

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



# Designing effective tools for the promotion and protection of social and economic rights

3<sup>rd</sup> Meeting

of the CoE-FRA-ENNHRI-EQUINET Collaborative Platform

on Social and Economic Rights

10 October 2016

Belgrade, Palace "Serbia", room "Beograd"

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*MEETING REPORT*

## 1. Introduction

The Collaborative Platform on Economic and Social Rights (ESR Platform), between the Council of Europe (CoE), the European Network of National Human Rights Institutions (ENNHRI), the European Network of Equality Bodies (EQUINET), and the European Union Agency for Fundamental Rights (FRA), first met in Strasbourg on 15 October 2015. The second ESR Platform meeting was held in Strasbourg on 28 January 2016. The third meeting, held in Belgrade (Serbia) on 10 October 2016 at the initiative of the Commissioner for the Protection of Equality of Serbia, explored in particular the relationship between the recently launched European Pillar of Social Rights and the European Social Charter, and discussed proposals for relevant indicators for monitoring respect for social and economic rights under these mechanisms. It aimed also at identifying further capacity-building needs to be followed up in 2017.

## 2. Opening

Brankica Janković, Commissioner for the Protection of Equality of the Republic of Serbia, welcomed participants and thanked them for coming to talk about social and economic rights outside Strasbourg. She pointed out that social and economic rights are related to the labour market, but also to access to health, nutrition, education and housing. An analysis of the complaints received by the Serbian Commission shows that such rights are at the root of 50% of cases. A large proportion of complaints received concerned recruitment procedures and discrimination in access to public services. The Commission's 2015 annual report demonstrated that persons living in extreme poverty, children and youth, women, persons with disabilities, refugees and migrants, national minorities (Roma most vulnerable) and LGBTI population are at risk of having their rights violated. Many poor families are exposed to multiple risk factors. There are many needs not always associated with poverty, but that are still crucial to improving the quality of life and outcomes for vulnerable groups: work-life balance (WLB), long term care and community based services.

Economic and social rights are often violated during times of economic crisis. This leads to anxiety and instability, creating a specific [negative] context. Equality bodies must therefore give their full support to the realisation of economic and social rights and aim to ensure the full realisation of these rights to the extent that resources allow.

The Commissioner furthermore underlined that for these reasons the role of the Collaborative Platform is important in offering guidelines and tools to support the work of national equality bodies and national human rights institutions. The only approach to understanding discrimination is to link it with social and economic rights. Increasing the visibility of discrimination and the need to respect social and economic rights is a task for all national equality bodies and national human rights institutions, but it is a task that must be undertaken with partners other stakeholders and requires an innovative and comprehensive approach.

Finally, the Commissioner expressed the hope that the today's meeting will be a promising practice for all member States to join forces and achieve full respect for the European Social

Charter and the EU anti-discrimination legislation. She thanked the representatives of trade unions and other bodies for participating as natural partners. She underlined that working together means working more efficiently, using all our resources to ensure that citizens do not experience discrimination and that they realise their rights.

Natalija Pavlović Šiniković, Assistant Minister in the Ministry of Public Administration and Local Self-Government, thanked participants for accepting the invitation to the meeting. She stressed that the fight against discrimination and the protection of human rights was of the utmost importance in Serbia and beyond.

She pointed out that social and economic rights are human rights that must be protected at the national level through international obligations. Serbia has adopted the necessary instruments by ratifying the UN International Covenant on Economic, Social and Cultural Rights and the European Social Charter.

She expressed satisfaction that the Commissioner for the Protection of Equality, which is best placed to describe the problems that lead to breaches of social and economic rights, has taken the initiative to host the 3rd meeting of the Platform in order to exchange best practices to be applied in this field. Serbia has been experiencing economic hardship for some time, but Serbia wishes as a State to ensure that all citizens can enjoy their rights. The State is prepared to consider further legislative measures, adopt anti-discrimination legislation and respect all international obligations. Support will be needed to achieve this in the context of Serbia's accession to the EU, where Serbia subscribes to common values in this area.

Finally, she expressed the wish that the results of the meeting could serve as a guideline on this road.

Nadia Ćuk, Deputy Head of the Council of Europe Office in Belgrade, noted that the Serbian Commission for the Protection of Equality is making a significant contribution to building a society in Serbia that respects the rule of law and human rights, including social and economic rights.

She underlined the importance of establishing possible synergies between the two documents to be discussed during the meeting; the European Social Charter and the European Pillar of Social Rights are both major initiatives and there should be a way to unify these forces.

Furthermore, she recalled that the Council of Europe seeks to establish a strong framework that guarantees citizens access to their rights, especially in the current context of social and economic crisis, austerity measures and the refugee crisis. The Council of Europe relies mainly on its own acquis in this respect, aimed at supporting member states in European integration. The Organisation applies its standards, in particular the new generation of Conventions (the Convention on preventing and combating violence against women and domestic violence, the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, the Convention on Action against Trafficking in Human Beings), and uses monitoring bodies notably to identify weaknesses and potential challenges to be overcome. Also, co-operation programmes have been used to help remove existing deficiencies. In order to promote democracy and human rights, the Council of Europe conducts an ongoing dialogue with its member States and National Human Rights Institutions, including with the Commissioner for the

Protection of Equality of Serbia, with whom this co-operation has a long history.

Ms Ćuk stressed that the European Social Charter is one of the most important and unique legal instruments: it guarantees citizens the rights (right to health, education, housing, legal protection, freedom of movement and prohibition of discrimination) to improve their standard of living. A particular feature of the Charter comes from the collective complaints procedure, which highlights the role of social partners and civil society.

