

## Information Documents

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**Improving the implementation of social rights –  
reinforcing the European Social Charter system:  
Secretary General's proposals**

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## **Introduction**

Improving the implementation of social rights in Europe and reinforcing the European Social Charter system to this end has been a longstanding Council of Europe objective. Some of the measures adopted in the past have had a positive impact, while others, well intended, have not offered all of the benefits sought, especially as regards streamlining (or simplifying) procedures under the Charter.

The COVID-19 pandemic has added urgency to the need for change. It has brought to light strengths, but also sometimes serious weaknesses, of social rights protection systems in Europe. The pandemic has highlighted the need to reinforce social rights and their effective protection as part of the overall system of collective guarantees for human rights protection in Europe. The ongoing economic slowdown will bring additional pressure to bear on scarce resources, not only for the realisation of social rights but also to prevent their rollback.

Against this background, it is crucially important to take action to make the European Social Charter system more relevant as a tool to support member states in the design of social rights policies capable of addressing today's challenges, in line with my Strategic Framework for the Organisation.

The proposals set out in this document draw inspiration from a range of sources, in particular: the Committee of Ministers' decisions; proposals made collectively by member states' human rights experts in the 2019 report of the Steering Committee for Human Rights (CDDH); suggestions and reflections of the monitoring bodies of the European Social Charter, namely the European Committee of Social Rights (ECSR) and the Governmental Committee of the European Social Charter and European Code of Social Security (GC). More recently, a High-Level Group of Experts on Social Rights (Group of Experts), which I appointed, submitted a report to me with several proposals which have also been taken into account in the preparation of the present document.

My proposals have three main strands:

- the political support needed to improve the Council of Europe's contribution to the implementation of social rights in Europe;
- improvements to the procedures established under the European Social Charter and processes that might be engaged to enhance the efficiency and impact of the Charter; and
- forward-looking substantive and procedural developments that require more detailed consideration by Council of Europe member states and by the parties to the Charter.

## **1. Political commitment and support**

The European Social Charter is an instrument adopted by the member states of the Council of Europe to assist each other – and collectively – in achieving common objectives which are essential for the democratic stability of our continent, in particular preserving the fundamental values of human dignity, promoting economic and social progress and, more particularly, improving the wellbeing and the standard of living of all. Such common goals, which stem from the Statute of the Organisation, do not invalidate or seek to erase national specificities; on the contrary, these objectives are enriched by the wide variety of our communities, cultures or traditions.

Whereas many around the world argue that the pandemic and other recent crises show the need for a new social contract, in Europe we have the Charter, an instrument capable of providing a dynamic response to evolving realities.

It is therefore high time to confirm clearly and unambiguously, at the highest political level, that the European Social Charter provides a response to today's social challenges in Europe, and to show a renewed commitment to the common objectives underpinning the Charter. This high-level political support should be coupled with the engagement to develop a level playing field for social rights across Europe, a clear refusal to lower standards and a rejection of social dumping. It should be accompanied by an improved capacity of the organs of the Charter to respond effectively to the need for feedback and guidance which the collective guarantee of social rights creates. Finally, it should aim at promoting the ratification of the revised European Social Charter by all member states and their acceptance of additional provisions of this treaty and of the collective complaints procedure.

The 60th anniversary of the European Social Charter – as well as the 30th anniversary of the Turin Protocol and the 25th anniversary of the revised Charter – at the end of this year provide the opportunity for a Declaration by the Committee of Ministers to this effect.

## **2. Procedural improvements: simplification and dialogue**

The sources referred to in the introduction convey a unanimous message about the perception that the complexity of the European Social Charter system as currently articulated around reporting, groups of provisions, cycles and reference periods, conclusions and their staggered, multi-tier follow-up creates an excessive administrative burden for member states. At the same time, this complex system does not fulfil the core objective of assisting member states in addressing gaps and shortcomings in their domestic social rights policies. The collective complaints procedure has the potential to simplify this intricate scenario, but this potential has thus far been hampered by its slow take-up by states parties to the Charter and by the staggered follow-up obligations for the states that accept collective complaints.

The case for simplification is therefore strong, as was made clear by the CDDH. The ECSR introduced certain initial changes in response. In decisions adopted on 11 December 2019, the Committee of Ministers “took note with interest of the steps taken by the ECSR to simplify the reporting procedure under the European Social Charter, focusing on issue-based questions on selected provisions, and invited the ECSR and the Governmental Committee to consider further ways of streamlining the procedure, including the advisability of reviewing the current system of thematic reports”. The GC is also reviewing its own procedures and the Group of Experts made specific suggestions for simplification.

In parallel, there have been many calls for more dialogue between the Charter bodies – the ECSR and the GC – and states parties, as well as with other stakeholders, or to enhance the adversarial procedure in collective complaints. The desirability of facilitating dialogue between and among Charter stakeholders collectively has also been signalled.

### 2.1 A new reporting procedure

The answer to these two aspirations – simplification of procedures and enhanced dialogue – may be given by a new reporting procedure that could be shaped as follows:

- simplified quadrennial reports could be submitted on the application of the Charter as a whole by states parties to the Charter that have not accepted the collective complaints procedure<sup>1</sup>;
- these quadrennial reports could be supplemented by ad hoc reports focusing on specific issues when required by the circumstances, upon the request of the ECSR; for this purpose, the ECSR should consult the GC as well as other stakeholders, in particular social partners;
- ad hoc reports may also be required from states parties that have accepted the collective complaints procedure, under the same modalities and after consultation of the GC and other stakeholders;
- the GC could consider the conclusions of the ECSR on these quadrennial or ad hoc reports in a more targeted manner, with the benefit of updated information submitted by the states parties concerned, focusing on issues requiring specific attention from governments.

