



The European
Social
Charter

Carole Benelhocine

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Introduction

The European Social Charter's 50th anniversary is an opportunity to review its progress since it was opened for signature on 18 October 1961.

The Social Charter is a convention of the Council of Europe, a key political institution concerned with defending human rights. The Social Charter has to be seen in its European context. To understand its origins it is necessary to look at the history of the Council of Europe. The nature of the rights embodied in the Charter is closely bound up with the period and the organisation in which they took shape. The Social Charter is not the only treaty concerned with safeguarding economic, social and cultural rights. It must therefore be seen in relation to the other major European and international treaties that defend fundamental rights.

The main principles of the Charter described in the first part will help to clarify its scope, before we then go on to examine its substance. The second part considers the Charter as an instrument for defending human rights. This places the ordinary citizen at the heart of the Charter and looks at how those concerned can take full advantage of the rights it enshrines.

The Social Charter's supervisory body is the European Committee of Social Rights. We will describe its role and remit, and how it monitors the application of the Charter in the member states, focusing on the system of national reports and the collective complaints procedure. A sub-section will be devoted to practical examples of collective complaints, to help highlight the importance of this procedure, which offers civil society a means of enforcing economic and social rights.

Finally, we will examine the impact of the Charter on the states that are party to it. This will look at how and how quickly ratification has taken place since the treaty came into force. Any assessment of its likely impact on the lives

of ordinary citizens will also need to consider how far this treaty has been incorporated into countries' domestic law.

Lastly, there is the question of the future of the European Social Charter and what needs to be done to ensure that this human rights treaty can reach its full potential and be recognised for what it is by all the countries and citizens of Europe.

Chapter 1 – The main principles of the European Social Charter

The main principles of the European Social Charter need to be seen in relation to the context and conditions in which it was drawn up so that we can identify the overall shape of the rights and obligations that it embodies and its relationship to other conventions that protect social, economic and cultural rights.

1. Context and definition

To understand the European Social Charter, it has to be seen in its general context. The United Nations was founded in 1945 as the Second World War drew to a close. When they adopted the Universal Declaration of Human Rights on 10 December 1948, governments expressed their determination never again to suffer the violations of fundamental freedoms experienced during that conflict. In fact the declaration is limited in scope since it has no legal force and cannot be relied on in a court. But its importance lies elsewhere, since it was to inspire numerous treaties, declarations, conventions, laws and constitutions. The rights it embodies encompass all the key political, economic, social and cultural rights.

The Council of Europe

The Treaty of London reflected a decision by Europe to set up an organisation dedicated to defending human rights and fundamental freedoms. The Council of Europe was established on 5 May 1949 by 10 founder countries: Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, the United Kingdom and Sweden, followed by Greece and Turkey in August 1949. The Council of Europe now has 47 member countries, with the accession of Iceland and Germany (1950), Austria (1956), Cyprus (1961),

**Extract from the 1948
Universal Declaration
of Human Rights**

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

1. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Switzerland (1963), Malta (1965), Portugal (1976), Spain (1977), Liechtenstein (1978), San Marino (1988), Finland (1989), Hungary (1990), Poland (1991), Bulgaria (1992), Estonia, Lithuania, Slovenia, the Czech Republic, Slovakia and Romania (1993), Andorra (1994), Latvia, Albania, Moldova, “the former Yugoslav Republic of Macedonia” and Ukraine (1995), the Russian Federation and Croatia (1996), Georgia (1999), Azerbaijan (2001), Bosnia and Herzegovina (2002), Serbia (2003), Monaco (2004), and Montenegro (2007).¹

Council of Europe membership automatically implies a democratic regime, free elections and respect for human rights and freedoms. Candidate countries must undertake to ratify the European Convention on Human Rights. Countries that fail to meet these conditions may be excluded, or may withdraw for the time needed to re-establish the rule of law. Following the 1967 *coup d'état* and under the threat of expulsion, Greece opted to abandon its membership. It only rejoined the Council following the restoration of democracy in 1974.

How it operates

To ensure that all the member states are democratically represented, the Council of Europe has a distinctive form of organisation. First, a Secretary General and Deputy Secretary

1. Serbia and Montenegro became a member of the Council of Europe on 3 April 2003. Following its independence in June 2006, Montenegro became a member in 2007. Serbia succeeded Serbia and Montenegro.

General are elected for five years by the Parliamentary Assembly. The former heads the institution during this period and acts as its spokesperson.

To determine the Council of Europe's political objectives and approve its budget there is the Committee of Ministers, made up of the ministers of foreign affairs of each member state, or their representatives. This is the Council of Europe's intergovernmental body, and fulfils a supervisory role. It adopts conventions and accepts candidate states, on the recommendation of the Parliamentary Assembly. It also scrutinises member states' conduct to ensure that they comply with conventions they have ratified and with judgments of the European Court of Human Rights. In the latter case, it adopts resolutions when the country concerned has taken appropriate steps to comply with the Court's decision.

The Council of Europe can justly claim to have contributed to establishing human rights in Europe, thanks to numerous conventions drawn up by its Parliamentary Assembly, composed of representatives appointed by the parliaments of the member states. The Assembly plays a dynamic role in the life of the Organisation and enables each member state to be involved in its development. The Assembly held its first session on 10 August 1949, shortly after the Council of Europe was established. It was the first international parliamentary assembly to be made up of democratically elected representatives reflecting the full range of political opinions. At present, five European political parties take part in the Assembly's debates. It has 318 members and the same number of substitutes. National parliaments' representation varies from two to 18 members, according to their country's population. The Parliamentary Assembly meets four times a year.

To facilitate the integration of non-member countries an observer status has been introduced. The national parliaments concerned send members to attend Assembly debates but they have no voting rights and can only take part with the approval of the President of the Parliamentary Assembly.

The Council of Europe also offers local and regional elected representatives the opportunity to meet and make their views known in the Congress of Local and Regional Authorities. This provides a forum for local elected members who are in daily contact with ordinary members of the public throughout Europe, and encourages exchanges of opinions and experience between the local and regional authorities of member states. To reflect the geographical situation of member countries, the Congress comprises 318 representatives

and 318 substitutes, and has two chambers: the Chamber of Local Authorities and the Chamber of Regions. It holds two sessions a year in Strasbourg.

Similarly the Conference of International Non-Governmental Organisations (INGOs) brings together some 400 European voluntary associations and trade unions. These play an active part in many of the Council of Europe's working groups and provide the organisation with a direct insight into citizens' lives. The Conference meets three or four times a year in Strasbourg.

The Council of Europe's numerous activities also require the permanent presence of specialists operating in a number of divisions. Each group of activities has its own directorate, composed of several departments, with its particular role and a director and staff whose task is to protect the rights associated with their area of concern, all with the same objective: defending human rights and democracy in Europe.

The Council of Europe is more than just a forum for discussion. It has also established formal arrangements to supervise its two flagship conventions, the European Convention on Human Rights (the Convention) and the European Social Charter (the Charter). These conventions establish rights, and the European Court of Human Rights and the European Committee of Social Rights must ensure that these rights are upheld. There is then a further stage when the Committee of Ministers scrutinises states' compliance with the Court's and the European Committee of Social Rights' decisions.

Finally, the office of the Commissioner for Human Rights also reflects the Council of Europe's values, though without a judicial role. The Commissioner acts as an additional safeguard against possible breaches of freedoms and human rights in the member states. He or she can only carry out these responsibilities by focusing on prevention, and thus on education. The Commissioner is elected by the Parliamentary Assembly for a six-year non-renewable term.

Council of Europe conventions

Countries that join the Council of Europe must undertake to increase respect for human rights. The Organisation has a clear duty to act as a guarantor of human rights and beyond. It achieves this by drawing up conventions in a number of areas.

The 200 or so conventions signed and ratified since the Organisation's creation include the European Cultural Convention (1955),² the Bern Convention on the Conservation of European Wildlife and Natural Habitats (1982), the Anti-Doping Convention (1990), the European Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes (1991), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1993), the Framework Convention for the Protection of National Minorities (1998), the Convention on Human Rights and Biomedicine (1999), the Convention on Cybercrime (2004), the Convention on the Prevention of Terrorism (2007), the Convention on the Avoidance of Statelessness in relation to State Succession (2009), the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2010), and the Framework Convention on the Value of Cultural Heritage for Society (2011).

However, the Council of Europe is known first and foremost for its two flagship conventions, the European Convention on Human Rights (the Convention) and the European Social Charter (the Charter).

The European Convention on Human Rights

The Convention is the centrepiece of human rights protection. It was the first convention to be adopted by the Council of Europe's founding members, in 1950, and came into force in 1953. It also symbolises the Council of Europe's role. All member states have to ratify the Convention in order to join the Council of Europe, which gives it greater sway than the other conventions.

The Convention is based on the United Nations Universal Declaration of Human Rights of 1948 and lists a series of fundamental rights and freedoms, including such civil and political rights as the obligation to respect human rights (Article 1), the right to life (Article 2), the prohibition of torture (Article 3), the prohibition of slavery and forced labour (Article 4), the right to a fair trial (Article 6), the right to respect for private and family life (Article 8), freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10) and the prohibition of discrimination (Article 14).

The Convention has a very special symbolic significance because it was the first binding human rights treaty to implement the Universal Declaration

2. In brackets, date of entry into force.

of Human Rights. Other treaties had preceded it, but these were essentially statements of intent by the signatory countries. None of them were mandatory whereas the Convention not only contains a catalogue of rights but also establishes an institution, the European Court of Human Rights, to monitor their application. The Court came into being in 1952 and can receive applications from all European citizens and the member states. It is therefore the necessary means of ensuring that states abide by the rights embodied in the Convention. The Court's judgments enable the Convention to advance in line with developments in its case law. The law does not remain static but evolves according to how the Court interprets the articles of the Convention. Moreover, the countries concerned must change their legislation and practice to make them compatible with the Court's decisions.

The European Court of Human Rights is thus a supervisory body at the service of European citizens and states, but it also helps to improve the enforcement of rights and give democracy a firmer basis in Europe. The growing number of applications registered by the Court each year suggests that it is seen to be effective. It serves as an ultimate court of appeal because cases will only be accepted once all domestic remedies in the country concerned have been exhausted. By 1 January 2010, the Court had registered 147 000 applications and handed down 12 000 judgments. However, with its success has come an almost overwhelming number of applications. There are now some 119 300 cases pending, which are still to be heard.³

The European Social Charter

The Charter is the second flagship convention of the Council of Europe. As a complement to the Convention, which establishes civil and political rights, the Charter is concerned with social and economic rights. Despite the commitment of the Council of Europe's founding states, they found it impossible to reach agreement on a single convention in 1950 covering all the rights embodied in the Convention and in the Charter. To include all human rights in just one treaty was just not possible, given the relative novelty of social rights and the difficulty of defining them in the post-war context.

3. *50 Years of Activity: The European Court of Human Rights – Some Facts and Figures*, www.echr.coe.int/NR/rdonlyres/ACD46A0F-615A-48B9-89D6-8480AFCC29FD/0/FactsAndFigures_EN.pdf

Preamble to the Treaty of Rome establishing the European Economic Community

Determined to establish the foundations of an ever closer union among the European peoples,

Decided to ensure the economic and social progress of their countries by common action in eliminating the barriers which divide Europe,

Directing their efforts to the essential purpose of constantly improving the living and working conditions of their peoples,

Recognising that the removal of existing obstacles calls for concerted action in order to guarantee a steady expansion, a balanced trade and fair competition,

Anxious to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various

...

The Council of Europe can take pride in the fact that it has produced the most comprehensive international instrument on social and economic rights. Nevertheless, throughout the world these rights still have a lower status than their civil and political counterparts. The reason is that governments are wary of being subjected to imposed standards that fail to take account of existing economic disparities and trends in Europe. As a result, considerable difficulty was experienced in drawing up this treaty, in a less than favourable political and economic climate.⁴

The Charter was opened for signature in 1961 and came into force in 1965, thus coinciding with the full emergence of the European Common Market (1957–1974). The Treaty of Rome establishing the European Economic Community (EEC) was signed in Rome on 25 March 1957 by Germany, France, Italy, Belgium, Luxembourg and the Netherlands, and came into force on 1 January 1958. The aim of the EEC was to facilitate the free movement of goods, services, capital and people in order to establish a single economic market in the six countries. The preamble to the treaty stated that “economic and social progress” was necessarily bound up with “constantly improving the living and working conditions of their peoples”.

In its early days the Charter did not receive all the attention it required. The EEC member states saw no need for another treaty that

4. See Chapters 1 and 2 of this book.

regions and by mitigating the backwardness of the less favoured,

Desirous of contributing by means of a common commercial policy to the progressive abolition of restrictions on international trade,

Intending to confirm the solidarity which binds Europe and overseas countries, and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,

Resolved to strengthen the safeguards of peace and liberty by establishing this combination of resources, and calling upon the other peoples of Europe who share their ideal to join in their efforts,

[The contracting parties] have decided to create a European Economic Community (...)

in their eyes simply imposed constraints on countries in order to harmonise social policies, without including any more rights than those already in the EEC Treaty and the Constitution of the International Labour Organization (ILO). The economic boost and productivity gains that EEC membership would bring would naturally culminate in better living and working conditions.

But above all, governments felt that an instrument to protect civil and political rights was the priority and would help to safeguard democracy. Besides, the then Eastern bloc countries had laid claim to the social rights issue, to which they gave priority over civil and political rights. In these times of East-West rivalry, the West made its choice, despite disagreements between countries. These differences of opinion concerning the Charter led to a compromise, with supervisory machinery that was less binding than that of the Convention.

The Constitution of the ILO, established in 1919 under the auspices of the League of Nations, predecessor to the United Nations, proclaims a certain number of social rights. In the inter-war period its authors were convinced that “universal and lasting peace can be established only if it is based upon social justice” (Preamble to the ILO Constitution). They considered that countries

would be better equipped to avoid war if their peoples enjoyed decent living conditions. This institution still brings together governments, employers and employees from all the countries of the world in an effort to secure decent working conditions for all.

Extract from the Preamble to the ILO Constitution

1. Whereas universal and lasting peace can be established only if it is based upon social justice;

2. And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required ...;

3. Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

(...).

The ILO Constitution also identifies a series of measures to improve the situation of workers, including:

- regulation of the hours of work including the establishment of a maximum working day and week;
- regulation of the labour supply, prevention of unemployment and provision of an adequate living wage;
- protection of the worker against sickness, disease and injury arising out of his employment;
- protection of children, young persons and women;
- provision for old age and injury, protection of the interests of workers when employed in countries other than their own;
- recognition of the principle of equal remuneration for work of equal value;
- recognition of the principle of freedom of association;
- organisation of vocational and technical education and other measures.

The Charter differs from other treaties because it emanates from the Council of Europe, the European political organisation dedicated

to defending human rights. Its objectives are primarily concerned with the ordinary citizen, rather than national economic growth, even though the latter can, and must, be a driving force for democracy.

The Charter also differs from the Treaty of Rome and the ILO in terms of the obligations it lays down. It establishes concrete rights and has a quasi-judicial body, the European Committee of Social Rights (hereafter “the Committee”), which ensures that the Charter is not just a declaration of intent but that the member states are bound by the rights it contains and their national legislation and practice are fully compliant with its provisions.

Despite its advantages, it took some time before the Charter was established as a fundamental document to complement the European Convention on Human Rights. Whereas the latter was acknowledged to be an essential safeguard of civil and political rights, and although both were based on the 1948 Universal Declaration, governments were reluctant to accept the Charter, despite the Committee's insistence and despite the clear correlation between civil and political and social and economic rights.

In one of its conclusions, the Committee stated that:

The Social Charter is a human rights treaty. Its purpose is to apply the Universal Declaration of Human Rights within Europe, as a complement to the European Convention on Human Rights. While recognising, therefore, the diversity of national traditions of the Council of Europe's member states, which constitute common European social values and should not be undermined by the Charter or its application, it is important to:

- a. strengthen commitment to the shared values of solidarity, non-discrimination and participation;
- b. identify principles to ensure that the rights embodied in the Charter are applied equally effectively in all the Council of Europe member states.⁵

It needs to be added that governments' concerns that they would be forced to harmonise their social legislation and practice with those of other member states were unjustified. In practice, the Charter recognises the diversity of national social policies and economic growth rates. Rights are only enforced to the extent that they can actually be applied. Certain Charter rights must be immediately applicable whereas others may come into force gradually, as the means become available. It all depends on the subject matter of the right and how difficult it would be, in terms of legislation and resources, to apply it.

It was not until the 1990s, and the accession of the countries of central and eastern Europe, that the Charter really came into its own. It was also during this period that the Committee's role was clarified, in the 1991 amending protocol, and the collective complaints procedure emerged, in the 1995 additional protocol. The latter opened up the Charter machinery to the public, via international non-governmental organisations, and gave it greater scope and a fresh impetus. And the Charter experienced a genuine renaissance when the

5. Conclusions 2006 of the European Committee of Social Rights, p. 8.

revised European Social Charter (hereafter “the revised Charter”) was adopted in 1996 and came into force three years later. The new version is intended to gradually replace the original Charter, as more and more states ratify it.

The 1961 Charter has long been criticised for focusing exclusively on work-related issues, rather than concerning itself with the whole range of social rights. The revised Charter is clearer about which rights it is intended to protect, taking account of European and international developments in the recognition of these rights.

To date 43 of the 47 Council of Europe member states have signed and ratified the 1961 Charter or the revised Charter: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and the United Kingdom.

Four states have signed but not yet ratified: Liechtenstein, Monaco, San Marino and Switzerland. When they sign conventions, states are indicating that they subscribe to the principles laid down and intend to abide by them. However, signature is not in itself binding, but merely indicates that the country concerned may be prepared to ratify. Ratification, in contrast, is legally binding, so the state is bound by the convention and must comply with its provisions.

This description of the historical background to the Charter offers us an insight into how it has evolved. It is now time to take a closer look at the content of the Charter, the rights it embodies and the obligations it places on states parties.

2. Rights and duties

Composition

The 1961 Social Charter comprises:

- a preamble and Part I setting out the 19 rights and principles;
- 38 articles in Parts II to V: 19 on rights and 19 on procedural matters;
- an appendix.

The 1996 revised Charter comprises:

- a preamble and Part I setting out 31 points;
- 46 articles: 31 numbered 1 to 31 on rights and 15 from A to O on procedural matters (Parts II to VI);
- an appendix.

The drafters of the revised Charter took account of numerous developments in Community social law and the case law of the European Committee of Social Rights. They also incorporated the changes introduced by the 1988 Additional Protocol, which came into force in 1992.

New rights appeared, in particular:

- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 1 of the 1988 Protocol and Article 20 of the revised Charter);
- the right of elderly persons to social protection (Article 4 of the 1988 Protocol and Article 23 of the revised Charter);
- the right to protection in cases of termination of employment (Article 24 of the revised Charter);
- the right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25 of the revised Charter);
- the right to dignity at work (Article 26 of the revised Charter);
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27 of the revised Charter);
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28 of the revised Charter);
- the right to information and consultation in collective redundancy procedures (Article 29 of the revised Charter);
- the right to protection against poverty and social exclusion (Article 30 of the revised Charter);
- the right to housing (Article 31 of the revised Charter).

The revised Charter also reinforces the non-discrimination principle, in favour of female-male equality, the rights of children and better protection for persons with disabilities.

There were various intermediate stages before the adoption of the new Charter. The 1991 amending Protocol clarified the role of the supervisory bodies but the main development was the 1995 additional Protocol. This offered European citizens a new form of remedy and as such was an important step forward for democracy.

The rights in the revised Charter concern everyone in his or her daily life. Apart from the world of work, which is still well represented, the other provisions are concerned with the individual in society. The revised Charter is a direct descendant of the 1948 Universal Declaration of Human Rights. It draws equally on the latter and on the European Convention on Human Rights by linking social and human rights, particularly in the articles on non-discrimination. In this way, the Charter closely reflects the notion of the interdependence of human rights that inspired the authors of the Universal Declaration of Human Rights.

Protected rights

The Charter specifies and protects a certain number of rights.

The rights in Part I of the revised Charter have been grouped into seven “pillars”, covering:

- housing:
 - access to affordable housing of an adequate standard, with appropriate legal safeguards, particularly for the most vulnerable groups;
 - procedures to restrict evictions and guaranteed rights of appeal;
 - in the event of eviction, respect for the personal dignity of those concerned;
 - a sufficient quantity of emergency accommodation of an adequate standard for homeless persons awaiting access to housing, and in the case of children even irregular migrants;
 - equal access for non-nationals to social housing and housing benefits;
 - social housing and/or housing assistance for persons on low incomes and disadvantaged groups of the population;
 - a reduction in housing allocation times and right of appeal against excessive waiting periods.

