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High-Level Conference on the European Social Charter

General Report

(Turin, 17-18 October 2014)

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General Rapporteur of the Conference

European Social Charter | Charte Sociale Européenne

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Executive Summary

The High-level Conference on the European Social Charter was organised by the Council of Europe in co-operation with the Italian authorities, in the framework of the Italian Presidency of the European Union, and took place in Turin on 17 and 18 October 2014.

The decision to organise a High-level Conference on the Charter stemmed from the conviction that this fundamental treaty of the Council of Europe is facing a number of major challenges which impact on the effectiveness of its implementation, and require political decisions to be taken by the States Parties, the Council of Europe's political bodies and, to some extent, the European Union.

At a time when the political conviction is growing that respect for fundamental social rights constitutes the best way forward to increase citizens' participation in democratic processes, reinforce their trust in European construction and combat fundamentalism and radicalisation by promoting inclusion and social cohesion, the Conference put the Charter at the centre of the European political scene. This was necessary so that the normative system of the Charter can be strengthened and finally express its full potential alongside the European Convention of Human Rights and the Charter of fundamental rights of the European Union, in the name of the principles of the indivisibility and interdependence of fundamental rights.

The Conference itself gathered approximately 350 people, including delegations from 37 European States, including such political representatives as Ministers and Secretaries of State from fifteen countries. The Council of Europe and the European Union were represented at the Conference by top level representatives (see the programme at www.coe.int/turinprocess).

In this framework, participants agreed to compare their points of view with respect to three main challenges: social rights and economic crises, the synergy between EU law and the Charter, and the relevance and effectiveness of the collective complaints procedure.

There was agreement at the Conference that the crisis experienced by Europe in recent years has revealed the gaps in States' legal arsenal for the protection of fundamental rights. The crisis made evident, in case that was necessary, the fundamental relevance of social rights. For European society it represented an opportunity to grasp the importance of achieving those rights. In this context, the Charter has been recognised as a living, integrated system of guarantees, whose implementation at national level has the potential to reduce economic and social tensions, promote political consensus, and, where appropriate, draw on this agreement to facilitate the adoption of the necessary reforms.

As regards the changing relationship between the law of the European Union and the Charter, consensus was gathered around the idea that there is an urgent need to enhance existing synergies and find effective solutions to emerging conflicts. It must be ensured that the fundamental rights enshrined in the Charter are fully respected by decisions or legislation of the States Parties resulting directly or indirectly from changes in EU law. To that effect, the idea was raised of reinforcing co-operation between competent Council of Europe and EU bodies, in view of promoting the harmonisation of the two normative systems to improve states' abilities to comply with their international obligations. The proposal that a document identifying the legal and technical obstacles to the accession of

the European Union to the Charter be prepared was also discussed during the Conference.

With regard to the improvement of the supervisory mechanism of the Charter on the basis of collective complaints, the idea was shared that that this mechanism, allowing participation by the social partners and civil society in the monitoring of the application of the Charter, represents a more transparent, open and democratic monitoring system than the one based on national reports. Moreover, it was made clear that if the collective complaints procedure was accepted by more states (only 15 have accepted the relevant Protocol so far), this could reduce the number of pending cases before the European Court of Human Rights. It has been acknowledged that the collective complaints procedure shares positive traits of the 'pilot-judgment' procedure of the Court. Broader acceptance of the procedure would also have the advantage of reducing the workload of the national administrative departments involved in the Charter's reporting procedure, by focusing on specific issues.

The Conference provided the opportunity to discuss two other important issues. The first issue refers to the necessity of reinforcing the status and the position of the European Committee of Social Rights, with a view to contributing to filling the gap which exists within the Council of Europe with respect to the monitoring systems of fundamental rights, be they civil, political, social or economic. Such a reinforcement could also help to ensure adequate representation of the diversity of legal approaches and social models which exist across the continent.

The second issue refers to the need for the Council of Europe to implement a communication policy able to provide a clear message on the legal nature of the Charter and the scope of the decisions of the abovementioned Committee. Communication on the Charter should be regular, systematic and, above all, proportionate to the importance of the rights that the Charter guarantees. An increased parallelism between the Charter and the Convention in communication policies within the Organisation would also help to enhance the Council of Europe's role as the guardian of all fundamental rights at the continental level.

More generally, at the Conference it was recognised that the current era is marked by a loss of confidence in the European project, which is leading to a withdrawal into nationalism and, in some cases, the development of a belief that rights and values would be better upheld if this took place at national level rather than at European level. This trend is even more pronounced in the social sphere, insofar as it is held in many quarters that the social dimension is merely an economic adjustment variable. The conclusion was that social rights are therefore doubly undermined, firstly, because of the legal and institutional disequilibrium between the monitoring systems of the respect for fundamental rights in Europe and, secondly, because of the impact of the crisis, which is leading to restrictions of rights or the dismantling of the underlying policies.

With this in mind, States and European institutions are invited to start a political process which promotes a greater acceptance of the normative system of the Charter and a better implementation of its provisions. This process would represent a vital step towards a fresh restart for the whole process of uniting Europe, given that, as stated emblematically on the occasion of the Conference, it is essential for Europe to be based on the fundamental values around which its task is to bring states and their citizens together, and especially on

the values of the Charter, “Europe’s social constitution”. On this basis, at the Conference, the Secretary General of the Council of Europe launched the ‘Turin process’ for the European Social Charter.

The general report of the Conference aims to constitute a driving force for the ‘Turin process’. With this in mind, an Action Plan for the ‘Turin process’ is included in the report. In the Action Plan, the ideas and proposals put forward during the Conference are combined in the form of a list of priority measures, divided according to their objectives, the responsible actors and the timetable for their implementation.

Contents

The General Report on the High-Level Conference on the European Social Charter is available on the Council of Europe website: http://www.coe.int/turinprocess
The full audio-video recording of the Conference is also available on this website.

I. Introduction

1. Following an initiative by the Deputy Secretary General of the Council of Europe, Gabriella Battaini-Dragoni, the proposal to hold a high-level conference on the European Social Charter was put forward by the President of the European Committee of Social Rights, Luis Jimena Quesada, when he met the Committee of Ministers of the Council of Europe on 11 September 2013 (1177th meeting of the Ministers' Deputies).

2. When that proposal was made, the Italian Government declared its willingness to host the Conference in the same city where, on 18 October 1961, the European Social Charter ("the Charter") had been opened for signature by the Member States of the Council of Europe. To mark the anniversary, the Conference was thus held in Turin, at the Teatro Regio, on 17 and 18 October 2014, in the context of the Italian Presidency of the European Union and in co-operation with the city authorities.

3. The Conference was attended by approximately 350 people, amongst them representatives of 37 Council of Europe Member States. Those representatives included, as well as the Italian Minister of Labour and Social Policies, 14 political personalities including ministers, deputy ministers and state secretaries from Azerbaijan, Bulgaria, Croatia, the Czech Republic, Lithuania, Luxembourg, Malta, Poland, the Russian Federation, Serbia, Slovenia and Turkey. The Speaker of the Italian Chamber of Deputies also took the floor on behalf of Italy.

4. Contributions to the debates were made not only by national delegations, but also, on behalf of the Council of Europe, by the Minister representing the Chairmanship of the Committee of Ministers, the President of the Parliamentary Assembly, the Vice-President of the European Court of Human Rights, the President of the Conference of INGOs, the Secretary General, the Deputy Secretary General, the General Rapporteur and the Italian member of the European Committee of Social Rights. Speakers on behalf of the European Union included the European Commissioner responsible for Employment, Social Affairs and Inclusion, and other speakers were the First Vice-President of the European Parliament, the Advocate General of the Court of Justice and the President of Group III of the European Economic and Social Committee. The Mayor of Turin opened and closed the Conference.

5. In addition to the experts who took part in the various panels, other representatives of the Council of Europe (Development Bank, Venice Commission) and European Union (Intergroup "Extreme Poverty and Human Rights" of the European Parliament, Fundamental Rights Agency) took part in the event. Speakers also took part from international organisations, both governmental (International Labour Organisation) and non-governmental (European Trade Union Confederation, International Organisation of Employers), and from academia (Academic Network on the European Social Charter and Social Rights). Large numbers of representatives of civil society and the mass media also

followed the Conference debates, in the foyer of the Teatro Regio or via the live streaming. A complete list of participants is attached (Appendix 1c).

1. The need for a Conference

6. The idea of holding a high-level conference on the European Social Charter sprang from a realisation that implementation of this fundamental treaty of the Council of Europe now faces a number of challenges which require political decisions to be taken by the contracting states and the Council of Europe's political bodies, and, to a certain degree, by the European Union. The purpose of the Conference was therefore to bring the Charter back to the centre of the European political stage, allowing it to show its full potential, alongside the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, in the name of the indivisibility and interdependence of fundamental rights.

7. In institutional terms, the Conference represented the culmination of a building process characterised by the adoption of a number of documents which highlighted the Charter's centrality and contemporaneity, as well as the need for new impetus. These include:

a. the declaration adopted by the Committee of Ministers of the Council of Europe on the occasion of the 50th anniversary of the Charter (2011);
b. Resolution 1792 and Recommendation 1958 of the Parliamentary Assembly of the Council of Europe on the monitoring of commitments concerning social rights (2011);
c. the joint declaration by the Committee of Ministers, Parliamentary Assembly, Congress of Local and Regional Authorities and Conference of INGOs on "Acting together to eradicate extreme poverty in Europe" (2012);
d. several decisions adopted by the European Committee of Social Rights in the course of the collective complaints procedure, relating to the observance of social rights during times of economic crisis and the relationship between European Union law and the Charter (2012 and 2013);[1]

[1] *Confédération Générale du Travail* (CGT) v. France, Complaint No. 55/2009, Decision on the merits of 23 June 2010; *Confédération Française de l'Encadrement* «CFE-CGC» v. France, Complaint No. 56/2009, Decision on the merits of 23 June 2010; Federation of Employed Pensioners of Greece (IKA –ETAM) v. Greece, Complaint No. 76/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Public Service Pensioners v. Greece, Complaint No. 77/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI.) v. Greece, Complaint No. 79/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012, Decision on the merits of 7 December 2012; Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and on the merits of 3 July 2013.

e. the research into certain subjects done by the European Union's Fundamental Rights Agency, which appeared in the annual reports on the Agency's activities (2012 and 2013).[2]

8. More recently, the Secretary General of the Council of Europe himself has referred to the centrality and relevance of the Charter, making sure that the observance of social rights and the strengthening of the Charter are central to his second term of office (2014). All the abovementioned documents are attached to this report in Appendix 4.

9. Having regard to the aforementioned documents, the Conference represented a decisive step with a view to the actuation of a political process portending initiatives and reforms at both national and European level, and equal to the challenges of the implementation of the Charter, considering the fundamental nature of the rights which it secures.

10. From a practical standpoint, the Conference was a major opportunity for building awareness in political circles and public opinion of the widespread social unease which obtains, and of the hardship linked with the economic recession. Whilst it is true that the first battle to win in the struggle for human rights is against indifference, one of the foremost challenges to meet is that of making the representatives of institutions ever more alert to citizens' needs and expectations. This alertness was the source, in the period following World War II, of the great declarations of human rights, and today this inspiration needs reviving not only to protect citizens to the full, but also to restore strength and credibility to democratic institutions.

11. In that sense the Conference sought to focus institutions' attention on citizens' sentiments. Over the two days of discussion, the issues of poverty, unemployment, housing shortage and deficient access to health care or education were raised several times. Participants also saw for themselves, in the parades and demonstrations around the Teatro Regio, workers' protests and the poverty affecting so many people.

12. In that perspective, the Conference confirmed that the "social question" and the "democratic question" are closely connected, and that European construction, whatever the content of the social and economic policies adopted, must always and in all circumstances concern itself with the fulfilment of the rights linked with these needs, thereby helping to prevent movements of an antisocial, anti-political, anti-European or racist nature, or those simply founded on political exploitation of social egoism, from imperilling the pillars of democracy - the rule of law and fundamental rights - values which have been ever championed and promoted by the Council of Europe. A democratic order cannot claim to be such unless it generates a model of society capable, through proper

[2] "The European Union as a Community of values: safeguarding fundamental rights in times of crisis", Publications Office of the European Union, 2013 and "Bringing rights to life: the fundamental rights landscape of the European Union", Publications Office of the European Union, 2012.

apportionment of the available resources, of addressing people's basic needs with due respect for their dignity.

13. The Conference was thus founded on the principle that the three pillars of the Council of Europe, as well as the values which they presuppose, should always be secured together. It has in fact been acknowledged that the realisation of each of the three sets of values cannot be guaranteed unless the other two are similarly and concurrently realised. Which means that there is no democracy if freedom of expression, assembly and movement is lacking, but also if the rights to housing and education are not secured for all; likewise, there is no democracy unless rules are laid down to limit the exercise of power and to provide that political responsibility must always go hand in hand with legal responsibility. In this same regard, there was consensus on the idea that it is not possible to guarantee human rights, including social and economic rights, without a law-based state, and especially without effective instruments of judicial protection, which must be secured to anyone who may consider that his or her rights have been violated.

2. Setting out the objectives

14. On the basis of the Conference programme (Appendix 1b), participants discussed three decisive challenges.

15. The first challenge, which came under Theme I of the Conference, discussed on 17 October, relates to the affirmation of the rights set out in the Charter following the far-reaching socio-economic changes which have, since 2008, had a sometimes dramatic impact on the meeting of people's everyday needs and on the realisation of their fundamental rights. On the basis of the principle that, within an advanced democracy, ensuring that these rights are fully realised is not a prerogative of the "Right" or "Left", but is a constitutional task of the state governed by the rule of law, the Conference gave participants the opportunity to discuss how the affirmation of these rights can contribute to reducing or neutralising the damaging effects of the crisis, giving consideration to the question of the balance between the requirements of economic recovery and social justice. In that context, the Charter was recognised as a system of safeguards, the application of which can help to reduce tensions, foster political consensus and possibly, on that basis, facilitate the adoption of reforms. The Charter, therefore, is an instrument at the service of socially sustainable economic development.

16. The second challenge, also examined under Theme I, concerns the advisability of increasing the impact of the system protecting the social rights enshrined in the Charter through the collective complaints procedure. That objective was based on the idea that this procedure, allowing participation by the social partners and civil society in the monitoring of application of the Charter, represented a more transparent, open and democratic monitoring system than the one based on national reports. In that context, the Conference made possible discussion of the idea that acceptance of the complaints procedure by a larger number of European states could help both to reduce the number of cases pending

in the European Court of Human Rights (hereafter "the Court"), which is responsible for monitoring application of the European Convention on Human Rights (hereafter "the Convention") and to lessen the workload of the national authorities which contribute to the Charter monitoring procedure based on the aforementioned reports.

17. The third challenge, which came under Theme II of the Conference, discussed on 18 October, concerned the relationship between European Union law and the Charter. The Conference started from the assumption that it is necessary to ensure that the fundamental rights guaranteed by the Charter are fully protected in those decisions by contracting states which stem directly or indirectly from changes in European Union law. The recent collective complaint against Sweden submitted by some Swedish trade unions to the European Committee of Social Rights (hereafter "the Committee") on the subject of the right to collective bargaining of workers detached to another state of the European Union (see footnote no. 1) provides a good illustration of this situation, which concerns not only Sweden, but all Member States of the European Union (hereafter "the EU"). The Conference raised the subject of this challenge, drawing attention to the urgent need for effective solutions designed to resolve possible or emerging conflicts between the two systems of standards, in the interest of both states and citizens. For the purposes of the debate on this subject, reference was made to the specific working document drawn up by the Committee for the Conference (see paragraph 17 and Appendix 3g).

18. The Conference highlighted the existence of another two challenges that the Council of Europe needs to face up to in order to achieve the objectives set by the challenges already mentioned. First and foremost, the institutional strengthening of the body which supervises application of the Charter.[3] The discussions at the Conference showed the urgent need to consolidate the Committee's independence and authority. In the framework of a document on its own role and status, adopted by the Committee on the occasion of the Conference (Appendix 3c), an explicit request was made for Committee members to be elected by the Parliamentary Assembly of the Council of Europe, as provided for by the Protocol amending the Charter, adopted in 1991 (but not yet in force). There is not a shadow of doubt that such election would consolidate the democratic basis and independence of the body responsible for monitoring states' compliance with their obligations under the Charter.

19. The Committee took advantage of the adopted document to put forward two additional requests. The first was for the number of its members to be increased, with a view to better management of its growing workload, ensuring adequate representation of the diversity of legal approaches and social models which exist across the continent. As was stated, that request could be met without additional costs, by, for example, reducing the number of annual meetings of the Committee. The second request was for the strengthening of the administrative structure of the Council of Europe responsible for

[3] For information about the standards in force relating to the European Committee of Social Rights, its composition, terms of reference, members, etc. see paragraph 37 and the website www.coe.int/socialcharter

assisting the Committee. That request seems very much justified, bearing in mind the challenges to be faced and the surprising differences that exist in the treatment of the systems for monitoring fundamental rights within the Council of Europe Secretariat. In this respect, there is a need to increase the number of posts of specialist legal experts, and to ensure that the structure concerned can be acknowledged to have a place and a status commensurate with the fundamental nature of the rights safeguarded by the Charter, to reiterate the view expressed by Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe.

20. The other challenge to be met in order to achieve the Conference objectives relates to communication. It is vital in this context for the Council of Europe to convey a clear and conspicuous message as to the legal nature of the Charter, the scope of the Committee's decisions and the importance of the complaints procedure to the effectiveness of social and economic rights in Europe. Thus the challenge that the Council of Europe must meet is that of designing and implementing specific communication on the Charter which is comparable to that dedicated to the Convention, which is regular and systematic and which, in particular, is proportionate to the importance that the Charter is acknowledged to have. All of that would enable a number of inaccuracies and ambiguities which remain in circulation about the Charter, to the detriment of the achievement of the rights that it safeguards, to be eliminated. In addition to the substantial progress which might be achieved through this proposal, the introduction of parallelism between the Charter and Convention in the communication sphere would enable the spotlight to be turned on the Council of Europe's role as the European guardian of the primary sources of European law relating to fundamental human rights.

3. The beginning of a process

21. The severe economic crisis suffered by Europe in recent years has given rise to social crises which could jeopardise the values on which the building of Europe has been based. In such a worrying situation, looking beyond the Council of Europe and the European Union, the Conference themes and debates were chosen to give substance to the very concept of Europe and its reality. Europe will be able to react to the crisis only if it starts afresh from its origins, from its wish to be a place of peaceful coexistence and protection of the fundamental rights of all persons, and so from its humane and social dimension, which it must place at the centre of all its activities. With a view to achieving that objective, the Charter represents an essential benchmark. It is for every institution concerned, both national and European, to play its part in the joint effort to develop and enhance this fundamental European treaty through appropriate measures in terms of both law and practice. The Conference afforded a splendid opportunity to give thought to the ways of achieving this objective.

22. In the “Action Plan for the Turin process”, set out in chapter IV of this report, the ideas and proposals discussed at the Conference take the form of a table of *priority measures*, subdivided according to substance, stakeholders and timescale. This Action Plan sends a strong and immediate message to the persons for whom the Charter is intended, including those who turned out in force to demonstrate during the Conference, to people who abstain at election time, to all who reject the very idea of politics and to those who irresponsibly exploit social discontent and propose unachievable shortcuts.

23. As observed during the Conference, it is for us to approach these people, and on this path, the attachment of new value to the Charter, their Charter, is a decisive step. It will thus be vital for the promises and commitments announced at the Conference not to be abandoned, for as Europeans judge the future action of those, at both national and European level, who bear responsibility for the *res publica*, they will also take into consideration the extent of the achievement of the fundamental rights set out in the Charter.

24. In this context, the starting of a political process which can improve implementation of the Charter will be a vital step towards a fresh start for the whole process of uniting Europe. As stated emblematically on the occasion of the Conference, it is essential for Europe to be based on fundamental values around which its task is to bring states and their citizens together, and especially on the values of the Charter, “Europe’s social constitution”.

II. The European Social Charter in Motion

1. The evolution of fundamental social and economic rights in the Council of Europe framework

25. As is well known, the Council of Europe was set up in 1949, only a few months after the adoption of the Universal Declaration of Human Rights by the United Nations on 10 December 1948. The Universal Declaration is the catalogue of all the fundamental rights recognised by the international community so as to ensure the dignity of every individual. It embodies the solemn assertion that “Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality” (Article 22). With that, the unity and indivisibility of fundamental rights are clearly recognised, in their various dimensions: human, civil, political, social, economic and cultural. This unity and indivisibility have been constantly reaffirmed by the UN in the course of its history, as is evident from the Vienna Declaration (1993): “5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and

regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms".

26. The aim of the Council of Europe, as set out in Article 1 of the Statute, is "to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress". However, when it came to giving binding legal force to the rights in the Universal Declaration, the Council of Europe adopted two separate treaties, at an interval of about 10 years. It focused first on what are known as "civil and political" rights, which were incorporated in the Convention and in respect of which all individuals may submit applications to the Court if they believe that their rights have not been respected.

27. The Charter, in turn, was adopted in 1961. Even though the adjective 'social' appears both in the preamble and in Article 1 of the Statute of the Council of Europe, it took over 10 years after the adoption of the Convention for the Charter finally to be adopted. The Charter sets out those human rights which are described as "economic and social" rights and does so in a solemn manner. The text is called a 'Charter' rather than a 'Convention', even though this title has sometimes been perceived as suggesting that the Charter is less important, as though it were not an international treaty exactly as is the Convention. The duality of legal instruments for securing the rights concerned was intrinsically linked to the political and geostrategic conditions prevailing in Europe, where divisions were taking hold, as illustrated, in particular, by the building of the Berlin Wall a few weeks before the opening for signature of the Charter, in Turin where the present conference is hosted, on 18 October 1961.

28. For the first 40 years of the Council of Europe's existence, the Court expanded regularly and gradually established itself as "the conscience of Europe".[4] It is not unusual for the term 'human rights' to be used solely to describe civil and political rights to the exclusion of the other components, in particular the Charter. This is a mistake which will have to be remedied by means of appropriate communication.

29. While the Convention was ratified progressively by all Council of Europe member states, a process which was completed by 1974 and was subsequently imposed on all new member states, for many years, the Charter remained the "poor relative" in terms of ratifications. It is reassuring that all the central European countries which have joined the Council of Europe since 1990 have ratified the Charter (in most cases, the revised version) with varying speed. To date, only Liechtenstein, Monaco, San Marino and Switzerland have not ratified the Charter.

[4] "The conscience of Europe: 50 years of the European Court of Human Rights", ed. Jonathan Sharpe, 2011.

30. The same observation applies to the supervisory procedure: all member states progressively accepted the compulsory jurisdiction of the Court, which became an integral part of the Convention under Protocol No. 11, which entered into force in 1998 and established the single, permanent Court. In contrast, over 15 years after the procedure for collective complaints to the Committee came into force, only a minority (15) of the States Parties to the Charter have decided to accept it.

31. As mentioned several times during the Conference, the situation has, however, evolved favourably with regard to social rights in general and the Charter in particular. For instance, at the World Conference on Human Rights in Vienna in 1993, the international community reasserted its commitment to the principles of the Universal Declaration, among which the interdependence and indivisibility of human rights are particularly important. Of course, no matter how solemn it is, a declaration does not change the situation radically. But the Vienna Declaration provided a benchmark for reminding states of their commitment to treat social rights like civil and political rights.

32. Following the Vienna Conference, the Council of Europe undertook the process of 'relaunching' the Charter. The decision to renew the treaty had been taken symbolically at the October 1990 Rome Conference marking the 40th anniversary of the Convention. This led rapidly to the October 1991 "Turin Conference" to mark the 30th anniversary of the Charter, and the adoption of the amending Protocol concerning the reporting procedure, then a little later, the 1995 Protocol providing for the system of collective complaints and, most recently in 1996, the revised Charter (which entered into force in 1999).

33. Ten years later, on the occasion of the 50th anniversary of the Charter, the Committee of Ministers of the Council of Europe adopted a solemn declaration reaffirming the principle established in Vienna in 1993 that all human rights are universal, indivisible, interdependent and interrelated. In this connection, it reiterated its commitment to human dignity and the protection of all human rights and underlined the particular relevance of social rights and respect for them in times of economic difficulties, in particular for individuals belonging to vulnerable groups. In referring in the declaration to the paramount role of the Charter in guaranteeing and promoting social rights in Europe, the Committee of Ministers also expressed its resolve to secure the effectiveness of the Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure.

34. It must be pointed out here that in order to implement this resolve and given the unanimous agreement of the States Parties to the Charter, the Committee of Ministers decided in April 2014 that the reporting procedure for States Parties having accepted the collective complaints procedure should be simplified. In connection to this, it decided that states having accepted the collective complaints procedure would be invited to prepare a 'simplified' report every two years. The new system has already entered into force for all states which have currently accepted the procedure and, for other states, it will enter into

force one year after acceptance of the collective complaints procedure.[5] It is to be hoped that this change approved by the Committee of Ministers before the Conference is only the beginning of a broader reform of the system for supervising application of the Charter so that it remains in line with the social and democratic needs of our times.

2. The European Social Charter today

35. Following the changes described above, the Charter now forms an integrated and dynamic system of binding legal instruments which secures fundamental rights in the fields of housing, health, education, employment, legal, economic and social protection and protection against poverty and social exclusion. As is well known, the Charter lays specific emphasis on the protection of vulnerable persons such as elderly people, children, people with disabilities and migrants. The Charter requires that enjoyment of the rights it lays down should be guaranteed without discrimination.

36. Unlike the Convention, the Charter is still based on what is termed an 'à la carte' ratification system, enabling states, under certain circumstances, to choose the provisions they are willing to accept as binding international legal obligations. While signatory states are explicitly encouraged to make progress in accepting the Charter's provisions, they are also allowed to adapt the commitments they enter into at the time of ratification to the level of legal protection of social rights attained by their own system. Part I of the text of the Charter sets out the various rights, along the lines of the Convention, while Part II lays down states' obligations for implementing these rights. Part II therefore lists states' positive obligations, which arise from the text of the treaty, whereas in the case of the Convention, they derive directly from the case-law of the Court.

37. As is recognised, in spite of the changes in its status and the rules on its operation, the Committee still differs in many ways from the Court. Firstly, it is a select body which comprises only 15 members rather than one per Council of Europe member state (47) or per State Party to the Convention (43). Unlike the Court, the Committee is not a permanent body. It meets in Strasbourg seven times a year and the Council of Europe Secretariat ensures continuity between sessions. The Committee only supervises the application of the Charter by the States Parties through the system of national reports and the collective complaints procedure. Unlike the position at the Court, individual applications to the Committee are not possible.

38. Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter and the Protocol providing for the system of complaints, the decisions and conclusions adopted by the Committee must be respected by the States concerned; however, they are not directly 'enforceable' in the domestic legal system. In practice, this means that when the Committee rules that the situation in a country is not in compliance with the Charter, it cannot be required that the Committee's decisions or

[5] Cf. document adopted by the Ministers' Deputies on 2-4 April 2014 at their 1196th meeting.

conclusions be enforced in domestic law as would be the case with a ruling by a national court. However, it is not because the decisions and conclusions of the Committee are not 'enforceable' that a State can ignore them. As they refer to international binding provisions, States must respect the decisions taken by the body established to monitor their implementation. In this connection, in some cases domestic courts can declare invalid or set aside domestic legislation if the Committee has ruled that it is not in compliance with the Charter. Bearing that in mind, as stated several times during the Conference and expressed in the declaration adopted by the Committee of Ministers in 2011 on the occasion of the Charter's 50th anniversary (see paragraph 7 and Appendix 4d), it is vital for the Council of Europe to continue its involvement in information and education activities on the Charter and the Committee's case-law.

39. It should be noted here that, apart from this case-law and implementation at national level, when the Committee finds that there has been a violation of the Charter, it falls to the Committee of Ministers (as also applies with the Court) to make sure that the state concerned does bring the situation into conformity. For the purpose of this work concerning the conclusions which the Committee publishes every year under the reporting procedure, the Committee of Ministers is assisted by the Governmental Committee of the European Social Charter and the European Code of Social Security (the "GC"). The GC comprises ministerial representatives from the States Parties and, as observers, representatives of the European social partners.

40. The Committee of Ministers has the power, either directly under the complaints procedure or after the intervention of the GC under the reporting procedure, to invite states to bring situations into conformity, to encourage them to do so or to adopt recommendations insisting that they do so. It is very unusual for the Committee of Ministers to resort to the last option, as, in practice, most states undertake to bring the situations into conformity, which the Committee of Ministers then notes in resolutions, which indicate in varying degrees of detail the arrangements for implementing the undertakings.

41. Compared with its tasks concerning the Court's judgments, the role of the Committee of Ministers in terms of following up the Committee's conclusions and decisions only concerns the adoption of general or specific measures for compliance with the Charter, for instance changes in legislation, practices or case-law or the conclusion of collective agreements. This involves detailed work in often complex areas which necessarily takes time. The Committee of Ministers decides on the degree of insistence with which it asks the state concerned to make efforts to bring the situation into conformity, depending on economic and social considerations. The wording of the resolutions therefore varies according to the situations. It should be noted here that the questions raised in collective complaints are also examined regularly by the Committee under the reporting system, not only in respect of the respondent states but also, if appropriate, in respect of the other States Parties.

3. Challenges for the future

i. Overcome the crisis with social rights

42. The crisis experienced by Europe in recent years has revealed the gaps in European states' legal arsenal for the protection of fundamental rights. Mr Poletti, the Minister who spoke at the opening of the Conference, encapsulated this perfectly when he referred to the fragility of national systems for the protection of the rights of the most vulnerable people: the European *welfare* model can be protected only in a supranational context. It is precisely the negative context of the economic crisis that has helped us to rediscover supranational instruments such as the Charter, which, as has been said, seemed to have been tidied away, but in contrast, managed during the crisis to draw attention to its remarkable nature as a treaty uniting states, individuals, international organisations, workers' associations and NGOs, laying the foundations for the rebuilding of a Europe of values and rights. The crisis highlighted, in case that was necessary, the fundamental relevance of social rights. And for European society it represented an opportunity to grasp the importance of achieving those rights.

43. But account is also taken of the fact that the current era is marked by a loss of confidence both in international institutions in general and in Europe in particular, which is leading to a withdrawal into nationalism and, in some cases, the development of a belief that values and rights would be better upheld if this only took place at national level or, at least, if supervision of respect for them was performed only at national level and much less at European level. This trend is even more pronounced in the social sector, insofar as it is held in many quarters that the social dimension is merely an economic adjustment variable. Social rights are therefore doubly undermined, firstly, because of the inadequate legal and institutional equilibrium mentioned above and, secondly, because of the impact of the crisis, which is leading to restrictions of rights or dismantling of the underlying policies.

44. A frequent response to the current tensions is to assert that social rights should wait until after the crisis because the economic climate is depriving the authorities of the budgetary resources needed for upholding them. While some social rights, for instance, the right to organise, clearly do not entail high financial costs for the community, certain other social rights – and, indeed, certain civil and political rights – are much more complex and much more expensive for states to implement. Naturally, in times of economic crisis, these rights are immediately threatened. On the other hand, in times of economic difficulties, these rights are more important than ever because the economic crisis goes hand in hand with social hardship and failure to uphold social rights leads to deteriorating individual situations.

45. At this point in my report, it seems important to recall the case-law of the Committee on social security and social assistance. In its general introduction to Conclusions 2009, on the repercussions of the economic crisis on social rights, the Committee stated that,

while the “increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline”, by acceding to the 1961 Charter, the Parties “have accepted to pursue by all appropriate means the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised.” Accordingly, it concluded that “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries most need the protection”.

46. In this same sphere, it is noteworthy that, in the IKA–ETAM v. Greece complaint, No. 76/2012 (see footnote no. 1), the Committee specified that “even when reasons pertaining to the economic situation of a state party make it impossible for a state to maintain their social security system at the level that it had previously attained, it is necessary (…) for that state party to maintain the social security system on a satisfactory level that takes into account the legitimate expectations of beneficiaries of the system and the right of all persons to effective enjoyment of the right to social security”. This requirement stems from the commitment of states parties to “endeavour to raise progressively the system of social security to a higher level”. According to the Committee, that means that, as required under Article 12§3 of the Charter, the government concerned should have maintained “a sufficient level of protection for the benefit of the most vulnerable members of society, even though the effects of the adopted measures risk bringing about a large scale pauperisation of a significant segment of the population”. The Committee specified that “the cumulative effect of the restrictions (…) is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned”, stating that “any decisions made in respect of pension entitlements must respect the need to reconcile the general interest with individual rights, including any legitimate expectations that individuals may have in respect of the stability of the rules applicable to social security benefits”.

47. In respect of labour law, again in the context of the collective complaints procedure, in the case of GENOP-DEI and ADEDY v. Greece, Complaint No. 65/201 (see footnote no. 1), the Committee stated that “what applies to the right to health and social protection should apply equally to labour law and that while it may be reasonable for the crisis to prompt changes in current legislation and practices in one or other of these areas to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter”. The Committee also said that “a greater employment flexibility in order to combat unemployment and encourage employers to take on staff, should not result in depriving broad categories of employees, particularly those who have not had a stable job for long, of their fundamental rights in the field of labour law, protecting them from arbitrary decisions by their employers or from economic fluctuations. The

establishment and maintenance of such rights in the two fields cited above is indeed one of the aims of the Charter. In addition, doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance, unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection".

ii. A stronger commitment for the collective complaints procedure

48. The Additional Protocol providing for a system of collective complaints (hereafter "the Protocol") was opened for signature by Member States of the Council of Europe in November 1995, and came into force in July 1998. Unlike the Charter, which has been ratified by virtually all Council of Europe Member States, the Protocol has been accepted by only 15 countries, 14 of which are members of the EU, namely Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Slovenia and Switzerland.[6]

49. The purpose of the Protocol is to increase the efficiency, speed and impact of Charter monitoring activities. The complaints procedure has in fact strengthened the role of the social partners and non-governmental organisations, enabling them to address the Committee directly for verification of possible violations of the Charter at national level, particularly in states which have accepted both the Charter and the Protocol. The organisations which are allowed under the Protocol to submit collective complaints are: a) the European social partners: European Trade Union Confederation (ETUC) on behalf of workers; Business Europe (formerly UNICE) and the International Organisation of Employers (IOE) on behalf of employers; b) the international non-governmental organisations (INGOs) with participatory status at the Council of Europe and whose request is accepted by the Governmental Committee; c) social partners at national level. The Protocol provides for any contracting state to recognise the right of representative national non-governmental organisations (NGOs) within its jurisdiction to submit complaints. Regrettably, only Finland has used that facility to date.

50. Notwithstanding the small number of states which have accepted the Protocol and the still low number of complaints submitted to date (111; for updates, the Council of Europe website dedicated to the Charter may be consulted), the collective complaints procedure has enabled noteworthy results to be achieved in its early years of operation (1998-2014). Those results, which represent an indication of the procedure's potential, have been highlighted by the Committee of Ministers, which, in its declaration on the 50th anniversary of the Charter (see paragraph 7 and Appendix 4d), acknowledged its importance and expressly invited the Member States which had not yet done so to consider the possibility of accepting it. At the same time, the Committee of Ministers

[6] The chart of signatures and ratifications of the European Social Charter and its Protocols, and list of states' declarations and reservations are available at the following sites: http://www.coe.int/socialcharter, http://www.conventions.coe.int and http://www.coe.int/turinprocess

expressed its resolve to secure the effectiveness of the Social Charter, by reference to the decisions taken by the Committee in that sphere.

51. The collective complaints procedure represents a protection system that is parallel and complementary to the judicial system for which the Convention provides. However, as already pointed out, while the Court can examine individual applications, the Committee cannot. Because of their collective nature, complaints can only raise issues of non-conformity of a state's legislation or practice with one of the provisions of the Charter. Individual cases cannot be submitted. It is therefore important to point out here that complaints may be submitted without national remedies having been exhausted and without the complainant organisation necessarily having been a victim of the violation complained of.

52. In the light of all those facts, it was emphasised several times during the Conference that the collective complaints procedure is a credible and effective one which, in certain cases, could produce effects comparable to those of the Court's individual applications procedure. A parallel was drawn between the complaints procedure and the Court's "pilot judgment" system. Several speakers also highlighted the idea that, if the complaints procedure were better known, accepted and used, the number of applications pending in the Court could be reduced. In that context, an appropriate communication policy at the Council of Europe could make significant progress possible.

53. Acceptance of the collective complaints procedure by a larger number of countries would also offer the advantage of lessening the workload of the national authorities involved in the presentation of reports; in that context, if the path followed by the Committee of Ministers in terms of simplification of the Charter monitoring procedure based on reports for states which have accepted the complaints procedure (see paragraph 34) were pursued right to the end, it would also be possible to prevent – given the small number of states which have so far accepted the complaints procedure and the fact that those states are also subject to the procedure based on reports – the aforementioned monitoring from unduly becoming more of a burden on some states than on others.

54. Considering the fundamental contribution made by the collective complaints procedure to the achievement of human rights in Europe, the hope was expressed by several speakers at the Conference that its acceptance by the states concerned would subsequently and at several levels be encouraged by the institutions concerned at the Council of Europe and European Union. It is to be hoped that the ideas and proposals put forward at the Conference will impel those institutions to take initiatives, both political and diplomatic, to encourage those states which have not yet done so to ratify the Protocol, so that the collective complaints procedure becomes the most extensive and important monitoring procedure of fundamental social rights throughout Europe.

iii. Achieving greater synergy between European Union law and the European Social Charter

55. It seems important to highlight from the outset the preparation by the Committee of a specific working document on the subject of the synergy between European Union law and the Charter (Appendix 3g). That document, finalised in July 2014, was drafted as a contribution to the Conference, and was therefore forwarded to the European Commission, the Court of Justice and the European Union's Fundamental Rights Agency. It was intended to cast light on the relations between the two European systems of standards, those of the Council of Europe and the European Union, in terms of fundamental social and economic rights, with a view to contributing to a strengthening of the synergy between them. In that context, through its own contribution, the Committee provided the Conference with a valuable basis for discussion.

56. As observed during the Panel on the subject, a degree of competition, or – to be more precise – emulation began to emerge where social and economic rights are concerned when the European Community started to expand its own powers outside the economic dimension. To European citizens, that emulation has contributed to significant progress based on an interlinked arsenal of standards, both binding and declaratory, defending social and economic rights. As time went by, however, the overlapping of standards and of interpretations by the European bodies responsible for monitoring application of those standards has in some cases led to divergences, or even clashes.

57. Against this background, the rights established by the Charter are guaranteed in a more or less explicit and detailed manner by EU law. In addition to the relevant provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union, today most of the rights guaranteed by the (Revised) Charter are matched by corresponding safeguards in the Charter of Fundamental Rights of the European Union, but with significant exceptions relating to certain articles and paragraphs. In this context, it is important to point out that that document establishes that, where the level of protection is concerned, none of its provisions are to be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are parties.

58. In the case of secondary legislation (directives and regulations), the EU lays down requirements in a significant number of fields of specific relevance to social and economic rights. In this context, or in the context of other initiatives taken in the field of intergovernmental co-operation, the European Union has addressed, to varying extents and in varying detail, a large number of social rights-related issues. It has also looked into issues including work organisation and working conditions, occupational health and safety, co-ordination in social security matters, social dialogue, free movement of workers, social inclusion and the fight against poverty, non-discrimination and the needs of vulnerable people such as people with disabilities and elderly people. In this context, it should be also

noted that as can be seen from the Explanatory Report to the (Revised) Charter, some of its provisions draw on, or make express reference to, EU directives.

59. At present the 28 EU member states are parties to the "system" of the Charter treaties (the 1961 Charter, the Additional Protocol of 1988, the Additional Protocol of 1995 and the Revised Charter), albeit with differences regarding the commitments they have entered into: nine states are bound by the 1961 Charter (five of which are also bound by the Protocol of 1988) and nineteen by the Revised Charter. With the exception of two states, France and Portugal – which have accepted all the paragraphs of the Revised Charter - the others have ratified a greater or lesser number of provisions of either version of the Charter. Only fourteen EU member states have accepted the 1995 Protocol establishing a system of collective complaints.

60. As pointed out by the Committee in its working document on the relationship between EU law and the Charter, the situation described in the previous paragraph results in a variety of situations and contracted obligations. The Committee states in this respect that “There is a clear lack of uniformity in the acceptance of Charter provisions by the EU member states. This is the result of the choices made by each State Party when expressing its sovereign will on the basis of the Charter acceptance system described in paragraph 36. While not amounting to an anomaly in itself, this lack of uniformity sometimes reveals a lack of consistency. Where the protection of some fundamental social and economic rights is concerned, some states have chosen not to enter any undertaking under the Charter; yet, pursuant to the law of the European Union they have adopted legal instruments or measures providing equal or greater protection than that guaranteed in the Charter provision(s) they have not accepted”.

61. Given this situation, the idea was shared during the Conference of identifying the Charter provisions which member states of the European Union could accept because they belong to the Union. In this respect, it was rightly observed that a greater consistency as regards EU member states’ social rights commitments under the two standard-setting systems may contribute in future to the realisation of the European Parliament’s proposal that the European Union should accede to the Charter (Appendix 4a).

62. As regards the dimension of judicial practice, it was observed by some that, while indeed the Court of Justice of the EU (hereafter “CJEU”) had never hesitated to place civil and political rights among the general principles of the Union’s law and ensure their observance by guaranteeing them particular prominence, for example under the Convention, conversely it had never raised social rights to the same status hitherto. Social rights appear in the case-law of the CJEU not so much as prerogatives of the individual, but rather as goals legitimately pursued by the Union Member States. Even if the CJEU accepts that the Member States can invoke certain social rights as compelling grounds of general interest such as to justify restrictions on free movement of goods or on free provision of services, or restrictions on the right of competition, the Charter does not constitute a mandatory benchmark instrument for specifying such rights. Bearing this

framework in mind, the wish was expressed during the Conference that relations between the CJEU and the Committee might in future be intensified with a view to interpretations – as happens in the case of the civil and political rights secured by the ECtHR – characterised by deeper mutual recognition and at least a tendency to greater convergence of case-law. Relying on the EU Charter of Fundamental Rights, which provides inter alia for a series of social rights inspired by the Social Charter, the CJEU might regard the latter as a reference point in the interpretation given in respect of Union law. Explicit mention of the Charter in the EU Treaties and its ratification by all states of the Union could be an incentive in that direction. In this connection it was observed that pursuit of these objectives would represent a significant contribution for placing the principle of the indivisibility of fundamental rights on a Europe-wide footing.

63. It seems useful to point out here that the subject of coordination between the European Union and the Council of Europe was also dealt with in general terms in the Memorandum of Understanding concluded by the two organisations in 2007. This document states inter alia that the European Union regards the Council of Europe as the Europe-wide reference source for human rights and will cite the relevant Council of Europe norms as a reference in its own documents. In this context, the EU institutions will have to take account of the decisions and conclusions resulting from the Council of Europe monitoring mechanisms when they are relevant. The Memorandum also states that while preparing new initiatives in this field, the Council of Europe and the European Union institutions will draw on their respective expertise as appropriate through consultations and that in the field of human rights and fundamental freedoms, coherence of Community and European Union law with the relevant conventions of the Council of Europe will be ensured.

64. It is impossible to finish this chapter without mentioning the contribution made by the Parliamentary Assembly to this particular challenge. In this context, it should be remembered that the Assembly has adopted Resolution 1756 (2010) and Recommendation 1935 (2010) on the need to avoid duplication of the work of the Council of Europe by the European Union Agency for Fundamental Rights, as well as Resolution 1836 (2011) and Recommendation 1982 (2011) on the impact of the Lisbon Treaty on the Council of Europe. More recently, it has adopted Recommendation 2027 (2013) on European Union and Council of Europe human rights agendas: synergies not duplication.

III. The Conference's Input

1. Contributions and proposals

65. The Conference provided a focal point for discussion of the imperative for, and practical aspects of, the reinforcement of the Charter as a key instrument to protect and promote social and economic rights across Europe. Not only were there sessions organised around highly relevant themes, with contributions from political representatives of States and European institutions, but a number of other meetings took place around the

Conference (see Box below), which all contributed to the final output, as well as provided increased impetus for the necessary follow-up.

Meetings related to the Charter held in conjunction with the Conference:

- 274th Session of the European Committee of Social Rights, 13-16 October 2014: Curia maxima, Turin
- 130th meeting of the Governmental Committee of the European Social Charter and the European Code of Social Security: 13-17 October 2014, ILO training Centre, Turin
- Meeting of the INGOs Conference of the Council of Europe organised on the occasion of the International Day for the eradication of poverty: 17 October 2014, Palazzo Civico, Turin
- General Assembly of the Academic Network on the European Social Charter and Social Rights (ANESC): 16 October 2014, Università di Torino, Campus Luigi Einaudi, Turin
- Round table organised by ANESC on the occasion of the High-level Conference on the European Social Charter: 16 October 2014, Università di Torino, Campus Luigi Einaudi, Turin
- Meeting of the Sub-Committee on the European Social Charter of the Parliamentary Assembly of the Council of Europe: 17 October 2014, Palazzo Civico, Turin

66. At the same time as the Conference, a number of international bodies adopted or published documents which further the debate surrounding the most effective manner of reinforcing the Charter and ensuring respect for social rights in the current time of crisis and, importantly, sustainably for the future (see Box below).

Documents adopted in view / on the occasion of the Conference:

- Statement by the Parliamentary Assembly's Sub-Committee on the European Social Charter (17 October 2014) (Appendix 3a)
- Declaration by the Council of Europe's Conference of INGOs (17 October 2014) (Appendix 3b)
- Document of the European Committee of Social Rights (adopted on 16 October 2014) (Appendix 3c)
- Contribution of the Academic Network on the European Social Charter and Social Rights (ANESC) (adopted on 16 October 2014) (Appendix 3d)
- Positions and Proposals of ANESC (adopted on 16 October 2014) (Appendix 3e)
- The Council of Europe Commissioner's human rights comment: Preserving Europe's social model (13 October 2014) (Appendix 3f)
- Working document of the European Committee of Social Rights on the "Relationship between European Union law and the European Social Charter" (15 July 2014) (Appendix 3g)

67. The following sections refer to the speeches and interventions given by speakers at the Conference.

i. Opening Session

68. The Conference was opened by Giuliano Poletti, Minister of Labour and Social Policies of Italy, who highlighted the need for a coherent approach to the questions which face Europe with regard to social and economic rights, both from international and supranational organisations, and from states. The need for reform of the labour market to increase job growth and secure the recovery of the economy was cast in the light of sustainable policy making, inspired by a common vision which promotes quality investments. He provided examples of how institutional reforms are supporting the broader drive towards social cohesion and mobility, and demonstrated that states may have much to gain from coordinated dialogue on the implementation of social and economic rights in this context.

69. The Secretary General of the Council of Europe, Thorbjørn Jagland, underlined from the outset that together with the Convention, the Charter embodies the best of the European democratic and social model. He stated that it is high time to give a new impulse to the Charter and called for social rights to be relaunched within the Council of Europe convention system, alongside the Convention which defends civil and political rights. With respect to austerity, the Secretary General pointed out that some measures, designed to stimulate recovery, may weaken the protection of social rights, which in turn, may affect social cohesion and threaten the European social model based on solidarity. He therefore invited governments to consider social and economic rights as an integral part of the recovery plans.

70. The Secretary General went on to identify four crucial imperatives, stemming from his report on the State of Democracy, Human Rights and the Rule of Law (2014), and the agenda for his second term of office (2014-2019). Firstly, all member states should ratify the Revised Charter and accept the collective complaints procedure. Secondly, the decisions and conclusions of the Committee must be followed up by States Parties. Thirdly, synergies between the Charter and EU Law need to be strengthened to avoid any conflict. Lastly, cooperation activities centred on the Charter need to be enhanced, including through national action plans and targeted training activities. Finally it cannot be denied, as identified by the Secretary General, that the success of the Conference will be defined by the quality of its follow up.

71. Before the first Ministerial Session began, Piero Fassino, Mayor of Turin, further underlined the need to coordinate the approach of international bodies, in order to give clear guidance to governments on how to comply with their obligations, and how best to realise the potential of the Charter and the rights enshrined within it.

ii. Theme I – The role of the European Social Charter in affirming social rights during the crisis period and the crisis exit phase

a. Ministerial Session

72. The first Ministerial Session allowed Ministers, Deputy Ministers and Secretaries of State, along with representatives from the Council of Europe's Committee of Ministers, the EU Commission and the EU Parliament, to take the floor in the context of Theme I of the Conference.

73. The Session was an opportunity to consider in detail both the importance of the Charter as a pan-European standard setting document, and also as a living, integrated system of guarantees, whose implementation at national level has the potential to reduce economic and social tensions, promote political consensus, and where appropriate facilitate the adoption of the necessary reforms. The Charter, thus, is an instrument at the service of economic development that can, as it must, also be socially sustainable. Some participants also commented on the relationship between the EU and the Charter; while this foreshadowed discussions under Theme II, it also shed valuable light on the position of the Charter in the international legal sphere, and enables us to see its true value in context.

74. Salim Musulmov, Minister of Labour and Social Protection of the Population of Azerbaijan, representing of the Chairmanship of the Council of Europe's Committee of Ministers, stressed the importance of embarking on a more comprehensive approach by considering the respect for all human rights, including social rights, as mutually reinforcing prerequisites for ensuring human dignity, prosperity and security. In this context, he underlined that we must attach the same degree of importance to social rights as we do with regard to civil and political rights and considered that in order to solidify its importance, the partnerships between the Council of Europe and relevant international and regional organisations, including the EU, need to be enhanced.

75. Furthermore, based on the Declaration adopted by the Committee of Ministers in 2011 on the occasion of the 50th anniversary of the Charter, he rightly pointed out that Member States need to increase their effort to raise awareness of the Charter at national level. This should include measures targeted at legal practitioners, academics and social partners, as well as informing the public at large of their rights. Doing so will increase the effectiveness and relevance of the Charter at national level, and enable individuals to understand and defend their social rights, including judicially. It is clear that the movement for reinforcing social rights must unite organisations, governments and people at all levels, and can benefit greatly from increased input at the national level.

76. László Andor, European Commissioner for Employment, Social affairs and Inclusion, naturally shed light on the position of the European Commission, while emphasising that the Council of Europe and the European Union are based on shared

values and stand for the same principles. He referred to the presence of the Charter in the Treaties of the European Union, and mentioned the continuous dialogue held between the two organisations in the area of social and economic rights. He then went on to outline the EU initiatives which were introduced to tackle the economic crisis and ensure that social rights be respected. For instance, he detailed that the number of people in the EU at risk of poverty or social exclusion rose by close to 7.8 million between 2009 and 2014. He highlighted that the effects of the crisis have been unequally spread and that there is great scope for countries to share their experience and identify effective and successful social policy strategies.

77. Mr Andor also referred to the scoreboard of employment and social indicators adopted by the European Commission, and expressed the Commission's clear desire to incorporate social and economic assurances in the further development of the monetary union. He quite rightly said that no monetary union can be sustainable or legitimate without upward convergence of social standards – which must draw inspiration from the founding texts, among which the Charter has a central place. He finished by declaring the European Commission ready to engage in a continuing dialogue at the international level; a dialogue which will surely prove fruitful from the point of view of ensuring the rights enshrined in the Charter in a concrete way.

78. Antonio Tajani, First Vice-President of the European Parliament, has expressed great concern about the fact that many citizens seem convinced that European institutions are somehow to blame for the economic crisis and its damaging effects. That view takes no account of the safeguards provided and defended by those institutions since the 1950s, within the Council of Europe and European Union, in order to protect and promote fundamental social rights across the continent. Those safeguards are based, according to Mr Tajani, on the principle of the social market economy, whereby the market is regarded as an instrument for achieving the objectives of social policies. In this context, it is essential, as recommended by the European Parliament in its Resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012) (Appendix 4a), for the principles of the Charter to continue to characterise the political action of the Union and its Member States, in parallel with those of the Convention.

79. In that context, the First Vice-President of the European Parliament wished to draw participants' attention to, on the one hand, the need to adapt competition rules to the globalisation of markets, in order to prevent third countries' failure to observe fundamental rights from having negative consequences for the European market and employment, and, on the other hand, the urgent need to couple with austerity policies other measures to boost the economy so as to promote investment and employment. Mr Tajani concluded his speech by saying that law was a fundamental instrument of politics and that the time had therefore come to begin "a major debate on the Charter", and on how this fundamental European treaty could in future better serve the policies that Europe will need to pursue in order to deal with the challenges of a changing world.

80. Algimanta Pabedinskiene, Lithuanian Minister of Social Security and Labour, described the Charter as the most comprehensive international instrument that guarantees fundamental social and economic human rights as those rights concern citizens in their daily lives. She considered that we need to make social security systems more relevant, adequate, stable and efficient; it was specifically recognised that the Charter, with its unique and balanced supervising mechanism, can be a useful tool in seeking this goal.

81. Continuing this theme, Faruk Çelik, Minister of Labour and Social Security for Turkey noted that the austerity measures taken for overcoming the macroeconomic problems led to a step back in the social rights of many people, especially with regard to their social security. For him, social security is among the most important elements of stability for countries. It is an effective and crucial instrument, which protects societies against economic shocks, particularly during the crisis periods. He underlined that the Charter has a constructive role in times of crisis and the crisis exit phase, it cannot be ignored; instead it is needed in order to increase the well-being in every country. To this end, Mr Çelik highlighted the role that good dialogue between the government and the Committee is playing in enabling Turkey to ratify further provisions of the Charter and secure social rights in his country. Finally, Mr Çelik added that the international dimension of social security is more significant than ever due to the accelerated rate of migration following globalisation.

82. Sergey F. Vel'myaikin, First Deputy Minister of Labour and Social Protection of the Russian Federation, stated that the fulfilment of obligations taken under the Charter, in particular those in the sphere of social rights, remains a priority for the Russian Federation and that the conclusions of the Committee help governments to see the weak points of systems and to improve legislation and law enforcement practices.

83. Radoslaw Mleczko, Undersecretary of State, Ministry of Labour and Social Policies for Poland, reminded participants that the Charter was created for such situations as the current crisis. He stated that the dialogue between states and the Charter's monitoring authorities must be based on the idea of how to reconcile the protection of the rights and guaranties with social and economic realities. Some of these realities he highlighted with reference to Commissioner Andor's earlier speech, for example, compared with 2008, there are around 9 million more people unemployed across the European Union, and joblessness among young people and the long-term unemployed is a cause of great concern. He pointed out that all of the numbers referred to are people, are individuals, human beings with human rights. He referred to the need to create better conditions for economic activity, but considered the need to provide sustainable budgets. Closing the ministerial session, he stated: "It is our duty to protect and enhance the positive role of the European Social Charter as a source of guarantees, the implementation of which may contribute to the reduction of economic and social tensions, and to build a broad consensus around social policy."

b. Panel Session - Austerity measures in a period of crisis

84. The first panel session, moderated by Francesco Manacorda, Deputy-Director of the newspaper “La Stampa”, brought experts together to consider the impact of austerity measures on social rights, the participation of citizens and the contribution of the European Social Charter to the crisis exit phase.