She then recalled that Nils Muižnieks, the Council of Europe Commissioner for Human Rights, has repeatedly warned against the negative effect of restrictive austerity measures for the respect of human rights and a social policy insufficiently sensitive for youth and vulnerable groups. He highlighted that these vulnerable groups face multiple discrimination, once because they are vulnerable, and again because they are struck by the economic crisis. Millions of young persons are unemployed without perspective for employment. A growing number of children are leaving school to find work and help their families which have permanent consequences for their education and future security. This also leads to a risk of exploitation of children. The Commissioner has appealed several times for a European social model that is based on human dignity, individual freedom, social solidarity, political liberty and respect for rights. The European Social Charter is a pillar of human social rights protection.

Danuta Wiśniewska-Cazals from the Department of the European Social Charter of the Council of Europe thanked the Commissioner for hosting the 3rd meeting of the Platform. The holding of the meeting outside Strasbourg gives new impetus to the work of the Platform and shows the interest of Serbia in the development of this form of co-operation.

As some people participated for the first time, she then presented the summary of previous meetings. In particular, she outlined four clear objectives that were identified for the Collaborative Platform at its 2nd meeting, namely:

- 1) Facilitate the exchange of information between partners and national bodies; develop timelines for exchange;
- 2) Provide training for national bodies working on social and economic rights (including NGOs);
- 3) Raise awareness of the European Social Charter – how to achieve that States accept more provisions and the collective complaints procedure; and
- 4) Develop tools for more effective work on social and economic rights in terms of impact on these rights.

Furthermore, she informed the participants that following the decision of the Platform to have a website, the Council of Europe began working on its creation. The website of the Platform will be hosted by the website of the European Social Charter, with a direct link. The participants were invited to input on what this website should provide; an interactive website for members only, or a tool also open to the public? The website should help to make sure the Platform is more than a yearly event.

### 3. European Pillar of Social Rights and the European Social Charter

Gyula Cserey from the Secretariat General – Policy Coordination of the European Commission, quoted Commissioner Janković when saying that social and economic rights have to develop hand in hand with economic progress. He pointed out that the Social Pillar is developing in a post-crisis context where certain groups were especially marginalised, such as youth. Some structural weaknesses were present before the crisis, but were exacerbated by the latter. Some member States are behind in labour productivity. The Economic and Monetary Union remained incomplete, suffering from the crisis.

Social and employment issues remain a top concern for European citizens. The Commission conducted annual surveys which show citizens have employment as their top concern. Social set-backs can hamper economic development, as it has been shown that inequality is detrimental to growth.

Furthermore, Mr Cserey outlined four main issues in the European Pillar of Social Rights:

- 1) Unemployment. Remains high, 21 million persons are unemployed and many of them are long-term unemployed. ¼ persons are at risk of poverty and social exclusion. The phenomenon is too high.
- 2) There is still disparity and asymmetry between the member States and regions, while the European project is built on convergence. This is a particular issue in the Euro area, where there are very limited monetary tools available (cannot devalue the currency).
- 3) The future of work: the need to keep up with developments there, where segmentation of production, robotisation, the increase in non-standard work contracts must be addressed due to social security and protection challenges raised.
- 4) The aging population is a serious issue today. The ratio of the young supporting the old is falling drastically. This needs to be addressed.

For these reasons, President Juncker pledged this new initiative to upgrade social standards. The initiative covers a range of issues, including the non-discrimination chapter, also work and social protection (childcare, housing, access to essential services, pensions).

According to the interim results of the public consultation, tackling inequalities is a high priority.

Regarding working conditions and the digital economy, there is a concern to abolish the differences between standard and non-standard contracts. Already 50% of EU contracts are atypical.

Another challenge is to ensure that transitions in the labour market are handled well and the portability of rights is effective. Young persons need income stability during job transitions. Transferring social security entitlements from one job to another is expected.

Lifelong learning should be available to all.

The modernisation of social security systems is necessary with regard to maternity leave and parental leave. This also applies to self-employed workers, of whom only 8 % are able to use maternity leave.

Trade unions and NGOs expect laws. Member States and companies would prefer soft law.

They do not have the ambition to serve as an automatic stabilisation mechanism through insurance such as an unemployment benefit scheme but prefer to see it as a framework for identifying good practices.

The Commission would like to assess in which cases the legislation would be relevant and to identify areas that might be better addressed by the soft law.

Mr Cserey concluded his presentation by inviting the participants to contribute to the public consultation on the European Pillar of Social Rights launched on 8 March 2016 and carried out by the Commission.

Danuta Wiśniewska-Cazals stressed that Council of Europe is very interested in the European Pillar of Social Rights and its implementation, as it seeks to protect social rights in States which are all members of the Organisation and which have all ratified the European Social Charter.

The Council of Europe and the European Union have established a framework for enhanced cooperation on fundamental rights by signing on 11 May 2007 the Memorandum of Understanding between the two institutions. According to the Memorandum, the cooperation takes into account the competences and expertise of the Council of Europe and the European Union - avoiding duplication and promoting synergy. It seeks added value and makes better use of existing resources. The Memorandum of Understanding states, inter alia, that the Council of Europe and the European Union base their cooperation on the principles of indivisibility and universality of human rights, compliance with the standards defined in the fundamental texts of the United Nations and the Council of Europe, and the preservation of the cohesion of the system of protection of human rights in Europe. It provides for consultations between the two institutions to ensure the coherence of Community and European Union legislation with the relevant Council of Europe conventions which are considered to be the pan-European source of reference in the field of human rights.

Furthermore, Ms Wiśniewska-Cazals informed the participants that the initiative of the Pillar was presented by the European Commission during the Forum on Social Rights in Europe organised by the Council of Europe in Turin on 18 March 2016. It was then stressed that the Pillar will complement the social acquis in the field of social rights and that the Commission will include in the Pillar international legal instruments devoted to social rights. The Commission stated that the Council of Europe will be directly involved in the consultation procedure on the Pillar, which aims at achieving three objectives: to carry out an evaluation of the social acquis of the EU, to consider new trends in work arrangements and in our societies, and to gather views and reactions on the principles contained in the preliminary outline of the Pillar. The two institutions agreed to set up liaison officers to work on the consultation process.