- health:
 - accessible and effective universal health system;
 - policies to prevent illnesses and ensure a healthy environment;
 - elimination of occupational hazards in law and in practice, to ensure health and safety at work;
 - maternity protection.
- education:
 - free primary and secondary education;
 - free and effective vocational guidance services;
 - access to initial training, including general and vocational secondary education, university and non-university higher education, vocational training and further education;
 - integration of children with disabilities into mainstream schooling;
 - access to education and training for persons with disabilities.
- employment:
 - freedom to form trade unions and employers' organisations to defend their economic and social interests and individual freedom to decide whether or not to join such organisations;
 - promotion of joint consultation, collective bargaining, conciliation and voluntary arbitration;
 - right to strike;
 - prohibition of forced labour;
 - prohibition of the employment of children under 15;
 - special working conditions for 15 to 18 year olds;
 - right to earn one's living in an occupation freely entered upon;
 - economic and social policies to secure full employment;
 - fair working conditions with regard to pay and working hours;
 - protection against sexual and psychological harassment;
 - protection in the event of dismissal;
 - access to employment for persons with disabilities.

- legal and social protection:
 - legal status of children;
 - treatment of young offenders;
 - protection against violence and ill-treatment;
 - prohibition of all forms of sexual and other forms of exploitation;
 - legal protection of the family, including equality between spouses, equal treatment of children and protection of children when families break up;
 - right to social security, social assistance and social welfare services;
 - right to protection against poverty and social exclusion;
 - children's right to care and legal custody of children;
 - rights of elderly persons: adequate resources, services and facilities, housing, health and respect for privacy in institutions.
- movement of persons:
 - right to family reunion;
 - right of nationals to leave the country;
 - limited number of circumstances justifying expulsion and appropriate procedural safeguards;
 - simplification of immigration procedures.
- non-discrimination:
 - the rights laid down in the Charter must be applicable to all, including foreign nationals residing and/or working lawfully in the country, without discrimination based on race, sex, age, colour, language, religion, opinions, national or social origin, state of health, association with a national minority or any other ground.

There are rights attached to each pillar, which are specified in the articles of the Charter. Part I sets out the rights in the form of objectives to be attained. Part II lays down the obligations corresponding to these rights, which states undertake to comply with.

Constraints

The Charter is the most ambitious supranational treaty on economic and social rights. It not only establishes such rights but also seeks to ensure that they are fully applied by governments by establishing a supervisory body and obligations concerning its application. It is not just a catalogue of

rights. As the European Committee of Social Rights has stated, “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact.”⁶

States that wish to become parties to the Charter or revised Charter must accept certain rules. They enter into a sort of contract that creates rights and duties. Ratifying the Charter enables them to prove their commitment to respect social rights within their respective countries. They can thus demonstrate to the European and international communities that they abide by the rule of law and have a properly functioning democracy. They also undertake to do everything to ensure that their citizens enjoy a decent standard of life. The Charter lends credibility to them as states, and gives them a European status. Experts regularly visit countries that are not yet parties to persuade them of the advantages of accession to the Charter. These experts also explain to existing parties the importance of adding to the list of provisions already accepted, thereby extending the number of rights guaranteed.

Obligatory provisions

Candidate states must prove their credentials to the member states. Apart from demonstrating the necessary features of a democratic state and their ability to confirm and develop respect for human rights, which are prerequisites of Council of Europe membership, candidates must at a minimum accept certain core provisions of the Charter.

In the case of the revised Charter, countries must accept at least six of the following nine provisions:

- the right to work (Article 1);
- the right to organise (Article 5);
- the right to bargain collectively (Article 6);
- the right of children and young persons to protection (Article 7);
- the right to social security (Article 12);
- the right to social and medical assistance (Article 13);

6. *International Commission of Jurists v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999.

- the right of the family to social, legal and economic protection (Article 16);
- the right of migrant workers and their families to protection and assistance (Article 19);
- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20).

These are what are normally referred to as the core provisions of the Charter.

It is worth noting that other rights that are essential ingredients of a decent standard of life, such as the right to a fair remuneration (Article 4), the right to protection against poverty and social exclusion (Article 30) and the right to housing (Article 31) are not obligatory provisions.

States must also choose a minimum of 16 articles or 63 numbered paragraphs from among the other provisions.

A margin of discretion

As well as those already referred to, states must decide which articles they intend to apply. This arrangement offers them a certain flexibility and allows them to respond to the conditions set by the other provisions in so far as their social and economic development allows. They can therefore adapt to the Charter requirements at their own pace.

They also have a certain discretion as to how they implement their chosen provisions. In the case of some particularly complex Charter articles, the timetable for implementation will vary according to a country's economic circumstances. Thus, how the Charter is applied will be very different in Germany, with its long-established political and economic foundations, and Bosnia and Herzegovina, which some 20 years ago was embroiled in war. Moreover, each democracy has its own unique political structure and policies, so attempts to impose a uniform social policy for all would be quite inappropriate. The role of the Charter is to establish rights and to be sufficiently flexible for governments to accept its demands without imposing excessive constraints on their development process.

Tangible rights

However, flexibility does not mean a lack of seriousness, and the Charter imposes a number of obligations to ensure that the rights it embodies are properly enforced. These are fundamental rights that require oversight arrangements, and this is the function of the European Committee of Social Rights. The Committee's role is also to offer a more detailed interpretation of the Charter's articles. Thus, the introduction to Part I of the revised Charter states that:

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised.

The Committee has identified the need for a body of case law to clarify the Charter. To ensure that the application of rights is not neglected it stresses the notion of obligation. In particular, it has stated that:

implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein.⁷

The Charter also creates other duties, such as the obligation to adapt legislation and practice to bring them into line with the Charter's provisions and the Committee's conclusions. In other words the Charter's requirements have to be reflected in countries' domestic legislation, to ensure that they are universally recognised. Moreover, governments also have to develop appropriate policies, with the requisite funding, to fulfil these requirements.

The Committee has also ruled in a number of decisions that there must be a clear timetable for the application of these rights. "Reasonable deadlines"⁸ must be set, and there must be "maximum use of available resources"⁹. States cannot defer the implementation of rights indefinitely.

7. *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007.

8. *Ibid.*

9. *Autisme Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003.

Emergency situations

The notion of deadlines is important because the rights enshrined in the Charter must be respected, especially in the case of those who only have the minimum of security. When certain groups are granted rights, the state must make sure that other persons who do not yet enjoy these rights do not suffer in consequence. This is something the Committee emphasises:

States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for the other persons affected.¹⁰

Account must be taken of all the economic and administrative factors, but also of particularly urgent situations, in order to implement the rights established by the ratified provisions as rapidly as possible.

Restrictions

One restriction, and a significant one at that, on the application of the 1961 and 1996 Charters is that whereas the Convention applies to everyone, irrespective of nationality and place of residence, apart from citizens of the countries concerned the Charter only covers “foreigners ... in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned”.¹¹ Several conditions therefore have to be met for entitlement to social and economic rights. For example, an illegal immigrant from Côte d’Ivoire cannot rely on the Charter to claim a violation of his social rights by a state party.

However, in a 2004 conclusion, the Committee ruled that parties guarantee these rights to foreign nationals:

by ratifying human rights treaties – in particular the European Convention of Human Rights – or by adopting domestic rules whether constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals.

10. Ibid.

11. See appendices to the Charter and the revised Charter.

Thus, the rights of foreign nationals of states that are not parties to the Charter have to be guaranteed in another international treaty. If not, the wording of the Charter means that they are not covered by it.

Incorporating the Charter into domestic legal systems¹²

If domestic courts were to take the Charter's provisions into account, this would represent genuine recognition for social rights. To date, of all the Council of Europe's treaties, only the Convention, which national courts refer to and apply, has direct effect. The Charter does not as yet benefit from such consideration and national judges are still reluctant to accept this notion, though recently there has been some evolution in this regard.

Nevertheless, despite the difficulties there are other ways of enforcing the rights embodied in the Charter. Non-compliance decisions and findings of violations by the European Committee of Social Rights generally lead to changes in the law. In the best of circumstances, states amend their legislation even before the Committee has handed down its decision. For example, Portugal changed its existing legislation to recognise the right of police officers to form trade unions when the European Council of Police Trade Unions lodged a collective complaint.¹³

The Committee's conclusions are generally taken seriously by states parties, even if they are not always rapidly translated into action. They tend to accept the Committee of Ministers' recommendations and change their laws and regulations to bring them into line with provisions they have ratified.

Besides, both the conclusions the Committee reaches after considering national reports and its decisions under the collective complaints procedure are published. Individuals and organisations can then, for example, invoke them in their domestic courts.

The European Court of Human Rights has also taken account of the Charter on occasions when interpreting the Convention. The Court is often required to rule on cases with an indirect social rights dimension. It then draws on the Charter and the Committee's case law in its judgments. Thus, in a 1979

12. See Chapter 3.2.

13. *European Council of Police Trade Unions v. Portugal*, Complaint No. 11/2001, decision on the merits of 21 May 2002.

judgment, the Court stated that “the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation”.¹⁴

The Court is often called on to examine domestic legislation, while continuing to acknowledge each country’s internal legal traditions, and its judgments may influence those of national courts. National laws are gradually changing under the Court’s influence. It is to be hoped that decisions concerning social rights will increasingly have the same effect.

Having considered the notion of guaranteed rights and the obligations to which states are subject, we must now look at the various instruments concerned with social rights.

3. Links with the Council of Europe’s European Convention on Human Rights, the European Union’s Charter of Fundamental Rights, United Nations treaties and International Labour Organization conventions

Economic and social rights are not always properly recognised throughout the world. Nevertheless international organisations have drawn up numerous treaties to give them more weight.

Links with the Convention

These links have already been considered but a few additional points should be made. As noted, the rights embodied in the Charter were an extension of existing civil and political rights. There are also social rights in the Convention and its protocols.

For example, the world of work appears in Article 4.2 of the Convention.

Article 4 – Prohibition of slavery and forced labour (Convention)

2. No one shall be required to perform forced or compulsory labour.

14. European Court of Human Rights, *Airey v. Ireland* judgment of 9 October 1979, Series A No. 32.

This Article is concerned with deprivation of liberty but it still has a close link with Article 1.2 of the Charter.

Article 1 – The right to work (Charter)

2. [The parties undertake] to protect effectively the right of the worker to earn his living in an occupation freely entered upon.

It will be seen that the two articles differ slightly in tone. The words “undertake to” make the Charter seem more tentative. Nevertheless, this Article is one of the Charter’s core provisions.

The same applies to Article 11.1 of the Convention and Article 5 of the Charter.

Article 11 – Freedom of assembly and association (Convention)

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

Article 5 – The right to organise (Charter)

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom.

The similarity of the two articles shows how difficult it can sometimes be to distinguish civil and political from social rights.

These four articles appear in the body of the texts of the Convention and the original and revised Charters, thus emphasising their importance and obligatory nature. And there are other links between the two conventions, thanks to two additional protocols to the Convention.

Article 2 of Protocol No. 1 of the Convention – “the right to education” – has the same subject matter as one of the rights in the Charter. They are worded somewhat differently. That of the Convention is negative – “No person shall be denied” – whereas that of the Charter is positive, and lays down rights, which moreover are broader in scope.

Article 2 – Right to education (Additional Protocol No. 1 of the Convention)

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Education (as guaranteed by the Charter)

- free primary and secondary education;
- free and effective vocational training services;
- access to initial training (general and vocational secondary education), university and non-university higher education, vocational and continuing training;
- special measures on behalf of foreign residents;
- integration into school of children with disabilities;
- access to education and training for persons with disabilities.

Protocol No. 12 extends the rights to non-discrimination in Article 14 of the Convention. This provision is solely concerned with discrimination, which it treats in a much more extensive and general fashion. Moreover, Article 14 can only be relied on in combination with another Article of the Convention whereas the articles of Protocol 12 can be relied on themselves. Eighteen member states have ratified the protocol.

Article 1 – General prohibition of discrimination (Additional Protocol No. 12 of the Convention)

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

The same theme recurs in an obligatory Article of the revised Charter, Article 20, specifically relating to work: “the right to equal opportunities and equal treatment in matters of employment and occupation without

discrimination on the grounds of sex". However, non-discrimination is particularly the concern of Article E (Part V) of the revised Charter, where it relates to all the provisions.

Article E – Non-discrimination (*Revised Charter*)

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

Much has been made of the interaction between social and civil and political rights. This is just one of numerous illustrations of this link.

On two occasions, the Council of Europe's Parliamentary Assembly has attempted to establish a more formal link between the Convention and the Charter, because it believes in the indivisibility of the two generations of rights. Thus, in a 1999 recommendation,¹⁵ the Assembly called for a new protocol to the Convention on fundamental social rights. Such a protocol:

would make it possible to remedy deficiencies and would constitute an instrument for strengthening social cohesion, in particular with a view to putting an end to inequalities and safeguarding the interests of the most vulnerable sectors of society. The elaboration of such a protocol is, for the Council of Europe, the challenge of the next millennium.

The Assembly had already adopted a previous recommendation in 1998¹⁶ on the future of the Charter, in which it called for improvements to the existing arrangements. It wished to extend the Charter's application to "all persons resident in the signatory states, irrespective of whether they originate from another signatory state or from a state that is not a member of the Council of Europe". It also saw a need for a new court similar to the European Court of Human Rights but entirely concerned with social rights. These rights would then be properly enforceable. The Parliamentary Assembly has also proposed the incorporation of certain social rights into the Convention. So far these recommendations have come to nought.

15. Recommendation 1415 of 23 June 1999.

16. Recommendation 1354 of 28 January 1998.

Governments have often decided to ratify the Charter because it remains sufficiently flexible. They worry that otherwise they might be committed to heavy expenditure that they are not always prepared to undertake. Finally, what might appear to be beneficial from the standpoint of social rights could be seen by governments as an additional pressure, particularly if individuals could enforce such rights in a court of justice.

Links with the European Union

The European Union also has its Charter of Fundamental Rights (hereafter the EU Charter). This was adopted at the Nice summit on 7 December 2000, was proclaimed by the European Parliament in Strasbourg on 12 December 2007 and became binding on December 2009 when the Treaty of Lisbon came into force.

In 1989, most of the members of the then European Economic Community (EEC) had signed a previous document on social rights, the Community Charter of Fundamental Social Rights for Workers. This charter's authors wanted to add a social dimension to the economic base of the EEC. Nevertheless, it did not cover all social rights. It only concerned workers' rights and the workplace in society, and was not binding.

The rights guaranteed by this charter are:

- freedom of movement;
- employment and remuneration;
- improvement of living and working conditions;
- social protection;
- freedom of association and collective bargaining;
- vocational training;
- equal treatment for men and women;
- information, consultation and participation of workers;
- health protection and safety at the workplace;
- protection of children and adolescents;
- elderly persons;
- disabled persons.

In fact, the first Charter was a catalogue of objectives for states, not a legal document. It was simply a solemn declaration of the heads of state and government of the member states.

The 2000 Charter of Fundamental Social Rights has the advantage of assembling the whole body of civil and political and social rights in one document, with no hierarchy between them. The authors considered it time for the European Union to draw up an instrument devoted to human rights in all their diversity. They also wanted to give it greater force and visibility by bringing them together in a common set of rights.

The new Charter is based on a number of different sources, such as the European Convention on Human Rights, the European Social Charter, the Community Charter of Fundamental Social Rights for Workers, the constitutions of EU member states and other international conventions ratified by its members.

It includes a certain number of rights in these conventions without developing them or introducing new ones. Thus, the absence of certain rights, such as the right to housing and the rights of persons from ethnic, religious or linguistic minorities, is regrettable. Had they been included in the text, it would have raised their status with member states and allowed them to be taken more into consideration.

The EU Charter comprises 54 articles divided into six sections: Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice. The rights may also be broken down into three main groups:

- civil rights;
- political rights;
- economic and social rights.

In fact, despite the authors' hopes, the EU Charter is not as binding as might have been expected. Article 6.1 of the Treaty of the European Union, as amended by the Lisbon Treaty, now reads:

The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The EU Charter has the same legal value as the other treaties signed by the Union's member states, which means that in the event of an alleged violation of one of its provisions by a member state, the European Commission or another member state can take the case to the Court of Justice of the European Union.

However, Article 6 also states that "the provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties". Moreover, the EU Charter only applies to legal rules established by the European Union itself, and not to legislation or regulations that are within the national authorities' jurisdiction. It therefore appears that the EU Charter does not impose any new constraints on member states, but it will help to ensure that European Union rules and regulations are fully compatible with fundamental rights.

On the other hand, real progress has been made with the opening of dialogue in July 2010 between the Council of Europe and the European Union. It concerns the EU's accession to the European Convention on Human Rights. Such accession is provided for in Article 6 of the revised Treaty of the European Union and Article 17 of Protocol No. 14 of the Convention, and would pave the way for greater compliance of EU member states with the fundamental rights embodied in the Convention.

The European Union currently has its own judicial structure, with the European Court of Justice of the European Union at its apex. Accession would enable the European Court of Human Rights to rule on cases where the EU is alleged to have contravened Convention provisions. Ordinary citizens could submit applications to the Court, once all their domestic remedies had been exhausted.

Until now, the EU member states have been required to comply with the fundamental rights in the Convention but the European Court of Human Rights has been unable to rule on applications alleging violations of the Convention by European Union legislation and regulations.

European Union acceptance of the Convention will represent undoubted progress. Ideally, the Council of Europe Social Charter should also benefit from this progress, in the form of Union accession to the Charter.

Links with United Nations conventions

The task of the United Nations, founded in 1945, is to maintain peace throughout the world. It encourages international co-operation between states in such fields as law, security, economic development, social progress and human

International Covenant on Civil and Political Rights

- Article 1: right of all peoples to self-determination;
- Article 3: equal right of men and women to the enjoyment of all economic, social and cultural rights;
- Article 6: right to work and training;
- Article 7: right to just and favourable conditions of work;
- Article 8: trade union rights;
- Article 9: right to social security;
- Article 10: rights of the family;
- Article 11: right to an adequate standard of living;
- Article 12: right to health;
- Article 13: right to education;
- Article 14: right to free primary education.

rights. Practically every country on the planet is a member of the UN. It has produced numerous treaties and conventions, not all of which have been ratified or signed by all its members. Each treaty lists a certain number of rights relating to a precise topic. The failure to give social rights their full value across the world has given rise to a number of treaties. For example the International Covenant on Economic, Social and Cultural Rights was adopted in 1966. The rights enshrined in the Covenant overlap in part with those of the European Social Charter.

Unlike the Council of Europe, the UN opted to produce two admittedly different but complementary treaties at the same time.

The International Covenant on Civil and Political Rights, which was also adopted in 1966, covers fairly similar rights to those included in the Convention, such as the right of peoples to self-determination (Article 1), the right to life (Article 6), the prohibition of slavery and forced labour (Article 8), the right to freedom of thought, conscience and religion (Article 18) and so on.

Another fundamental treaty protects the rights of women. The Convention on the Elimination of all Forms of Discrimination against Women was adopted in 1979. According to its preamble:

discrimination against women violates the principles of equality of rights and respect for

human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.

Similarly, the 1989 Convention on the Rights of the Child lays down civil, political, cultural, economic and social rights that must be granted to children and young persons aged under 18.

Another vulnerable group of the population, migrant workers, also merited its own convention. This came to fruition in 1990 with the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. This is a group that suffers particularly inhuman living and working conditions. Countries generally fail to take sufficient account of their situation. The Convention distinguishes between migrant workers in a regular situation and those in an irregular one, but grants both groups similar fundamental rights such as freedom of thought, conscience and religion. It also stresses the need to offer them the same working conditions as nationals of the host country.

More recently, in 2006 the UN adopted the Convention on the Rights of Persons with Disabilities. Their rights were already laid down in other documents but this is the first time they have been enumerated in a specific convention for disabled persons. It establishes such principles as "respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities."

All these conventions and others embody social rights. However, there is no system of national reports to a committee responsible for examining the situation in each country to see whether it is compatible with these conventions. When individuals or groups do have a right of appeal, this is only provided for in additional protocols that are less likely to be ratified than the conventions themselves.

Links with the International Labour Organization

The ILO was established in 1919 and since 1946 has been attached to the UN. The ILO has 183 member states, and its role is to draw up international labour standards to ensure that everyone enjoys fair and decent working conditions. It has produced about 200 conventions on numerous work-related subjects since its creation. Most, but not all, have been ratified by the member states.