85. In this framework, Cleopatra Doumbia-Henry provided insight on the synergies between the Charter and the treaties of the ILO. She stressed the importance of policy coherence at the international and national levels. At the international level, it is important to coordinate and harmonise the standards established by the Council of Europe, the EU and the ILO in order to avoid confusion or conflict between the intermingling obligations to which states have submitted themselves. In turn, this harmony of standards will simplify the process of states’ compliance. At the national level, states should ensure that governmental departments work together to find the right balance in terms of solutions and strategies. The Ministry of Labour and the Ministry of Finance must coordinate their policies to have the best outcome for social rights and the economy. This coordination should involve the translation of international commitments into domestic law and practice. The protection provided by the international standards are important, because whether it is the right to a decent salary, leave with pay, social security protection or occupational health and safety, we all need social protection at various moments of our lives. Ms Doumbia-Henry emphasised the importance of Europe setting an example for other countries to follow.

86. Turning to the issue of austerity, it is clear that the crisis has impacted on the international obligations of countries, vis-à-vis the Charter and the ILO in terms of ratifying conventions. Furthermore, the ILO supervisory bodies have observed a failure to give social dialogue the chance to find appropriate solutions to make relevant compromises. The ILO promotes the ‘tripartite’ approach to social dialogue with a view to promoting social justice. It is important to ensure that such dialogue occurs in order to give input to workers, employers and governments, to find the right balance so that rights are not sacrificed, with sometimes irreversible effect. Whatever the decisions or compromises to be made in the wake of the crisis, Ms Doumbia-Henry outlined that they should strictly ensure that the fundamental principles and rights at work are not undermined. In order to guarantee this outcome, the spirit of the Charter and the rights it protects must surely be implemented through both legal and practical policies.

87. Ioannis Dragasakis, Chairperson of the Sub-Committee on the European Social Charter of the Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly highlighted the need for a coherent position to be taken. It is not enough to say that we are in favour of social rights; the dilemma is what position to take when the rights of the poor are at odds with the interests of the advantaged few. He criticised international austerity policies which ignored social rights, and said that policies must be designed within the framework of the Charter, otherwise the whole spectrum of

human rights could be destroyed.The importance of balancing fiscal consolidation with social rights protection is further elaborated and explained in the Contribution of the Sub-Committee, (Appendix 3a).

88. Sylvie Goulard, Member of the European Parliament, considered that the priority has to be given to the fight against the growth of poverty and inequalities. A multitude of measures could conceivably achieve this, both at European and national level. She stressed that the rhetoric toward the poor has to be changed. Not only should we, the politicians and the media, cease to stigmatise them, but also the value of this section of society must be recognised. Irrespective of the moral aspects of exclusion of the poor, it is a matter of economic waste. In particular, new investments in the education system should be part of the approach to inclusion. She stated that criticism of the austerity measures implemented by European governments cannot bring about an adequate solution to the crisis. What must be considered is how to invest so as to avoid creating debt for the future generations who will, unacceptably, have to pay for current operating expenditures.The reduction of salary costs of the most disadvantaged cannot be the basis for seeking to achieve budgetary balance objectives. Tax system harmonisation was identified as a field where efforts need to be reinforced, in order to secure the continuing function of the common EU market.

89. The contribution of Renata Hornung Draus, Vice-President for Europe of the International Organisation of Employers, focussed on the institutional problems which have been revealed by the crisis. The financial crisis has turned into a jobs crisis. Therefore the issue must be addressed: how do we produce jobs again? We must look at how to make it possible for small businesses to hire. We must be prepared to question the current systems of social contribution. However, fiscal consolidation must mean not only austerity policies – which can also be based on reasons of "inter-generational" justice so as to avoid passing on social costs to future generations - but also policy must be formulated in terms of social justice. There are structural issues at the heart of unemployment. The question must be asked whether current social systems are promoting job creation. There is at times too much bureaucracy; parliaments must be able to act and to take decisions. Social partners are also willing able to engage in the process to reform the system.

90. Jean-Marie Heydt, President of the Conference of INGOs of the Council of Europe, stressed that the Charter must continue to evolve with its context, and that States Parties must ratify the collective complaint procedure. This will enable the Charter to stay relevant and act as a proactive, transparent safeguard of fundamental rights. We should consider the Charter in a democratic approach focussed on the individual, the human being. The collective complaints procedure gets closer to the reality of ensuring individuals' rights are directly protected. Furthermore, Jean-Marie Heydt highlighted the need to bolster the monitoring mechanism within the Council of Europe, saying that when a violation is confirmed, there should be an effective questioning. This would provide the impetus for states to make meaningful positive changes to the laws and act quickly to safeguard rights.

91. Bernadette Ségol, Secretary General of the European Trade Union Confederation, emphasised that economic conditions, or the austerity measures themselves taken in response, must not be a pretext to disapply social rights. The Charter is useful, and if the current austerity measures continue to be applied, will be more and more so. The notion that austerity measures were necessary was challenged; they have not brought about solutions. For example, it has not been proven that reduction of wages increases employment. With this in mind, she spoke about two proposals. Firstly, it is crucial that we ensure that the accession process of the European Union to the Charter, which is currently blocked, continues. This would cement the position of the Charter in the European framework of rights and ensure that EU member states set the example, as desired by Ms Doumbia-Henry, through greater consideration of social rights in the formulation of EU legislation, and the raised profile of the Charter. Secondly, there is a need to improve the control system of implementation of the Charter with the participation of social partners not only on a national level but also on a European level. The question is one of participation of the citizens. But how can this become a reality? Social partners are an important asset in the field of economic and social rights. The European Trade Union Confederation will continue to use the channels available to participate with the Council of Europe in the implementation of the Charter, and others should do the same.

c. Panel Session - The contribution of the collective complaints procedure

92. The second panel session, moderated by Giuseppe Zaffuto, Spokesperson, Directorate of Communication of the Council of Europe, discussed the monitoring mechanisms of the Social Charter and assessed the current contribution of the Collective Complaints mechanism, and its potential for the future assertion of social rights.

93. Jean-François Akandji-Kombé, General Coordinator of the Academic Network on the European Social Charter and Social Rights (ANESC), Professor at the Sorbonne Law School, Paris, highlighted two important proposals made by ANESC with a view to securing better implementation of the Social Charter. Firstly, the four month delay between the transmission of collective complaints decisions to the Committee of Ministers and their publication should be eliminated. Secondly, the control mechanism of the Committee of Ministers should be reinforced on the model of the execution of judgments of the Court. These ideas are further elaborated and explained in the Contribution of ANESC (Appendix 3e).

94. Colm O'Cinneide, General Rapporteur of the Committee, noted that the collective complaints procedure allows the committee to develop a more concrete and specific analysis of the situation than is possible through the reporting mechanism. Representatives of national governments, judges and ombudsman have also mentioned its usefulness, they point out that collective complaints add a more tangible dimension to the Charter. Certainly, the procedure could benefit from more active engagement of

governments and social partners. These as well as other ideas are further elaborated and explained in the Contribution of the Committee (Appendix 3c).

95. Urfan Khaliq, Professor of Public International and European Laws at Cardiff University, stated that to realise the full potential of the collective complaints procedure more members states must ratify the protocol. It is disappointing that only 15 states have ratified the collective complaints protocol. The collective complaints procedure is not a threat to the states, but is an opportunity for them to engage with the citizens and to improve their standard of living. This reminds us of the view, as affirmed by Mr Poletti in his opening speech, that the collective complaints procedure brings the Charter closer to its intended beneficiaries, the citizens. It is not hard to see situations where individuals might bring complaints before the Court, where a remedy could actually be dealt with under the collective complaints mechanism. These could be dealt with more quickly, and might avoid the repetitive bringing of complaints before the Court.

96. Mr Khaliq recalled that the collective complaints procedure has been carried out by the Committee in a fair way, including the recognition of a margin of appreciation which acknowledges the subsidiarity nature of the Charter and emphasises that the primary responsibility lies with states. Proportionality tests also demonstrate a nuanced approach to the application of social rights. The Charter must be a living instrument to allow diverse social and economic realities to be considered. Indeed, in the decisions of the Committee against Greece it was the manner in which the changes were made, rather than the changes themselves, which was found to be in violation. The added value of the Charter was adroitly explained by Mr Khaliq. When you are dealing with a situation, and the member state addresses the situation, you are not providing alleviation of the wrongs of a right to an individual, but to everyone who is affected.

97. Guido Raimondi, Vice-President of the European Court of Human Rights, emphasised at the beginning of his address that the Committee was a strong, authoritative and respected body, despite the fact that it dealt with rights which, notwithstanding declarations of principle, were not effectively considered to rank as a highly as those dealt with by the Court. Mr Raimondi recognised the great quality of the Committee's case-law, whether it arises from the work done during the reporting procedure or in the context of collective complaints, stating that the Court takes full account of that case-law – if necessary basing itself explicitly thereon – whenever there are aspects relating to the social dimension of fundamental rights. In this context, he quoted a number of examples showing the extent to which the Charter and the Committee's case-law have influenced decisions of the Court.

98. After illustrating the complementarity and synergy of relations between the Court and Committee, Mr Raimondi highlighted the added value of the collective complaints procedure as compared to the procedure for applications to the Court. In this context, he drew attention to three significant advantages of that procedure: firstly *immediacy*, in the sense that complaints may be submitted without domestic remedies having been

exhausted; secondly *efficiency*, in the sense that decisions on the merits of the issues under consideration are taken speedily (in a maximum of twenty-four months); and finally *general applicability*, in the sense that – as in the specific case of a "pilot judgment" by the Court – the complaints procedure enables situations concerning more than one person to be systematically dealt with.

iii. Theme II – The implementation of social rights in Europe

99. On 18 October, before the Ministerial Session on the abovementioned theme, Anne Brasseur, President of the Parliamentary Assembly of the Council of Europe, took the floor. At the beginning of her speech, President Brasseur underlined that social rights must be considered as fundamental human rights, indivisible from civil and political rights, and not as "second class" rights. President Brasseur affirmed that the implementation and realisation of social rights is essential in periods of economic recession and crisis, during which they risk being undermined by the pressure of austerity measures. Making reference to the positions and activities of the Parliamentary Assembly concerning social rights, she rightly stressed that austerity measures cannot be taken to the cost of the most vulnerable groups such as young families, single mothers, children, young people, the elderly, people with disabilities, migrants and minorities.

100. In light of this, Ms Brasseur recalled that the Assembly consistently calls on the member states of the Council of Europe who have not already done so to ratify the Revised Charter, the Additional Protocol providing for a system of collective complaints, and the so-called 'Turin Protocol', which provides for the election of members of the Committee by the Parliamentary Assembly. In this context, President Brasseur made a point of encouraging her own country, Luxembourg, to advance in the process of ratifying these instruments. Concerning the parliamentary dimension, Ms Brasseur recalled that the Parliamentary Assembly encourages national assemblies to use both the Charter and the jurisprudence of the Committee when drafting national and regional legislation.

a. Ministerial Session

101. The second Ministerial Session allowed Ministers, Deputy Ministers and Secretaries of State to take the floor within the context of Theme II.

102. Michael Farrugia, Minister for the Family and Social Solidarity for Malta, recognised that it is important to turn the post crisis period into an opportunity for enhancing social cohesion and social justice through the creation of more inclusive labour markets, and through investment in people's skills and employability. He stated that Europe's social vision needs to be complemented by innovative answers to social challenges, by the promotion and development of measures that ail to reduce and prevent poverty, whilst ensuring greater equality of opportunity, social justice and social mobility, as well as through measures which ail to mainstream social inclusion issues across different policy

areas. He reiterated the validity of the Council of Europe's legal instruments for social rights as promoters of social cohesion and well-being.

103. Nevertheless, Minister Farrugia identified a need for new measurements of social well-being in the European framework; for example, Eurostat methodology currently does not allow for the inclusion of social benefits in kind, such as free child care, provision of free health services, social housing, etc. Malta has introduced a broad range of policies which deal with numerous aspects of social and economic issues. At the same time, unemployment has reduced and GDP increased. In finishing, he declared: "Politicians can easily say 'we saved the banks, we saved the Euro', so let us follow the Social Charter and save the people."

104. Michaela Marksová, Minister of Labour and Social Affairs, Czech Republic, underlined the importance of the collective complaints procedure as a tool for the more effective safeguarding of social and economic rights. It was noted that sometimes the scope of complaints go beyond the competence of one ministry, and therefore more departments are required to cooperate and coordinate. This however also shows the breadth and importance of social rights and the potential of the collective complaints procedure to investigate fully the complaints received.

105. The Deputy Minister of Labour and Social Policy for Bulgaria, Petya Evtimova, highlighted her country's ratification of the collective complaints procedure. She stated that Bulgaria pays special attention to the Decisions of the Committee in respect of collective complaints. It is clear that the adoption of the Charter as an integral part of national legislation has brought about significant developments in ensuring the basic social rights of citizens. These include the right to decent work, the right of association and participation, the right of protection of children and young people, and the right of social security. Using the Charter as a reference for standards of rights protection has also led to better legislation protecting equal treatment, non-discrimination and equal opportunities, as well as the integration of disabled people in all areas of social life.

106. Nicolas Schmit, Minister of Labour, Employment and Social Economy for Luxembourg, said that economic progress and social progress are not opposite, rather they are complementary. He highlighted some important issues in the application of social and economic policy. Firstly, that youth must be engaged and their rights must also be protected. In order to create a stable future, the youth must be allowed to play their part in creating their own future; we must work for intergenerational justice, and take advantage of the capabilities of the younger generations, who have never before been better trained. Secondly, the hopeful migrants who come to Europe are its responsibility - they must be allowed to express their rights. The ostracised, discriminated, poor and unappreciated have lost faith in national and international institutions, but yet they still want to vindicate their human rights, and the values of social justice inscribed in the Charter. The current economic crisis undermines social cohesion, and it raises the demons of the past, nationalism, populism and racism. The divisions created by the current crisis, the

inequality and injustice, cannot form the basis for a durable, well-performing economy. Just as bloodletting has never been a remedy for illness, nor can austerity policies lead to growth. Europe must relaunch, and it can and should do so on the basis of the same fundamental rights recognised in the Charter since 1961. Finally, referencing the encouragement of President Brasseur in respect of ratifying the Revised Charter, Mr Schmit indicated that Luxembourg will work towards making up its delay.

107. Tatjana Dalić, Assistant Minister in the Ministry of Labour and Pension System, Croatia, stated that the right to work is one of the most important guaranteed by the Charter. Finding solutions for the problem of unemployment, which has grown considerably during the economic crisis, is a key challenge. The loss of jobs directly affects the income side of the State budget and the future sustainability of social rights and entitlements, such as pensions, health protection and social care. However, she identified investments in active labour market policy measures as having a multiplying positive effect on society, through increased state revenue and higher expenditure on goods and services, which affect general economic growth, while at the same time decreasing expenditure on social care benefits. These measures should be targeted at specific groups of unemployed persons who are in unfavourable positions on the labour market, as well as employed persons at risk. Croatia dedicates special attention to youth unemployment, to contribute to positive future developments and progress.

108. Mr Nenad Ivanišević, Serbian Secretary of State of the Ministry of Labour, Employment, Veterans and Social Affairs, made reference to the amendments to national legislation which are ongoing, and take account of the Charter, aiming to facilitate more consistent application of its standards. This demonstrates the positive effect which the Charter and the jurisprudence of the Committee can have in securing social rights where national legislative bodies engage with its provisions. Furthermore, the commitment of state authorities, the parliament and relevant NGOs is necessary to continue the promotion of labour and social rights.

109. Dejan Levanic, Secretary of State, Ministry of Labour, Family, Social Affairs and Equal opportunities for Slovenia, concluded the Ministerial session, reiterating the idea that the sustainable development of European society is possible only if we place all three dimensions: social, environmental and economic, on equal footing. He further said that States would find it easier to fully meet their obligations in the implementation of social rights were areas of convergence between the Council of Europe and European Union law were increased. Therefore an intense dialogue between the Council of Europe and the European Commission is needed.

b. Panel Session - Synergies between the law of the European Union and the European Social Charter

110. The final Panel Session, moderated by Giovanni Guiglia, Coordinator of the Italian Section of the Academic Network on the European Social Charter and Social Rights,

Professor of Public Law, University of Verona, brought together representatives of the Council of Europe, the European Union, the Fundamental Rights Agency and ANESC to discuss the relationship, convergence and divergences between EU law and the Charter.

111. Giuseppe Palmisano, member of the European Committee of Social Rights, considered that the question of synergy between EU law and the Charter constituted one of the conference's main objectives: ensuring that social rights, as enshrined in the Charter, were made a key focus of attention for the EU institutions and member States with a view to their reinforcement and their evaluation from a policy and law-making standpoint. Achievement of this objective was all the more necessary at a time when, above all in light of the economic crisis, the adoption of austerity measures and of labour market reforms has caused friction between the EU system and that of the Charter. In this context, he mentioned a number of recent decisions taken by the Committee under the collective complaints procedure, concerning violations of the Charter by Greece and Sweden (see the footnote on page 1 of the Committee's working document on "The relationship between European Union law and the European Social Charter", appendix 3g).

112. To explain this friction, he referred to the diversity of the standard-setting systems under consideration: on one hand, that of the Charter, with its substance which is undeniably specialist but concerns fundamental values of a constitutional nature; on the other hand, that of the EU, which is far more wide-ranging and complex and pursued not just the above values but also other objectives relating to economic freedoms, competition, budgetary equilibrium, and so on. For MrPalmisano these differences of approach could lead to, and indeed have brought about, an imbalance detrimental to the adequate protection of fundamental social rights at European level. In the long term, imbalances of this kind could cause a regression of the European model centred on respect for social rights and advanced welfare systems.

113. Based on the conviction that social justice must be one of the pillars of the European construction process, and citing a number of tangible examples, Mr Palmisano argued that the time had come to exploit the existing convergence between EU law and the Charter. The aim was to ensure, firstly, that measures taken by the EU and its member States fully upheld fundamental social rights and, secondly, that Europe as a whole, beyond the borders of the EU, could benefit from the EU's major achievements in the field of social rights, in the hope thatthis could also be realised through the Charter and the work of the Committee, which is ready to be supplemented and enriched by those achievements. As proposed by the Committee (see Appendix 3c), this was in other words an attempt to systematise the existing synergies along the lines of the dialogue already under way with the relevant EU institutions, particularly the Commission, the European Economic and Social Committee, the Agency for Fundamental Rights and, on a more political level, the EU Parliament. The EU institutions could also contribute to the protection of social rights by encouraging member States that had not yet done so to ratify

the revised Social Charter (nine states) and the Protocol on Collective Complaints (14 states).

114. Olivier De Schutter, Member of the Committee on Economic, Social and Cultural Rights of the United Nations (2015 – 2018), Professor at the University of Leuven and the College of Europe, elaborated four proposals in view of achieving greater synergy between the EU and the Council of Europe in the field of social rights. These are further detailed and explained in the Contribution of the Academic Network on the European Social Charter and Social Rights (Appendix 3d). Firstly, while interpreting the EU Charter of Fundamental Rights, which contains a series of provisions inspired by the Charter, systematic reference should be made to the interpretation of the Charter provided by the Committee – exactly the way the European institutions, including the CJEU, take into account the case-law of the Court. This would put these two influential treaties on an equal footing.

115. Secondly, given that a number of Charter provisions have not been integrated into the EU Charter of Fundamental Rights, it is suggested to integrate fundamental rights set out in the Charter into the general principles of the EU Law. This would provide guidance to national jurisdictions and further harmonise compliance with both sets of norms. The Committee's case-law should therefore inspire the development of the case-law of the Court in the field of social rights, in compliance with the general principles ofEU law. Thirdly, while preparing impact assessments prior to submitting legislative proposals to the EU bodies, the European Commission should systematically take into account Charter provisions, not only as regards the social rights, but in all fields related to the functioning of internal markets, without limiting itself to the fields covered by DG Employment, Social Affairs and Inclusion. This would prevent member States from being confronted one day witha choice between ensuring follow-up ofthe conclusions ofthe Committee, on the one hand, and respecting the obligations imposed by EU Law, on the other. Finally, the European Union and the Council of Europe should elaborate a common document identifying the legal and technical obstacles to the accession of the EU to the Charter. If we are aiming at this accession to take place by 2030-2040, we have to start working on this document now. This proposed accession and concrete work towards its achievement would also be an important message to EU citizens as regards its social dimension.

116. Luca Jahier, President of Group III of the European Economic and Social Committee of the European Union (EESC), expressed the need to reinforce the collaboration between the EU and Charter bodies, for example through greater coordination and dialogue between the EESC and the Committee. Furthermore, he suggested concrete measures such as new forms of class actions which would enable wider protection of social rights; the reinforcement of the collective complaints procedure; and wider use of the initiatives of citizens provided for by the Treaty of Lisbon. Further, he suggested the EU adopt the indicators of social impact with automatic stabilising mechanisms. Together these strengthened mechanisms could enforce a collaborative approach to the implementation of fundamental social rights.

117. Paolo Mengozzi, Advocate General of the Court of Justice of the European Union indicated that his contribution to the Panel was made easier by the working document on the relationship between EU law and the Charter drafted by the Committee, which represents a valuable basis for the discussion. He stressed the commitment and concrete results achieved by the European Union in its activities aimed at protecting fundamental rights, including social and economic rights. After underlining the importance of the dialogue between the EU and the Council of Europe with respect to human rights, he considered that in order to take full account of the challenges of globalisation, this dialogue should be extended to the World Trade Organization. Prof Mengozzi also encouraged the dialogue between the CJEU and the Committee and, in this respect, made a reference to the regular exchanges of views between the two bodies. In this framework, he considered that the Committee, like the Court, should begin to apply a "presumption of compatibility" of the norms of EU law with the Charter. Other considerations and proposals on the relationship between EU law and the Charter will be included in his written observations to the abovementioned working document.

118. Armindo Silva, Director for Employment and Social Legislation, Social Dialogue, DG for Employment, Social Affairs and Inclusion of the European Commission, underlined that the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. These values it shares with the Council of Europe. He discussed the development of a rights based approach in the EU, which occurred as it became apparent that the building of an economic space could not be sustainable without being grounded on the bedrock of social rights and values. The Charter is one of the inspiring sources for the treaties of the EU, for example it is cited in Article 151 of the treaty, which forms the fundamental legal basis of EU social policy legislation. The Charter is also being increasingly recognised by the CJEU when determining new fundamental rights and principles. There is thus a wide convergence between the EU and Charter systems of protection of fundamental rights.

119. Gabriel Toggenburg, Senior Legal Advisor of the Director of the Fundamental Rights Agency of the European Union (FRA), asked how the EU legislation could be brought into harmony with the obligations in the Charter. He proposed a mapping of the 'community core', where the EU has the legislative competence to become active in areas which affect or overlap the Charter's scope. Furthermore, this could be done on a wider scale, to cover all Council of Europe conventions. He highlighted the EU's strength in its implementation mechanisms, for example the direct effect of some of its legislation, and the supremacy of its jurisprudence over national law. Furthermore, he pointed to the consensus achieved with the adoption of the Action Plan on 17 May 2005, which states: "The European Union shall strive to transpose those aspects of Council of Europe Conventions within its competence into European Union Law". Therefore it is important that the EU and Council of Europe work in harmony, utilising the freedom and strength of the Council of Europe as a standard setter and monitoring body.

120. Following the Panel on the relationship between EU law and the Charter, and prior to the Closing Session, the President of the Italian Chamber of Deputies, Laura Boldrini, took the floor. During her speech, President Boldrini observed the failures of the States and the European Union concerning the provision of adequate protection for citizens against the effects of the current economic recession. In this regard, she reiterated that reductions in social welfare spending are having dramatic effects, above all in the areas of education and health. She drew the attention of the Conference to the fact that according to figures published by the European Commission, the number of people at risk of poverty could yet be close to 100 million in the year 2020; a situation which would have a disproportionate effect on women and youth.

121. In mentioning the current debate among economists over the response to the crisis, Ms Boldrini noted that authoritative figures are now clear that austerity measures alone are not adequate to resolve the problems. In particular, referring to the work of Professor Piketty, she recalled that if austerity measures continue to be pursued as they are today, that is, without corrective economic action, we are destined to go back to a wealth distribution pattern similar to that of the 19th century.

122. In this context, and underlining the binding nature of the Charter, President Boldrini considered that in order to maintain the effectiveness of fundamental social safeguards, the culture and politics of human rights must “go on the attack”. In other terms, it is not sufficient according to Ms Boldrini to “defend the status quo”, instead we must look ahead, and anticipate new rights and protections that will be required for the new needs emerging in the present era. Parliaments can make a decisive push for a new culture of rights which is equal to the challenges of the present day. In this environment, she suggested it could be very useful firstly to put in place an “early warning” procedure in the parliamentary context, to monitor the compatibility of European and national legislation with the principles of the Social Charter, and secondly to organise regular meetings at the continental level between the competent committees of the different European parliamentary assemblies.

iv. Closing Session

123. Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe, recalled that the starting point for the Conference was the realisation that the Charter currently finds itself confronted with a number of challenges which jeopardise its effective implementation, and now require the adoption of political decisions by the contracting States and the political organs of the Council of Europe, and to a certain extent by the European Union. She underlined that it is necessary to tackle the crisis through measures that reconcile the demands of growth with the need for social justice. In other words, the social dimension cannot be politically divorced from the macroeconomic context or considered as a mere adjunct to it. In this respect, it was recognised by many, and reiterated by the Deputy Secretary General, that implementation of the Charter is an essential prerequisite for the success of the economic policies pursued by the relevant national and European authorities.

124. With regard to those States which are also members of the European Union, she also highlighted that wider acceptance of the revised Charter would offer the advantage of fostering greater legislative integration between the European Union and the Council of Europe. The solutions envisaged for the harmonisation of the implementation of social rights also include the possibility, at the appropriate time, of EU accession not only to the Convention but also to the Revised Charter, as recommended by the European Parliament. The Deputy Secretary General will personally monitor the work on the initiatives identified to address the priority of the Secretary General to reinforce the Charter as a pillar of the Council of Europe alongside the Convention. She said that we must and shall do all that we can to ensure that the Charter always occupies a place within the Council of Europe convention system consistent with the fundamental nature of the rights it safeguards, and its status as the social Constitution of Europe.

125. Giuliano Poletti, Italy's Minister of Labour and Social Policies, voiced the idea that, during this phase of historic significance – because of changes which have altered on a global scale, and so in Europe as well, the relationship between the economy, labour and society – the realisation of the social and economic rights guaranteed by the Charter can unfortunately not be taken for granted. The Conference was an important opportunity to consider how it will be possible to ensure that those rights continue to be fully realised in a constantly changing geopolitical situation. The Minister declared his willingness to ensure that the high-level discussions started in Turin can continue. With that in mind, he urged all the participants to "Restart in Turin", so that fundamental rights become a subject of pan-European dialogue and co-operation. He expressly invited all Council of Europe Member States to take practical action for the benefit of the Charter, for example by accepting the revised Charter, additional provisions or one of its Protocols. Emphasising the importance of this step the Minister said that, for all the states concerned, it was a "categorical imperative".

126. Piero Fassino, Mayor of Turin, expressed agreement with the Minister's view that realisation of the rights protected by the Charter was no longer a foregone conclusion. The economic crisis had made this quite clear. The main issue was therefore that of ensuring a new beginning for both growth and rights, bearing in mind that Europe did not exist within a "bubble" of its own, and that the dynamics of competitiveness, now global, and worldwide social dumping had a severe effect on realisation of the Charter rights on our continent. The European institutions, by means other than synergies between sources of law, thus needed to fight for the universality of social rights, so that their affirmation in Europe did not ultimately penalise our continent in terms of development, with counter-productive effects on the realisation of those same rights.

127. In other words, in the Turin Mayor's view, it is necessary on the one hand to continue to assert the centrality and dignity of both work and the associated fundamental rights, and, on the other hand, to combine growth and social protection with due flexibility. These challenges need to be achieved in a way which enables Europe to realise its own

social model without being subjected to decisions made, worldwide, in different economic situations. In this context, the Conference, according to Piero Fassino, set in train a political process capable of contributing to these challenges, getting to grips with the new scenarios and new variables of globalisation. In the context of that process, the Charter must be defended and promoted as one of the pillars around which to redefine the European, and not just the European, model of development.

2. Conclusions of the General Rapporteur

128. Thanks to the exchanges of opinions, presentations and statements, it has forcefully emerged that the rights secured by the Charter form part of the indivisible corpus of human rights, so that one can fittingly speak of "fundamental social rights"[7] or rights belonging to all human beings, like civil and political rights, which are fundamental to individual and community living in that their enjoyment underpins the possibilities for fulfilment of human existence. In that sense, they are inalienable rights, not the kind of optional rights that could be withdrawn for want of resources during periods of austerity and which are devoid of usefulness in periods of economic prosperity.

129. For years we have regarded social and economic rights as secondary and, so to speak, supplementary rights, disregarding the fact that the substance of these rights, that is access to the vital common goods (food, clothing, shelter, health, education, etc), represents – both theoretically and historically – the premise for claiming and availing oneself of fundamental civil and political rights. As was remarked by Norberto Bobbio from Turin, recognition of a few fundamental social rights is the premise or the precondition for effective exercise of the rights of freedom. An educated individual is freer than an ignoramus; an individual with a job is freer than someone unemployed; a healthy man is freer than a sick one.[8]

130. The fact that access to the vital commons is a necessary precondition for exercising other rights is altogether patent in anthropological terms: without life, there is no possibility of expressing oneself freely. Thus in moral terms, situations where severe poverty, illness or inability to provide for oneself imperil the very existence of some individuals create binding obligations for the individuals around them. Hans Jonas expressed this concept forcefully by citing the example of the nursling which by its very existence and its very inability to survive independently imposes a binding obligation on anyone near it to provide for its existence.[9] The same could be said about the "injured person in the street"

[7] In the EU Charter of Fundamental Rights and Freedoms, the typically 'social' rights are counted among fundamental rights, such as in the case of free education, the protection of children, the elderly, disabled people and the rights of the worker, etc.

[8]] N. Bobbio, « Sui diritti sociali » (1996), available in *Teoria generale della politica*, ed. M. Bovero, Einaudi, Turin 1999, p. 465.

[9] H. Jonas, *Das Prinzip Verantwortung. Versuch einer Ethik für die technologische Zivilisation*, Insel Verlag, Frankfurt, 1979.

situation, which compels us to stop and render assistance: here too, the situation of absolute necessity makes indifference and inaction culpable, not only morally but also legally, as demonstrated by the definition of the offence of non-assistance embodied in legislation across Europe.

131. In history also, the idea is attested that enjoyment of social rights is a prerequisite for enjoyment of political rights.[10] Under the aristocratic or bourgeois regimes of the early nineteenth century, only someone who was economically independent and educated could vote and be elected to parliament. When this proved unacceptable to democratic regimes – as it is to us – it appeared quite clear that, to guarantee everyone equal freedom of expression and political action, some social measures were necessary. That prompted the measures regarding state education, employment policies, medical assistance and all the rest. To deny this relationship today would result in our being plunged back into a scenario founded on social exclusion, which would be rapidly transformed into political exclusion and carry serious risks for democratic structures.

132. To proclaim the inseparability of social rights from civil and political rights, and the fact that their enjoyment presupposes satisfaction of some fundamental social needs, is not at all tantamount to disregarding the different dynamic that operates between the various rights and official intervention. In the case of the fundamental rights of freedom, it is primarily a matter of setting limits to the action of the public authorities and thus of "negatively" demarcating state intervention in order to allow full enjoyment of freedoms such as freedom of expression or religion. However, in the case of the fundamental social rights, an active intervention is instead requested of the state which, through legislative and administrative measures, delivers specific services to citizens according to their means. So, while the former rights possess immediate validity and enforceability, the latter must necessarily be commensurate with the existing capabilities. And at all events, it cannot escape a deeper insight that this distinction is not such as to mark an insurmountable divide between the two categories. On the one hand, even enjoyment of the fundamental rights of freedom calls for active intervention and significant public resources, as demonstrated by the security policies for the protection of citizens' personal freedom which have become so important in the life of our societies (to say nothing of the active policies and the financial resources deployed by states to safeguard freedom of political or religious expression, with funding or tax relief to press organs, political associations and religious communities). On the other hand, when a citizen's enjoyment of a social right is denied or disproportionately curtailed (housing, employment, assistance, etc), the possibility of an immediate complaint and of public safeguards is extensively recognised by our legal systems, meaning that the state is not at all indifferent to the possibility or otherwise for citizens to enjoy a full life.

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[10] Cf. E.W. Böckenförde, "Soziale Grundrechte im Verfassungsgefüge", in Soziale Grundrechte.Von der bürgerlichen zur sozialen Rechtsordnung, eds. E.W. Böckenförde, J. Jekewitz, Th. Ramm, Heidelberg 1981, pp. 7-16.

133. Recognising that enjoyment of social rights is the precondition for full enjoyment of civil and political liberties thus means recognising that the state cannot be indifferent to these rights and that on the contrary their realisation represents a clear "constitutional task"[11] of a mature democracy which cannot be delegated to the discretion of governments or technical agencies. In democracy it is the citizens' vote that assigns to parliamentary majorities and to governments the task of carrying out specific social and economic policies of one stamp or another, and this is part of free democratic interplay. But although there may be different means which are all equally legitimate, there are common objectives not to be disregarded, and these certainly include support for every citizen's effort to lead his life to the full with dignity. Every state is therefore obliged to pursue coherent policies thanks to which citizens may have a reasonable possibility of fulfilling their needs through their labour and their initiative, and such policies must be made understandable to all in a transparent manner. Furthermore, their outcomes must be verifiable and if they do not achieve the objectives hoped for, they must allow of amendment so as to perform effectively the "constitutional task" of safeguarding social rights.

134. To regard realisation of social rights as a "constitutional task" entails thorough analyses and informed decisions on allocation of the available public resources. In a mature democracy, one cannot overlook the problem of access for all to resources in a manner complying with the principles of freedom and justice. This concerns both the distribution of public resources and the regulation of social relations. Constant attention must moreover be paid to assessing the effects of this or that policy on the conditions for citizens' genuine equality. Indeed, it is commonly believed that excessive disparity of economic and social conditions among citizens may represent not only an impediment to full democracy, but also a factor of economic instability. It should therefore be remembered that the fight against inequality is conducive to economic development and that – as the Secretary General cogently said – there is a "productiveness of social justice". It is altogether true – and the topic came out strongly in the discussion – that austerity policies too may be prompted by reasons of "intergenerational" justice so as not to pass on the social costs of given policies to the future generations, as has been done too often. But it is also true that there are living standards which must not be ignored if we wish to ensure a decent minimum subsistence level for all.

135. As recalled by Mr Poletti at the close of the Conference, it is not straightforward to assert these standards in the world of today. Taking into account the challenges of globalisation, the time has come to open a political debate on how to ensure that the rights secured by the Charter continue to be applied in a rapidly changing European and international scenario. In other words, it is necessary to "Restart in Turin" with a view to choices allowing for the changed relationship between the economy, labour and society in Europe resulting from the changed world. As the Mayor of Turin observed, the central issue is therefore that of a new beginning for growth and rights, bearing in mind that

[11] The Italian and German constitutions represent an example in this regard.

Europe does not exist within its own “bubble”. The Conference was unanimous in the opinion that, over and above the essential synergy of the sources of European law, the Council and Union should fight for the universality of fundamental rights, making sure that the measures adopted for their affirmation in Europe are accompanied by ineluctable progress as regards their observance at world level.

136. When we say that the fight against poverty and exclusion is a constitutional task of democracies, we mean that we must make this not the duty of a political or social faction, but the duty of all. Protection of social and economic rights should be a cross-cutting concern in parliaments and not only the prerogative of a majority or minority. As Habermas invoked a “constitutional patriotism” for democracies, saying that the realisation of social rights was a “constitutional task”, so we look forward to the birth of a “social patriotism” finally dissociating social rights from the idea that they are “rights of the poor” or “poor rights”: rather, they are universal rights pertaining to the fullness or “richness” of human life. We therefore need a “new European social contract” modelled on the best practices of local governments.

137. Our reflection on social rights compels us to rediscover again and again the “social” nature of rights, in a word the “sociality” of a right in itself. The rights of individuals have to do with their relationships and always remind us that no man is an island, and nobody can attain self-fulfilment except in their respect for and acknowledgment of others. We must fight for observance of social and economic rights because without these rights individuals are stripped of their sociality, of their relationship with others and finally of being themselves. As Joel Feinberg explained, “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 recognisable capacity to assert claims”.

The **“Turin Process”** is under way.

IV. An Action Plan for the "Turin process"

PRIORITY MEASURES BASED ON THE IDEAS AND PROPOSALS PUT FORWARD AT THE CONFERENCE

Key:

Immediate action
Medium term
Long term

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
Reinforcement of the Charter				
	Open a political debate on the Turin Process (CM[12], PACE[13])	Open a political debate on the Turin Process (Council[14], EC[15], EP[16])	Open a political debate on the Turin Process	Open a political debate on the Turin Process
	Promote the ratification of the Revised Charter and/or all provisions (CM, PACE, Congress[17], Conference of INGOs[18], HR Commissioner[19])	Promote the ratification of the Revised Charter and/or all provisions by EU member states (EC, PE, CESE[20], FRA[21])	Ratify the Revised Charter and/or all provisions	Promote the ratification of the Revised Charter and/or all provisions
	Reinforce the position/ visibility of the Charter within the Organisation (CM, SG[22])		Reinforce the position/ visibility of the Charter in framework of sources of international law	
	Allow the election of members of the ECSR[23] by the PACE (CM, PACE)		Allow the election of members of the ECSR by the PACE	

[12] Committee of Ministers, Council of Europe
[13] Parliamentary Assemby of the Council of Europe
[14] Council of the European Union
[15] European Commission
[16] European Parliament
[17] Congress of Local and Regional Authorities
[18] Conference of International Non-Governmental Organisations, Council of europe
[19] Commissioner for Human Rights, Council of Europe
[20] European Economic and Social Committee
[21] European Union Agency for Fundamental Rights
[22] Secretary General of the Council of Europe
[23] European Committee of Social Rights

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
	The jurisprudence of the ECSR must take account of new situations and challenges (ECSR)			
	Increase the number of members of the ECSR (CM)			
	Reinforce the position and structure of the Social Charter Department within the General Secretariat of the Council of Europe and increase the number of lawyers working in the department. (CM, SG)			
	Reinforce the monitoring procedures of the PACE on the Charter (PACE)			
	Organise and facilitate interparliamentary debates on the Charter (PACE)	Organise and facilitate interparliamentary debates on the Charter (EP)	Organise and facilitate interparliamentary debates on the Charter	
Better implementation of the Charter				
		Adapt and design macroeconomic policies which support sustainable growth, taking into account social rights (EC)		
			Reinforce the framework for ensuring the implementation of the Charter, as well	

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
			as the decisions and conclusions of the Committee	
		Promote sustainable and inclusive growth through fiscal policy and investment in skills and access to work (Council, EC, EP)	Promote sustainable and inclusive growth through fiscal policy and investment in skills and access to work	
		Integrate social rights in economic recovery plans, adapt social impact indicators and new reference values to measure social well-being (Council, EC, EP, Eurostat)	Integrate social rights in economic recovery plans, adapt social impact indicators and new reference values to measure social well-being	
		Integrate the fundamental rights established in the Charter into the general principles of EU law (Council, EP, EC, CJEU[24])		
	Reinforce the follow up of Committee conclusions and decisions, along the lines of the enforcement of ECtHR[25] judgments (CM)			
	Where necessary, use the ability to make Recommendations to the Member States (CM)			
	Respect the '*contradictoire*' principle of the			

[24] Court of Justice of the European Union
[25] European Court of Human Rights

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
	collective complaints procedure and prevent states from challenging ECSR decisions (CM)			
	Promote a procedure of advisory opinions of the ECSR for courts and legislators at national / EU level (CM)	Seek advisory opinions from the ECSR where potential violations are identified in the EU legislative/ implementation process (Council, EC, EP, CJEU)	Seek advisory opinions from the ECSR where potential violations are identified in the national legislative/ implementation process	
			Ad hoc advisory bodies should be set up by governments concerning the implementation of the Charter and ECSR decisions/conclusions	
	The CoE Development Bank can assist in ensuring the efficacy of social rights initiatives (CEB[26])			
			Central and local governments need to work together more closely to ensure the implementation of ECSR decisions/ conclusions	
Collective complaints procedure				
	Promote the ratification of the Collective Complaints Protocol (CM, PACE, Congress, Conference of INGOs, HR Commissioner)	Promote the ratification of the Collective Complaints Protocol by EU member states (Council, EC, EP, EESC, FRA)	Ratify the Collective Complaints Protocol	Encourage the states to ratify of the Collective Complaints Protocol

[26] Council of Europe Development Bank

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
	Inform social partners and NGOs about the CC[27] procedure (CM, PACE, Conference of INGOs, HR Commissioner, ECSR)	Inform social partners and NGOs about the CC procedure (EC, EP, FRA, EESC)	Inform social partners and NGOs about the CC procedure	Inform social partners and NGOs about the CC procedure and encourage them to participate
	Encourage use of third party mechanism by EU bodies and NGOs (CM, ECSR)	Encourage use of third party mechanism by EU bodies (EC, EP, FRA, EESC)	Encourage use of third party mechanism by NGOs	Use the third party mechanism
	Encourage authorisation of national NGOs to bring complaints (CM)		Authorise national NGOs to bring complaints	
	Immediate publication of the ECSR Decisions (CM)			
	Promote systematic notification by states of the steps taken to implement decisions of the ECSR (CM)		Systematically notify the steps taken to implement decisions of the ECSR	
Synergy between EU law and the Charter				
	Encourage the emergence of an integrated, common normative system of protection of fundamental rights (CM, PACE, ECSR)	Encourage the emergence of an integrated, common normative system of protection of fundamental rights (Council, EC, EP, EESC, FRA, CJEU)		
		Define the "Community Core" in order to prevent incongruities between the law of the EU and the law of the Charter (EC, FRA, EESC)		
	Reinforce the relationship with the EC, EP, CJEU and	Take the Charter into account in the legislative process	Take the Charter into consideration when interpreting and	

[27] Collective complaints procedure

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
	other bodies through dialogue and consultation (ECSR) Identify and use EU legislation and jurisprudence in conclusions and decisions of the Committee (ECSR)	(Council, EP, EC) Consult the ECSR during the legislative process (Council, EP, EC) Prepare impact evaluations prior to submitting legislative proposals (EC) Take account of the Charter and the jurisprudence of the ECSR in the interpretation and application of EU law (CJEU)	implementing EU law Consult the ECSR during the legislative process	
		Reinforce the relationship and dialogue between the ECSR and CJEU. Create a system of reciprocal recognition similar to the ECtHR and work towards a greater convergence of jurisprudence (CJEU)		
	Promote the accession of the EU to the Charter (CM, PACE)	Work towards the proposed accession of the EU to the Charter (Council, EC, EP, EESC, FRA)	Promote the accession of the EU to the Charter	Promote the accession of the EU to the Charter
		Implement "early warning" procedures with respect to the compliance of EU law with the Charter (EP, EC, CoR[28])	Implement "early warning" procedures with respect to the compliance of national legislation with the Charter (National Parliaments)	
		Ensure that EMU reform systematically takes account of social rights (EC)		

[28] Comittee of Regions

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
	Reinforce the links between the ECSR and FRA, share knowledge and data, to exploit the advtanages of both monitoring systems (ECSR)	Reinforce the links between the ECSR and FRA, share knowledge and data, to exploit the advantages of both monitoring systems (EESC, FRA)		
Information and Communication				
	Adapt communication within the Council of Europe to improve the visibility of the Charter and place it at the level of the ECHR (SG)	Adapt communication to improve the visibility of the Charter and place it at the level of the ECHR in the EU framework (EC, EP, EESC, FRA)	Adapt communication to improve the visibility of the Charter and place it at the level of the ECHR	Adapt communication to improve the visibility of the Charter and place it at the level of the ECHR
	Promote training on the Charter for judges and lawyers at national and international level	Promote training on the Charter for EU judges, national judges and experts (EC, EP, EESC, FRA)	Promote training on the Charter for judges and experts	Promote expert awareness and inform NGOs about the Charter and the CC[29] procedure
	Promote knowledge on the Charter and CC procedure among NGOs and citizens	Promote knowledge on the Charter and CC procedure among NGOs and citizens	Promote knowledge on the Charter and CC procedure among NGOs and citizens	Promote knowledge on the Charter and CC procedure among NGOs and citizens

[29] Collective Complaints Procedure

V. Appendices

1. Conference Documents

a. Introductory note
b. Programme
c. List of participants
d. Final press release

2. Conference Speeches and Statements

a. Giuliano Poletti, Minister of Labour and Social Policies of Italy
b. Thorbjørn Jagland, Secretary General of the Council of Europe
c. Piero Fassino, Mayor of Turin
d. Salim Muslumov, Minister of Labour and Social Protection of the Population of Azerbaijan, on behalf of the Chairmanship of the Committee of Ministers of the Council of Europe
e. László Andor, European Commissioner responsible for Employment, Social affairs and Inclusion
f. Antonio Tajani, First Vice-President of the European Parliament
g. Algimanta Pabedinskiene, Minister of Social Security and Labour, Lithuania
h. Faruk Çelik, Minister of Labour and Social Security, Turkey
i. Sergey F. Vel'myaikin, First Deputy Minister of Labour and Social Protection, Russian Federation
j. Radoslaw Mleczko, Undersecretary of State, Ministry of Labour and Social Policies, Poland
k. Anne Brasseur, President of the Parliamentary Assembly of the Council of Europe
l. Michaela Marskova, Minister of Labour and Social Affairs, Czech Republic
m. Nicolas Schmit, Minister of Labour, Employment and Social Economy, Luxembourg
n. Michael Farrugia, Minister for the Family and Social Solidarity, Malta
o. Petya Evtimova, Deputy Minister of Labour and Social Policy, Bulgaria
p. Tatjana Dalić, Assistant Minister, Ministry of Labour and Pension System, Croatia
q. Nenad Ivanišević, State Secretary, Ministry of Labour, Employment, Veterans and Social Affairs, Serbia
r. Dejan Levanic, State Secretary, Ministry of Labour, Family, Social Affairs and Equal opportunities, Slovenia
s. Laura Boldrini, Speaker of Chamber of Deputies, Italian Parliament
t. Michele Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe, General Rapporteur of the Conference
u. Giuliano Poletti, Minister of Labour and Social Policies of Italy
v. Gabriella Battaini Dragoni, Deputy Secretary General of the Council of Europe
w. Piero Fassino, Mayor of Turin

3. Documents adopted/issued by various bodies for/on the occasion of the Conference

a. Statement by the Sub-Committee on the European Social Charter of the Parliamentary Assembly of the Council of Europe (17 October 2014).
b. Declaration by the Council of Europe's Conference of INGOs (17 October 2014).
c. Document of the European Committee of Social Rights (16 October 2014).

d. Contribution of the Academic Network on the European Social Charter and Social Rights (ANESC) (16 October 2014).
e. Positions and Proposals of ANESC (16 October 2014).
f. The Council of Europe Commissioner's human rights Comment: Preserving Europe's social model (13 October 2014).
g. Working document of the European Committee of Social Rights on the "Relationship between European Union law and the European Social Charter" – (Without appendices) (15 July 2014).
h. Statement of the Secretary General of the Council of Europe on austerity (28 January 2014).

4. Recent documents issued by Council of Europe and European Union bodies referring to the European Social Charter and/or to social rights

a. European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012).
b. Recommendation 2027 (2013) of the Parliamentary Assembly of the Council of Europe on European Union and Council of Europe human rights agendas: synergies not duplication.
c. Joint Declaration by the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Conference of INGOs of the Council of Europe, of 17 October 2012, "Acting together to eradicate extreme poverty in Europe".
d. Declaration of the Committee of Ministers of the Council of Europe on the 50th Anniversary of the European Social Charter (2011).
e. Resolution 1792 (2011) of the Parliamentary Assembly of the Council of Europe on the monitoring of commitments concerning social rights.
f. Recommendation 1958 (2011) of the Parliamentary Assembly of the Council of Europe on the Monitoring of commitments concerning social rights.

APPENDICES

Appendix 1a

Europe restarts in Turin:

High-level Conference on the European Social Charter

(Turin, 17 and 18 October 2014)[1]

Introduction[2]

1. The High-Level Conference on the European Social Charter is organised by the Council of Europe, the Italian Government and the city of Turin, in the context of the Italian Presidency of the Council of the European Union.

2. The aim of the Conference is to bring together the political decision-makers of the member States of the Council of Europe and its institutions and those of the European Union in a convivial and stimulating context to discuss ways of improving the implementation of the rights enshrined in the Charter, bearing in mind the far-reaching social and economic changes which have occurred since 2008, sometimes having a dramatic impact on the satisfaction of individuals' everyday needs.

3. This aim is based on the idea that the Charter is a living, integrated system of guarantees, whose implementation at national level has the potential to reduce economic and social tensions, promote political consensus, and, where appropriate, draw on this to facilitate the adoption of the necessary reforms. As an international treaty setting out fundamental rights, the Charter provides a key reference point for its signatory states when they are devising and implementing policies intended to foster development which is not only socially committed and sustainable but also based on the rule of law and the democratic principles upheld by the Council of Europe.

4. It will be possible to achieve the Conference's aims provided that the problems which are currently undermining the implementation of the Charter can be openly investigated and debated within a common framework by the relevant authorities of the states, the Council of Europe and the European Union. This moment of reflection and exchange may subsequently foster political decisions confirming that the Charter is a key component for the construction of a type of Europe that is not just "economic" but also "social" in nature, as it shows due regard for the fundamental rights of individuals in their everyday lives. With this in mind, the Conference participants will be invited to compare their ideas and views on a number of major issues.

5. The first major issue is affirming social rights during the crisis period and the crisis exit phase. Austerity measures, the scale of which nobody disputes, are having a clear impact on respect for fundamental social rights. For example, reference can be made to several collective complaints lodged in recent years, in respect of which the European Committee of Social Rights found that some of the measures taken constituted infringements of the Charter. More evidence can be found in the Committee's

[1] Document established from the Information document from the Deputy Secretary General of the Council of Europe on the High- level Conference on the European Social Charter as dated of 15 May 2014

[2] Document established before the Conference

conclusions, adopted in the context of the procedure to monitor the application of the Charter on the basis of national reports, relating to the right to work and equal opportunities or the right to engage in gainful employment in other States Parties. The Conference will be a chance to disseminate the idea that, as its etymology indicates, the "crisis" is an opportunity to gain a better understanding and make better decisions, drawing on the idea that – over and above all preconceived ideas – respect for social rights is a means of alleviating the impact of the crisis and that the implementation of these rights can help states to overcome it. What matters in all circumstances is that respect for the dignity of all individuals is ensured, as that is vital.

6. The second issue relates to the changing relationship between EU and Charter law. In this connection, it has to be ensured that the fundamental rights enshrined in the Charter are fully respected by decisions of the States Parties resulting directly or indirectly from changes in European Union law. This is a major political challenge. There is an urgent need to find pragmatic and effective solutions to settle potential or emerging conflicts between the two sets of standards in the interests of states and individuals.

7. The third issue relates to the improvement of the supervisory mechanism for the application of the Charter on the basis of collective complaints and what was planned in this respect in the political declaration adopted on 12 October 2011, by the Committee of Ministers of the Council of Europe to mark the fiftieth anniversary of the Charter. If it were better known and accepted, particularly by the EU member states, the collective complaints procedure could help to resolve many issues. If the collective complaints procedure were accepted by more states, this could help to reduce the number of pending cases before the European Court of Human Rights. Broader acceptance of the procedure would also have the advantage of reducing the workload of the national administrative departments involved in the Charter's reporting procedure. Taking this approach would also avoid a situation in which, because of the limited number of states which have accepted the complaints procedure to date and because these states are also still subject to the reporting procedure, the latter procedure becomes unduly more urgent for some states than for others.

8. During the concluding part of the Conference, a summary report of the debates will be drawn up by a General Rapporteur and this will be forwarded in writing, afterwards, to the authorities of the states and international organisations involved. There are no plans for the participants to adopt a final declaration.

9. It should be noted that several meetings on the European Social Charter will be held in Turin in conjunction with the Conference: the 274th session of the European Committee of Social Rights; the meeting of the Sub-Committee on the European Social Charter of the Parliamentary Assembly of the Council of Europe; the 130th meeting of the Governmental Committee of the European Social Charter and the European Code of Social Security; the meeting of the INGOs Conference of the Council of Europe organised on the occasion of the International Day for the eradication of poverty; the General Assembly of the Academic Network on the European Social Charter and Social Rights (ANESC) and the Round table organised by ANESC on the occasion of the High-level Conference. Additional information on these meetings are available on the website and the Programme brochure of the Conference.

Appendix 1b

CITTA' DI TORINO

Presidenza Italiana del Consiglio dell'Unione Europea

italia2014.eu

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

17 and 18 October 2014

High-Level Conference on the European Social Charter

TEATRO REGIO

Turin, Italy

Piazza Castello, 215

Europe *restarts* in Turin

European Social Charter | Charte Sociale Européenne


Europe restarts in Turin

17 and 18 October 2014

High-level Conference on the European Social Charter

TEATRO REGIO
Piazza Castello, 215 - Torino

Europe *restarts* in Turin

Europe is perceived by its citizens as being remote from their everyday concerns. In order to regain its appeal Europe must focus on the fundamental values which are central to its mission to bring together states and their citizens and primarily on the European Social Charter, signed in Turin on 18 October 1961. This Charter, a genuine social constitution for Europe, must now be at the forefront so that Europe can once again count on the full support of citizens and the commitment of states based on the values of democracy, the rule of law and respect for human rights.

"The road forward is neither easy nor safe, but must be pursued and it will be."

