

***Text of the statement by Michele Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe, General Rapporteur of the High-Level Conference on the European Social Charter (Turin, 17-18 October 2014), on the occasion of the conference***

*(Translation from the original Italian)*

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*First of all, I would like to thank the Council of Europe and the Italian authorities for inviting me to this conference and for having entrusted me – in my capacity as Vice-President of the Parliamentary Assembly – with the challenging task of preparing the general report. I shall draw up this document in written form so that the organisers can circulate it to all participants in the coming weeks. In accordance with the objectives of the conference, the general report represents the first step of the political process opened by the conference with respect to the European Social Charter. As regards my future commitment, I would like to quote Altiero Spinelli, “The road forward is neither easy nor safe, but must be pursued and it will be”. I shall now continue in Italian.*

The primary aim of this conference was to pay heed to the social suffering of our time. Over the two days of our proceedings, the themes of poverty, unemployment, and inadequate access to health care or education have been raised many times in the debate. The marches and demonstrations being held in the vicinity of the conference venue have also enabled us physically to witness the workers' protests and the difficulties of many citizens. This too is the Council of Europe's working style. Indeed, where would democracy and the rule of law be, if they were reduced to mechanisms that function perfectly but disregard citizens' real experience? The pillars of our constitutional and democratic systems are the result not of indifference, but of attention to human suffering and of a passion for humanity.

It is impossible not to mention this here in Turin, a city which bequeathed to us one of the greatest testimonies to the offences perpetrated against humanity in the 20th century in the form of Primo Levi's masterwork "If this is a man".

From a historical standpoint, there is no declaration of rights or constitutional charter whose authors did not draft it with breaches of human dignity in mind and with the desire to remedy them. To understand the Declaration of 1948 and the Convention of 1950 we must bear in mind the fact that those who drew them up had before their eyes not only the appalling violations of freedoms perpetrated by totalitarianism, but also the tragedy of the poverty resulting from the ravages of war.

A citation by Altiero Spinelli, that great Europeist, was selected for inclusion in the introduction to the programme of this conference, and if we re-read his extraordinary "Ventotene Manifesto" today, we can see that its central focus is concern about

social issues, or as Spinelli put it “for social reform”, central to which was the duty to afford young people equal opportunities to work and to realise their potential. Many pro-Europeans perceived the failure to resolve major social questions as the origin of the nationalist and racist follies in so many countries. The Social Charter of 1961 therefore partakes of this concern for human suffering and of the conviction that social and democratic issues are closely linked and that the efforts to rebuild Europe from the ruins – yesterday and today – cannot be founded on indifference, which is the enemy of protection of fundamental rights.

The crisis has revealed the deficiencies of the legal arsenal available to European countries for safeguarding fundamental rights. Minister Poletti put this perfectly in his opening address when he referred to the national systems' weakness in safeguarding the rights of the most vulnerable members of society. The European welfare model can be saved only at the supranational level. The negative context of the economic crisis has itself enabled us to rediscover those supranational instruments, like the Social Charter, which, as someone said, seemed to have been put in cold storage and which, with the crisis, instead revealed their key characteristic as treaties that unite States, individuals, international organisations, workers' organisations and NGOs, laying the foundations for a reconstruction of the Europe of values and rights. The crisis highlighted, if there were any need to do so, the fundamental relevance of social rights. And for European societies it constituted an opportunity to grasp the importance of implementing those rights.

This conference is the outcome of a long series of activities and measures; it constitutes the culmination of a process involving a number of key events. Mention need not be made of the emblematic decisions of the European Committee of Social Rights concerning the collective complaints procedure, the celebration of the Charter's 50th anniversary in Strasbourg in October 2011 – with the participation of the Mayor of Turin and the adoption of the political declaration by the Committee of Ministers - the work of the Parliamentary Assembly and the European Parliament and the activities of the Commissioner for Human Rights of the Council of Europe, as well as the role played by the Academic Network on the Charter, which has succeeded in awakening an interest in this key treaty and fostering knowledge and research concerning it.

The Charter's key importance and relevance were mentioned by Secretary General Jagland, who has firmly placed the question of respect for social rights and reinforcement of the European Social Charter at the heart of his second term of office.

Thanks to the exchanges of views, the presentations and the statements, the idea has forcefully emerged, without the slightest shadow of doubt, that the rights enshrined by the European Social Charter are part of human rights, that they are not flexible rights, depending on optional criteria, rights that cannot be exercised in

periods of austerity for lack of resources and that serve no purpose in periods of economic prosperity. These rights belong to all human beings in the same way as civil and political rights and to an even greater degree since they are, in many respects, a prerequisite for effective enjoyment of civil and political rights.