The ILO considers eight conventions to be fundamental:

- the Forced Labour Convention (1930), ratified by 174 countries;
- the Freedom of Association and Protection of the Right to Organise Convention (1948), ratified by 150 countries;
- the Right to Organise and Collective Bargaining Convention (1949), ratified by 160 countries;
- the Equal Remuneration Convention (1951), ratified by 168 countries;
- the Abolition of Forced Labour Convention (1957), ratified by 171 countries;
- the Discrimination (Employment and Occupation) Convention (1958), ratified by 169 countries;
- the Minimum Age Convention (1973), ratified by 157 countries;
- the Worst Forms of Child Labour Convention (1999), ratified by 173 countries.

There are also conventions covering specific types of employment, such as mining, agriculture, fishing, hotels and restaurants, and nursing; particular categories of persons, such as children or persons with disabilities; or dangerous working conditions, such as industrial accidents and asbestos. What distinguishes the ILO and its conventions is that they go into much more detail than the Charter, which sets out to cover the whole range of economic and social rights.

Nevertheless, the ILO's supervisory machinery bears a certain resemblance to that of the European Social Charter. States party to conventions submit regular reports on the legislation and practices they have established to implement the relevant provisions. If the situation is not in compliance with

the convention, a recommendation is issued. States also present measures taken in particular areas, even if they have not ratified the relevant convention. In such cases objectives are proposed and although they are not binding, the countries concerned are strongly encouraged to implement them.

The revised Charter has also followed the example of the ILO's existing complaints procedure, whereby national and international employers' and employees' organisations can allege violations of one or more rights by a state party. As is the case with the Charter's collective complaints procedure, individuals cannot lodge complaints.

Another option is the complaint procedure, under which a complaint of not complying with a ratified convention may be filed against a member state by another member state that has ratified the same convention. If the complaint is found to be justified, the Governing Body will then issue a recommendation to the state concerned.

There is another link between the two organisations. The Social Charter makes use of the ILO's expertise, in the form of an observer from the organisation who sits on the European Committee of Social Rights. As stated in Article 26 of the Charter: "The International Labour Organisation shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts." When the Committee considers national reports and collective complaints, the observer can advise on the situation or case in point.

The Council of Europe also has observer status with the UN and co-operates with several of its specialist organisations, such as UNESCO, the World Health Organization and the ILO.

Chapter 2 – The European Committee of Social Rights

The rights enshrined in the European Social Charter can only be properly secured if there is a means of supervising their implementation. The European Committee of Social Rights is the body which ensures that the Charter is properly applied through a reporting system and through the cases brought before it by trade unions and international non-governmental organisations in the form of collective complaints. In order to look into the collective complaints procedure, it is important to know how the Committee is composed and how it works. We will then provide a specific example of the procedure in action.

The European Committee of Social Rights (“the Committee”), which was previously called the “Committee of Independent Experts”,¹⁷ was provided for by the European Social Charter of 1961. The Committee is the Charter’s supervisory body, ensuring that it is properly applied in the states parties and promoting its implementation and recognition.

Composition of the European Committee of Social Rights

The Committee’s composition and tasks are described in the 1961 Charter but were clarified by the Turin Protocol of 1991, which also redefined the tasks of the Governmental Committee and the Parliamentary Assembly.

The clarification was necessary to bolster the Committee’s credibility as, up until the change, the Governmental Committee also gave its opinion on the interpretation of Charter provisions. Yet, the Governmental Committee is made

17. See Appendix I, opening speech of the 1st session of the Committee of Independent Experts of the European Social Charter, 16 December 1966.

up of representatives of the member states, meaning that they acted as both judges and parties, interpreting the application of Charter provisions by their own and other states. The conclusions issued by the Governmental Committee often differed from those of the European Committee of Social Rights.

The Turin Protocol was an innovative measure in that it remodelled the tasks of the European Committee of Social Rights and made it the “only body with the power to make a legal assessment on the conformity of national legislation and practice with the Charter”¹⁸. The protocol has not yet been ratified by all the states parties but it is already applied, in accordance with a Committee of Ministers decision of 11 December 1991.

The European Committee of Social Rights is made up of 15 independent and impartial members, elected by the Council of Europe’s Committee of Ministers for a six-year period, renewable once. According to one of the clauses of the Turin Protocol, Committee members are supposed to be elected by the Parliamentary Assembly but this is the only decision that has not yet been applied.

All future members must make the following solemn declaration before taking up their duties:

I solemnly declare that I will exercise my functions as a member of this Committee with the requirements of independence, impartiality and availability inherent in my office and that I will keep secret the Committee’s deliberations.

Members are required to be “of recognised competence in national and international social questions”¹⁹. At present, the Committee is made up of judges or academics specialising in public, private, labour or European law.

The role of the European Committee of Social Rights

The Committee processes national reports and collective complaints as well as organising awareness-raising activities to explain the benefits of the Charter to states.

18. Claire Dubois-Hamdi, “Le bilan de la ‘relance’ du mécanisme de contrôle, le regard intérieur”, in *L’Europe des libertés*, Revue d’actualité juridique, 2000.

19. Article 3 of the 1991 Protocol amending the European Social Charter.

Having examined the reports and done the appropriate research, the Committee issues its yearly “conclusions”, arranged on a country-by-country and article-by-article basis and assembled into a collection, published both as a hard copy and on the Charter website.²⁰ In its conclusions, the Committee highlights accepted provisions which are not properly implemented by states and checks that situations which were found to be incompatible with the Charter in previous supervision cycles have been brought into line. This work cannot be questioned by the countries concerned. However, the states party to the Charter sometimes accuse the Committee members of interpreting the Charter’s provisions too broadly.

If it cannot be sure from its investigations that the situation is in conformity, the Committee’s decision will be a negative one. The conclusions concerning a state generally contain several simultaneous findings of nonconformity, highlighting breaches of particular points of law or more serious violations. If the information provided by a state is not clear or comprehensive enough, the Committee may defer its decision, in which case it gives the state extra time.

Seminars

The Committee’s task is not only to ensure that the Charter is applied but also to improve states’ knowledge of it, irrespective of whether they are parties. To this end, it assists states and describes the different ways in which the Charter is applied so that they will have a sense of ownership over it and comply with it as best they can. Since 1994, therefore, the Committee has held various information seminars for states at the Council of Europe or in the countries concerned. At these information and technical seminars, Committee members describe the rights enshrined in the Charter and the obligations that arise from its ratification.

Seminars on the preparation of first reports are aimed at new states parties and designed to help them collect the right information for their national report, which is then examined by the Committee in its supervisory capacity. The Committee of Ministers also provides states with a form outlining what information needs to be provided in the reports.

20. www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp.

The reports drawn up on the basis of this Form should give, for each accepted provision ...:

1. the legal framework – any laws or regulations, collective agreements or other provisions that contribute to such application; as well as where relevant pertinent national case law – relevant decisions by courts and other judicial bodies;
2. measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework;
3. pertinent figures, statistics or any other relevant information enabling an evaluation of the extent to which these provisions are applied.²¹

Seminars are also held regularly in the states parties under the action plan of the 3rd Summit of Heads of State and Government of the Council of Europe, held in Warsaw in 2005. As a result, Committee members take part in exchanges of experience between countries on the various rights guaranteed by the Charter, focusing on issues such as their practices with regard to social dialogue and collective bargaining.

Colloquies

Colloquies are held in states to raise awareness about various Charter related topics.

Sessions

There are seven sessions per year, each lasting a week. The Committee held its first session at the Council of Europe in Strasbourg in 1968 and by January 2011 it had reached its 241st session. These regular meetings enable the Committee to ensure that the states parties are applying the Charter.

The Committee also examines collective complaints, taking an initial decision as to their admissibility and then, if they are admissible, a decision on their merits, as well as adopting annual conclusions on the national reports

submitted by the states parties, exchanging views on the application of the Charter with invited guests of honour and holding meetings on non-accepted provisions. Five years after ratifying the revised Charter, states must take stock of the provisions they have not accepted. The Committee encourages them to accept more to extend the scope of application of Charter rights.

21. This form can be found at the following address: www.coe.int/t/dghl/monitoring/socialcharter/ReportForms/FormESC2008_en.pdf.

Activity reports

Every year, the Committee draws up a report on its activities, in which it gives an overview of the situation of states with regard to the articles of the Charter examined during the year under the reporting procedure and of the general standing of the Charter. Collective complaints on which decisions have been made or which are under examination are summarised. In addition, to provide the full picture, the report contains the following items:

- a list of the Committee members;
- the state of signatures and ratifications of the Charter;
- summary tables of the Committee's conclusions;
- a collective complaints list and state of proceedings;
- a list of the various events held (meetings, colloquies, training sessions, etc);
- national, European and international decisions referring to the Charter;
- a bibliography.

The activity report provides an overview of progress in the application of the Charter and developments within the Committee.

The Committee's activities are intended to raise the Charter's profile and encourage greater compliance with its provisions. The members pay particular attention to how countries promote employment, good industrial relations, social protection and measures to reduce poverty and financial insecurity. To do so they use a number of indicators to quantify national situations and compare them.

These concerns guide them in their work, particularly when deciding whether the situation in the state complies with the Charter, either through the reporting or the collective complaints procedure.

1. Supervising the application of the European Social Charter

a. The national reports procedure

i. Examination by the European Committee of Social Rights

The European Social Charter is a binding instrument and the European Committee of Social Rights is the body responsible for ensuring that the states parties comply with it. It has two tools with which to carry out this task.

The first is the national reporting system. To monitor the way in which states are applying the Charter, the Committee's experts examine governments' annual reports on the application of a number of the Charter's articles, divided into thematic groups:

▪ **Group 1: Employment, training and equal opportunities (Articles 1, 9, 10, 15, 18, 20, 24 and 25)**

- Article 1: The right to work
- Article 9: The right to vocational guidance
- Article 10: The right to vocational training
- Article 15: The right of persons with disabilities to independence, social integration and participation in the life of the community
- Article 18: The right to engage in a gainful occupation in the territory of other Parties
- Article 20: The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex
- Article 24: The right to protection in cases of termination of employment
- Article 25: The right of workers to the protection of their claims in the event of the insolvency of their employer

▪ Group 2: Health, social security and social protection (Articles 3, 11, 12, 13, 14, 23 and 30)

- Article 3: The right to safe and healthy working conditions
- Article 11: The right to protection of health
- Article 12: The right to social security
- Article 13: The right to social and medical assistance
- Article 14: The right to benefit from social welfare services
- Article 23: The right of elderly persons to social protection
- Article 30: The right to protection against poverty and social exclusion

▪ Group 3: Labour rights (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29)

- Article 2: The right to just conditions of work
- Article 4: The right to a fair remuneration
- Article 5: The right to organise
- Article 6: The right to bargain collectively
- Article 21: The right to information and consultation
- Article 22: The right to take part in the determination and improvement of the working conditions and working environment
- Article 26: The right to dignity at work
- Article 28: The right of workers' representatives to protection in the undertaking and facilities to be accorded to them
- Article 29: The right to information and consultation in collective redundancy procedures

▪ Group 4: Children, families, migrants (Articles 7, 8, 16, 17, 19, 27 and 31)

- Article 7: The right of children and young persons to protection
- Article 8: The right of employed women to protection of maternity
- Article 16: The right of the family to social, legal and economic protection
- Article 17: The right of children and young persons to social, legal and economic protection

- Article 19: The right of migrant workers and their families to protection and assistance
- Article 27: The right of workers with family responsibilities to equal opportunities and equal treatment
- Article 31: The right to housing

As a result the same articles appear on the agenda every four years and the Committee investigates how each state has been implementing them. This grouping of the articles into four thematic groups was decided on some years ago in order to simplify the work of the states. Before this, information was presented on the implementation of all the “core” articles in the same report every two years and on the application of all the “non-core” articles in the alternate years.

Under Article 21 of Part III of the 1961 Charter, states are required to submit national reports to the Committee.

With the help of an observer from the ILO, the experts examine countries’ legislation, regulations and constitutions to ensure that they are compatible with the requirements of the Charter. However, they are not just concerned with the legal framework. They also look at national practice when implementing legislation or where there is no legislation. They also check whether the law makes provision for a supervisory body, such as a labour or social inspectorate, to ensure that rules are properly applied. The Committee checks in particular that the social rights established by national legal systems are effective in practice and can be referred to by the courts. In this way it ensures that the most vulnerable members of society can enjoy these rights to the full.

Non-accepted provisions are also subject to a specific examination. In this connection, Article 22 of Part IV of the 1961 Charter states:

The Contracting Parties shall send to the Secretary General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of Part II of the Charter which they did not accept at the time of their ratification or approval or in a subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided.

ii. Follow-up by the Governmental Committee

The task of following up on conclusions to make sure that they are put into practice lies with the Governmental Committee. It is made up of representatives of the states parties and observers from international employees' and employers' organisations (the European Trade Union Confederation, the International Organisation of Employers and BusinessEurope), who take part in the Committee's work in an advisory capacity. Non-governmental organisations are also invited to an annual exchange of views.

It asks states to which findings of non-conformity are addressed by the European Committee of Social Rights to explain how they intend to respond. States parties must indicate how they intend to apply the Charter and provide a timetable for introducing new measures if they cannot make the changes required straight away.

The Governmental Committee examines national situations which the European Committee of Social Rights considers not to be in conformity. It looks at them in the context of countries' economic and social situation while ensuring that there are no obvious, unwarranted discrepancies in the way states are treated. It also takes account of any explanations provided by governments. It may then ask the Committee of Ministers to issue a recommendation, which it prepares itself, if there is no evidence of a genuine effort to bring the situation into line. In practice, before any recommendation is made, the Governmental Committee issues a warning, followed by a second one if the first is not heeded. Only then does it propose a recommendation. Warnings extend the deadline for bringing situations into conformity and may be issued, for instance, where major changes or legislative amendments are required.

The members of the Governmental Committee vote by a two-thirds majority on whether a proposal for a recommendation should be submitted to the Committee of Ministers. In recent years member state representatives have become increasingly cautious. Abstention is relatively frequent and the stagnation to which this gives rise can call the process into question and hamper progress in the application of the Charter.

iii. Supervision by the Committee of Ministers

In most cases, the Committee of Ministers agrees with the European Committee of Social Rights' conclusions and may inform states of measures

they must take to apply the Charter by issuing recommendations. However, these are rare. If it adopts one or more recommendations proposed by the Governmental Committee, it notifies the state or states concerned directly, whereas if it follows the advice of the European Committee of Social Rights it often only sends a simple resolution to all the states parties so that they can take account of its conclusions.

Ten years can pass before a situation is rectified and satisfies the requirements of the Charter despite repeated requests of the European Committee of Social Rights and Committee of Ministers recommendations. Everything depends on states' willingness to take recommendations into account.

Examples of conclusions of the European Committee of Social Rights and Committee of Ministers recommendations

Of the many conclusions issued by the Committee when examining national reports which the Committee of Ministers has subsequently followed up on, the following can be cited as an example.

In volume 1 of Conclusions 2006, in response to Ireland's report for 2003 and 2004, the Committee found that it was not in conformity with Articles 7.1 and 7.3. The conclusion on the violation of Article 7.1 by Ireland reads as follows:

The Committee takes note of the information provided in the Irish report.

The Committee requested further information on how "light work" is defined. The report does not provide the information requested. The Committee repeats its question and considers that should the Government fail to provide this information, there would be no evidence that the situation in Ireland is in conformity with Article 7.1 of the Revised Charter.

In its previous conclusion (Conclusions 2004, p. 266) the Committee noted that the Protection of Young Persons (Employment) Act of 1996 provided for derogations in respect of children employed by a close relative. These children being excluded from the statutory framework, the Committee considered that the situation was not in conformity. As the situation has not changed on this point, the Committee reiterates its decision that Ireland is not in conformity.

The Committee asked for information on the activities of control of the Labour Inspectorate including the number of inspections made by the Labour Inspectorate and the number of infringements of the rules detected and sanctions imposed. According to the report, when infringements of the

1996 Act are discovered, prosecutions are initiated automatically after the first inspection. In 2003 the Inspectorate carried out 7 168 inspections and initiated 20 prosecutions. In 2004 it carried out 5 160 inspections and initiated 14 prosecutions.

The Committee invites the government to answer the question on work at home in the general introduction.

The Committee concludes that the situation in Ireland is not in conformity with Article 7.1 of the Revised Charter on the ground that the minimum age of 15 years does not apply to children employed by a close relative.

On 26 September 2007, the Committee of Ministers adopted Recommendation CM/RecChS(2007)1 concerning Ireland.

Recommendation CM/RecChS(2007)1 on the application of the European Social Charter (revised) during the period 2003-2004 (Conclusions 2006, "hard core" provisions) relating to Ireland with regard to Article 7, paragraphs 1 and 3

The Committee of Ministers,

Having regard to the European Social Charter (revised), in particular Part IV thereof;

Whereas the European Social Charter (revised), signed in Strasbourg on 3 May 1996, came into force on 4 November 2000 with respect to Ireland and whereas, in accordance with Article A Part III, Ireland has accepted 92 of the 98 paragraphs contained in the revised Charter;

Whereas the Government of Ireland submitted in 2006 its 3rd report on the application of the revised Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the revised Charter;

Having examined Conclusions 2006 of the European Committee of Social Rights, appointed under Article 25 of the Charter, and the report of the Governmental Committee, established under Article 27 of the Charter;

Having noted that the European Committee of Social Rights had concluded that the situation in Ireland is not in conformity with Article 7, paragraphs 1 and 3, of the revised Charter on the ground that the Protection of Young Persons (Employment) Act 1996 does not prohibit the employment of children by a close relative;

Following the proposal made by the Governmental Committee;

Recommends that the Government of Ireland takes account, in an appropriate manner, of the conclusion of the European Committee of Social Rights and requests that it provide information in its next report on the measures it has taken to bring the situation into conformity with the Charter.

This shows that the European Committee of Social Rights keeps situations under review for several years. In previous conclusions, it had already pointed out that Ireland failed to comply with Article 7.1 of the Charter. Having received the extra information it had requested, it repeated its finding of nonconformity. The Committee of Ministers had already adopted resolutions on the subject but it finally decided to issue a recommendation, following the proposal by the Governmental Committee.

The European Committee of Social Rights' varying activities enable it to work regularly with states before they enact new legislation but also to check that standards they have already adopted are compatible with the Charter.

The Charter's other control mechanism is the collective complaints procedure, which is available for use by civil society, as represented by non-governmental international organisations and employers' and workers' organisations.

b. The collective complaints procedure

The collective complaints procedure is the second tool used by the European Committee of Social Rights for supervising the states parties. It is governed by the Additional Protocol of 1995, which came into force in 1998. To date, 14 countries have accepted the collective complaints procedure, namely Belgium, Bulgaria, Cyprus, Croatia, Finland, France, Greece, Ireland, Italy, Norway, the Netherlands, Portugal, Slovenia and Sweden.

The 1991 and 1995 Protocols have given the Charter much greater authority. The European Committee of Social Rights can now pride itself on carrying out a proper quasi-judicial examination of the states parties. This makes the rights it defends all the more effective and better guaranteed. The gap between the recognition of civil and political rights on the one hand and social and economic rights on the other has been narrowed by the new procedure.

As a result, the European Committee of Social Rights is able to conduct a complementary, twofold review through the system of national reports

and the collective complaints procedure. It can investigate the situation in a country both as a whole and through the prism of a particular issue. The role of the European Committee of Social Rights is increasing. It is becoming a fully fledged guardian of individual social rights.

How it operates

The procedure followed in collective complaint proceedings is similar to that of conventional legal proceedings. The case file must contain certain information, including the names and contact details of the complainant organisation and the impugned state, the articles of the Charter which are alleged to have been violated, and the parties' submissions and supporting documents.²² Having acknowledged receipt of the complaint, the Secretary General notifies the impugned state and the European Committee of Social Rights thereof. The Committee examines the complaint and decides whether it is admissible. Its decision on the matter is published. This first stage has usually been relatively straightforward since only four of the 66 complaints lodged to date have been found to be inadmissible.

The Committee then invites the state to present written submissions on the application of the articles which it is alleged to have violated. It may also invite the INGO or the workers' or employers' organisation which filed the complaint to provide further evidence. It can also invite both parties for a hearing.

In the light of the information provided, it takes a decision on the merits of the complaint, which it subsequently forwards to the Committee of Ministers. The complaint is confidential until the Committee of Ministers adopts a resolution or a recommendation on the subject. If after four months, the Committee of Ministers has taken no action, the decision is published.