### 2.2 Strengthening the adversarial dimension of collective complaints

As regards collective complaints, the steps taken by the ECSR to ensure strict application of admissibility criteria and enhance the adversarial dimension of its work should be endorsed. In addition:

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<sup>1</sup> This concerns accepted provisions, without prejudice to the specific Article 22 procedure regarding non-accepted provisions.

- the ECSR could be encouraged to seek as much clarification on matters of fact or points of law as may be necessary from the parties and to consider favourably the holding of hearings at the request of one of the parties; it should also be possible for the ECSR Rapporteur in a particular complaint to propose a hearing or other form of dialogue with the parties. In this framework, the opportunity should be examined of communicating to the parties the points under litigation in respect of the admissibility and merits of a collective complaint, in order to enable them to focus their submissions on the issues of fact and law which are to be considered by the ECSR.

The ECSR could be encouraged to consider revising its Rules and working methods accordingly. The Deputies could consider progress in this field at their regular exchanges with the President of the ECSR.

- The Committee of Ministers could more frequently have recourse to the adoption of recommendations pursuant to Article 9 of the Protocol on collective complaints in order to provide guidance to member states on ways to improve their social rights policies.
- It could also envisage further developing its own follow-up procedure to decisions on the merits, thus alleviating ECSR supervision of developments following its own decisions.

In this respect, a Working Party established under the authority of the Committee of Ministers could be invited to make concrete procedural suggestions as to the modalities of the Deputies' follow-up to decisions on collective complaints, taking into account the possible absence of regular quadrennial reporting by states parties which have accepted the collective complaints procedure.

### 2.3 Enhancing dialogue and impact

The ECSR could provide additional general guidance on the understanding and application of the provisions of the Charter through statements of interpretation. It should seek the views of states parties, the GC and other stakeholders on the subject of such statements.

To enable and expedite communication between the organs of the Charter (the ECSR and the GC) and national authorities, each party should be invited to designate a focal point or government agent.

Collective dialogue among and across stakeholders (organs of the Charter, national authorities, social partners and civil society organisations) could usefully be facilitated, mostly at the initiative of the GC, as well as through regular conferences of specialised ministers and procedures for the follow-up at national level of monitoring outcomes under the Charter.

The impact of the European Social Charter system depends on its effective implementation at national level. A broad range of proposals have been made by the CDDH and by the Group of Experts in this respect: awareness raising, training (including university curricula and professional training for legal professionals, in particular judges), promoting compatibility assessments prior to the adoption of legislation or policies, establishing national follow-up mechanisms. These proposals would require increased efforts by the Council of Europe member states.

As appropriate, the above considerations could be usefully set out in the Declaration by the Committee of Ministers referred to in chapter 1.

### **3. Forward-looking developments**

The sources referred to in the introduction and in particular the report of the High-Level Group of Experts on Social Rights (Group of Experts), point to further possible substantive and procedural developments which should be given particular consideration so that the European Social Charter remains an instrument which is in tune with today's challenges.

It would be appropriate for the Council of Europe to initiate and facilitate a discussion on the question of social and economic rights that should apply to everyone. It would then be for the states parties to the Charter to take, as appropriate, follow-up decisions on that instrument's personal scope. The Council of Europe is equally well placed to consider the rights of those who are engaged in new forms of working relations.

The introduction of an advisory opinion procedure under the Charter, comparable to that of Protocol 16 to the European Convention on Human Rights, has also been proposed, notably by the Group of Experts.

The Group of Experts also proposed considering the inclusion of new rights in the list of those guaranteed by the European Social Charter, notably: a right to adequate standard of living, including access to food and water (or a right to a minimum of dignity); a right to a healthy environment; specific rights to address the situation of workers in non-standard forms of employment (including platform or gig economy workers); or safeguards that should accompany the rise of digitisation and artificial intelligence.

The question of accession of the European Union to the European Social Charter has been suggested, including by the European Parliament, among the issues that should be given appropriate consideration.

The above issues will need to be considered carefully by the High Contracting Parties in due course. This could be done in the framework of a Conference of the Parties which could be convened in 2022-2023.

## **Conclusion**

1. The 60th anniversary of the European Social Charter, which will be celebrated on 18 October 2021, provides an opportunity for the Committee of Ministers to confirm in a Declaration the relevance of the European Social Charter in providing adequate responses and guidance to address the many social challenges with which our societies are confronted. This renewed commitment should be coupled with an encouragement to ratify the revised European Social Charter, enter into additional commitments and accept the collective complaints procedure. It should also encourage the ECSR and the GC to finalise the reform of their working methods, in particular as regards the reporting procedure and to enhance interaction with member states.
2. The ECSR and the GC could be encouraged to consider, for example by putting in place a joint technical task force, the advisability and concrete modalities of a new reporting procedure consisting of simplified quadrennial reports for states parties which have not accepted the collective complaints procedure, coupled with special reports, whenever necessary, for all states parties.
3. The ECSR could be encouraged to revise its Rules and working methods in order to increase the adversarial dimension of its proceedings concerning the admissibility and merits of collective complaints.
4. The Ministers' Deputies could consider putting in place a Working Party to make concrete procedural suggestions as to the modalities of their follow-up to decisions on collective complaints, taking into account the possible absence of regular quadrennial reporting by states parties which have accepted the collective complaints procedure.
5. Substantive and procedural issues as regards the rights guaranteed, the personal scope of the Charter, the possibility of advisory opinions of the ECSR, as well as the question of a possible accession of the European Union to the Charter, should be considered by the High Contracting Parties. This could possibly be done at a Conference of the Parties. The Ministers' Deputies may wish to encourage states parties to hold such a conference.