For years we regarded social rights as secondary rights, so to speak supplementary rights, forgetting that the substance of social rights, namely access to the vital resources of human life (food, clothing, shelter, health, education and so on), constitutes, from both a theoretical and a historical standpoint, the precondition to be able to assert and bring to fruition one's fundamental civil and political rights.

In his work "On social rights..." Turin-born Norberto Bobbio wrote "I maintain that the recognition of certain fundamental social rights is the presupposition or precondition for the effective exercise of rights to freedom. The educated individual is freer than an uneducated one; an individual in employment is freer than one who is unemployed; an individual in good health is freer than one who is sick."

The fact that access to vital resources is a necessary precondition for the exercise of other rights is quite obvious from an anthropological perspective. Without life it is not possible to exercise one's freedom of expression. From a moral standpoint, therefore, situations in which poverty or illness threaten a person's very existence engender binding obligations. Hans Jonas gave forceful expression to this concept, referring to the example of a baby who is alive but is incapable of surviving alone and accordingly creates an absolute obligation of care for those around him/her. The same could be said of the obligation to stop and help an "injured person on the street". Indifference is culpable not only on moral grounds but also from a legal standpoint (failure to assist a person in danger).

However, this also holds good in social terms. It was clear to 19th century aristocrats that the enjoyment of social rights was a precondition for the enjoyment of political rights: only those who owned property and had received an education had the right to vote and to be elected to parliament. This is unacceptable for democratic regimes. This was why measures were taken to promote state education systems, labour policies, health care and all the rest. Do we want a sudden return to nineteenth-century conditions of social exclusion, which also becomes political exclusion?

It is clear to everyone that social rights obey a dynamic different to that of civil and political rights, since they require active policies and economic resources (but what right to tell the truth does not require them?). However, that does not mean that respect for those rights can be left to the totally arbitrary decision-making of governments or technical bodies. Respect for these rights, in their very capacity as "prerequisites", is one of the "constitutional duties" of democracies (the Italian and German Constitutions offer examples along these lines).

In a democracy public resources cannot be allocated in a manner that disregards the need for everyone to have access to them. This concerns both the distribution of public resources and the regulation of social relations in the belief that fighting inequality is a factor of economic development and that – as Mr Jagland so aptly said – social justice is a source of productivity. It is absolutely true – and this theme came to the fore in the discussions – that austerity policies can also be based on reasons of "inter-generational" justice so as to avoid passing on social costs to future generations, as is all too often the case. However, it is also true that there are yardsticks that cannot in any case be disregarded in terms of minimum standards of living in dignity.

When we say that fighting poverty and exclusion is a constitutional duty for a democracy, we mean by that that democracies must make this a matter of concern for everyone, rather than just the task of a given political party or a part of society. Safeguarding social rights should be a cross-cutting issue in parliaments, not just the preserve of the majority or the minority. Just as Habermas called for a form of constitutional patriotism in favour of democracies, if we assert that fighting inequality is a constitutional duty, we must develop the concept of "social patriotism", ultimately eradicating the idea that social rights are the "rights of the poor" or "poor rights". They are instead universal rights associated with the plenitude, that is the "wealth", of human existence. We therefore need a new European social contract that would be modelled on the best local government practice, as the Mayor of Turin, Piero Fassino, pointed out.

The conference has been a wellspring of ideas not only in general political and legal terms but also regarding tangible measures.

I am thinking of the proposal that national parliaments be urged to review their social and economic legislation in the light of the principles of the Social Charter through:

- a debate among parliaments, which could take the form of an inter-parliamentary conference attended by the chairpersons of parliamentary committees on employment and social affairs;
- intense social dialogue: a number of speakers mentioned the need to launch a discussion process involving representatives of government, parliament, employees' and employers' associations and NGOs dealing with social rights;
- careful monitoring and evaluation of social and economic policies' impact on social rights, carried out by independent bodies such as universities or research centres;
- closer relations between parliaments and the European Committee of Social Rights;
- the implementation of specific procedures such as the European Union's early warning process in respect of Community legislation that fails to comply with the Social Charter.

I also have in mind the important need to ensure that the Charter's provisions and the

case-law of the European Committee of Social Rights are known and applied by the national courts, within the constitutionally defined limits of the relationship between international and domestic law.

