INSTRUMENTS WITH OTHER INSTRUMENTS FOR THE PROTECTION OF SOCIAL RIGHTS

### 1. Current challenges

- See the Report of the 2<sup>nd</sup> meeting (2–4 May 2018) of the CDDH-SOC (document CDDH-SOC(2018)R2):

14. ...

- The following further particular aspects could be discussed in the second report: ... the synergy between the European Social Charter and the European Union's and the United Nations' (in particular the International Labour Organisation's) systems and instruments of protection of social rights; ...

- See the Short analysis of the replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)06):

#### B. Main proposals made with a view to improving the implementation of social rights, in particular those laid down in the (revised) Charter as interpreted by the ECSR

...

12. Member States also pleaded in favour of a better cooperation between the institutions working in the sphere of social rights at the international level, notably between the Council of Europe and the EU. It is to be noted in that context that some States referred to specific problems of implementation of social rights on account of conflicting texts or decisions, notably conflicts between the (revised) Charter and International Labour Organisation (ILO) Conventions or obligations imposed under EU law.

- See the Summary of the Member States' replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)07Rev):

#### B.3. Consistency of International Law and/or Obligations

*Are you confronted in your country with situations of national implementation of conflicting texts or decisions of international and/or European bodies?*

34. Twelve States<sup>252</sup> out of twenty-five respondents affirmed not having encountered problems of implementation at national level of conflicting texts or decisions of international and/or European bodies and one State<sup>253</sup> did not provide information. Two States<sup>254</sup> indicated that when such situations arose, the national courts (including higher Courts) may be seized to examine them.

<sup>252</sup> Azerbaijan, Croatia, Georgia, Ireland, Italy, Republic of Moldova, the Netherlands, Poland, Portugal, Slovak Republic and Ukraine.

<sup>253</sup> Latvia.

<sup>254</sup> Albania and Norway.

35. One State<sup>255</sup> indicated not being “confronted with conflicting texts but rather with the excessive interpretation by the ECSR, which goes beyond the accepted obligations”. Another State<sup>256</sup> mentioned that “it’s not the implementation of decisions or conclusions of the ECSR which would be in contradiction with those of other organisations, but rather some specific requirements of the ECSR which are not foreseen notably in the European Community law, which may sometimes lead to misunderstandings by the public authorities”.

36. Another State<sup>257</sup> referred to possible differences in interpretation of similar convention provisions and/or European legislation by the national authorities involved in the regulatory impact assessments (RIA) process; such differences may occur for various reasons, such as changes in the legal system, changes of political context or purpose of the organisation/body that has issued a given provision.

37. Two States<sup>258</sup> referred to situations of conflict between national legislation and the international standards. Moreover, examples of implementation problems in practice at national level on account of conflicting texts or decisions of international and/or European bodies were provided by six States<sup>259</sup>.

38. Among the above six States, problems pointed out related to:

- the impossibility to fully apply Article 13, paragraph 4 of the Social Charter unless social security treaties were adopted with all countries which have ratified the Social Charter;<sup>260</sup>
- the interpretation adopted by the ECSR with respect to Article 24 of the Revised European Social Charter, on the one hand, and the ILO Convention No. 158 and EU law on the other;<sup>261</sup>
- “conflicting issues between ECSR commitments and EU Country Specific Recommendations”;<sup>262</sup>
- the policies imposed by the EU in the context of economic adjustment programmes and provisions of the European Social Charter.<sup>263</sup>

**• See the Speech of the President of the ECSR, Professor G. Palmisano, before the Committee of Ministers on 22 March 2017:**

...

I wish also to recall that, consistently with one of the objectives of the “Turin process”, that is improving the synergies between the Social Charter system and the European Union law, the

<sup>255</sup> Czech Republic.

<sup>256</sup> France.

<sup>257</sup> Poland

<sup>258</sup> Armenia and Lithuania.

<sup>259</sup> Bulgaria, Estonia, Finland, Greece, Iceland and Slovenia.

<sup>260</sup> Estonia.

<sup>261</sup> Finland.

<sup>262</sup> Bulgaria provided examples concerning the adequacy/growth of the minimum salary, the adequacy/period of payment of some social benefits of unemployment benefits, considering that the EU Country Specific Recommendations are mostly based on economic/budgetary indicators for stability/discipline and not so much on social rights provided for in the European Social Charter. Furthermore, Slovenia has indicated that in 2010 it had received a Conclusion of the ECSR of non-conformity with Article 4 § 1 of the Revised Charter on the ground that the minimum wage was manifestly unfair. Since 2010 the ratio between the minimum and the average wage in Slovenia has been on a steady rise and reached 50,0 % in 2012, which was still not fully in conformity with the Charter. On the other hand, in the context of the European semester 2012 the European Commission found that the said ratio was among the highest in the EU and suggested Slovenia to revise the minimum wage regulation in order to support competitiveness and job creation (Country Specific Recommendations for Slovenia 2012).

<sup>263</sup> The phenomenon of national implementation of conflicting texts or decisions of international and/or European bodies has notably been observed in Greece over the last years. In its recent decisions on collective complaints Nos. 65/2011, 66/2011, 76/2012 – 80/2012 and 111/2014 lodged against Greece, the ECSR found that Greece had violated several provisions of the 1961 Charter (and of the Revised Charter) as regards national legislation that has been adopted in the past few years during the severe economic crisis and in the framework of the support mechanism for the Greek economy.