Altiero Spinelli, Ventotene Manifesto

European Social Charter | Charte Sociale Européenne

High-level Conference on the **European Social Charter**

PROGRAMME

Friday 17 October 2014 2.15 > 6.15 pm

2.15 > 2.45 pm

OPENING SESSION

> **Giuliano Poletti** Minister of Labour and Social Policies of Italy
> **Thorbjørn Jagland** Segretary General of the Council of Europe
> **Piero Fassino** Mayor of Turin

Theme I

THE ROLE OF THE EUROPEAN SOCIAL CHARTER IN AFFIRMING SOCIAL RIGHTS DURING THE CRISIS PERIOD AND THE CRISIS EXIT PHASE

2.45 > 3.45 pm

MINISTERIAL SESSION

Statements:

> **Salim Muslumov** Minister of Labour and Social Protection of the Population of Azerbaijan, on behalf of the Chairmanship of the Committee of Ministers of the Council of Europe
> **László Andor** European Commissioner responsible for Employment, Social affairs and Inclusion
> **Antonio Tajani** First Vice-President of the European Parliament
> **Algimanta Pabedinskiene** Minister of Social Security and Labour, Lithuania
> **Faruk Çelik** Minister of Labour and Social Security, Turkey
> **Sergey F. Vel'myaikin** First Deputy Minister of Labour and Social Protection, Russian Federation
> **Radoslaw Mleczko** Undersecretary of State, Ministry of Labour and Social Policies, Poland

3.45 > 5.00 pm

PANEL 1

Austerity measures in a period of crisis: the impact on social rights, the participation of citizens and the contribution of the European Social Charter to the crisis exit phase

Moderator: **Francesco Manacorda** Deputy-Director of the daily newspaper "La Stampa"

> **Cleopatra Doumbia-Henry** Director of the Department of Labour Standards of the International Labour Organisation (ILO)
> **Ioannis Dragasakis** Chairperson of the Sub-Committee on the European Social Charter of the Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly of the Council of Europe
> **Sylvie Goulard** Member of the European Parliament, President of the Intergroup on "Extreme Poverty and Human Rights"
> **Jean-Marie Heydt** President of the Conference of INGOs of the Council of Europe
> **Renate Hornung-Draus** Vice-President for Europe of the International Organisation of Employers
> **Bernadette Ségol** Secretary General of the European Trade Union Confederation

5.00 > 5.20 pm *coffee break*

5.20 > 6.15 pm

PANEL 2

The contribution of the collective complaints procedure to the respect of social rights in Europe

Moderator: **Giuseppe Zaffuto** Spokesperson, Directorate of Communication, Council of Europe

> **Jean-François Akandji-Kombé** General Coordinator of the Academic Network on the European Social Charter and Social Rights, Professor at the Sorbonne Law School, Paris
> **Colm O'Cinneide** General Rapporteur of the European Committee of Social Rights, Council of Europe
> **Urfan Khaliq** Professor of Public International and European Laws, Cardiff Law School, Cardiff University
> **Guido Raimondi** Vice-President of the European Court of Human Rights, Council of Europe

8.30 pm >

Dinner offered by the Municipality of Turin, reserved to Heads of ministerial delegations and representatives of the participating institutions

(at the invitation of the Mayor)

Family photo at 8.20 pm in front of the restaurant

Saturday 18 October 2014 9.00 am > 1.30 pm

9.00 > 9.30 am

Opening speech by

> **Anne Brasseur** President of the Parliamentary Assembly of the Council of Europe

Theme II
THE IMPLEMENTATION OF SOCIAL RIGHTS IN EUROPE

9.30 > 10.45 am

MINISTERIAL SESSION

> **Michaela Marskova** Minister of Labour and Social Affairs, Czech Republic
> **Nicolas Schmit** Minister of Labour, Employment and Social Economy, Luxembourg
> **Michael Farrugia** Minister for the Family and Social Solidarity, Malta
> **Petya Evtimova** Deputy Minister of Labour and Social Policy, Bulgaria
> **Tatjana Dalić** Assistant Minister, Ministry of Labour and Pension System, Croatia
> **Nenad Iavnisevic** State Secretary, Ministry of Labour, Employment, Veterans and Social Affairs, Serbia
> **Dejan Levanic** State Secretary, Ministry of Labour, Family, Social Affairs and Equal opportunities, Slovenia

10.45 am > 11.45 pm

PANEL 3
Synergies between the law of the European Union and the European Social Charter

Moderator: **Giovanni Guiglia** Coordinator of Italian Section of the Academic Network on the European Social Charter and Social Rights, Professor of Public Law, Department of Legal Sciences, University of Verona

> **Olivier De Schutter** Member of the Committee on Economic, Social and Cultural Rights of the United Nations (2015-2018), Professor at the University of Leuven and at the College of Europe
> **Luca Jahier** President of Group III of the European Economic and Social Committee, European Union
> **Paolo Mengozzi** Advocate General of the Court of Justice of the European Union
> **Giuseppe Palmisano** Member of the European Committee of Social Rights, Council of Europe
> **Armindo Silva** Director for Employment and Social Legislation, Social Dialogue - Directorate General for Employment, Social Affairs and Inclusion, European Commission
> **Gabriel N. Toggenburg** Senior Legal Advisor of the Director of the Fundamental Rights Agency of the European Union

11.45 > 12.15 pm *coffee break*

12.15 > 12.30 pm

> **Statement of Laura Boldrini** Speaker of Chamber of Deputies, Italian Parliament

12.30 > 12.50 pm

GENERAL REPORT

> **Michele Nicoletti** Vice-President of the Parliamentary Assembly of the Council of Europe
General Rapporteur of the Conference

12.50 > 1.30 pm

CLOSING SESSION

> **Giuliano Poletti** Minister of Labour and Social Policies of Italy
> **Gabriella Battaini-Dragoni** Deputy Secretary General of the Council of Europe
> **Piero Fassino** Mayor of Turin

1.30 pm >

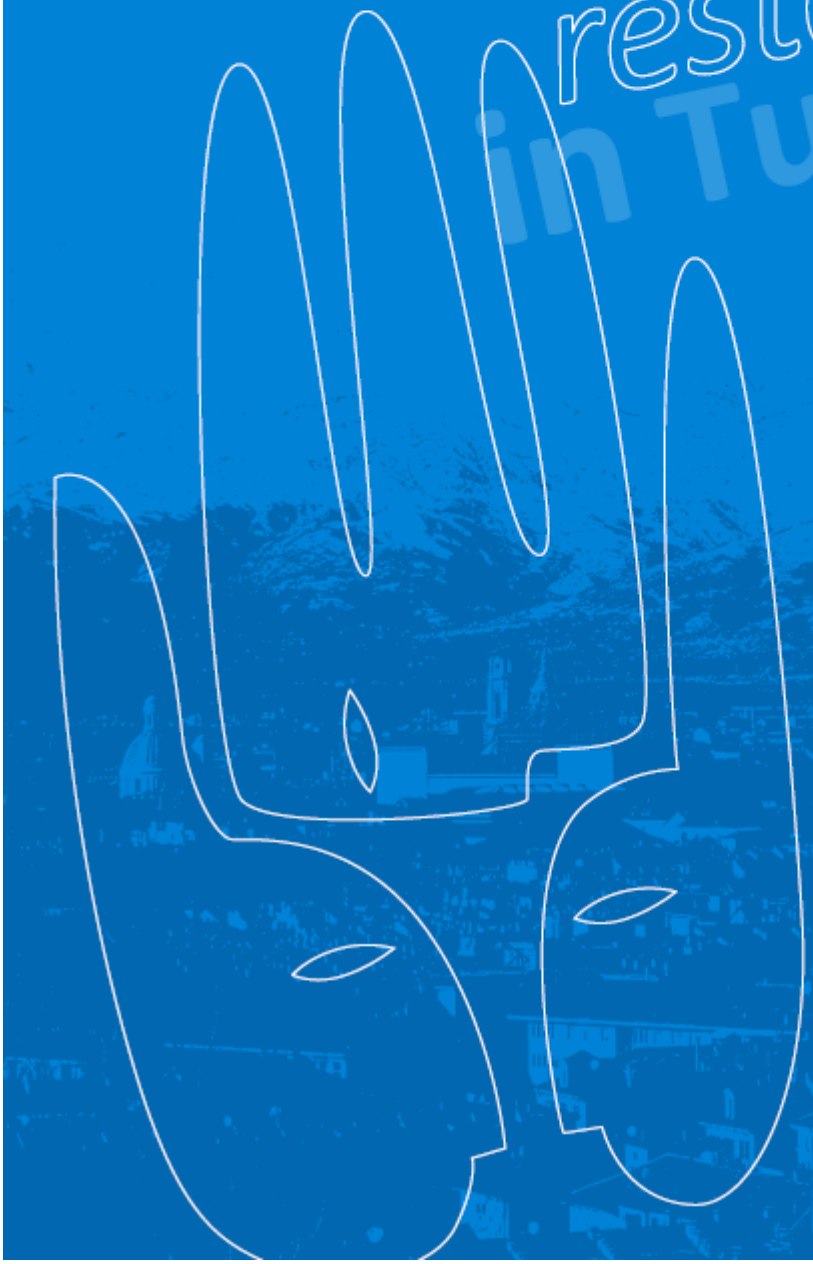
PRESS CONFERENCE

Meetings related to the European Social Charter

held in conjunction with the High-Level Conference on the European Social Charter

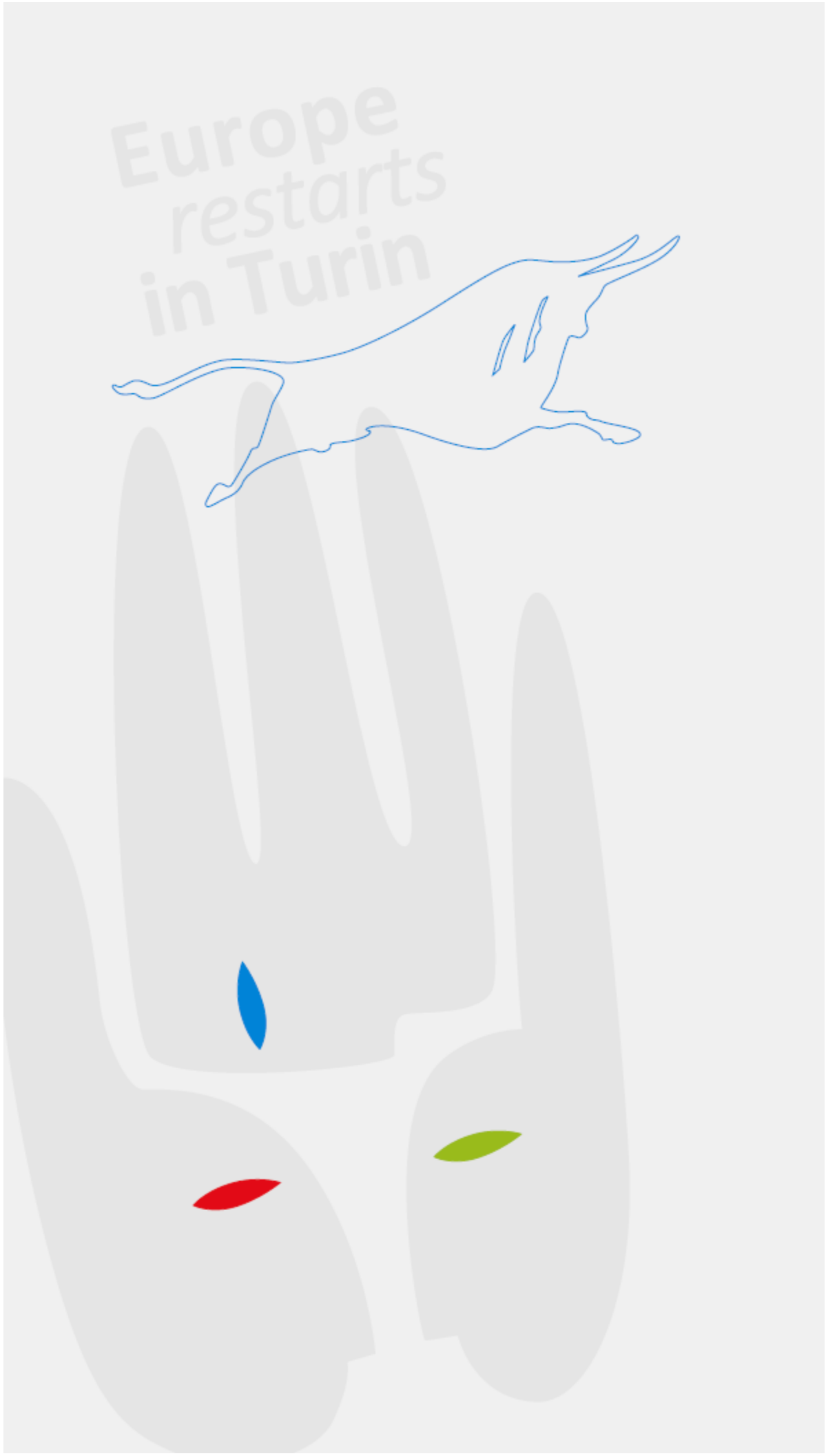
- **274th Session of the European Committee of Social Rights**
  13-16 October 2014 - Curia maxima, via Corte d'Appello, 16, Turin
- **130th meeting of the Governmental Committee of the European Social Charter and the European Code of Social Security**
  13-17 October 2014 - ILO training Centre
  viale Maestri del Lavoro, 10 - Turin
- **Meeting of the INGOs Conference of the Council of Europe** organised on the occasion of the International Day for the eradication of poverty
  17 October 2014 - Palazzo Civico, Piazza Palazzo di Città, Turin
- **General Assembly of the Academic Network on the European Social Charter and Social Rights** (ANESC)
  16 October 2014 - Università di Torino, Campus Luigi Einaudi, Turin
- **Round table organised by ANESC** on the occasion of the High-level Conference on the European Social Charter
  16 October 2014 - Università di Torino, Campus Luigi Einaudi, Turin
- **Meeting of the Sub-Committee on the European Social Charter of the Parliamentary Assembly of the Council of Europe**
  17 October 2014 - Palazzo Civico, Piazza Palazzo di Città, Turin

Europe restarts> in Turin



17 and 18 October 2014

Conférence à haut niveau sur la Charte sociale Européenne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List of participants / Liste des participants

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Ministry of Social Welfare and Youth Director General

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Andorra / Andorre

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Azerbaijan / Azerbaïdjan

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On behalf of the Chairmanship of Committee of Ministers of the Council of Europe

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"The former Yugoslav Republic of Macedonia " / « L'ex -République yougoslave de Macédoine »

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Cleopatra DOUMBIA-HENRY
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COUNCIL OF EUROPE / CONSEIL DE L'EUROPE

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Ana VUKADINOVIC
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General Rapporteur of the Conference

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Konstantinos TRIANTAFYLLOS (Greece)
Member of the Committee on Social Affairs, Health and Sustainable Development

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Sevda VALJEVCIC (Bosnia and Herzegovinia) Mme Sofia VERGI (Greece)
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European Committee of Social Rights / Comité européen des Droits sociaux

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Birgitta NYSTRÖM Member

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Elena MACHULSKAYA
Member

Giuseppe PALMISANO Member
Panelist

Karin LUKAS Member

Eliane CHEMLA Member

József HAJDÚ Member

Marcin WUJCZYK Member

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INGOs Conference / Conférence des OING

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Piero FASSINO Mayor

Elide TISI Deputy Mayor

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Claudio LUBATTI
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Appendix 1d

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"Europe *restarts* in Turin": High-level conference on the European Social Charter

Strasbourg, 16.10.2014 – A high-level conference on social rights : in the context of the Italian Presidency of the European Union, and with the co-operation of the City of Turin, the Council of Europe is holding an event at the city's *Teatro Regio* on 17 and 18 October focusing on the European Social Charter, an instrument which provides Europe with a true social constitution.

The Charter establishes a system of legal standards which help to reduce economic and social tensions while facilitating sustainable and mutually beneficial development in the States Parties.

The main aim of the conference is to bring together European policy-makers and reaffirm the importance of social rights in times of crisis.

Secretary General Thorbjørn Jagland will open the event together with Giuliano Poletti, Minister of Labour and Social Policies of Italy and Piero Fassino, Mayor of Turin.

Deputy Secretary General Gabriella Battaini-Dragoni will participate in the closing session.

Salim Maslumov (Minister of Labour and Social Protection of Azerbaijan, on behalf of the Chairmanship of the Committee of Ministers), Anne Brasseur (President of the Parliamentary Assembly), Laura Boldrini (President of the Italian Chamber of Deputies), Làszlò Andor (European Commissioner for Employment, Social Affairs and Inclusion) and Antonio Tajani (Vice-President of the European Parliament) will also take part.

Michele Nicoletti (Vice-President of the Parliamentary Assembly) will be the General Rapporteur of the Conference.

The main subjects to be discussed at the three panels will be:

- Austerity measures in a period of crisis: the impact on social rights, the participation of citizens and the contribution of the European Social Charter to the crisis exit phase;
- The contribution of the collective complaints procedure to the respect of social rights in Europe;
- Synergies between the law of the European Union and the European Social Charter.

The conference will be on live streaming. A link will be available on
http://www.coe.int/en/web/portal/high-level-conference-esc-2014

A press conference is scheduled on Saturday 18 October (1.30 pm).

Links for accreditation and to the programme

Background:
The European Social Charter is a Council of Europe treaty signed in Turin on 18 October 1961 which safeguards day-to-day freedoms and fundamental rights: housing, health, education, employment, legal and social protection, freedom of movement for individuals, non-discrimination. The substance of the Charter was supplemented by a revised version of 1996.

The European Committee of Social Rights has two procedures to ensure that States Parties comply with their commitments under the Charter: national reports and collective complaints. A Protocol opened for signature in 1995, which came into force in 1998, allows national and international trade union organisations, employers' organisations and non-governmental organisations to submit to the Committee their complaints about violations of the Charter.

Contact: Giuseppe Zaffuto, Spokesperson/Press officer, Tel. +33 6 86 32 10 24

Text relating to the speech delivered by Minister Giuliano Poletti at the Opening Session of the High-Level Conference on the European Social Charter (Turin, 17-18 October 2014)
(Translation from the original Italian)

Mr Mayor, Mr Secretary General,
Ministers, Ladies and Gentlemen,

We are gathered here today at a symbolic place and time, since it was in this very city that the signature of the European Social Charter took place exactly 53 years ago. I therefore thank the Council of Europe for its determination to hold this conference and Turin, a city which - with its tradition of openness and welcoming -fully reflects the values promoted by the Charter, for hosting it. For my part I wish to say that it is a great honour and an opportunity for Italy to organise this conference during the six months of its EU presidency, since it enables us to reinforce existing synergies between the European Union and the Council of Europe and to underline these institutions' common objectives.

I. This conference is being held at a particularly difficult time for Europe, whose economic and employment prospects are a cause for concern, as can be seen from the most recent data. The crisis has had negative repercussions on the enjoyment of social and family rights, as well as on levels of labour market participation, particularly among young people. This costs a great deal in economic, social and employment terms and brings with it a risk of further marginalisation of the most disadvantaged sectors of society.

Labour market reforms, particularly supply-side reforms through efficient active policies, appear necessary, but will not in themselves suffice to reduce unemployment to acceptable levels. It is therefore also necessary to act on the aggregate demand side. A return to higher employment levels, essential for social cohesion and good living conditions of the population at large, requires a combination of monetary, fiscal, structural and social measures.

Recently, in response to the causes of the crisis, the European Union reinforced its rules on macroeconomic and budgetary surveillance, introduced a financial stability mechanism in the Eurozone and adopted a Banking Union. Similarly, there is now also a need to respond to the consequences of the crisis, first and foremost unemployment and social disadvantage, through appropriate co-ordination of our fiscal and financial policies with policies for inclusive, sustainable growth and social policies.

Budgetary constraints, slack growth and erosion of economic potential call for a common vision which should promote quality investments, whether public or private, while making optimum use of public budgets and implementing appropriate control of risk management measures.

II. Italy itself is strongly occupied with the implementation of a wide-ranging, ambitious general reform programme, which our country has needed for many years and which, as can be seen from the results of the recent European elections, has captured the attention of voters, among whom it commands a consensus.

Labour market reforms are therefore being pursued as part of a broader reform agenda, especially since the rapid adoption of this reform package constituted the Renzi government's raison d'être. Beginning with the reform of the country's institutional foundations, by doing

away with "paritary" bicameralism, which slows down the legislative process to such a great extent; moving on to the reform of electoral law, to ensure governability; and then the revision of the distribution of powers and responsibilities between central government and the regions, with the abolition of the provinces.

Then there are the tax system reforms, aiming to reduce the tax burden on employment income, beginning with the lowest earners, and on businesses. The institutional reforms must go hand in hand with a reform of public administration, since they require a streamlined, more efficient administrative approach that is more open to dialogue and to a public service ethos. The civil justice system is also being reformed, because its malfunctioning discourages both national and international investments in Italy.

There is a strong awareness that these reforms are essential to restore our country's competitiveness, reinforce social cohesion and mobility and enhance citizens' faith in public institutions and politics.

III. The Council of Europe has an important role to play in the above context, because the economic crisis that has shaken the member States has revealed the national systems' weakness in safeguarding the rights the organisation has stood for since its very foundation, at a time when the European Union as we know it today, that is to say a bearer of not solely economic values, did not yet exist. It is not by chance that no country has joined the European Union without first acceding to the Council of Europe, whose task of upholding democracy, human rights and the rule of law has never become outdated. The proof of this lies in the 200 treaties – conventions, charters and agreements – concluded so far, first and foremost of which the European Convention on Human Rights, of which the Social Charter that we are celebrating today is a corollary, translating the Convention into the everyday lives of millions of European citizens.

The rights to housing, health, education, work and freedom of movement directly concern individuals and families, young people and the elderly, children and people with disabilities. Protection of these rights constitutes the essence of the European concept of the social welfare state, which in recent years has been under considerable strain. In the past it may have seemed all but inevitable that the rights recognised in the Charter should make gradual progress thanks to our countries' economic and social performances, but the crisis has called this progression into question. The constant obligation to comply with the Charter, and to apply its provisions, has in any case forced the member States to consider the state of implementation of their own welfare systems, to confront the analyses inherent in the policy choices made necessary by the conjuncture, and to not lose sight of fundamental rights.

The Charter has led to a completely original mechanism for monitoring its implementation by the member States, based on periodical reporting and on the work done by the independent experts of the European Committee of Social Rights, whose assessments result in binding adaptation requirements for the member States, often necessitating legislative and administrative measures that are fairly broad in scope. Tangible examples in our country are the adoption of a National Strategy for the Roma or of the National Disability Plan, transposing the debate on these themes that has developed within the Charter's supervisory system.

An even more direct form of supervision is available to all citizens of States that have acceded to the additional protocol providing for a system of collective complaints. This protocol permits NGOs and employer and employee organisations to lodge genuine complaints with the Committee concerning alleged breaches of the Charter. Over the years an

ever-growing impact on the national legislation of the countries having ratified the protocol has been noted. Its more widespread acceptance therefore could but bring the Charter even closer to its direct beneficiaries, the citizens.

The development of the European Union has led to greater contiguity in the two organisations' fields of action. Over time the references to the Social Charter contained in Community law, including primary law, have become more frequent, testifying to a common desire to place respect for human rights at the heart of the action of the member States and of the organisations to which they belong. The core treaties of the European Union contain specific references to the Social Charter, especially with regard to the promotion of employment, the improvement of working conditions, enhanced social protection, the safeguarding of industrial relations and the development of human resources. The EU Charter of Fundamental Rights replicates many of the provisions of the Charter, albeit not entirely.

There is, however, no shortage of instances where the legal systems of the EU and the Council of Europe overlap, to the point where a number of decisions taken by the European Committee of Social Rights have resulted in certain legislative amendments at national level that have been considered to violate Community law, and have therefore led the EU Court of Justice to find against the States concerned. There have also been cases in which States were sanctioned by the Committee in respect of legal standards adopted in accordance with Community law, which is not regarded as a sufficient ground for failing to comply with the Charter.

A face-to-face discussion between the two organisations is therefore welcome, in pursuit of the common objective of ensuring the full application of rights which, albeit social or economic in nature, are above all human rights and regarded as fundamental by both organisations, although their approaches differ. I am certain that our proceedings today will make a significant contribution to addressing and resolving the current impasse, with beneficial consequences not only for the administrations of the member States and of the organisations concerned, but first and foremost for the citizens who constitute the ultimate target of their policies.

Thank you for your attention. I wish you all a very successful conference.

Thorbjørn Jagland, Secretary General of the Council of Europe

TURIN (ITALY), 17/10/2014,

[Check against delivery]

Minister Poletti,
Mayor Fassino,
Dear Ministers,
Distinguished Guests,

It is a great pleasure and an honour to open this High-Level Conference on the European Social Charter.

Let me express my deep gratitude to Minister Poletti, Mayor Fassino and the Italian authorities for making this event possible.

This Conference is a very timely one.

Europe is facing an unprecedented crisis with heavy economic and social consequences.

Unemployment is on the rise. According to a recent OECD report, there are 45 million unemployed people in the OECD countries, which is 12 million more than before the financial crisis.

Young people are among the worst affected.

Poverty and inequality are on the rise in all European countries.

More people are poor, and those who are already poor are becoming even poorer. The gap between the extremes in income and wealth is increasing at an alarming pace.

At the same time, some austerity measures, designed to stimulate recovery, may weaken the protection of social rights, which, in turn, may affect social cohesion and threaten the European social model based on solidarity.

Public expenditure cuts, reduced labour protection and pension reforms are having a negative impact, especially on vulnerable groups such as children, the unemployed, the elderly and the disabled.

In 2012, the European Committee of Social Rights, the supervisory body of the European Social Charter, found in two cases concerning Greece that some austerity measures were contrary to the Charter.

One case related to dramatic cuts in pension benefits, set to significantly deteriorate the living conditions of the pensioners; the other case concerned the minimum salary

for workers under the age of 25 – meaning that these young people fell below the poverty line.

This situation is not inevitable.

Government leaders should start considering social and economic rights as an integral part of recovery plans.

In this context, I believe it is high time to give a new impulse to the European Social Charter, here in Turin, more than 50 years after its signature in October 1961.

Together with the European Convention on Human Rights, the Charter embodies the best of the European democratic and social model.

It contains the minimum essential levels of rights necessary for ensuring human dignity: the right to quality education, to health care, to housing, to a fair remuneration, to social security, to social assistance.

The Charter is a safety net that governments should have in mind when modernizing or reforming their labour legislation or their pension systems.

We have a duty to re-launch the Charter as a pillar of the Council of Europe convention system alongside the European Convention on Human Rights.

Doing so will help re-affirm the indivisibility, the interdependence and complementarity of human rights.

It will help to strengthen democratic security in Europe. Ladies and Gentlemen,
Distinguished Guests,

In my report on the State of Democracy, Human Rights and the Rule of Law, as well as in my agenda for my second term of office, I have outlined some crucial imperatives as regards the European Social Charter.

First, all member States should ratify the Revised Charter and accept the collective complaints procedure.

By accepting the complaints procedure, states help to ensure that our social partners and civil society play a bigger role in enforcing social rights and strengthening democratic accountability.

This procedure has produced results.

It has facilitated access to education for children and young adults with disabilities. It has contributed to a reduction in child labour.

It has strengthened the right of elderly persons to social protection.

With more ratifications, this procedure could be used to achieve even more.

Second, follow-up must be given to the decisions and conclusions of the European Committee of Social Rights by State Parties.

Fundamental social rights cannot exist on paper alone. They must exist in practice, in the everyday lives of citizens.
Member states enjoy a good degree of freedom in the follow-up to be given. The measures taken, however, must be in compliance with the Charter.

Third, we need strong synergies between the Charter and European Union law to avoid any legal conflict.

Let me recall a case against Sweden. The European Committee of Social Rights considered recently that restricting the right of trade unions to take action to regulate employment conditions of posted workers, based on a 1996 European Union directive, was contrary to the Charter.

Since then, the European Council took an important step forward and adopted an Enforcement Directive on Posting of Workers last May. This new Directive is meant to safeguard respect for posted workers' rights in practice.

It is in this context that I wish to explore the possibilities of accession by the European Union to the Charter as is presently foreseen in respect of the European Convention on Human Rights.

Finally, co-operation activities around the Charter need to be enhanced, including through national action plans and targeted training activities.

Now, more than ever, the European Social Charter is a benchmark. It is a measuring stick of our attachment to social rights.
Together, we must make it relevant to the lives and aspirations of citizens across Europe.

Ladies and Gentlemen,

Let me conclude by saying that this conference is a very important milestone, but it is merely the beginning of a long process, a process that could appropriately be called the "Turin Process".

The success of this conference will be defined by the quality of its follow-up.

There is still a long way to go before social rights achieve the same recognition as civil and political rights.

And yet civil and political rights can never be enjoyed fully as long as social rights are withheld.

It is therefore high time that states redouble their efforts to protect and implement the rights set out in the Charter.

Protection and implementation of social rights is not only a policy choice. It is a moral obligation.

Thank you.

Piero Fassino, Mayor of Turin – Opening address 17/10/2014
(Translation of the transcription of the recording of the speech made during the Conference)
(Translation from the original Italian)

Hello everyone and welcome to Turin. I am particularly honoured to welcome you, because I was also a member of my country's delegation to the Council of Europe for over nine years. I worked with Thorbjørn Jagland for a long time and we developed a friendship which I particularly appreciate.

Thank you for having chosen Turin to hold this important conference, a conference intended to promote debate and a re-launching process – as the slogan says, "Europe restarts in Turin" - giving a fresh impetus to the full implementation of the European Social Charter.

The European Social Charter was signed on 18 October 1961 in the very building which stands in front of us, the Palazzo Madama. As a reminder, there is a bronze plaque over there, which was brought here from Strasbourg, and every year - not just this year on the occasion of your presence - every year our city commemorates this important event not only for the life of Turin but also for the life of Europe.

There are other reasons why this location is a good choice. The first is obviously that the Social Charter was born here and it is therefore only right to come back here – to the city where it first saw the light of day –to discuss how to foster its full implementation.

A second reason is that Turin has for many years been a major industrial city, devoted to manufacturing and production. A city that symbolises work, particularly that form of Fordist industrial employment which throughout the 20th century characterised the economic development of Italy and of all the countries of Europe. A city with a highly industrial, technological and manufacturing profile. A city with a strong social presence, linked to the world of industry. A city with strong traditions of social organisation and trade unionism. A city whose identity has been marked by the labour movement and employment rights.

Then there is a third reason why our presence here today is very appropriate. This is because the city, which for a century was a manufacturing hub, the main driving force of Italian industry, a genuine "factory town", has in the last fifteen years undergone a huge transformation, showing visible signs of becoming a very different, very new city, which is far more open.

Turin continues to be a major industrial city, but at the same time it has seen a broadening of its identity and an opening of its profile to new roles, with an ever-growing focus on becoming a centre of excellence in research, innovation and technology.

It is a big university city, with two high quality universities and one hundred thousand students, of whom thirteen thousand come from abroad. It is a major cultural capital.

This building is one of the city's main cultural institutions. The city has invested in culture and is continuing to do so, making culture not just an adjunct to economic development, but an integral part of it.

And for this reason Turin has even become a tourist city today, something which it clearly was not in the past.

I mention these developments not merely in order to tell our many friends, from many different European countries, what this city represents today, but also because Turin offers a good example of how cities' identities are evolving as the European and global economic dynamic changes.

For a long time, this city had a single role. Today, its roles are plural, because cities with a single role emerged and developed within the economy of protected markets. In the age of globalisation, that of open markets, the city's development dynamics must no longer be founded on a single role, but on many.

Turin is indeed a good model of a city that is broadening its identity, rethinking its own development, through a convergence between its historical industrial profile and everything that revolves around the knowledge economy, research, academia and culture.

I have mentioned this transformation, since the implementation of rights, the manner in which rights are applied, experienced and recognised, is not separate and divorced from the development dynamic and the ways in which development takes shape.

For a long time we were used to conceiving the everyday implementation of social rights in terms of a productive employment and social model of an industrial type, that of Fordism. Today, we have to bring these same rights alive within a changed society, one with a new profile, with plural roles and multiple approaches to labour market organisation, relations between production and consumption and the organisation of economic activity.

This issue arises not only here, but also in many other parts of the world. Accordingly, today we are not solely called upon to recognise that the rights enshrined in the Social Charter are a matter of justice – that is self-evident, otherwise we would not be here. We have to ask ourselves how, in the globalisation age, the era of open markets and plural economies, the rights laid down in the Social Charter can be enforced with the same intensity and strength as we were capable of achieving in a different era and another economic phase.

It is therefore of particular interest to hold this debate here, because this city is in point of fact an archetype of change, of a transformation of identity and of the development model, of a way of being, which requires a reflection on how the fundamental rights that accompanied Europe's development over the last fifty years can be enforced today. This is all the more relevant since, as we know, the economic difficulties and the economic and social crisis in Europe in recent years have resulted in greater uncertainty, insecurity and precariousness for many individuals and families. We are well aware that the labour market has moved towards increasingly

flexible forms of work. However, while flexibility is naturally an organisational solution not just for manufacturing but also for modern-day society, it is equally true that were are duty-bound to seek ways of ensuring that flexibility does not translate into economic insecurity.
As a consequence, the question of how social rights, the rights of the European Social Charter, can be kept alive today is particularly topical, and it is a question linked to Europe's exit strategy from the crisis and to the efforts to build a social model capable of combining rights and flexibility.

That is the meaning of our presence here. As Mr Poletti already pointed out – and I thank him for joining us, of course along with all the other ministers participating in the ministerial session – this conference is being held within the context of Italy's six-month presidency of the European Union. For the city of Turin, these six months are very intense, with many events, of which this conference is one of the main. At the beginning of September, in this very room, we hosted a meeting of the Bureau of the EU's Committee of the Regions. A few weeks ago the 28 culture ministers of the EU member States came together here in Turin. Next week we will be celebrating another important anniversary, the 50th anniversary of the foundation, here in Turin, of the Training Centre of the International Labour Organization, which will be another opportunity to discuss social and employment rights. Immediately after that we will be celebrating the 20th anniversary of the European Training Foundation, in the presence of ministers from the EU and the Mediterranean States, which will be another forum for debate on the themes that concern us here today. Other events will take place up to 31 December, making Italy's six-month EU presidency a key opportunity for our city to open up internationally and for reflection on the many challenges facing our continent.

I wish to thank all of you for your presence here. I hope that you will be able not only to participate in the discussions today and tomorrow, but also to seize the many cultural opportunities that our city offers and will therefore enjoy your stay in Turin also in terms of leisure. I also hope that you will fall a little in love with this city, that you will return here often and that each time you will receive a warm and friendly welcome. Thank you.

High-level Conference on the European Social Charter
Turin, 17-18 October 2014

Speaking notes for Mr. Salim Muslumov, Minister of Labour and Social Protection of Population of the Republic of Azerbaijan, on behalf of the Azerbaijani Chairmanship of the Committee of Ministers of the Council of Europe

Minister Poletti,

Mr. Secretary General,

Mr. Fassino,

Ministers,

Commissioner,

Ladies and gentlemen,

It is with great pleasure that I am here in Turin today. On behalf of the Azerbaijani Chairmanship of the Committee of Ministers of the Council of Europe, I want to thank the Italian authorities, and our host Mr. Fassino, the Mayor of Turin, for organizing this Conference. We feel particularly privileged that this event is taking place in Turin, a city of grace and rich cultural heritage, and of course the historic home of the revised European Social Charter.

As rightly mentioned in the program of the Conference, the Charter "*must be at the forefront so that Europe can once again count on the full support of citizens and the commitment of states based on the values of democracy, the rule of law and respect for human rights*".

The issues of social protection and social cohesion have been on top of the Chairmanship Agenda of Azerbaijan. Last September, we hosted the Council of Europe Conference on the Social Cohesion Strategy and Action Plan. The event proved to be very useful for tackling important themes such as social cohesion and European social model in times of economic crisis, diversity in European societies, current and future challenges for more inclusive societies. We believe in the importance of a continued dialogue on these issues. Therefore, I would like to reiterate our Government's readiness to host the next Council of Europe Conference of Ministers responsible for Social Cohesion in Baku.

Over the last few years, , many member States of the Council of Europe have experienced – and unfortunately many continue to experience – the most serious economic recession since the Second World War. The austerity measures, which have often followed have had a negative impact on the level of social protection in many States.

Such austerity measures were undoubtedly economic imperatives. But we also need to look beyond the demands of this crisis situation and consider how to maintain the welfare of our societies. We should all be aware that the long-term costs of a failure to adequately protect social rights would be very high for millions of Europeans and, accordingly, for the cohesion and democratic foundations of our countries.

Ladies and gentlemen,

Violence and fragility remain the largest obstacles to ensuring social rights. Peoples throughout the world continue to suffer from devastating wars, and ethnic cleansing. Millions of people have become refugees or have been internally displaced, which makes social cohesion in many parts of the world a significant challenge, including in my country.

In the broader context, we need to embark on a more comprehensive approach by considering the respect for all human rights, including social rights, as mutually reinforcing prerequisites for ensuring human dignity, prosperity and security. Therefore, we must attach the same degree of importance to social rights as we do with regard to civil and political rights.

We should recall two fundamental principles, which underlie all human rights – civil, political, social, economic and cultural – human dignity and equal opportunities for all. This is an important element. As it is often in the social sphere where the biggest challenges to these principles lie. Let us think of potentially vulnerable persons such as the elderly, children, persons with disabilities, refugees, internally displaced people and migrants,– whose human dignity or rights can easily be violated through neglect, inadequate care or external factors. Let us think too of those in situations of poverty, of long-term unemployment – and the despair that this can bring. For people in such situations, having access to social rights can be a lifeline.

Ladies and gentlemen,

The Committee of Ministers of the Council of Europe has a particular interest in these issues, not least because it has appropriate authority to intervene in the Charter's reporting and collective complaints systems, issuing targeted recommendations to the State parties concerned.

I would also recall the Declaration, which the Committee of Ministers adopted in 2011 on the occasion of the 50th anniversary of the Charter, which in particular underlines the relevance of social rights and their guarantee in times of economic difficulties, especially for individuals belonging to vulnerable groups.

With regard to acceptance of the Charter by member States, the Azerbaijani Chairmanship of the Committee of Ministers has made efforts to facilitate the ratification of the Revised European Social Charter as called for by the declaration of the Committee of Ministers of 2011. This Conference represents yet an occasion for States to reaffirm their commitment to the Charter.

During our Chairmanship, we have given special attention to the issue of enhancing the partnership of the Council of Europe with the relevant international and regional organisations, including with the EU. In that regard, I would like to express my appreciation to the Italian Presidency of the Council of the European Union for hosting this conference.

Finally, I should like to welcome the fact that during this week, several other side-events relating to the Charter are taking place here in Turin. This is a good example of follow-up to the encouragement addressed to member States in the Committee of Ministers' Declaration of 2011, to increase their effort to raise awareness on the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.

Taking this opportunity, I would also like to reaffirm my Government's commitment to the European Social Charter. The last 10 years, since we joined the Social Charter, have indeed been remarkable for the socio-economic development of Azerbaijan. Our GDP increased by 3.4 times,

investment into the economy amounted to 132 billion USD, more than 1 million 300 thousand new jobs were created, the unemployment rate dropped to 5 percent, poverty rate to 5.3 percent, population revenues increased by 6.5 times.

Along with active poverty reduction and job-creation efforts, our Government puts special emphasis on strengthening the protection of the more vulnerable in our country.. Currently, more than 1 million 273 thousand people are provided with retirement pensions, while 491 thousand people receive social assistance, and 321 thousand people receive social benefits. In general, the social security system supported 22% of the country's population.

Ladies and gentlemen,

This concludes my opening remarks. I look forward to very fruitful discussions. Thank you for your attention.

EUROPEAN COMMISSION

[CHECK AGAINST DELIVERY]

László Andor
Commissioner for Employment, Social Affairs and Inclusion

Towards a new 'social contract' in Europe

High-level Conference on the European Social Charter
Turin, 17 October 2014

Excellencies,

Secretary General of the Council of Europe Mr Mayor,

Ladies and gentlemen,

The Council of Europe and the European Union are longstanding partners. Our two organisations are based on *shared* values and stand for *the same* principles.

We share a determination to promote and safeguard democracy, the rule of law, human rights and fundamental freedoms and we support each other in that endeavour. All of the EU Member States are members of the Council of Europe.

The European Union has high regard for the Council of Europe's unique role in standard- setting. We work closely together in many ways, and hold a continuous dialogue in the area of social and economic rights.

This two-day conference on the European Social Charter here in Turin, where the Charter was signed 53 years ago, comes at the right time as we reach a turning point in the crisis.

Social rights are inseparable from the concept of advance democracy in Europe. A well- functioning democracy requires a set of social rights as a bond between the State and its citizens. The French would speak of a *'contrat social'.* The last 200 years saw the concept of 'social contract' taking roots everywhere in Europe.

All EU Member States have signed the European Social Charter and are parties to the European Convention of Human Rights.

The preamble to the Treaty on European Union states that the Member States confirm "their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers".

And Article 151 of the Treaty on the Functioning of the European Union refers explicitly to the European Social Charter, alongside the Charter of

Fundamental Rights of the European Union.

But transforming those rights into reality is a big challenge for all of us, especially since the crisis started.

Let's take the right to work, which is a critical question, especially in times of high unemployment.

Unemployment reached its peak last year when it stood at 11% in the EU and at 12% in the Euro area. Unemployment in the Euro area fell to 11.5% by June this year, thanks to an incipient economic recovery which started in spring last year and which still remains fragile and uneven.

Compared with 2008, there are around 9 million more people unemployed across the European Union, and joblessness among young people and the long-term unemployed is a cause of great concern.

Since late last year, real household income is picking up again, but the recovery falls short of addressing the social challenges that have built up since the crisis broke out. The social damage done by the crisis will take years to mend.

Then there is another important right — the right to protection against poverty and social exclusion.

In 2010, the European Union adopted the Europe 2020 Strategy and set a headline target to reduce the number of those living in poverty and social exclusion by at least 20 million by 2020.

The relevance of this objective is highlighted by the fact that the number of people in the EU at risk of poverty or social exclusion has risen by close to 7.8 million in the last 5 years. That means that the poor and the socially excluded in the EU now stand at 124 million — nearly a quarter of the EU population! The protracted economic crisis has also brought with it more inequalities, especially in the Euro zone periphery.

That runs counter to our efforts to promote the well-being of all people in the EU and it poses a threat to society and the economy — since poverty and social exclusion undermine social cohesion, hamper growth, and weaken economic competitiveness.

Those effects are not felt evenly across the Union.

The gap is widening between the Member States in terms of their social situation and of social outcomes. While the growing divergence is worrying, it also shows that some Member States have more effective social policy strategies than others, and that we can learn from them.

Poverty is a complex and multi-faceted phenomenon. It has many drivers. Some are structural, while others have been exacerbated by the crisis and the remedies applied to the economy.

These challenges are not just for policy-makers at national level.

While employment and social policies are largely the Member States' responsibility, the European Union has put in place a long-term strategy to achieve smart, sustainable and inclusive growth backed up by strong governance

mechanisms. The European Union also supports the Member States in their efforts by developing common standards and benchmarks. And of course we provide financial support to boost investment in the Member States.

In some areas, the EU sets the rules — for instance on the way the internal market functions, including worker mobility and working conditions, including health and safety at work.

But we realise that targeted assistance cannot replace a supportive macroeconomic policy mix. A policy mix that needs to blend investments in human capital, structural reforms and safety nets and that can protect people from economic shocks.

The great divergence in the Member States' economic, employment and social situations
— especially in the euro area — and in their prospects for recovery is the biggest challenge facing us.

A large consensus has emerged that collective action is needed to tackle employment and social challenges in a timely and effective manner if we are to address and prevent enduring disparities and avert the risks they hold for social and institutional stability.

This is why the Commission adopted a scoreboard of key employment and social indicators able to detect worrisome social trends, so that we can calibrate the policy response.

Giving the Economic and Monetary Union a stronger social dimension has been one of my main concerns as Commissioner and I welcome the fact that Commission President- designate Juncker and the Italian Presidency want to take this up and incorporate the social dimension into the further development of the monetary union.

That will bolster our endeavour to improve coherence in macroeconomic, employment and social policies, which I understand is among the key messages of this Conference.

Let me be crystal-clear: no monetary union can be sustainable or legitimate without upward convergence of social standards — convergence that must draw inspiration from the founding texts, among which the European Social Charter has a central place.

Only through a continued reform of the EMU and by strengthening it with new instruments that facilitate balanced growth, ensure well functioning social dialogue and safeguard our welfare systems in all Member States, can we move towards a new 'Social Contract' in Europe.

Ladies and gentlemen,

I said that the recovery cannot come at the expense of fundamental rights, including those protected under the European Social Charter and the Charter of Fundamental Rights of the European Union.

And there can be no sustainable recovery without quality job creation.

We know that the crisis has increased the long-term trend towards wage polarisation and labour-market segmentation in many countries.

Greater job insecurity, more acceptance of part-time and temporary work by necessity, not by choice, have increased stress in many places.

Within the European Union, across Europe and outside Europe too, we must resist the temptation to engage in a race to undercut each other in labour standards.

We need to improve working conditions in Europe and across the world and promote our shared values in order to prevent social dumping on today's global marketplace as we seek to come out of the crisis.

That is why I proposed a Strategic Framework on Health and Safety at Work for the period up to 2020, a European Platform to prevent and deter undeclared work and specific action to boost quality employment for young people through Youth Guarantee schemes, a Quality Framework for Traineeships, and the European Alliance for Apprenticeships.

All these initiatives stretch beyond the borders of the EU.

Under our enlargement and neighbourhood policy, the European Union promotes job quality and better working conditions and calls on the authorities to engage in social dialogue with their social partners and with civil society.

The EU promotes respect for labour standards in our external relations and is active in such global forums as the G20, which can help foster strong, sustainable, balanced growth with an eye in particular to quality job creation and social cohesion. The recent G20 meeting of Employment Ministers in Melbourne confirmed our common endeavour to boost employment and improve working conditions.

Ladies and gentlemen,

This conference will surely highlight other aspects of the European Social Charter's role in asserting social rights as we exit the crisis, and my Commission colleagues will no doubt round out what I have said.

I want to thank the Council of Europe, the Italian Presidency and the City of Turin for organising this event.

As the European Committee of Social Rights suggests in the working document on EU law and the European Social Charter submitted to this Conference, the Commission is ready to engage in a continuing dialogue in this area.

We share a determination to make the world a better place to work and live in. This conference is a good opportunity to make progress towards that goal.

Thank you.

Statement by Antonio Tajani, First Vice-President of the European Parliament
(Translation of the transcription of the recording of the speech made during the Conference)
(Translation from the original Italian)

Mr Minister, Mr Commissioner, Dear Mr László, Mr Mayor, Mr Secretary General, dear friends of the Council of Europe,

The crisis Europe has undergone, which is not yet at an end, has led many citizens to adopt a critical or negative stance towards the EU institutions, and also European organisations such as the Council of Europe. But when people speak out against these institutions and question their usefulness they forget what has been achieved in recent decades thanks to their existence and thanks to Europe as a whole, in the broadest sense, not just confined to the European Union.

If there is a charter of rights, a European Social Charter, that is because Europe has made human values the central focus of all of its political activity. This is very clear on reading the Social Charter, and it can also clearly be seen from the fact that EU economic policy is, or should be, guided by the aim of achieving a social market economy, an economy in which the market is merely a highly important and useful means of conducting social policies. We must not forget how many rights European citizens and workers enjoy today, despite the problems, as compared with other people around the world. I consider this a major achievement. However, we should certainly not rest on our laurels, because Europe is in dire straits. It is as if we found ourselves in the middle of the Po river in a time of drought and were at risk of being swept away when the water resumed its full flow. That is why we must move forward and implement the tools we have put in place. We must not overlook the results attained, while ensuring that these achievements germinate and produce other positive results. One of the major themes at present, and it is included on the agenda for these two days of proceedings, is certainly the relationship between the European Social Charter and EU law.

The European Social Charter has been incorporated not just formally and legally in EU law, but also in its spirit, and last February the European Parliament adopted a resolution inviting the member States to transpose all the treaties deriving from the Social Charter, covering all aspects of the protection of human rights. This was therefore a strong message from the European Union's sole elected assembly, aimed at making the Social Charter a key feature of our political activity and our everyday lives not just in legal terms, but also in substance. Mention can be made, for example, of the right to equal pay for women and men, something which, alas, has not yet been achieved in Europe. Even in the liberal professions women are often not paid as much as men. This difference in treatment is certainly not a matter of principle. I would remind you that I was one of the signatories, with Viviane Reding, of the European Commission's proposal aimed at having more female board members, an idea which encountered much resistance. One does not have to consider women a protected species but, if we want to achieve genuine gender equality, there is certainly sometimes a need to take action to guarantee certain rights.

The European Parliament resolution also raises another issue, which is the need for the member States to launch a discussion as to how the Social Charter could be used more effectively, how to incorporate it more and more into law, and this opens up a major debate. At this juncture I cannot refrain from making two very brief points that in fact concern the debate on European law-making activity. Europe is capable of making itself heard, if that is what it wants, to defend the rights of workers. For example when a big multinational operating in Europe, despite already making profit, decides to relocate elsewhere in order to increase its earnings. This is what happened with Tenneco, a US multinational which wished to close a factory in Gijón, Asturias. In the end we succeeded in persuading the company that its plans were wrong and that it could continue to make a tidy profit without moving its activity elsewhere. Thanks to European policy, that is without legislating, we have now put the smiles back on the faces of hundreds of Asturian families, who have recently been celebrating the announcement that the Gijón site will not close. That was an instance of Europe embodying the spirit of the European Social Charter. Yet, there is also something not right. Thinking of our competition policy – and I am convinced that fair competition is a good thing - if we truly wish to abide by the European Social Charter, if we truly wish to defend the founding values of the European Union, the social market economy, in view of the changed geopolitical context we have to make sure that jobs are not being subjected to outdated competition rules.

Nowadays competition is global, and we therefore need to ensure that our countries, and our undertakings, are competitive not just in our domestic markets but internationally. Our competitors are China, India, the United States and Latin America. I say this because I have in mind an Italian city that has suffered. While the city of Gijón can celebrate the rescue of its production plant, in the city of Terni part of the manufacturing activity is being shut down, leaving hundreds of families without a livelihood, because obsolete competition rules dating from the 1950s required a steel company to reduce its output. A general strike is today under way in Terni.

So this is not a matter of principle, but rather a question of whether EU competition law, as currently applied, is consistent or inconsistent with these values, the values of the social market economy. I personally think it is not. I think it must be changed. This is not the fault of our colleague, Joaquín Almunia, who is just applying the rules. However, when we end up closing shipyards in the Basque Country because competition law imposes certain choices, we must indeed stand up for the principle, but if we wish to defend our values we should perhaps do something to change the law, because the global situation has changed. Our law descends from Roman law, which therefore means that it is inspired by values. The law dictates our behaviour, and, if we seriously wish to apply the European Social Charter, it is therefore necessary to launch a reflection, a great debate, on how we apply the principles of competition, but - for goodness' sake - not a debate on the principles of competition themselves.

If these rules are undermining our values, if they are unfairly hitting jobs, then the time has perhaps come to adapt them. We can certainly have rules that guarantee fair competition within the EU, but in that case we must set the bar higher and seek to guarantee fair competition at a global level. This would enable us to protect hundreds and hundreds of jobs. That is why I believe that we undoubtedly have to ensure that Community law does not conflict with the European Social Charter from

a legal standpoint - not just future law but the law as it stands at present - and we also need to assess whether the legal standards we have been applying according to certain of our rules are in line with the values we recognise.

This is why I wanted to point out here today – here in this industrial city, as its mayor has reminded us – that Europe is a great industrial reality. Europe has rediscovered its industrial role, and it is unquestionably a modern and competitive one. Without industry and enterprise no jobs can be created. For this reason I also view the European Social Charter as being part of a context, a strategy. It is not simply an instrument to be commemorated from time to time; it partakes of a common political goal to foster our fellow citizens' wellbeing, a goal in which we all share. This therefore means that something has to change if we wish to defend Europe, to cut the ground from under the feet of those who are anti-Europe because it has proved a disappointment, and above all if we wish to find a way out of the crisis.

Macroeconomics and fiscal consolidation are not the only way of creating jobs. We of course need to have our accounts in order, but without a policy to support the real economy there will never be a way out of the crisis. We are like a family man who can make a huge effort to pay off all his debts by the end of the working week, but if he has no job the following Monday he will begin to run into debt again. This is why there is a need to strike a balance - particularly in the context of this debate, which needs to be broader-based – between fiscal consolidation and macroeconomics on one hand, and microeconomics, industry, enterprise and agriculture on the other. László is moreover aware that, when I was a Commissioner, we always found ourselves on the same side over this, no matter how many differences of opinion we may have had within the Commission.

Europe will not emerge from the crisis, and we will no longer be able to create new jobs, if we do not take this direction. Therefore we simply have to do this, and we must act not merely from a legal standpoint. The law is of little use if it becomes a mere drafting exercise for the legislators - but if it is used to make political choices and to defend certain values, then, yes, the European Social Charter will have meant something.

I believe the challenge we must all take up, in all our national and European institutions, is to open a major debate on how the European Social Charter can be applied in practice; and since, not simply because I am Italian, I am an optimist, I believe that in the end we will succeed and our citizens will be able to look to the future with greater optimism.

Thank you.

Check against delivery

Statement of Ms. Algimanta Pabedinskienė Minister of Social Security and Labour of the Republic of Lithuania
Ministerial session of the High-level Conference on the European Social Charter "THE ROLE OF THE EUROPEAN SOCIAL CHARTER IN AFFIRMING SOCIAL RIGHTS DURING THE CRISIS PERIOD AND THE CRISIS EXIT PHASE"
17 October 2014, Turin (Italy)

Distinguished delegates,
Dear Colleagues,

It's my pleasure to address this audience in this High-level Conference on the European Social Charter. Let me express my gratitude to the organisers for this opportunity.

I believe that the European Social Charter should be more appreciated beeing not only one of the flagship conventions of the Council of Europe, but also the most comprehensive international instrument that guarantees fundamental social and economic human rights as those rights concern citizens in their daily lives.

Lithuania has more than ten years experience of implementation of the provisions of the revised European Social Charter. We can admit that it has not always been very easy to fulfil our obligation under the revised Charter as implementation of social rights depends not so much on the good will of the Government as on the economic and social situation of the country.
Lithuania as a number of other countries has faced challenges during the global economic crisis. Even though it posed significant difficulty for maintaining the same level of the protection of economic and social rights, austerity measures, such as temporary reduction of salaries in the public sector as well as revision of certain benefits in 2010-2011, made it possible to keep the social protection at the appropriate level. Therefore we could provide social assistance at least for the most vulnerable groups of the population at that difficult time. The reduced benefits have been already restored to the previous amounts and we are trying to compensate the loss according to our financial abilities giving priority to those most in need.

I would like to stress that crisis gave us not only challenges, but also a good opportunity to learn and to consider how to make social security systems more relevant, adequate, stable and efficient. The European Social Charter with its unique and balanced supervising mechanism can be a useful tool seeking this goal as the States introduce changes to their legislation and practice in order to bring their situation into line with the Charter.

Ladies and Gentlemen,

As human rights cannot be theoretical and illusory, social and economic human rights must be practical and effective. I hope that this conference will be a good opportunity to share our practice in guaranteeing fundamental social human rights and an important step for Europe to restart after the crisis.

Thank you for the attention.

The Speech Delivered by H.E. Mr. Faruk ÇELİK,
Minister of Labour and Social Security of the Republic of Turkey,
on the Occasion of High-Level Conference on European Social Charter

October 17, 2014 / Turin-Italy

Dear Secretary General,
Honourable Ministers,
Distinguished Participants,

At the outset, I would like to express my pleasure for being at the city of Turin, which hosted the genesis of one of the most important human rights conventions developed in Europe, namely the European Social Charter.

I also thank the Italian Government and City of Turin for their kind hospitality.

European Social Charter continues to be an influential guide for all of us in our efforts to increase the well-being of our fellow citizens and to strengthen the cohesion of our societies.

It has been more than fifty years since the first version of the European Social Charter opened for signature in 18 October 1961 at this beautiful city of Turin.

Our continent has witnessed significant socioeconomic changes since then.

In parallel to these changes and transformations, European Social Charter has also been updated and further developed with the contribution of all Contracting Parties.

The relationship between Turkey and the European Social Charter had a similar progress and developed gradually.

I would like to underline that as the Republic of Turkey, we have accepted 29 out of 31 Articles and 91 out of 98 Paragraphs of the Revised European Social Charter, which we have signed on 6 October 2004 and ratified on 27 June 2007.

Thanks to this progress, Turkey has become the seventh country with highest number of accepted articles and paragraphs among the Contracting Parties to the Revised European Social Charter.

Besides, I would like to express that a significant progress has been achieved in the works carried out under the coordination of my Ministry with regard to the acceptance of those non-accepted a few articles and paragraphs of the Charter.

In this context, we are making the necessary arrangements for the acceptance of the first paragraph of Article 4 on "The Right to a Fair Remuneration"; Article 5 on "The Right to Organise" and the first three paragraphs of Article 6 on "The Right to Bargain Collectively".