When the Committee of Ministers adopts a resolution, it is simply taking note of the Committee's decision. When it adopts a recommendation it means that the state is required to do everything in its power to bring the situation (in law and/or in practice) into conformity with the Charter.

22. Régis Brillat, *La Charte sociale du Conseil de l'Europe, les droits de l'homme au quotidien* in *La Semaine Juridique* No. 22, 29 May 2007.

When it subsequently examines the relevant national reports, the Committee can monitor developments to determine whether the impugned state has taken account of the Committee of Ministers' decisions and changed its legislation and/or its practices.

In most cases, states comply with the decisions of the European Committee of Social Rights and the Committee of Ministers. They have accepted the collective complaints procedure and are relatively efficient where it comes to changing their legislation or practice. However, the Committee of Ministers' only means of bringing pressure to bear is to adopt recommendations. States undertook to abide by these when ratifying the Protocol, but ultimately, all amendments and changes in practice depend solely on their willingness to carry them out.

If governments ignored recommendations, the Charter and social rights as a whole would inevitably be weakened. This attitude would also undermine the credibility of the European Committee of Social Rights.

Strengths

The collective complaints procedure is relatively simple, lasting about two years. This is relatively brief compared to other bodies. For instance, it can take up to 10 years after an application is lodged for the European Court of Human Rights to give its judgment in a case. However, this is also the result of the relatively low number of collective complaints filed so far – 66 since the entry into force of the Protocol in 1995.

The procedure also has other advantages. One of the main ones is that it is not necessary to exhaust all domestic remedies. Complainant organisations do not need to have brought proceedings in the national courts before lodging a complaint and complaints can be filed even before the law, order, agreement or any other national text is implemented in the country concerned. Consequently, the procedure plays a preventive role as the adverse effects of a legal norm can be countered before they come into effect. It is also possible to react rapidly and condemn a measure or a practice which has only just been adopted or set up.

The European Committee of Social Rights' experience of examining national reports has also shown that practice is just as important as the letter of the law. Unlike some courts, which base their decisions only on the legal norms, the

Committee looks at the wider situation in the country concerned, including national rules, their means of implementation, how this is monitored and the results achieved. This approach has the merit of highlighting situations where countries' legislation is entirely in keeping with the Charter but actual practice is not. So although citizens in most countries which have ratified the collective complaints procedure enjoy a broad range of social rights, legislation and other legal texts do not always have any tangible effect. The Committee attempts to remedy this problem by looking into everyday situations experienced by people on the ground in more detail.

A survey of the complaints thus far²³

France is the country against which the largest number of collective complaints have been lodged, accounting for 23 of the 66 complaints registered to date. Complaints have been filed against Portugal 11 times, Greece nine and Bulgaria six. No organisation has made a complaint against Norway or Cyprus.

The main rights referred to in collective complaints are:

- the right to organise;
- the right to bargain collectively;
- the right of children and young persons to protection;
- the right of the family to social, legal and economic protection;
- the right to fair remuneration;
- the right to social and medical assistance;
- the right to housing;
- the right to protection against poverty and social exclusion;
- the right of migrant workers and their families to protection and assistance;
- non-discrimination.

Initially, complaints related mainly to labour rights. Then gradually organisations began taking up social issues in their broader sense,

23. See the list of collective complaints in Appendix II.

highlighting legal failings in the fields of health, housing and the fight against poverty. The rights of individuals in society are being increasingly raised and asserted by complainant organisations, which are, at last, making this instrument their own and, in so doing, giving the Charter its full weight and raising its profile.

Organisations entitled to submit complaints²⁴

Individuals cannot submit complaints to the European Committee of Social Rights. This remedy is not intended for persons acting on their own but for groups of people wishing to assert their rights. The procedure makes it possible to put a stop to a situation which is at variance with the Charter and affects a particular category of people or the whole population.

This distinctive feature has the benefit for victims that they do not have to act on their own behalf. This makes the procedure less intimidating and less potentially sensitive.

However, it can also be difficult for victims to use, since they do not always know which organisations to turn to even if the areas they cover are relatively broad.

The organisations entitled to submit collective complaints are:

- international workers' organisations (the European Trade Union Confederation) and international employers' organisations (BusinessEurope and the International Organisation of Employers);
- employers' organisations and trade unions in the country concerned;
- international non-governmental organisations (INGOs) enjoying participatory status with the Council of Europe on a list drawn up for this purpose by the Governmental Committee of the Charter for a renewable four-year period. Of the 366 INGOs taking part in Council of Europe activities, 75 are on this list.

And, for states which also accept this option:

- national NGOs.

24. See the list of entitled INGOs in Appendix III.

All the states parties to the Protocol must accept the right of the first three categories of organisations cited above to submit complaints. However, to date, only Finland has authorised national NGOs to do so.

The collective complaints procedure also allows the Committee to confirm the interpretations it makes when examining reports. In July 1998, a recommendation was issued to Portugal by the Committee of Ministers following a finding of non-conformity with Article 7 (child labour) in Conclusions XIII-5. Accordingly, in October 1998, when the International Commission of Jurists alleged that Portugal had violated Article 7.1 of the Charter, the Committee found the complaint admissible and confirmed that the Article had been infringed. It focused on the scope of the prohibition of the employment of children under 15 and on the type of employment involved:

27. The prohibition relates to: all economic sectors and all types of enterprises, including family businesses, as well as all forms of work, whether paid or not (...); agricultural and domestic work, which the Committee has declared cannot be automatically considered to be light work within the meaning of this paragraph (...); homeworking and sub-contracting.

28. Work within the family (helping out at home) also comes within the scope of Article 7 para. 1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker.²⁵

These points are reiterated because child labour must be prohibited or at least very strictly limited even within the family. The Committee goes on to define the concept of “light work”, stating that “work which is unsuitable because of the physical effort involved, working conditions (noise, heat, etc.) or possible psychological repercussions”²⁶ should not be carried out by children under the age of 15.

This is a good illustration of the different means at the Committee’s disposal to interpret an article of the Charter or define a legal notion to which the Charter refers. These interpretations create precedents, meaning that in principle,

25. *International Commission of Jurists v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, paragraphs 27 and 28.

26. *International Commission of Jurists v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, paragraph 30.

they will be applied and reiterated by the Committee when it deals with other complaints or issues other conclusions under the reporting system.

The Committee's interpretations are sometimes criticised by states. However, they do allow the Charter to evolve, ensuring that it is not a fixed text but one which can be adapted to the realities of the modern world.

Interpreting articles

The initiative which the members of the European Committee of Social Rights have shown in interpreting the provisions of the Charter has helped it to be accepted more readily by judges and states.

Article 7: Right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

Paragraph 1: to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education.

An example may help to clarify the scope of the articles of the Charter and the work carried out by the Committee. By referring partly to the national reports system and partly to the collective complaints procedure, we can learn more about the meaning the Committee attaches to a particular article. After examining the reports submitted by states, the Committee issues "conclusions". After looking into collective complaints, it gives "decisions".

Let us look at Article 7.1, and the various means that have been used to develop its interpretation and the terms used when it was drafted.

In its initial conclusions, the Committee attempted to specify exactly which jobs were affected by this paragraph. It asked for the provision to be interpreted "as applying to all categories of work, including, for example, agricultural and domestic work; it took the view that such work could not automatically be considered as 'light' work within the meaning of the paragraph".²⁷ It repeated this clarification later in numerous conclusions on national reports (see Conclusions I, Italy; II, Italy; and following conclusions up to Conclusions 2006, Italy).

27. Conclusions I, statement of interpretation of Article 7.1 (31 May 1969).

The Committee asked for a recommendation to be sent to Italy “to bring its legislation into line with the requirements of the Social Charter. The Committee also expressed the wish that the second report of the Italian Government would include information on all derogations granted in Italy to permit the employment of young persons below fifteen years of age” (Conclusions I, 31 May 1969, Italy). Since, however, this was Italy’s first report, the Committee of Ministers decided not to make any recommendation (Resolution (71) 30 of 12 November 1971).

In its conclusion on Italy’s second report, the Committee considered that “the additional information supplied by the Government of Italy ... did not enable the Committee to alter its previous decision”. It again asked the Committee of Ministers to take account of its conclusion and make a recommendation to Italy. The Committee of Ministers, however, did not go along with this suggestion, deciding instead to send the Committee’s conclusion to Italy and ask it to take it into consideration (Resolution (74) 16 of 29 May 1974).

The social partners

National and international workers’ and employers’ organisations work regularly with Council of Europe bodies to improve the protection of labour-related rights. Their knowledge of the situation on the ground makes them key partners.

One of the main aims of the collective complaints procedure was to enhance the role and involvement of the social partners. National trade unions and employers’ organisations still make little use of the procedure despite the fact that, by highlighting situations that are at variance with the Charter, they can encourage states to guarantee the rights they so regularly assert.

The European Trade Union Confederation (ETUC) suggests that to improve the social partners’ knowledge and use of the Charter, they should be involved in drafting national reports alongside the national governments. The ETUC regrets the fact that the social partners know so little about the Charter and the collective complaints procedure. It suggests that the Council of Europe should hold information seminars and that universities

and schools should familiarise themselves more with the Charter so that they can make it known to as many people as possible.²⁸

2. The international non-governmental organisations (INGOs)

The list of INGOs²⁹ contains a series of organisations working in various fields and hence covers a sufficiently broad spectrum. The rights of children, women, homosexuals, persons with disabilities and minorities are represented by organisations such as ATD Fourth World, Médecins du Monde, Amnesty International and Caritas.

In a resolution adopted in 2003, the Committee of Ministers upgraded the INGOs' consultative status to participatory status. The difference between the two lies in the extent to which these organisations work with the Council of Europe. The Committee of Ministers considered that:

the existence of an active civil society and its non-governmental organisations ... is an important and indispensable element of democracy. ... initiatives, ideas and suggestions emanating from civil society can be considered as a true expression of European citizens (Resolution Res(2003)8 of the Committee of Ministers of 19 November 2003).

INGOs now play an active part in the life of the Council of Europe and its work to protect rights and represent Europe's citizens.

INGOs with participatory status with the Council of Europe are entitled to make use of the collective complaints procedure to promote social rights but they also do so on a more regular basis by taking part in Council of Europe activities. They champion the whole diverse range of human rights and represent civil society.

The Council was the first institution in Europe or the world to grant INGOs such a status. They make a key contribution and their involvement marks a desire to involve civil society, and hence citizens, in the Council of Europe's projects and activities.

28. Council of Europe: ETUC statement on the occasion of the 3rd Summit of Heads of State and Government, see www.etuc.org/a/1111

29. See Appendix III.

The President of the Council of Europe's Conference of INGOs, Mr Jean-Marie Heydt, described the functioning and the role of INGOs in an interview conducted in January 2011.



Interview with Jean-Marie Heydt, President of the Conference of INGOs

What are your functions at the Conference of INGOs and how long have you been exercising them?

Jean-Marie Heydt – I am the Chair of the Conference of INGOs and have a three-year term of office, renewable once, which will come to an end in 2012. My work for the Conference is unpaid. Formerly, I was a member of several Council of Europe committees and chaired the committee on the European Social Charter. I also worked for the Conference of INGOs before chairing it. My own INGO is FESET (the European Social Educator Training), which is a grouping of social and educational institutions, which I represented at the Council of Europe for some 15 years.

What is the role of the Conference of INGOs?

It has a unique role in Europe and the world. Its main task is to act as an umbrella body uniting a large number of international organisations, which are federations of associations working in a wide variety of fields. The Conference brings these organisations together to enable grassroots opinion to reach the highest political levels. At the same time, though, it provides a channel for the political strategies which the Conference helps to shape to filter down to ground level.

At the Council of Europe, the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Conference of INGOs form the four pillars of a “quadrilogue”, through which they communicate with each other about their activities. Without participatory status, INGOs would not be able to take part in this quadrilogue.

The Committee of Ministers grants participatory status to INGOs which so request on condition that they are represented in several member states. They must then undertake to respect the Council of Europe's fundamental values and texts and implement a number of activities connected with

their own regular activities and those of the Council of Europe. In short, the Conference has to keep abreast of everything that is being done at the Council of Europe. For example last year, the Parliamentary Assembly and the Conference signed a joint text on biodiversity.

The Conference also invites representatives of “democratically developing” countries such as Belarus to take part in its work while Conference members work with such states to help them progress. Another good illustration of the Conference’s role is its dealings with Russia. During his presidency, Mr Putin restricted the power of NGOs in Russia. We intervened, and, after nearly three years of work, dialogue and efforts to build up a relationship of trust, managed to convince the President that civil society has a contribution to make to the democratic debate and that he should not be afraid of it.

INGOs working in the field also pass on statistical information or draw attention to situations which fail to comply with Council of Europe standards. In this way, the Conference of INGOs attempts to establish a direct link between the grassroots and the higher echelons – often a very difficult feat to pull off as information from the field does not always arrive in time or we do not have the right contacts to provide it.

Despite this, the organisation works, and we are only too ready to benefit from our unique status. At the European Union, INGOs are only called on for humanitarian work or particular projects. They do not take part directly in the EU’s activities. The same applies to the United Nations. INGOs have the right to speak and take decisions but they are not part of the United Nations’ official set-up; they work alongside it.

The INGOs’ circumstances are different at the Council of Europe. Here we meet and exchange experience. If the Parliamentary Assembly or the Committee of Ministers has a specific question relating to civil society, they can put it to us and we will reply.

For example, at the Forum for the Future of Democracy, the Committee of Ministers asked us to draw up a “code of good conduct”, which would define the role of NGOs in the activities of states. The aim was to draw up a list of good practices to be implemented by member states, though this would not be a code in the strict legal sense. It would provide indicators to compare national situations and identify those which failed to give NGOs their rightful place and voice.

There are currently 366 member INGOs. How do you manage to work together?

First, it should be said that each INGO comes to Strasbourg at its own cost. No expenses are paid by the Council of Europe, which only finances actual activities.

The Conference of INGOs currently has 10 working committees. Each makes its own contribution and adopts “recommendations”, which it sends to the Committee of Ministers when necessary. The INGOs meet four times a year, which is probably not enough.

Are all possible spheres covered?

Practically none are ruled out. Virtually the only topics we do not cover are defence, economic matters dealt with by the European Union, and the pharmacopoeia. Any other subject may be addressed by the INGOs. For example there are organisations which deal with social affairs, education, the environment and public administration. Others represent groups such as gifted children or defend particular cultural groups or faiths.

How many people work for the Conference of INGOs?

The first point is that all the members of the Conference are unpaid. However, none of the work could be done without the logistical support of five Council of Europe officials, namely the head of the unit, an assistant and three secretaries.

What budget is allocated to the Conference?

The Conference budget was €108 000 for 2010-2011, not including staff salaries. It is used for foreign assignments. The Bureau members’ travel expenses are covered but not their board and lodging or meals. The money is also used to pay the interpretation and administrative costs of session meetings. The remaining budget is given over to field activities. Otherwise, when we work with countries such as the Russian Federation or Turkey, it is these countries’ governments which fund our activities at their own instigation.

What do you think of the European Social Charter?

I think it is a marvellous instrument. We are lucky that the Charter was adopted in 1961 because I do not think it would be accepted today. Member states are much more wary than they were in the past. Now, when I talk to

representatives of the states parties, some say that if they could go back on the provisions they have ratified, they would do so. They consider the Charter to be too binding. Unlike the Convention, the Charter was only possible because it established a system of options. States ratified those articles which troubled them least but now the constraints they impose mean that they are still a cause of concern.

To be more specific, I believe that Article 30 of the Charter, entitled "The right to protection against poverty and social exclusion", should have been one of the compulsory articles. Some years ago, the European Union undertook to eradicate poverty and exclusion from the world, setting 2010 as its deadline. Poverty and exclusion are still found in the EU member states but the EU has been very active in this area. The European Social Charter should follow this example by adding Article 30 to its core provisions. The Congress of Local and Regional Authorities, the Parliamentary Assembly and the Committee of Ministers were in favour of adding it, but ultimately governments rejected the idea.

What do you think of the European Union's Charter of Fundamental Rights?

I think that the European Union Charter has a large element of window dressing. Any legal expert who has scrutinised the articles of this text in all their detail would see that they do not impose the slightest additional constraint on states. All that can be said is that it may influence future court decisions and may point the way forward. However, it is not binding, unlike the Charter. It does form part of the Treaty of Lisbon and so it cannot be ignored, but it lacks the binding force which we in the INGOs were hoping for. In short, it would be a disaster if the Charter of Fundamental Rights were to replace the Charter.

What is the link between the Charter and the Conference of INGOs?

The Charter is a good thing for organised civil society. I would insist on the word "organised", though, because civil society as represented on the Internet by someone in an emotional state responding to a particular event for example is not at all organised. Organised civil society unites people who express their views through existing organisations, established in keeping with the rules of the country in which they live. We only represent organised INGOs which are legally registered and have an established status. The existence of the Charter, its binding force and its collective complaints procedure have enabled advances to be made, whose scope we cannot always envisage.

A highly symbolic example of this is the case of the organisations representing Europe's police forces. They were among the first bodies to make use of the Charter, lodging collective complaints against Portugal for failing to respect the right to strike. If these INGOs had not done this, Portugal would still not have changed its position on the subject. Another example is worth noting. Portugal has always had an unusual stance on child labour in family businesses and on farms. The collective complaint which was filed to protect the rights of children under the age of 15 prompted Portugal to take a big step forward by allowing children to go to school instead of working.

The Department of the European Social Charter took advantage of this to organise a major awareness-raising campaign aimed at parents, to encourage them to let their children go to school. However, following the changes to the legislation, the government was severely criticised and the minister responsible for education was forced to resign. Attitudes may take longer to evolve.

It is the INGOs which partly prompt these steps forward because if they did not lodge collective complaints, nothing would change. The collective complaints procedure is a formidable tool. Civil society can use it to highlight incompatible situations. If the collective complaints procedure were to disappear, the 27-state Europe of the European Union or the 47 states of the Council of Europe would be left with no other choice than an outright market economy.

Are the Council of Europe's INGOs sufficiently familiar with the collective complaints procedure?

No. Member INGOs are made aware of it by the Conference, but there is still a problem. The forms for lodging collective complaints are very complicated and unless a lawyer does it, the application is bound to fail. Yet not all INGOs have a lawyer among their members. The conditions to be fulfilled are not insurmountable, but a solid case has to be presented for a complaint to succeed. Absolutely nothing can change if a complaint is declared inadmissible.

What are the limits of the collective complaints procedure?

The first limit is the unwieldiness of the procedure. The second stems from the fact that the Charter has been kept too distinct from the European Convention on Human Rights. The Charter is presented as the economic and social counterpart of the Convention. But, if this is so, it should be integrated

into the Convention. We should have a European convention including the two categories of rights. If this had been done, the European Court of Human Rights, which is already overloaded, would probably be even more inundated but it would not have to rule on social issues. The President of the Court, to whom I talked recently, said that an incredible number of cases of a social nature were brought before the Court because the boundary was very unclear. The Convention and the Charter should be combined but only in such a way that the Charter would not lose its value.

We have reached a turning point as the European Union is due to accede to the Convention. Yet, the European Union does not necessarily wish to sign up to what is provided for in the Charter as a number of countries reject the slightest constraint on social issues. Furthermore, when they hear talk of the Charter, they think primarily of the relationship between employer and employee, whereas, for us, this is only a small part of the Charter, the remainder being the role of individuals and the place of families and women in society.

Not all the states party to the Charter have ratified the collective complaints procedure. Does this really pose problems?

It creates confusion for INGOs and for potential complainants. For instance, it is not always known whether the complainant organisation's country has ratified the procedure and, if so, what articles it has accepted. It is easy to get completely lost. However, the Department of the European Social Charter has an outstanding team of staff, who, although few in number, take the trouble to inform anyone who enquires about the various provisions that countries have accepted and the procedure itself. And it should be said that if states had had to accept all the Charter's provisions, none of them would have ratified it. Moreover, those which did sign the 1995 Protocol sometimes regret their decision, like France, against which a large number of complaints has been lodged.

Would you agree that there have been surprisingly few collective complaints since the establishment of the procedure?

Yes, there have not been enough. This clearly shows that states are careful. However, they are attempting to amend their legislation all the same.

Secondly, states also acknowledge that there are problems and that they are in a position to make commitments to civil society which they would not have dared to make previously. A good example is the collective complaint

that Autism Europe lodged against France. There were no specialist facilities for autistic children, who could only be accommodated in hospitals. As a result of the complaint, France has had to present its programme for creating posts, setting up facilities and providing finance. At present, autistic children in France are still in hospitals but definite progress has been made. This clearly shows that the procedure is having positive results. However, we have to hope that governments will not be given the opportunity to back out of their commitments. If one state begins, the others will follow.