It should be observed that the revised Charter contains amendments which take into account the development of Community law since 1961 and that influence the way in which States Parties implement it. These include amendments to women's rights in order to ensure full equality between women and men (with the sole exception of maternity protection); the minimum age for admission to employment for certain occupations considered dangerous or unhealthy; the right of employee representatives to be informed and consulted by employers prior to a collective redundancy procedure. Furthermore, the Charter is mentioned in the Treaty on European Union and the Treaty on the Functioning of the European Union, a number of

rights guaranteed by the revised Charter have corresponding standards in the Charter of Fundamental Rights of the European Union. However, this Charter, on which the Pillar is based, remains selective regarding social rights. It does not mention, for example, the right to work, the right to a fair remuneration, the right to protection against poverty and social exclusion, or the right to housing that are guaranteed by the European Social Charter.

Bearing in mind the need to ensure synergy between normative systems for the protection of social rights in Europe, the European Union could endorse the social acquis of the Council of Europe, as it has done in the area of justice and place the European Social Charter at the heart of the Pillar by formally incorporating provisions of the treaty. This would promote the concrete realisation of these fundamental rights in Europe.

During the discussion that followed the two introductions, several questions and comments emerged:

What is the timeframe for the European Pillar of Social Rights?

When will the Commission decide what parts of the Pillar will be covered by the soft law and what cases will be governed by the hard law?

What kind of feedback is expected from NHRIs?

The consultation is open to all. However, the Pillar will only apply in the euro area. Will this not divide the European Union further into two speeds?

What is the relationship between the European Pillar and the other European Commission initiatives to combat discrimination (including the Work-Life Balance)? How does the Commission deal with this in parallel?

Would the fact that all the European Union member States have ratified the European Social Charter help when implementing the Pillar? What kind of synergies might be identified between the European Union and the Council of Europe acquis with regard to the Pillar?

In his reply, Mr Cserey advised that the public consultation will last until the end of 2016. At the beginning of 2017, the European Commission will publish a White Paper on the results of the public consultation and propose an outline based on these results and a legal analysis. The Commission will then communicate it to the member states. In order to facilitate participation in the public consultation, a questionnaire (10 questions) containing both specific and general questions was drawn up. But it is entirely possible to ignore it and contribute through an informal document or conference papers containing specific priorities.

As regards the legal framework, it is premature to say how specific areas will be regulated. For example, currently the right to housing is not regulated, so it is necessary to explore what will be possible.

The European Commission is only an initiator; the Social Pillar is a project of the European Union. The Council is involved in the development and will keep the member States up to speed on it.

Concerning the scope of the Pillar, five member States have announced that they wish to see the convergence strengthened, which is the most acute within the euro area. However, the Pillar

is expected to be open to non-euro area members as well.

The main objective of the Pillar is to better meet employment needs. The indicators adopted in the European Economic and Monetary Union (EMU) are used to address similar issues. There is a need to strengthen the surveillance and make use of social indicators annually in the analysis.

In addition, the European Commission's Work-Life Balance package also seeks to strengthen the social fabric. It could feed into the Pillar. The Work-Life-Balance package should target men as well as women, and not just address the active labour market perspective, but also the passive labour market perspective, seeking to reintegrate persons after childbirth, or bridge the gap while persons choose to stay home with children, and meet care responsibilities.

The open question will be how to recognise care responsibilities as another form of active contribution to society in terms of "meaningful activity" that could be remunerated with minimum income or revenue. Discussion is currently also underway at the ILO level, as this is an important issue for the future of work.

As regards the relationship between the Pillar and the European Social Charter, the outline currently presented does not refer to the Treaty because it does not refer to instruments outside European Union law (including the law of the member States). Indeed, there is a strong convergence between European Union law and the Social Charter.

Although the national contexts in the Council of Europe member States are very different, the Commission is willing to explore how synergy can best be achieved. There is a new form of co-operation on the subject within the framework of the Turin process, which is precisely targeted at this issue. The European Union can also promote the ratification of the revised European Social Charter and its collective complaints procedure among the European Union member States.

The principle of subsidiarity of the European Union means that its institutions only have a supporting role in social matters. The question then arises: what can the European Union do within the framework of its tools to ensure the ratification of the Council of Europe Charter?

One can seek to identify the issues that are covered by the Social Charter and are therefore covered by the national law of the member States, and maybe not covered by the European Union's legal acquis. Such an assessment might lead to tough discussions as to whether European Union law should address some of these gaps. Another possibility would be for the European Union to accede to the Social Charter of the Council of Europe, but then the accession process should be completed before one could go further. Open question whether the European Union would have to wait with accession until all its member States have accepted the revised Charter.

In the end, the Pillar gives another opportunity for the European Union to hold an open discussion on the European Social Charter.

A representative of a Serbian trade union stated that in Serbia, everyone declares their support for European Union membership and integration, as well as for economic development. Special attention should be paid to the humanitarian situation in society, including social security.



Economic development is important, but it is not primary. The role of solidarity and the distribution of goods play a more important role than the market economy. The market has not entered education, and this is where the State must play a more important role. As such, the State must design more mechanisms to ensure redistribution, but also the right to work and the rights arising from work.

Vulnerable groups are often called incorrectly “marginalised groups” - young people cannot be marginalised, they are the future.

Serbia has an unemployment rate of 14 % and there is a growing demand amongst its productive population for non-standard or temporary forms of work. This represents almost 90% of employed persons to work on the basis of non-standard contracts and conditions.

If someone who works once a week on the black market is considered as an active worker, it distorts the statistics. How can a Pillar work when poverty in the workplace is prevalent, while 90% of new jobs are on a temporary basis and when non-standard work contracts proliferate? Reforms generally lead to a race to the bottom. From a fiscal point of view, they give some positive results, but socially, it is a disaster.