Obviously, in addition to the efforts and determination put by Turkey, the support of European Committee on Social Rights and the Secretariat of the Social Charter has been decisive in this rapid progress.

For instance, we had the opportunity to comprehensively exchange views and experiences on the non-accepted articles and paragraphs of the Charter in the meeting hosted by my Ministry on 6 May 2013 in Ankara with the participation of the representatives of European Committee of Social Rights.

In addition to this, with the participation of representatives from the Council of Europe, we have held the 5th International Social Security Symposium last month in Turkey. In this symposium, we had the chance to discuss recent developments in the field of social protection and we continue our studies in this respect intensely.

Dear Ministers,
Distinguished Participants,

Global financial crisis started in 2008 laid a heavy burden on world of work and on employment.

The austerity measures taken for overcoming the macroeconomic problems led to a step back in the social rights of many people, especially with regard to their social security.

According to ILO figures, due to the negative effects of global financial crisis, more than 200 million people are currently unemployed, 75 million of whom are young persons.

What is more, nearly 2.5 billion persons live under extreme poverty with a daily income less than 2 USD.

As Turkey we are well aware that, the importance of adherence to the Charter provisions has further increased under such a difficult political and economic environment.

I believe that the European Social Charter is not a document which can be ignored in times of crisis. Rather, it is an instrument which we need especially in such periods in order to increase the well-being in our countries.

In this sense, I would like to express that in Turkey we have always considered the social rights and humanitarian aspects of the measures that we have taken against the crisis.

Dear Ministers,
Distinguished Participants,

As you all know, great human tragedies are currently being experienced in the world and especially in the close neighbourhood of Turkey.

Unfortunately, hundreds of thousands of people have lost their homes, jobs, food and even their lives.

Turkey has opened its doors to these people regardless of their ethnic and religious identities.

There are approximately 2 million asylum-seekers in Turkey at the moment, 1.5 million of whom are from Syria alone.

Turkey will definitely continue to embrace these people solely basing on the grounds of humanitarian assistance.

Here, I would like to draw your attention to the fact that Turkey has spent more than 4.5 billion USD in order to assist these people, who are victims of the unfortunate developments in Syria and Iraq and took shelter in our country.

Beyond doubt, all Conventions and their provisions centred on human rights would make sense only if they are put into practice.

And the main motive that brought us together here today under the European Social Charter is the “human being”.

However, it is a great disappointment and concern to see the lack of sensitivity of the World and especially of the developed countries towards the human tragedy in the Middle East.

And this indifference causes terrorism to be proliferated and diversified.

It should be born in mind that such problems cannot remain limited to their regions and carry the risk of rapid expansion in a globalizing World.

In this framework, I believe that the European Social Charter should be applied universally and problems should be handled sensitively regardless of their regions.

Dear Ministers,
Distinguished Participants,

As a result of globalization, the rate of migration has accelerated and diversified making the international dimension of social security more significant than ever.

As a result of this understanding, in 2008 we implemented the "Social Security Reform" in Turkey.

We enabled social security services to be provided efficiently from a single authority by integrating three separate social security institutions.

Thanks to this reform, we have also increased the number of persons under the coverage of social security system.

Through the implementation of universal health insurance, we facilitated the easy access of our citizens to quality medical services.

We have also established a new Ministry in order to coordinate social benefits from a single unit, namely the Ministry of Family and Social Policies.

On the other hand, our fight against informality is going on by which we have also increased the premium income of our Social Security Institution. Hence, the ratio of the social security deficit to the GDP has been shrinking gradually.

Besides, we have signed bilateral social security agreements with 29 countries up until now.

Furthermore, we currently extend our services through labour attaches and counsellors in a total of 50 centres within Turkey's diplomatic missions for our 6 million citizens abroad.

In short, I can say that Turkey has made significant progress for all the Articles in the group of "Health, Social Security and Social Protection" of the Charter over the past decade.

Dear Ministers,
Distinguished Participants,

Social security is among the most important elements of stability for our countries.

It is an effective and crucial instrument, which protects societies against economic shocks, particularly during the crisis periods, by holding the social fabric together and building the future.

The political stability in Turkey during the last decade has brought about economic stability and thus had positive impacts on both social security and working life.

In recent six years since the onset of the global financial crisis in 2008, Turkish economy has grown by nearly 4% on average annually.

We have allocated nearly 20 billion USD for the active labour market policies and incentive packages in order to increase the qualifications of our labour force.

In total figures, 1.4 million enterprises and 10 million employees have benefitted from these active labour market policies and thus we have managed to create an additional 6 million employment during this six-year-period.

In summary, Turkey prevailed to be one of the few countries that succeeded on creating employment while growing steadily in the crisis period.

On the other hand, on occupational safety and health, which we consider as an integral part of human life and world of work, we have put into practice several prominent arrangement and regulations since 2012.

Dear Ministers,
Distinguished Participants,

At the end of my speech, I would like to underline the constructive role of the provisions of the Charter once again, particularly during the crisis period and the crisis exit phase.

Accordingly, as we stressed in Istanbul Declaration adopted at the end of the "Council of Europe Conference of Ministers Responsible for Social Cohesion", which we hosted in Istanbul in 2012, I believe that our commitment for achieving priorities envisaged in the "New Strategy and Council of Europe Action Plan for Social Cohesion" will also strengthen the alignment of our countries to the provisions of the Charter.

Furthermore, I would also like to express that Turkey, which will undertake the G20 Presidency in 2015, is going to maintain its adherence to the Charter principles on employment, labour and social protection issues and will strive for these principles to become universally accepted.

Apart from this, I believe that strengthening the link between the implementation and scope of the European Social Charter and the EU Law will increase the well-being of all of Contracting Party citizens and thus will be beneficial to all European citizens.

Thank you.

Appendix 2i

Statement of Mr Sergey F. Vel'myaikin, First Deputy Minister of Labour and Social Protection, Russian Federation
Report to be delivered at the conference in Turin on October 17, 2014 on the topic «Role of the European Social Charter in consolidation of social rights during the period of crisis and at the recovery stage»

Dear Chairperson! Dear participants!

The Russian Federation, having ratified the European Social Charter in 2010 (two thousand ten), regards implementation of its provisions as an essential means to ensure and promote social rights.

During the 2008-2009 (two thousand eight - two thousand nine) economic and financial crisis, Russia assumed a policy aimed at maintaining and even increasing basic social benefits. Thus, social and labour pensions were raised, followed by the further increase of social allowances and wages of social workers.

Currently, Russia has been proceeding with improvement of its social rights system to render it more up-to-date and efficient.

The Government of the Russian Federation has approved new versions of the following State Programmes: Assistance in Employment, Social Support of Citizens and Accessible Environment.

Since January first, 2015 (twenty-fifteen), there will be a new procedure of formation of citizens' pension rights and granting pensions within the framework of compulsory pension insurance system. The reform will provide a decent pension rate regarding the principle of social justice and will enhance joint responsibility of the State, employers and employees for the pension provision level.

The system of unemployment benefit payment is being further improved, benefits yet remaining low due to highly liberal conditions of their granting. This year criteria of unemployment benefits granting will be optimized to render them more targeted. Besides, unemployment benefit rate will be increased. Therefore Recommendations of the Committee on Social Rights experts are being implemented. In fact, conclusions of the Committee on Social Rights experts help a lot to see weak points of our system and to improve legislation and law enforcement practices.

Russian Federation pays special attention to social protection of vulnerable groups of population including people with disabilities. In 2012 (twenty-twelve) we ratified the UN Convention on the Rights of Persons with Disabilities. This resulted in adoption of more

than 10 corresponding laws and over 30 (thirty) amendments to legal acts.

Moreover, in 2012 (twenty-twelve) the Federal State Programme «Accessible Environment» was launched. It is aimed at ensuring barrier-free access of disabled persons to every day facilities and services as well as creating specially equipped workplaces for the disabled. The implementation of the Programme is provided with about 4 billion euros for 5 years.

Russian Government focuses on the development of inclusive labour market and removal of barriers faced by underrepresented in the labor market groups of population willing to work. This refers primarily to people with disabilities and women with small children. In particular, the new Law on Social Service, aimed at improving social service for families with children, has been adopted. The elaboration of the law was performed following the Recommendation of the Committee of Ministers to member states on children's rights and social services friendly to children and families.

Another important activity area of the European Social Charter provisions implementation is improvement of the Russian legislation and law enforcement practices on occupational safety and health issues.

In December 2013 (twenty-thirteen), there were adopted laws stipulating a unified procedure of objective labour conditions evaluation. As a result, it became possible to comply with the requirements set forth in Part 4, Articles 2 and 3 of the Charter *in corpore*. This refers primarily to reduction of working hours duration in workplaces where it is not yet possible to eliminate risks. More generally it refers to measures for economic stimulation of employers to improve labor conditions through direct correlation between decrease of the rates of contributions, which are paid to the Pension Fund, and reduction job hazard level. The laws provide for determination and modernization of outdated manufactures with "contaminating technology" and old- fashioned equipment in order to reduce hazard.

In conclusion, I would like to underline once again that fulfillment of obligations taken under the European Social Charter, in particular, those in the sphere of social rights, remains a priority for the Russian Federation since the Charter goals and objectives perfectly correspond to the policy pursued by the Government in this sphere.

Thank you for your attention!

REPUBLIC OF POLAND

Intervention of Mr Radosław Mleczko

Undersecretary of State, Ministry of Labour and Social Policy

High-level Conference on the European Social Charter

Torino, October 17, 2014

Dear Secretary General, Commissioner, Ministers, all the distinguished guests, ladies and gentlemen.

First of all I would like to thank you for inviting me to take part in discussion on this crucial issue.

I would also like to emphasize the achievements of Council of Europe in the field of human rights, including social rights, as well as building social cohesion. Within the achievements, the European Social Charter has a special place – it is a unique document because of the scope and method of regulations, as well as the monitoring of its implementation.

Polish social policy is inspired by various international instruments, Charter among them . Its provisions were the impetus to the amendments of Polish law. We are considering further modifications, in order to solve certain problems related to the implementation of the document.

The economic crisis and the austerity measures define the contemporary context of the implementation of social rights and, more broadly, social policy. Rights, protective measures are defined anew, sometimes even they are significantly reduced. It is justified by the need to provide sustainable budgets, and create better conditions for economic activity.

The way out of the economic and social crisis chosen by the states tend to be questioned. It is said that the economic crisis does not justify departing from the protection guaranteed by the Charter. You will also hear that the deteriorating living conditions and lack of stability in the labour market impose the requirement to strengthen the protection standards.

Such assessments seem to be confirmed by the increasing number of cases in recent years of negative evaluation of the performance of the European Social Charter. Does Europe really departed from/ abandoned fundamental values in the social area? Do you need to announce the need to return to them?

No. Social policy and social rights in Europe are still deeply rooted in such values as solidarity, non-discrimination and participation. The societies and conditions changed, particularly economic environment in which they operate.

What is the change?

Europe moves away from the current formula of social rights protection. States are not able to guarantee complex, in terms of subjective and objective scope, rights. They rather provide the incentives for professional activation, and increasing the adaptability of workers, introduce flexible labour law regulations, reform social protection systems. States forgo "the approach based on the guarantees of rights" ("Rights based approach") in favour of "an approach based on meeting the actual needs" ("Needs based approach"). This means new social priorities, redefining the scope of individual and joint liability, new ways of acting in the social field.

The European Social Charter allows to specify the scope of the obligations and shape their content to meet, on the one hand, the legitimate and changing expectations of societies and, on the other hand, to face changing economic conditions in which these expectations are to be realized. Guarantees of such Charter implementation are also provided by a complex control system. The Charter has therefore the potential to play a significant role - to support the state in making decisions that reconcile economic efficiency and social sensitivity, determine the execution of such values as solidarity, active society and decent state.

The Charter was created for such situations like this crisis. However, today the States - including Poland - have doubts about whether the Charter is moving in the right direction.

There is no doubt that you cannot violate fundamental *acquis* in the social field. Other standards are the subject of difficult political decisions taken in the democratic procedure. You have to talk about it, but it cannot be questioned.

Hence the subject of dialogue between states and the Charters' monitoring authorities must be based on the idea of how to reconcile the protection of the rights and guarantees with social and economic realities. So far in the discussion we did not go beyond the question, whether in time of continuous economic difficulties which lead to rethinking the social system/building a new one, it is realistic to expect full compliance with protection standards, established in other realities.

If this point of the discussion is not exceeded, the Charter may stop providing guidance for state’s actions in the near future. Poland cannot allow that to happen.

Evaluation of state actions is a difficult and complex task.

It must be based on the analysis of the rationality of decisions. You have to look at the goals and conditions that lie behind - especially in the long term. This is the base for assessing the adequacy of the decision and whether the limitation of rights is in the minimal necessary scope. Specific solutions must also be seen in a bigger picture - as a part of a comprehensive state action in the social field. These are the conditions for a balanced assessment of the elements of national social policy.

We should take into account of the experience of other international control bodies, such as the Court of Human Rights, whose position on the legitimate public interest and the principle of proportionality, including on issues related to the social field, is widely recognized best practice.

The Charter is not the only standard binding European countries – Europe Union has two agendas for social rights. Thus, the same actions can be assessed by the Council of Europe and the EU. Why does it happen that the evaluation of the same actions may be so fundamentally different? Obviously some criteria can be valued differently. However, the basic ideals and principles are common - which is reflected by the fact that the European Social Charter is the basis for the Charter of Fundamental Rights of the EU. This should be inspiration for reflection on the mode and method of assessment of state actions.

These guidelines place the high expectations on evaluators of state actions. On the other hand, the evaluators must have reliable sources. Expectations should therefore be equally directed at both parties - countries and control bodies.

Ratings without these elements undermine the credibility of the evaluation. Unfortunately, we now have to deal with situations like this.

Demand to carry out such a complex evaluation of state actions has its source in the performance of the control system of the Charter. It consists of three bodies, and their actions are complementary.

All components of the system: legal evaluation, assessment from social and economic point of view, and finally political assessment, are equally important. None of these elements can function in isolation from the others. Only together they can show what is actually happening in the country.

Nowadays, it often happens that partial evaluation is treated as final. Effect for the Charter is unambiguously negative - more and more questions are asked what and how it is evaluated.

We also draw attention to a necessary element such as cooperation between the States and experts committee as well as cooperation between the regulatory bodies of the Charter. Dialogue should definitely be strengthened. It can only bring improvements in the quality and credibility of all parties involved in the implementation of the Charter.

The dialogue should also be applicable to the interpretation of the Charter.

Its provisions give countries a margin of freedom as to the specific objectives and solutions. The Charter does not treat these ideals as immutable; range of specific commitments for the states is changing.

The way the Charter currently operates rises the question whether these rules are followed.

Nowadays there is a strong trend to confirm the existing standards and define new ones, more detailed and severe. It is suggested to strengthen the control mechanisms of their execution. It is supposed to be a response to the voices of serious human rights violations being a result of decisions aiming at long-term stability of social protection systems or to facilitate entrepreneurship. Such voices are listened to on the international level.

However, at the same time, questions arise whether their implementation is real? What will be their long-term effects? Finally - is there sufficient legitimacy to create such standards - that is, the actual lawmaking and formulating directions for state actions on the national level?

It should also be underlined: in the discussion concerning standards there is no room for freedom of interpretation, the provisions of the Charter draw the limits. There are also commonly accepted rules of interpretation of international agreements and established competence in this field by the treaties.

The presented comments regarding applying and evaluation of the implementation of the Charter indicate the need for a systematic analysis of the impact of social and economic policy, and financial instruments on social rights. The implementation of these rights, as any other, depends on the capabilities of the state.

These activities should involve civil society. But foremost the participation of national institutions for protection of human rights is necessary.

Poland aims to have at effectively functioning Charter, reflecting the aspirations of societies and the realities of social and economic life.

It is our duty to protect and enhance the positive role of the European Social Charter as a source of guarantees the implementation of which may contribute to the reduction of economic and social tensions and to build a broad consensus around social policy.

Thank you!

Appendix 2k

18.10.2014

Address by Ms Anne Brasseur, President of the Parliamentary Assembly of the Council of Europe Opening of the High-level Conference on the European Social Charter "Europe restarts in Turin"

(Turin, Italy, 18 October 2014)

THEME II – The implementation of social rights

(Translation from the original Italian and French)

Signor Ministro, Signor Sindaco, Eccellenze, Cari colleghi,

Sono onorata che mi sia stato chiesto di aprire la discussione di oggi a nome dell'Assemblea parlamentare del Consiglio d'Europa, che parla per gli ottocentoventi milioni di persone di quarantasette Stati attraverso i loro rappresentanti democraticamente eletti.

Vorrei ringraziare gli organizzatori di questa conferenza, in particolare il nostro ex collega il Sindaco di Torino, Piero Fassino. Il Sindaco è stato membro dell'Assemblea parlamentare per 9 anni ed è sempre un grande piacere quando gli ex membri della nostra Assemblea continuano a promuovere i valori del Consiglio d'Europa anche nelle loro funzioni successive.

Sulla prima pagina del programma di questa Conferenza vi sono le parole di Altiero Spinelli, un convinto europeista della prima ora:

"La via da percorrere non è facile né sicura, ma deve essere percorsa e lo sarà".

"*The road ahead is neither easy nor safe, but must be pursued and it will be.*"

We are here today to continue on this road, to bring social rights forward in Europe.

In my intervention, I will highlight how the Parliamentary Assembly has sought to contribute to the journey on this road, but also address further steps needed to ensure better implementation of the rights enshrined in the European Social Charter.

53 years ago, the European Social Charter was adopted here, in Turin. This landmark Convention has brought about many improvements in the lives of millions of Europeans.

Allow me to start by stating what should be obvious, but is unfortunately not yet granted: social rights must be considered as fundamental human rights, indivisible, interdependent and complementary. They are not “second class” rights.

Altogether they enable people to lead meaningful lives in dignity.

This is all the more important in a period of economic downturn and crisis, where they risk being undermined by the pressure of austerity measures.

Through its work, the Assembly has been looking at certain problematic issues such as the dismantling of labour rights, working conditions and social benefits.

The Parliamentary Assembly has expressed its view that austerity measures can never be taken at the costs of the most vulnerable groups: young families, single mothers, children, young people, the elderly, people with disabilities, migrants and minorities.

We have to protect the most vulnerable members of our societies.

The rise of extremism and neo-Nazism and the entry of extremist populist parties into several parliaments in Europe should raise alarm bells across Europe as they take the most vulnerable as scapegoats.

This is one of the reasons why it is of outmost importance that social rights are guaranteed and implemented. Implementation is the object of today’s discussions.

The Parliamentary Assembly has paid much attention to the European Social Charter, its different texts and mechanisms in recent years. Through its Resolutions it has made recommendations to member States on:

- unbalanced austerity measures as a danger for democracy and social rights ;
- decent work ;
- decent pensions ;
- youth employment, and ;
- child poverty ;

It has also taken an in-depth look into the social rights mechanisms of the Council of Europe.

Currently, reports are being prepared on “equality and the crisis”; the European Social Model; the right to bargain collectively, including the right to strike ; and the need for a citizenship income.

This work reflects three priority areas set by the Parliamentary Assembly’s Committee on Social Affairs, namely, the **protection and promotion of social rights** in accordance with the European Social Charter, the **promotion of social cohesion** in all Council of Europe member States and the **protection of groups in need of special protection**.

But where do we go from here?

There is no doubt that further steps are needed to ensure consistency of national measures in the field of social rights.

Let us start by ensuring the ratification of the relevant texts by all member States, hence creating a harmonised European landscape.

The Parliamentary Assembly consistently calls all member States that have not yet done so to sign and ratify:

- the revised Social Charter;
- the Additional Protocol Providing for a System of Collective Complaints;
- the so-called Turin Protocol, (the Amending Protocol to allow for the election of the 15 members of the European Committee of Social Rights by the Parliamentary Assembly).

Although my own country – Luxembourg – is not one of the best pupils in this respect, let me stress that it is no longer acceptable to make excuses when it comes to the ratification of these instruments. All Council of Europe member States should be bound by the Revised European Social Charter and its Protocols, alongside the European Convention on Human Rights.

However for the enjoyment of social rights to be a reality, the rights which flow from the Social Charter and its Protocols must be respected and promoted by all actors, be they Parliaments, Governments, employers, trade unions, or others.

To ensure the implementation of the European Social Charter, the Parliamentary Assembly encourages national parliaments to use both the Charter and the Case Law of the European Committee of Social Rights when drafting national and regional legislation.

I would also like to highlight the importance of States’ acceptance of the collective complaints procedure, so as to reinforce social democracy and compliance with the Charter at national level. *Bravo* to the States that have ratified this procedure, which brings to life the Charter for civil society and people in the street. So far, unfortunately, only 15 countries have accepted this procedure. We can do better.

Finally, to be fully effective the implementation of social rights requires a differentiated approach. For each social category, specific problems exist and specific solutions have to be found. Differentiated policies are needed so as not to leave anyone behind, especially in these times of budgetary restrictions where social benefits are threatened.

The member States of the Council of Europe must protect social rights by not only protecting the rights of their own populations, in particular the most vulnerable groups, but also by seeking to improve the 'rules of the game' at the international level.

Ladies and Gentlemen, at the start of my presentation I quoted what Mr Spinelli said about our road being neither easy nor safe.

I would like to end by quoting from a poem by Robert Frost:

"Two roads diverged in a wood, and I –
I took the one less traveled by,
And that made all the difference."

When we go back from Turin, where it all started 53 years ago, we will have 2 roads.

The one we are used to - business as usual.

I hope however many of us will take the one less traveled - which could make all the difference.

Thank you.

Michaela Marskova, Ministre du Travail et des Affaires sociales, République Tchèque

Ladies and Gentlemen,

First, I would like to thank the organizers for holding this important meeting in such nice surroundings which became the birthplace of the European Social Charter more than 50 years ago.

The Czech Republic has always perceived the outstanding importance of social and economic rights and the need to advocate their full use and enjoyment by all human beings. With this aim, the Czech Republic has ratified numerous instruments of various international organizations.

The last Council of Europe treaty ratified by the Czech Republic in 2012 is the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. The Czech Republic sees the collective complaints procedure as an important tool for more effective safeguarding of social and economic rights in the Council of Europe Member States. The Charter and the Collective Complaints Protocol thus form a unique system to guarantee social rights which so positively influence the lives of the Europeans.

During the relatively short time since the ratification of the Protocol, two collective complaints were lodged against the Czech Republic. We have gained our first experience which I would like to mention briefly today. In both cases, the merits of the complaint went beyond the responsibilities of my Ministry. In other words, we have to involve more ministries and coordinate the positions of all the institutions concerned. And that takes time. I would, therefore, ask for taking this into account when the Committee of Experts sets a deadline for national statement to a collective complaint.

With regard to the Collective Complaints Protocol, I would like to emphasise that we should not forget the purpose of the Protocol. That is to enable more effective use of social rights guaranteed by the Charter through adoption of new measures. The Committee of Experts has a crucial role concerning the admissibility. They have to make sure that the collective complaints mechanism does not become only an administrative procedure. In cases when the merits of the complaint is based solely on the arguments that have been raised during the standard reporting mechanism, the collective complaints tool brings no new impulse to improve the situation regarding rights guaranteed by the Charter. Some people then may ask about the added value of the Protocol.

In general, the Committee of Experts plays a very important role with regard to observing the rights guaranteed by the Charter. I must appreciate and highlight the painstaking work the Committee does year after year upon the reports of the Member States and the assessment of national legislation. The Czech Republic aims to meet the obligations of the Charter. In this regard, I would therefore like to ask the Committee for clear distinction between the commitments of the original Charter of 1961 and those of the Revised Charter.

The Czech Republic is a member of the Council of Europe and also of the European Union. Both organisations consider application of social and economic rights as priority objectives. I see a great potential for closer cooperation here that will benefit all inhabitants of the Council of Europe countries.

The Czech Republic takes seriously commitments of the European Social Charter and makes every effort to guarantee full access to rights to all the citizens of the Czech Republic as well as the other Contracted Parties of the Charter. In my speech, I have made several recommendations which all have one goal. That is to maintain and strengthen the importance of the Charter in this difficult time.

Thank you for your attention.

Speech of Nicolas Schmit, Ministre du Travail, de l'Emploi et de l'Economie sociale, Luxembourg
(Transcription of the recording of the speech made during the Conference-French only)

Caro Ministro,
Madame la Présidente de l'Assemblée,
Chers collègues Ministres,
Chers collègues,

Il y a 53 ans, au jour même, car je crois que c'était le 18 octobre, a été signée la Charte Sociale à Turin même.

Cette signature marque une certaine conception de l'Europe et cette conception de l'Europe est partie de cette ville qui, non seulement pour l'Italie, a une valeur historique considérable, mais qui représente aussi pour l'Europe une ville phare puisqu'elle allie les cultures, elle allie une partie de notre patrimoine commun.

Cette conception de l'Europe c'est celle qu'il n'y a pas de paix, qu'il n'y a pas de progrès sans le respect de la dignité humaine, c'est-à-dire sans le respect des droits sociaux.

Ces droits sont considérables. Ceux qui ont été inscrits dans cette Charte : le droit au travail – un droit important surtout en ce moment – le droit des conditions de travail équitables, le droit à la sécurité et à la protection sociale, le droit pour les travailleurs à la consultation et à l'information, le droit à l'égalité des chances, le droit à la dignité dans le travail, pour ne citer que quelques-uns.

Avoir inscrit ces droits dans un texte à portée juridique nationale, mais surtout internationale, marque aussi le fondement, pose le fondement, d'un modèle qui, aujourd'hui, est appelé le modèle social européen.

Ce 18 octobre 1961, seuls treize pays européens ont signé ce document qu'il faut qualifier d'historique. Rappelons-nous en 61 : c'est la guerre froide, avec ses crises qui risquent de déclencher, en quelques sortes, chaque instant, un cataclysme nucléaire. 1961, c'est la division de l'Europe et du monde entre l'ouest et l'est. 1961, c'est aussi le début prometteur de la construction européenne avec la Communauté Economique Européenne, avec des progrès considérables qui sont déjà accomplis au niveau du Marché Commun. L'Europe, en 1960, connaît une période d'expansion économique, un progrès social, un progrès aussi au niveau de l'ouverture de nos sociétés, considérables. Et ce projet européen, qui a été cimenté ici à Turin, est devenu le grand projet pour toute une génération. Ça a été un projet mobilisateur pour la jeunesse, et cela bien au-delà de ces 13 pays qui ont signé ce document ici à Turin. C'est devenu un projet, une vision de solidarité dont la portée économique est renforcée précisément par les valeurs que représente le Conseil de l'Europe, dont celles inscrites dans la Charte sociale.

Aujourd'hui, 53 ans plus tard, nous nous retrouvons à Turin non plus à 13 Etats, mais à une quarantaine, presque une cinquantaine d'Etats qui ont ratifié la Charte, qui ont rejoint le Conseil de l'Europe et qui partagent les valeurs du Conseil de l'Europe et les valeurs inscrites dans la Charte.

L'Europe, certes, a surmonté certaines de ses divisions. Mais n'oublions pas – je crois que célébrer un anniversaire c'est aussi se rappeler – des moments plus difficiles. Donc l'Europe a connu aussi, depuis, des guerres qui ont déchiré certaines régions de notre continent, entre des pays qui aujourd'hui d'ailleurs sont membres de ce Conseil de l'Europe et aujourd'hui malheureusement, hélas, nous assistons encore en Europe à un conflit pas si loin d'ici qui déchire et qui représente une réelle menace.

Le rôle et la mission du Conseil de l'Europe, celle d'unifier notre continent sur base des mêmes valeurs, des mêmes principes, du respect des droits de l'Homme, du respect des droits sociaux, n'ont rien perdu de leur importance et de leur actualité. La crise économique, hélas, a aussi ouvert de nouvelles fractures, d'abord entre les nations, mais aussi au sein même des pays, au sein même des sociétés. Le chômage touche aujourd'hui des millions d'Européens et, notamment, des millions de jeunes Européens. La pauvreté est redevenue, ou est devenue, une réalité présente, et je pense notamment à la pauvreté des enfants. Il y a aujourd'hui des pays où des centaines de milliers d'enfants n'ont pas tous les jours assez pour manger, et cela, en Europe. Il y a quelques jours, sous la présidence italienne, nous avons eu un débat sur la stratégie 20-20, et un des grands objectifs de la stratégie européenne 20-20 c'est précisément la réduction de 20 millions du nombre des pauvres en Europe. Aujourd'hui, cinq ans après le lancement de cette stratégie, nous avons constaté qu'hélas cet objectif est loin d'être atteint et donc représente aujourd'hui un défi plus fort encore qu'il y a cinq ans.

Au sein même de notre Union européenne, une réelle division, une réelle fracture, existe entre le Nord et le Sud, provoquée par les crises de la dette, mais provoquée aussi, ou aggravée, par ces politiques d'austérité qui ont été discutées hier et j'ajouterai simplement que, comme les saignées n'ont jamais été un remède en médecine, les politiques « austéritaires » ne peuvent pas être à l'origine d'une croissance et du progrès économique.

Cette crise touche également les voisins non encore ou non membres de l'Union. Elle mine la cohésion sociale, elle fait réapparaître les démons du passé – nationalisme, populisme, xénophobie, discrimination, cela vient d'être dit – notamment pour certaines catégories de nos populations. Tous ces mots qui ont chaque fois amené l'Europe à la catastrophe, des mots que le Conseil de l'Europe a précisément pour mission d'éradiquer. Vous avez donc bien choisi, cher ami, la devise pour cette conférence : l'Europe repart de Turin. En effet, elle doit repartir, non pas tellement sur de nouvelles bases, mais peut-être sur celles qu'il y a 53 ans ont été posées ici même. Et je crois que le choix d'avoir organisé cette conférence est un message fort pour les Européens et, notamment, pour les jeunes Européens. Progrès économique et progrès social ne s'opposent pas, ils sont complémentaires et peuvent se soutenir mutuellement. On ne peut pas construire un avenir de sécurité, un avenir de paix si toute une génération, si la jeunesse européenne, ne voit pas pour elle-même une réelle perspective. Une génération perdue, des millions de jeunes sans emploi, souvent très bien formés – jamais les jeunes Européens n'ont été mieux formés qu'aujourd'hui – et pourtant ils souffrent du chômage et de l'exclusion. Ces jeunes, cette génération perdue, n'a plus confiance souvent dans nos institutions, ni nationales, ni d'ailleurs européennes. Avec cette jeune génération, avec cette génération dite perdue, on ne peut pas créer un avenir, parce que eux ne peuvent pas construire leur propre avenir. Comment est-ce qu'un jeune qui vit dans la précarité, comment est-ce qu'un jeune qui vit sans emploi, peut fonder une famille, avoir des enfants, avoir un logement, tous ces droits d'ailleurs

qui sont inscrits dans la Charte européenne ? Il est donc indispensable que l'Europe, l'Union européenne certes, mais l'Europe dans son ensemble, change de cap et retrouve un nouvel élan dans la solidarité. Solidarité d'abord dans notre société, cela a été dit – les riches et les moins riches et les pauvres – solidarité aussi entre les Etats membres, et solidarité au-delà pour refaire de l'Europe une zone de croissance, d'innovation, de créativité. Je pense aussi à ces milliers, ces centaines de milliers de jeunes qui traversent la Méditerranée. C'est aussi une responsabilité de l'Europe ces jeunes qui viennent chercher un monde meilleur ici en Europe et qui souvent découvrent qu'ils sont exclus, qu'ils n'ont pas de perspectives, qu'ils sont discriminés. Je crois aussi que ce problème de la migration est devenu un problème crucial pour l'Europe, mais aussi pour les valeurs que nous voulons représenter. Non, notre modèle de société n'est pas dépassé. Beaucoup de pays s'en inspirent aujourd'hui, ou du moins s'y intéressent de plus en plus. C'est le cas notamment de la Chine qui s'intéresse à comment on va construire un système de solidarité entre générations, comment on va construire un système de pensions, puisque la solidarité entre générations ne fonctionne plus à cause de la politique démographique qu'ils ont menée, comme elle a pu fonctionner pendant des millénaires. Regardons cette jeunesse de Hong-Kong. De qui est-ce qu'elle parle ? Qu'est-ce qu'elle revendique ? Elle revendique des droits, elle revendique des droits à l'autonomie, elle revendique le respect des valeurs que nous représentons, que le Conseil de l'Europe représente. Le principe de justice sociale n'est pas seulement une valeur morale, c'est aussi une valeur éthique. Certes, il l'est aussi, mais il est aussi une valeur économique et d'ailleurs c'est quand même intéressant de lire dans les textes du FMI, le Fond monétaire international, qui dit maintenant qu'une société inégalitaire, une société où règne une forte injustice sociale, ne peut pas être une société économiquement performante et qu'on ne peut pas construire une économie durable, une économie performante, innovatrice, sur une telle injustice, sur des inégalités. Et d'ailleurs on le voit bien, concrètement, et cela a été rappelé par le Secrétaire Général du Conseil de l'Europe. Les Etats membres du Conseil de l'Europe, comme de l'Union européenne, où l'injustice et les inégalités sont les moins grandes, où la justice est la plus ancrée dans les traditions, dans les pratiques, ce sont souvent les pays où la compétitivité est la plus forte, où l'innovation est la plus forte, où la cohésion, bien sûr, des sociétés, est la plus forte.

Faisons repartir l'Europe ici de Turin en nous engageant qu'il n'y a pas de politique économique, qu'il n'y a pas d'assainissement budgétaire, qu'il n'y a pas de réforme de nos structures – et elles sont nécessaires, disons-le – valables sans intégrer pleinement et concrètement les principes de la Charte, les principes des droits sociaux dans leur application concrète. J'ai eu le message de mon amie la Présidente. Nous allons nous mettre au travail pour effectivement rattraper ce retard du Luxembourg au niveau de la ratification. Et c'est grâce à cette application concrète des droits sociaux que nous pouvons redonner espoir et confiance à une jeunesse souvent désorientée. L'Europe, la grande Europe, celle du Conseil de l'Europe, peut trouver pleinement sa place, son rôle, sa cohésion, son rayonnement à travers ses valeurs, mais aussi son économie dans un monde qui se globalise et qui regarde vers l'Europe, et qui attend un message fort de cette Europe. Merci.

High-Level Conference on the European Social Charter, Turin Synopsis of Speech by Minister for the Familyand Social Solidarity Michael Farrugia – 18th October 2014

The European Social Charter may be viewed as the backbone of the European system for the protection of fundamental social rights in Europe. It also underpins our commitment to have a balanced socio- economic policy with a rights-based approach. It is very easy for me to continue on the same lines taken by the previous speakers, so I opt to speak from a different perspective

The social consequences of the crisis, manifested by rising unemployment and higher poverty levels across Europe, will require much time and effort to resolve. As yet, it is important to turn the post crisis period into an opportunity for enhancing social cohesion and social justice through the creation of more inclusive labour markets and through investment in people's skills and employability.

Indeed, Europe's social vision needs to be complemented by innovative answers to social challenges by the promotion and development of measures that aim to reduce and prevent poverty, whilst ensuring greater equality of opportunity, social justice and social mobility, as well as through measures which aim to mainstream social inclusion issues and objectives across different policy areas.

Malta reiterates its support for the Council of Europe's legal instruments for social rights, since these not only provide valid instruments for promoting social cohesion and well-being across the EU, but also for ensuring greater equality of opportunity and combating discriminatory practices.

In the measurement of poverty, Eurostat methodology does not allow the inclusion of social benefits in kind, such as free child care centres, provision of free health services, medicines for chronic illnesses or below a set income, social housing with heavily subsidised rents, free education, stipends to post secondary and tertiary students amongst other benefits in kind which are available in Malta amongst other benefits in kind.

For this reason, Eurostat statistics are flawed as the ***one size fits all*** model does not give a clear picture of the at-risk-of-poverty and social exclusion level as the main indicator to monitor the Europe 2020 Strategy.

My government elected just over 18 months ago has introduced the Civil Union Act, because we believe in civil rights. Introduction of free Child-Care Centres to encourage both parents or single parents to work. And presently, is working hard on the issue of Youth Guarantee so that all school leavers are either in work, post secondary education or in training.

This year we focused on those registering for over two years. Once gaining employment they continue to receive a Tapering of Benefits which amount to 65% on the first year, 45% on the second year and 25% on the third year of their benefit while the employer will receive 25% of the benefit as an incentive. Further initiatives are going to be taken in this direction in the coming months. Coming budget is going to also include a number of initiatives aimed at persons with disabilities.

We are working on a number of incentives in order to increase the number of persons at

work, especially female participation. It is important to fight both undeclared work and precarious work. Educating the people and informing them that benefits are there as a safety net for a period of time to avoid people falling in absolute poverty, and at the same time showing the people that work-pays.

This year, 2014, households had a reduction of 25% in their energy tariffs and 5% in the water rates, and up to 35% to those consuming less electricity and low income families – this should help decrease the number of persons at risk of poverty. As of March next, businesses are going to have a 25% decrease in their electricity bills.

During the past eighteen months we managed to push down unemployment at 6%, attract more investment to our country and see our GDP increase between 3 to3.5%. Next year we plan a deficit of about 1.6% and also decrease the national debt as a percentage of the GDP. My ministry is also working hard to see that we reform our pensions and benefits in order to secure the future of our society.

We are proud that the crises that hit almost all the countries was not that bad for us thanks to our local banks that are strong and were always responsible by opting to follow our strict regulations. Politicians can easily say that we saved the banks, saved the Euro, and so let us follow the Social Charter and save the people.

Statement by Ms Petya Evtimova, Deputy Minister of Labour and Social Policy of Bulgaria at a Session on „The Implementation of Social Rights in Europe" as part of the High-level International Conference on the European Social Charter (revised)

Turin, 18 October 2014, 9.45-11.00 h

Ladies and Gentlemen!

The European Social Charter is an unique international treaty for protection of human rights, as it covers a broad spectrum of social rights and further develops the adopted international standards in the field of human rights. With the ratification of the document in the year of 2000, Bulgaria has committed itself to the performance of bigger than the mandatory minimum number of commitments as an expression of its will to ensure certain social rights for its citizens.

With the ratification, Bulgaria has made a declaration stating that the country adopts the guidelines and the principles defined in Part One of the Charter as its own objectives.

Bulgaria joined Part Four of the Charter, thus following its obligations in compliance with the procedure set forth in the Additional Protocol of 1995 concerning the collective complaints ' system. I would like to emphasize that **Bulgaria pays special attention to the Decisions of the European Committee on Social Rights in respect of the collective complaints and will continue to undertake measures to resolve any non-conformities identified by the Committee.**

Since the adoption of the European Social Charter as an integral part of the national legislation, we make efforts to develop policies implementing adequate measures that follow the principles and objectives set forth in the treaty. Pursuant to the requirements of the Charter, the national legislation has significantly developed providing specific texts to ensure the basic social rights of the citizens, to regulate the right to decent work, the right of association and participation, the right of protection of children and young people, the right of family assistance, the right of social security.

The national legislation has developed also in respect of equal treatment, non-discrimination, creation of equal opportunities, as well as integration of disabled people in all areas of social life.

Bulgaria pays particular attention to the development of measures for equal participation of women and men in the labour market, the achievement of a better balance between work and family life, equal access to vocational training and qualification, equal pay for women and men.

We will continue to work in this direction as this is of a significant importance for achieving the objectives of the European Social Charter.

Thank you for your attention!

High-level Conference on European Social Charter

Turin, Italy, 17-18 October 2014

I N T E R V E N T I O N

Ms. Tatjana Dalić, Assistant Minister of Labour and Pension System, Croatia

The area of economic and social rights is very wide and complex. Therefore it is not possible to address all the rights guaranteed by the European Social Charter in such a short intervention, like this one.

The right to work is one of the most important rights guaranteed by the Charter, as well as by conventions of International Labour Organization, since the achievement of many other rights, which stem from work, is enabled through work.

Through work, skills and competencies of the employed are maintained and new ones are developed, which directly contributes to maintaining of employability of workers in the long run. Widening of social and business contacts through work directly influences the social inclusion of the employed person.

Therefore, finding solutions for the problem of unemployment, or achieving increased employment is a **key challenge** for many European states, and also for the Republic of Croatia. It is also one of the five Headline targets in Europe 2020 Strategy, which promotes a model of growth based not only on the increase of the GDP.

In the context of the prolonged economic crisis that affected the EU and the Republic of Croatia, and the need for fiscal consolidation and implementation of austerity measures, the sustainability of citizens' rights included in the Charter has become questionable in many countries. The biggest problem is a trend of increasing unemployment and loss of jobs, which directly affect the income-side of the State Budget and the future sustainability of social rights and entitlements – pension insurance, health protection and social care. Finding the most appropriate and efficient balance between the necessary austerity measures and measures for fostering growth and development is a crucial challenge for any society.

However, **investments in Active labour market policy measures** (ALMP measures) have the multiplying positive effect on the society when a person works; for example, through increase in state income from taxes and social contributions, higher expenditure on goods and services, which affect the general economic growth, while at the same time resulting in decrease of expenditures for social care benefits, and reduces the number of citizens at risk of poverty and social exclusion.

In spite of the crisis, Croatia has significantly increased the expenditure on Active labour market policy measures in the last three years. The number of beneficiaries has increased from 27.265 persons in 2011 to 44.779 persons in 2013, which is an increase of 64 percent. In the first nine (9) months of 2014 the number of beneficiaries has amounted 46.099, which is an increase of 2.9 percent in comparison to the same period in 2013.

Measures are targeted at specific groups of unemployed persons who are in unfavourable position on the labour market, as well as employed persons in risk of losing their jobs. Following groups of measures are implemented: employment incentives, self-employment incentives, support for upskilling, education of unemployed persons and occupational training without commencing employment.

Special attention is dedicated to tackling the youth unemployment. Croatia was among the first EU member states which started implementing special measures for youth in July 2013 (set of measures „Young and creative“), which are now, alongside with other measures, included in the Youth guarantee implementation plan.

Another important aspect of the Right to work is the **necessity to change the perception of work itself.** In the ever changing business conditions and environment in the modern world, there are no longer „secure“ jobs in the traditional sense.

Life-long investment in one self, through work and learning, and with activities for own career development, with readiness for changing working sector or occupation or type of job, as well as the willingness to change the of place of work, are the only pre-conditions of secure employability.

Human potentials are the most valuable resource of every country. In unfavourable demographic trends and ageing population conditions, only the economically independent persons, here we specially emphasize youth and women, can contribute to future positive developments regarding family perspective and progress in economy and society as a whole.

Statement of Mr Nenad Ivanišević, State Secretary, Ministry of Labour, Employment, Veterans and Social Affairs, Serbia
Ministerial session of the High-level Conference on the European Social Charter on "The Implementation of Social Rights in Europe"
18 October 2014, Turin (Italy)

Dear Colleagues, Ladies and

Gentlemen,

First of all, on behalf of the Government of the Republic of Serbia and myself, I would to thank the organisers for exceptionally organised Conference. Also all complements go to our Italian hosts and to the Council of Europe.

All that has been said at this Conference has presented the European Social Charter in a comprehensive way – the system of collective complaints, European trends regarding one corps of human rights that are guaranteed under the Social Charter

I have followed the interventions and discussion with great interest and would like to underline that the Republic of Serbia in its policies has always paid attention to protection of labour and social rights, but also to sustainability of social security and welfare, and in particular to the sustainability in current economic crisis in the country.

Also, the Government of the Republic of Serbia and the Ministry of Labour, Employment, Veterans and Social Affairs stand as always ready and committed to continue promotion of labour and social rights in the country, and I think that we are all on the same path as is the National Assembly of Serbia and all other relevant state authorities and NGOs.

In this context, i would like to inform the gathering that amendments to the national legislation have been announced in the forthcoming period, and I assure you that they will facilitate more consistent application of the standards set in the European Social Charter

Finally, once again I would like to greet and thank all the participants and organisers of the Conference.

HIGH - LEVEL CONFERENCE ON THE EUROPEAN SOCIAL CHARTER

Turin, 17 and 18 October 2014

STATEMENT BY STATE - SECRETARY DEJAN LEVANIČ

Colleagues,

Ladies and Gentlemen,

I would like to begin by thanking the organisers for hosting the conference and for choosing the themes for discussions. I'm looking forward especially to the debate on relations between European Social Charter and *acquis communautaire.*

Today, Europe is still confronting the social consequences of the crisis itself, combined with the consequences of the policy choices made by the Governments in their 'recovery' packages. Unfortunately, for too many people in Europe, recovery has not yet started.

Disappointingly, the majority of governments across Europe have reacted to the economic and financial crisis with similar approach: with priority given to reducing public deficits, mainly through austerity cuts in public expenditure, focused on reducing social benefits and public services. The European Commission and European Central Bank have had a strong influence in formulating Member States' responses to the crisis.

Needless to say, recent experiences has showed us that the social Europe can be build and sustainably preserved only hand in hand with social, employment as well as economic policies, in a well balanced way to enable growth, employability and social inclusion.

I have to admit that from the member state Government's point of view is often very difficult to meet obligations under the European Social Charter on one hand and recommendations within the EU semester on the other, in the same time.

Let me share with you one example:

In 2010 Slovenia received a conclusion of the European Committee of Social Rights on non- conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage was manifestly unfair. Since 2010 the ratio between the minimum and the average wage in Slovenia has been on a steady rise and reached 51,4 % in 2013, which was still not in conformity with the Charter. On the other hand the European Commission found out that the ratio is among the highest in the EU in 2013 and suggested Slovenia to revise the minimum wage regulation in order to support competitiveness and job creation.

I believe that the Slovene Government is not alone in facing conflicts between human values and market values, and between speculative and productive investments when choosing the policy options for responding to the crisis.

Since we consider employment and social security to be basic human rights, and social policy to be an investment in human capital, financial resources for the implementation of policy and measures in the fields of employment and social protection were substantially increased for the 2009–2013 period, in comparison to 2008. However, the number of poor has been increasing in Slovenia.

In conclusion,

I would like to stress that the Slovene Government is highly committed to the European Social Charter - the instrument which provides Europe with a true social constitution.

I further believe that an intense dialog between the Council of Europe and the European Commission is needed to increase areas of convergence and reduce areas of divergence between the two normative system. It would be much easier for the Governments to fully meet their obligations.

Distinguished colleagues,

We should not forget that the sustainable development of European society is possible only if we place all three dimensions**: social, environmental and economic** on equal footing. Today we are sending a strong message of real commitment to notable results for fairer, more just and inclusive Europe.

Thank you.

18/10/2014

Address by the President of the Chamber of Deputies, Laura Boldrini, at the High-Level Conference on the European Social Charter (Turin, 17-18 October 2014)
(Translation from the original Italian)

Greetings to Giuliano Poletti, Minister of Labour and Social Policies, to Piero Fassino, Mayor of Turin, to Michele Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe and Chair of the Italian delegation, and to Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe, who all promoted the idea of holding this conference. And greetings to everyone present.

Thank you for inviting me to address this conference on the European Social Charter. I regard this idea adopted by the Council of Europe, the Italian Presidency of the Council of the European Union and the City of Turin as very important, since it serves to bring new public attention in both Italy and the rest of Europe to the content of the Charter signed here in Turin exactly 53 years ago.

In order to take stock of the situation of social rights in Europe, it is necessary to start with the people concerned by the economic crisis and austerity policies and their tangible effects on everyday life for millions of European citizens. Are these consequences bearable? Are they acceptable? Let us say straight away that the individual states and the European Union as a whole have been unable to provide adequate protection against the high price paid by their citizens in terms of the curtailing of social rights.

There are too many Europeans currently experiencing increasing difficulties in securing living conditions that offer a minimum of dignity. Reductions in absolute terms in social expenditure in many countries of Europe are having their own dramatic effects. More and more families are struggling to get their children through to the end of their education or are unable to obtain quality health care. Certain categories are the worst affected, such as single-parent families and families with three or more children. According to the European Commission, the objectives of the Europe 2020 strategy are receding, to the extent that the number of people at risk of poverty could still be close to 100 million in the year 2020. And let me tell you, this is truly scandalous. A true scandal in the European Union, the world's greatest economic power!

The people most exposed are those living in countries which have borne the greater part of the austerity burden. One of those countries is Italy. Amongst all the critical aspects of the Italian situation, one in particular should give rise to the greatest alarm: the situation of our young people. Italy's youth unemployment rate (at around 42%) and truancy rate are amongst the highest of all European Union states.

The other major victims of exclusion from the labour market are women, whose employment rate in Italy falls well short of European objectives, with particularly dramatic figures for the southern regions. Women still lag behind, suffering the effects of a welfare system pared to the bone, and also because of the lack of policies designed to provide an incentive for the employment of women.

In the face of these situations of growing hardship, families no longer play the role of social shock absorber. Europe has not managed during these years of crisis to act as a provider to citizens of tangible social guarantees capable of offsetting the effects of stringent financial policies. The frustration generated by this failure may well gain the upper hand: in the recent European elections, radically anti-European political movements emerged in most European Union states, often with openly populist and xenophobic aims.

This widespread feeling that European social protection policies are hopelessly inadequate is echoed by analyses carried out at a more advanced level of economic science. In two recent lectures given in Italy's Chamber of Deputies, authoritative contemporary economic thinkers, Joseph Stiglitz and Thomas Piketty, emphasised the great limitations of current European economic governance. Stiglitz criticised the one-way austerity policies which have so far continued to depress European economies, particularly within the Eurozone, while Piketty illustrated the current tendencies which, on the basis of neoliberal theories, are increasing inequalities in the United States and in Europe. Without corrective action, according to Piketty, we are destined to go back to a wealth distribution pattern similar to that of the 19th century!

When it comes to questioning and reconsidering in most of Europe the gains which have been consolidated in the field of social rights, it seems to me as useful as ever, as this conference proposes, to make a strong reaffirmation of the binding force of the fundamental principles of the European Social Charter: the right to work, the right to join a trade union, the right to social security, the family's right to social, legal and economic protection, the right of migrant workers and their families to protection and assistance. In this context, it was rightly emphasised during today's debate that close synergy is necessary between the law of the European Union and the European Social Charter. Those rights are an essential part of European civil identity, rights hallmarking us worldwide, and the observance of which needs to be kept under constant supervision. In order to protect those rights better, it might be very useful to put in place an early warning procedure in the parliamentary context to monitor the compatibility of European and national legislation with the principles of the Social Charter, and to organise regular meetings between the competent committees of the different European parliamentary assemblies.

In order to maintain the effectiveness of the vital core of social safeguards, however, the culture and politics of rights must in my view go onto the attack. In the face of truly tangible threats of regression, it is not enough to defend what already exists. It is necessary to look ahead, outlining the protection that will be required for the new needs emerging in the present era. That is what the European Social Charter itself has already partly done, with its 1996 revised version encompassing guarantees of new rights, such as the right to equal opportunities, protection against sexual harassment and protection for all forms of disability. And this is what it must continue to do now.

And talking of new rights, last Monday – during the conference of fundamental rights committees of the parliaments of the European Union held in the Chamber of Deputies – the draft of a declaration of Internet rights drawn up by a committee of MPs and experts in the Chamber was made public. This was the first experiment in Italy relating to these crucial issues: the Internet today is not just a means of communication, but a dimension of our day-to-day lives in which an ever-growing part of our personality and social relations is expressed. It is therefore

becoming vital, as proposed by this innovative Internet "Bill of Rights", to secure a new generation of rights such as the right of access to, and neutrality of, the Internet, the right to the elimination of the digital divide – which might otherwise lead to the very same economic inequalities as exist now – and the right to protection of personal rights. On the basis of the text drawn up by the committee, a public consultation is to take place from 27 October onwards on the Chamber's website. It is important in my view for such new texts today to come from a parliament working in close co-operation with civil society. Parliaments – today perhaps more than ever before – reflect for better or worse the complex pluralism of our society, unresolved conflicts and new bodies seeking recognition. Parliaments today can make a decisive push for a new culture of rights which is equal to the challenges of the present day. It is my hope that positive co-operation can start on these subjects with governments and supranational institutions such as the Council of Europe, the very raison d'être of which is the promotion of fundamental rights and democracy.

Thank you.

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)

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 but 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.

Summary of the address by Giuliano Poletti, Minister of Labour and Social Policies, to the final session of the High-Level Conference on the European Social Charter (Turin, 17 to 18 October 2014)
(Translation from the original Italian)

The decision to hold this conference sends a message to Europe and to our citizens about a new departure for the social dimension, as indicated in the title itself of the conference.

I shall nevertheless, if I may, remind you that armed conflicts are still taking place on our continent and that everything possible needs to be done to put an end to those conflicts, which are in flagrant contradiction with social justice.

One of the conclusions which has to be drawn from our discussions is that the crisis has made it more difficult to tackle social problems, and that there is a need for dialogue and for coordination between budgetary and social cohesion policies with a view to inclusive and sustainable growth.

The European social model remains valid, but unless we manage to provide practical answers to the crisis and the increase in inequalities registered in recent years, then extremism, nationalism and xenophobia will gain in strength.

I invite all who have not yet done so to sign the agreements and commitments already in force, such as the Protocol on collective complaints, but I also observe that the legal basis for social rights largely exists already, so what we need to do now is concentrate on implementing and harmonising practice and case-law.

So I consider it appropriate and a matter of priority to forge good relations between the bodies responsible for monitoring the rights deriving from the European Social Charter and those active within the European Union.

The hope is therefore that a process will now begin to which all the players concerned – governments, parliaments, the competent courts and committees, the social partners and civil society – will contribute so as to follow up the productive discussions that we have had here in Turin.

Finally, I should like to express my gratitude to the Council of Europe, the City of Turin and all the participants who have contributed to the successful outcome of a debate which, for Italy, is absolutely consistent with our commitments during our six-month Presidency of the Council of the European Union.

Gabriella Battaini Dragoni, Deputy Secretary General of the Council of Europe

TURIN (ITALY), 18 OCTOBER 2014
(Translation from the original Italian) *[Check against delivery]*

Minister, Mr Mayor,
Your Excellencies,
Ladies and Gentlemen,

Following the ministerial conferences which, in 1961 and 1991, led respectively to the adoption of the European Social Charter and to the reform of the system to supervise its implementation at European level, it is only natural that the political process aimed at asserting social rights in Europe should restart here in Turin.

With regard to this, may I first of all convey my sincere thanks to the mayor, Piero Fassino, for the warm welcome we have been given in this splendid city, a city with a leading role not just in industry, culture and sport, but also in the promotion of social issues.

Special thanks also go to Minister Poletti who, through the support he has given to the organisation of this conference in the context of the Italian presidency of the Council of the European Union, has helped to consolidate the dialogue between the European Union and the Council of Europe in the field of social rights, a dialogue which is now more necessary than ever.

The starting point for this conference was the realisation that the European Social Charter currently finds itself confronted with a number of challenges which jeopardise its effective implementation, and now require the adoption of political decisions by the contracting States and the political organs of the Council of Europe, and also, to a certain extent, by the European Union.

The Conference is a reflection of our conviction that the Charter can and must play an important role in today's Europe, and of our determination to work in this direction.

The Conference has repositioned the Social Charter at the centre of the European political scene with the objective of enabling its enormous potential to be given full expression, alongside the European Convention on Human Rights and the EU Charter of Fundamental Rights, in the name of the indivisibility and interdependence of fundamental rights and freedoms.

