

Concluding Remarks

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At the end of this Conference, it is not an easy task to propose some tentative conclusions. All presentations by the eminent rapporteurs were so rich and interesting, they focused on such complex and wide-ranging topics, and the discussions were so articulated, that it would be clearly impossible and weak-willed on my part to try to summarize the issues at stake and to make comments on them.

Therefore, I would limit myself to propose a few unambitious closing remarks which, of course, are closely linked with the general topic of the conference – namely, the role of domestic and European courts in protecting social rights and enhancing respect for such rights –, but which are also the result of my convictions and experience as President of the European Committee of Social Rights, that is the quasi-judicial monitoring body of the European Social Charter.

As emerged very clearly from the whole conference, social rights today are not only a fundamental value for Europe and European governments and civil society; respecting and promoting social rights is not only a political goal or programme, or an ethical or social priority for achieving the wellbeing of European peoples and our communities.

Social rights and respect for social rights have a full legal character, they are part of the law which is in force in Europe: European international human rights law, EU law and – of course – national laws.

As a consequence, social rights have to be implemented and put effectively into practice, as legal rules, by the subjects and addressees of such rules and obligations, that are in the first place the European States and State authorities, institutions and organs, operating at different levels and exercising various kind of competences and powers. And, as legal rules, they have to be applied, interpreted and judicially guaranteed by judges and courts: domestic judges as well as European courts.

Against this backdrop, let me say that the “law” – the legal source – to be applied in Europe by judges and courts, when it comes to ensure respect for social rights, is neither the European Convention of Human Rights, nor the Charter of Fundamental Rights of the EU, or this or that EU Directive: the relevant “law” is *par excellence* the European Social Charter.

It is in fact hardly necessary recalling that the Charter is an international treaty, adopted within the framework of the Council of Europe; as such it is legally binding for all its 43 States parties and it is explicitly referred to in the EU primary and secondary law. And it is also hardly necessary recalling that, at the pan-European level, the Charter is the most wide-ranging and comprehensive instrument for the protection of social rights. More than any other existing legal instrument, it takes care of the essential social needs of individuals in their daily lives. At the same time, from the standpoint of the commitment required by States and State authorities, the Social Charter, more than any other international and European instrument, actually pushes the State parties to provide themselves with an advanced and efficient public welfare system.

And it is a living instrument. By virtue of the evolving jurisprudence of the European Committee of Social Rights, the Charter reveals enormous potential to continuously address emerging and persisting social needs, to cope with old and new problems in ensuring respect for social rights.

It is therefore clear that, when it comes to ensure respect for social rights, the European courts (either in Strasbourg or in Luxembourg) should always take into proper consideration the Social Charter; and the national court and judges of the States parties to the Charter, in deciding cases before them, should always apply the provisions of the Charter by which their respective State is bound.

As regards the European courts, it emerged from our conference today that they both, for different reasons, do not seem to fully exploit all the potential offered by the Social Charter system; nor they always seem to properly treat the Charter as a legal source to be referred to, or applied, when social rights issues are at stake. In this respect, let me respectfully say that, if and when this should occur, the European courts would not only miss the opportunity to contribute to the enhancement of the meta-legal value (or political goal) of respecting social rights: rather, they would not entirely and properly fulfil their inherent task to say and apply the law.

As for the domestic courts of the States parties to the Charter, the Social Charter should more and more be considered and perceived as “a part of the law of the land”. As such, it should progressively become an usual key weapon in judges’s legal arsenal, taking of course into account – on the one hand – the specific legal features of each respective national legal order (and in particular the ways and methods by which it allows and regulates the implementation of an international binding treaty, as the Social Charter is), and – on the other hand – the peculiar character of the Social Charter’s provisions, which are not all self-executing, nor all apt to produce direct (“horizontal” or “vertical”) effects. This would really represent not only a significant improvement in the exercise of the jurisdictional function by domestic courts, but also a major contribution to the effective respect for, and enhancement of, social rights in all Europe.

Enhancing social rights’ effectiveness and their uniform application in Europe implies, in fact, acknowledging and promoting the key role of national judicial authorities that act as the principal conduit for ensuring respect for social rights at the national level.

For this reason, I think that we all should be particularly grateful to the Supreme Court of Cyprus for having organized, together with the Council of Europe, within the framework of the Cypriot Chairmanship of the Committee of Ministers, this important Conference, which provided indeed an excellent opportunity to sustain the momentum of the “Turin process” for the European Social Charter and, mostly, to foster awareness of social rights among European and national judges.