Finally, the representative of a Serbian trade union stressed that the Platform on social and economic rights should be pragmatic and practical, and its objectives should be clearly defined so that it can have an impact. She expressed her interest in collaboration.

At the end of this part of the meeting, Mr Miltos Pavlou from the European Union Agency for Fundamental Rights concluded that the European Pillar of Social Rights can be a game changer for those organisations that know the situation on the ground.

#### **4. Indicators for monitoring economic and social rights**

During the discussion on the indicators for monitoring economic and social rights, several issues were raised:

How to choose the right indicators? When an indicator is really relevant, gives information on the implementation of rights (suicide rate and access to health for example)?

How to ensure effective participation in the development of indicators?

How can a balance be struck between the information obtained through the indicators and any other information?

How to move from the indicators to the formulation of conclusions on the implementation of human rights and their follow-up?

What should be the timing of the use of the indicators to ensure the validity of the results?

Furthermore, the difficulty in developing indicators for monitoring the Convention on the Rights of Persons with Disabilities (CRPD) was pointed out. The need to involve people with disabilities in the identification of these indicators was stressed in this context. Similarly, in working with persons living in poverty, it would be useful to obtain some indicators from life experience of this people. However, it is not always easy to get such indicators recognised.

It was observed that the FRA mainly uses performance indicators but there are also structural indicators (whether legislation is in place or not), and process-oriented indicators: how the legislation is implemented. Nevertheless, it is important to avoid a huge number of indicators, some of which are not always strategic, in order to obtain reliable results.

The Serbian government is trying to develop indicators for the Roma Action Plan. The large number of data sets and indicators is difficult to manage. While drawing inspiration from the UN Sustainable Development Goals indicators, it seeks to resist economic pressure, where economic indicators are really strong. Serbia is in favour of the creation of the Western Balkans observatory of policies towards groups referred to as Roma/Gypsies to strengthen the observatory existing at EU level. Roma issue is the most important for the accession of Serbia to the EU. The government insists on the need to develop social indicators.

The discussion on the indicators used by the Platform Partners for monitoring human rights, in particular social and economic rights, was followed by the presentation on **the indicators for monitoring economic and social rights** (available [here](#)) given by Allison Corkery from the Center for Economic and Social Rights.

Based in New York, the Center focuses on using human rights to advance social justice. Amongst other things, it aims to build and strengthen institutional capacity in order to further the realisation of social and economic rights. The Center has worked in the past with many different NHRIs and NHRI networks, particularly with ENNHRI. It has also worked with the CoE Commissioner for Human Rights to draft a paper on the consequences of the financial crisis and the human rights impacts of subsequent austerity policies.

Ms Corkery's presentation focused in particular on a few different topics related to indicators, including some definitions and terminology, the difference between qualitative and quantitative indicators, the relationship between indicators, benchmarks and data, various socio-economic development indices, and how indicators can be used to measure the achievement of different human rights norms (e.g. discrimination, progressive realisation etc.).

In her presentation, Ms Corkery pointed out that a lot of indicators currently being used to measure social and economic rights are "socio-economic indicators" developed for the purposes of measuring development outcomes. As a result, they relate largely to people's standard of living in terms of outcomes – e.g. literacy rates, income levels, nutrition rates, numbers or percentages of the population benefiting from particular programmes. She stressed that to be considered as human rights indicators, however, these indicators should reflect human rights standards and norms, measure obligations based on results and outcomes, and also capture States' obligations of conduct (process indicators, policy and resource analysis).

During the discussion, participants observed that the distinction between indicators and benchmarks was crucial in order to understand their application. It is problematic to discuss indicators without reference to benchmarks, while indicators may remain technocratic, benchmarks imply actions which should be taken and are political in nature.

Furthermore, it was emphasised that data collection for newly developed indicators could be an expensive exercise, in particular when conducted in a participatory manner. For example, in Holland, all data collection offices were asked to check their data on selected issues, which

became costly. Now, there is an attempt to find cost-effective ways to select appropriate indicators and monitor them in a participatory way.

Belgium is developing indicators for the rights of children. Indicators are selected on the basis of available data as there are no resources to collect new ones.

The Belgian Federal Migration Center - Myria - carried out a project to examine the procedure for regularisation of stay (administrative procedure) in collaboration with the Ministry of the Interior and the Statistical Agency. This project started from the beginning and it was possible to have a dialogue with the statisticians to ensure that the selected data were useful for monitoring the human rights situation of migrants. There is a difference between monitoring a new development and monitoring a long-standing process for which data may not be available or inappropriate. Myria was requested to pay for the data, which was a very strange situation where one public institution has to pay another to do its job. Myria advocated an agreement between the institutions at a reasonable price, because ultimately it is the government itself that benefits from this analysis and the data sets.

The idea of an agreement with the data collection authorities and the identification of missing data in the collection of current data were appreciated by the participants.

The question was then raised as to whether "Triple A" for the euro area will become a consideration for the candidate countries. The field of development of benchmarks is neglected by decision-makers and becomes a school exercise. Fewer and fewer civil servants are able to use indicators; the gap between researchers capable of doing so and policy makers is clear. According to research conducted by the World Bank, 80% of the indicators are decided at the lower or middle level because policy makers do not care enough about the matter. It was observed that Serbia was exposed to purely economic indicators; even the Prime Minister knows these indicators and benchmarks and cares about them. This is not the case for indicators on social rights. An attempt should be made to sensitise the European Commission to the legacy of the CoE, the ILO and other international actors in this field.

When the EC proposed a "light" European Semester in Serbia, it requested that the Social Impact Assessment be conducted. It was surprising to discover that, with respect to the austerity policy in Greece, only an ex-post impact assessment was made. EC Economic Services are not in dialogue with social services. However, they are now in dialogue with the Council of Europe and the OSCE in order to take these considerations into account and to ensure that they will be valid for the accession countries.