The discussions have focused above all on the economic crisis and the management of its social consequences. Many of those taking the floor have acknowledged the inconceivability of seeking to address a crisis on this scale while disregarding the question of giving force to social rights.

The current levels of unemployment in many European countries, particularly among young people, and the resurgence of poverty and social inequality, which now affects broad swathes of the population, are realities which unfortunately present obstacles for Europe's economic recovery.

The growing sense of distrust, uncertainty and demotivation which results from these situations is at risk of undermining the social pact which, for the last fifty years, has

enabled Europe to live in a far more united, prosperous and civil manner.

All of this makes it necessary to tackle the crisis through measures that reconcile the demands of growth with the need for social justice. In other words, the social dimension cannot be politically divorced from the macroeconomic context or considered as a mere adjunct to it.

Respect for social rights is not just a question of civilisation, social peace or human dignity. If they are to function properly our economies need human capital that is recognised as a founding asset of our society, and treated as such in all respects.

It is essential to view, and act upon, the economy and society as a whole, one single dimension, without ever separating what constitute its intrinsic parts. From this standpoint, implementation of the European Social Charter is an essential prerequisite for the success of the economic policies pursued by the relevant national and European authorities.

Europe must make the best possible use of its standard-setting systems to promote innovative social policies aimed at preventing situations where anti-social, anti-European, racist or corporatist movements, or those simply founded on political exploitation of social egoism, can endanger the principles which the Council of Europe has always defended and promoted: democracy, the rule of law and human rights.

To ensure that the crucial economic recovery is sustainable from a social viewpoint, it is urgently imperative that all Council of Europe member States ratify the revised European Social Charter, and accept the largest possible number of its provisions, as the Committee of Ministers called upon them to do on the occasion of the Social Charter's 50th anniversary.

With regard to those States which are also members of the European Union, wider acceptance of the revised Charter would also offer the advantage of fostering greater legislative integration between the European Union and the Council of Europe.

With this aim in mind, the conference has launched ideas and proposals for ways of guaranteeing that the fundamental rights safeguarded by the Charter will be fully upheld when the contracting States take decisions ensuing directly or indirectly from developments in EU law.

The solutions envisaged also include the possibility, at the appropriate time, of EU accession not just to the European Convention on Human Rights but also to the revised European Social Charter, as recommended by the European Parliament. Such solutions could help to resolve potential or emerging conflicts between the two normative systems, in the interests of both the States themselves and their citizens.

During the conference ideas and proposals were also put forward for enhancing the Charter supervision mechanism based on the system of collective complaints.

In particular, the discussions brought to light the fact that, if this mechanism were better known and accepted, especially among EU member States, it could contribute to a reduction in the number of cases pending before the European Court of Human Rights.

Among other benefits, broader adhesion to the collective complaints procedure would

help to reduce the workload of the national administrative bodies participating in the Charter supervision process based on the reporting procedure.

That would make it possible to avoid a situation where, because of the limited number of States that have accepted the collective complaints system to date and the fact that the same States are also subject to the national reporting procedure, the latter process wrongly ends up putting more pressure on certain States than on others.

Ladies and Gentlemen,

As the Secretary General pointed out in his opening address, and the General Rapporteur reiterated just a moment ago, the Conference is but the first step in the Turin process.

This process will involve a series of initiatives to implement the common priorities identified during this conference.

I will personally monitor this work, while constantly bearing in mind that the reinforcement of the European Social Charter is one of the priorities identified by our Secretary General in his strategic vision for the Council of Europe over the next five years.

To this end, apart from supporting the dissemination of the General Rapporteur's report, we will do everything we can to ensure that, as far as possible, the European Social Charter always occupies a place within the Council of Europe convention system consistent with the fundamental nature of the rights it safeguards.

With that same aim in mind, as part of the Turin process, we will firstly support the initiatives taken by member States of the competent Council of Europe entities, and secondly co-operate with the relevant European Union institutions.

In this regard, in agreement with the authorities of Belgium - which, as you know, will hold the Chairmanship of the Committee of Ministers of our Organisation from mid-November - I wish to inform you that, as a result of this Conference, the Belgian Government will organise on 12-13 February 2015 in Brussels a Conference on the European Social Charter. This event will be specifically dedicated to the issue of the protection of fundamental social rights and to the coherence of the international legal systems in this area.

The combination of these initiatives will be implemented to ensure that the Social Charter will always remain, in the interest of all, the social Constitution of Europe.

All of the above steps will be taken in order to ensure that, in the interests of all those concerned, the European Social Charter can always remain the Social Constitution of Europe.

Speech of Piero Fassino, Mayor of Turin
(Translation of the transcription of the recording of the speech made during the Conference)
(Translation from the original Italian)

It is now for me to express my thanks, above all because, following the statements made at this conference, I think that the issues have been well-examined over the last two days and are clearly reflected in our conclusions.

I sincerely thank Speaker Boldrini for having accepted the city's invitation to this conference.

I also thank Minister Poletti and the Italian Government for their assistance with the preparation and organisation of this event.

I thank the foreign delegations, the ministers, secretaries of state and their staff gathered together here.

I naturally convey special thanks to Secretary General Jagland and Deputy Secretary General Battaini-Dragoni, as well as all the officials of the Council of Europe who worked with us on this conference.

Permit me, as is only normal, also to thank my own colleagues, beginning with Dr Gianfrate, the head of my private office, and all the other members of our administration who worked on this conference.

I of course thank all the other people who have assisted us in our work, for example the interpreters.

For two days we have been discussing a vital topic, and we have been told that we have to reckon with a scenario in which the implementation and application of the European Social Charter cannot be regarded as self-evident, as Mr Nicoletti pointed out. This is a time of economic and social crisis, which has resulted in greater uncertainty and insecurity for millions of individuals and families and a weaker rate of development in many countries. It is clear that all this has also undermined the possibilities for full assertion of rights. We should perhaps make this connection more evident, pointing out that there is an inseparable link between the full implementation of rights and growth and development policy.

It is not true that rights can be asserted without regard for the economic and social situation. An economic context in which uncertainty and insecurity prevail regarding development dynamics also becomes a situation of uncertainty and insecurity for rights. From this standpoint, the central focus of the European Union's debate - the debate on how to re-launch growth and investments policies, how to re-create jobs, how to ensure that the stability pact is not solely a means of controlling public finances and budget policies but also an instrument for boosting growth – is closely linked to the theme of giving a fresh impetus to the Social Charter and the rights enshrined therein.

Another factor, a second component of the scenario which cannot be disregarded, is that the European Union, the Council of Europe and our continent are not living in a bubble. We live in a globalised world, and the conditions that govern economic relations at global level, the

dynamics of competition and the various forms of dumping, including social dumping, have an impact on the implementation of rights.

In this sense, in addition to the issue of harmonising the rules laid down by the Social Charter and EU social law, a battle must be fought to promote the universal recognition of social rights. Otherwise we will continue to be confronted with a competitive gap that entails a clear risk of undermining the full application of these rights.

The third question I believe we must take into account is the radical structural transformation of employment, as regards its quantitative distribution and its qualitative composition. It is not a coincidence that we increasingly speak about the "works society", rather than the "work society", since the transformation of employment is bringing about different ways not just of organising work, but also of experiencing it and perceiving it and of identifying oneself with one's job, and all this clearly has an impact on how work is also protected and guaranteed. There is no doubt that, whatever the form of work in question, no matter what its content or the place where it is carried out, there is a need for recognition of the dignity of work. And work equates with dignity when it commands decent pay, when it is contractually protected and legally safeguarded, and first and foremost when the physical and mental integrity of those doing the work are guaranteed.

However, while being absolutely true, all these considerations must be tempered by the fact that, nowadays, we need to determine how to establish and implement these rights in a changing labour market, one which is now entirely organised around the concept of flexibility rather than rigidity.

I have mentioned just three factors that influence our ability to ensure that the Social Charter, and hence the Turin Process, is given full application. I am very pleased that, after having hosted the Charter's signature, our city is also the starting point for a process aimed at giving it a fresh impetus, so as to ensure its implementation under the new conditions and scenarios. The Turin Process will have to contend with these conditions, and hence with certain changed key variables, around which, as Mrs Battaini-Dragoni and Speaker Boldrini have pointed out, the rights and protections we can afford our citizens must in point of fact be redefined. In other words, and I will conclude here, the Social Charter must be perceived as one of the pillars on which to rebuild the European development model, and not just the European model, as it constitutes an essential point of reference for welfare reform processes and for the social State. The Social Charter must be regarded as a key yardstick for a new phase of citizenship rights for all citizens.

These are the considerations I considered it useful to raise in these few concluding words.

I again convey my sincere thanks to everyone. I hope that our hospitality has enabled you to appreciate the many opportunities that our city has to offer and, as I said yesterday when I opened our proceedings, I hope that you will come back to Turin and that you will always find a warm and friendly welcome here.

Thank you!

Appendix 3a

Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

AS/Soc/ESC (2014) 03rev
17 October 2014
Asocesc03rev_2014

Committee on Social Affairs, Health and Sustainable Development

Sub-Committee on the European Social Charter

Declaration by the Sub-Committee participating in the High-level Conference on the European Social Charter on behalf of the Parliamentary Assembly of the Council of Europe

Turin, 17-18 October 2014

In its Resolution 1884 (2012) on "Austerity measures - a danger for democracy and social rights", the Parliamentary Assembly expressed its concern about the impact of austerity programmes on social rights standards. These concerns have been supported in a more recent report by the Council of Europe's Commissioner for Human Rights on "Safeguarding human rights in times of economic crisis".

Many austerity and fiscal consolidation programmes were implemented without prior consultation with social partners and are not in conformity with the European Social Charter, nor the Charter of Fundamental Rights of the European Union.

With a view to giving new impetus to the protection of social rights, in particular the right to work, across Europe, **the Sub-Committee on the European Social Charter** calls upon European governments and parliaments to strengthen the protection of social rights and related mechanisms, by:

- Assessing the impact of past austerity measures on social and democratic rights, and encouraging the adoption of programmes for the restoration of rights and of institutions for social dialogue where necessary;
- Ensuring that fiscal objectives and structural reforms do not hamper decent work and employment for all, and promote fair income distribution;
- Reinvigorating and establishing the pivotal role of the European Social Charter in this context;
- Doing their utmost to ensure that standards defined by the Council of Europe and the European Union, including in their jurisdictions, are respected to avoid any discrepancies between the approaches followed by member States and European institutions;

- With regard to the social rights protection mechanism in particular:
  - Further promoting the full ratification and implementation of the revised European Social Charter (STE No. 163) which remains the most comprehensive instrument in this field;
  - Lifting any national reservations and opt-outs concerning specific articles of the Charter;
  - Ratifying the Additional Protocol Providing for a System of Collective Complaints (ETS No. 158), thus allowing labour and other non-governmental organisations to submit complaints to the European Committee of Social Rights (ECSR);
  - Where they still abide by the 1961 Charter, ratifying the Amending Protocol ("Turin Protocol", ETS No. 142) to allow for the election of the 15 members of the European Committee of Social Rights by the Assembly, in order to strengthen the legitimacy of social rights monitoring processes.

As parliamentarians of the Greater Europe, we are committed to supporting relevant efforts undertaken by our respective national authorities, notably by taking legislative and political initiatives, but also by facilitating links between our national authorities and social partners in our respective constituencies.

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Appendix 3b

CONFERENCE OF INGOs
OF THE COUNCIL OF EUROPE

CONFERENCE DES OING DU
CONSEIL DE L'EUROPE

Message

from the event organised by the Conference of INGOs to mark the International Day for the Eradication of Poverty on 17 October 2014 in Turin

to participants in the high-level conference on the European Social Charter

At the gathering held by the Conference of INGOs of the Council of Europe on 17 October 2014 in Turin, participants drew on existing European legal instruments and in particular Article 30 of the European Social Charter to make the following positive observation: legal instruments for combating poverty are available at European level and in the legislation of almost every state. The UN's Guiding Principles on Extreme Poverty and Human Rights describe in detail ways of ensuring that the legislation in question is properly implemented.

This legal framework and the strategies put forward for implementing it should have brought about visible improvements in communities across Europe and yet poverty continues to grow, an indication of the powerlessness of national and international institutions to stem the destructive effects that poverty has both on individuals and on social cohesion in the countries concerned.

For their part, NGOs in every country in Europe have drawn not only on this legal framework but also on the expertise of individuals affected by the various forms of poverty to develop effective ways of combating poverty and social exclusion. It is clear from their discussions on 17 October 2014, however, that they are constantly being hampered in their efforts by administrative barriers at local, regional, national and international level, by sometimes conflicting regulations and by a lack of financial and human resources. Added to this is the devastating impact of austerity policies.

Gathering in the same city, at the same time and for the same cause, European institutions, national governments and NGOs must firmly commit to working together to move beyond the barriers and conclusions about powerlessness to secure the implementation of policies and measures advocated by people who know from experience how the fight for human dignity and against exclusion should be conducted, for themselves and with others.

To this end, we wish to make a number of requests:

- of European lawmakers, we ask that the statutory provisions adopted in the economic sphere respect all human rights, whether civil, political, economic or social;

- of the European Committee on Social Rights, we ask that they continue developing their enlightened case-law, in particular of Articles 30 and 31 of the European Social Charter;

- of those states which have not yet done so, we ask that they ratify these articles together with the Additional Protocol on collective complaints through which INGOs can help states to maintain their efforts to combat poverty;

- of central, local and regional governments, we ask that they work together effectively to combat poverty and eliminate prejudice and discrimination, and provide the resources needed for action on the ground;

- of administrations at all levels and in all areas (justice, health, education, employment, social services, etc.), we ask that they deal with people living in poverty in a way that respects the full range of human rights and the dignity inherent to all human beings;

- of all public stakeholders, we ask that they pay attention and provide support to successful initiatives by people living in poverty in co-operation with civil society organisations.

Appendix 3c

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

17 October 2014

Some proposals concerning the role and status of the European Committee of Social Rights on the occasion of the High-Level Conference in Turin, Italy 17-18 October 2014

Some proposals concerning the role and status of the European Committee of Social Rights, on the occasion of the Turin Conference

The Committee welcomes the organization by the Italian Minister of Labour and Social Policies, the Mayor of Turin and the Secretary General of the Council of Europe of the High-Level Conference on the European Social Charter on 17 and 18 October 2014.

The Committee shares the objectives of the Conference, in particular the intention to re- launch the normative system based on the Charter as an effective source of European and international law, and to affirm the protection and promotion of social rights as a founding value for all European States and the European Union.

With a view to pursue such a crucial goal, the Committee considers that the European Social Charter should now be at the forefront and that its own role as the independent and authoritative monitoring body of the Charter should be strengthened. In this respect, it highlights the unique character and the usefulness of the monitoring procedures under the Charter, in particular the collective complaints mechanism.

On the occasion of the Conference, the Committee therefore wishes to put forward a number of proposals and invites all stakeholders and interested parties to reflect on these proposals, as well as on others that may emerge, in the follow-up to the High-Level Conference as an important dimension of the "Turin Process". The Committee is available to take part in the discussions.

- The 1991 Amending Protocol ("the Turin Protocol") provides that Committee members be elected by the Parliamentary Assembly. Pending the entry into force of this Protocol, the Committee of Ministers could consider applying this provision immediately, in the same way as it has already decided to apply all the other provisions of the Protocol. This would also be in keeping with what the Parliamentary Assembly has recommended. Election by the Parliamentary Assembly would strengthen and make more visible the Committee's democratic basis and its independent status, which is crucial for a body operating with monitoring and quasi- judicial procedures.

- The number of members of the Committee should be increased from the current 15, in particular to ensure a better overall balance in the Committee of the different legal traditions and social models in Europe. This would furthermore contribute to cope with the increasing workload by allowing further improvement of the Committee's working methods. This would also provide a much-needed opportunity for a revision of the distribution of States in the groups for the election process.

- The Committee also considers that in order to strengthen its role and the performance of its institutional functions, its secretariat should be reinforced and its status should be upgraded. It has already made proposals to this effect concerning the qualifications and experience of staff, the level of their grades and

their number.

- The four-month embargo on the Committee's decisions on the merits of collective complaints is a procedural anomaly which hinders communication on and visibility of the procedure. The Committee wishes to initiate a reflection on how to overcome this problem, one possibility being that States concerned accept immediate publication.

Le processus de Turin

Contribution du Réseau académique sur la Charte sociale européenne et les Droits sociaux [R.A.C.S.E.]

Avertissement : *Le présent texte est en cours de traduction en langue anglaise*.

I. Introduction

La Charte sociale européenne a été voulue par les Etats membres du Conseil de l'Europe comme pendant de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. Comme cette dernière, la Charte concrétise le but de cette organisation qui est de sauvegarder et de promouvoir les idéaux et les principes qui sont le patrimoine commun des Etats européens et de favoriser leur progrès économique et social, notamment par la défense et le développement des droits de l'homme et des libertés fondamentales. Aussi, participe-t-elle de la construction de la société démocratique européenne.

Depuis son adoption le 18 octobre 1961, et avec sa révision le 3 mai 1996, la Charte sociale européenne constitue une référence reconnue en Europe, en tant qu'elle formule le catalogue le plus complet de droits sociaux. Elle est au fondement du développement des droits sociaux fondamentaux dans l'ordre juridique de l'Union européenne (article 151 du Traité sur le fonctionnement de l'Union européenne).

La Charte sociale européenne de 1961 (et sa version révisée de 1996) sont des instruments conventionnels internationaux au sens de la Convention de Vienne sur le droit des traités du 23 mai 1969. Ainsi que le confirme la Charte elle-même: « Les Parties s'engagent à se considérer comme liées par les obligations résultant des articles et des paragraphes » figurant dans la partie I (article 20 de la Charte sociale européenne, article A de la Charte sociale européenne révisée). En ratifiant lesdites Chartes, ceux-ci s'engagent, conformément à l'article 26 de ladite Convention de Vienne, à exécuter les engagements qu'elles contiennent de bonne foi.

Le Réseau académique sur la Charte sociale européenne et les droits sociaux (RACSE) est une association[1] qui réunit, à titre principal, des enseignants-chercheurs et chercheurs des

[1] L'association est régie par les articles 21 à 79-III du Code civil local maintenu en vigueur dans les départements du Haut-Rhin, du Bas-Rhin et de la Moselle par la Loi du 1er juin 1924, ainsi que par ses statuts. Elle est inscrite au

établissements d'enseignement supérieur d'Europe, de rang professoral ou non, et, à titre subsidiaire, des personnes physiques ou morales particulièrement qualifiées sur les questions relatives à la Charte sociale européenne et aux droits sociaux. Selon ses statuts, « le Réseau a pour mission prioritaire la promotion de la Charte sociale européenne et des droits sociaux en Europe, et prend toute initiative propre à faire connaître la Charte sociale européenne et les autres instruments de protection des droits sociaux en Europe, ainsi qu'à améliorer leur mise en œuvre et leur protection tant à l'échelle du Conseil de l'Europe que dans les Etats membres de cette organisation »[2].

Le Réseau académique sur la Charte sociale européenne et les droits sociaux voit la Conférence à haut niveau de Turin comme devant avoir pour objectif de traduire dans la réalité européenne la vocation de la Charte sociale à être une véritable constitution sociale pour l'Europe. La réalisation de cet objectif n'implique, en l'état actuel du droit européen, aucune révision des textes en vigueur. Elle suppose cependant que soient prises par le Comité des ministres, qui en a le pouvoir, des mesures concrètes pour renforcer la visibilité et l'effectivité de la Charte sociale. Elle suppose également une amélioration de la coordination entre la production normative de l'Union européenne et les exigences de la Charte sociale européenne.

Tel est le sens et l'esprit du présent document. Le Réseau académique sur la Charte sociale européenne et les droits sociaux souhaite, à travers lui, contribuer à la réflexion collective sur les thèmes à l'ordre du jour de la Conférence à haut niveau. Conformément à son mandat statutaire, il estime devoir soumettre à la délibération des gouvernements et des institutions européennes les propositions qu'il juge les plus propres à réaliser l'objectif que cette Conférence à haut niveau s'est donnée, à savoir « mettre au premier plan la Charte sociale européenne en tant que Constitution sociale du continent, pour que l'Europe retrouve l'adhésion des citoyens et l'engagement des Etats autour des valeurs de démocratie, de prééminence du droit et de respect des droits de l'homme ».

1. L'AMELIORATION NECESSAIRE DES MECANISMES DE LA CHARTE SOCIALE EUROPEENNE

1.1. Application de la Charte dans l'ordre juridique des Etats parties

Le mécanisme de suivi du respect des engagements des Etats parties qu'institue la Charte sociale européenne et le Protocole additionnel prévoyant un système de réclamations collectives n'est pas un substitut à une meilleure prise en compte de la Charte par les autorités nationales. La Charte sociale européenne est un traité international qui, à ce titre, impose des obligations à l'ensemble des organes de l'Etat. Le Législateur, l'Exécutif, et le Judiciaire ne peuvent ignorer les exigences de la Charte sociale européenne qu'au risque d'engager la responsabilité de l'Etat. Or, trop peu de progrès ont été faits à cet égard. S'il est vrai que l'Annexe à la Charte sociale européenne énonce, s'agissant de la Partie III de la Charte, que

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registre des associations du Tribunal d'Instance de Strasbourg. Elle a son siège à : La Maison des associations, 1-a Place des Orphelins, 67000 Strasbourg.

[2] Article 2 des statuts.

celle-ci « contient des engagements juridiques de caractère international dont l'application est soumise au seul contrôle visé par la partie IV », cette précision signifie uniquement que le contrôle de la Charte repose sur les mécanismes que la Charte institue et non sur d'autres mécanismes internationaux ; elle ne dispense pas les Etats parties de l'obligation de tenir compte de leurs engagements internationaux dans l'adoption de législations et de politiques au plan national.

Le Réseau académique sur la Charte sociale européenne et les droits sociaux estime le moment venu de dépasser le préjugé selon lequel la Charte sociale européenne ne contiendrait que des obligations de nature programmatique, et trop vagues pour être invoquées directement devant les juridictions nationales. Il relève en outre que, même dans les Etats parties qui définissent de manière restrictive la compétence de leurs juridictions nationales à prendre appui sur les règles de droit international en vigueur à l'égard de l'Etat concerné, ceci ne dispense pas les autres pouvoirs de l'Etat – le Législateur et l'Exécutif – de prendre en compte les règles de la Charte dans l'élaboration des lois et dans leur mise en œuvre, de même que cela n'a pas fait obstacle à une application de ces règles par les juridictions. Les mécanismes de contrôle institués au niveau du Conseil de l'Europe devraient n'avoir qu'une fonction purement subsidiaire à remplir.

a) La prise en compte de la Charte devant les instances juridictionnelles

De manière croissante, les juridictions nationales reconnaissent que les droits économiques et sociaux que leur Etat s'est engagé à reconnaître en droit international peuvent être invoqués devant elles. Les modalités de cette invocation sont diverses. L'invocabilité passe parfois par l'application directe de la règle internationale: celle-ci est assimilée à une règle de droit nationale, et appliquée comme telle. L'invocabilité peut être plus indirecte : la règle internationale peut influencer l'interprétation des règles applicables du droit interne, par exemple lorsque plusieurs interprétations sont possibles, ou lorsqu'apparaissent des notions à contenu variable telles que l'ordre public, la « faute » en droit de la responsabilité civile, l'abus de droit ou la bonne foi.

Dans plusieurs Etats parties à la Charte sociale européenne, les cours et tribunaux admettent qu'au moins certaines dispositions de la Charte puissent être invoquées dans le cadre des litiges dont ils sont saisis. Cette évolution est appelée à s'accélérer dans les années qui viennent, notamment suite à l'entrée en vigueur, le 5 mai 2013, du Protocole facultatif au Pacte international relatif aux droits économiques, sociaux et culturels.

Bien que le Comité européen des droits sociaux n'impose pas aux Etats parties qu'ils reconnaissent une forme déterminée d'invocabilité de la Charte sociale européenne, il a insisté à juste titre sur le fait que la reconnaissance de pareille invocabilité est de nature à favoriser une meilleure prise en compte de la Charte par l'Etat concerné[3]. Il ressort aussi de certaines décisions du Comité qu'il appartient aux juridictions internes d'appliquer aux litiges dont

[3] C.E.D.S., *Conseil européen des syndicats de police (CESP) c. France*, réclamation n° 57/2009, déc. du 1er déc. 2010, § 23.

elles sont saisies les appréciations générales qu'il donne sur la conformité des situations nationales à la Charte[4].

Le Réseau académique européen sur la Charte sociale européenne et les droits sociaux en appelle aux différents organes du Conseil de l'Europe pour qu'ils encouragent l'application de la Charte sociale par les juridictions nationales. Ceci pourrait se traduire notamment par l'organisation d'échanges réguliers entre le Comité européen des droits sociaux et les juges des cours suprêmes des Etats membres du Conseil de l'Europe, par la formation des juges là où cela est nécessaire, et par la diffusion des bonnes pratiques. Une réflexion pourrait aussi être engagée sur la possibilité de compléter le système de la Charte sociale européenne par une procédure d'avis consultatif permettant aux juridictions nationales d'obtenir une interprétation autorisée des dispositions pertinentes de la Charte par le Comité européen des droits sociaux.

Le Réseau entend contribuer à cette évolution, qui renforcerait le caractère subsidiaire des mécanismes de suivi de la Charte que prévoit la partie IV de la Charte sociale européenne de 1961 (à laquelle renvoie l'article C de la Charte sociale européenne révisée), en même temps que l'effectivité de ladite Charte sur le territoire des Etats parties. Il peut contribuer à la formation des juges et agents de la justice et à la réflexion sur un éventuel mécanisme d'avis consultatif. Il a en outre résolu d'entreprendre une étude comparative systématique de la prise en compte de la Charte par les juridictions nationales des Etats parties, de manière à favoriser une diffusion des bonnes pratiques et à permettre de mettre en lumière à la fois les avantages d'une telle prise en compte et les obstacles qu'elle rencontre.

b) La prise en compte de la Charte dans l'élaboration des lois et des politiques au plan national

Lorsqu'une atteinte aux droits que garantit la Charte sociale européenne est dénoncée devant les juridictions nationales, c'est que les lois ou pratiques nationales ont échoué à prendre en compte les exigences de la Charte de manière suffisamment complète. C'est donc le signe d'un échec. Or, plusieurs mécanismes permettraient d'éviter une telle situation, où une atteinte aux droits de la Charte est constatée *post hoc*, par une meilleure prise en compte de la Charte *ex ante*. Parmi ces mécanismes préventifs figurent :

- les études d'impact des lois en préparation sur les droits de la Charte sociale européenne, permettant d'anticiper le risque de violation ;
- une attention plus grande portée à la Charte sociale européenne par les institutions nationales de prévention et de protection des droits de l'homme, établies en conformité avec les Principes de Paris ;
- une amélioration de l'information des assemblées parlementaires concernant l'étendue des obligations de l'Etat au regard de la Charte sociale européenne ;
- la constitution d'un groupe de travail interdépartementaux, au sein de l'Exécutif, à même de vérifier, à intervalles réguliers, la conformité de l'ensemble des législations et pratiques nationales aux exigences de la Charte sociale européenne, notamment par

[4] C.E.D.S., *Confédération européenne des Syndicats c. Suède*, réclamation n° 12/2002, déc. du 22 mai 2003, §§ 28 et 42

le suivi des conclusions adressées par le Comité européen des droits sociaux à l'Etat concerné.

Le Réseau académique européen sur les droits sociaux estime que le Conseil de l'Europe pourrait encourager les initiatives des Etats tendant à renforcer la prise en compte de la Charte dans les politiques publiques nationales et, par ailleurs, assurer et contribuer à la diffusion des bonnes pratiques.

Le Réseau invite l'Union européenne et ses Etats membres à œuvrer à l'amélioration de la prise en compte de la Charte sociale européenne dans la formulation et la mise en œuvre des législations et pratiques nationales, et au partage des bonnes pratiques en la matière. Il est prêt à apporter sa contribution au processus. Il tient également à souligner le rôle important des institutions nationales de promotion et de protection des droits de l'homme en la matière, y compris dans le suivi des décisions et conclusions du Comité européen des droits sociaux.

1.2. Les voies de la consolidation du mécanisme des réclamations collectives

1.2.1. Ratification du Protocole sur les réclamations collectives.

La procédure de réclamations collectives a été instituée par le Protocole additionnel à la Charte sociale européenne prévoyant un système de réclamations collectives, ouvert à la signature le 9 novembre 1995 et en vigueur depuis le 1er juillet 1998. Cette procédure est un élément clé du processus de « relance » de la Charte sociale européenne. A ce jour, 15 Etats sur les 47 que compte le Conseil de l'Europe ont accepté la procédure. Il s'agit de : la Belgique, la Bulgarie, Chypre, la Croatie, la Finlande, la France, la Grèce, l'Irlande, l'Italie, la Norvège, les Pays-Bas, le Portugal, la République tchèque, la Slovénie et la Suède. Quatre autres Etats ont signé, mais n'ont pas encore ratifié le Protocole de 1995. Il s'agit de : l'Autriche, le Danemark, la Hongrie et la Slovaquie.

Le nombre relativement faible de Parties à la Charte sociale européenne ayant accepté le mécanisme des réclamations collectives illustre la distance considérable qui sépare encore la réalité européenne des objectifs assignés à cette nouvelle procédure. En effet, pour les rédacteurs du Protocole, celui-ci devait permettre « d'améliorer la mise en œuvre effective des droits sociaux garantis par la Charte »[5]. Or, la poursuite de cet objectif implique, de l'avis du Réseau académique sur la Charte sociale européenne et les droits sociaux, que le Protocole de 1995 soit ratifié par tous les Etats parties à la Charte sociale de Turin ou à la Charte sociale révisée. Parallèlement, les efforts doivent se poursuivre en vue de la ratification de la Charte sociale européenne par l'ensemble des 47 Etats membres du Conseil de l'Europe, de manière à marquer l'interdépendance, l'indivisibilité et l'égale importance de l'ensemble des droits civils, culturels, économiques, politiques et sociaux, que les Etats européens promeuvent dans le cadre universel.

[5] Préambule du Protocole de 1995 prévoyant un système de réclamations collectives.

Le Réseau estime que le Comité des Ministres du Conseil de l'Europe pourrait inviter les Etats membres non encore parties à la Charte sociale européenne à adhérer sans plus tarder à celle-ci, et inviter les Etats parties qui n'ont pas encore ratifié le Protocole additionnel de 1995 à le faire dans un délai raisonnable. Le Réseau serait favorable à ce que, parallèlement, une étude systématique permette d'identifier les obstacles qui subsistent à cet égard dans les différents Etats concernés.

1.2.2. Optimisation du fonctionnement de la procédure de réclamations collectives.

Depuis son entrée en vigueur en 1998, la procédure a enregistré 110 réclamations. Le traitement de ces requêtes par le Comité européen des droits sociaux est, de l'avis du Réseau académique européen sur la Charte sociale européenne et les droits sociaux, globalement satisfaisant. Le Réseau se réjouit en particulier :

- de la mise en place d'une pratique transparente de la procédure (mise en ligne de tous les actes de procédure[6]) ;
- du respect rigoureux des principes du procès équitable, en particulier le contradictoire et le délai raisonnable ;
- de la mise en œuvre de principes d'interprétation propres à assurer l'effectivité des droits de la Charte sociale européenne et à permettre la coordination des normes des droits de l'homme au sein du Conseil de l'Europe, spécialement avec la Convention européenne des droits de l'homme, mais également avec les normes universelles de protection des droits sociaux de l'homme (notamment, Pacte international relatif aux droits économiques, sociaux et culturel ; Pacte international relatif aux droits civils et politiques ; Conventions de l'Organisation internationales du travail)

Des difficultés et des points de préoccupation n'en demeurent pas moins.

En ce qui concerne l'accès à la procédure. Dans l'économie générale du Protocole de 1995, une place importante est accordée aux organisations non-gouvernementales nationales, aux côtés des organisations non-gouvernementales internationales et des organisations professionnelles, en tant qu'agents de réclamations. Du fait de la position de ces organisations, au plus près des réalités sociales, on pouvait fonder sur elles l'espoir d'une mise en conformité de maintes situations nationales concrètes avec la Charte. Or ce levier de la mise en œuvre effective des droits sociaux est resté, à ce jour, largement inactif, parce que le Protocole subordonne le droit de réclamation des ONG nationales à une déclaration de l'Etat de juridiction et qu'un seul Etat[7], la Finlande, a effectué cette formalité.

Le Comité des Ministres du Conseil de l'Europe pourrait recommander à tous les Etats ayant accepté la procédure de faire la déclaration autorisant les ONG nationales à introduire des réclamations.

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[6] Ils sont disponibles à l'adresse suivante : http://www.coe.int/t/dghl/monitoring/socialcharter/default_fr.asp

[7] Article 2, § 1 du Protocole de 1995 : « Tout Etat contractant peut, en outre, lorsqu'il exprime son consentement à être lié par le présent Protocole, conformément aux dispositions de l'article 13, ou à tout autre moment par la suite, déclarer reconnaître le droit de faire à son encontre des réclamations aux autres organisations nationales non gouvernementales représentatives relevant de sa juridiction et qui sont particulièrement qualifiées dans les matières régies par la Charte ».

En ce qui concerne la publicité et le suivi des décisions du Comité européen des droits sociaux. Du Protocole de 1995 il ressort la répartition suivante des rôles dans le cadre de la procédure de réclamations collectives[8] : le Comité européen des droits sociaux se prononce en droit sur la conformité avec les obligations découlant de la Charte des situations nationales dont il est saisi et fait rapport au comité des Ministres[9] ; et ledit comité des Ministres prend acte des décisions de non violation et, s'agissant des constats de violation, recommande aux Etats les mesures à prendre afin de se conformer à la Charte [10] . Quant au comité gouvernemental, il ne joue pas de rôle spécifique dans le cadre de cette procédure, mais voit sa mission générale de préparation des travaux du comité des Ministres s'étendre à ce cadre.

Cette claire répartition des rôles se trouve à présent affectée par certaines règles et pratiques auxquelles, de l'avis du Réseau, il conviendrait de mettre fin.

Il en va ainsi d'abord de la règle qui impose que les décisions du CEDS ne soient rendues publiques qu'après l'adoption par le comité des Ministres de la résolution ou de la recommandation prévues par le Protocole ou, à défaut, après un délai de 4 mois [11] . L'application de cette règle ne peut être que source de confusion. Pour le requérant, et plus largement le citoyen, rien ne justifie qu'une décision définitivement acquise voie sa publication retardée. Cette absence de transparence ne peut que nourrir la suspicion. Et ce d'autant plus que cette obligation de délai n'étant pas sanctionnée, une organisation réclamante, qui y a nécessairement intérêt, sera tentée de rendre publique la décision qui lui a été notifiée.

Ce délai nuit à la crédibilité et à l'efficacité de la procédure. C'est pourquoi le Réseau est en faveur de la publication immédiate des décisions du Comité européen des droits sociaux. Ceci ne ferait pas obstacle à ce que le Comité des Ministres joue pleinement le rôle que lui reconnaissent la Charte sociale européenne et son protocole additionnel prévoyant une procédure de réclamations collectives.

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[8] Articles 7 à 10 du Protocole additionnel à la Charte sociale européenne prévoyant un système de réclamations collectives.

[9] Article 8, § 1 du Protocole additionnel à la Charte sociale européenne prévoyant un système de réclamations collectives: « Le Comité d'experts indépendants rédige un rapport dans lequel il décrit les mesures qu'il a prises pour examiner la réclamation et présente ses conclusions sur le point de savoir si la Partie contractante mise en cause a ou non assuré d'une manière satisfaisante l'application de la disposition de la Charte visée par la réclamation ». Disposition à lire de concert avec l'article 2 du Protocole d'amendement à la Charte sociale européenne (1991) modifiant l'article 24 de la Charte de Turin (1961), ainsi rédigé : « le [Comité européen des droits sociaux] *appréciera, d'un point de vue juridique, la conformité des législations, réglementations et pratiques nationales avec le contenu des obligations découlant de la Charte* pour les Parties contractantes concernées ». Souligné par nous.

[10] Article 9, § 1 du Protocole additionnel à la Charte sociale européenne prévoyant un système de réclamations collectives: « Sur la base du rapport du Comité d'experts indépendants, le Comité des Ministres adopte une résolution à la majorité des votants. *En cas de constat, par le Comité d'experts indépendants, d'une application non satisfaisante de la Charte, le Comité des Ministres adopte*, à la majorité des deux tiers des votants, *une recommandation à l'adresse de la Partie contractante mise en cause* ». Souligné par nous.

[11] Article 8, § 2 du Protocole additionnel à la Charte sociale européenne prévoyant un système de réclamations collectives: « Le rapport [du Comité européen des droits sociaux] est transmis au Comité des Ministres. Il est également communiqué à l'organisation qui a introduit la réclamation et aux Parties contractantes à la Charte, sans qu'elles aient la faculté de le publier. Il est transmis à l'Assemblée parlementaire et rendu public en même temps que la résolution prévue à l'article 9 ou au plus tard dans un délai de quatre mois après sa transmission au Comité des Ministres ».

Outre cette règle, doivent aussi être mentionnées deux pratiques du comité des Ministres. L'une consiste à admettre que l'Etat qui a succombé devant le CEDS conteste devant l'organe ministériel le constat de violation rendu à son égard, et l'autre à remplacer les recommandations requises par le Protocole par de simples résolutions. Ces deux pratiques ne sont conformes ni à la lettre ni à l'esprit des textes. Mais elles sont plus encore. La première d'entre elles, en plus de fragiliser le constat juridique fait par le CEDS, remet directement et nécessairement en cause le principe du contradictoire qui gouverne la procédure de réclamations collectives, la partie réclamante n'ayant pas l'avantage de pouvoir s'exprimer devant le comité des Ministres. Quant à la seconde pratique, elle fait naître un contraste frappant entre le suivi dont font l'objet les décisions du CEDS et la surveillance par le comité des Ministres de l'exécution des arrêts de la Cour européenne des droits de l'homme, ce qui est de nature à renforcer la perception d'une protection des droits de l'homme à deux vitesses, au détriment des droits sociaux.

Le Réseau académique sur la Charte sociale européenne et les droits sociaux considère que le Comité des Ministres du Conseil de l'Europe jouerait pleinement son rôle dans le système de la Charte sociale européenne en contribuant à assurer le suivi de l'exécution des décisions du Comité européen des droits sociaux, œuvrant à cet égard par analogie avec le rôle qu'il assume dans le cadre de la Convention européenne des droits de l'Homme. Il s'agit dans les deux cas de garantir le respect de l'Etat de droit en Europe, à travers la mise en œuvre de décisions adoptées par des mécanismes régionaux indépendants de contrôle du respect des engagements internationaux des Etats en matière de droits de l'homme.

En ce qui concerne l'administration de la procédure de réclamations collectives. La procédure de réclamations collectives est administrée par un comité de 15 membres assisté d'un Secrétariat réduit (le service de la Charte sociale européenne et du Code européen de sécurité sociale). Or, le CEDS et les personnels mis à son service ont à gérer aussi une procédure de contrôle sur rapports qui accroit considérablement leur charge de travail.

Le processus de « relance » de la Charte sociale européenne entamé en 1990 avait aussi été animé par la volonté de consolider l'organe de contrôle international de cet instrument. Un des moyens choisis pour y parvenir était de conférer aux membres du Comité européen des droits sociaux la même légitimité qu'aux membres de la Cour européenne des droits de l'homme. Aussi, l'article 3 du Protocole d'amendement à la Charte sociale (1991) modifiant l'article 25 de la Charte de Turin prévoyait-il que les « membres [du Comité européen des droits sociaux sont] élus par l'Assemblée parlementaire à la majorité des voix exprimées sur une liste d'experts de la plus haute intégrité et d'une compétence reconnue dans les matières sociales nationales et internationales », sur proposition des Parties contractantes. Cette réforme n'a jamais été mise en œuvre, en raison de la non-ratification du Protocole de Turin.

Dans le souci de consolider l'efficacité du contrôle européen des engagements des Etats en matière de droits sociaux, le Comité européen des droits sociaux devrait voir le nombre de ses membres accru. Ceci n'implique pas nécessairement de devoir s'aligner sur la solution retenue dans le cadre de la Convention européenne des droits l'Homme,

où la Cour européenne des droits de l'Homme comprend un juge élu au titre de chaque Partie contractante.

Parallèlement, il importerait d'augmenter le nombre de juristes au service de la Charte sociale européenne.

Le Réseau estime par ailleurs le moment venu de mettre en application l'amendement figurant à l'article 3 du Protocole de Turin de 1991. Ce serait une manière, parmi d'autres, d'indiquer l'importance que le Conseil de l'Europe et ses Etats membres attachent aux droits de la Charte sociale européenne.

2. LE DEVELOPPEMENT DU DROIT DE LA CHARTE SOCIALE EUROPEENNE

2.1. Les interactions entre la Charte sociale européenne et le droit de Union européenne

Le Réseau académique sur la Charte sociale européenne et les droits sociaux constate l'existence de risques accrus de conflits entre les exigences de la Charte sociale européenne (révisée) d'une part, et celles du droit de l'Union européenne d'autre part, à mesure que s'étendent les périmètres de chacun de ces ensembles de normes.

Il relève ainsi que, dans une décision du 3 juillet 2013, le Comité européen des droits sociaux a conclu au bien-fondé d'une réclamation introduite par les syndicats suédois, qui estimaient que les amendements apportés à la législation suédoise en 2010, afin de permettre à la Suède de se conformer à l'arrêt *Laval* de la Cour de justice de l'Union européenne, violaient plusieurs paragraphes de la Charte sociale européenne (révisée) : le Comité constate que lesdits amendements ne favorisent pas la négociation collective, en violation de l'engagement accepté par la Suède dans l'article 6 § 2 de la Charte de promouvoir la négociation collective comme manière de régler les conditions d'emploi; et que ces amendements apportent des restrictions aux actions collectives auxquelles les travailleurs doivent pouvoir recourir, dont la nature aboutit à une violation de l'article 6 § 4 de la Charte[12].

Cette décision s'inscrit dans une évolution d'ensemble. Deux décisions rendues le 23 mai 2012 par le Comité européen des droits sociaux constataient déjà qu'aboutissaient à des violations de la Charte sociale européenne de 1961 plusieurs mesures de flexibilisation du droit du travail en Grèce – en particulier, autorisant le licenciement sans préavis ni indemnité de personnes engagées sous les liens d'un contrat de travail à durée indéterminée ou favorisant l'embauche de jeunes travailleurs par la création de régimes spéciaux aboutissant à créer un régime dérogatoire –, alors que ces mesures se voulaient une réponse à la crise économique et notamment au taux de chômage très élevé des jeunes en Grèce, et étaient semble-t-il adoptées sous la pression de la « troïka » (comprenant la Banque centrale européenne, la Commission européenne, et le Fonds monétaire international) constituée afin de s'assurer que ce pays

[12] Comité européen des droits sociaux, *Confédération générale du travail de Suède (LO) et Confédération générale des cadres, fonctionnaires et employés (TCO) c. Suède*, réclamation n° 85/2012, décision sur la recevabilité et le bien-fondé du 3 juillet 2013, spéc. paras. 116 et 120.

prendrait des mesures structurelles garantissant la résorption de sa dette publique[13]. Par la suite, le Comité européen des droits sociaux a pris position sur le bien-fondé d'une réclamation introduite par le Syndicat des pensionnés-salariés de Grèce (« IKA-ETAM »), alléguant qu'un ensemble de modifications apportées au régime grec des pensions au cours de l'année 2010 était incompatible avec les engagements de la Grèce dans le cadre de la Charte sociale européenne, notamment avec son article 12 qui impose de porter progressivement le régime de sécurité sociale à un niveau plus élevé[14]. Le Comité relève dans sa décision que la clause de restriction de l'article 31 § 1er de la Charte de 1961 ne fait pas figurer les « objectifs économiques ou financiers » parmi les motifs admissibles de restriction des droits que la Charte garantit[15]. Il ajoute que « la circonstance que les mesures nationales contestées tendent à satisfaire à une autre obligation internationale que la Charte ne les soustrait pas à l'empire de celle-ci »[16]. Selon le Comité européen des droits sociaux, « lorsque les Etats parties acceptent des dispositions contraignantes qui se réfèrent à des questions régies par la Charte, il leur appartient, tant lors de l'élaboration dudit texte que de sa mise en œuvre dans leur droit interne, de tenir compte des engagements qu'ils ont souscrits par la ratification de la Charte »[17].

Le Comité européen des droits sociaux dit attacher « la plus grande importance à ce que les Parties contractantes de la Charte tiennent compte de ce traité lorsqu'elles adoptent, au sein de l'Union européenne, des directives dans les domaines couverts par la Charte. Le Comité souhaite en outre que les Parties contractantes, lorsqu'elles sont appelées à transposer en droit

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[13] Comité européen des droits sociaux, *Fédération générale des employés des compagnies publiques d'électricité (GENOP-DEI) et Confédération des syndicats des fonctionnaires publics (ADEDY) c. Grèce*, réclamation n° 65/2011, décision sur le bien-fondé du 23 mai 2012 ; Comité européen des droits sociaux, *Fédération générale des employés des compagnies publiques d'électricité (GENOP-DEI) et Confédération des syndicats des fonctionnaires publics (ADEDY) c. Grèce*, réclamation n° 66/2011, décision sur le bien-fondé du 23 mai 2012. La première décision concerne des mesures de flexibilisation du droit du travail en Grèce, introduites par une loi du 17 décembre 2010, rendant possible, au cours de la période probatoire, le licenciement d'un travailleur engagé à durée indéterminée, sans préavis ni indemnité de licenciement: le Comité considère que cette mesure porte atteinte à la garantie figurant à l'article 4 § 4 de la Charte sociale européenne de 1961, qui garantit « le droit de tous les travailleurs à un délai de préavis raisonnable dans le cas de cessation de l'emploi ». La deuxième décision constate que des dispositions introduites en 2010 dans le droit du travail grec, concernant les « contrats spéciaux d'apprentissage » destinés à l'embauche des jeunes de 15 à 18 ans et concernant la première embauche de jeunes de moins de 25 ans, violent plusieurs garanties de la Charte sociale européenne. Les « contrats spéciaux d'apprentissage » ne prévoient pas que les jeunes bénéficieront de trois semaines au moins par an de congés payés, en violation de l'article 7 § 7 de la Charte ; ils ne favorisent pas la formation des jeunes travailleurs, contrairement au prescrit de l'article 10 § 2 de la Charte ; et ils excluent en pratique les jeunes travailleurs de la protection offerte par le système de sécurité sociale, en violation de l'article 12 § 3 de la Charte. Et, s'agissant des mesures destinées à favoriser la première embauche des jeunes de moins de 25 ans, le Comité considère que l'autorisation d'engager des jeunes contre une rémunération située à 68% du salaire minimum légal ne respecte pas l'article 4 § 1er de la Charte, qui garantit le droit à une rémunération équitable et s'oppose au versement d'un salaire situé en-deçà du seuil de pauvreté ; il constate en outre qu'elle débouche sur une discrimination fondée sur l'âge.

[14] Comité européen des droits sociaux, *Fédération des pensionnés salariés de Grèce (IKA-ETAM) c. Grèce*, réclamation n° 76/2012, décision sur le bien-fondé du 7 décembre 2012.

[15] Id., para. 12. L'article 31 § 1er de la Charte sociale européenne de 1961 dit que: « Les droits et principes énoncés dans la partie I, lorsqu'ils seront effectivement mis en œuvre, et l'exercice effectif de ces droits et principes, tel qu'il est prévu dans la partie II, ne pourront faire l'objet de restrictions ou limitations non spécifiées dans les parties I et II, à l'exception de celles prescrites par la loi et qui sont nécessaires, dans une société démocratique, pour garantir le respect des droits et des libertés d'autrui ou pour protéger l'ordre public, la sécurité nationale, la santé publique ou les bonnes mœurs ».

[16] Voir déjà Comité européen des droits sociaux, *Confédération générale du travail (CGT) c. France*, réclamation n°55/2009, décision sur le bien-fondé du 23 juin 2010.

[17] Comité européen des droits sociaux, *Fédération des pensionnés salariés de Grèce (IKA-ETAM) c. Grèce*, réclamation n° 76/2012, déc. précitée sur le bien-fondé, para. 51.

interne des directives de l'Union européenne, fassent cette transposition en se conformant à leurs obligations au regard de la Charte. Il en va ainsi particulièrement des directives qui n'ont pas encore été intégrées dans le droit interne d'un certain nombre de Parties contractantes »[18].

En effet, les risques de conflit entre le droit de l'Union européenne et les exigences de la Charte sociale européenne subsisteront tant que les exigences que la Charte sociale européenne impose aux Etats parties ne seront pas mieux prises en compte dans l'élaboration du droit et des politiques de l'Union européenne[19]. Dans une décision de 2010[20], le Comité européen des droits sociaux a rappelé que cette situation empêchait de considérer *a priori* les textes juridiques de l'Union européenne comme bénéficiant d'une présomption de conformité avec la Charte sociale européenne[21]. Il s'est dit néanmoins « prêt à modifier son opinion » lorsque la prise en compte de la Charte sociale européenne dans le droit de l'Union européenne serait plus systématique et fidèle[22].

Or, le Réseau constate que le risque de conflits entre le droit de l'Union européenne et les exigences de la Charte sociale européenne s'accroît :

1. La Cour de justice de l'Union européenne ne considère pas que la Charte sociale européenne devrait inspirer l'interprétation des dispositions fondamentales de l'Union en matière sociale, et plus généralement, les principes généraux du droit de l'Union. La Cour de justice accepte certes que les Etats membres puissent présenter certains droits sociaux fondamentaux – et leur souci d'en assurer la protection au plan national – comme constituant des raisons impérieuses d'intérêt général susceptibles de justifier des restrictions à la libre circulation des marchandises[23] ou à la libre prestation des services[24], ou comme justifiant des restrictions aux exigences du droit de la concurrence[25]. Mais la Charte sociale européenne ne constitue pas une référence obligatoire pour l'identification de ces droits[26]. Il peut donc

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[18] Conclusions XIV-1 (1998), Introduction générale, p. 28.

[19] En ce sens, O. De Schutter, « Le statut de la Charte sociale européenne dans le droit de l'Union européenne », in *Mélanges en hommage à Jean-Paul Jacqué*, Dalloz, Paris, 2010, pp. 217-261.

[20] Comité européen des droits sociaux, *Confédération générale du travail (CGT) c. France*, réclamation n°55/2009, décision sur le bien-fondé du 23 juin 2010, voy. spéc. §§ 32-42 (compatibilité de la loi française n° 2008-789 du 20 août 2008 portant rénovation de la démocratie sociale et réforme du temps de travail avec les engagements de la France dans le cadre de la Charte sociale européenne révisée).

[21] *Ibid*., § 35.

[22] Comité européen des droits sociaux, *Confédération générale du travail (CGT) c. France*, déc. précitée n. 21, § 37.

[23] C.J., 28 avril 1998, *Decker*, C-120/95, *Rec.*, p. I-1831, points 39 et 40. Pour une étude systématique, voy. O. De Schutter, « L'affirmation des droits sociaux fondamentaux dans la Charte des droits fondamentaux de l'Union européenne », in A. Lyon-Caen and P. Lokiec (dir.), *Droits fondamentaux et droit social*, Paris, Dalloz 2005, pp. 145-184.

[24] C.J., 17 décembre 1981, *Procédure pénale c. A. J. Webb*, 279/80, *Rec.*, p. 3305 ; C.J., 27 mars 1990, *Rush Portuguesa*, C-113/89, *Rec.*, p. I-1417, point 17 ; C.J., 28 mars 1996, *Guiot*, C-272/94, *Rec.*, p. I-1905, point 16; C.J., 28 avril 1998, *Kohll*, C-158/96, *Rec.*, p. I-1931, point 41 ; CJ.C.E., 23 novembre 1999, *Arblade*, aff. jtes C-369/96 et C-376/96, Rec., p. I-8453, point 36 ; C.J., 15 mars 2001, *Mazzaleni et ISA*, C-165/98, *Rec.*, p. I-2189, point 27 ; C.J., 24 janvier 2002, *Procédure d'infraction c. Portugaia Construçoes Lda*, C-164/99, *Rec.*, p. I-787, points 20 et 21.

[25] C.J., 21 septembre 1999, *Albany*, C-67/96, *Rec.*, p. I-5751.

[26] Sur la question des rapports entre Charte sociale européenne et droit de l'Union européenne, voy. généralement O. De Schutter, « Le statut de la Charte sociale européenne dans le droit de l'Union européenne », cité ci-dessus; J.-Fr. Akandji-Kombé, « Charte sociale et droit communautaire », in J.-Fr. Akandji-Kombé et St. Leclerc (éds.), *La Charte sociale européenne*, Bruylant, Bruxelles, 2001 ; et J.-Fr. Flauss, « Les interactions normatives entre les instruments de droit européen

arriver qu'un Etat membre se voie tenu, en vertu des obligations qui lui sont imposées en raison de son appartenance à l'Union européenne, de renoncer à garantir certains droits sociaux fondamentaux, ou au moins de devoir renoncer à les garantir à un niveau déterminé, alors qu'en assurant cette garantie, il prétendrait s'acquitter des obligations que lui impose la Charte sociale européenne.

2. Bien que la Charte sociale européenne et les directives de l'Union européenne en matière sociale n'imposent en général que des prescriptions minimales, le risque de conflit peut résulter de l'interprétation que donne la Cour de justice de l'Union européenne des libertés économiques que reconnaissent les traités européens. En outre, dans d'autres domaines couverts par la Charte sociale européenne révisée, ce sont des mesures d'harmonisation adoptées au sein de l'Union européenne qui créent le risque de conflit. C'est le cas en particulier des mesures prises en vue de l'établissement du marché intérieur, sur la base des articles 114 et 115 TFUE.

Dans son rapport sur la *Situation de la démocratie, des droits de l'homme et de l'Etat de droit en Europe*, présenté à la 124e réunion du Comité des Ministres du Conseil de l'Europe tenue à Vienne les 5 et 6 mai 2014, le Secrétaire général du Conseil de l'Europe note que: « le Comité européen des droits sociaux a rendu en 2013 une décision dans laquelle il conclut notamment à une atteinte au droit de négociation collective et au droit de grève, corollaires notables du droit syndical. Les mesures attaquées avaient été prises à la suite d'un arrêt de la Cour de justice de l'Union européenne. Les décisions d'Etats parties découlant directement ou indirectement du droit de l'Union doivent respecter les droits garantis dans la Charte. Il est donc urgent de trouver des façons pragmatiques de résorber les contradictions entre les deux groupes de normes ».[27]

Cet appel doit être entendu. Le Réseau propose d'y contribuer.

Il attire aussi l'attention sur le fait qu'il existe, dans le cadre de la procédure de réclamations collectives, un mécanisme d'appel à interventions des tiers (article 32A du Règlement du Comité) qui peut servir au dialogue entre le système de la Charte sociale européenne et le droit de l'Union européenne. Il estime qu'il serait très utile que des mécanismes équivalents existants dans le cadre de l'Union européenne soient élargis.

2.2. Les garanties de la Charte sociale européenne et les politiques liées à la crise financière et économique

2.2.1. Position du problème

L'obligation qui incombe aux Etats de se conformer à la Charte sociale européenne lorsqu'ils adoptent des dispositions législatives ou réglementaires, ou de prendre les mesures propres à faire en sorte que les parties sociales se conforment à la Charte lorsqu'elles concluent des

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relatives à la protection des droits sociaux », in J.-Fr. Flauss (dir.), *Droits sociaux et droit européen. Bilan et prospective de la protection normative*, Bruylant-Némésis, Bruxelles, 2002, p. 87.