However, I do believe in this Charter and other states are due to join soon. The Russian Federation, for instance, signed and then ratified the Charter in 2009, after years of negotiation. One year before, Mr Putin had given us formal assurances, in his capacity as prime minister, that despite the crisis raging in Europe, social affairs would not be affected. He kept his promise and although it had taken a long time, the deed was done. The Russians most certainly chose articles that it was easy for them to implement but the fact that the Russian Federation has ratified provides a definite glimmer of hope.

Would you like it to be easier for national NGOs to lodge collective complaints?

Unfortunately, the term "NGO" has many meanings. When we ask our central European members of the Conference of INGOs to send us a list of all their member organisations, it becomes obvious that the definitions of what constitutes an association differ between East and West. Many of these organisations are local opposition forces or trade unions in disguise, not genuine NGOs with an unpaid volunteer membership including some permanent members and a core non-profit-making purpose. The main distinguishing feature of INGOs at the Council of Europe is that they are here on a purely voluntary basis. They have nothing to gain financially from being here.

There are all sorts of NGOs and this alarms national governments. For example, in the Caucasian countries, NGOs have not yet understood that their role is not just to act as an opposition force, with the thought that one day they will take power. If they are NGOs, it is not to prepare for elected office but because they believe in what they advocate. National governments are aware of this desire of NGOs to act as an opposition force. They are afraid that if they allow them to lodge collective complaints, they will use the procedure inappropriately to destabilise those in power. This has been used as an argument against the collective complaints procedure.

In my view, national NGOs should be able to lodge complaints but in the meantime, they can always turn to the international NGOs that are active in their country and ask them to act as their mouthpiece. The European Social Charter is undoubtedly a challenge and an opportunity for civil society. Through it, social cohesion can remain a reality in the states parties. Once social cohesion disappears, any excess becomes possible. The Charter has to continue to grow and I am one of its most ardent advocates.



Having given details of the collective complaints procedure and the role of the INGOs and trade unions, it would be worth looking at some specific examples of complaints to understand more about the advances they can lead to.

3. Practical examples of collective complaints: the rights of Roma

The collective complaints procedure enhances respect for social and economic rights. To understand more about how the process leads to changes in legislation, it is worth conducting a case study. The rights of Roma are frequently flouted in Europe and the world. There are about 10 million Roma living in the member states. This population group is often the victim of discrimination when it comes to their living conditions. Poor access to decent housing, education and health care services, deficient sanitary facilities, remote camp sites, racism and forced evictions are all part of their day-to-day existence. Yet states are not always punished for these indecent living conditions and they take their time to grant Roma their rights.

Since 2003, the European Committee of Social Rights has given rulings under the national reports system and the collective complaints procedure on infringements of a number of social rights from which the Roma population has been suffering.

INGOs have seized on this mechanism to assert the rights of Roma at the European level. As a result, 12 of the 66 complaints so far (of which four are pending) relate to the violation of their rights. In addition, two complaints against France, namely Complaint No. 33/2006 by the International Movement ATD Fourth World and Complaint No. 39/2006 by the European Federation of National Organisations Working with the Homeless (FEANTSA),

also relate to the rights of Roma and Travellers, although it was not their main subject.

The states concerned

The Committee has found against five states party to the Charter in this connection, many of them more than once:

- Belgium: one case pending;
- Bulgaria: three cases;
- France: three cases, two of which are pending;
- Greece: two cases;
- Italy: two cases.

A further complaint against Portugal is also pending.

The complainant INGOs

The Centre on Housing Rights and Evictions (COHRE) is one of three organisations that have lodged complaints concerning Roma. It is an international organisation, which works throughout the world to promote the right to housing.

It has lodged two collective complaints:

- Complaint No. 58/2009 against Italy;
- Complaint No. 63/2010 against France.

The European Roma Rights Centre (ERRC) is an international organisation which combats the violation of the rights of Roma. It fights against discrimination and for access to justice, education, housing, health and public services for this population group.

It was the instigator of the first collective complaint relating to the rights of Roma and has lodged the largest number of complaints on the subject with the European Committee of Social Rights:

- Complaint No. 15/2003 against Greece;
- Complaint No. 27/2004 against Italy;
- Complaint No. 31/2005 against Bulgaria;
- Complaint No. 46/2007 against Bulgaria;
- Complaint No. 48/2008 against Bulgaria;

- Complaint No. 51/2008 against France;
- Complaint No. 61/2010 against Portugal.

The International Centre for the Legal Protection of Human Rights (INTERIGHTS) promotes respect for human rights by providing expert legal advice to lawyers, judges, human rights campaigners and NGOs. It lodged Collective Complaint No. 49/2008 against Greece.

The International Federation for Human Rights (FIDH) is an:

international NGO defending all civil, political, economic, social and cultural rights, set out in the Universal Declaration of Human Rights. It acts in the legal and political field for the creation and reinforcement of international instruments for the protection of Human Rights and for their implementation.³⁰

It was the instigator of Collective Complaint No. 62/2010 against Belgium.

The European Roma and Travellers Forum is an autonomous NGO, independent of governments and intergovernmental organisations.

It does, however, have a legal partnership agreement with the Council of Europe, which, amongst other things provides for the establishment of relations with the various bodies of the Council of Europe ... The Forum may also seek consultative relations with other international institutions and organisations, and with governments.³¹

The latest collective complaint, as of publication, to defend the rights of Roma (No. 64/2011) was lodged by the Forum.

Provisions shown by the relevant collective complaints to have been infringed³²

Article 11 – The right to protection of health

Part I: Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

30. www.fidh.org/

31. www.coe.int/t/dg3/romatravellers/ertf_EN.asp?

32. www.coe.int/t/dghl/monitoring/socialcharter/theme%20factsheets/romarightsfactsheet_EN.asp?

Part II: With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Violations of this right have been found on the grounds of failure of the authorities to take appropriate measures to counter the exclusion, marginalisation and environmental hazards which Roma communities are exposed to, along with the problems encountered by many Roma in accessing health care services.

Article 13 – The right to social and medical assistance

Part I: Anyone without adequate resources has the right to social and medical assistance.

Part II: With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

...

Violations of this right have been found on the ground of denial of continued social assistance to persons in need, depriving them of adequate resources to continue to live in a manner compatible with their human dignity.

Article 16 – The right of the family to social, legal and economic protection

Part I: The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

Part II: With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Violations of this right have been found on the grounds of:

- insufficient legal protection of Roma and Travellers' families because their legal status is not ensured (lack of identity documents and/or birth certificates);
- *de facto* discrimination as regards access to social services, family benefits and housing;
- identification and census procedures which were not accompanied by due protection of privacy and safeguards against abuse, amounting to undue interference in the private and family life of the Roma and Sinti concerned.

Article 17 – The right of children and young persons to social, legal and economic protection

Part I: Children and young persons have the right to appropriate social, legal and economic protection.

Part II: With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed: ... to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Violations of this right have been found on the ground that, while educational policies for Roma children may be accompanied by flexible arrangements to reflect the diversity of the group and may take into account the fact that some Roma live an itinerant or semi-itinerant lifestyle, there should be no separate schools for Roma.

Article 19 – The right of migrant workers and their families to protection and assistance

Part I: Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

Part II: With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

- ... to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

...

- to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of [...] accommodation;

...

- to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

...

Violations of this right have been found on the grounds of:

- misleading racist propaganda allowed by or emanating from public authorities;
- segregation and poor living conditions in camps and stopping places;
- *de facto* collective expulsions of Roma and Traveller migrants.

With regard to the evictions and racist propaganda, the fact that the authorities have not only failed to take appropriate action against the perpetrators of the violations but have also contributed to them and that the violations have specifically targeted and affected vulnerable groups amounts, in the Committee's view, to an "aggravated violation".

Article 30 – The right to protection against poverty and social exclusion

Part I: Everyone has the right to protection against poverty and social exclusion.

Part II: With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b) to review these measures with a view to their adaptation if necessary.

Violations of this right have been found on the grounds of:

- failure to adopt a co-ordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion;
- segregation, poverty and civil marginalisation affecting most Roma and Sinti living in camps or similar settlements.

Article 31 – The right to housing

Part I: Everyone has the right to housing.

Part II: With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

Violations of this right have been found, *inter alia*, on the grounds of:

- poor living conditions for Roma and Travellers in camps or stopping places;
- the failure to create a sufficient number of stopping places for Travellers;
- the carrying out of evictions without respecting the dignity of the persons concerned and without alternative accommodation being made available;
- the lack of legal remedies and/or legal aid to those who need it to seek redress from the courts following evictions;
- the lack of adequate affordable housing for persons with limited resources.

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

As with Article 14 of the Convention, the purpose of Article E is to secure the equal effective enjoyment of all the rights concerned regardless of people's differences. With regard to Roma and Travellers, most of the violations mentioned above were also held to constitute racial discrimination or discrimination on the basis of ethnic origin.

Examples of interpretations

The text of the Charter is not static; it is constantly explained and enlarged upon by the European Committee of Social Rights. The latter gives a contemporary interpretation of the articles of the Charter in keeping with Europe's social changes. These interpretations contribute to the Charter's vitality and diversity. It is therefore relevant to look at the meaning attributed by the Committee to one of the articles of the 1961 Charter and then consider the reaction of the state concerned.

For instance, in a collective complaint lodged in 2003, the European Roma Rights Centre alleged that Greece had violated Article 16 of the Charter (the right of the family to social, legal and economic protection). The complainant organisation asserted that a ministerial decision (No. A5/696/25.4.83) gave rise to the social exclusion of Roma families and that the discrimination to which they were subjected was an incitement to racism. Article 1 of the ministerial decision read: "the unchecked, without permit, encampment of wandering nomads (Athinganoi etc.) in whatever region is prohibited". The fact that specific reference was made to "Athinganoi" was discriminatory and drew a distinction between this group of people and other Greek nationals. The fact that they were not granted access to adequate and decent housing also amounted to discrimination. Furthermore, Article 3 of the decision stated:

the lands for the organised encampment of wandering nomads ... must be outside inhabited areas and a good distance from the approved urban plan or the last contiguous houses.

Forced as they were to settle outside towns, Roma families were, in effect, excluded from the community. In addition, Roma settling on sites illegally were subject to collective evictions. The European Roma Rights Centre also alleged that the living and housing conditions of Roma were inadequate because of the remoteness of sites and the lack of sanitary facilities.

Having summarised the content of the complaint, we must now review the reaction of the European Committee of Social Rights.

In its decision on the merits of 8 December 2004 the Committee reiterated the principle of non-discrimination set out in Article E, which underlies all the Charter's provisions. This meant that "states must respect difference and ensure that social arrangements are not such as would effectively lead

to or reinforce social exclusion". The ministerial decision therefore was not compatible with the Charter, particularly as the Committee had regularly stated in many conclusions and decisions that:

States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for the other persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.³³

The Roma belonged to an ethnic, cultural and religious minority. They had to be afforded the same status as other people but special attention had to be paid to ensure that they were not the victims of discrimination.

The Committee acknowledged that unauthorised camps should not be the rule, but the evictions to which they gave rise should follow strict procedures and be decided on for proper reasons. It confirmed that in Greece's case, evictions had taken the form of mass clearances and that no proposals had been made to rehouse those affected. The Committee found that Article 16 had been violated and emphasised the following points:

illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned ... the Committee concludes ... that the forced eviction ... of Roma constitutes a violation of Article 16 of the European Social Charter.

The Committee reiterated these findings in another decision on the merits.³⁴ The Italian Government had taken special measures to tackle what it called the "nomad emergency" or "Roma emergency" through a "pact for security". In addition to collective expulsions, the new legislation had provided for the monitoring of camps and a census of the people and family groups living in them. The law also provided that residing illegally in Italy would be considered an aggravating circumstance in the event of a criminal offence. Despite the findings of a previous decision on the merits of a complaint lodged by the European Roma Rights Centre against Italy (Complaint

33. *Autisme Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003.

34. *COHRE v. Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010.

No. 27/2004) and negative conclusions issued after the examination of Italian reports, the Italian Government had not changed course.

In its decision on the complaint by the European Roma Rights Centre against Greece in 2003, the Committee fleshed out the meaning of Article 16 of the Charter, explaining what it meant by “family housing”. Existing housing had to be “of an adequate standard and include essential services (such as heating and electricity). The Committee has stated that adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence”. Following this interpretation, the Committee concluded as follows:

the insufficiency of permanent dwellings constitutes a violation of Article 16 of the European Social Charter ... the lack of temporary stopping facilities constitutes a violation of Article 16 of the European Social Charter; [and] the forced eviction and other sanctions of Roma constitute a violation of Article 16 of the European Social Charter.

Changes in legislation as a result of decisions by the European Committee of Social Rights

Following the Committee’s decision on the merits of the complaint, the Committee of Ministers took note of it and adopted a resolution on 8 June 2005.³⁵ The European Committee of Social Rights returned to the matters raised in the ERRC’s complaint when examining the Greek national reports in the years following the case.

The legislative changes introduced by the Greek Government were described in Conclusions XVIII-1 (Volume 1). It had taken measures to bring the situation in line with Article 16 of the Charter by setting up an “Integrated Action Plan for the social inclusion of Greek Roma (IAP)”. The plan comprised a programme to grant housing loans to Roma and:

simplified, faster procedures ... for local authorities to transfer ownership of municipal real estate to Greek Roma citizens living in their municipalities.

35. Resolution ResChS(2005)11.

Despite these changes, the Committee found that Article 16 was still being violated because the housing made available to Roma was still inadequate and a substantial number of Roma still lived in camps with no amenities and were still evicted from their homes but offered no alternative place to live.

This example of a collective complaint and the follow-up action taken by the Committee shows both the scope of the work it carries out and its pugnacious approach. It dissects articles, proposes new interpretations, examines the information provided by the parties, listens to everyone's arguments and then, finally, gives its decision. Then it comes back and scrutinises national legislation or practices previously found to be incompatible with the Charter. Unfortunately, the Committee often has to repeat its conclusions of non-conformity before they are heeded by the states concerned.

Chapter 3 – The European Social Charter: a point of reference for the states parties

In order to gain a better understanding of the impact of the European Social Charter on the states parties, we will first consider the ratification process and then the way in which it is incorporated into domestic law.

Moreover, several changes need to be contemplated if the convention is to continue in the right direction.

1. The ratification process

The signature and ratification processes for both the 1961 and the revised Charters varied from one member state to another. Some were keen to ratify as soon as one or other were adopted while others waited longer. Yet others have signed but still not ratified. Some countries have only ratified the 1961 Charter while others have ratified both.

First, an initial review of the ratification procedure for both Charters. When the Committee of Ministers approves a convention or treaty, there must then be a minimum number of ratifications, specified in the text, for it to come into force. The Charter required at least five countries to ratify it. It was opened for signature on 18 October 1961 and came into force on 26 February 1965.

Thirteen states signed the treaty when it was opened for signature. Germany, Ireland, Norway, Sweden and the United Kingdom were the first to ratify the Charter, thus enabling it to come into force. More and more ratifications followed over the years. Over the first 10 years of its existence there were 9 ratifications. By 1981, 12 states had become parties to the Charter, rising to 20 in 1991. There were 29 states parties in 2001 and 43 in 2011.

The Charter's renewal in the 1990s was a positive process, for after 10 years 14 countries had ratified the revised Charter. Far from running out of steam it has gained a new lease of life over time, particularly following ratification by new member countries.

Nevertheless, a more detailed analysis shows wide variations between states.

The Council of Europe founding states and others

Ratification of the Charter by the Council of Europe's founding states – Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom – was not as straightforward as that of the Convention.

The first to ratify the original Charter – in 1962 – were Norway, Sweden and the United Kingdom. Then followed Ireland (1964), Denmark, Germany and Italy (1965), Cyprus (1968), Austria (1969), France (1973), Iceland (1976) and the Netherlands (1980). In fact it took Luxembourg 30 years to ratify the Charter – in 1991 – even though it had signed it on adoption in 1961.

Austria, Croatia, the Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Monaco, Poland, San Marino, Spain, "the former Yugoslav Republic of Macedonia" and the United Kingdom have all signed the revised Charter but not ratified it.

It is already clear therefore that the approach taken by these countries, many of which have been members of the Council since its very early days, has varied widely in practice. Thus, while they have defended the principle of the interdependence and indivisibility of human rights, they have not all ratified the Charter with great alacrity.

Particular cases

Certain member states have not yet ratified the Social Charter. For example, Switzerland signed the original Social Charter in 1976 but has not yet ratified it, even though guaranteed rights under Swiss law fully satisfy the requirements of the Charter. The failure to ratify is linked to internal legislative considerations. Switzerland has not signed the revised Charter. Similarly, Liechtenstein signed the 1961 Charter in 1991 but has not ratified

it. San Marino and Monaco signed the revised Charter in 2001 and 2004 respectively. Once again, economic factors are no hindrance to ratification.

The countries of central and eastern Europe

These countries see the Charter in a different light. Their transition to democracy and Council of Europe membership is more recent. Incorporating the European Social Charter into their domestic legal systems could have seemed particularly complex operations. Nevertheless, their ratifications of the 1961 or revised Charter do not appear to have taken any longer than for the founding countries.

Some of these countries have ratified the original Charter but not yet the revised version. These include Poland (1997), the Czech Republic (1999), Latvia (2002), Croatia (2003) and “the former Yugoslav Republic of Macedonia” (2005). Between 1999 and 2010, 17 countries of central and eastern Europe ratified the revised Charter. Some of them had previously ratified the 1961 Charter. The first were Romania and Slovenia in 1999. The most recent were Hungary, the Russian Federation, Serbia and Slovakia in 2009, and Montenegro in 2010.

A sense of renewal

The ratification process for the countries of central and eastern Europe took place in the 1990s. Over this period there was a sense of renewal and the Committee of Ministers adopted:

- the Additional Protocol to the European Social Charter in 1988, supplementing the social and economic rights of the 1961 Charter;
- the Turin Protocol in 1991, amending the European Social Charter, which clarified the respective roles of the supervisory bodies;
- the Additional Protocol to the Charter in 1995, providing for a system of collective complaints;
- the revised European Social Charter in 1996.

The process of integrating the former Communist countries into the Council of Europe was now well under way. Their accession to the Council obliged them to abide by the standards laid down not only in the Convention, but

also those of the Charter. The latter acquired fresh vigour, which was to be tested to the full with the arrival of these new member states.

Another concept of social rights

This progress was not totally straightforward as the countries concerned had a different conception of what constituted social rights. They wished to join the Council of Europe to gain credibility with other European countries. This meant that they had to safeguard the rights and freedoms laid down in the Convention and then the Charter. This facilitated the accession of some of these countries – Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia and Slovenia – to the European Union. In fact one of the criteria for admission to the Union was the need to take account of social rights. Under the former Communist regimes, everyone was guaranteed the same social rights, since the government provided citizens with jobs, accommodation, gas, electricity, education and so on. The collapse of these regimes left many of their citizens with grave concerns about their well-being and their rights.

A policy of seduction

Thanks to the efforts of the various Council of Europe institutions, the governments of these countries began to see the value of ratifying the Charter. Value in relation to their citizens, because ratification would enable them to vaunt their status as parties to the Convention and the Charter, but also economic value because the introduction of the rights embodied in the Charter could lead to a new upsurge in their economies.

The rise in the Charter's prestige was a result of the obligation placed on new member states to ratify it. Following their arrival, the Parliamentary Assembly decided to undertake a campaign to promote the Charter among the newcomers, to explain to them how it worked and the benefits it brought. The Committee of Ministers had already decided in 1992 to allow signatory states to the Charter to take part in Governmental Committee meetings. The aim was to give the countries concerned a practical insight into the scope of the Charter, and its benefits and constraints. Their observer status enabled them to attend meetings without the right to vote, but this did not prevent them from entering into debate with representatives of the existing states parties.

Seminars were also organised for these states to increase their understanding of what Charter commitments meant and to smooth the path to ratification.³⁶ These efforts bore fruit because all the countries of central and eastern Europe have ratified either the 1961 Charter or, more often, the revised Charter, while choosing those provisions that they have felt able to implement.

Accepted and non-accepted provisions

As noted previously, states did not all ratify the Charter at the same pace. Another advantage is that, aside from the obligatory ones, states can ratify the number of provisions that they decide on.