In this context, participants were informed that ENNHRI has sent open letters to EC to ensure that human rights monitoring translates into policy planning. These letters were sent in connection with the work done on the impact of the austerity measures in Greece and Spain.

The question then was raised what exactly it means to have a human rights impact assessment. It was observed that probably a serious and long-term mechanism for impact assessment does not exist.

From this angle, it was recalled that the methodology must be chosen according to the objectives set. Each indicator must be narrowly defined and linked to a solid policy framework or legal obligations. It should also be comparable. Negotiated indicators can be used, but they

should be based on legal texts. In addition, focusing on process indicators is crucial in determining whether policies / tools are achieving an objective. Process indicators are important, because evaluating whether the process contributes to achieving the outcome helps to formulate conclusions and recommendations. Evidence-based indicators are better than opinion-based indicators. Different indicators for the same phenomenon should be avoided. The Pillar opens up interesting paths in this process. The FRA endeavors to ensure that member States adopt such indicators.

As regards the **quantification of data in the context of human rights monitoring**, Ms Corkery raised in particular the following points:

- Using indicators selectively by identifying the decision makers who can address the identified problem - what data will persuade them? Politicians, the courts and the general public will need different types of information.
- The research question selected will frame the indicators, so researchers need to be very clear about their research question.
- Data collection (quantitative data collection).
- Judging indicators: to what extent does the indicator match the right in question? Relationship between the unemployment rate and the right to work - obscures other issues at stake in employment relations.
- Some ways to assess indicators: What is the authority of the indicator? Does it match a recommendation from an international or national source? Does it have popular support? Does it make sense for right holders? Does it tell us something about how government actions impact on the right being investigated?
- Indicators, as the name suggests, only give an indication, never an exact measure. Quantitative data are well adapted to the diagnosis of a situation that answers the questions "how much", "how many", "to what extent", "where" or "when", but they alone will not be able to tell us "why" something has or is happening. Advantage should be taken of the "power of numbers", but at the same time it is necessary to pay attention to what the figures do not show and take it into account in the conclusions.

After discussions in small groups that followed Allison's presentation, [Lauri Leppik](#), General Rapporteur of the European Committee of Social Rights, presented **the use of statistical indicators in monitoring social rights under the European Social Charter** ([available here](#)).

The aim of the presentation was to analyse the use of statistical indicators in legal assessment of social rights when monitoring compliance with legal obligations undertaken at ratification of the European Social Charter. Mr Leppik gave a short overview of indicators that have been used by the European Committee of Social Right, but also assessment methods – how the indicators have been used to assess conformity/non-conformity, and addressed some methodological problems in applying statistical indicators to evaluate the effective exercise of rights.

European Social Charter from 1961 stipulates 19 rights, the European Social Charter (revised) from 1996 provides for 31 rights. Indicators are commonly used in policy analysis. The application of indicators in policy analysis is more process oriented with the purpose of observing trends and developments, assessing improvement or deterioration. Policy analysis

may use targets and benchmarks for indicator values to evaluate whether policies achieve the established aims.

In legal assessments the use of indicators is somewhat different. Legal analysis is mostly binary: there is either conformity or violation (non-conformity). To determine this we need cut-off values, but these are not necessarily identical to policy benchmarks. Defining cut-off values is a normative decision. The cut-off values are often either lower or higher than the policy benchmark values, depending on the nature of phenomena.

The ECSR is entrusted with the legal assessment of the law and practice in Contracting Parties of the Charter. For the effective enjoyment of social rights not only shall legislation exist and comply with the requirements of the Charter, but the law shall also be applied in practice and the de facto situation shall comply with the requirements of the Charter. It is particularly the latter aspect where statistical indicators come in play.

The use of statistical indicators in legal assessment of social rights is gradually increasing. This is driven by desire to make assessments more objective, measurable and quantifiable. However, legal practitioners are sometimes still uncomfortable with quantitative data. Legal rights have been often perceived as qualitative matters. But quantitative data is sometimes only a way of expressing qualitative issues.

The text of the Charter has very few numerical values. Article 7 refers to the age of children and youth (15/18). Article 8 refers to the minimum duration of maternity leave (14 weeks). All other indicators are a result of the interpretation of Charter rights by the ECSR as embodied in Committee's case law. Frequently, these indicators have links to indicators applied by other international monitoring bodies.

For example, under Article 1§1 of the Charter Parties undertake *“to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment”* The ECSR has to interpret what words like “high” and “stable” level of employment mean. For this purpose, the Committee uses a set of core indicators: employment rate, unemployment rate, long-term unemployment, youth unemployment, activation rate (share of unemployed persons who participated in active labour market policy (ALMP) measures) and expenditure on ALMP as a share of GDP. The context indicator, against which the evolution of core indicators over the reference period is assessed, is GDP growth.

The ECSR interprets Art.1§1 as an obligation as to means rather than as to result. Accordingly, there are no fixed cut-off values. This provision is regarded as a ‘dynamic’ provision, where gradual progress is assumed while taking into account constraints imposed by economic trends. Efforts of states shall be adequate with consideration of the economic situation and the level of unemployment, i.e. efforts shall correspond to the situation. For example, if unemployment increases in a situation of GDP growth, the efforts of a state are not adequate given the context. On the other hand, if the unemployment rate is very low, expenditure on labour market policy does not have to be high, given the favourable situation.

Examples of non-conformity conclusions include Albania where the Committee has concluded that the number of persons with access to active labour market measures is “too low”. In the

case of the Slovak Republic, the Committee observed that “*employment policy efforts have been inadequate in view of the persisting high levels of unemployment in a context of relative economic growth.*”

As to the right to health (Article 11§1), the core indicators used by the Committee are life expectancy at birth; death rate; infant mortality rate; maternal mortality rate; coverage by health insurance; health care expenditure by GDP (including share of public and private financing); out-of-pocket payments in total health expenditure; waiting times for first consultation in primary care and care in hospitals.