[27] *Situation de la démocratie, des droits de l'homme et de l'Etat de droit en Europe*. Rapport établi par le Secrétaire général du Conseil de l'Europe, SG(2014)1 final, p. 41.

accords ou conventions collectifs de travail, n'a jamais soulevé de doute. En effet, en adhérant à la Charte, les Etats parties se sont engagés à prendre des mesures déterminées pour reconnaître des droits aux bénéficiaires désignés ou pour mettre en œuvre tel ou tel droit garanti par le texte européen, pour favoriser ou promouvoir telle pratique, pour reconnaître immédiatement tel droit qui devra par conséquent être respecté, etc.

Ces obligations, et les droits corrélatifs, ne sont cependant pas absolus. La Charte ouvre aux Etats parties deux possibilités pour en réduire la portée. Ces facultés font l'objet des articles 30 et 31 de la Charte de Turin, F et G de la Charte révisée. Ces articles visent respectivement les dérogations en cas de guerre ou de danger public[28] et les restrictions[29]. C'est dans ces mêmes dispositions que se trouvent les garanties d'application de la Charte, en ce compris celles qui s'appliquent lors de circonstances extraordinaires comme la crise économique et financière.

2.2.2. La jurisprudence du Comité européen des droits sociaux

Interprétant l'article 31 de la Charte de 1961 ou l'article G de la Charte sociale révisée de 1996, le CEDS a toujours jugé que le pouvoir des Etats de restreindre la jouissance des droits protégés par la Charte sociale était subordonné à certaines conditions et ne saurait, en tout état de cause, conduire à ce que les droits en cause soient vidés de leur substance et, a fortiori, que la jouissance de ces droits soit suspendue. Cette position se fonde sur les articles 31-CSE et G-CSER, qui posent comme exigence que la restriction aux droits de la Charte soit prévue par la loi, qu'elle soit au surplus justifiée par la nécessité de garantir le respect des droits et des libertés d'autrui ou de protéger l'ordre public, la sécurité nationale, la santé publique ou les bonnes mœurs et, enfin, qu'elle soit proportionnée au but à atteindre. Il s'agit là de conditions cumulatives.

S'agissant de l'article 30 de la CSE et de l'article F de la CSER, il résulte des décisions précitées du Comité européen des droits sociaux qu'une crise financière ou économique est étrangère à la notion de « guerre ou autre danger public menaçant la vie de la nation », seule circonstance pouvant justifier des mesures dérogatoires aux exigences de la Charte. Il a aussi été jugé que les aménagements aux droits sociaux rendus nécessaires par les circonstances de crise doivent être strictement limités et ne pas porter atteinte à la substance de ces droits. La considération de principe justifiant cette position a été exprimée dans ces termes par le CEDS

[28] Les articles 30 CSE et F CSER sont rédigés comme suit : « *1-* En cas de guerre ou en cas d'autre danger public menaçant la vie de la nation, toute Partie peut prendre des mesures dérogeant aux obligations prévues par la présente Charte, dans la stricte mesure où la situation l'exige et à la condition que ces mesures ne soient pas en contradiction avec les autres obligations découlant du droit international. *2-* Toute Partie ayant exercé ce droit de dérogation tient, dans un délai raisonnable, le Secrétaire Général du Conseil de l'Europe pleinement informé des mesures prises et des motifs qui les ont inspirées. Elle doit également informer le Secrétaire Général de la date à laquelle ces mesures ont cessé d'être en vigueur et à laquelle les dispositions de la Charte qu'elle a acceptées reçoivent de nouveau pleine application ».

[29] Les articles 31 CSE et G CSER sont rédigés comme suit : « *1-* Les droits et principes énoncés dans la partie I, lorsqu'ils seront effectivement mis en œuvre, et l'exercice effectif de ces droits et principes, tel qu'il est prévu dans la partie II, ne pourront faire l'objet de restrictions ou limitations non spécifiées dans les parties I et II, à l'exception de celles prescrites par la loi et qui sont nécessaires, dans une société démocratique, pour garantir le respect des droits et des libertés d'autrui ou pour protéger l'ordre public, la sécurité nationale, la santé publique ou les bonnes mœurs. *2-* Les restrictions apportées en vertu de la présente Charte aux droits et obligations reconnus dans celle-ci ne peuvent être appliquées que dans le but pour lequel elles ont été prévues ».

lui même : « la crise économique ne doit pas se traduire par une baisse de la protection des droits reconnus par la Charte. Les gouvernements se doivent dès lors de prendre toutes les mesures nécessaires pour faire en sorte que ces droits soient effectivement garantis au moment où le besoin de protection se fait le plus sentir »[30].

La protection des droits sociaux revêt une importance accrue, lorsque se trouvent fragilisées des populations entières et lorsque le pouvoir de négociation des travailleurs se trouve affaibli. C'est tout particulièrement le cas en cette période de crises. Les droits sociaux ne doivent pas être une variable d'ajustement des politiques économiques et sociales développées en réponse à la crise financière et économique et, aujourd'hui, à la crise de la dette souveraine des Etats.

2.2.3. Les suites des décisions du Comité européen des droits sociaux

Dans le souci d'assurer la protection des droits de l'homme en période de crise économique, le Commissaire aux droits de l'homme du Conseil de l'Europe a formulé récemment les recommandations suivantes à l'endroit des Etats membres du Conseil de l'Europe[31] :

- institutionnaliser la transparence, la participation et le respect du principe de responsabilité envers les citoyens tout au long du cycle de politique économique et sociale ;
- réaliser systématiquement des études d'impact des politiques sociales et économiques et des budgets sur les droits de l'homme et l'égalité ;
- promouvoir l'égalité et lutter contre la discrimination et le racisme ;
- garantir une protection sociale minimale pour tous ;
- garantir le droit à un travail décent ;
- réglementer le secteur financier dans l'intérêt des droits de l'homme ;
- travailler de concert pour mettre en œuvre les droits de l'homme au moyen d'une coopération et d'une assistance économiques ;
- faire participer la société civile et soutenir ses activités ;
- garantir l'accès de tous à la justice ;
- ratifier les instruments européens et internationaux relatifs aux droits économiques et sociaux ;
- systématiser l'action en faveur des droits de l'homme ;
- promouvoir les structures nationales des droits de l'homme et les associer aux réponses à la crise économique.

Le Commissaire aux droits de l'homme a entendu, à travers plusieurs de ces recommandations, tirer les implications des décisions du Comité européen des droits sociaux relatives au respect de la Charte sociale européenne dans le cadre des politiques d'austérité.

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[30] Comité européen des droits sociaux, *Fédération générale des employés des compagnies publiques d'électricité (GENOP-DEI) et Confédération des syndicats des fonctionnaires publics (ADEDY) c. Grèce*, Réclamation n° 65/2011, Décision sur le bien fondé du 5 fevrier 2013, § 16.

[31] *Protéger les droits de l'homme en temps de crise économique,* Document thématique publié par le Commissaire aux droits de l'homme du Conseil de l'Europe, Conseil de l'Europe, mai 2014, p. 9 à 12.

Malheureusement, les organes politiques du Conseil de l'Europe ont parfois adopté des positions qui sont de nature à instiller le doute sur les attentes développées à l'égard des Etats. Ainsi, le Comité des ministres, dont la mission est précisément de veiller à l'exécution des décisions du CEDS, n'a pas recommandé au gouvernement grec de prendre les mesures fortes qu'impliquaient les décisions rendues à l'encontre de ce pays.

Le Réseau estime que le Comité des Ministres remplirait plus efficacement son rôle en assurant le suivi des décisions et conclusions du Comité européen des droits sociaux. Il pourrait, dans un premier temps, demander aux Etats de lui notifier les mesures prises pour se conformer aux exigences de la Charte telles qu'énoncées par le Comité européen des droits sociaux dans ses décisions.

Le Réseau est préoccupé par ailleurs par le fait que nombre d'Etats parties à la Charte sociale, pour s'exonérer de l'obligation de se conformer aux exigences énoncées par le CEDS, n'hésitent pas à invoquer la jurisprudence de la Cour européenne des droits de l'homme[32], dont ils prétendent qu'elle confirme leur liberté de prendre toutes mesures économiques et sociales exigées par la crise.

Il importerait, de l'avis du Réseau, de réaffirmer de manière claire et incontestable que les obligations assumées en vertu de la Convention européenne des droits de l'homme, instrument complémentaire de la Charte sociale européenne, n'ont pas vocation à neutraliser les engagements pris au titre de la Charte sociale.

Le présent texte a été rédigé conjointement par

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- ***Olivier DE SCHUTTER, Professeur à l'Université catholique de Louvain (Belgique), Ancien Rapporteur spécial de l'ONU sur le droit à l'alimentation (2008-2014), et membre du Comité sur les droits économiques, sociaux et culturels (ONU, 2015-2018).***

Il a été approuvé par l'Assemblée générale du Réseau académique européen sur la Charte sociale européenne et les droits sociaux (R.A.C.S.E.) réuni à Turin, le16 octobre 2014.

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[32] Voir notamment : Cour européenne des droits de l'homme, 30 janv. 2013, Décision *E.B. (no 2) c. Hongrie*, req. n° 34929/11 (à propos d'une réforme de 2010, en Hongrie, qui aboutit, notamment, à la suppression du régime de retraite à deux piliers (fonds public / fonds privé), et à l'augmentation des cotisations de retraite) ; 31 oct. 2013, Décision *Da Conceição Mateus c. Portugal et Santos Januário c. Portugal*, req. n° 62235/12 et n° 57725/12 (Portugal : à propos de la décision de réduction des pensions prise par le gouvernement en 2012).

Adopté le 16 octobre 2014 par l'Assemblée Générale du R.A.C.S.E. réuni à Turin *Le présent texte est une version abrégée de la contribution du Réseau académique sur la Charte sociale européenne et les Droits sociaux à la Conférence à haut niveau de Turin des 17-18 octobre 2014, adoptée le même jour.*	*Adopted in October 16, 2014 by the A.N.E.S.C.'s Assembly, in Turin.* *The current text is a limited version of the full contribution of the Academic Network on the European Social Charter and Social Rights to the High Level Conference in Turin on October 17-18, 2014, which was adopted on the same day.*

Conférence à haut niveau sur la Charte sociale européenne, Turin, 17-18 octobre 2014

Positions et propositions du Réseau académique sur la Charte sociale européenne et les droits sociaux

Le Réseau académique sur la Charte sociale européenne et les droits sociaux œuvre à l'effectivité de la Charte sociale et la protection des droits sociaux en Europe et souhaite contribuer à l'amélioration dans ce but des mécanismes de protection de ces droits. Il formule les propositions suivantes.

1. Application de la Charte sociale européenne par les juridictions nationales

Le Réseau en appelle aux différents organes du Conseil de l'Europe pour qu'ils encouragent l'application de la Charte sociale par les juridictions nationales. Ceci pourrait se traduire notamment par l'organisation d'échanges réguliers entre le Comité européen des droits sociaux et les juges des cours suprêmes des Etats membres du Conseil de l'Europe, par la formation des juges là où cela est nécessaire, et par la diffusion des bonnes pratiques. Une réflexion pourrait aussi être engagée sur la possibilité de compléter le système de la Charte sociale européenne par une procédure d'avis consultatif permettant aux

High level conference on the European Social Charter, Turin, 17-18 October 2014

Positions and Proposals of the Academic Network on the European Social Charter and Social Rights

The Academic Network on the European Social Charter and Social Rights seeks to promote the effectiveness of the European Social Charter and of social rights in Europe, and to contribute to the improvement of the mechanisms for the protection of social rights. With these aims in mind, it presents the following proposals.

1. Application of European Social Charter by national courts

The Network calls on the different organs of the Council of Europe to encourage the application of the European Social Charter by national courts. This could take the form of regular exchanges organised between the European Committee of Social Rights and the judges of the highest courts of the member States of the Council of Europe, of training of these judges where necessary, and of dissemination of good practices. Consideration should also be given to the possibility of complementing the system of the European Social Charter by introducing an advisory opinion procedure allowing national courts to obtain

juridictions nationales d'obtenir une interprétation autorisée des dispositions pertinentes de la Charte par le Comité européen des droits sociaux.

Le Réseau académique sur la Charte sociale européenne et les droits sociaux entend contribuer à cette évolution, qui renforcerait le caractère subsidiaire des mécanismes de suivi de la Charte que prévoit la partie IV de la Charte sociale européenne de 1961 (à laquelle renvoie l'article C de la Charte sociale européenne révisée), en même temps que l'effectivité de ladite Charte sur le territoire des Etats parties. Il peut contribuer à la formation des juges et agents de la justice et à la réflexion sur un éventuel mécanisme d'avis consultatif. Il a en outre résolu d'entreprendre une étude comparative systématique de la prise en compte de la Charte par les juridictions nationales des Etats parties, de manière à favoriser une diffusion des bonnes pratiques et à permettre de mettre en lumière à la fois les avantages d'une telle prise en compte et les obstacles qu'elle rencontre.

2. Prise en compte de la Charte sociale européenne dans l'élaboration des lois et des politiques au plan national

Le Réseau académique européen sur les droits sociaux estime que le Conseil de l'Europe pourrait encourager les initiatives des Etats tendant à renforcer la prise en compte de la Charte dans les politiques publiques nationales et, par ailleurs, assurer et contribuer à la diffusion des bonnes pratiques.

Le Réseau invite l'Union européenne et ses Etats membres à œuvrer à l'amélioration de la prise en compte de la Charte sociale européenne dans la formulation et la mise en œuvre des législations et pratiques nationales, et au partage des bonnes pratiques en la matière. Il est prêt à apporter sa contribution au processus. Il tient également à souligner le rôle important des institutions nationales de promotion et de protection des droits de l'homme en la matière, y compris dans le suivi des décisions et conclusions du Comité européen des droits sociaux.

3. Ratification du Protocole à la Charte sociale européenne prévoyant une procédure de réclamations collectives

La Charte sociale européenne n'est, à ce jour, pas ratifiée par tous les Etats membres du Conseil de l'Europe. En outre, seuls 15 Etats ont ratifié le protocole additionnel prévoyant un système de réclamations collectives.

Le Réseau estime que le Comité des Ministres du Conseil de l'Europe pourrait inviter les Etats membres non encore parties à la Charte sociale européenne à adhérer sans plus tarder à celle-ci, et inviter les Etats

authoritative interpretations of the relevant provisions of the Charter by the European Committee of Social Rights.

The Academic Network on the European Social Charter and Social Rights looks forward to contributing to this evolution. This would reinforce the subsidiary character of the monitoring mechanisms of the Charter envisaged by Part IV of the European Social Charter of 1961 (referred to by Article C of the Revised European Social Charter), as well as the effectiveness of the Charter within the territory of the States Parties. Il could contribute to the training of judges and other officials and to the discussion on a possible advisory opinion mechanism. Moreover, the Network has resolved to undertake a systematic comparative study of the manner in which national courts of State Parties take into account the Charter, in order to facilitate the dissemination of good practices and to help identify both the advantages and the obstacles encountered at domestic level.

2. Taking into account the European Social Charter in the design of laws and policies at the national level

The Academic Network on the European Social Charter and Social Rights considers that the Council of Europe could encourage initiatives at national level that strengthen the taking into account of the Charter in domestic public policies, and could also ensure and contribute to the dissemination of good practices.

The Network calls on the European Union and its member States to work towards ensuring that the Charter is taken into account in the design and implementation of national legislation and practice, and to promote the sharing of good practices in this regard. It is available for contributing to this process. The Network underlines the important role of national human rights institutions in this regard, including for monitoring the follow-up of the decisions and conclusions of the European Committee of Social Rights.

3. Ratification of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints

The European Social Charter has not, to date, been ratified by all the Member States of the Council of Europe. Moreover, only 15 States have ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints of 1995.

The Network submits that the Committee of Ministers of the Council of Europe could invite the Member States that are not yet party to the European Social

parties qui n'ont pas encore ratifié le Protocole additionnel de 1995 à le faire dans un délai raisonnable. Le Réseau serait favorable à ce que, parallèlement, une étude systématique permette d'identifier les obstacles qui subsistent à cet égard dans les différents Etats concernés.

4. Accès des organisations non gouvernementales nationales à la procédure de réclamations collectives

A ce jour, seule la Finlande a accepté que des organisations non-gouvernementales nationales placées sous sa juridiction exercent le droit de réclamation collective.

Le Comité des Ministres du Conseil de l'Europe pourrait recommander à tous les Etats ayant accepté la procédure de faire la déclaration autorisant les ONG nationales à introduire des réclamations.

5. Publication des décisions du Comité européen des droits sociaux sur le bien fondé des réclamations collectives

Il résulte des dispositions du Protocole de 1995 prévoyant un système de réclamations collectives que les décisions du Comité européen des droits sociaux ne sont rendues publiques qu'après une intervention du Comité des Ministres ou au terme d'un délai de quatre mois.

Ce délai nuit à la crédibilité et à l'efficacité de la procédure. C'est pourquoi le Réseau est en faveur de la publication immédiate des décisions du Comité européen des droits sociaux. Ceci ne ferait pas obstacle à ce que le Comité des Ministres joue pleinement le rôle que lui reconnaissent la Charte sociale européenne et son protocole additionnel prévoyant une procédure de réclamations collectives.

6. Suivi des décisions du Comité européen des droits sociaux constatant la violation de la Charte sociale européenne

Le Réseau académique sur la Charte sociale européenne et les droits sociaux considère que le Comité des Ministres du Conseil de l'Europe jouerait pleinement son rôle dans le système de la Charte sociale européenne en contribuant à assurer le suivi de l'exécution des décisions du Comité européen des droits sociaux, œuvrant à cet égard par analogie avec le rôle qu'il assume dans le cadre de la Convention européenne des droits de l'Homme. Il s'agit dans les deux cas de garantir le respect de l'Etat de droit en Europe, à travers la mise en œuvre de décisions adoptées par des mécanismes régionaux indépendants de contrôle du respect des engagements internationaux des Etats en matière de droits de l'homme.

Charter to accede to it as soon as possible, and invite the State Parties that have not yet ratified the 1995 Additional Protocol to do so within a reasonable period of time. At the same time, the Network would welcome a systematic study aiming to identify the obstacles faced in this regard by the different States concerned.

4. Access of national non-governmental organisations to the system of collective complaints

To date, only Finland has made a declaration recognising the right of national non-governmental organisations within its jurisdiction to file collective complaints.

The Committee of Ministers of the Council of Europe could recommend to all States that have accepted the procedure to make a declaration authorising national NGOs to submit complaints.

5. Publication of the European Committee on Social Rights' decisions on the merits in collective complaints

The 1995 Protocol providing for a system of collective complaints envisages that the decisions of the European Committee on Social Rights will only be made public after the intervention of the Committee of Ministers or after a period of four months.

This rule undermines the credibility and the effectiveness of the procedure.The Network therefore favors the immediate publication of his decisions by the European Committee of Social Rights. This would not prevent the Committee of Ministers from fully exercising the role envisaged for it under the European Social Charter and its Additional Protocol Providing for a System of Collective Complaints.

6. Follow-up of the decisions of the European Committee on Social Rights concluding that there has been a violation of the European Social Charter

The Academic Network on the European Social Charter and Social Rights considers that the Committee of Ministers of the Council of Europe would be fully discharging its duties in the system of the European Social Charter by ensuring the follow-up to the decisions of the European Committee of Social Rights, in a manner analogous to the monitoring of the European Court of Human Rights' decisions. In both cases, the issue consists of guaranteeing respect for the rule of law in Europe through the faithful implementation of decisions adopted by independent reigonal mechanisms for monitoring State compliance with international human rights obligations.

7. Renforcement du dispositif de gestion des procédures de contrôle du respect de la Charte sociale européenne

Dans le souci de consolider l'efficacité du contrôle européen des engagements des Etats en matière de droits sociaux, le Comité européen des droits sociaux devrait voir le nombre de ses membres accru. Ceci n'implique pas nécessairement de devoir s'aligner sur la solution retenue dans le cadre de la Convention européenne des droits l'Homme, où la Cour européenne des droits de l'Homme comprend un juge élu au titre de chaque Partie contractante.

Parallèlement, il importerait d'augmenter le nombre de juristes au service de la Charte sociale européenne.

Le Réseau estime par ailleurs le moment venu de mettre en application l'amendement figurant à l'article 3 du Protocole de Turin de 1991. Ce serait une manière, parmi d'autres, d'indiquer l'importance que le Conseil de l'Europe et ses Etats membres attachent aux droits de la Charte sociale européenne.

8. La Charte sociale européenne et l'Union européenne

Dans son rapport sur la *Situation de la démocratie, des droits de l'homme et de l'Etat de droit en Europe*, présenté à la 124e réunion du Comité des Ministres du Conseil de l'Europe tenue à Vienne les 5 et 6 mai 2014, le Secrétaire général du Conseil de l'Europe a considéré qu'il est urgent de trouver des façons pragmatiques de résorber les contradictions entre la Charte sociale européenne et les normes de l'Union européenne.

Cet appel doit être entendu. Le Réseau propose d'y contribuer.

Le Réseau attire l'attention sur le fait qu'il existe, dans le cadre de la procédure de réclamations collectives, un mécanisme d'appel à interventions des tiers (article 32A du Règlement du Comité) qui peut servir au dialogue entre le système de la Charte sociale européenne et le droit de l'Union européenne. Il estime qu'il serait très utile que des mécanismes équivalents existants dans le cadre de l'Union européenne soient élargis.

9. Respect de la Charte sociale européenne en période de crise

La protection des droits sociaux revêt une importance accrue, lorsque se trouvent fragilisées des populations entières et lorsque le pouvoir de négociation des travailleurs se trouve affaibli. C'est tout

7. Strengthening the management of the monitoring procedures with the European Social Charter

In order to strengthen the effectiveness of the monitoring of the undertakings of States regarding social rights, the European Committee of Social Rights should increase its membership. This does not necessarily imply adopting the solution applied in the framework of the European Convention on Human Rights, where the European Court of Human Rights is composed of judges elected in the name of each State Party.

In addition, the number of lawyers working in the secretariat of the European Social Charter should be increased.

The Network also notes that it is high time that the amendment contained in Article 3 of the Protocol of Turin of 1991 be applied. This would clearly highlight the importance attached by the Council of Europe and its Member States to the rights of the European Social Charter.

8. The European Social Charter and the European Union

In his report on *The Situation of Democracy, Human Rights and the Rule of Law in Europe*, presented at the 124th meeting of the Committee of Ministers of the Council of Europe, held in Vienna on 5 and 6 May 2014, the Secretary General of the Council of Europe considered that there is an urgent need to find practical ways to resolve the contradictions between the European Social Charter and the norms of the European Union.

This call must be heeded. The Academic Network looks forward to contributing to this process.

The Network draws the attention to the fact that, under the Collective Complaints Procedure, there is a mechanism of third party intervention (see section 32A of the Rules of the European Committee of Social Rights) that can be used in the dialogue between the system of the European Social Charter and the European Union. It would be helpful if the similar mechanisms in the European Union framework were broadened.

9. Respect for the European Social Charter in times of crisis

The importance of the protection of social rights increases when whole populations are fragilized and workers' bargaining power is weakened. This is especially the case in times of economic crisis. Social

particulièrement le cas en cette période de crises. Les droits sociaux ne doivent pas être une variable d'ajustement des politiques économiques et sociales développées en réponse à la crise financière et économique et, aujourd'hui, à la crise de la dette souveraine des Etats.

Le Réseau estime que le Comité des Ministres remplirait plus efficacement son rôle en assurant le suivi des décisions et conclusions du Comité européen des droits sociaux. Il pourrait, dans un premier temps, demander aux Etats de lui notifier les mesures prises pour se conformer aux exigences de la Charte telles qu'énoncées par le Comité européen des droits sociaux dans ses décisions.

10. Respect des obligations de la Charte sociale européenne en même temps que celles de la Convention européenne des droits de l'homme

Le Réseau académique européen sur la Charte sociale européenne et les droits sociaux est préoccupé par la tendance de certains Etats à s'appuyer sur la jurisprudence récente de la Cour européenne des Droits de l'Homme à propos des mesures d'austérité pour se soustraire aux obligations qui s'imposent à eux en vertu de la Charte sociale européenne.

Il importerait, de l'avis du Réseau, de réaffirmer de manière claire et incontestable que les obligations assumées en vertu de la Convention européenne des droits de l'homme, instrument complémentaire de la Charte sociale européenne, n'ont pas vocation à neutraliser les engagements pris au titre de la Charte sociale.

rights must not be a variable to be adjusted to suit the economic and social policies developed in response to financial and economic crises and, today, the sovereign debt crisis of some States.

The Network notes that the Committee of Ministers would fulfill its role more effectively by following up the implementation of decisions of the European Committee of Social Rights. It could limit itself initially to require States to notify the measures that they have taken to comply with the requirements of the Charter as set out by the European Committee of Social Rights in its decisions.

10. Respect for the obligations of the European Social Charter as well as those of the European Convention on Human Rights

The Academic Network on the European Social Charter and Social Rights is concerned by the tendency of certain States to invoke the recent European Court of Human Rights' case law on austerity measures in order to evade their obligations under the European Social Charter.

It is important, in the view of the Network, to clearly and incontrovertibly reaffirm that the obligations flowing from the European Convention on Human Rights, which is a complementary instrument of the European Social Charter, are not aimed at neutralizing the commitments under the Charter.

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The Council of Europe Commissioner's human rights Comment

Preserving Europe's social model

PRESERVING EUROPE'S SOCIAL MODEL

As we enter the 7th year of the economic crisis, the end is not yet in sight. Worse, in most countries, the adoption of austerity measures has so far contributed little to recovery, but has exacerbated the dire living conditions of millions of people. Not surprisingly, disillusioned Europeans are increasingly giving their support to populist movements and parties, which poses a serious threat to the stability of our societies.

Yet, this situation is far from inevitable. If Government leaders and money lenders started considering socio-economic rights not as a luxury, but as an integral part of recovery plans, they would increase the chances of reversing course, averting future shocks and boosting economic development. Growing evidence suggests that economic development is more sustainable and societies are more resilient when social rights are protected.

In this context, a renewed interest in the European Social Charter seems indispensable.

A pillar of human rights protection

By adopting the Charter in Turin 53 years ago, and by modernising it over the decades, European Governments took a visionary decision: Europe's construction would be based not only on the pursuit of economic prosperity and the protection of

civil and political rights, but also on the rights of all citizens to have a job, decent housing, health protection, social security and quality education, and on protection from poverty and from social exclusion.

In a few days, the commitment made in Turin can be rejuvenated, as Ministers, representatives of International Organisations, academia and civil society representatives gather in the capital of the Piedmont region to find ways of improving the Charter's implementation and strengthening its role in the European system of human rights protection.

By looking at the accomplishments of the Charter, we understand how topical it is for our daily lives. Were it not for the Charter, many more children would still be working, women treated as second-class citizens and vulnerable people denied adequate access to health and social protection.

Among the most striking accomplishments of the Charter is the introduction of legislation in many countries, including Czech Republic, Greece, Italy, Portugal, which prohibits children's work under the age of 15 and strictly regulates the work of older children.

In Austria, Germany and Italy, just to mention a few countries, the increased protection of women, both in terms of maternity rights and job security, as well as access to health care and equal pay helped overcome longstanding discrimination.

In other countries, including Portugal, Spain and the UK, the Charter contributed to the ban on corporal punishment of children while in Cyprus, France and Lithuania it also promoted the adoption of legislation fostering the social inclusion of persons with disabilities.

True, the situation on the ground is still far from satisfactory. In many countries children still work and suffer domestic violence, women and persons with disabilities are still discriminated against and other vulnerable groups, including Roma and migrants, still struggle to access their basic needs.

This reality shows that we still have a lot of work to do to close the implementation gap between commitments and reality.

From theory to reality

To get there, I see three main steps that need to be taken.

The most obvious is the ratification of all the Charter's provisions by all Council of Europe member States. This would create a homogenous European space where

citizens would be able to enjoy comparable social protection. To date, 43 countries have ratified the Social Charter as revised in 1996[1], with only France and Portugal having ratified all its provisions.

The second step is to widen the application of the collective complaints procedure. Since 1998 this procedure has allowed trade unions, employers' organisations and international NGOs to lodge complaints with the European Committee of Social Rights. Though individuals are not authorised to use this procedure, it still represents a powerful bottom-up tool to have socio economic rights enforced at national level, with a relatively quick procedure of only 18 months. So far only 15 countries have accepted this procedure, and in Finland also national NGOs can use it. This is an example that the other 14 countries should follow, not to mention the remaining 32 - 14 of which are also EU member States - that have not even accepted the procedure yet. In this context, a more proactive approach of the EU in promoting the ratification of the procedure among its member States and, more generally, in taking into account the Charter and the Committee's case-law would be highly beneficial to establish a more coherent legal space for the enforcement of social rights.

The third step is to increase the use of the Committee's jurisprudence by national courts, tribunals and national human rights structures. Judgments and decisions of national courts informed by the Committee's jurisprudence can in fact have a huge impact for people's everyday lives. Encouraging examples of national judgments referring to the Charter have already started to appear. In Italy, the Court of Cassation and the Regional Administrative Tribunal of Lazio pronounced two judgments in 2013 highlighting the normative obligations derived from the Charter.

Another interesting example comes from Spain, where in November 2013 a Labour Court in Barcelona set aside national legislation which had introduced the possibility of dismissing workers in their probation period without notice or compensation. The Court grounded its rationale on the decision of the Committee on a Greek case, considering that the Troika-imposed measures introduced in Spain were analogous to those adopted in Greece.

The significance of this judgment, followed by other Spanish labour Courts, has a bearing well beyond the case in question. First of all, it legitimises the transnational applicability of the Committee's jurisprudence, which can be therefore enforced by national courts without necessarily waiting for a case concerning their country. Second, by doing so, national courts can incorporate decisions taken under the collective complaints procedure also in countries, like Spain, which have not yet accepted it.

In addition to Courts, national human rights structures, such as Ombudsmen, human rights commissions and equality bodies, can contribute to strengthening socio-economic protection. By way of example, I was particularly impressed by the work done by the Ombudsman of Spain over the last few years in the field of socio-economic rights. In a recent visit to the Netherlands, I could also see how strong social rights are anchored in the work of the country's human rights bodies, in particular the Children's Ombudsman.

All these initiatives must be encouraged and further expanded because they provide additional tools to keep Europe's social promise.

Balancing financial and human rights concerns

Undoubtedly, finding the right formula to tackle the impact of the financial and economic crisis and reorganise national budgets represents an extraordinary challenge for national and local governments alike.

In this difficult exercise, human rights concerns cannot be ignored. By laying down the foundations of our social model, the Charter has become Europe's crowning achievement and the aspiration for millions of Europeans.

We have to use its values and standards to carefully steer our response to the crisis. The society we want to live in and bequeath to future generations depends on our ability to take decisions today based on human rights norms and principles.

Nils Muižnieks

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[1] Only Liechtenstein, Monaco, San Marino and Switzerland have not ratified it.

Appendix 3g

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

15 July 2014

The relationship between European Union law and the European Social Charter

Working Document

Introduction

1. This document is a follow-up to the meeting between representatives of the European Committee of Social Rights ("the Committee") and of the European Commission's Directorate General for Justice at the latter's headquarters in Brussels on 14 March 2013 on the subject of the relationship between European Union (EU) law and the European Social Charter ("the Charter"), particularly in the context of the implementation of the EU Charter of Fundamental Rights.[1]

2. The need for clarification about the relations between the two European standard setting systems on social rights, namely, on the one hand, EU law, including primary law, secondary law and, as a source of supplementary law, the case-law of the EU Court of Justice and, on the other, the Charter, was referred to for the first time at the aforementioned meeting. At the meeting emphasis was placed on the divergences between the two systems, which were noted by the Committee in the process of monitoring the application of the Charter on the basis of collective complaints in the period 2010-2013.[2]

3. The Committee noted that these divergences, relating to the national law of some States Parties to the Charter that are also members of the EU and which falls within the scope of the Charter, constituted a violation of these states' obligations under the Charter. At the same time, other divergences between the two systems, linked to the application of the Charter in national law, have been brought to light for a number of years now in the conclusions adopted by the Committee in the course of its supervision work based on national reports.

4. The aim of this document is to clarify the relations between the two European standard-setting systems for the protection of social rights (at the Council of Europe and the European Union), whether divergent or convergent, as highlighted by the case-law of the Committee. On this basis, the document is designed to contribute to improved co-

[1] Participants: European Committee of Social Rights: Mr Petros Stangos, Vice-President, Mr Régis Brillat, Executive Secretary, accompanied by Ambassador Torbjørn Frøysnes, Special Representative of the Secretary General of the Council of Europe, Head of the Council of Europe Liaison Office with the European Union, Brussels; DG Justice – Directorate C Fundamental Rights and Union Citizenship: Mr Paul Nemitz, Director, accompanied by Messrs Charalambos Fragkoulis, Dimitrios Dimitriou, Michael Morass and Vincent Depaigne.

[2] Confédération Générale du Travail (CGT) v. France, Complaint No. 55/2009, Decision on the merits of 23 June 2010; Confédération Française de l'Encadrement «CFE-CGC» v. France, Complaint No. 56/2009, Decision on the merits of 23 June 2010; Federation of Employed Pensioners of Greece (IKA – ETAM) v. Greece, Complaint No. 76/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Public Service Pensioners v. Greece, Complaint No. 77/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI.) v. Greece, Complaint No. 79/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012, Decision on the merits of 7 December 2012; Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and on the merits of 3 July 2013.

ordination of the two systems, both in the interests of states and citizens and in that of the two European organisations concerned. At any event, the conditions for renewed co-operation can only be established and implemented by means of high-level political decisions by the competent institutional bodies.

5. In this light, the first part of the document provides general information on the Charter and the tasks assigned to the Committee by virtue of the Charter and its additional protocols. In this context, Appendix I illustrates the various levels of commitment of EU member states with regard to the provisions of the Charter.
The second part, which is subdivided into various sections and sub-sections, describes the existing links between EU law and the Charter, with reference to the provisions of the Charter and relevant EU texts. The Charter provisions and the corresponding sources of EU primary law, secondary law (identified on the basis of the Committee's case-law) and the relevant case-law of the EU Court of Justice are presented respectively in Appendix II (columns 1, 2 and 3) and Appendix III of this document.
The third part of the document describes the links between the provisions of the Charter, secondary EU law and the case-law of the Court of Justice as reflected in the Committee's case-law. The bases for these links are illustrated in Appendix II (column 4); in this context, the comments are an indication of the convergence or divergence in the levels of protection provided by the two systems.

6. Bearing in mind the foregoing, the final part of the document contains considerations and proposals relating to the establishment of more coherent and harmonious relations between the two standard-setting systems with a view to the possible future accession of the EU to the Charter. These proposals will serve as a basis for discussion at the High-Level Conference on the European Social Charter, to be held by the Council of Europe in Turin (Italy) on 17 and 18 October 2014, in co-operation with the Italian Government and the Turin city authorities and in the context of the Italian Presidency of the European Union.

Part I

1. The European Social Charter and the European Committee of Social Rights: background information

7. The Charter is a Council of Europe treaty, which was adopted in 1961 and revised in 1996 and which safeguards social and economic rights, that is human rights affecting people's everyday lives. These rights are additional to the civil and political rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 ("the Convention"). Like the Convention rights, those recognised under the Charter have their origin in the Universal Declaration of Human Rights.

8. The 1961 Charter sets out to establish binding international legal guarantees in the same way as the Convention but without going so far as to set up a dedicated court. The Revised Charter updates and adds to the rights enshrined in the 1961 instrument. One of its sources of inspiration was EU law.

9. The Charter guarantees a wide range of fundamental rights, mainly relating to working conditions, freedom to organise, health, housing and social protection. Specific emphasis is laid on the protection of vulnerable persons such as elderly people, children, people with disabilities and migrants. The Charter requires that enjoyment of the rights it lays down should be guaranteed without discrimination.

10. In view of this diversity, the Charter is based on what is termed an *à la carte* ratification system, enabling states, under certain circumstances (see table below), to choose the provisions they are willing to accept as binding international legal obligations. This means that while signatory states are encouraged to make progress in accepting the Charter's provisions, they are also allowed to adapt the commitments they enter into at the time of ratification to the level of legal protection of social rights attained by their own system.

Under the so-called à la carte *arrangement, each Contracting Party undertakes:*

- *to consider Part I of the Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;*
- *to consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20 (in the corresponding provision of the 1961 Charter the Articles referred to were Articles 1, 5, 6, 12, 13, 16 and 19);*
- *to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs (in the corresponding provision of the 1961 Charter, the total number of articles or numbered paragraphs was supposed not to be less than 10 articles or 45 numbered paragraphs).*

11. According to the Charter, states' compliance with their commitments under the Charter is subject to the international supervision of the Committee. Its fifteen members, who are independent and impartial, are elected by the Committee of Ministers of the Council of Europe for a six-year term of office, which is renewable once. The Committee verifies compliance with the Charter under two separate procedures: the reporting procedure, whereby member states submit regular national reports, and the collective complaints procedure, based on the filing of complaints by employer and employee organisations and non-governmental organisations.

12. For more information on the Charter, it is possible to consult the Council of Europe website, at www.coe.int/socialcharter. In addition to information on the various treaties and the Committee's work, these pages contain all of the Committee's conclusions and decisions and country factsheets. They also include a database and a compendium of the Committee's case-law.

13. The interpretation made by the European Committee of Social Rights of the Charter illustrates the nature and the scope of this treaty: the Social Charter is a human rights treaty. Its purpose is to apply the Universal Declaration of Human Rights within Europe, as a supplement to the European Convention on Human Rights.

14. In this perspective, while respecting the diversity of national traditions of the Council of Europe's member states, which constitute common European social values and which should not be undermined by the Charter nor by its application; it is important to:

- consolidate adhesion to the shared values of solidarity, non-discrimination and participation;
- identify the principles that ensure that the rights embodied in the Charter are applied equally effectively in all the Council of Europe member states.

15. On the occasion of the examination of several complaints, the Committee explained the nature of the States' obligations in order to implement the Charter: the Committee recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact. In this respect it considers that the implementation of the Charter cannot be achieved solely by the adoption of legislation if its application of it is not accompanied by an effective and rigorous control. The implementation of the Charter requires thus the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter.

16. Certain rights guaranteed by the Charter require immediate implementation as from the entry into force of the Charter in the State concerned. Other rights may be implemented progressively by States parties. This is the case for rights the implementation of which is particularly complex and may involve significant budgetary costs. The Committee has, however stated with precision what methods of progressive implementation may be in conformity with the Charter: when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings. In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights specified in the Charter are likely to remain ineffective (…) In connection with timetabling (…), it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely.

17. Moreover, the Charter is interpreted in the light of the European Convention on Human Rights and the case-law of the European Court of Human Rights as well as in

the light of other international treaties which are relevant in the field of rights guaranteed by the Charter as well as in the light of the interpretation given to these treaties by their respective monitoring bodies, in particular the United Nations International Covenant on Economic Social and Cultural Rights, the United Nations Convention on the Rights of the Child, the International Convention on the Elimination of all forms of Racial Discrimination of 21 December 1965.

18. The Committee takes also into account the law of the European Union when interpreting the Charter.

Part II

Existing links between EU law and the Charter – *see the tables in Appendices I, II (columns 1, 2 and 3) and III*

1. General information

19. In general, the rights established by the Charter are guaranteed in a more or less explicit and detailed manner by EU law. As can be seen from the summary table in Appendix II (see, in particular, columns 2 and 3), the 98 paragraphs of the Revised Charter can be matched to binding provisions of primary or secondary EU law, albeit with some differences of both form and substance.

20. From this table, it can be seen in particular that, in addition to the relevant provisions of the Treaty on European Union (Article 6) and the Treaty on the Functioning of the European Union (particularly, in Article 18, the section concerning individuals' freedom of movement and, above all, that on social policy), most of the rights guaranteed by the Revised Charter are matched by corresponding safeguards in the EU Charter of Fundamental Rights (see column 2), but with significant exceptions relating to certain articles and paragraphs.

21. Without being exhaustive, the table in question also shows that, in the case of secondary legislation (directives and regulations), the EU lays down requirements in a significant number of fields of specific relevance to social rights (see column 3). In this context or the context of other initiatives taken in the field of intergovernmental co-operation, the EU has addressed, to varying extents and in varying detail, a large number of social rights-related issues. It has also looked into issues including work organisation and working conditions, occupational health and safety, co-ordination in social security matters, social dialogue, free movement of workers, social inclusion and the fight against poverty, non-discrimination and the needs of vulnerable people such as people with disabilities and elderly people.

2. Links between EU law and the Charter considered from the standpoint of the Charter

2.1 The diverse nature of commitments entered into by EU member states under the Charter treaties

22. At present the 28 EU member states are part of the "system" of the Charter treaties (the 1961 Charter, the Additional Protocol of 1988, the Additional Protocol of 1995 and the Revised Charter), albeit with differences regarding the commitments they have entered into: nine states are bound by the 1961 Charter (five of which are also bound by the Protocol of 1988) and nineteen by the Revised Charter. With the exception of two states, France and Portugal – which have accepted all the paragraphs of the Revised Charter - the others have ratified a greater or lesser number of provisions of either version of the Charter. Only fourteen EU member states have accepted the 1995 Protocol establishing a system of collective complaints. This results in a variety of situations and contracted obligations. The table in Appendix I provides detailed information on the undertakings made by each EU member state with regard to the provisions of the Charter.

23. There is a clear lack of uniformity in the acceptance of Charter provisions by the EU member states. This is the result of the choices made by each State Party when expressing its sovereign will on the basis of the Charter acceptance system described above (see Part I above). While not amounting to an anomaly in itself, this lack of uniformity sometimes reveals a lack of consistency. Where the protection of some fundamental social rights is concerned, some states have chosen not to enter any undertaking under the Charter; yet, pursuant to EU law, they have adopted legal instruments or measures providing equal or greater protection than that guaranteed in the Charter provision(s) they have not accepted. In other words, while applying the EU's binding standards in an area covered by the Charter, some states have not accepted the Charter provisions establishing legally equivalent guarantees.

24. Given this situation, it would be expedient to identify the Charter provisions which EU member states should accept because they belong to the EU. Greater consistency as regards EU member states' social rights commitments under the two standard-setting systems may contribute in future to the realisation of the European Parliament's proposal that the EU should accede to the Charter (on this point, see Chapter 3.3 below).

2.2 Community Directives: a source of inspiration for the Revised Charter

25. The Community Charter on the Fundamental Social Rights of Workers is a declaration adopted in 1989 by eleven Heads of State and Government of the European Economic Community and draws its inspiration from the 1961 Charter. On the basis of this declaration, the Community institutions have gradually adopted a series of directives relating to labour law.

26. As can be seen from the Explanatory Report to the Revised Charter ("the report"), some of its provisions draw on, or make express reference to, these directives. For example, this concerns:

- Article 2§6 on the right to just conditions of work – and especially to information about the employment contract – concerning which the report refers to Council Directive 91/533 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship;

- Article 7§2 on the right of children and young persons to protection, especially the ban on employment of those under the age of 18 in dangerous or unhealthy occupations, where the report states that this provision was inspired by Council Directive 94/33 on the protection of young people at work;

- Article 8§4 on the right of employed women to protection of maternity, especially the regulation of night work, with regard to which the report states that the basic idea behind this paragraph was taken, inter alia, from Community Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. Concerning this same article, the report stipulates that the definition of the women workers covered by this provision (pregnant women, women who have recently given birth and women who are nursing their infants) draws on the directive in question;

- Article 25 on workers' right to the protection of their claims in the event of the insolvency of their employer, where the report states that this provision was inspired, inter alia, by Community Directive 80/987 on the approximation of the laws of the member states relating to the protection of employees in the event of the insolvency of their employer, laying down the general principle of the right of workers to protection of their claims in such circumstances;

- Article 29 on the right to information and consultation in collective redundancy procedures, where the report states that when drafting the article account was taken of Community Directive 92/56 of 1992 amending Directive 75/129 on the approximation of the laws of the member states relating to collective redundancies.

3. Links between EU law and the Charter considered from the standpoint of EU law

3.1 Introduction

27. This section concerns primary and secondary EU law and other non-binding texts adopted by the EU (or the European Community or the European Economic Community) referring expressly to the Charter (see Appendix II – columns 2 and 3). In this context, a list of documents of the Court of Justice referring directly to the Charter is also presented (see Appendix III), and the references to the Charter or the Committee in these have been underlined to make it easier to identify them. Where certain primary law provisions are concerned, commentaries have been included, particularly guidelines and explanations drawn up by EU institutions or bodies with regard to the implementation of the Charter of Fundamental Rights. This section also includes EU

documents which do not refer explicitly to the Charter but implicitly take it into account as supplementary law, that is as an international human rights treaty.

3.2 The Charter in primary law sources (including explanations and guidelines on the implementation of the EU Charter of Fundamental Rights)

28. *The Single European Act (Luxembourg, 17 February, and the Hague, 28 February 1986)*

Preamble, §3

"…DETERMINED to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice,".

29. *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (2 October 1997)*

Article 1

"The Treaty on European Union shall be amended in accordance with the provisions of this Article.

1. After the third recital the following recital shall be inserted:

'… CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,'

22. Articles 117 to 120 shall be replaced by the following Articles:

Article 117

The Community and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion."

30. *Treaty on European Union*

Preamble, §5

'… CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,'

31. *Treaty on the Functioning of the European Union*

Article 151

"The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action."

32. *The EU Charter of Fundamental Rights and related acts*

The European Parliament, the Council and the Commission formally adopted the Charter of Fundamental Rights in Nice in December 2000. With the entry into force of the Treaty of Lisbon, in December 2009, this document was given the same binding legal force as the treaties. To this end, the Charter of Fundamental Rights was amended and proclaimed for the second time in December 2007. It includes an introductory preamble and 54 articles divided among 7 chapters. Chapter IV on "Solidarity" relates in particular to workers' right to information and consultation within the undertaking, the right to bargain collectively and to collective action, the right of access to placement services, protection against unjustified dismissal, fair and just working conditions, the prohibition of child labour and protection of young people at work, family life and professional life, social security and social assistance and health care.

The Charter of Fundamental Rights is applicable to the European institutions with due regard for the subsidiarity principle and under no circumstances can it broaden the powers or tasks conferred on them by the treaties. It is also applicable to EU member states when they implement EU legislation. The meaning and scope of any right corresponding to the rights guaranteed by the European Convention on Human Rights

must be the same as laid down therein. It should be noted that EU legislation can provide for more extensive protection. Any right resulting from the joint constitutional traditions of the EU member states must be interpreted in keeping with those traditions.[3]

Preamble, §5

"This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention".

Article 53 – *Level of protection*

"Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions."

33. It is on account of this obligation that the European Union Agency for Fundamental Rights ("the Agency") considers that the "fundamental rights community" established by EU law should be "seen in the wider context of a multilevel governance perspective with … the Council of Europe and the EU Member States all providing their respective shares in a joined up system of fundamental rights protection".[4]

34. On that basis, with more specific relevance to the Council of Europe, the Agency considers that:

- "To become more effective on the ground … the Council of Europe and the EU [should] increase their inter-operationality. When EU Member States apply EU law, they remain responsible for implementing human rights under Council of Europe treaties".

[3] NB – Protocol No. 30 to the treaties on application of the Charter of Fundamental Rights to Poland and the United Kingdom restricts the interpretation of the Charter by the Court of Justice and the national courts of these two countries, particularly regarding rights relating to solidarity (Chapter IV – see above).

[4] 2012 Annual Report of the European Union Agency for Fundamental Rights – section on "Observing fundamental rights obligations in Article 6 of the TEU".

- "Against this background, it is important to make positive use of the EU layer of governance to ensure that all branches of EU government – judiciary, legislature and administration – can contribute to the flowering of the Council of Europe standards …"[5]

35. The considerations on what it terms the European "fundamental rights landscape" lead the Agency to conclude that one of the key challenges is to "guarantee that all levels of the system are efficient and use a variety of mechanisms to protect and promote rights and inform each other (horizontal dimension)." With this aim in mind, it considers that another challenge is "how to foster interaction among all the different levels of the fundamental rights landscape (vertical dimension)" and that "fundamental rights can only be efficiently protected if the levels are well connected …".[6]

36. *Explanations relating to the Charter of Fundamental Rights*

In the introduction to the "Explanations",[7] it is stated that they "were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter".

On the subject of the "Explanations", Article 6 of the Treaty on European Union states as follows: "…The rights, freedoms and principles in the [EU Charter of Fundamental Rights] shall be interpreted in accordance with the general provisions in Title VII of the [aforementioned] Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions".

37. The Charter is mentioned in the following "Explanations":

- Explanation on Article 14- The right to education: Article 10 of the Charter ;
- Explanation on Article 15- Freedom to choose an occupation and right to engage in work: Article 1§2 of the Charter ;
- Explanation on Article 23- Equality between men and women: Article 20 of the Charter ;
- Explanation on Article 25- The rights of the elderly: Article 23 of the Charter ;
- Explanation on Article 26- Integration of persons with disabilities: Article 15 of the Charter ;
- Explanation on Article 27- Workers' right to information and consultation within the undertaking: Article 21 of the Charter ;

[5] 2011 Annual Report of the European Union Agency for Fundamental Rights – Focus section on Bringing rights to life: the fundamental rights landscape of the European Union".
[6] *Ibid.*
[7] See EU Official Journal of 14 December 2007 – 2007/C 303/02.

- Explanation on Article 28- Right of collective bargaining and action: Article 6 of the Charter ;
- Explanation on Article 29- Right of access to placement services: Article 1§3 of the Charter ;
- Explanation on Article 30- Protection in the event of unjustified dismissal: Article 24 of the Charter ;
- Explanation on Article 31- Fair and just working conditions: Article 3 of the Charter concerning §1 of Article 31 and Article 2 of the Charter concerning §2 of this provision ;
- Explanation on Article 32- Prohibition of child labour and protection of young people at work: Article 7 of the Charter ;
- Explanation on Article 33- Family and professional life: Article 8 of the Charter and Article 27 of the Charter ;
- Explanation on Article 34- Social security and social assistance: Article 12 of the Charter concerning §1 of Article 34, Articles 12§4 and 13§4 of the Charter concerning §2 of this provision and Article 13 of the Charter concerning §3 of this provision;
- Explanation on Article 35- Health care: Articles 11 and 13 of the Charter.

38. *Council conclusions on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union*[8]

"…Member States' administrations are the first level where compliance with obligations deriving from the Charter, as well as the constitutional traditions and international obligations common to all Member States, should be guaranteed …"

39. *Council conclusions on fundamental rights and the rule of law and on the Commission's 2012 Report on the Application of the Charter of Fundamental Rights of the European Union*[9]

"… [M]ake full use of existing mechanisms and cooperate with other relevant EU and international bodies, particularly with the Council of Europe, in view of its key role in relation to promotion and protection of human rights, democracy and the rule of law, in order to avoid overlaps".

40. *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments*[10]

"… [T]o understand the meaning and scope of the rights enshrined in the Charter [of Fundamental Rights] in a given policy context, it is also important to look more closely at international human rights conventions to which either the Union … or all Member

[8] Document of the Justice and Home Affairs Council, meeting in Brussels on 24 and 25 February 2011.
[9] Document of the Justice and Home Affairs Council, meeting in Luxembourg on 6 and 7 June 2013.
[10] Document SEC(2011) 567 final (6 May 2011).

States are contracting parties…". To that end, it considers that "Depending on your policy context, it may therefore be necessary to take such international human rights conventions into account when interpreting the rights set out in the Charter".

41. *Communication from the Commission on the Strategy for effective implementation of the Charter of Fundamental Rights by the European Union*[11]

"…[T]he [EU] Charter [of Fundamental Rights] is an innovative instrument because it brings together in one text all the fundamental rights protected in the Union, spelling them out in detail and making them visible and predictable. In a footnote the reference to "all the fundamental rights protected in the Union" is clarified in the following terms "The rights and principles enshrined in the Charter stem from the constitutional traditions and international conventions common to the Member States, the European Convention on Human Rights, the Social Charters adopted by the Community and the Council of Europe and the case law of the Court of Justice of the Union and the European Court of Human Rights."

3.3 The Charter in secondary law sources

42. *Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers*

"(44) This Directive should apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961 and, where relevant, the European Convention on the Legal Status of Migrant Workers of 24 November 1977".

43. *Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection - Text with EEA relevance*

Article 1

"Directive 2003/109/EC is amended as follows: …

(2) Article 3 is amended as follows: … in paragraph 3, point (c) is replaced by the following: (c) the European Convention on Establishment of 13 December 1955, the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987, the European Convention on the Legal Status of Migrant Workers of 24 November 1977, paragraph 11 of the Schedule to the Convention Relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967, and the European Agreement on Transfer of Responsibility for Refugees of 16 October 1980".

[11] COM(2010) 573 final.

44. *Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents*

"3. This Directive shall apply without prejudice to more favourable provisions of:

...

(c) the European Convention on Establishment of 13 December 1955, the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

45. *Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification*

Article 3

"4. This Directive is without prejudice to more favourable provisions of:
(a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;
(b) the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the legal status of migrant workers of 24 November 1977".

46. *Decision No 50/2002/EC of the European Parliament and of the Council of 7 December 2001 establishing a programme of Community action to encourage cooperation between Member States to combat social exclusion*

"Whereas: …

(2) Pursuant to Article 136 of the Treaty, the Community and the Member States, taking note of fundamental political principles, such as those set out in the European Social Charter signed at Turin on 18 October 1961, the revised Social Charter of the Council of Europe (1996), in particular in Article 30 thereof on the right to protection against poverty and social exclusion, and in the 1989 Community Charter of the Fundamental Social Rights of Workers, and bearing in mind also the rights and principles recognised by the Charter of Fundamental Rights of the European Union proclaimed jointly by the European Parliament, the Council and the Commission on 7 December 2000, shall have as an objective the combating of exclusion".

47. *Resolution of the Council and the representatives of the governments of the Member States, meeting within the Council of 23 July 1996 concerning the European Year against Racism (1997)*

"(1) Whereas, in the preamble to the Single European Act, the Member States stressed the need to 'work together to promote democracy on the basis of fundamental rights

recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice'".

48. *Resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council of 5 October 1995 on the fight against racism and xenophobia in the fields of employment and social affairs*

"Whereas, in the Single European Act, the Member States stressed the need 'to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice'".

49. *Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 29 May 1990 on the fight against racism and xenophobia*

"Whereas, in the Single European Act, the Member States stressed the need 'to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice'".

50. *Commission Recommendation of 18 July 1966 to the Member States on the promotion of vocational guidance*

"3. Co-operation between the member states in the field of vocational guidance is especially important given that it is generally felt, albeit to varying degrees, that the organisation and functioning of guidance services should be improved. Furthermore, as there are many similarities between the problems faced by the different countries as regards optimising and extending guidance activities, it will be of benefit to the six member states to compare their experience at national level to draw general conclusions. Convergent concerns have already been expressed in various international organisations and in their member states. The importance attached to these has been reflected at international level by contacts and the adoption of certain measures. In addition to Recommendation No. 87 of the International Labour Organisation, Geneva, of July 1949, reference should be made in particular to: the European Social Charter, Turin, October 1961; Recommendation No. 56 of the International Conference on Public Education, Geneva, July 1963; the Recommendation of the Council of the Organisation for Economic Co-operation and Development on Manpower as a Means for the Promotion of Economic Growth, Paris, May 1964; Recommendation No. 122 of the International Labour Organisation on employment policy, Geneva, 1964".