The conference has brought the Social Charter to centre stage, above all for we participants. We have had to re-read and think about this instrument, and we have perhaps realised that our own organisation, the Council of Europe, has also run the risk of making this a sectoral issue, a matter for a sub-committee of the Parliamentary Assembly or for the 15 members of the European Committee of Social Rights, rather than one of the pillars of our whole approach.

From this standpoint, it is of key importance that all of the Organisation's entities - and here I am referring specifically to the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities, the European Court of Human Rights and the Commissioner for Human Rights - should co-ordinate their own initiatives to reinforce the Charter's status as a primary treaty of the Council of Europe. This is a sphere where the input of the Council of Europe Development Bank can be of valuable assistance.

The proposals of the European Committee of Social Rights regarding, inter alia, a reinforcement of its own status will be very useful here. Along the same lines, measures should be put in place to ensure that the work of the intergovernmental committees of the Council of Europe is consistent with the process launched by this conference.

The General Secretariat, represented here by its two most senior figures, Thorbjørn Jagland and Gabriella Battaini Dragoni, has an essential role to play in achieving these objectives. More generally, an effort must be made to adapt communication regarding the Charter, so that, whether in Europe or within the member States, it can be maintained at the high level reached thanks to this conference.

However, the Charter is not just our property, of which we should be proud. It is also a common good of many stakeholders, of numerous national and supranational institutions, of associations and movements, and above all of the public. The Chairmanship of the Committee of Ministers of the Council of Europe, represented at this conference by Minister Muslumov, has encouraged the member States which have not yet done so to ratify the revised version of the Charter. More specifically, attention has been drawn to the importance of persuading other States to accept the protocol on collective complaints, so that complaints, as an expression of the democratic relationship between rules and regulations and citizens, can become the "normal" mechanism for monitoring the application of the Charter. On a positive note, it can be observed that a number of States have formally committed themselves to do so on the occasion of this conference.

As the EU Fundamental Rights Agency said, this conference has confirmed that the Council of Europe and the European Union are founded on the same values, and those values include respect for social rights. The conference has made it possible to open up an effective dialogue with the European Union, in particular the European Commission. The Commission now recognises the importance of the decisions of the European Committee of Social Rights and the principle that the EU member States cannot rely on a directive as a reason for non-compliance with the Charter. The conference has also highlighted the importance of the relationship between the Court of Justice of the European Union and the European Committee of Social Rights and the advisability of reinforcing this relationship. In this connection, it was noted that the reasons in favour of EU accession to the European Convention on Human Rights can also be validly cited in support of EU accession to the Social Charter. However, what is lacking is the political will. A pragmatic approach might therefore be adopted: utilising the full potential of the references to the Charter contained in the EU treaties so as to ensure greater consistency between the two legal systems.

The Charter is central to the three pillars of the Council of Europe: democracy, human rights and the rule of law. Over and above the Council of Europe and the European Union, it is a question of giving consistency to the very concept of Europe and of making it a reality. A Europe which must pick itself up, which can make a new start, without ever again overlooking its humanist dimension which it must make the focus of all its activities. It is now for each of the institutions involved in the life of the Charter to participate in the joint effort to develop it and enhance its status through appropriate measures based on the proposals we have put forward, whose prompt translation into law and practice remains essential.

We must convey a message, loud and fast, to those for whom the Charter is intended, to the demonstrators outside the Teatro Regio, to the non-voters in the European elections, without expecting or hoping that they will change their minds: it is for us to reach out to them, and in this process the re-launching of the Charter, of their Charter, is of decisive importance.

As we leave Turin, we must not abandon our commitment to keep in mind the spirit of Turin – this hardworking, industrial city which is also a city of culture and a university city – and we can be certain that the people of Europe will judge our future action in the light of the values, principles and rights we have discussed here.

Debating social rights forces us endlessly to rediscover the "social" nature of rights, that is the fact that human rights have to do with human relationships, that no one is an island and that one cannot realise oneself without respect for and recognition of others. For this reason we must fight to ensure respect for social rights, since without rights we are stripped of our own social dimension, our relationship with others, and in the end our capacity to be ourselves.

As Joel Feinberg said: "Having rights enables us to 'stand up like men and women', to look others in the eye, and to feel in some fundamental way the equal of anyone. To think of oneself as the holder of rights is not to be unduly but properly proud, to have that minimal self-respect that is necessary to be worthy of the love and esteem of others. Indeed, respect for persons (this is an intriguing idea) may simply be respect for their rights, so that there cannot be the one without the other; and what is called 'human dignity' may simply be the recognizable capacity to assert claims".

The "Turin process" is launched.