Similar to the assessment method under Art.1§1, the Committee interprets Art.11§1 as a ‘dynamic’ provision where gradual progress is assumed. However, in respect of life expectancy indicator, the Committee has held that it shall not be too far below the European average. So there is also a comparator, the European average. But how far is “too far”? The case law of the Committee does not give a definite answer. Examples of non-conformity conclusions under Art.11§1 include Azerbaijan where efforts to reduce infant and maternal mortality rate have been “insufficient” and public expenditure on health care is “low” compared to other European countries. Although the maternal mortality rate has decreased drastically, the 15.3 rate in 2011 was still much higher than the European average.

In Latvia the maternal death rate is 26 per 100 000 births. However, this is a situation which deserves special attention and reveals some problems with relative indicators. If the population size is small, even small changes in absolute figures may lead to significant changes in relative indicators. While the standard indicator to measure maternal mortality compares the number of maternal deaths to 100 000 births, there aren’t actually 100 000 births in Latvia per year. There are only about 20 000 births a year. Maternal mortality rate of 26 thus actually means 5 maternal deaths a year. In small countries is therefore important to look also at absolute numbers. It may happen that even one single case may double the relative statistical indicator.

As to the right to social security (Art. 12§1), this provision, in contrast to Articles 1§1 and 11§1, has not been interpreted as a ‘dynamic’ provision. Here the Committee has set a clear cut-off value to assess the adequacy of minimum social security benefits, albeit in the form of relative indicators comparing the minimum rates of benefits with median incomes in the same country.

Notably, the ECSR is the only international monitoring body to set a threshold for assessment of the minimum level of social security benefits. The Committee holds that the minimum amounts of social security benefits (statutory minimum rates or the lowest benefits actually paid) for a single person in branches of old age, unemployment, sickness, invalidity, employment injury, survivors and maternity shall in any case not fall below 40% of median equivalised income per household member calculated on the basis of the Eurostat at-risk-of-poverty threshold value. If the minimum rates fall between 40% and 50% of the median equivalised income supplementary benefits may be taken into account. But for benefits falling below 40% threshold, the Committee holds that there are “manifestly inadequate”. In other words, the ECSR considers that beneficiaries relying on social security benefits shall be effectively protected from falling into poverty. Notably, the cut-off value applied by the ECSR is related to the Eurostat at-risk-of-poverty threshold. However, while in the context of EU social inclusion strategy the at-risk-of-poverty threshold is defined as 60% of median equivalised income per household member, the

lowest cut-off value applied by the Committee is 40% of median equivalised income per household member, i.e. twenty percentage points lower. In fact, also the latter threshold is used in the EU portfolio of social inclusion indicators to capture poverty depth.

The other indicators applied for assessment of Art.12§1 include the duration of payment of unemployment benefits, the share of persons covered by health insurance/public health care as a percentage of total population and the total number of persons insured against the risks of unemployment, old age, sickness and invalidity out of the total number of economically active population.

Article 23 of the Charter addresses the right of the elderly to social protection. Here the Committee assesses the adequacy of benefits, focusing on minimum pension, but taking into account also any complementary cash benefits that are available to elderly persons, and comparing the sum of all such benefits to the median equivalised income in the country concerned. But as the Charter is concerned not only with the situation in practice, the Committee additionally looks at the poverty rates of persons aged 65 and over. The two indicators complement each other. There may be situations where the minimum pension is below the at-risk-of poverty threshold, while the actual poverty rates of elderly persons are very low. And vice versa, it could be that the minimum pension is above the at-risk-of poverty threshold while the actual poverty rates of elderly persons are rather high.

Indicators may also be used to establish indirect discrimination under Article E of the Charter. The Committee has used such indicators in particular under the collective complaints procedure. To establish indirect discrimination, there is a need for a comparator when controlling whether persons of an affected group have been exposed to some detriment or disadvantage, have been treated less favourably because of the characteristic which has attracted legislative protection, to which persons unaffected by such characteristic would either not have been exposed or have been significantly less exposed.

Examples are Committee's decisions in collective complaints 13/2002 Autism-Europe vs France and 81/2012 European Action of the Disabled vs France. In the former case the Committee found that the proportion of children with autism being educated in either general or specialist schools was much lower than in the case of other children, whether disabled or not. The Committee thus used the indicator of proportion of children in education and compared the educational attendance of different groups of children for assessment of claimed discrimination. In CC 81/2012 the Committee used the number of children with autism moving from France to Belgium and vice versa to find a violation of Article E taken in conjunction with Article 15§1, because "families have no other choice than to leave the national territory in order to educate their children with autism in a specialised school, which constitutes a direct discrimination against them." However, it is a question if such an indicator is appropriate to establish discrimination. While the majority decided that it was, I submitted a dissenting opinion.

Finally, a number of methodological notes can be made. 'Progressive' interpretation of Charter provisions presumes that there shall be a steady progressive expansion of enjoyment of social rights, states undertaking positive obligations and implementing policies to progressively improve the situation, reflected in progressive improvement of outcome indicators, which rarely occurs in practice. In contrast, 'dynamic' interpretation would allow some fluctuation in indicator

values, while the positive obligations of states are assessed against those indicator values, to see if efforts (e.g. in terms of expenditures) correspond to the magnitude of problems.

Comparative assessment, where indicator values are compared against the European (or EU) average, comes with an underlying idea the average constitutes a certain social norm and that Contracting Parties shall strive to converge around the (moving) European average. A question that can be asked in this respect is if such assessment method derives from the notion of 'relative' social rights. The opposite approach is based on clearly defined minimum thresholds. However, setting of cut-off values needs sound analytical base in order not to be arbitrary (e.g. is six enough or eight too much, and on what empirical base can it be decided).