51. *Commission Recommendation of 7 July 1965 to the Member States on the housing of workers and their families moving within the Community*

“9. At international level, the issue of the housing of migrant workers has already been the subject of various instruments such as: (a) ILO Convention No. 97 (Geneva, 1 July 1949) on migration for employment;

…

(c) the European Social Charter (Council of Europe, Turin, 18 October 1961): in Article 19 on the right of migrant workers and their families to protection and assistance, the Contracting Parties undertake, *inter alia*, to secure for such workers: “…c. accommodation”. The Commission has invited the member states to ratify this Charter, which came into force on 26 February 1965”.

52. *Commission Recommendation to the Member States on the activities of the social services in respect of workers moving within the Community (23 July 1962)*

“… The Commission has also taken due account of the ILO conventions and recommendations on migrant workers, particularly Convention No. 97 and Recommendation No. 86, which are the main reference documents. Without prejudice to the provisions of these documents relating to the subject at issue, the Commission has drawn up the following recommendation. For this purpose, it also drew on the European Social Charter, particularly with regard to the recognition of the right for everyone to benefit from social welfare services and, for migrants and their families, from the right to protection and assistance”.

3.4 The Charter in other EU instruments (non-legal documents)

53. *Strategic Framework on Human Rights and Democracy*[12]

In this document, the EU expressly calls on all member States "… to ratify and implement the key international human rights treaties, including core labour rights conventions, as well as regional human rights instruments." In the same document it commits itself to "working with partners, multilateral forums and international organisations in the field of human rights and democracy" and to "continue its engagement with the invaluable human rights work of the Council of Europe and the OSCE."

54. *EU Action Plan on Human Rights and Democracy*[13] So as to act on the commitments contained in the aforementioned Strategic Framework, this document sets the following objectives:

- “Intensify the promotion of ratification and effective implementation of key international human rights treaties, including regional human rights instruments”.

[12] Council Document 11855/12 – Appendix II (25 June 2012).

[13] *Ibid.*, Annex III. Based on available information the objectives laid down in the plan are implemented by the European Commission, the EU External Action Service and/or the member States.

- “Ensure that EU policy documents contain appropriate references to relevant UN and Council of Europe human rights instruments, as well as the EU Charter of Fundamental Rights”.
- "Continue to engage with the Council of Europe and the OSCE; intensify dialogue with other regional organisations and support and engage with emerging regional organisations and mechanisms for the promotion of universal human rights standards".

55. In the same Plan, it is also recommended to “insert human rights in Impact Assessment, as and when it is carried out for legislative and non-legislative proposals, implementing measures and trade agreements that have significant economic, social and environmental impacts, or define future policies”.

56. *European Parliament resolution of 13 March 2014 on Employment and social aspects of the role and operations of the Troika (ECB, Commission and IMF) with regard to euro area programme countries*[14]

“The European Parliament,

… - having regard to the revised European Social Charter, in particular its Article 30 on the right to protection against poverty and social exclusion,

… D. whereas Article 151 TFEU provides that action taken by the EU and its Member States must be consistent with the fundamental social rights laid down in the 1961 European Social Charter, and in the 1989 Community Charter of the Fundamental Social Rights of Workers, in order to improve, inter alia, the social dialogue; whereas Article 152 TFEU states: ‘The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy;

… 26. Recalls that the Council of Europe has already condemned the cuts in the Greek public pension system, considering them to be a violation of Article 12 of the 1961 European Social Charter and of Article 4 of the Protocol thereto, stating that ‘the fact that the contested provisions of domestic law seek to fulfil the requirements of other legal obligations does not remove them from the ambit of the Charter’; notes that this doctrine of maintaining the pension system at a satisfactory level to allow pensioners a decent life is generally applicable in all four countries and should have been taken into consideration;

… 37. Invites the Commission to ask the ILO and the Council of Europe to draft reports on possible corrective measures and incentives needed to improve the social situation in these countries, their funding and the sustainability of public finances, and to ensure full compliance with the European Social Charter, with the Protocol thereto and with the ILO’s Core Conventions and its Convention 94, since the obligations deriving from these

[14] European Parliament document (2014/2007(INI)).

instruments have been affected by the economic and financial crisis and by the budgetary adjustment measures and the structural reforms requested by the Troika;

… 40. Calls on the Troika and the Member States concerned to end the programmes as soon as possible and to put in place crisis management mechanisms enabling all EU institutions, including Parliament, to achieve the social goals and policies – also those relating to the individual and collective rights of those at greatest risk of social exclusion – set out in the Treaties, in European social partner agreements and in other international obligations (ILO Conventions, the European Social Charter and the European Convention of Human Rights); calls for increased transparency and political ownership in the design and implementation of the adjustment programmes; …".

In this context, it should be noted that the Committee was invited by the European Parliament to participate in the hearing on "Employment and social aspects of the Troika operations with regard to euro area programme countries" held in Brussels on 9 January 2014.

57. *European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012)*

"The European Parliament,

… – having regard to the European Social Charter, as revised in 1996, and the case law of the European Committee of Social Rights,

… R. whereas the preamble of the Treaty on European Union, Articles 8, 9, 10, 19 and 21 of the EU Charter of Fundamental Rights and the case law established by the EU Court of Justice acknowledge the importance of fundamental social rights through their embodiment in cross-cutting principles of Community law, thus making it clear that the EU must guarantee fundamental rights and freedoms, such as trade union rights, the right to strike, and the right of association, assembly, etc., as defined in the European Social Charter, and whereas Article 151 of the Treaty on the Functioning of the European Union contains an explicit reference to fundamental social rights such as those set out in the European Social Charter;

… 8. Believes that in order to make full use of the potential of the treaties, there is a need to:

(a) complete the process of acceding to the European Convention on Human Rights and immediately put in place the necessary instruments to fully accomplish this obligation, which is enshrined in the treaties, as it will provide an additional mechanism for enforcing the human rights of its citizens, inter alia with a view to ensuring the application by the Member States of the judgments given by the European Court of Human Rights, particularly 'pilot judgments; accede, as called for by the Council of Europe, to the European Social Charter, signed in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996; and for Member States to

accede to and ratify the human rights conventions of the Council of Europe, to implement the already existing instruments of the acquis communautaire and to reconsider the opt-outs, which might risk affecting the rights of their citizens;

… 78. Underlines the fact that social rights are fundamental rights, as recognised by international treaties, the ECHR, the EU Charter of Fundamental Rights and the European Social Charter; highlights that these rights must be protected both in law and in practice to ensure social justice, notably in periods of economic crisis and austerity measures; underlines the importance of the right to dignity, occupational freedom and the right to work, the right to non-discrimination, including on the basis of nationality, protection in the event of unjustified dismissal, the right to health and safety at work, social security and social assistance, the right to health care, freedom of movement and of residence, the right to protection against poverty and social exclusion, through the provision of effective access to employment, adequate housing, training, education, culture and social and medical assistance, and in relation to remuneration and social benefits, guaranteeing a decent standard of living for workers and the members of their families, as well as of other conditions of employment and working conditions, autonomy of social partners, and freedom to join national and international associations for the protection of workers' economic and social interests and to bargain collectively;

… 81. Recommends that all Member States lift their remaining reservations on the European Social Charter as soon as possible; considers that Parliament should stimulate a permanent dialogue on progress made in this respect; believes that the reference to the ESC in Article 151 TFEU should be used more effectively, for example by including a social rights test in the impact assessments of the Commission and Parliament;

… 88. Calls on the Commission and the Member States to recognise that the right of workers to safe and healthy working conditions, as set out in Article 3 of the European Social Charter, is essential for workers to have the opportunity to live a decent life and to ensure that their fundamental rights are respected; …".

58. *European Parliament resolution of 19 May 2010 on the institutional aspects of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms*[15]

"The European Parliament,

… 30. Notes that accession by the Union to the ECHR signifies the recognition by the EU of the entire system of protection of human rights, as developed and codified in numerous documents and bodies of the Council of Europe; in this sense, accession by the Union to the ECHR constitutes an essential first step which should subsequently be complemented by accession by the Union to, inter alia, the European Social Charter,

[15] European Parliament document (2009/2241(INI)).

signed in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996, which would be consistent with the progress already enshrined in the Charter of Fundamental Rights and in the social legislation of the Union;

… 31. Calls, further, for the Union to accede to Council of Europe bodies such as the Committee on the Prevention of Torture (CPT), the European Commission against Racism and Intolerance (ECRI) and the European Commission on the Efficiency of Justice (CEPEJ); stresses also the need for the Union to be involved in the work of the Commissioner for Human Rights, the European Committee of Social Rights (ECSR), the Governmental Social Committee and the European Committee on Migration, and asks to be duly informed of the conclusions and decisions of these bodies; …".

59. *Community Charter of the Fundamental Social Rights of Workers*

"… Whereas inspiration should be drawn from the Conventions of the International Labour Organization and from the European Social Charter of the Council of Europe; …"

60. Appendix III presents a series of decisions of the Court of Justice of the European Union making express reference to the Charter. In this connection, specific mention can be made of the recent judgments of the Court of Justice, both that handed down in 2014 in case C-176/12 – containing an interpretation of Article 52 of the EU Charter of Fundamental Rights – and that pronounced in 2013 in case C-617/10, which gives an interpretation of Articles 50 and 51 of the EU Charter.

3.5 A first step in the direction of an integrated EU-Council of Europe approach to social rights.

61. Before concluding this section of the document, it seems important to mention the Memorandum of Understanding concluded between the EU and the Council of Europe in 2007 with a view to co-ordinating their work in areas including fundamental rights. This document states in particular that "the European Union regards the Council of Europe as the Europe-wide reference source for human rights" and will cite the relevant Council of Europe norms "as a reference" in its own documents. In this context, the EU institutions will have to take account of the decisions and conclusions resulting from the Council of Europe monitoring mechanisms when they are relevant.

62. The Memorandum also states that "while preparing new initiatives in this field, the Council of Europe and the European Union institutions will draw on their respective expertise as appropriate through consultations" and that "in the field of human rights and fundamental freedoms, coherence of Community and European Union law with the relevant conventions of the Council of Europe will be ensured. This does not prevent Community and European Union law from providing more extensive protection". In this context, the Council of Europe and the EU also agreed to base their co-operation "on the principles of indivisibility and universality of human rights, respect for the standards set out in this field by the fundamental texts of the United Nations and the Council of Europe, in particular the Convention for the Protection of Human Rights and

Fundamental Freedoms, and the preservation of the cohesion of the human rights protection system in Europe".

Part III

Links between EU law and the Charter, as resulting from the Committee's case law – see table in Appendix II, column 4

63. The Committee takes account of EU law when it interprets the Charter. Furthermore, as highlighted in Part II (Section 2.2), the Revised Charter contains amendments to the original instrument of 1961 which allow for developments in Community law since that date and influence the manner in which the parties implement the Charter.

64. Examples are:

- the changes in women's rights so as to ensure full equality between women and men (with the sole exception of maternity protection measures), which draw directly on EU law;

- the minimum age for employment in certain occupations regarded as dangerous or unhealthy, which was not specified in the 1961 Charter, but was set at 18 years of age in the Revised Charter. This provision stems from Council Directive 94/33 of 22 June 1994 on the protection of young people at work (Article 7§2 of the Charter);

- Article 29 providing that the states must impose on employers an obligation of information and consultation of employee representatives in collective redundancy procedures, which is inspired inter alia by Directive 92/56/EEC of 24 June 1992 amending Directive 75/129/EEC on the approximation of the laws of the member States relating to collective redundancies.

65. The Committee has clarified the links between the rights enshrined in the Charter and those recognised in EU law. European Union law can play a positive role in the Charter's implementation; nonetheless, there is no presumption of conformity with the Charter when a state is in compliance with the directives, even if their subject matter comes within the scope of the Charter.

66. The fact that provisions of national law draw on an EU directive does not exempt them from conforming to the requirements of the Charter. It is true that the Committee is not competent for assessing the conformity of national situations with a European Union directive, nor the conformity of such a directive with the Charter. However, when the EU member states agree on binding measures that they apply to themselves by means of a directive, affecting the way in which they implement Charter rights, they should take account of the commitments they made when they ratified the European Social Charter both in drawing up that directive and in transposing it into their national law. It is ultimately for the Committee to assess compliance of a national situation with the

Charter, including in the event of transposition of a European Union directive into national law.

67. The Committee considers that neither the situation of social rights in the EU's legal order nor the procedures for establishing secondary legislation in these matters would justify a similar presumption, even rebuttable, as to the conformity of legal texts of the EU with the European Social Charter.

68. Whenever it has to assess situations where the states take into account or are bound by EU legal instruments, the Committee examines on a case-by-case basis whether the States Parties implement the rights guaranteed by the Charter in their national law.

69. Concerning health and safety at work, national law on prevention of and protection from risks must be in conformity with the international reference standards. A state is considered to fulfil this general obligation if it has transposed most of the Community *acquis* in the relevant field.

70. For example, concerning asbestos the international reference standards are Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work, as amended by Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003, and the ILO Convention on asbestos, No. 162 of 1986.

71. Concerning ionising radiation, national law must take account of the recommendations made by the International Commission on Radiological Protection (ICRP, the 1990 Recommendations, Publication 60), particularly as regards dose limits for occupational exposure and for persons who, without being assigned directly to jobs involving radiation exposure, may be exposed from time to time. The transposition of Council Directive 96/29/Euratom of 13 May 1996, laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation, is sufficient as this directive incorporates the norms of ICRP Publication 103.

72. Regarding working time, the Committee examined Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. Although the recitals in the preamble to the directive make absolutely no reference to the European Social Charter, despite the fact that it has been ratified by all EU member states and the Treaty on European Union explicitly refers to it on several occasions, the Committee considered that the concerns underlying this directive undoubtedly demonstrated the authors' intention to comply with the rights enshrined in the Charter. It took the view that the practical arrangements agreed between the EU member states, if properly applied, would permit the concrete and effective exercise of the rights contained, in particular, in Articles 2§1 and 4§2 of the Revised Charter.

73. The Committee nonetheless noted that the directive provided for many exceptions and exemptions which might adversely affect respect for the Charter by states in practice. It accordingly considered that, depending on how EU member states translated those exceptions and exemptions into national law or combined them, the situation could be compatible or incompatible with the Charter.

74. Regarding the right to health, the Committee stated that it had taken account of a number of judgments of the European Court of Justice in its interpretation of the right to a healthy environment.

75. Concerning the right to family reunification, the Committee concluded that Directive 2003/86/EC on the right to family reunification contains provisions allowing the member states concerned to adopt and apply rules that infringe Article 19§6 of the Charter.

76. These concerned in particular:

- the length of residence requirement for migrant workers wishing to be joined by members of their family. In this connection, the Committee has always considered, taking account of the provisions of the European Convention on the Legal Status of Migrant Workers (ETS No. 93), that a length of more than one year is excessive and, consequently, in breach of the Charter.

- the exclusion of social assistance from the calculation of the income of a migrant worker who has applied for family reunification (in connection with the criteria relating to available means). The Committee noted that the Court of Justice of the European Union (CJEU) had already limited the possibility provided by the above-mentioned directive to restrict family reunification on the ground of available income (see the CJEU judgment of 4 March 2010 in the case of Chakroun, C-578/08, paragraph 48). In this respect the Committee pointed out that migrant workers who have sufficient income to provide for the members of their families should not be automatically denied the right to family reunification because of the origin of such income, in so far as they are legally entitled to the benefits they may receive. In view of the above and of the relevant case law of the European Court of Human Rights (see the judgment of 19 February 1996 in Gül v. Switzerland, No. 23218/94), the Committee considered that the above-mentioned extension was such as to prevent family reunification rather than facilitate it. It accordingly constituted a restriction likely to empty the obligation laid down in Article 19§6 of its substance and was consequently not in conformity with the Charter.

- the requirement that members of the migrant worker's family sit language and/or integration tests to be allowed to enter the country or pass these tests once in the country, with leave to remain depending on their success. On this subject, the Committee considered that, in so far as this requirement, because of its particularly stringent nature, discouraged applications for family reunification, it constituted a condition likely to prevent family reunification rather than facilitate it. It accordingly

represented a restriction likely to empty the obligation laid down in Article 19§6 of its substance and was consequently not in conformity with the Charter.

77. For posted agency workers, the Committee considered that Swedish law, as amended following a decision by the CJEU (judgment of 18 December 2007, *Laval un Partneri Ltd. v. Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet* – Case No. C-341/0), did not promote the development of suitable machinery for voluntary negotiations between employers' organisations and trade unions, with a view to the regulation of terms and conditions of employment by means of collective agreements. In addition, the law imposed a disproportionate restriction on the free enjoyment of trade unions' right to engage in collective action, in so far as it prevented them from taking action to seek an improvement in the employment conditions of posted workers.

78. In addition, it did not secure for posted workers, for the period of their stay and work in the host state, a treatment not less favourable than that of the national workers of the host state in respect, inter alia, of remuneration and other employment and working conditions.

79. The table presented in Appendix II, column 4, focuses on the existing links between EU law and various Charter provisions, as reflected in the Committee's conclusions and decisions. As highlighted, in most cases these links are characterised by convergence between the two standard-setting systems. However, in a small yet significant number of cases, there is evidence of conflict.

Final summary

80. Several proposals have been made for establishing more effective links between EU law and the law of the Charter. The time seems to have come to consider their implementation. The Committee sets out below some proposals for discussion and action, which it hopes will help to launch a process of dialogue with the Commission with a view to increasing areas of convergence and reducing areas of divergence.

81. Firstly, possible accession by the EU to the Charter along the lines of what is taking shape for the European Convention on Human Rights would enable greater account to be taken of the Charter in the development and implementation of EU law. The reasons put forward regarding the European Convention on Human Rights apply mutatis mutandis to possible accession to the Charter. Proposed by the European Parliament, this solution has been the subject of at least one detailed study[16], but should be looked at closely to assess the practical effects depending on any arrangements adopted. However, there does not yet seem to be political consensus concerning the proposal and the solution can therefore only be considered for the medium term.

[16] Olivier De Schutter, L'adhésion de l'Union européenne à la Charte sociale européenne, EUI Working Paper LAW No. 2004/11, version révisée en juin 2014, Université catholique de Louvain.

82. In the meantime, other practical arrangements which could lead to greater convergence between the two legal orders do seem feasible.

83. For instance, the EU could encourage its member states to harmonise their commitments, in particular by all ratifying the revised Charter and all accepting all the provisions in the Charter which are most directly related in terms of substance to the provisions of EU law and the competences of the EU. For example, these include Articles 4§3 (equal pay for women and men) and 2§1 (reasonable working hours).

84. It would be useful for a definition of a kind of 'Community core' within the Charter to be drawn up so as to give EU member states clear indications in this respect.

85. A commitment of all EU member states concerning the collective complaints procedure would also help to ensure greater balance between EU members in terms of taking the Charter on board, as the current difference between those which have accepted the procedure and those which have not would disappear.

86. In addition, if the Charter was taken into account by EU lawmakers (Commission, Council and Parliament), this would ensure that any new EU legislation increased the convergence between the two legal orders.

87. Lastly, the links between the Committee and the Fundamental Rights Agency could be extended with a view to enabling the Committee to make still greater use than at present of the Agency's research in finding out more about and better understanding the actual situation of social rights in states.

Appendices

I Acceptance of the provisions of the Charter treaties by the EU member states

II Charter provisions and corresponding sources of primary and secondary EU law (identified on the basis of the Committee's case-law) and links between these provisions, secondary law and the case-law of the Court of Justice, as reflected in the case-law of the Committee.

III List of judgments of the EU Court of Justice making express reference to the Charter

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Secretary General calls for better protection of social rights in times of austerity

New findings show numerous violations of the European Social Charter across 38 countries

Strasbourg, 28.01.2014 – The Secretary General of the Council of Europe, Thorbjørn Jagland, has urged European governments and international organisations to pay greater attention to social and economic rights when implementing austerity measures.

The European Committee of Social Rights (ECSR) will tomorrow publish its annual conclusions for 2013 showing some 180 violations of the European Social Charter, a social and economic counterpart to the European Convention on Human Rights, across 38 Council of Europe member states.

According to the ECSR, the increase in violations of the charter is increasingly linked to inadequate levels of social benefits – disproportionately affecting the poor, the unemployed, the elderly and the sick – and to unequal treatment of migrants under the guise of combating "benefit tourism".

The Secretary General said: "The need to protect everyday rights for workers and non-working people is a core European value which becomes all the more important when times are tough".

"However, the information to be published shows that the economic crisis and austerity policies have clearly had a negative impact on social and economic rights across Europe. Benefits are being restricted and people moving between countries to live or find work are often being unfairly treated.

"All Council of Europe member states should ratify the latest version of the European Social Charter and also sign up to the complaints mechanism which helps to make sure it is put into practice.

"Furthermore, international organisations – including the European Union – must take individual countries' obligations under the charter into account when discussing austerity measures."

Notes to Editors

- The ECSR publishes annual conclusions on the extent to which laws and practices in Council of Europe member states are in line with their obligations under either the 1961 European Social Charter or the 1996 European Social Charter (Revised) – depending on which version of the charter they have ratified.

- The annual conclusions for 2013 – looking at provisions of the charter relating to health and social protection – will be published on the ECSR website at 12pm CET on Wednesday 29 January 2014.

- The conclusions will be presented to the media at a press conference at the Council of Europe office in Brussels (Avenue des Nerviens 85) from 10am the same day. Individual interviews with members of the committee can also be arranged.

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Appendix 4a

Texts adopted		
Thursday, 27 February 2014 - Strasbourg		**Provisional edition**
Fundamental rights in the European Union (2012)	P7_TA-PROV(2014)0173	**A7-0051/2014**

European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012) (2013/2078(INI))

The European Parliament,

– having regard to the preamble of the Treaty on European Union ('EU Treaty'), notably its second and its fourth to seventh indents,

– having regard in particular to Article 2, Article 3(3), second indent, and Articles 6 and 7 of the Treaty on European Union, and to the articles of the TEU and TFEU relating to respect for and promotion and protection of fundamental rights in the EU,

– having regard to the Charter of Fundamental Rights of the European Union of 7 December 2000 ('the Charter'), proclaimed on 12 December 2007 in Strasbourg, which entered into force with the Treaty of Lisbon in December 2009,

– having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the case law of the European Court of Human Rights, the conventions, recommendations, resolutions and reports of the Parliamentary Assembly, the Committee of Ministers, the Human Rights Commissioner and the Venice Commission of the Council of Europe,

– having regard to the European Social Charter, as revised in 1996, and the case law of the European Committee of Social Rights,

– having regard to United Nations conventions on the protection of human rights and fundamental freedoms,

– having regard to the UN Convention on the Rights of Persons with Disabilities, to which the EU is a party, along with almost all its Member States,

– having regard to the guiding principles on extreme poverty and human rights, adopted on 27 October 2012 by the United Nations Human Rights Council (A/HRC/21/39),

– having regard to the Commission communications entitled 'Article 7 of the Treaty on European Union – Respect for and promotion of the values on which the Union is based' (**COM(2003)0606**), 'Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union' (COM (2010)0573), and 'Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments' (SEC(2011)0567),

– having regard to the conclusions on the Council's actions and initiatives for the implementation of the Charter of Fundamental Rights of the European Union, adopted by the Council on 23 May 2011, and to the Council's Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies[(1)],

– having regard to the 2013 Commission Report on the Application of the EU Charter of Fundamental Rights (**COM(2013)0271**) and to the accompanying staff working documents,

– having regard to the EU Citizenship Report 2013 entitled 'EU citizens: your rights, your future' (**COM(2013)0269**),

– having regard to the 'Stockholm Programme – an open and secure Europe serving and protecting citizens'[(2)],

– having regard to the Commission Communication on an EU Framework for National Roma Integration Strategies up to 2020 (**COM(2011)0173**) and the European Council conclusions of 24 June 2011,

– having regard to the Commission communication entitled 'Steps forward in implementing national Roma integration strategies' (**COM(2013)0454**) and to the proposal for a Council Recommendation on 'Effective Roma integration measures in the Member States' (**COM(2013)0460**),

– having regard to Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law[(3)],

– having regard to Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin[(4)], Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation[(5)] and the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (**COM(2008)0426**),

– having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(6)],

– having regard to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[(7)],

– having regard to the decisions and case law of the Court of Justice of the European Union, and the case law of national constitutional courts, which use the Charter as a reference for interpreting national law,

– having regard to the State of the Union address by Mr Barroso to the European Parliament on 11 September 2013 and the speech by Mrs Reding on the European Union and the rule of law on 4 September 2013 at the Centre for European Policy Studies (CEPS) in Brussels,

– having regard to the letter of 6 March 2013 sent by the Ministers of Foreign Affairs of Germany, Denmark, Finland and the Netherlands to the Commission President, Mr Barroso, calling for the establishment of a mechanism to foster compliance with fundamental values in the Member States,

– having regard to the Council conclusions of 6 and 7 June 2013 on fundamental rights and the rule of law and on the 2012 Commission Report on the Application of the Charter of Fundamental Rights

of the European Union,

– having regard to the conclusions of the conference on ‘A Europe of equal citizens: equality, fundamental rights and the rule of law’, organised by the Irish Presidency of the Council on 9 and 10 May 2013,

– having regard to the fourth annual symposium of the European Union Agency for Fundamental Rights (FRA) of 7 June 2013 on ‘Promoting the rule of law in the EU’,

– having regard to the draft Council conclusions on the evaluation of the European Union Agency for Fundamental Rights of 13 September 2013,

– having regard to the activities, annual reports, studies and opinions of the FRA, in particular the Annual Report on the situation of fundamental rights in the EU in 2012,

– having regard to the joint report by the FRA, the UNDP, the World Bank and the Commission entitled ‘The situation of Roma in 11 EU Member States – Survey results at a glance’, published in May 2012,

– having regard to the report by the UN Special Rapporteur on the human rights of migrants, published in April 2013, on ‘Management of the external borders of the European Union and its impact on the human rights of migrants’,

– having regard to NGO reports and studies on human rights and the relevant studies requested by the Committee on Civil Liberties, Justice and Home Affairs, in particular the study on ‘The triangular relationship between fundamental rights, democracy and the Rule of Law in the EU - towards an EU Copenhagen mechanism’,

– having regard to its resolutions on fundamental rights and human rights, in particular its resolution of 15 December 2010 on the situation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon[(8)] and its resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010-2011)[(9)],

– having regard to its resolution of 22 April 2004 on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights)[(10)],

– having regard to its resolution of 8 June 2005 on the protection of minorities and anti-discrimination policies in an enlarged Europe[(11)],

– having regard to its resolution of 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy[(12)],

– having regard to its resolution of 17 September 2009 on the Lithuanian Law on the Protection of Minors against the Detrimental Effects of Public Information[(13)],

– having regard to its resolution of 9 September 2010 on the situation of Roma and on freedom of movement in the European Union[(14)],

– having regard to its resolution of 19 January 2011 on violation of freedom of expression and discrimination on the basis of sexual orientation in Lithuania[(15)],

– having regard to its resolution of 9 March 2011 on the EU strategy on Roma inclusion[(16)],

– having regard to its resolution of 10 March 2011 on media law in Hungary[(17)],

– having regard to its resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU[(18)],

– having regard to its resolution of 24 May 2012 on the fight against homophobia in Europe[(19)],

– having regard to its resolution of 14 March 2013 on strengthening the fight against racism, xenophobia and hate crime[(20)],

– having regard to its resolution of 15 September 2011 on the EU's efforts to combat corruption[(21)],

– having regard to its resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken (final report)[(22)],

– having regard to its resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to its resolution of 16 February 2012)[(23)],

– having regard to its resolution of 11 September 2012 on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report[(24)] and its follow-up resolution of 10 October 2013[(25)],

– having regard to its resolution of 11 September 2013 on endangered European languages and linguistic diversity in the European Union[(26)],

– having regard to the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),

– having regard to the European Pact for Gender Equality (2011-2020), adopted by the Council in March 2011,

– having regard to the Commission communication of 21 September 2010 entitled 'Strategy for equality between women and men 2010-2015' (**COM(2010)0491**),

– having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence of 7 April 2011,

– having regard to its resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women[(27)] and of 6 February 2013 on the 57th session on UN CSW: Elimination and prevention of all forms of violence against women and girls[(28)],

– having regard to its resolution of 24 May 2012 with recommendations to the Commission on application of the principle of equal pay for male and female workers for equal work or work of equal value[(29)],

– having regard to working documents I and II on the situation of fundamental rights in the European Union in 2012 (rapporteur Louis Michel),

– having regard to the public hearing held on 5 November 2013 by the Committee on Civil Liberties, Justice and Home Affairs on 'The situation of fundamental rights in the European Union: how to strengthen fundamental rights, democracy and the rule of law in the EU',

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Employment and Social Affairs and the Committee on Women's Rights and Gender Equality (**A7-0051/2014**),

A. whereas European integration is a political project born out of the ashes of the Second World War and the persecution and repression of individuals by totalitarian regimes, and whereas its aim has been to anchor European states to democracy and the rule of law in order to respect and promote human rights, fundamental rights, equality and the protection of minorities, on the basis of the Universal Declaration of Human Rights (UDHR), the European Convention on Human Rights (ECHR) and other instruments on human rights and fundamental freedoms, and avoid a return to any kind of authoritarian regime;

B. whereas the individual, citizen or resident, must be at the centre of the European Union, and whereas fundamental rights protect any individual against possible interference, abuse and violence by authorities – at all levels – with respect to their private life and their rights and freedoms; and whereas respect for and promotion of human rights, fundamental freedoms, democracy and the values and principles enshrined in the EU treaties and international human rights instruments (UDHR, ECHR, ICCPR, ICESCR, etc.) must be at the centre of European integration;

C. whereas the European Union has developed a fundamental acquis, which aims to ensure that fundamental rights are respected, protected and promoted, including through the development of the 'Copenhagen criteria', the inclusion of Articles 2, 6 and 7 in the EU Treaty, the Charter of Fundamental Rights**,** the obligation to accede to the European Convention on Human Rights and the corresponding national legislative provisions of the Member States;

D. whereas, with the entry into force of the Treaty of Lisbon, the Charter has transformed values and principles into tangible and enforceable rights and whereas, having the same value as the Treaty of Lisbon, it has become legally binding on the institutions, bodies and agencies of the EU, as well as the Member States when implementing EU law;

E. whereas a genuine culture of fundamental rights must be developed, promoted and reinforced in the institutions of the Union but also in Member States, especially in applying and implementing Union law, both internally and in relations with third countries; whereas the implementation of these values and principles must also be based on effective monitoring of respect for the fundamental rights guaranteed in the Charter, for example when legislative proposals are being drawn up; whereas other considerations may not take precedence over respecting and guaranteeing those fundamental rights, since this would risk discrediting the role and image of the European Union regarding human rights, particularly in its relations with third countries;

F. whereas the European Union operates on the basis of the presumption and mutual trust that EU

Member States conform with democracy, the rule of law and fundamental rights, as enshrined in the ECHR and the Charter of Fundamental Rights, notably in relation to the development of an Area of Freedom, Security and Justice and the operation of the mutual recognition principle;

G. whereas the mutual recognition principle leads to a situation where people can be transferred from one jurisdiction to another, without any prior human rights scrutiny of the respective decisions;

H. whereas the Court of Justice of the European Union underlined in joined cases C-411/10 and C-493/10 that such a presumption of compliance with fundamental rights must be rebuttable and that judges must therefore check whether there are substantial grounds for believing that there are systemic flaws in the judicial system of the other Member States;

I. whereas it is consequently necessary to make sure that national authorities have sufficient evidence available in order to take an informed decision as to whether or not there are systemic flaws in the judicial systems of other Member States;

J. whereas corruption causes social harm and violations of fundamental rights, as organised crime groups use it to commit other serious crimes, such as trafficking in human beings; whereas an efficient, independent and impartial judicial system is essential for the rule of law and to ensure the protection of the fundamental rights and civil liberties of citizens in Europe;

K. whereas the European Union is going through a period of economic and financial crisis, and also a democratic and constitutional crisis, as demonstrated by recent events in certain Member States, and whereas these tensions have highlighted the lack of appropriate instruments to cope with this crisis, as well as the lack of political will and the difficulties in applying the monitoring, evaluation and sanctioning mechanisms provided for in the existing treaties, in particular the requirements under Articles 2 and Article 7 of the EU Treaty;

L. whereas Parliament has repeatedly called for a strengthening of the mechanisms to ensure that the values of the Union set out in Article 2 of the EU Treaty are respected, protected and promoted, and for crisis situations in the Union and in the Member States to be addressed, and whereas a debate is under way on the creation of a ‘new mechanism’, in which the Commission, the Council and Member States are joining Parliament and NGOs;

M. whereas the FRA underlined in the focus section of its Annual Report on 2012 dedicated to ‘The European Union as a Community of values: safeguarding fundamental rights in times of crisis’ the fact that a common understanding of the Article 2 values and the legal obligations deriving therefrom is an aspiration that calls for the establishment of a regular dialogue within the EU;

N. whereas the Commission has indicated its desire to strengthen the rule of law in the European Union and whereas it could propose the use of letters of formal notice under Article 7(1) of the existing EU Treaty; whereas it has also spoken of the need to amend the treaties and has announced that it might propose amendments before the end of 2013, or in early 2014, with a view to holding a debate during elections (including on Article 7) and seeking a consensus on these proposals, the aim of which should be to ensure that the EU policy on fundamental rights in the EU is based on clear rules and mechanisms, objective indicators, data and evidence which are transparent, fair and predictable and provide strong protection for individual rights, democracy and the rule of law;

O. whereas any decision on the matter should guarantee, as soon as possible, the proper application

of Articles 2, 6 and 7 of the EU Treaty and ensure that every decision is taken on the basis of objective criteria and an objective evaluation, in order to address criticisms of a lack of indicators and evaluation criteria, of differential treatment and of political bias;

P. whereas numerous fundamental rights violations are still occurring in the European Union and in the Member States, as detailed in (annual and special) reports by the Commission, the FRA, the Council of Europe (annual reports and judgments of the European Court of Human Rights, documents and reports of the Commissioner for Human Rights, CoE Parliamentary Assembly documents), UN documents (including the documents and reports of the UN Human Rights Council, of the UN High Commissioner for Human Rights, of the Special Rapporteurs, etc.), documents produced by NGOs (such as Human Rights Watch, Amnesty International, the Open Society Institute, ILGA-Europe, ECRE, Reporters without Borders, Freedom House, FIDH, etc.), etc.; whereas such violations require appropriate responses from the Commission, the Council and Member States, given their gravity and recurrence;

Q. whereas these organisations have expressed and recorded their concerns, particularly with regard to the situation of Roma, migrants, asylum seekers, refugees, minorities, members of LGBT communities, the media and journalists, the actions of the security forces, police and secret services, the investigations necessary to prosecute and punish those responsible for human rights violations, state involvement in acts of torture and ill-treatment committed in third countries, the use of evidence thus obtained, conditions of detention and the ill-treatment of detainees;

R. whereas the preamble of the Treaty on European Union, Articles 8, 9, 10, 19 and 21 of the EU Charter of Fundamental Rights and the case law established by the EU Court of Justice acknowledge the importance of fundamental social rights through their embodiment in cross-cutting principles of Community law, thus making it clear that the EU must guarantee fundamental rights and freedoms, such as trade union rights, the right to strike, and the right of association, assembly, etc., as defined in the European Social Charter, and whereas Article 151 of the Treaty on the Functioning of the European Union contains an explicit reference to fundamental social rights such as those set out in the European Social Charter;

S. whereas Articles 2 and 3 of the Charter of Fundamental Rights recognise the right to life and the right to the integrity of the person;

T. whereas there are about 100 million children in the European Union and about 80 million European persons with disabilities; whereas persons with disabilities, especially children, are still suffering from a lack of assistance and support as regards their inclusion in schools, and are experiencing difficulties in accessing buildings or services and trouble in being heard and participating in decisions affecting their lives; whereas the EU, as a party to the UN Convention on the Rights of Persons with Disabilities, has the obligation to promote, protect and respect the rights of persons with disabilities as enshrined in the Convention, to adopt a strategy to implement the Convention and to ensure that policies and existing and future primary and secondary law comply with the provisions of the Convention;

U. whereas women and girls are the main victims of gender-based violence, given that, according to estimates in the EU, 20-25 % of women have suffered physical violence at least once during their lives; whereas hundreds of thousands of women living in Europe have been subjected to genital mutilation and thousands of girls are at risk;

V. whereas women in the EU earn around 16 % less per hour than men;

W. whereas poverty, gender inequality and gender stereotypes increase the risk of violence and other forms of exploitation, including trafficking in women and prostitution, and hamper the full participation of women in all areas of life;

X. whereas fundamental freedoms, human rights and equal opportunities should be guaranteed for all citizens of the European Union; whereas, however, the protection of national minorities and regional and minority languages in an enlarged EU is a major issue, which cannot be resolved simply by combating xenophobia and discrimination, but by adopting specific legal, linguistic, cultural, social, etc. regimes and treatments;

1. Stresses, that as a political, historical and ethical project, the European Union endeavours to bring together countries which share and together promote common European values, such as those laid down in Article 2 TEU and in the Charter of Fundamental Rights, as well as the ECHR, including respect for human dignity, democracy, the rule of law, fundamental rights, equality, freedom, non-discrimination and protection of minorities, which are closely linked and are mutual preconditions, and believes therefore that a fundamental pillar of the European identity is, and must be, the internal and external promotion of human rights, fundamental freedoms and democracy, which are European values;

2. Recommends that Parliament, the Commission and the Council recognise the existence of positive obligations to protect and promote human rights; emphasises that respect for fundamental rights and freedoms implies actions at various levels; highlights the role played in this area by regional and local authorities, NGOs and civil society, and asks the Commission and the Council to improve their cooperation with these actors;

3. Reminds the Union institutions and the Member States of the need to comply with their obligations to respect fundamental freedoms and rights; notes that participation in international treaties for the protection and promotion of human rights can only serve to strengthen the protection of fundamental rights within the EU;

4. Condemns the worrying trends with regard to breaches of human rights within the European Union, particularly in the fields of immigration and asylum, and with regard to discrimination and intolerance – especially affecting certain population groups (minorities and migrants) – security and terrorism, freedom of the press, freedom of movement within the Union and social and trade union rights; observes more and more frequently that Member States are adopting obstructive attitudes towards respect for these fundamental rights and freedoms, particularly with regard to Roma, women, LGBT people, asylum-seekers, migrants and other vulnerable population groups;

Institutional questions

5. Points out that it is essential for the European Union, its institutions and the Member States to guarantee respect for the common European values set out in Article 2 TEU, that all the instruments currently provided for in the treaties in this regard urgently need to be applied and implemented, and that where necessary amendments to the treaties should be prepared; stresses that the obligation to fulfil the Copenhagen criteria does not lapse after accession but remains incumbent on the Member States, that fundamental rights are part of Union primary law and that they must be respected when Union law is applied by any court or authority, be it at Union or national level; in this connection,

regrets in particular the length of time taken by ECHR accession negotiations and the fact that EU accession to the ECHR has not already been completed;

6. Reminds the European institutions and the Member States that any policy relating to fundamental rights must first of all prevent any violations from occurring, particularly by means of accessible procedures for prevention and redress before a decision or measure is taken, to enable particular cases to be considered and judged as quickly as possible and in an effective, just and equitable manner, without discrimination;

7. Considers that the general public are increasingly concerned about respect for fundamental rights and about their protection and promotion, as demonstrated by the mobilisation in relation to, and greater attention devoted to, cases of violations, abuses or inequalities, both in everyday life and in symbolic or well-known cases, thanks in part to the better circulation of information with the aid of new technologies, social networks and the media; recalls that any violation, abuse or inequality is detrimental to democracy and the rule of law, as well as to the confidence of citizens in institutions and their representatives, particularly political decision-makers; stresses that institutions and political decision-makers must note and support this democratic trend by establishing new procedures for dialogue with citizens and by enhancing scrutiny of State authorities by members of the public, parliaments, courts and the media, while those authorities must be more open and transparent in order to serve the interests of citizens better;

8. Believes that in order to make full use of the potential of the treaties, there is a need to:

(a) complete the process of acceding to the European Convention on Human Rights and immediately put in place the necessary instruments to fully accomplish this obligation, which is enshrined the treaties, as it will provide an additional mechanism for enforcing the human rights of its citizens, inter alia with a view to ensuring the application by the Member States of the judgments given by the European Court of Human Rights, particularly ‘pilot judgments; accede, as called for by the Council of Europe, to the European Social Charter, signed in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996; and for Member States to accede to and ratify the human rights conventions of the Council of Europe, to implement the already existing instruments of the acquis communautaire and to reconsider the opt-outs, which might risk affecting the rights of their citizens;

(b) ensure that legislative proposals and policies comply with the Charter and respect fundamental rights, by taking tangible steps towards ensuring that they are verified against the Charter in all phases of the drafting of legislation and that the impact on fundamental rights of EU legislation and its implementation by the Member States is systematically examined in the evaluation reports on the implementation of such legislation, as well as in the annual report on the monitoring of the application of EU law;

(c) ensure that the Commission – and the Council, where it initiates legislation – where appropriate, make use of the external independent expertise of the FRA;

(d) intensify the cooperation between the Commission and the Member States, as well as with the European Parliament and the national parliaments, in order to improve the implementation of existing EU human rights legislation;

(e) ensure that the drafting and transposition of EU law which affects and develops fundamental rights are strengthened and are carried out correctly, by following a rigorous policy of evaluation and monitoring and by bringing violations before the Court of Justice, particularly in areas within the competence of the EU, such as non-discrimination, equality, gender, disability, data

protection, asylum and immigration;

(f) ensure the promotion of a substantial rule of law approach which takes into account how fundamental rights are protected in practice;

(g) acknowledge that a strong political will is required to address these issues, especially in times of economic and financial crisis;

(h) strengthen and ensure transparency in the interinstitutional dialogue on fundamental rights or when European citizens' interests are at stake;

(i) ensure that the Commission makes full use of the existing mechanisms and that it launches objective evaluations and investigations and initiates infringement proceedings if a case is well grounded, thus avoiding double standards, wherever a Member State violates the rights enshrined in the Charter when implementing EU law;

(j) plan ambitious, efficient and far-reaching policies and action programmes relating to fundamental rights and common European values, particularly in order to comply proactively and systematically with the EU's obligations with regard to combating discrimination and promoting equality, as referred to in Articles 8 and 10 TFEU and Article 21 of the Charter;

(k) cooperate in a more systematic and coordinated fashion at all levels, in particular with the Council of Europe and other international institutions, according to their specific expertise, in order to avoid any duplication;

(l) streamline the multiplicity of mechanisms already available to prevent violations of fundamental rights in the EU, tackle breaches of fundamental rights and avoid forum shopping, and to step up the role which can be played by regional and local authorities, together with human rights organisations;

(m) prepare comparative and summary country-by-country tables, on the basis of which the Commission should issue country-specific recommendations on fundamental rights policy, as it does for EU27 economic policy; the Council could endorse or amend these recommendations and the Commission's proposals regarding blatant fundamental rights violations, by the next European Council summit;

(n) develop a peer review mechanism, with the participation of national human rights bodies, similar to the OECD's Development Assistance Committee (DAC): each Member State would be peer-reviewed once every three or four years, the main objectives being to help the country concerned understand in what ways it could improve its fundamental rights strategy and structures; and to identify and share good practice in human rights policy and strategy within the EU;

(o) establish a 'new Copenhagen mechanism' to ensure that the fundamental rights and values of the Union referred to in Article 2 of the EU Treaty and in the Charter of Fundamental Rights are respected, protected and promoted;

9. Stresses that this 'new Copenhagen mechanism', aimed at monitoring compliance with the Copenhagen criteria by every Member State in an effective and binding manner, could be activated immediately, on the basis of a Commission decision, with the full involvement of Parliament, and that it should:

(a) set indicators – on the basis of existing or already developed and recognised fundamental rights standards – such as those developed at UN and Council of Europe level, taking into account the advice of NGOs working in the area of human rights and fundamental freedoms (FRA and Commission);

(b) be based on objective and reliable data and information structured around such indicators, which would be further developed through a transparent and credible process (FRA, Commission);

(c) monitor the situation in the EU and in the individual Member States through a regular and objective process (FRA, Commission, Council, European Parliament and national parliaments);

(d) carry out objective, comparative and regular assessments, for each of the fundamental rights and/or subject areas and for each institution and Member State individually – while striving for maximum comparability - also on the basis of the findings and recommendations issued by existing monitoring mechanisms of the Council of Europe, the United Nations and the EU institutions and bodies, in addition to information submitted by civil society organisations (FRA reports, Commission annual reports, Parliament annual reports, Council annual reports) and on this basis issue recommendations;

(e) establish a European policy cycle on the application of Article 2 of the EU Treaty (democracy, rule of law, fundamental rights, equality) to provide an annual and multiannual framework, and an open annual interinstitutional forum on these European values, in particular the protection of fundamental rights;

(f) bring all existing data and analysis from national, European and international bodies together in order to ensure that existing information that is relevant for the protection of fundamental rights, the rule of law, democracy and equality is more accessible and visible;

(g) ensure that DG Justice and the FREMP working party in the Council work with Parliament‘s Committee on Civil Liberties, Justice and Home Affairs to establish a regular structured dialogue between these institutions and civil society organisations on fundamental rights issues inside the EU;

(h) develop and adopt a set of recommendations along with effective and proportionate penalties which act as an effective deterrent (e.g. the temporary suspension of Fund commitments, the application of certain acts, etc.) to deal with violations of Articles 2 and 7 of the EU Treaty and to ensure that the rights enshrined therein are successfully upheld;

(i) incorporate an early-warning system, political and technical dialogue, letters of formal notice and a ’freezing procedure’, as already called for by Parliament, to ensure that Member States, at the request of EU institutions, suspend the adoption of laws that might disregard or breach fundamental rights or the EU legal order; the Commission should hold meetings at technical level with the services of the Member State concerned but not conclude any negotiations in policy areas other than those relating to Article 2 TEU until full compliance with Article 2 TEU has been ensured;

10. Calls on the Commission, in collaboration with the FRA, to adopt a decision establishing this ‘new Copenhagen mechanism’, as it did for the monitoring of corruption in the EU and in the Member States, and to revise the FRA rules in order to give it enhanced powers and competences;

11. Calls for the establishment, preferably under an interinstitutional agreement, of a ‘Copenhagen commission’ composed of independent high-level experts on fundamental rights, to be appointed *inter alia* by Parliament, whose aim should be to ensure compliance by all Member States with the common values enshrined in Article 2 TEU and continuous compliance with the ‘Copenhagen criteria’ and to advise and report on fundamental rights matters, pending the amendment the FRA Regulation to allow the agency to have stronger powers and a wider remit, including in monitoring individual Member States in the field of fundamental rights, as requested on repeated occasions by Parliament;

12. Recommends the opening of a dialogue between the EU institutions and a Member State where there is a risk of a serious breach of the values of the Union, as well as the possibility for the

European institutions to make recommendations as provided for in Article 7(1) of the EU Treaty; fully supports the Commission's proposal to use letters of formal notice in this context;

13. Invites the Commission and the Council to set up, together with Parliament, a contact group to follow up on the effective implementation of the values of the Union, and to specifically carry out joint assessments of the fundamental rights situation in specific cases that have been noted with concern by any of these three institutions of the Union; calls also on these institutions to take into account the resolutions of the Council of Europe and decisions of the European Court of Human Rights;

14. Welcomes the statements made by the President of the Commission and by Vice-President Reding announcing a communication setting out possible changes to the Treaties, in addition to the options available under the current Treaties, and calls on its competent committees to examine the following proposals in detail, with a view to strengthening the protection of fundamental rights in the EU Treaties:

– revision of Article 7 of the EU Treaty, adding an 'application of Article 2 of the EU Treaty' stage, separating the 'risk' stage from the 'violation' stage, with different thresholds for the majorities provided for, a strengthening of technical and objective (not only political) analysis, enhanced dialogue with the Member States' institutions and a wider range of detailed and predictable penalties which are applicable throughout the procedure;
– drawing on Article 121 of the Treaty on the Functioning of the European Union to devise a stronger and detailed fundamental rights coordination and supervision mechanism;
– extending the scope for redress and the powers of the Commission and the Court of Justice;
– a reference to the FRA in the Treaties, including a legal base making it possible to amend the Agency's founding regulation not by unanimity as is currently the case but via the ordinary legislative procedure;
– deletion of Article 51 of the Charter of Fundamental Rights;
– enabling Parliament to launch proceedings on the violation of Article 2 TEU on an equal footing with the Commission and the Council, and for the FRA to be able to contribute its necessary specialised support to the procedure;
– reviewing the unanimity requirement in areas relating to respect for and protection and promotion of fundamental rights, such as equality and non-discrimination (e.g. Article 19 TFEU);

calls also on its competent committee to clarify the application of, and eventually review, the procedure whereby Parliament can activate Article 7 TEU;

15. Calls on the FRA to set up a public website collecting and pooling information and documents related to fundamental rights issues drawn up by the UN, the Council of Europe, the OSCE, NGOs, the FRA, the European Parliament, courts, national parliamentary committees, ombudsmen, etc.; considers that such information should be retrievable by date, state, author and right, so as to provide sources and information on the fundamental rights situation in the EU and its Member States;

Specific rights based on the Charter of Fundamental Rights
Dignity

16. Expresses its alarm at the persistence of instances of violation of human dignity in the Union and in its Member States, whose victims include minorities, Roma in particular, asylum-seekers, migrants, people suspected of having links with terrorism and people who are deprived of their freedom, as well

as vulnerable groups and poor people; stresses that public authorities must abide by the absolute prohibition on torture and cruel, inhuman or degrading treatment, carry out swift, effective and independent in-depth investigations into any breach and prosecute those responsible;

17. Expresses its concern about the numerous instances of ill-treatment by police and the forces of law and order, particularly in relation to the disproportionate use of force against peaceful participants and journalists in connection with demonstrations, and the excessive use of non-lethal weapons, such as batons, rubber bullets and tasers; calls on the Member States to ensure that the uniforms of law enforcement personnel bear a means of identifying the wearer and that such personnel are always held to account for their actions; calls for an end to police checks that are based on ethnic and racial profiling; expresses concern at the increasing number of restrictions on freedom of assembly and peaceful demonstration and points out that the rights of assembly, association and freedom of expression form the basis to the right to demonstrate; calls on the Member States not to take measures that would undermine or criminalise people's exercise of their fundamental freedoms and rights, urges them to take measures to ensure that force is used only in exceptional cases duly justified by a real and serious threat to public order and recalls that the primary role of the police forces is to guarantee people's safety and protection***;***

18. Reiterates its support for a European initiative to ensure that the fundamental rights of persons deprived of their freedom are upheld and that persons who are imprisoned can be reintegrated into society upon their release; expresses concern at the disastrous level of prison overcrowding in many Member States, and at bad prison conditions and treatment of inmates, and calls for a European initiative to be launched to ensure that the recommendations of the European Committee for the Prevention of Torture and the judgments of the European Court of Human Rights are implemented, including by the police and in immigration centres and psychiatric hospitals; recommends that measures be taken to reduce prison overcrowding, such as avoiding excessive use of pre-trial detention, providing alternatives to custodial sentences, considering the decriminalisation of certain offences and/or shortening the periods for which people can be held without charge;

19. Reiterates its call for a full investigation into collaboration by European states in the 'extraordinary rendition' programme of the United States and the CIA, flights and secret prisons within the territory of the Union, and insists that Member States must perform effective, impartial, in-depth, independent and transparent investigations and that there is no place for impunity; reminds the Member States that the ban on torture is absolute and, therefore, that state secrecy cannot be invoked to limit the obligation on states to investigate serious human rights violations; stresses that the Member States' reputation and trust in their commitment to protect fundamental rights will be at stake should they fail to comply with the above;

20. Stresses that the climate of impunity as regards the CIA programme has made it possible for fundamental rights violations to continue under EU and US counter-terrorism policies, as emphasised by the revelations concerning the mass espionage activities which were conducted under the surveillance programme of the US National Security Agency and by intelligence bodies in various Member States and which are currently being considered by Parliament; calls for legislation concerning EU and Member State security and intelligence agencies to be revised, with a particular focus on ex-ante judicial and parliamentary scrutiny, and the right to appeal and to rectify data collected, held or processed by these agencies;

21. Calls on those Member States which have not yet done so to fully transpose and implement Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating

trafficking in human beings and protecting its victims, and to take appropriate measures to ensure that victims of trafficking in human beings are adequately assisted and protected, that traffickers are prosecuted and handed down effective, proportionate and dissuasive sanctions and that preventive measures are also put in place;

22. Calls on the Member States to fully transpose Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, adopting appropriate measures to ensure adequate assistance and protection of victims of crime;

23. Calls for respect for dignity at the end of life, notably by ensuring that decisions expressed in living wills are recognised and respected;

24. Recognises that sexual and reproductive health and rights (SRHR) are an essential element of human dignity, which need to be addressed in the broader context of structural discrimination and gender inequalities; calls on the Member States to safeguard SRHR through the FRA and the European Institute for Gender Equality (EIGE), not least by providing for reproductive health programmes and services, including the types of care and medicines essential for voluntary family planning and maternal and new-born health, and by maintaining vigilance on policies and/or legislation which may infringe upon sexual and reproductive health and rights;

Freedoms

25. Stresses that democracy and the rule of law are based on respect for fundamental rights and freedoms and that any action or measure against terrorism or organised crime, and international cooperation with this aim, must not breach European fundamental rights standards but must strictly comply with them, notably in relation to the presumption of innocence, due process, rights of the defence, protection of privacy and personal data, etc.; underlines the need for stronger democratic scrutiny, and protection of and respect for fundamental rights in the context of cross-border cooperation in these fields, in particular in the light of ever greater collection and use by authorities of personal data; calls, therefore, for measures to be taken to guarantee privacy and the protection of personal data in this field;

26. Criticises the fact that the Internal Security Strategy (ISS) focuses on security to the detriment of civil liberties, fundamental rights and the adoption of preventive measures; deplores the widening gulf between stated objectives and the way policies are actually implemented; believes that Parliament should play a decisive role in the evaluation and framing of internal security policies, given that they have serious consequences for the fundamental freedoms and rights of all persons residing in the Union, with a view to ensuring democratic monitoring and scrutiny of security policies, including intelligence activities, and, where necessary, the revision of those policies in order to safeguard human rights and fundamental freedoms;

27. Expresses its concern about the revelations concerning the flagrant breach of the right to private life and protection of personal data committed in the secret programmes of mass surveillance of European citizens, without case-by-case judicial authorisation and without appropriate parliamentary control, established by European and non-European states; condemns such practices and urges these states to end such infringements without delay; calls for full details of these programmes and possible international involvement in them to be disclosed, and for the programmes to be reviewed immediately; stresses that the EU and its Member States should take firm action against states which

violate the fundamental right to privacy by spying on the communications of EU citizens and institutional, political and economic representatives and actors in Europe; is concerned at the fact that intelligence services have escaped democratic, parliamentary and judicial control, conducting secret programmes and operations without political approval; calls, consequently, for an urgent revision of mechanisms for the judicial and parliamentary oversight of secret services so as to ensure that intelligence services are anchored in democracy, the rule of law and fundamental rights, as required by Article 2 TEU; condemns the secret involvement of private undertakings in mass surveillance activities; stresses that the EU should react more forcefully and that it should call for measures to be taken at international level to ensure that European privacy and data protection rules are enforced and upheld, and should promote technologies that guarantee the confidentiality of communications in Europe;