The founding and other older member states

Of the countries that are only parties to the 1961 Charter, Luxembourg has ratified 69, and the United Kingdom 60 of the 72 paragraphs. Spain has ratified all of them, but Denmark only 45. The ratification rate among parties to the revised Charter is fairly high. Of the founding states, Norway has chosen the fewest provisions, with 80 paragraphs out of 98. Cyprus in contrast has only ratified 63. Others have decided to ratify all or nearly all the paragraphs: the Netherlands and Italy 97, and France and Portugal all of them.

Consideration of the Charter's non-accepted provisions highlights those that states find least attractive.

Among the countries, other than those in central and eastern Europe, that have ratified one or other version of the Charter, the least accepted provisions are:

- some or all of the paragraphs of Article 7 (right of children and young persons to protection), for Austria, Denmark, Germany, Iceland, Norway, Sweden, and the United Kingdom;

36. See Danièle Levy-Puech, "Les engagements souscrits au titre de la Charte sociale par les nouvelles démocraties européennes", in *Droits sociaux et droit européen – Bilan et prospective de la protection normative*, Bruylant, 2002.

- some or all of Article 8 (right of employed women to protection of maternity), for the same countries, plus Luxembourg;
- some or all of the paragraphs of Article 19 (right of migrant workers and their families to protection and assistance), which are frequently not accepted.

There are certain other distinctive features. For example, Greece and Turkey have elected not to accept Article 5, on the right to organise, and Article 6, on the right to bargain collectively, and Andorra has not accepted Article 6. Belgium and Ireland have not selected Article 31 on the right to housing. Cyprus and Malta have not accepted either Article 30 (protection against poverty and social exclusion) or Article 31. Finally, the United Kingdom has only chosen one paragraph of Article 12 (right to social security).

Since 2003, there have been regular meetings on non-accepted provisions. These are an opportunity for governments to explain why they have not ratified certain provisions and what progress they have made towards future acceptances. Not all countries have yet explained their reasons.

Norway explains its non-ratification of Articles 7 and 8 (right of children and young persons to protection and right of employed women to protection of maternity, respectively) in terms of the introduction of the new Working Environment Act, which came into force in 2006 and is the main source of labour law. The Act covers working conditions and the education of children under 18 and under 15. It also lays down specific working conditions for women on maternity leave. Sweden says that it has not accepted one of the paragraphs of Article 7 because this matter is meant to be settled by agreements between the social partners. In connection with Article 8, Swedish legislation and collective agreements protect women during and after their pregnancy.

In fact, the European Committee of Social Rights has told states that the Charter can be implemented by the social partners via collective agreements if this is part of their national tradition. This by no means prevents governments from accepting the relevant Charter provisions, though of course the state remains ultimately responsible at international level, vis-à-vis the Council of Europe and the other states parties, for the correct application of the Charter.

New legislation in Ireland on maternity protection for women provides for a reduction of working hours until the baby is six months old. Ireland therefore considers that it does not need to ratify Article 8.3 of the Charter, which requires parties to “provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose”. Nor has it ratified Article 31, since house building and renovation programmes are already under way. There is also legislation on the accommodation needs of the homeless.

Belgium has not ratified Article 31 (right to housing) on the decision of the regions, who are responsible for housing matters. Nevertheless the right to housing is guaranteed in legislation, and in a number of practical instruments and specific measures. The representative of Belgium thought that there was no obstacle to acceptance of Article 31 from a technical standpoint, but that it was a political matter. In addition, Mr Vandamme, general adviser in the Federal public service “Employment, Labour and Social Dialogue”, put forward the reasons why his government had decided not to ratify certain provisions in the general conclusions of a meeting in 2009 on the provisions not accepted by his country:

Article 19 – right of migrant workers and their families to protection and assistance, paragraph 12; promote and facilitate, as far as practicable, the teaching of the migrant worker’s mother tongue to the children of the migrant worker. Article 19.12 does not make it obligatory to teach the mother tongue and Belgium makes considerable efforts in this regard. Nevertheless, this paragraph cannot yet be accepted.

Article 23 – right of elderly persons to social protection: this is a unique article in the human rights protection system, based on the principle of adequate resources (in the case of Belgium, the guaranteed minimum income for elderly persons and social assistance). The protection system, such as the right to housing and to health, is normally based on services. Many of these responsibilities are devolved to the communities, which means that they must accept this provision.

Article 24 – right to protection in cases of termination of employment: the Belgian authorities prefer the current regulatory system. The absence of any obligation to justify the dismissal has to be assessed in its overall context. There is no real political will to change this system.

Article 26 – right to dignity at work, paragraph 2: promote awareness, information and prevention of ... offensive actions directed against individual workers: the Belgian model is a good one for other countries and this provision is acceptable.

Article 27 – right of workers with family responsibilities to equal opportunities and equal treatment: two paragraphs are acceptable. Paragraph 3 cannot be accepted because reasons do not have to be given in Belgium for termination of employment.

Article 28 – right of workers' representatives to protection in the undertaking and facilities to be accorded to them: national legislation grants facilities to employees' representatives, who have to be covered by these arrangements. The Belgian system is well developed, so the provision could be accepted.

Article 31 – right to housing: the regions have taken detailed measures. The Flemish Region could recommend acceptance, while the Walloon Region made a presentation. The Brussels-Capital Region agreed with the other regions' presentations. The federal system was also described. The provision is acceptable from a technical standpoint but since housing is a community responsibility acceptance is dependent on an agreement with the communities.³⁷

The countries of central and eastern Europe

Of the five states that have only ratified the original Charter, Latvia has chosen the fewest provisions, with 25 accepted, followed by "the former Yugoslav Republic of Macedonia" with 41, Croatia with 40 (plus three provisions from the 1988 Protocol), the Czech Republic with 52 (plus four from the 1988 Protocol) and Poland with 57 provisions accepted out of the 72 in the 1961 Charter.

The states party to the revised Charter have generally opted for a broader range of rights than the parties to the 1961 Charter. Apart from Azerbaijan (47) and Bosnia and Herzegovina (51), the countries concerned have ratified a minimum of 60 provisions, as is the case with Hungary. Lithuania and Slovakia have ratified 86 provisions, Serbia 88, and Slovenia 95 of the 98 in this Charter. These are the four that have selected the highest number of provisions. The majority of the new states party to the revised Charter have thus decided to

37. Report on the meeting with Belgian Government representatives on non-accepted provisions of the revised Social Charter, 3 February 2009 (French only): www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Belgium2009_fr.pdf

enter fully into its spirit and establish new rights for their citizens. The political and economic situation in central and eastern Europe is of course quite distinctive and this is reflected in their choice of accepted provisions.

Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Latvia, Lithuania, Moldova, Montenegro, Romania, the Russian Federation, Serbia, Slovakia, “the former Yugoslav Republic of Macedonia” and Ukraine have all failed to ratify some or all of the paragraphs of Article 19 – the right of migrant workers and their families to protection and assistance.

There are also very few acceptances of Article 18 – the right to engage in a gainful occupation in the territory of other parties – whose aim is to facilitate the employment of foreign workers. The explanation lies in these countries’ complicated relations with their neighbours. They also consider that they lack the financial and material resources to ensure that migrant workers and their families can enjoy the rights set out in this article.

Similarly, most of these countries have elected not to accept the right to social security in Article 12 and the right to social and medical assistance in Article 13. The associated costs probably appear to them to be prohibitive, and ratification of these articles is not yet on the agenda.

Nor is there unanimous acceptance of the right to vocational training in Article 9. These countries do not yet have the same concept of work as their Western European neighbours.

These options are clearly linked to the particular circumstances of these new parties to the Charter. More generally though, in the case of both these states and the countries of western Europe, their chosen exceptions reflect their national situation, their history, their experience of social rights and existing policies and the likely costs entailed by new rights. International and economic considerations and national repercussions are also among the factors that influence their decisions to opt for one or other provisions.

In addition, the decision to ratify the 1961 or the revised Charter was also bound up with these countries’ EU accession. Countries like the Czech Republic, Hungary and Poland had already had their European Union applications accepted. It was therefore sufficient for them to start with the 1961 Charter. Other countries, such as the Baltic states, Bulgaria and

Romania, ratified the revised Charter to demonstrate to the Union the efforts they were prepared to make to have their future candidatures accepted.

The provisions they have chosen reflect not only the rights to which their citizens are entitled but also the state of progress of social rights in each country. Nevertheless, states that have opted for a limited number of provisions are still required to abide by the general principles of the Charter laid down in Part I, and in selecting certain provisions they are obliged to respect a number of significant and substantial rights.

The undertakings entered into by states are also emphasised in Part V of the Charter. For example, Article E, on non-discrimination, applies to all the accepted paragraphs. So even if a state has not accepted Article 19, on the rights of migrant workers, or Article 18, on the right to engage in a gainful occupation in the territories of the other Parties, it must undertake to ensure that the rights granted to its own citizens apply:

without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

They also undertake to give the Charter full effect by incorporating it into their domestic legal systems, as laid down in Article I of Part V.

2. The European Social Charter and national legislation and standards³⁸

The Charter can only be properly recognised and effective if states incorporate it into their domestic legal systems. In fact, the Charter starts to take effect even before ratification, since countries must make sure their law is compatible with it and, if it is not, change their legislation and practices to bring them into line with Charter requirements.

A number of changes may serve as examples.³⁹ Ireland repealed measures that discriminated against women's employment in the public service to comply with Article 1.2. And both it and the United Kingdom amended their

38. See, for example, the situation in Greece regarding the Charter in Appendix IV.

39. "La Charte sociale européenne", address by Ms A. Leclerc at a colloquy at the University of Granada, Council of Europe, 1989.

legislation on the employment of young persons to comply with Article 7. In Cyprus, public officials' right to join trade unions has been strengthened, to take account of Article 5. Article 12.1 has also had an impact, in the form of legislation to reorganise the Cypriot social security system.

The Charter is an international treaty. As such, it has a special place in each country's domestic legal system and is binding on states that ratify it. Countries also undertake to incorporate it into their legislation or standards, as specified in Article I of Part V of the revised Charter. How international treaties apply the Charter varies according to countries' constitutional arrangements. Some adopt a so-called monistic and others a dualistic approach. Constitutions are states' supreme law, and no law can take precedence over them, but so-called "monist" states consider that treaties such as the Charter can take precedence over ordinary laws whereas for "dualist" states they have either the same status as laws or a lower one.

The dualist approach

In dualist states there is a specific procedure for incorporating the Charter into their domestic legal systems. To be enforceable in domestic courts, the contents of the Charter have to be transposed by legislation into national law. The Charter is not therefore directly applicable. Dualist countries that are parties to the Charter include Austria, Denmark, Finland, Germany, Iceland, Ireland, Italy, Malta, Norway, Sweden and the United Kingdom.

The monist approach

In monist states, international conventions have direct effect. They are directly applicable and no legislation is needed to transpose them into the domestic legal system. A majority of parties to the Charter are monist states. However, the distinction is not always as clear-cut in practice. Certain monist states incorporate international treaties directly into law whereas dualist systems opt to pass legislation to incorporate treaties into their domestic law. The primacy of international treaties and their direct effect, in other words their immediate application, are generally provided for in these countries' constitutions. For example, under Article 5.4 of the Bulgarian Constitution: "International treaties which have been ratified in accordance with the constitutional procedure, promulgated and come into force with respect to

the Republic of Bulgaria, shall be part of the legislation of the State. They shall have primacy over any conflicting provision of domestic legislation.”

Similarly, under Article 7.1 of the Hungarian Constitution: “The legal system of the Republic of Hungary ... [shall] harmonise the internal laws and statutes of the country with obligations assumed under international law.”

And again, according to Article 55 of the French Constitution: “Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party.”

However, once it becomes part of domestic law, the Charter also has to be given practical effect. It establishes new rights, but the domestic courts must also take it into account so that these rights can be enforced.

The applicability of international treaties in monist states

International treaties are thus directly applicable in these countries’ domestic legal systems and take precedence over national legislation. However, much depends on the treaty. If its wording is clear and precise, it becomes self-executing and can be applied directly. However, if courts consider the wording to be too vague it cannot have direct effect. In that case, for the rights embodied in the treaty to be applicable in domestic law, its content has to be specified more clearly in legislation or some other legal instrument. Moreover, courts may take the wording used in certain conventions as grounds for disregarding their direct effect. For example, provisions that start with “States Parties undertake to guarantee ...” or “States undertake to ...” are possible grounds for not making them directly effective, whereas other international treaties state that “The parties shall secure ...” or “States shall assure ...”. The latter wording enables courts to consider them to have direct effect.

The ability to rely on international treaties in monist states

Once the applicability stage has been successfully completed, courts must decide whether the treaty can be relied on. They must decide whether it

can be used by individuals or simply establishes obligations for states. In the latter case, states are bound to comply with it but it cannot be relied on in the domestic courts. If the rights enshrined in international treaties cannot be enforced by citizens in their own courts they can still be raised with the supervisory bodies provided for in international conventions.

The effect of the European Social Charter in domestic law

Certain courts have ruled that the Charter is not directly applicable. This means that INGOs can only rely directly on Charter rights before the European Committee of Social Rights, under the collective complaints procedure. In other words, the social rights in the Charter do not enjoy the same guarantees as the civil and political rights in the Convention.

Nevertheless, social rights do enjoy protection, sometimes going back a long time, in European domestic legislation. There are laws governing labour relations, the rights of children, minorities, women, persons with disabilities and elderly persons, and the right to health, all social rights that are fully integrated into national legal systems. The rights embodied in such legislation are even enforceable in the courts. However, they are often fairly limited and only cover very specific areas. The Social Charter offers a means of filling any legal gaps or voids, since even when certain social rights are established by law others laid down in the Charter remain outside its scope.

Social rights may have constitutional, legislative or some lesser legal status in domestic law. Nevertheless, as Herrera notes, they are not always considered to be genuine enforceable rights in the legal sense but simply objectives, because they cannot be pleaded in, or enforced by, the courts.⁴⁰

The distinction between the two generations of rights, social and economic on the one hand, civil and political on the other, has led domestic courts to give precedence to the latter. According to the report of a research study on the enforceability of social rights, directed by Professor Diane Roman, such rights constitute programmes, objectives or guides for action for

40. Carlos Miguel Herrera, "Sur le statut des droits sociaux, la constitutionnalisation du social", *Revue Universelle des droits de l'Homme*, vol. 16, Nos. 1-4, 2004.

public authorities, rather than individual rights.⁴¹ Social rights are inevitably subject to political choices and financial constraints. Governments can only implement them gradually, and over time.

The traditional view is that states must make legal provision for social rights whereas civil and political rights exist, *de facto*, in free and democratic societies. They do not require any action from governments, other than appropriate legislation. They are therefore easy to enforce because they exist in law and are applicable to all. Social rights, in contrast, require political decisions and directives.

Moreover, according to Professor Roman's findings, social rights could not benefit from the protection of the courts because they were not clearly laid down and were not aimed at any specified persons.⁴² They were thought to be too abstract and too vague and it was unclear to whom exactly they applied.

This poor reputation means that social rights have often been treated as semi- or pseudo-rights, in other words, rights of a different and secondary nature that operate under a separate system and with different safeguards to other fundamental rights.⁴³ Social rights amount to ones that create obligations for states but do not directly concern ordinary citizens. The latter are only affected by them once legislation has been passed or other arrangements established to make them effective. So because of these differences between the two generations of rights, the courts often consider that they also differ with regard to their enforceability.

The social rights in the Charter have often been criticised as being too abstract to be relied on in, and used by, the courts. Yet these rights concern individuals' daily lives. Just like civil and political rights, they offer citizens individual protection. Threats to freedom of expression, freedom of movement and all the other civil and political rights amount to threats to the

41. Droits des pauvres, pauvres droits? Recherche sur la justiciabilité des droits sociaux, dirigée par Diane Roman, Professeure de droit public, École des Hautes Études en Santé Publique (EHESP), pour le Centre de Recherches sur les droits fondamentaux (CREDOF), University Paris Ouest Nanterre la Défense, http://droits-sociaux.u-paris10.fr/assets/files/dossiers/Synthese_rapport_axe2.pdf.

42. http://droits-sociaux.u-paris10.fr/assets/files/dossiers/Synthese_rapport_axe2.pdf

43. http://droits-sociaux.u-paris10.fr/assets/files/dossiers/Synthese_rapport_axe2.pdf

very fabric of democratic society. But abolishing the right to work, to social security or to education would pose just as much of a threat to democracy. The two generations of rights are in fact inseparable.

The fact that the social rights guaranteed by the Charter only create obligations for the states concerned means that they offer less legal protection than that afforded to civil and political rights. This is a function of their distinctive nature. But how they are applied by the courts also needs to be considered. By referring to them, the courts have the power to secure their recognition as full rights, thus giving them the same value as other rights.

Courts have to strike a balance between respect for the decisions of the legislative power and respect for rights emanating from the highest level of the legal hierarchy.⁴⁴ Because the Charter establishes obligations for states, it is for parliament to ensure that these rights are given practical force through the legislation or regulations that they enact. Courts are reluctant to trespass on parliamentary territory by finding that social rights have been violated, since such judgments could be interpreted as obliging parliaments to pass legislation, which could in turn pose a threat to the separation of the legislative and judicial powers. The courts' role is to ensure that citizens' rights are protected, not to force parliaments to legislate.

The Charter's provisions do not necessarily entail changes to existing law. The rights in the Charter may be implemented by laws or regulations, collective agreements, a combination of those two methods or other appropriate means.⁴⁵ Certain Charter provisions even specify how these should be applied. For example, Article 27.2 of the revised Charter requires parties to:

provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice.

Other provisions are extremely clear about what has to be done. Thus, Article 12.1 requires states to "establish or maintain a system of social security".

44. http://droits-sociaux.u-paris10.fr/assets/files/dossiers/Synthese_rapport_axe2.pdf

45. See Part V, Article I of the revised Charter.

Certain provisions have been interpreted by the European Committee of Social Rights in such a way that national legislation and courts can apply them directly without any need for further interpretation.

Thus under Article 4.4, parties undertake to “recognise the right of all workers to a reasonable period of notice for termination of employment”. The Committee has clarified the notion of a “reasonable period” in numerous conclusions.⁴⁶

The same applies to Articles 6 (right to bargain collectively) and 5 (right to organise). In its conclusions, the Committee identifies circumstances in which these rights are not provided for in law or collective agreements, or are not respected in practice. The government concerned is then invited to take the necessary steps to bring the situation into compliance with the Charter. In doing so, the Committee is telling the courts what it understands by an incompatible situation and national parliaments what has to be done to implement these rights.

Other articles are less specific and require interpretation, one example being Article 7.5, which urges states to “to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances”. In addition:

the provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected (Part V, Article H).

What the authors of the Charter always had in mind was citizens’ best interests. So if another provision offers people more favourable treatment, this should take priority.

Similarly, Article G.1 of the revised Charter states that:

the rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

46. Conclusions I, IV and XIII-3.

When states undertake to abide by their Charter commitments, they can only restrict their application if this poses a threat to democracy, and then only subject to very strict conditions. Thus, for example, individuals may be requisitioned to help remove debris following a natural disaster.

Moreover, citizens' rights under the Charter must be accompanied by a right of appeal. Rights cannot simply be laid down without offering individuals a potential remedy for breaches of those rights. States parties undertake to respect this principle when they ratify the Charter. However, by refusing to accept that the Charter is directly applicable, the domestic courts do not always offer this facility.

The response of domestic courts

There have been changes in judicial approach. National courts refer increasingly to European law and international treaties in their judgments and decisions. However, there has been a long-standing reluctance to take account of the rights embodied in the Charter and, more generally, social rights arising from international treaties. In practice, all depends on the position of the domestic courts. In other words, they may or may not consider that the Charter is directly applicable to individuals and that the latter can rely on it when pleading their cases.

Like other countries, France adopts a fairly conservative attitude by not recognising the Charter's direct application. Thus, in a decision of 20 April 1984,⁴⁷ the French *Conseil d'Etat* ruled that Article 4.4 of the Charter was not directly applicable to the nationals of contracting parties, without offering any further explanation. Similarly, it has held that Articles 11, 12, 13 and 17 and Article E of Part V of the revised Social Charter are not directly applicable to individuals and cannot be validly relied on.⁴⁸

The European Social Charter is not the only means of protecting social rights whose direct application and the possibility of relying on certain of its provisions are not accepted by the *Conseil d'Etat*. The same applies to certain articles of the United Nations International Covenant on Economic,

47. CE, 20 April 1984, *Minister of the Budget v. Ms Valton and Ms Crépeaux*, Rec. CE p.148.

48. CE, 7 June 2006, *Aides and Gisti*, No. 285576.

Social and Cultural Rights.⁴⁹ However, the *Conseil d'Etat* has recognised that the Convention on the Rights of the Child is applicable to foreign children's right of access to care.