Several possible limitations on the use of indicators for monitoring social rights shall also be recognised. The Committee is frequently facing data limitations: data is not always available, there are data gaps for some countries or even whole regions (in particular Eurostat data not available for non-EEA, non-OECD countries), data from national sources is not always comparable or with unknown validity. There is frequently also a relatively long time lag in statistics production. It may take a couple of years from data collection before certain indicators become available, hence allowing only a retrospective assessment of past situations, but not of the current situation, which may be pertinent in collective complaint decisions.

Finally, some precaution is needed in order not to over-quantify social rights. Extensive use of indicators may effectively re-construct the substance of some rights – the content of the right becomes what the indicators measure. For example, if we assess the right to health only by means of infant and maternal mortality rates and health care expenditure (any non-conformity conclusions relating only to the values of these indicators), as these data are commonly available for all or at least the majority of the Contracting Parties, this may lead to a perception that the right to health primarily concerns infant and maternal mortality. Which is obviously a very false perception as these aspects cover only a small part of the broader right to health

## **5. Next steps for the Platform**

It was proposed that members of the Platform have an opportunity to express their needs regarding the **online cooperative website** that the Council of Europe has agreed to design and create.

The Platform members' main expectations regarding the website functionalities are:

- A space to share Platform Meetings material (agenda, handouts, PPTs, contact lists of participants, reports);
- A space to share resources on the topics of economic and social rights, monitoring, indicators (national and international research, reports, articles of interest found by the members);
- A publicly available webpage and a restricted collaborative webpage.



According to members, the following could be useful to be made available on the external/public part of website

- the meetings material;
- the Platform partners' statements related to the issues dealt with by the Platform partners and members;
- joint statement of Platform partners, if any;
- information on the national developments relating to the (non) ratification of and the reporting under the European Social Charter.

Regarding the Platform website, the following next steps were agreed:

- Platform members are invited to familiarise themselves with the existing website of the Operational Platform on Roma Equality : [OPRE website](#);
- Platform partners are invited to discuss the key features of this website in between the meetings;
- Questions are identified on the public webpage content and on the restricted collaborative area;
- The Council of Europe offers to circulate the questions to collect Equinet and ENNHRI members feedback on the website, which will be presented at the next meeting.

**Concluding message on behalf of ENNHRI** delivered by Laurence Bond, Irish Human Rights and Equality Commission.

ENNHRI has dedicated itself to activities on economic and social rights since 2013, when it hosted a major public event on the human rights impact of the economic crisis, and work completed by NHRIs to address this. The following year, ENNHRI issued Open Letters prior to the Troika visit to Greece, which have been sent to the President of the European Commission, José Manuel Barroso, and the President of the European Central Bank, Mario Draghi.

The Platform on social and economic rights with partners (agreed also in 2013) was another stimulus to focus more on economic and social rights in the activities of ENNHRI. An ESR WG was formed to materialise this commitment, with meetings in 2015 and 2016 to clarify priorities. A training workshop to support NHRI work in this area is organised in Belgrade immediately after the Platform meeting.

In its « Statement of Support for the Turin Process to strengthen Social Rights in Europe” (released on 10 October 2016, available [here](#)):

- ENNHRI encourages the endorsement of the Turin Process by State Parties through the adoption of measures at national level;
- ENNHRI encourages the EU and the Council of Europe to establish close cooperation and work towards a cohesive framework for the protection of economic and social rights throughout Europe;
- ENNHRI encourages the EU to take into full account the European Social Charter when interpreting EU law and integrate its provisions into the EU's human rights assessment procedure for policy-making;
- ENNHRI reiterates its commitment to fully engage with the institutions of the Council of Europe and the EU, where appropriate national governments and civil society to pursue these priorities.

ENNHRI, therefore, welcomes the Turin Process, which aims at strengthening the system of the European Social Charter within the Council of Europe and in its relationship with the law of the European Union. ENNHRI calls on the European Union and the Council of Europe to establish close co-operation, in order to strengthen economic and social rights in Europe through the Turin Process and identify good practices in the implementation of these rights at national and European level.

ENNHRI moreover, contributed to the adoption of the Joint Statement on the evictions of Roma and travelers in Europe.

ENNHRI will continue its work in this area, not only through the Platform, but also through a workshop on ESCR in 2017, and ongoing work on Sustainable Development Goals.

**Concluding message on behalf of Equinet** delivered by [Julie Lejeune](#), ENNHRI Secretariat (in the absence of [Katrine Steinfeld](#)).

Equinet head of legal and policy team, Tamas Kadar, in his capacity as an independent expert, launched a report on socio-economic status as a ground of discrimination in Dublin at the end of October. The [Equality & Rights Alliance](#) has commissioned this publication as a means of stimulating debate on the introduction of a socio-economic status based on equality legislation in Ireland and of building momentum towards its introduction. The last time the issue was debated was in 2004 when the Department of Justice, Equality and Law Reform commissioned research to assess the introduction of new grounds under equality legislation on the foot of a position paper developed by the then Equality Authority. It is timely to re-engage the debate and to introduce a new socio-economic ground into the equality legislation.

[Read 'An analysis of the introduction of socio-economic status as a discrimination ground' here.](#)

## **6. Conclusions**

The Collaborative Platform started to work in December 2015 with four clear objectives, namely:

1. Facilitate the exchange of information between partners and national bodies;
2. Provide training for national bodies working on social and economic rights;
3. Raise awareness of social and economic rights; and
4. Develop tools for more effective work on social and economic rights.

Equinet, ENNHRI and FRA have contributed significantly to the Platform and the Council of Europe's support to this project is invaluable. Meeting after meeting, a sense of community is growing among the members and everyone's involvement is enriched. Now is the time to decide what will be the next steps in the Platform endeavours.