28. Deplores the fact that discussions on the adoption of a draft regulation and directive on the protection of personal data are stalling in the Council despite the fact that Parliament has expressed strong support for more stringent rules; regrets the decision taken by the European Council at its meeting of 24-25 October 2013 to complete the digital single market only by 2015, thereby delaying the adoption of the data protection package, and calls on the Council to move forward with the data protection directive and regulation negotiations in order to have the data protection package adopted before the end of this parliamentary term;

29. Believes that the EU and its Member States should adopt a whistle-blower protection system for persons revealing serious violations of fundamental rights by intelligence services that have eluded all democratic, parliamentary and judicial scrutiny;

30. Stresses that the rapid pace of change in the digital world (including increased use of the internet, applications and social networks) necessitates more effective protection of personal data and privacy in order to guarantee confidentiality;

31. Welcomes the fact that a growing number of Member States are respecting the right to found a family through marriage, civil partnership or registered cohabitation and adoption, without discrimination on grounds of sexual orientation, and calls on the remaining Member States to do the same; welcomes the recent judgment by the European Court of Human Rights in the case of Vallianatos and others v. Greece affirming that same-sex couples must be able to enter into civil unions; calls on the Commission and all Member States to propose and adopt legislation and policies to combat homophobia, transphobia and hate crimes, and welcomes the publication of Opinion No 2/2013 of the FRA on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime; calls on the Commission and all Member States to enforce the directive on freedom of movement without discrimination on grounds of sexual orientation; reiterates its call for the Commission to propose an ambitious regulation on the mutual recognition of the legal effects of civil status documents;

32. Is extremely concerned about the number of suicides among young people who are the victims of homophobia; recalls the findings of the FRA‘s EU LGBT survey which showed that 26 % of all respondents had been attacked or threatened with violence at home or elsewhere, a figure which rises to 35 % among all transgender respondents, while 19 % of respondents felt discriminated against at work or when looking for a job, despite legal protection under EU law; calls on the Commission, therefore, to use these findings as a basis for a comprehensive European response to the fundamental rights problems of LGBT persons, in the shape of an EU roadmap for equality on grounds of sexual orientation and gender identity, as repeatedly called for by Parliament and NGOs;

33. Regrets the fact that legal gender recognition procedures for transgender people still include compulsory sterilisation in 14 Member States; calls on the Member States to review these procedures so that they fully respect transgender people‘s right to dignity and bodily integrity; congratulates the Commission on its commitment to working within the World Health Organisation to withdraw gender identity disorders from the list of mental and behavioural disorders and ensure a non-pathologising reclassification in the negotiations on the 11th version of the International Classification of Diseases (ICD-11);

34. Recognises freedom of thought, conscience, religion, belief and non-belief, and freedom to practise the religion of one‘s choice and to change religion; condemns any form of discrimination or intolerance, and believes that secularism defined as the strict separation between non-confessional political authorities and religious authorities, as well as the impartiality of the State, are the best means of guaranteeing non-discrimination and equality between religions and between believers and non-believers; calls on the Member States to protect freedom of religion or belief, including the freedom of those without a religion not to suffer discrimination as a result of excessive exemptions for religions from laws on equality and non-discrimination;

35. Recalls that national laws that criminalise blasphemy restrict freedom of expression concerning religious or other beliefs, that they are often applied to persecute, mistreat, or intimidate persons belonging to religious or other minorities, and that they can have a serious inhibiting effect on freedom of expression and on freedom of religion or belief; recommends that the Member States decriminalise such offences;

36. Regrets the fact that young people in some Member States are still being prosecuted and sentenced to imprisonment because the right to conscientious objection to military service is still not adequately recognised, and calls on the Member States to stop the persecution of and discrimination against conscientious objectors;

37. Recalls that freedom of expression, information and the media are fundamental with a view to ensuring democracy and the rule of law, and reiterates its call for the Commission to review and amend the audiovisual media services directive along the lines indicated by Parliament in its report on the subject; strongly condemns violence, pressure or threats against journalists and the media, including in relation to the disclosure of their sources and information about breaches of fundamental rights by governments and states; calls on the Union institutions and the Member States to respect, guarantee, protect and promote the fundamental right to freedom of expression and information, and hence to refrain from exerting or developing mechanisms to impede those freedoms;

38. Is concerned at the impact of the economic crisis in Europe on the ownership of media outlets and the prospect of privatisation of public service media in some Member States; calls on the Member States to safeguard the independence of public service media and comply with their institutional duty to safeguard media pluralism and provide high-quality, diversified, accurate and reliable information; believes that media ownership and management should always be transparent and not concentrated; stresses that transparency of media ownership is crucial for the monitoring of intra-EU media investments and non-European investors exerting an increasing influence in the information that is provided in Member States;

39. Stresses the importance of respecting and protecting the rights of refugees and migrants, and underlines the fact that special attention should be paid to women and children migrants; expresses its concern about the numerous breaches of the right to asylum and of the obligation to ensure

protection in the event of removal, expulsion and extradition of any migrant; stresses the obligation to comply with international human rights conventions, particularly the UN Convention relating to the Status of Refugees and the principle of non-refoulement, and the obligation to come to the assistance of people at sea who are risking their lives to reach the EU, and to arrange for reception conditions and procedures which respect their dignity and fundamental rights; calls on the EU and the Member States to amend or review any legislation sanctioning people assisting migrants in distress at sea; calls on the Commission to review Council Directive 2002/90/EC defining the sanctions in case of facilitation of unauthorised entry, transit and residence in order to clarify that providing humanitarian assistance to migrants at sea who are in distress is to be welcomed and not an action which should ever lead to any form of sanctions;

40. Welcomes the completion of the Common European Asylum System (CEAS) and calls on the Member States to make the necessary legislative and administrative reforms to effectively implement it so as to ensure that the CEAS is fully established as planned, provides better access to the asylum procedure for those who seek protection, leads to fairer, quicker and better-quality asylum decisions and provides dignified and decent conditions both for those who apply for asylum and those who are granted international protection within the EU; deplores, however, the fact that children can still be placed in detention and calls for them to be systematically excluded from accelerated procedures; reiterates its call for the Commission to draw up strategic guidelines based on best practices to establish common minimum standards for the reception and protection of unaccompanied children; underlines the fact that procedural safeguards must be adequate and appropriate; calls for the application of the recent ECJ judgment stating that LGBT applicants for asylum can constitute a particular social group who are liable to be persecuted on account of their sexual orientation and that the existence of a term of imprisonment in the country of origin sanctioning homosexual acts may constitute an act of persecution per se;

41. Condemns the fact that a large number of migrants continue to die at sea attempting to reach the EU despite the many and varied technical means provided by the Member States and the EU for the surveillance and control of the EU's external borders; demands that the EU and its Member States implement the recommendations made in the resolution adopted by the Parliamentary Assembly of the Council of Europe on 24 April 2012, entitled ‘Lives lost in the Mediterranean Sea: who is responsible?’[(30)]; welcomes the decision of the Court of Justice which annulled Council Decision 2010/252/EU;

42. Stresses the vulnerability of persons crossing Europe‘s southern sea borders, calls for a viable solution of the overall issue of immigration in the Mediterranean fully respecting the principle of non-refoulement and calls for the Member States and EU institutions to take into account, as an absolute minimum, the recent opinions of the FRA on how best to protect the fundamental rights of migrants in the context of maritime surveillance;

43. Welcomes the handbook on European law relating to asylum, borders and immigration produced by the FRA together with the European Court of Human Rights as a concrete contribution assisting legal practitioners in Europe in upholding fundamental and human rights;

44. Calls on the Member States and the Council to speed up the work of the Task Force Mediterranean in order to ensure a significant expansion of rescue capacity at sea and launch a comprehensive plan on migration and asylum, based on solidarity and responsibility sharing, focusing on all relevant aspects such as the revision of EU and Member State laws allowing the criminalisation of humanitarian assistance to persons in distress at sea, the development of safe and legal routes for

refugees and migrants to Europe and development cooperation with third countries with a view to strengthening democracy, fundamental rights and the rule of law in order to ensure that tragedies such as those which have occurred off Lampedusa do not happen again;

45. Condemns the increasingly frequent violations of migrants' fundamental rights, particularly where they are deported to non-EU countries as highlighted by the UN Special Rapporteur on the human rights of migrants in his special report published on 24 April 2013[(31)] and by the FRA report[(32)]; stresses, in this connection, the need for the Return Directive, the readmission agreements and the work of Frontex to be genuinely appraised in terms of their respect for fundamental rights; calls on the Commission to provide a tangible follow-up to its 2011 report criticising the EU's readmission measures and agreements with non-EU countries; condemns the restrictive policies of Member States with regard to issuing visas to nationals of some specific non-EU countries;

46. Calls on the Member States to adopt policies encouraging legal migration and to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;

Equality

47. Stresses that the principles of human dignity, equality before the law and the prohibition of discrimination on any grounds are among the foundations of democratic society; considers that the Union and the Member States should step up their measures to promote equality, combat discrimination and protect cultural, religious and linguistic diversity, and their measures relating to gender equality, the rights of the child, the rights of older persons, the rights of persons with disabilities, the rights of LGBT persons and the rights of persons belonging to national minorities;

48. Calls on the Member States to adopt a national legislative framework to address all forms of discrimination and guarantee the effective implementation of the existing EU legal framework, including by launching infringement proceedings; deplores the deadlock in the Council negotiations on the proposal for a directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age and sexual orientation and reiterates yet again its call for the Council to adopt the proposal; welcomes the position taken by the Lithuanian Council Presidency to back the proposal and calls on other Member States to follow this example; welcomes, in this connection, the FRA's Opinion 1/2013 on the situation of equality in the European Union 10 years on from initial implementation of the equality directives; considers that discrimination on linguistic grounds should also be tackled;

49. Recalls its resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020[(33)], calling for full respect for the Charter of Fundamental Rights of the European Union;

50. Expresses its concern at the fact that persons with disabilities continue to face discrimination and exclusion, which hinders their ability to enjoy their fundamental rights on an equal basis with others; calls on the EU institutions and EU Member States to continue implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in their respective fields of competence; notes that the further development of EU law and policy in the area of non-discrimination could play a role in the process of harmonising legislation with the CRPD across the EU, for example regarding equality before the law; encourages the Member states to develop adequately resourced policies to better integrate persons with disabilities and facilitate their access to

housing, education, labour market, public transport and facilities, and participation in the political process, notably by abolishing legal and practical discrimination and restrictions to their right to vote and stand for election; deplores the fact that certain persons with disabilities have no choice but to live in special homes, given the lack of community-based alternatives, and calls on the Member States to champion arrangements which enable more persons with disabilities to live independently;

51. Calls on the Commission to carry out a comprehensive review of EU legislation and policies in order to assess their compliance with the UN Convention on the Rights of Persons with Disabilities; believes that EU legislative procedures and policy making should be adapted so as to ensure respect, and provide for the implementation, of the CRPD; calls on the Commission to adopt specific impact assessment guidelines to this end and to submit the draft EU progress report on the implementation of the CRPD in the EU to Parliament; believes that Parliament should hold regular debates and formulate recommendations through a resolution on the progress achieved in the enjoyment by persons with disabilities of their rights enshrined in the CRPD, including on the basis of the Commission report; supports the ongoing initiatives to set up a cross-committee task force in Parliament on the implementation of the CRPD in order to ensure that Parliament‘s actions in monitoring and supporting the implementation of the Convention are comprehensive and consistent;

52. Calls on the Member States and the Commission to protect, promote and enforce children’s rights in all internal and external actions and policies having an impact on them; expresses its concern about children who suffer violence and sexual exploitation and calls on the Member States to complete the transposition of Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography; calls on the Member States, the Commission and the FRA to continue their efforts to assess the way in which children are treated during judicial proceedings; considers that, when parents separate or divorce, the best interests of the children should always be taken into consideration and that every child ought to be able to be in regular and direct contact with both parents;

53. Expresses its concern about the situation of Roma in the EU and the numerous instances of persecution, violence, stigmatisation, discrimination, evictions, relocations and unlawful forced evictions, unlawful registration and ethnic profiling by law enforcement authorities, which are contrary to fundamental rights and European Union law; reiterates its position stated in its resolution of 12 December 2013 on the progress made in the implementation of the National Roma Integration Strategies[(34)] and calls once more for the effective implementation of strategies to foster real inclusion and for strengthened and pertinent action to promote integration, particularly in the field of fundamental rights, education, employment, housing and healthcare, and to combat violence, hate speech and discrimination of Roma; calls for an end to unlawful forced evictions, to the dismantling of settlements without alternative housing being provided, and to segregation of Roma children in schools and their illicit placement in special schools; calls on the Member States to make greater use of the EU funds placed at their disposal to implement integration projects in cooperation with local authorities, on the front line managing daily new arrivals on their territory;

54. Calls on the Commission and the Member States to provide an effective response to Roma exclusion by developing integrated policies and implementing the measures set out in the strategies focusing on anti-discrimination measures and measures aiming to increase their employability and access to the labour market in cooperation with representatives of the Roma population, while also ensuring their full participation in the management, monitoring and evaluation of projects affecting their communities, and to allocate sufficient budget resources to this end and ensure the efficiency of spending; calls also on the Commission and the FRA to present common, comparable and reliable

indicators to monitor progress in Member States;

55. Believes that the Commission should take strong action in cases of violation of the fundamental rights of Roma in Member States, especially by opening infringement proceedings in the event of failure to allow them access to and the exercise of their economic and social rights, the right to freedom of movement and of residence, the right to equality and non-discrimination and the right to the protection of personal data; calls on the Commission to set up a monitoring mechanism on hate crime against Roma, and calls on the Commission and the Member States to address the lack of birth registration and birth certificates for Roma residing in the EU; reiterates its call for a targeted approach to the social inclusion of Roma women in order to avoid multiple discrimination; calls for the European Framework for National Roma Integration Strategies to be developed into a fully-fledged European Strategy;

56. Stresses that it is essential that the fundamental rights and freedoms of persons belonging to national or ethnic, religious or linguistic minorities are respected; expresses its concern at the fact that, in everyday life, people belonging to these minority communities encounter obstacles in justice, health and social services, as well as in education and culture, and that this undermines their rights and dignity as human beings and citizens of the Union and leads to situations in which they are treated as second-class citizens by the national authorities of their own Member States; considers that such minorities have specific needs that are different from those of other minority groups, that public policies should be more focused and that the Union itself must address these needs in a more appropriate way;

57. Considers that no single solution exists for improving the situation of such minorities in all the Member States, but that some common and minimum objectives for public authorities in the EU should be developed, taking account the relevant international legal standards and existing good practices; calls on the Member States to ensure that their legal systems guarantee that persons belonging to a recognised national minority will not be discriminated against, and to adopt adequate measures to promote effective equality, based on the relevant international norms and good practice, inter alia the Council of Europe Framework Convention for the Protection of National Minorities; calls on the Commission to establish a policy standard for the protection of national minorities, including indigenous, traditional ethnic and linguistic minority communities, bearing in mind that they comprise more than 10 % of the total population of the EU, in order to avoid applying double standards that differentiate between candidate countries and Member States; stresses the need for a comprehensive EU protection system for traditional national minorities, regional linguistic groups and constitutional regions accompanied by a functioning monitoring mechanism, following the example of the EU Framework for National Roma Integration Strategies; calls on the Member States to provide comprehensive data on violations of the fundamental rights of minorities, so as to allow the FRA and the EU to ensure data collection and reporting;

58. Points out that positive measures implemented for the purpose of protecting minority persons and groups, fostering their appropriate development and ensuring that they are granted equal rights and treatment with respect to the rest of the population in the administrative, political, economic, social and cultural fields and in other spheres should not be considered as discrimination;

59. Condemns racist, anti-Semitic, homophobic/transphobic and xenophobic violence and violence against migrants, religious minorities and ethnic groups, which have reached alarming levels, in particular on the internet, in the absence of strong action by the authorities to combat these types of violence; calls on the Member States to implement Council Framework Decision 2008/913/JHA on

combating certain forms and expressions of racism and xenophobia by means of criminal law, to address discrimination, to ensure that hate speech and hate crimes are investigated, to adopt criminal legislation prohibiting incitement to hatred on any grounds including sexual orientation, and to ensure that there is effective protection against racism, anti-Semitism, anti-gypsyism, xenophobia and homophobia and that victims are offered proper assistance; calls on the Commission to launch infringement proceedings against Member States that fail to implement the framework decision correctly from 1 December 2014; calls for the revision of the framework decision to ensure that it also covers hate speech and acts of anti-Semitism, Islamophobia and religious intolerance, anti-Gypsyism, homophobia and transphobia, and strengthen its application; fully supports the initiative launched under the Irish Presidency of the Council to strengthen the fight against intolerance and calls the Council to continue such constructive work;

60. Calls on the Commission and the Member States to launch a coordinated and comprehensive action to combat and prevent hate crime systematically in the EU and to make hate crime visible through data, ensuring that such data is comparable so as to allow an EU overview of the situation, by working together with the FRA to improve hate crime data collection and harmonisation; condemns hate speech stigmatising groups of people on account of their social, cultural, religious or foreign origins and incitement to racial hatred, notably when made by public figures; points to FRA Opinion 2/2013 on the Framework Decision on Racism and Xenophobia and stresses the need to ensure respect for the rights of victims of crime, and in particular in cases of hate crime;

61. Calls on the Member States, recognising that education is vital in the fight against discrimination, to ensure that their integration strategies focus on reforming national curriculums to include xenophobia, racism and anti-gypsyism within syllabuses and to establish this as a form of discrimination in public discourse from a young age;

62. Urges the EU and the Member States to:

– ensure equality between women and men and prevent, combat and prosecute all forms of violence against women as a fundamental rights violation, while ensuring support and protection for victims;
– sign and ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and set up a data collection system to support the parties to the Convention by providing accurate and comparable data on the extent, forms and consequences of violence against women;
– step up their efforts to achieve the objectives of the European Pact for Equality between women and men (2011-2020), and to take adequate measures to tackle all forms of direct and indirect discrimination against women, in particular the gender pay gap, occupational segregation, stereotyping, and all forms of violence against women, since women continue to suffer multiple discrimination in various areas of everyday life in spite of the legislation in force on combating discrimination;
– promote gender equality education, gender mainstreaming and sufficient monitoring mechanisms for the implementation of EU gender policy;
– step up their efforts to combat human trafficking, in a bid to end sexual exploitation which affects women in particular, and forced labour;
– ensure the proper implementation of the existing gender equality directives including by initiating infringement proceedings;
– bring forward a European strategy on combating violence against women which will follow on

from its previous commitments in this field and will meet the many demands made by Parliament; welcomes, in this connection, the Commission's 'Zero tolerance of violence against women'; calls, however, for more action, including an EU-wide strategy to end violence against women, as announced in the Council conclusions of March 2010, comprising legally binding instruments and awareness-raising actions;

– keep the issue of violence against women – including violence in close relationships, sexual violence (rape, sexual assault and harassment), sexual exploitation and harmful traditional practices, such as forced marriage and 'honour crimes' – high on the agenda as gender-based violence is both a consequence of the inequalities between women and men and an obstacle to equality and. Therefore, should not be tolerated;
– apply a zero tolerance policy to female genital mutilation;
– take measures and launch projects for better reconciliation of family and working life for all generations of women, welcoming the decision to declare 2014 as the European Year of Work and Family Life Balance;

63. Calls on the Commission and the Member States to take account of women's needs and concerns by, inter alia, collaborating with civil society and women's NGOs, when drawing up legislation and analysing the situation of fundamental rights in the EU; stresses the importance of monitoring and evaluating the implementation of European legislation relating to gender equality in Member States;

64. Calls on the Member States to guarantee decent wages and pensions, reduce the gender pay gap and create more high-quality jobs for women, and to enable women to benefit from high-standard public services and improve welfare provisions;

65. Calls on the Member States to take action to combat the economic and social causes that foster violence against women, such as unemployment, low wages and pensions, housing shortages, poverty, and non-existent or inadequate public services, in particular public health, education and social security services;

66. Calls on the Commission to step up its efforts against the violation of the fundamental rights of young girls, specifically against that industry which perceives young girls as sexual objects and which triggers an increase in sexual trafficking in young girls within the EU;

67. Calls on the Member States to ensure the implementation of national strategies concerning respect for and the safeguarding of women's sexual and reproductive health and rights (SRHRs); insists on the role of the Union in awareness-raising and promoting best practices on this issue, given that health is a fundamental human right essential for the exercise of other human rights;

68. Invites the Commission to put forward a proposal for a legal framework on the issue of multiple and intersectional discrimination;

69. Considers that women's underrepresentation in political and business decision-making constitutes a deficit; calls, therefore, on Member States to introduce positive discrimination measures such as legislation for parity systems and gender quotas;

70. Stresses the fact that progress in narrowing the gender pay gap is extremely slow; points out that the implementation of the principle of equal pay for the same work and for work of equal value is

crucial to achieve gender equality; urges the Commission to revise without delay Directive 2006/54/EC and to propose amendments thereto in accordance with Article 32 of the directive and on the basis of Article 157 TFEU, following the detailed recommendations set out in the annex to Parliament's resolution of 24 May 2012;

71. Stresses the fact that cutbacks in public services providing childcare have a direct impact on the economic independence of women; points out that in 2010 28,3 % of women's inactivity and participation in part-time work was explained by a lack of care services, compared with 27,9 % in 2009; points out also that, in 2010, the employment rate of women with young children in the EU was 12,7 % lower than that of women without children, an increase from 11,5 % in 2008;

72. Deplores the fact that the fundamental rights of older women are too often violated, including a high number of cases of violence, physical abuse, emotional abuse and financial abuse in several Member States; calls on the Commission and the Member States to take further action to protect elderly women from all forms of abuse, including ill-treatment in care homes for the elderly;

73. Considers that women with disabilities suffer from double discrimination as a result of their gender and their disability; calls, therefore, on the Commission and the Member States to take measures to safeguard and protect the fundamental rights of disabled women in the EU;

74. Calls for a stronger commitment by the Commission and the Member States to ending the sexist stereotypes conveyed in the media, and in particular advertising, given the crucial role they may play in transforming the way in which male and female roles are generally portrayed;

75. Calls on the Commission and the Member States to increase citizens' awareness and knowledge about all their rights enshrined in the Charter and to encourage participative democracy by maintaining a continuous dialogue with civil society, relevant NGOs and women's organisations; calls on women's organisations in particular to share their invaluable expertise regarding persisting stereotypes and discrimination as women have always been the most vulnerable victims;

76. Calls for greater involvement of EU institutions and improved multi-stakeholder dialogue on the challenges which older people face in the full application of their human rights;

Solidarity

77. Stresses that the financial and economic crisis and the measures taken to tackle it have had a greater impact on the poorest and most deprived sections of the population, often affecting them very seriously, as reflected in the issue paper by the Council of Europe's Commissioner for Human Rights entitled 'Safeguarding human rights in times of economic crisis', in which reference is made to groups at risk of social marginalisation such as migrants, asylum seekers, Roma, women and children; points out that in 2012 a quarter of the population in EU 28 was at risk of poverty or social exclusion; calls for particular attention to be paid and appropriate, more incisive and effective measures to be taken to remedy this situation and fight inequalities and poverty; condemns remarks by politicians which aim to make scapegoats of these groups; expresses its concern at the fact that economic and social crises put fundamental rights, the rule of law and democratic values under strain, at both national and supranational level;

78. Underlines the fact that social rights are fundamental rights, as recognised by international treaties, the ECHR, the EU Charter of Fundamental Rights and the European Social Charter;

highlights that these rights must be protected both in law and in practice to ensure social justice, notably in periods of economic crisis and austerity measures; underlines the importance of the right to dignity, occupational freedom and the right to work, the right to non-discrimination, including on the basis of nationality, protection in the event of unjustified dismissal, the right to health and safety at work, social security and social assistance, the right to health care, freedom of movement and of residence, the right to protection against poverty and social exclusion, through the provision of effective access to employment, adequate housing, training, education, culture and social and medical assistance, and in relation to remuneration and social benefits, guaranteeing a decent standard of living for workers and the members of their families, as well as of other conditions of employment and working conditions, autonomy of social partners, and freedom to join national and international associations for the protection of workers' economic and social interests and to bargain collectively;

79. Underlines the fact that unemployment, poverty or social marginalisation makes it much more difficult, if not practically impossible, for people to exercise the rights and freedoms enshrined in the Charter of Fundamental Rights of the European Union; points out that the following rights and freedoms are particularly under threat: the right to human dignity (Article 1), the freedom to choose an occupation and the right to engage in work (Article 15), non-discrimination (Article 21), protection in the event of unjustified dismissal (Article 30), the right to social security and social assistance (Article 34), the right to health care (Article 35) and freedom of movement and of residence (Article 45); highlights, further, the fact that being unemployed, poor or socially marginalised can also make it more difficult for people to gain access to basic social, financial and other services;

80. Stresses that systems which recognise social justice as an important principle which must be underpinned by robust legislation form the best buffer against the social consequences of the economic and financial crisis;

81. Recommends that all Member States lift their remaining reservations on the European Social Charter as soon as possible; considers that Parliament should stimulate a permanent dialogue on progress made in this respect; believes that the reference to the ESC in Article 151 TFEU should be used more effectively, for example by including a social rights test in the impact assessments of the Commission and Parliament;

82. Calls for stronger action to help homeless persons and provide them with shelter and support, condemns – notably at a time when the persistent economic and financial crisis is driving more and more people in vulnerable situations onto the streets – laws and policies at national or local level criminalising those persons, who are more in need, as this amounts to a striking and inhumane violation of fundamental rights;

83. Stresses the need to ensure that crisis-remedying measures are compatible with the values and objectives of the Union, and particularly to ensure respect for the rule of law in relation to Union actions in the countries most afflicted by the effects of the crisis in the euro area;

84. Reiterates as a matter of urgency its appeal to the Council to include the topic 'Access by the poorest groups to all of their fundamental rights' in the thematic areas of the FRA's next multiannual framework;

85. Deplores the fact that in some Member States transitional rules on free movement of workers are still in place; stresses that fears of negative impacts of labour migration are unfounded; points out

that estimates show a long-term increase of almost 1 % in the GDP of the EU15 countries as a result of post-enlargement mobility (in 2004-09)[(35)];

86. Notes that the recent labelling of free movement as migration to benefit from social security systems is not based on facts[(36)]; emphasises that discrimination is a major obstacle preventing European citizens from enjoying fundamental rights; stresses that EU citizens residing permanently in another Member State enjoy the right to equal treatment regarding social security pursuant to Regulation (EC) No 883/2004;

87. Emphasises the need for the Commission and the Member States to strengthen their work on developing and guaranteeing labour rights and fundamental social rights as a crucial step towards ensuring that equal treatment, decent jobs and living salaries are obtained in the European Union;

88. Calls on the Commission and the Member States to recognise that the right of workers to safe and healthy working conditions, as set out in Article 3 of the European Social Charter, is essential for workers to have the opportunity to live a decent life and to ensure that their fundamental rights are respected;

89. Highlights the importance of the social partners' role in collective bargaining for safeguarding the fundamental rights and equal treatment of workers, particularly with regard to young people, women, persons with disabilities and other socially disadvantaged groups in the labour market;

Citizenship

90. Stresses that the entry into force of the Lisbon Treaty and of the Charter of Fundamental Rights, and the rising expectations of citizens and civil society – as demonstrated by the failure of ACTA and the surveillance scandals – make it necessary to strengthen and increase democratic and institutional transparency and openness in the EU, in particular in its institutions, bodies, offices and agencies and in its Member States; is of the opinion that transparency and openness are key principles that must be further strengthened and promoted in order to ensure good governance and the full participation of civil society in the EU's decision-making process;

91. Deplores the interinstitutional blockage of the revision of Regulation (EC) No 1049/2001 on the right of access to documents and information; calls on the Council and the Commission to resume their work on the revision of this regulation, on the basis of Parliament's proposals to guarante greater transparency in the EU decision-making process and improved access to documents for EU citizens; calls on all EU institutions, offices, bodies and agencies to fully implement Regulation (EC) No 1049/2001 as required by the Lisbon Treaty and notes, in the light of the case-law of the ECJ and complaints to the Ombudsman, that they have not done so; calls on the Council and the Commission at the same time to take the necessary measures to ensure transparency in informing the general public of how the funding passed on to Member States from the EU budget is used;

92. Emphasises that the right to good administration also entails a duty on the authorities to inform citizens of their fundamental rights, to help the most deprived to have their rights explained to them, and to support them in ensuring that these rights are respected;

93. Recalls that citizenship implies, under Article 21 of the UDHR, the right of every person to participate in the public affairs of their country of residence; recalls that European citizenship is not limited to the right to vote and stand in municipal and European elections, nor to the exercise of their

rights, however essential they may be, as regards freedom of movement and residence; stresses therefore that European citizenship implies the ability of each resident in the territory of the Union to participate actively and without discrimination of any kind in the democratic, political, social and cultural life of the Member State in which he or she resides and to exercise all the fundamental political, civil, economic, cultural and social rights and freedoms recognised by the European Union;

94. Draws attention to the need to organise awareness-raising and information campaigns in order to promote the values and objectives of the Union among citizens, and calls specifically for the widest possible dissemination of the texts of the relevant articles of the TEU and of the Charter of Fundamental Rights;

95. Welcomes the decision to declare 2013 the European Year of Citizens; calls, however, on the Commission, together with the Member States, to continue to inform EU citizens about their rights, so that they can fully enjoy their EU citizenship;

96. Calls on the Member States to launch information campaigns to inform EU citizens about their right to vote and stand for election; calls for the necessary reform of European election procedures to be carried out in all Member States in order to promote active EU citizenship; calls on the Member States to encourage the active participation of citizens through citizens‘ initiatives and the exercise of the right of petition and the right to submit complaints to the European Ombudsman;

97. Reiterates the importance of the work of the European Ombudsman to the rights of individuals; stresses that the Ombudsman‘s independence is an important means of ensuring that his work has credibility and calls, therefore, for the Ombudsman’s Statute to be amended so that members of the body appointing the Ombudsman, whether former members or members still in office, are officially not eligible to stand as candidates for the post;

98. Stresses that the right to freedom of movement and residence of European citizens and their families, as well as the freedom to choose an occupation and the right to engage in work, laid down in the Treaties and guaranteed by the Directive on freedom of movement, is one of the fundamental rights of European citizens and represents an important economic benefit for host countries, contributing to addressing skill and job mismatch and helping to compensate for the European Union‘s demographic deficit; underlines the fact that the directive already provides for exceptions and restrictions to the right to free movement; condemns any attempt to review this acquis, and calls for any breach of the rules to result in action before the Court of Justice;

Justice

99. Stresses that the independent, equitable, effective, impartial and just administration of justice, within reasonable time limits, is fundamental to democracy and the rule of law and to their credibility; expresses its concern about the numerous breaches which have occurred in this context, as demonstrated by the number of cases in which the European Court of Human Rights has found against states; calls on the Member States to fully implement the Court‘s decisions; stresses that any impunity on grounds of a position of power, force or influence over persons or the judicial or political authorities cannot be tolerated in the EU;

100. Acknowledges the importance of – in addition to courts – non-judicial and quasi-judicial institutions for access to justice, such as national human rights institutions, equality bodies, ombudsperson institutions, and data protection authorities as well as other such institutions with a

human rights remit; stresses, in this context, that national human rights institutions should be appointed or established in all the Member States with a view to their full accreditation under the so called Paris Principles (Principles relating to the status and functioning of national institutions for protection and promotion of human rights, UN General Assembly resolution 48/134, 20 December 1993); stresses that a full independence requirement would also benefit other institutions with a human rights remit;

101. Calls on the FRA to conduct a study, in collaboration with the UN Special Rapporteur concerned, on special laws and procedures justified on grounds of combating terrorism, and on their compliance with fundamental rights; rejects any exceptional procedure which manifestly creates an imbalance in the positions of the prosecution and the defence in judicial proceedings, such as secret hearings or sentencing in secret, or which gives governments special powers to censor the media or allow secret surveillance on the population; notes and deplores the fact that policies on combating terrorism are being gradually extended to a growing number of crimes and offences, giving rise in particular to an increase in the number of summary judicial proceedings and of minimum sentences that must be served in full, and in the information being recorded on the population;

102. Calls on the Commission to continue its work on criminal justice and the implementation of the road map on procedural safeguards and calls on the Member States to take up a more ambitious stance on the matter;

103. Welcomes the FRA report on access to justice in cases of discrimination in the EU and stresses that accessing justice is often complicated and cumbersome; believes that improvements could include facilitated procedures and enhanced support to those seeking justice;

104. Notes the justice scoreboard issued by the Commission, which unfortunately covers only civil, commercial and administrative justice issues, notwithstanding the fact that Parliament had requested that it also cover criminal justice matters, fundamental rights and the rule of Law; calls, therefore, for the scoreboard to be developed so as also to cover these areas; stresses that it should be incorporated into the new Copenhagen mechanism and the European policy cycle on the application of Article 2 of the TEU; stresses also that improving the functioning of justice systems cannot have as its sole objective to make a country a more attractive place to invest and do business, targeting above all the efficiency of judicial proceedings, but that it should also be aimed at safeguarding the right to a fair trial and respect for fundamental rights;

105. Urges the Commission to examine the effective implementation in the EU of the right of access to justice in the context of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being;

106. Expresses its concerns about the politicisation of constitutional courts in certain Member States and recalls that an independent judicial system is of the utmost importance;

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107. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the candidate countries, the Council of Europe and the Organisation for Security and Cooperation in Europe.

(1) Council Document 10140/11 of 18 May 2011.
(2) OJ C 115, 4.5.2010, p. 1.
(3) OJ L 328, 6.12.2008, p. 55.
(4) OJ L 180, 19.7.2000, p. 22.
(5) OJ L 303, 2.12.2000, p. 16.
(6) OJ L 281, 23.11.1995, p. 31.
(7) OJ L 145, 31.5.2001, p. 43.
(8) OJ C 169 E, 15.6.2012, p. 49.
(9) Texts adopted, **P7_TA(2012)0500**.
(10)OJ C 104 E, 30.4.2004, p. 1026.
(11)OJ C 124 E, 25.5.2006, p. 405.
(12)OJ C 294 E, 3.12.2009, p. 54.
(13)OJ C 224 E, 19.8.2010, p. 18.
(14)OJ C 308 E, 20.10.2011, p. 73.
(15)OJ C 136 E, 11.5.2012, p. 50.
(16)OJ C 199 E, 7.7.2012, p. 112.
(17)OJ C 199 E, 7.7.2012, p. 154.
(18) Texts adopted, **P7_TA(2013)0203**.
(19)OJ C 264 E, 13.9.2013, p. 54.
(20) Texts adopted, **P7_TA(2013)0090**.
(21)OJ C 51 E, 22.2.2013, p. 121.
(22) Texts adopted, **P7_TA(2013)0444**.
(23) Texts adopted, **P7_TA(2013)0315**.
(24)OJ C 353 E, 3.12.2013, p. 1.
(25) Texts adopted, **P7_TA(2013)0418**.
(26) Texts adopted, **P7_TA(2013)0350**.
(27)OJ C 296 E, 2.10.2012, p. 26.
(28) Texts adopted, **P7_TA(2013)0045**.
(29)OJ C 264 E, 13.9.2013, p. 75.
(30) Resolution 1872(2012) of the Parliamentary Assembly Council of Europe adopted on 24 April 2012.
(31) Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 24 April 2013, A/HRC/23/46.
(32)FRA report on Fundamental rights at Europe‘s southern sea borders, March 2013.
(33)OJ C 131 E, 8.5.2013, p. 9.
(34) Texts adopted, **P7_TA(2013)0594**.
(35) Employment and social developments in Europe 2011, chapter 6: Intra-EU labour mobility and the impact of enlargement, p. 274.

(36) See ‘A fact finding analysis on the impact on the Member States’ social security systems of the entitlements of non-active intra-EU migrants to special non-contributory cash benefits and healthcare granted on the basis of residence’, DG Employment, Final report submitted by ICF GHK in association with Milieu Ltd., 14 October 2013.

Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 2027 (2013)[1]
Final version

European Union and Council of Europe human rights agendas: synergies not duplication

Parliamentary Assembly

1. The Parliamentary Assembly recalls its previous resolutions and recommendations concerning co-operation between the European Union and the Council of Europe, in particular Resolution 1756 (2010) and Recommendation 1935 (2010) on the need to avoid duplication of the work of the Council of Europe by the European Union Agency for Fundamental Rights and Resolution 1836 (2011) and Recommendation 1982 (2011) on the impact of the Lisbon Treaty on the Council of Europe.

2. It stresses that the Council of Europe's binding legal instruments – first and foremost the European Convention on Human Rights (ETS No. 5) – constitute an effective system of human rights protection and promotion of the rule of law in all its member States, including those which are also members of the European Union.

3. The Europe-wide common standards and the level of protection set by the Council of Europe's legal instruments must not be undercut or undermined by member States of the Council of Europe or by the European Union. At the same time, higher standards and stronger protection are always welcome.

4. The Assembly reiterates its view that reinventing existing norms and setting up parallel structures creates double standards and opportunities for "forum shopping", leading to new dividing lines in Europe. Duplication of work also wastes limited budgetary resources that are needed for improving the protection of human rights and upholding the rule of law.

5. The Assembly is therefore worried that the accelerating expansion of the European Union's activities in the human rights field may result in unnecessary duplication of the Council of Europe's work. In the wake of the Charter of Fundamental Rights, the European Union established the Agency for Fundamental Rights and created the position of Special Representative for Human Rights, and is now considering setting up a monitoring mechanism for its member States' compliance with common fundamental rights and rule of law standards.

6. The Assembly recalls that many issues stemming from the co-existence of the legal orders of the Council of Europe and of the European Union will be resolved by the accession, foreseen in the Treaty on European Union, of the European Union to the European Convention on Human Rights.

7. The Assembly recognises the need for the European Union to ensure the implementation of its own legal standards by all its member States. It recalls that the expertise of relevant Council of Europe bodies, forged and funded to a large extent by the European Union's member States acting within the framework of the Council of Europe, is at the disposal of the European Union.

8. In particular, the Council of Europe's European Commission for Democracy through Law (Venice Commission) has recently demonstrated its ability to provide a well-founded, objective assessment of the constitutional and human rights implications with respect to the situation in Hungary. The Assembly has followed up these findings in Resolution 1941 (2013) on the request for the opening of a monitoring procedure

1. *Assembly debate* on 3 October 2013 (35th Sitting) (see Doc. 13321, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr McNamara). *Text adopted by the Assembly* on 3 October 2013 (35th Sitting).

in respect of Hungary, based on a report by its Monitoring Committee, and has invited the Committee on Culture, Science, Education and Media, the Committee on Legal Affairs and Human Rights and the Committee on Political Affairs and Democracy to continue following relevant aspects of the situation in Hungary.

9. In view of the above, the Assembly invites:

9.1. the European Union to:

9.1.1. explore possible synergies with existing Council of Europe mechanisms in the fields of human rights, democracy and the rule of law before setting up new structures or further expanding the activities of recently created bodies;

9.1.2. in particular, to continue to make use of the expertise of relevant Council of Europe bodies such as the Venice Commission, the Parliamentary Assembly and relevant specialised monitoring mechanisms, including those set up under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), the revised European Social Charter (ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), as well as the Group of States against Corruption and the European Commission against Racism and Intolerance;

9.1.3. explore modalities of co-operation with the Council of Europe in promoting and implementing the above-mentioned Council of Europe conventions and becoming a party to them as far as is possible;

9.1.4. accelerate the accession of the European Union to the European Convention on Human Rights;

9.2. the member States of the Council of Europe to facilitate co-operation between the Council of Europe and the European Union at all levels, including by ensuring that relevant conventions are drafted or adapted in such a way as to facilitate accession by the European Union;

9.3. those member States of the Council of Europe which are also members of the European Union to exercise their influence in such a way as to minimise duplication and maximise synergies between the European Union and the Council of Europe in the field of human rights, democracy and the rule of law.

10. The Assembly condemns any proposal by the European Union and/or the European Parliament to undermine or challenge the position of the European Convention on Human Rights as the definitive European legal instrument addressing human rights, democracy and the rule of law in the 47 member States of the Council of Europe.

11. The Assembly invites the Committee of Ministers to report back urgently to the Assembly on what it is doing to enhance the Council of Europe's role as the benchmark for human rights, the rule of law and democracy in Europe, as is set out in the memorandum of understanding between the Council of Europe and the European Union concluded in May 2007.

12. The Assembly invites the Committee of Ministers to take all necessary action to ensure that the European Convention on Human Rights is not undermined as the foremost European legal instrument which addresses human rights, democracy and the rule of law among all member States of the Council of Europe, including those countries which are also members of the European Union.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DECLARATION

ON THE OCCASION OF THE INTERNATIONAL DAY FOR THE ERADICATION OF POVERTY

Acting together to eradicate extreme poverty in Europe
Strasbourg, 17 October 2012

The Presidents of the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Conference of INGOs of the Council of Europe,

Reaffirming their commitment to human dignity and the protection of all human rights, which are universal, indivisible and interdependent;

Stressing that the effective enjoyment of human rights must be guaranteed to everyone without discrimination;

Concerned about the situation of people living in extreme poverty, which arises when the economic, social and cultural effects of poverty come together and are long lasting, depriving these people of any prospect of the effective exercise of their rights in the foreseeable future;

Observing that it is the people belonging to the most disadvantaged social groups who are the hardest hit by the economic crisis and often also by fiscal austerity measures;

Particularly concerned about the damaging effects of poverty of children and their families, which deprives children of equal opportunities for their development and leads to the intergenerational transmission of poverty;

Convinced that, in order to eradicate extreme poverty in all relevant policy areas at international, regional, national and local levels, an approach based on human rights should be applied;

Considering that a democratic society requires initiating policies that recognise and value every person’s potential to improve the quality of life and to contribute to the common good;

Convinced that efforts to ensure access to rights and justice as well as practical and effective exercise of these rights by people living in extreme poverty will be fully effective only within a comprehensive, consistent and long-term policy with the participation of the people concerned;

Considering that through its legal instruments, including the European Convention on Human Rights and the European Social Charter, opened for signature in 1961 and revised in 1996, the Council of Europe has established a set of European standards relevant to the eradication of extreme poverty;

Considering that through recommendations and thematic resolutions, the Council of Europe has already established a European framework which should ensure the full enjoyment of human rights by all people living in extreme poverty in Europe;

Highlighting the relevance of the Guiding Principles on Extreme Poverty and Human Rights of the United Nations Human Rights Council;

Aware of the need and urgency of taking further steps in the fight against extreme poverty,

Undertake, each within their respective competences and specific nature, to work together to:

- formulate and implement policies and measures to promote the eradication of extreme poverty, based on the values of dignity, freedom, participation, equality and solidarity, with a particular emphasis on children and their families ;

- create and develop the necessary conditions for people experiencing extreme poverty to participate effectively in the formulation, implementation and evaluation of policies and measures for the eradication of poverty,

- promote appropriate measures, in particular in the following areas, while following a multidimensional, structural, progressive and long-term approach:

1. participation in political and public life
2. autonomy and independence
3. family life
4. education and culture
5. housing and energy
6. health: prevention and care, food, water
7. employment and vocational training
8. social protection and proximity services
9. access to justice and protection against violence
10. awareness and solidarity of society

taking into account the circumstances and specific needs of each age group as well as family, social and territorial situations;

- establish effective mechanisms for the monitoring, evaluation and adjustment of policies and measures,

- strengthen cooperation within the Council of Europe by encouraging the involvement of all the relevant organs and entities, and by ensuring that the eradication of extreme poverty be included in the programmes and activities which promote human rights,

- mobilise all stakeholders, such as administrative bodies at national, regional and local level, parliaments, national human rights institutions and ombudsperson offices, the media, associations, universities, firms;

Call on Member States that have not yet ratified the Revised European Social Charter, including Articles 30 (right to protection against poverty and social exclusion) and 31 (right to housing), to consider doing so and to accept the system of collective complaints.

Appendix - Provisional version

Council of Europe texts concerning the fight against extreme poverty and human rights

Committee of Ministers

- CM/AS(81)Rec893 Reply to Parliamentary Assembly Recommendation 893 (1980) on Poverty in Europe

- Recommendation Rec(93)1 on Effective access to the law and to justice for the very poor

- CM/Del/Dec/Act(93)486/23 Supplementary reply to Parliamentary Assembly Recommendation 1196 (1992) on Severe poverty and social exclusion: towards guaranteed minimum levels of resources

- CM(2000)62 rev. 26 April 2000 Draft political message from the Committee of Ministers to the Special Session of the United Nations General Assembly (Geneva, 26-30 June 2000) “Towards social development for all: a European strategy based on co-operation and partnership”

- Recommendation Rec(2001)12 on the adaptation of health care services to the demand for health care and health care services of people in marginal situations

- Recommendation Rec(2001)19 on the participation of citizens in local public life

- Recommendation Rec(2003)19 on improving access to social rights

- Final declaration of the Council of Europe Conference of Ministers responsible for Social Cohesion, Moscow 26 and 27 February 2009

- Guidelines on Improving the situation of low-income workers and on the empowerment of people experiencing extreme poverty, 5 May 2010

- New Strategy for Social Cohesion, 7 July 2010

- Council of Europe Action Plan for Social Cohesion, 7 July 2010

- CM/AS(2010)Rec1912 Reply to Parliamentary Assembly Recommendation 1912 (2010) Investing in family cohesion as a development factor in times of crisis

- Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter, 12 October 2011

- CM/AS(2011)Rec1963 Reply to Parliamentary Assembly Recommendation 1963 (2011) on Combating poverty

- CM/AS(2011)Rec1958 Reply to Parliamentary Assembly Recommendation 1958 (2011) on Monitoring of commitments concerning social rights

- CM/AS(2012)Rec1976 Reply to Parliamentary Assembly Recommendation 1976 (2011) on The role of parliaments in the consolidation and development of social rights in Europe

Parliamentary Assembly

- Recommendation 893 (1980) Poverty in Europe

- Recommendation 1196 (1992)1 Severe poverty and social exclusion: towards guaranteed minimum levels of resources

- Recommendation 1355 (1998) Fighting social exclusion and strengthening social cohesion in Europe

- Resolution 1720 (2010) Investing in family cohesion as a development factor in times of crisis

- Recommendation 1963 (2011) Combating poverty

- Resolution 1800 (2011) Combating poverty

- Resolution 1824 (2011) The role of parliaments in the consolidation and development of social rights in Europe

- Resolution 1884 (2012) Austerity measures - a danger for democracy and social rights

- Resolution 1885 (2012) The young generation sacrificed: social, economic and political implications of the financial crisis

Congress of Local and Regional Authorities

- Resolution 243 (1993) Citizenship and extreme poverty: the Charleroi Declaration

- Resolution 41 (1996) Health and citizenship: care for the poorest in Europe

- Recommendation 154 (2004) Fighting severe poverty in towns: the role of local authorities

- Resolution 182 (2004) Fighting severe poverty in towns: the role of local authorities

- Recommendation 210 (2007) The evolution of extreme poverty in European towns

- Resolution (2007) The evolution of extreme poverty in European towns

Conference of INGOs

- Recommendation du 25 June 2008 on the adoption of the Guiding principles « Extreme poverty and human rights (UNHRC) by the Council of Europe member States

- Recommendation CONF/PLE(2009)REC8 Combating poverty

COUNCIL OF EUROPE CONSEIL DE L'EUROPE
Committee of Ministers
Comité des Ministres

Declaration of the Committee of Ministers
on the 50th anniversary of the European Social Charter

(Adopted by the Committee of Ministers on 12 October 2011
at the 1123rd meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 ("the Charter");

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;

2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;

3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;

4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;

5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;

6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.

Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Resolution 1792 (2011)[1]

Monitoring of commitments concerning social rights

Parliamentary Assembly

1. The Parliamentary Assembly is convinced that in the present context marked by the economic crisis and ongoing globalisation it is all the more important to defend social rights against the manifold threats they are facing. It considers that a binding instrument such as the European Social Charter, opened for signature in 1961 (ETS No. 35) and revised in 1996 (ETS No. 163), remains a highly significant instrument in this regard for stimulating national legislative processes, which complements various policy measures taken at European and national level.

2. The Assembly refers to its Resolution 1559 (2007) on Europe's social dimension: full implementation of the revised European Social Charter and evaluation of new labour regulations and minimum wages and its Recommendation 1795 (2007) on the monitoring of commitments concerning social rights. It welcomes the member states' strong support for the Social Charter, as illustrated by the high number of ratifications of its various treaties. Despite the progress made in this field in recent years, the Assembly considers that the promotion of this instrument should continue just as vigorously at all levels. The main objectives of such a commitment should be to increase the implementation of social rights, to make the prescribed collective complaints procedures more accessible, to place the monitoring machinery on a more democratic footing and to ensure acceptance by states of further provisions of the Charter.

3. The Assembly considers the present period especially favourable for taking stock of the implementation of the Social Charter and its monitoring mechanisms, and for reviewing the Assembly's role in relation to them. The 50th anniversary of the 1961 European Social Charter and the 15th anniversary of the revised European Social Charter, to be celebrated in Strasbourg on 18 October 2011, will be preceded by a series of conferences to prepare for strategic decisions concerning the Social Charter and the mechanisms linked to it. Thus, 2011 is the ideal year to highlight the indivisibility of social rights and civil and political rights, the importance of the European Social Charter for defending this corpus of rights, and an enhanced role for the Assembly in the Charter's monitoring machinery.

4. The Assembly invites the Council of Europe member states to:

4.1. continue promoting, at European and national level, the signature, ratification and implementation of the European Social Charter, and specifically its Amending Protocol of 1991 (ETS No. 142) (known as the "Turin Protocol") and its Additional Protocol of 1995 (ETS No. 158) Providing for a System of Collective Complaints;

4.2. ratify the revised European Social Charter or, where they still abide by the 1961 Charter, the Turin Protocol, if they have not already done so, in order that all provisions of the Social Charter may take full effect, including the election of the 15 members of the European Committee of Social Rights by the Assembly;

4.3. support before the Committee of Ministers the idea of enhancing the Assembly's role in the Charter's monitoring mechanisms;

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1. Assembly debate on 28 January 2011 (9th Sitting) (see Doc. 12441, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Marquet; and Doc. 12502, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Keleş). Text adopted by the Assembly on 28 January 2011 (9th Sitting). See also Recommendation 1958 (2011).

4.4. promote knowledge of the revised European Social Charter amongst social partners and non-governmental organisations, including women's associations, by supporting the organisation of an international conference and the publication of information material, and further encourage the recourse to the collective complaints procedure by those entitled to use it.

5. The Assembly notably invites its members and every national delegation to make the promotion of the Social Charter in their respective countries a priority. In particular, the Assembly calls on them to speak in favour of the acceptance of the collective complaints procedure with a view to promoting the fullest possible implementation of the Charter by member states.

6. In the light of the current situation regarding the European Social Charter, and in order to make a substantial contribution to its ongoing promotion, the Assembly further decides to:

6.1. schedule joint debates on the situation of social rights and on the state of human rights every two years, the next occasion being in June 2011 during the Assembly's third part-session;

6.2. undertake political monitoring of the implementation of the European Social Charter and of social rights, fully taking into account gender mainstreaming, in close collaboration with the European Committee of Social Rights and other international organisations, in particular the International Labour Organization and the European Union organs;

6.3. promote, within the Council of Europe and among its external partners, a broad-based approach to social rights as an integral and indivisible part of human rights;

6.4. promote, with the Committee of Ministers and other relevant Council of Europe bodies, a revision of the collective complaints procedure according to the Additional Protocol of 1995 to the Social Charter, which would allow for third party interventions, including by the Assembly, and envisage intervening in such a capacity where appropriate.

PARLIAMENTARY ASSEMBLY
OF THE COUNCIL OF EUROPE

Recommendation 1958 (2011)[1]

Monitoring of commitments concerning social rights

Parliamentary Assembly

1. The 50th anniversary of the European Social Charter (ETS No. 35) and the 15th anniversary of the revised European Social Charter (ETS No. 163) will be celebrated in 2011. On that landmark occasion for social rights in Europe, the Parliamentary Assembly welcomes the member states' strong support for these significant instruments, the great majority of which have acceded to some or all of the treaties constituting the European Social Charter.

2. The Assembly recalls that at the Warsaw Summit (2005), the heads of state and government of the Council of Europe member states considered that the revised European Social Charter should be regarded as the minimum core of social rights which all member states should guarantee. Despite this ample support for the Social Charter, ratification of the revised Charter and of some of the protocols to the 1961 Charter must continue to be promoted at all possible levels. Moreover, the Social Charter's monitoring machinery must be further strengthened, especially as regards the strict application of certain rules laid down by the treaties. The Charter itself must continue to evolve in its substance in order to remain, in the medium and long term, a genuine social rights reference for member states.

3. The Assembly regards the year 2011 as a cardinal year and a propitious time to remind all parties and bodies involved of the importance of the Social Charter mechanisms for the protection of social rights. The essential role assigned by the Social Charter to the Assembly with regard to the relevant monitoring mechanisms and the need to increase its real contribution in this respect by means of proactive steps should also be recalled in this context.

4. Recalling its own commitments made in Resolution 1792 (2011) on the monitoring of commitments concerning social rights, the Assembly accordingly calls upon the Committee of Ministers to:

4.1. acknowledge that social rights are indivisible from human rights and continue promoting their fulfilment through firm recommendations addressed to member states in the framework of the supervisory process related to the European Social Charter;

4.2. continue promoting the revised European Social Charter among the member states which have not yet ratified this authoritative instrument on modern social rights;

4.3. continue encouraging member states which have not ratified the 1995 Additional Protocol Providing for a System of Collective Complaints (ETS No. 158) to do so, and to ask them to secure to national non-governmental organisations the right to submit such complaints, following the good practice of Finland;

4.4. urge the four Parties to the European Social Charter which have not yet ratified the Amending Protocol of 1991 (ETS No. 142) (known as the "Turin Protocol") – namely, Denmark, Germany, Luxembourg and the United Kingdom – do so as soon as possible, to allow proper application of the monitoring system prescribed by the Charter and to allow, finally, for the election of the 15 members of the European Committee of Social Rights by the Assembly;

4.5. if the Turin Protocol does not come into force by June 2012, ensure that the Assembly can fully discharge its appointed function in the Charter's monitoring machinery as of 2013 by adopting a unanimous decision to that effect as was done on previous occasions to ensure the application of other provisions of the Turin Protocol;

4.6. revise the collective complaints procedure provided for by the Additional Protocol of 1995 so as to allow the Assembly and other stakeholders to intervene as a third party where appropriate.

5. Finally, the Assembly recommends that the Committee of Ministers take into account the results of the political monitoring which the Assembly will conduct in the coming years concerning the application of the Social Charter in the member states, including a general review of the development of social rights in the member states and a follow-up to the European Committee of Social Rights' decisions on the merits of collective complaints.

1. Assembly debate on 28 January 2011 (9th Sitting) (see Doc. 12441, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Marquet; and Doc. 12502, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Keles). Text adopted by the Assembly on 28 January 2011 (9th Sitting).

Europe restarts in Turin

Luca Rimini Design