The French Court of Cassation has also ruled that certain provisions of international conventions are directly applicable and can be relied on in domestic law. This means that the International Covenant on Economic, Social and Cultural Rights now has direct effect.

The French Court of Cassation referred to the Social Charter for the first time in its judgment 889 of 14 April 2010, in which it ruled that a particular form of trade union representativeness was compatible with Article 5 of the Charter. The Court has made subsequent references to the Charter, while the *Conseil d'Etat* has somewhat altered its initial position in two cases, in June 2006 ("Association Aides") and July 2007 (Lovinski judgment).⁵⁰

The German federal administrative court also handed down a decision on 22 February 1995⁵¹ ruling that the Charter was not directly applicable. It based its finding on the Appendix to the 1961 Charter, which states with reference to the scope of Part III that: "It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof." The Court interpreted this article to mean that domestic courts were barred from deciding on cases alleging violations of Charter provisions. In fact, the appendix is merely clarifying the principle that international bodies other than those of the Council of Europe cannot monitor compliance with the rights embodied in the Charter. The European Committee of Social Rights referred to the administrative court's decision in one of its conclusions on Germany's application of Article 16 of the Charter, stating that it was "concerned by the content of the judgment, which by refusing

49. CE, 5 March 1999, M. Rouquette *et al* and CE, 5 May 2000, Pinault, No. 205043.

50. "Droits sociaux, droits de l'Homme: le Conseil de l'Europe et nous ?", Proceedings of a conference on 19 December 2008, European and International Affairs Department of Ministry of Labour, Labour Relations, Family, Solidarity and Urban Affairs.

51. German administrative court, decision of 22 February 1995, 1C II.94, Informationsbrief Ausländerrecht (Inf Ausl R) 1995, vol 17, see <http://droits-sociaux.uparis10.fr/assets/files/Memoires/Opposabilite%20protection%20sociale.pdf>

direct effects to the European Social Charter denied the rights established by Article 16".⁵²

Other countries treat the Charter differently. In Belgium and the Netherlands, for example, the courts have drawn on certain Charter provisions to fill gaps in domestic legislation. This has permitted the incorporation of Article 6.4, on the right of collective bargaining, into their internal legal systems. The Netherlands has also accepted the need to apply Article 18.4, on the right of nationals to engage in a gainful occupation in the territories of the other contracting parties. In these and other countries, the domestic courts recognise the direct effects of the Charter.

It is also worth noting that at the European level, the Court of Justice of the European Union has referred to the Charter in its decisions on a number of occasions.

Impact on domestic legislation⁵³

Court decisions based on the Charter have on occasions had an impact on existing domestic law. However, there are also examples of changes and improvements that have taken place quite independently of such decisions.

In 2007, Belgium introduced federal and regional legislation prohibiting discrimination based on disability in the fields of housing, transport and cultural and leisure activities to comply with Article 15.3 of the Charter. This followed a non-compliance conclusion of the European Social Charter that same year.

Following the ratification, Estonia amended a 1992 law to prohibit the termination of the employment contracts of pregnant women or persons raising children under three years of age (Article 8.2 of the revised Charter).

Further examples highlight the impact of the collective complaints procedure on domestic law. In response to a collective complaint introduced by ATD Fourth World,⁵⁴ since 1 December 2008 France has granted applicants who are recognised by a mediation committee as being priorities and requiring

52. Conclusions XIII-2, 30 December 1994.

53. *Practical impact of the Council of Europe monitoring mechanisms*, Council of Europe, 2010.

54. *International Movement ATD Fourth World v. France*, Complaint No. 33/2006.

emergency accommodation, and who have not received an offer that has regard to their needs and their abilities, a right of appeal to the administrative court. This will thereby implement the Enforceable Right to Housing Act of 5 March 2007.

In 2006, Greece passed a law forbidding corporal punishment in the family and establishing several penalties for abuse of parental authority, rising to a court order withdrawing that authority. The legislation was in response to a complaint lodged by the World Organisation against Torture.⁵⁵

Progress may also be the result of the European Court of Human Rights and the European Committee of Social Rights reaching comparable solutions to the same question.

For example, Denmark prohibited trade union closed-shop agreements in undertakings to bring itself into line with Article 5 of the revised Charter and comply with a European Court of Human Rights judgment of 11 January 2006.⁵⁶

A French law of 3 December 2001 ended the discrimination suffered by illegitimate children with regard to inheritance rights, following a non-compliance conclusion on Article 17.1 of the revised Charter. The European Court of Human Rights had handed down a similar judgment in 2000 in the *Mazurek v. France* case.

Decisions emanating from the various European judicial bodies have influenced a number of new laws, changes to legislation and different action programmes. So even though certain national judiciaries are not yet ready to seek guidance from the Charter, it is still having an influence on domestic legal systems.

55. *World Organisation against Torture v. Greece*, Complaint No. 17/2003.

56. Conclusions XVIII-1 (2006) of the European Committee of Social Rights and the *Sorensen and Rasmussen v. Denmark* case, application Nos. 52562 and 52620/99 of the European Court of Human Rights.

Social rights and globalisation

Even in a globalised world, the national level will still remain important. Each country has its own identity, history and cultural, social and economic traditions on the basis of which its legal system has gradually evolved. Such points of reference cannot and must not disappear. The Charter's supervisory bodies are well aware of this and do not seek to challenge national diversity. Nevertheless, supranational rules are essential if citizens are to be guaranteed a certain number of social rights. Against a background of globalisation, there has to be a pillar of universal social norms.

European countries want to benefit from the resources of the world market to raise their economic standing, but economic growth also requires a legal framework. The Charter lays down such rules and establishes a system for monitoring their application, with a particular concern for economic factors. The aim is to protect social rights while encouraging economic development and the integration of states into the European system.

The rules laid down in the Charter and other international conventions enable European countries to establish comparable social safeguards and develop their economies according to a common set of rules.

Countries benefit from the social rights granted to their citizens. The Charter and the decisions of the European Committee of Social Rights should always be viewed as a means of developing their social standards and their economies. More systematic and effective incorporation of the Charter would permit the harmonisation of national rules and standards that is necessary for the market to function properly and for rights to be properly protected.

The role of the social partners and international non-governmental organisations (INGOs)

The social partners – employees' and employers' representative bodies – have a key role to play in securing recognition of social rights, both domestically and internationally. Historically, the demands made and battles fought by trade unions have often led to social advances. Such demands have subsequently been incorporated into collective agreements and laws, thus establishing them as rights for employees. The social partners may also assist the implementation of the Charter by incorporating Charter rights

when drawing up or improving collective agreements. They can also use the collective complaints procedure to promote employee rights at national level. Nevertheless, certain trade unions do not enjoy real independence from their governments, which among other things prevents them from lodging collective complaints against their state.

Since the 1995 Protocol came into force, the majority of complaints have been lodged by INGOs. They have grasped the relevance of this instrument for securing recognition of rights. INGOs are increasingly arguing that social rights such as the rights to housing, food and care are fundamental, and inseparable from civil and political rights. They no longer hesitate to take their cases to the courts. Because they are in daily contact with individuals and the shortcomings in social rights from which those individuals suffer, the social partners and INGOs are well placed to influence and change attitudes.

3. The future of the European Social Charter

Any consideration of the Charter's future raises the issue of its standing as a human rights instrument and the effectiveness of the rights it protects. In the global economic context, it is necessary for such a treaty to exist and for the social and economic rights it embodies to be afforded the same status as civil and political rights.

For the Charter to perform its role to the full and defend and develop the rights it enshrines, several frequently identified problems have to be resolved. This European treaty suffers from a number of shortcomings whose causes have to be set right for it to carry its full weight.

A lack of visibility

If social and economic rights are to be more firmly established, the relevant treaties, including the Charter, need to be better known. Yet ordinary citizens, international and national non-governmental organisations, the social partners and states know little or nothing of the European Social Charter.

Despite the efforts of the Council of Europe, and above all the Department of the European Social Charter, it is still not sufficiently visible. There need to be more regular "marketing" operations, which in turn implies more financial and human resources.

When it considers national reports or collective complaints the European Committee of Social Rights could carry out visits to the states parties concerned. This would enable it not only to gain a better insight into the situation on the ground, but also to meet national non-governmental organisations, social partners and governments and explain and publicise the Charter and its supervisory arrangements.

Even in Strasbourg, the Committee could also consider opening its meetings to INGOs and the social partners by holding public hearings when it discusses national reports. These organisations could then consider the issues under review, add their own points of view and use their experience to improve the Committee's analyses of reports.

A better understanding of the Charter also entails a better understanding of the work of the European Committee of Social Rights. Over the years, as society has changed, the Committee's experts have enabled the treaty to evolve. The Committee's numerous and often creative conclusions have led to advances in legislation and practice. Unfortunately, little is known about this activity and the decisions receive insufficient publicity.

The Charter's Internet site is a useful tool that is accessible to all, but further efforts should be made to ensure that decisions taken by the European Committee of Social Rights, as well as by the Governmental Committee and the Committee of Ministers, reach the widest possible audience.

For example, civil society could use negative conclusions addressed to states to highlight gaps in national legislation. The same applies to decisions following collective complaints. Civil society has a key role to play in securing recognition of economic and social rights and using the tools offered by the Charter and exploiting the means of communication at its disposal can enable it to assert those rights.

The INGOs and social partners represented in the Council of Europe could also do more to promote the Charter and the collective complaints procedure within their own organisations and via their networks.

Similarly, universities should develop the teaching of the Charter in their courses. This would mean training would-be lawyers and judges to make better use of the Charter in their future careers and in cases concerned with social rights that may come before them.

Greater visibility for the Charter is therefore essential, but consideration also needs to be given to ways of developing the European Committee of Social Rights.

Developing the European Committee of Social Rights

The Committee has to be recognised as a judicial body in its own right and its decisions have to be deemed authoritative in this area. Governments should “fear” negative Committee conclusions more than they do at present, and domestic courts should refer more openly and systematically to the Charter.

Above all, for the Committee to be acknowledged as a judicial body it must be independent. Yet the Committee’s experts are still elected by the Committee of Ministers, a political body, and not by the Parliamentary Assembly, as provided for in the Protocol of Amendment of 1991, reforming the Charter’s supervisory machinery.

Moreover, its conclusions must be respected and followed up by the Governmental Committee and the Committee of Ministers. Their status as political bodies should enable them to play a major role in putting pressure on governments concerned by negative conclusions of the European Committee of Social Rights. However, this option is not sufficiently exploited because the national representatives on these two bodies are often reluctant to vote in favour of a recommendation. Besides, the place of these two political committees in a judicial procedure, or one that wishes to be considered as such, may need to be questioned.

The Committee of Ministers’ role needs to be clarified. In response to the first collective complaint lodged in 2000 by the *Confédération Française de l’Encadrement (CFE CGC) v. France*, it adopted a resolution⁵⁷ that ran partially counter to the European Committee’s conclusion. When the same organisation lodged a second complaint in 2003, the Committee challenged the position adopted by the Committee of Ministers, stating that:

it is clear from the wording of the Protocol providing for a system of collective complaints that only the European Committee of Social Rights can determine whether or not a situation is in conformity with the Charter ... The explanatory

57. Resolution ResChS(2002)4.

report to the Protocol explicitly states that the Committee of Ministers cannot reverse the legal assessment made by the Committee of independent experts, but may only decide whether or not to additionally make a recommendation to the state concerned.⁵⁸

This reminder of the role of the European Committee of Social Rights is important, because it concerns its legitimacy as an independent Charter supervisory body. The Committee of Ministers should not continue along this path, but adopt positions that are less uncertain and more in line with the Committee's decisions.

In connection with the Committee's independence, questions may also be raised about the role of an observer from the ILO in what is practically a judicial body. The ILO is a tripartite organisation made up of employers, trade unions and state representatives. It played a very important role in drawing up the Charter and has contributed its knowledge and experience to the establishment of the supervisory systems. Nevertheless, its activities focus on the workplace whereas the Charter's much broader remit is to protect a whole body of economic and social rights. Moreover, the presence of an ILO observer may cause problems, since he or she may be in the position of judge and party at one and the same time. Thus trade unions and employers' organisations can present collective complaints while government representatives defend their positions before the European Committee of Social Rights.

So as a quasi-judicial body, the European Committee of Social Rights should rely on independent and impartial members specialising in social rights in their entirety.

Towards an evolution of the European Social Charter

The Charter is the most comprehensive convention concerned with all economic and social rights. Nevertheless, a number of shortcomings remain that slightly impair its status as a human rights treaty and prevent it from occupying the same rung as the European Convention on Human Rights.

58. *Confédération Française de l'Encadrement (CFE CGC) v. France*, Complaint No. 16/2003 decision on the merits of 12 October 2004.

First, it would be desirable, as with the European Convention on Human Rights, for ratification of the Charter and its protocols to be mandatory for all member states and an absolute condition of their membership of the Council of Europe. However, if the ratification conditions do remain unaltered, countries that have not already done so should ratify the revised Charter as rapidly as possible.

The core provisions should be extended to include others that are essential for intrinsically protecting social rights, such as: the right to a fair remuneration (Article 4), the right to protection against poverty and social exclusion (Article 30) and the right to housing (Article 31).

Two other provisions should be removed if the Charter is to be considered a treaty that guarantees the same rights to everyone.

Under paragraph 1 of the Appendix to the revised Charter:

the persons covered (...) include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned (...).

The rights embodied in the Charter do not therefore extend to all citizens, even though in practice the European Committee of Social Rights has dealt with this article in one of its decisions on the merits of a collective complaint.⁵⁹ It refers to a judgment of the European Court of Human Rights (*Thlimmenos v. Greece*, No. 34369/97) and states that:

the principle of equality ... means treating equals equally and unequals unequally. ... In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality.

Article 1 of the Appendix continues: "This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties." However, such an extension should be the rule, not the exception.

Another provision has excited considerable controversy: Article I.2 of Part V of the revised Charter and Article 33 of the 1961 Charter. These stipulate that: "compliance ... shall be regarded as effective if the provisions are applied ...

59. *Autisme Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003.

to the great majority of the workers concerned." Even though these articles only apply to a limited number of provisions it means that not all workers are covered and the Social Charter does not guarantee the same rights to all citizens.

The European Committee of Social Rights has ruled that if 80 per cent of persons are covered, the conditions will have been met. It has also stated that:

the application of Article I of the revised Social Charter cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.⁶⁰

These clarifications by the Committee help to reduce the risks and limit the scope of these articles. Nevertheless, they do threaten the Charter's legitimacy as a human rights instrument since the protection afforded by this treaty should benefit everyone.

These Charter provisions should therefore be removed if it is to correspond with the European Convention on Human Rights, Article 1 of which states that "the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention" (emphasis added).

The future of the supervisory machinery

The European Social Charter suffers from a lack of recognition that can be attributed to its supervisory system, whose main power of sanction is political pressure on non-compliant states. Some form of financial penalty might perhaps encourage states to come more rapidly into line with the Charter, thus offering a more effective guarantee of the rights it embodies. This would also be a way of persuading INGOs and ordinary citizens of the Charter's value.

One of the major difficulties raised by a system of compensating victims is that complaints can only be submitted on a collective basis. Compensating a group of persons may be more complicated than compensating a single

60. *Confédération Française de l'Encadrement (CFE CGC) v. France*, Complaint No. 16/2003, decision on the merits of 16 November 2001.

individual. Nor has the European Committee of Social Rights ever ruled in favour of a request from complainant organisations for compensation.

Nevertheless, in the case of individual applications before domestic courts relying on Charter provisions, it is possible that even judges who did not consider themselves competent to rule on such cases might at least respond to victims' requests for compensation. Based on the principle that in ratifying the Charter, states have undertaken to abide by its provisions, courts might decide to rule on this obligation and hand down a decision in favour of compensating victims.

Such a procedure could apply to all international treaties to increase their standing with the public and encourage governments to respect the undertakings they are bound by as a result of ratification.

The Charter supervisory system requires complaints lodged by organisations to be collective. In fact, to give Charter rights their full value it would also be helpful to permit individual complaints. Citizens would then have the opportunity to take alleged violations of their social rights to the body responsible for the Charter's application, quite aside from their domestic courts. This would offer them an additional avenue of appeal, and also help to highlight the value of the Charter supervisory system.

And if, in the end, such an approach is never adopted, there are still possible changes to the collective complaints procedure to consider. The organisations that are authorised to submit complaints do not always have the assistance and human and legal resources necessary to benefit from this facility. It would be helpful to simplify the procedure and/or establish a body within the Council of Europe to assist complainants. This could enable the organisations concerned to make more use of this option, which in turn would strengthen the safeguards that Charter rights offer.

Co-operation with other international treaties and with the European Union

Numerous international treaties include a certain number of social and economic rights but what may be a strength may also hinder the defence of these rights. Care has to be taken to ensure that treaties drawn up by the United Nations, the International Labour Organisation or the Council

of Europe do not adversely affect each other. The UN recently adopted a resolution⁶¹ that praised the benefits of co-operation between it and the Council of Europe and the activities of the latter, and in particular of the European Committee of Social Rights.

[The UN] recognises the role of the revised European Social Charter and of the European Committee of Social Rights in protecting economic and social rights ... and confirms its support for co-operation between the two organisations in the social and cultural fields, in particular with respect to the eradication of poverty, the protection and promotion of the rights and dignity of persons with disabilities, encouraging the integration of migrants and refugees, strengthening social cohesion, the fight against maternal and child mortality, and ensuring protection of economic, social and cultural rights for all.

Co-operation between the two organisations and a shared commitment do exist and are very necessary. The problem, though, is the possibility of multiple forms of redress. Thus, individuals and civil society organisations wishing to lodge an application with an international body may find themselves unable to choose between the numerous existing procedures.

The right to present collective complaints is usually one of the remedies laid down in international treaties but the UN has also recently introduced an individual communications procedure, available to individual applicants. However, this option does not apply to all UN conventions. It only appears in the additional protocols to three conventions, Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination. These differences increase still further the number and complexity of procedures available to citizens.

Article 6 of the Lisbon Treaty provides the necessary legal backing for the European Union's accession to the Convention. It is also provided for in Article 14 of the Convention, as amended by Protocol 14. This is an important advance. It will offer European Union citizens the same protection of their civil and political rights as that currently guaranteed by the member states. However, despite the general recognition that civil and social rights

61. Resolution 65/130 adopted by the General Assembly of the UN on 24 February 2011: Co-operation between the United Nations and the Council of Europe.

are interdependent, the European Union is not yet ready for a comparable ratification of the European Social Charter. Instead it has opted to append to the Lisbon Treaty its own Charter of Fundamental Rights, which includes a few social rights.

Nevertheless, collaboration between the European Union and the Council of Europe's Charter could still be possible, based on an existing Union body, the Agency for Fundamental Rights. The Agency contributes to our knowledge and understanding of fundamental rights, confined to civil and political rights, in the European Union. Various bodies assist it in this task, notably the Council of Europe. However, it would be well advised to rely more on the Charter if it is to carry out its role to the full.

It is essential for economic and social rights, which already suffer from a lower level of esteem, to be dealt with in a more coherent fashion. This applies both to their drafting and to the way they are monitored by the various existing supervisory bodies.

Greater complementarity between the Social Charter and the European Convention on Human Rights⁶²

The Social Charter and the Convention both enshrine human rights that are indivisible and inseparable, but as has been frequently noted, the Charter does not benefit from the same recognition as the Convention. Cooperation between the two supervisory systems is therefore desirable. Both conventions, and above all the Charter, would benefit from the strengths of the two sets of supervisory arrangements, which would thus offer better protection for citizen's rights.

The Council of Europe's Parliamentary Assembly has already suggested changes to the treaties that would embody their complementary aspects. In two recommendations in 1998 and 1999, it proposed the establishment of a parallel court to the European Court of Human Rights. It also called for certain rights in the Charter to be incorporated into the Convention, in order to benefit from the remedies offered by the European Court of Human Rights.

62. See Jean-François Akandji-Kombé, "Charte sociale européenne et Convention européenne des droits de l'homme: quelles perspectives pour les 10 prochaines années", in *La Charte sociale européenne: une constitution sociale pour l'Europe*, Bruylant, 2010 (French only).

The disadvantage of these two approaches is that they require amendments to both conventions. However, there are easier and less unwieldy solutions. The Charter and the Convention include rights that are undoubtedly inseparable. Including them in separate treaties helps to emphasise their variety, importance and complementarity.