Members' expectations for the development of the Platform to provide them with a framework to support their work on social and economic rights are well noted. Platform members have also indicated that they would like to try identifying a small set of indicators, using them and bringing back lessons learnt to the Platform for discussion. This can be explored further at a future Platform meeting. Members also considered working on a specific theme, and the right to health was mentioned in this context.

In the background of the Platform activities is the question on a possible role for the Platform in connecting to, or creating synergies between, the European Social Charter/Turin Process and

the European Pillar of Social Rights.

In line with the step-by-step approach agreed in January 2016 to achieve the Platform goals, the next steps can be identified as follow:

1. The criteria, modalities and timeline for the exchange of information have been developed:
  - The Council of Europe starts the work to launch a website and all platform partners are grateful and welcome this news;
  - The content and the use of the website will be explored further on the basis of the Platform members' input;
  - Previous suggestions on the website include hosting the exchange of information, particularly on Human Rights Impact Assessment (HRIA), economic analysis and research to support the implementation of social and economic rights.
2. ENNHRI and Equinet will feed into the European Commission's Consultation on the European Pillar of Social Rights and will invite their membership to do so as well.
3. The agenda for the next Platform meeting will be prepared on the basis of the members' input by the Platform Partners and will include, if possible, one capacity building activity. The Council of Europe and FRA offered their support for training initiatives.
4. The Ombudsman Office of the Republic of Latvia offered to host an awareness-raising event in late 2017 when the Platform would meet again.

In addition, the German Institute for Human Rights proposes to organise a bilateral seminar on the consequences of the ratification of the Revised Charter, as the German authorities reject such ratification.

## ANNEX I

COUNCIL OF EUROPE



# Designing effective tools for the promotion and protection of social and economic rights

3<sup>rd</sup> Meeting

of the CoE-FRA-ENNHRI-EQUINET Collaborative Platform

on Social and Economic Rights

10 October 2016

Belgrade, Palace "Serbia", room "Beograd"

## *OBJECTIVES*

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The third Meeting of the CoE-FRA-ENNHRI-EQUINET Collaborative Platform on Social and Economic Rights, organised at the initiative of the Commissioner for the Protection of Equality of Serbia, aims at increasing mutual awareness and knowledge among partners, with a focus on providing updates about practices in monitoring the respect of social and economic rights at the national, regional and international level. Specifically, the meeting will explore the relationship between the recently launched European Pillar of Social Rights and the European Social Charter, and discuss proposals for relevant indicators for monitoring respect for social and economic rights under these mechanisms. Finally, the Platform will identify further capacity building needs to be followed up in 2017.

## *FORMAT / WORKING LANGUAGE(S)*

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The one-day event will be held in plenary. The working languages will be English and French, with simultaneous interpretation.

## PROGRAMME

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08.30 – 09.00	Registration
09.00 – 09.30	Welcome by  Brankica Janković, Commissioner for the Protection of Equality of the Republic of Serbia Natalija Pavlović, Assistant Minister in the Ministry of Public Administration and local Self-Government Čedanka Andrić, Secretary of the Social and Economic Council of the Republic of Serbia Nadia Cuk, Deputy Head of Office, Council of Europe Belgrade Office  Opening remarks, including summary conclusions of the 28 January 2016 meeting and identified objectives by Danuta Wiśniewska-Cazals, Department of the European Social Charter, Council of Europe
09.30 – 11.00	European Pillar of Social Rights and the European Social Charter  Moderators: Danuta Wiśniewska-Cazals, Department of the European Social Charter, Council of Europe and Miltos Pavlou, European Union Agency for Fundamental Rights (FRA)  Introduction of the European Pillar of Social Rights by Gyula Cserey, European Commission, Secretariat General – Policy Coordination  Reflection on the relationship between the European Pillar of Social Rights and the European Social Charter in the light of the “Turin process” for the Charter by Danute Wisniewske-Cazals, Department of the European Social Charter, Council of Europe  Followed by discussion, including how Platform Partners can contribute meaningfully to the “Turin process” and consultations on the European Pillar of Social Rights  Discussion
11.00-11.15	<i>Coffee break</i>

- 11.15 – 12.45 Indicators for monitoring economic and social rights  
Moderator: Allison Corkery, Center for Economic and Social Rights  
  
The Power of Numbers: using quantification strategically in human rights monitoring by Allison Corkery, Center for Economic and Social Rights  
  
Discussion, including sharing examples of good practice on the indicators used by Platform Partners for monitoring human rights, in particular social and economic rights, as well as monitoring inequality in Europe
- 12.45 - 14.15 *Lunch break*
- 14.15 – 15.45 Indicators for monitoring economic and social rights continued  
  
Presentation of indicators in the framework of monitoring procedures of the European Social Charter by Lauri Leppik, General Rapporteur of the European Committee of Social Rights  
  
Discussion continued
- 15.45 –16.00 *Coffee break*
- 16.00–16.45 Next steps for the Platform  
  
Moderator: Katrine Steinfeld, European Network of Equality Bodies (Equinet)  
  
Brief review of actions agreed at the last meeting, follow-up required, including discussion and definition of capacity building needs of Platform Partners and agreement on a timeline of priorities
- 16.45 – 17.00 Conclusions by Julie Lejeune, European Network of National Human Rights Institutions (ENNHRI)

## ANNEX II

Designing effective tools for the promotion and protection of social and economic rights

3<sup>rd</sup> Meeting

of the CoE-FRA-ENNHRI-EQUINET Collaborative Platform

on Social and Economic Rights

10 October 2016

Belgrade, "Palace Serbia", Room "Beograd"

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DGII Directorate General of Democracy

Support Team of the Special Representative of the Secretary General for Roma Issues -  
Apologised

Conference of INGOs

Apologised

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