Committee in the last twelve months continued and reinforced its dialogue with the EU institutions. In this regard let me refer to the exchange of views with the President of the Court of Justice of the European Union, Judge Koen Lenaerts, which was held in Strasbourg during the October session of the Committee. But I refer also to the dialogue between the Committee and the EU Commission about the forthcoming “European Pillar of Social Rights”. Such a dialogue, which started on March 2016, on the occasion of the Turin Forum on social rights, progressed fruitfully with the Workshop on “The European Social Charter and European Pillar of Social Rights”, which took place the past December in Strasbourg. In this respect, let me sincerely express the same hope as Secretary General Jagland that the drafting of the “Pillar” can give the European Union the opportunity to achieve the result of a better consideration of the European Social Charter in the process of adopting EU legislative acts, policy measures and judicial decisions. ...

## 2. CDDH proposals

• See the Short analysis of the replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)06):

### B. Main proposals made with a view to improving the implementation of social rights, in particular those laid down in the (revised) Charter as interpreted by the ECSR

11. ... Some States stressed the importance of a better exchange of good practices, in particular, in view of a harmonisation of the (revised) Charter with the European Union (EU) legislation.

• See the Summary of the Member States’ replies to the questionnaire related to the good practices on the implementation of social rights at national level (document CDDH-SOC(2018)07Rev):

### Suggestions

*What suggestions could be made for a better implementation of the Charter and the ECSR’s decisions and conclusions at the judicial, legislative and executive levels in your country (e.g. technical cooperation activities with the Council of Europe, European projects for the exchange of good institutional practices or on specific topics...)?*

25. ... Certain States stressed the importance of enhancing exchanges of practices in view of a harmonisation of the ESC with the EU legislation. ...

...

## Suggestions

*What suggestions could be made in order to allow better national consideration of international standards on social rights and/or greater consistency of international law and/or obligations in this field?*<sup>264</sup>

39. Twelve States<sup>265</sup> made suggestions in order to allow a better implementation of international standards on social rights and/or to ensure greater consistency of international law and/or obligations in this field.

40. Some of them stressed the importance of a further development of the “Turin Process” and pleaded in favour of a better cooperation/collaboration between the respective institutions working in the sphere of social rights at the international level, notably between the Council of Europe and the European Union (in particular, the European Commission)<sup>266</sup>. The others focussed on enhancing technical assistance from experts of international organisations<sup>267</sup> and emphasised the importance of legal research projects to promote the consideration of social rights<sup>268</sup>. Some others suggested strengthening the international control mechanisms<sup>269</sup> or promoting a better exchange of information and experiences between the States to ensure a better implementation of international treaties on social rights<sup>270</sup>.

• See the Preliminary draft overview over the possible contents of the “second report” presenting proposals with a view to improving the implementation of social rights (document CDDH-SOC(2018)08):

## 6. Proposals concerning the Parliamentary Assembly

The Parliamentary Assembly could be encouraged to

- foster the co-ordination of legal and political action with other European institutions, notably the European Union;

...

## II. PROPOSALS AIMED AT FACILITATING THE RELATIONSHIP BETWEEN THE COUNCIL OF EUROPE INSTRUMENTS WITH OTHER INSTRUMENTS FOR THE PROTECTION OF SOCIAL RIGHTS

- EU Member States could be called upon to ensure more consistency among them when it comes to accepting provisions of the Charter already covered by EU law;<sup>271</sup>
- The relationship between the European Social Charter and other international obligations, in particular under international law, should be further clarified;<sup>272</sup>

<sup>264</sup> See also IV.2. above.

<sup>265</sup> Armenia, Azerbaijan, Belgium, Bulgaria, Finland, France, Greece, Latvia, Lithuania, Poland, Slovenia and “The former Yugoslav Republic of Macedonia”.

<sup>266</sup> Bulgaria, France, Poland and Slovenia.

<sup>267</sup> Lithuania.

<sup>268</sup> Finland.

<sup>269</sup> Latvia.

<sup>270</sup> Azerbaijan, France and Latvia.

<sup>271</sup> See also <http://www.coe.int/en/web/turin-european-social-charter/conference-turin>: document of 15 July 2014 on the “Relationship between European Union law and the European Social Charter”.

<sup>272</sup> See for the ECSR’s approach to the relationship between EU law and the Charter, for instance, *CGT v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2010, §§ 31–42.

- The EU could be called upon to implement the proposals made by the Secretary General in his Opinion on the European Pillar of Social Rights;<sup>273</sup>
- The dialogue and exchanges which the “Turin Process” has already made possible with competent bodies of the European Union should be reinforced so that full consideration can be given to the European Social Charter and decisions and conclusions of the ECSR in the process of the adoption of European Union legislative acts, policy measures and judicial decisions. This would strengthen the synergy between EU law and the Charter;
- EU institutions and EU Member States could be encouraged to work together with the Council of Europe to strengthen the role of the Charter in accordance with Member States’ obligations and to examine the possibility of accession of the EU to the Charter.<sup>274</sup>

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<sup>273</sup> See the following link for the [Secretary General's Opinion on the EU initiative to establish a European Pillar of Social Rights](#) of 2 December 2016.

<sup>274</sup> See also the [Resolution of the European Parliament on “The European Pillar of Social Rights”](#) (2016/2095(INI)) of 19 January 2017; and the FRA Fundamental Rights Forum, Vienna, 20-23 June 2016, Suggestion No. 49, available at: <http://fundamentalrightsforum.eu/>.



## **CONCLUSIVE REMARKS**

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