Moreover, each of the two systems has its advantages and disadvantages. Thus the European Court of Human Rights allows citizens to lodge individual applications. The alleged violations are examined case by case and victims can request compensation. If all domestic remedies have been exhausted, applicants can still secure redress in the Court. The Court's decisions are binding. A finding that a state has failed to fulfil its practical obligations may then apply to comparable situations. The Court's judgments often receive wide coverage and force governments to respond more rapidly. However, the Court's high recognition factor also reduces its effectiveness, because it suffers from an excessive workload linked to the number of applications it receives. This means that victims only obtain redress long after the events in question.

The Charter supervisory system includes a collective complaints procedure. One of its strengths is that complaints can be lodged about situations affecting groups of people, without the need to exhaust domestic remedies. The process only takes a few months and offers INGOs and the social partners an important and status-enhancing role. The reporting system enables the experts of the European Committee of Social Rights to carry out regular and long-term checks on whether the situation in individual countries is compatible with the Charter. Finally, the Committee's decisions force states to modify existing or establish new practices, laws and action programmes. No need, therefore, to renounce the positive and unique aspects of the Charter supervisory system, which deserves wider public recognition.

Keeping the two supervisory systems makes it possible to deal with situations from different perspectives. This should not prevent the two supervisory bodies from co-operating to ensure that rights are safeguarded as fully and effectively as possible. If the systems are retained, a significant and growing problem will remain, linked to the complementary nature of civil and political and social and economic rights.

Because of its high visibility, applicants often bring cases with social rights aspects to the European Court of Human Rights. Such applications

are frequently found to be inadmissible before even reaching the Court. Examples include *Paneenko v. Latvia* in 1999, where the applicant alleged a violation of the right to work, and *Salveti v. Italy* in 2002, concerning the right to free medical assistance.

Yet the Court has already refused to reject a case involving social and economic rights, as stated in the 1979 *Airey v. Ireland* judgment:

Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers, like the Commission, that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention.

The Court does not always take the same stance, as shown by the *Botta v. Italy* judgment of 24 February 1998. In this case, the applicant, who was physically disabled, claimed that he had been unable to use private bathing establishments that prevented persons with disabilities from gaining access to the beach and the sea. The Court dismissed the case because it considered that the articles relied on did not apply. Nevertheless, a closer examination of the judgment reveals a reference to the Charter: “the social nature of the right concerned required more flexible protection machinery, such as that set up under the European Social Charter.” In answer to the applicant’s claim that the Italian Government had failed to take appropriate steps to ensure he had access to the beach, the Court said that “this approach was likely to transform the Convention institutions into arbiters of the social policies of the States party to the Convention, a role which did not form part of either the object or the purpose of the Convention”.

The fact that the Convention and the Charter embody rights that are occasionally similar can cause problems both for applicants and for the Court, which sometimes has to rule on cases concerned with social rights. The disadvantage of this situation is that there may be victims whose violations are never dealt with and whose social rights are not, finally, protected.

It would be sensible to establish a body that could advise and guide applicants on how to lodge their application with the “right” institution. The Court would thus be less overloaded with social rights cases and those

concerned would receive a response to their applications from the European Committee of Social Rights.

The links between the Court and the Committee also need to be strengthened. The two have the same objective, namely to protect human rights, and both work under the auspices of the Council of Europe.

Such co-operation would help to ensure that the two bodies did not reach different, or even conflicting, decisions, and that each one's case law benefited from that of the other.

One possible link between the two bodies would be to allow them to offer opinions on each other's cases. For example, the Committee could advise the Court on cases concerning social rights. Similarly, the Committee could request the Court's opinion when cases at least partly concerned rights set forth in the Convention. Such a procedure would make it possible to seek the opinion of experts from both institutions and to ensure that applications were not rejected because the body concerned did not consider itself to have jurisdiction. This in turn would make the rights laid down in the Charter and the Convention more effective.

Such interaction would be possible, because Article 36.2 of the Convention reads:

The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Committee experts could be identified as such "persons concerned".

The Rules of Procedure of the European Committee of Social Rights also include a Rule 32 on "Third Party Intervention", but here the third parties are defined as "the States party to the Protocol as well as the States having ratified the Revised Social Charter" and the international organisations of employers and trade unions operating under the collective complaints procedure. Nevertheless, the Committee could amend its Rules of Procedure to include the European Court of Human Rights in the third parties so that it could add its own observations.

Co-operation between the Council of Europe's two flagship treaties could and should be envisaged so that experts from the European Committee of

Social Rights and judges of the European Court of Human Rights can benefit mutually from each other's experience. And European citizens would only gain in terms of their level of protection.

Making the indivisibility of human rights a reality

Now is surely the time to make economic and social rights an integral part of the fundamental rights system. The rule of law and democracy, so much lauded by member states and European and international organisations, are inextricably bound up with the need for economic and social safeguards. The very existence of democracy presupposes the existence of fundamental freedoms. Economic, social and cultural rights are the underpinning of civil and political rights. To remain in poverty is to be deprived of one's liberty. Failing to protect the right to form trade unions removes the guarantee of employment freely entered into and undertaken in decent working conditions.

Social, economic and cultural rights should enjoy the same recognition, and therefore be just as enforceable, as their civil and political counterparts. This is the only way of ensuring that the fundamental rights of all citizens will be guaranteed. This depends on the will and sense of responsibility of governments, but also of national and international courts.

Conclusion

The 50th anniversary of the European Social Charter is an opportunity to review the present situation and to look to the future. Consideration of the Charter, the way it has evolved since its inception and the rights it enshrines shows that it has now become a fully fledged European, and even international, instrument for defending social, economic and cultural rights.

The current political and economic climate is very different from that of 1961, when the first Charter made its appearance. At the time, the Council of Europe's founding states were still profoundly influenced by their wartime experience and wished above all to establish firm foundations for democracy, the rule of law and fundamental freedoms for all their citizens. This political commitment was reflected in the European Convention on Human Rights and the European Social Charter. European citizens were endowed with fundamental rights guaranteed by democratic societies, with constitutional force, and by international treaties.

So the question now is whether, against a background of free-market economics and globalisation, there is still the same political determination to safeguard fundamental rights. Or is there a danger of economic and social rights being sacrificed on the altar of economic growth?

This would be to ignore the fact that protecting fundamental, including social, rights helps to stabilise democracy. Popular uprisings are a response to repression and a lack of freedom and decent living conditions. Economic and social rights can also help societies to avoid collapse and cushion the effects of economic crises.

This is why democratic societies must continue to pay heed to the rights enshrined in the European Social Charter and other human rights conventions.

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- Vandamme F., "La relance de la Charte sociale européenne", *Revue Quart-Monde*, September 2008/3, No. 207, pp. 8-12.

Verdier J-M., "Des valeurs à garantir et des défis à relever dans le respect de la diversité des cultures", *Les droits sociaux dans les instruments européens et internationaux – Défis à l'échelle mondiale*, Bruylant, 2008, pp. 417-420.

Conventions, treaties

Charter of Fundamental Rights of the European Union

European Social Charter of 1961 and Revised Version

Charter of the United Nations

European Convention on Human Rights

Constitution of the International Labour Organization

International Pact on Civil and Political Rights

International Pact on Economic, Social and Cultural Rights

Treaty of Amsterdam

Treaty of Maastricht

Treaty of Nice

Internet sites, blogs

Social Charter: www.coe.int/t/dghl/monitoring/socialcharter/default_EN.asp?

Council of Europe: www.coe.int/defaultfr.asp

European Union: http://europa.eu/index_en.htm

ILO: www.ilo.org/global/lang--ENr/index.htm#a2

UN: www.un.org/en/

Blog Combat pour les droits de l'homme: combatsdroitshomme.blog.lemonde.fr/

Document "Justiciabilité des droits sociaux":

http://droits-sociaux.u-paris10.fr/assets/files/dossiers/Synthese_rapport_axe2.pdf Droits des pauvres, pauvres droits ? Recherche sur la justiciabilité des droits sociaux Recherche dirigée par Diane Roman, Professeure de droit public, Ecole des Hautes Etudes en Santé Publique (EHESP), pour le Centre de Recherches sur les droits fondamentaux (CREDOF), Université Paris Ouest Nanterre la Défense

Appendices

Appendix I – Opening address by Mr Polys Modinos, Deputy Secretary General of the Council of Europe, at the first session of the Committee of Independent Experts of the European Social Charter on 16 December 1966

At its first session back in 1949, our Consultative Assembly asked Council of Europe member states to ensure that the rights and freedoms which are the common denominator of our political institutions be recognised and safeguarded. The Assembly had taken care to point out that “professional freedoms and social rights, which have themselves an intrinsic value, must also, in the future, be defined and protected”. “Everyone will, however, understand,” continued Europe’s founding fathers, “that it is necessary to begin at the beginning and to guarantee political democracy in the European Union and then to co-ordinate our economies, before undertaking the generalisation of social democracy”.

As I have already had occasion to write, democracy calls itself political and needs to be social.

For what is the use in protecting family life if there is no security against unemployment? What is the use in having equality before the law if there is inequality in the means and opportunities available to citizens? And what is the use of that supreme right of any democratic system, namely the right to vote, if citizens cannot exercise it in a dignified manner, for the public good?

The greatest of all challenges is to achieve equal recognition and equal protection of civil, political, economic and social rights.

It is important that civil and political rights and socio-economic rights not be separated into two distinct groups, for let's not forget that it was this tension that gave rise to fiercely conflicting doctrines. All of these rights are equal and indivisible. It is not a question of choosing between them. If you do away with one, you do away with all. There is no such thing as a partial democracy.

It was a most welcome development, therefore, when first the Assembly and then the Committee of Ministers decided to follow up the Convention on Human Rights with a European Social Charter ... it took several years of tricky discussions and negotiations before the Charter was finally opened for signature by Council of Europe member states in Turin on 18 October 1961.

...

There may be disappointment in some quarters that the Social Charter has not mirrored the European Convention on Human Rights in terms of the functioning and extent of the joint and several guarantee between the Contracting Parties. It is one thing to "make to each Contracting Party any necessary recommendations"; it is quite another to institute, as the Convention on Human Rights does, bodies responsible for ensuring compliance with the commitments entered into.

Others might have hoped that the Social Charter would cover all those areas where the social sphere comes into contact with the economic sphere, thus meeting the ever increasing imperatives of modern civilisation. That is not in any way, however, to diminish the achievement of those who framed this legal instrument and, above all, of those states which have accepted it.

I am particularly pleased to have this opportunity to convey ... how indebted our institution is to the International Labour Organization. Without the ILO's support and assistance, our task would have seemed insurmountable. In expressing our gratitude, I wish to assure the ILO that we remain faithful to the spirit of cooperation that has always characterised our relations with it. This coordination is all the more important today due to the need to prevent social rights from being interpreted or applied differently, within our European family. Let's not forget either that we were largely guided by the ILO's experience when setting up the Committee of Experts, through Article 25.

One only has to read this article to appreciate the full importance of your task. First, there is the fact that yours is a restricted committee comprising a maximum of seven members, appointed by the Committee of Ministers, which is the executive body of the Council of Europe. In addition to this safeguard concerning the choice and appointment of members, there are many others. Article 25 requires that you be “independent” of your governments, in the same way that we, as international civil servants, are. As well as being of the highest integrity, you must also be of “recognised competence in international social questions”.

You, gentlemen, meet all these criteria perfectly. And since institutions are only as good as the people that run them, I can safely say that your competence is a guarantee that you will succeed in the tasks before you.

There are some opinions that are worth more than binding decisions, just as there are some Committee of Experts conclusions that have the same force as final judgments. It all depends on how the tasks are performed. I will not attempt to conceal from you the magnitude of the difficulties that lie ahead, or the fact that caution must go hand in hand with science and wisdom with progress. Legislation is never final. Laws that serve people evolve and adapt to the world around them. It is this march towards the future that you are asked to embark upon. With that hope, I am pleased to declare the first meeting of the Committee of Experts of the European Social Charter open.

Appendix II – List of collective complaints

No. 66/2011 General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece

No. 65/2011 General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece

No. 64/2011 European Roma and Travellers Forum (ERTF) v. France

No. 63/2010 Centre on Housing Rights and Evictions (COHRE) v. France

No. 62/2010 International Federation for Human Rights (FIDH) v. Belgium

No. 61/2010 European Roma Rights Centre (ERRC) v. Portugal

No. 60/2010 European Council of Police Trade Unions (CESP) v. Portugal

No. 59/2009 European Trade Union Confederation (ETUC) / Centrale Générale des Syndicats Libéraux de Belgique (CGSLB) / Confédération des Syndicats chrétiens de Belgique (CSC) / Fédération Générale du Travail de Belgique (FGTB) v. Belgium

No. 58/2009 Centre on Housing Rights and Evictions (COHRE) v. Italy

No. 57/2009 European Council of Police Trade Unions (CESP) v. France

No. 56/2009 Confédération Française de l'Encadrement (CFE-CGC) v. France

No. 55/2009 Confédération Générale du Travail (CGT) v. France

No. 54/2008 European Council of Police Trade Unions (CESP) v. France

No. 53/2008 European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia

No. 52/2008 Centre on Housing Rights and Evictions (COHRE) v. Croatia

No. 51/2008 European Roma Rights Centre (ERRC) v. France

No. 50/2008 Confédération Française Démocratique du Travail (CFDT) v. France

No. 49/2008 International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece

No. 48/2008 European Roma Rights Centre (ERRC) v. Bulgaria

No. 47/2008 Defence for Children International v. The Netherlands

- No. 46/2007 European Roma Rights Centre (ERRC) v. Bulgaria
- No. 45/2007 International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia
- No. 44/2007 International Helsinki Federation for Human Rights (IHF) v. Bulgaria
- No. 43/2007 Sindicato dos Magistrados do Ministério Público (SMMP) v. Portugal
- No. 42/2007 International Federation for Human Rights (FIDH) v. Ireland
- No. 41/2007 Mental Disability Advocacy Center (MDAC) v. Bulgaria
- No. 40/2007 European Council of Police Trade Unions (CESP) v. Portugal
- No. 39/2006 European Federation of National Organisations Working with the Homeless (FEANTSA) v. France
- No. 38/2006 European Council of Police Trade Unions (CESP) v. France
- No. 37/2006 European Council of Police Trade Unions (CESP) v. Portugal
- No. 36/2006 Frente Comum de Sindicatos da Administração Pública v. Portugal
- No. 35/2006 Federation of Finnish Enterprises v. Finland
- No. 34/2006 World Organisation Against Torture (OMCT) v. Portugal
- No. 33/2006 International Movement ATD Fourth World v. France
- No. 32/2005 European Trade Union Confederation (ETUC), Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" (CL "Podkrepa") v. Bulgaria
- No. 31/2005 European Roma Rights Centre (ERRC) v. Bulgaria
- No. 30/2005 Marangopoulos Foundation for Human Rights (MFHR) v. Greece
- No. 29/2005 Syndicat des hauts fonctionnaires (SAIGI) v. France
- No. 28/2004 Syndicat national des dermato-vénérologues (SNDV) v. France
- No. 27/2004 European Roma Rights Centre (ERRC) v. Italy
- No. 26/2004 Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France
- No. 25/2004 Centrale générale des services publics v. Belgium
- No. 24/2004 Syndicat SUD Travail Affaires Sociales v. France

- No. 23/2003 Syndicat occitan de l'éducation v. France
- No. 22/2003 Confédération Générale du Travail (CGT) v. France
- No. 21/2003 World Organisation against Torture (OMCT) v. Belgium
- No. 20/2003 World Organisation against Torture (OMCT) v. Portugal
- No. 19/2003 World Organisation against Torture (OMCT) v. Italy
- No. 18/2003 World Organisation against Torture (OMCT) v. Ireland
- No. 17/2003 World Organisation against Torture (OMCT) v. Greece
- No. 16/2003 Confédération Française de l'Encadrement (CFE-CGC) v. France
- No. 15/2003 European Roma Rights Centre (ERRC) v. Greece
- No. 14/2003 International Federation for Human Rights Leagues (FIDH) v. France
- No. 13/2002 International Association Autism-Europe (IAAE) v. France
- No. 12/2002 Confederation of Swedish Enterprise v. Sweden
- No. 11/2001 European Council of Police Trade Unions v. Portugal
- No. 10/2000 Tehy ry and STTK ry v. Finland
- No. 9/2000 Confédération Française de l'Encadrement (CFE-CGC) v. France
- No. 8/2000 Quaker Council for European Affairs (QCEA) v. Greece
- No. 7/2000 International Federation for Human Rights (FIDH) v. Greece
- No. 6/1999 Syndicat National des Professions du Tourisme v. France
- No. 5/1999 European Federation of Employees in Public Services (EUROFEDOP) v. Portugal
- No. 4/1999 European Federation of Employees in Public Services (EUROFEDOP) v. Italy
- No. 3/1999 European Federation of Employees in Public Services (EUROFEDOP) v. Greece
- No. 2/1999 European Federation of Employees in Public Services (EUROFEDOP) v. France
- No. 1/1998 International Commission of Jurists (ICJ) v. Portugal

Appendix III – List of INGOs entitled to submit collective complaints

(http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/INGOListJuly2010_en.pdf)

Organisations registered for a period of four years:

1 July 2007 – 30 June 2011

1. European Action of the Disabled (AEH)
2. International Alliance of Women (IAW)
3. Amnesty International (AI)
4. Caritas Internationalis (Caritas)
5. European Council of WIZO Federations (ECWF)
6. Marangopoulos Foundation for Human Rights (MFHR)
7. Médecins du Monde (MDM)/Doctors of the World

Organisations registered for a period of four years:

1 July 2008 – 30 June 2012

8. European Council for Classical Homeopathy (ECCH)
9. European Association for Psychotherapy (EAP)

Organisations registered for a period of four years:

1 January 2009 – 31 December 2012

10. Lesbian, Gay, Bisexual, Trans and Intersex Association – European Region (ILGA - Europe)
11. Mental Disability Advocacy Center (MDAC)
12. Centre on Housing Rights and Evictions (COHRE)
13. European Federation of National Organisations Working with the Homeless (FEANTSA)
14. European Disability Forum (EDF)
15. Foodfirst Information and Action Network (FIAN)

Organisations registered for a period of four years:

1 July 2009 – 30 June 2013

16. Open Society Institute (OSI)

Organisations registered for a period of four years:

1 January 2010 – 31 December 2013

17. Soroptimist International of Europe (SI/E)

Organisations registered for a period of four years:

1 July 2010 – 30 June 2014

18. International Union of Tenants (IUT)

19. Alzheimer Europe (AE)

20. Association for the Study of the World Refugee Problem (AWR)

21. Association for the Protection of all Children – Approach – Limited

22. European Association of Training Centres for Socio-Educational Care Work (FESET)

23. European Association of Railwaymen

24. European Association of Teachers (EAT)

25. Association of Women of Southern Europe (AFEM)

26. International Association Autism-Europe (IAAE)

27. International Association of Charities (AIC)

28. World Association of Children's Friends (AMADE)

29. Hospital Organisation of Pedagogues in Europe (HOPE)

30. European Centre of the International Council of Women (ECICW)

31. European Roma Rights Centre (ERRC)

32. International Centre for the Legal Protection of Human Rights (INTERIGHTS)

33. International Commission of Jurists (ICJ)

34. European Committee for the Education of Children and Adolescents who are Intellectually Advanced, Highly Gifted, Talented (EuroTALENT)

35. European Confederation of Police (EuroCOP)

36. European Confederation of Independent Trade Unions (CESI)

37. Conference of European Churches (CEC)
38. International Scientific Conference Minorities for Europe of Tomorrow (ISCOMET)
39. European Council of Police Trade Unions (CESP)
40. International Council on Social Welfare (ICSW)
41. International Rehabilitation Council for Torture Victims (IRCT)
42. Defence for Children International (DCI)
43. Federation of Catholic Family Associations in Europe (FAFCE)
44. European Federation of Public Service Employees (EUROFEDOP)
45. International Federation of Associations of the Elderly (FIAPA)
46. International Federation for Human Rights (FIDH)
47. International Federation of Musicians (FIM)
48. International Federation for Peace and Conciliation
49. International Federation for Spina Bifida and Hydrocephalus (IF)
50. International Federation of Persons with Physical Disability (FIMITIC)
51. International Planned Parenthood Federation – European Network (IPPF EN)
52. Mentor
53. European Roma and Travellers Forum (ERTF)
54. Inclusion Europe
55. European Ombudsman Institute (EOI)
56. Education International (EI)
57. International League against Racism and Antisemitism (LICRA)
58. Lions Clubs International, European Districts (LCI)
59. European Judges for Democracy and Liberties (MEDEL)
60. International Movement ATD Fourth World
61. European Organisation of Military Associations (EUROMIL)
62. Disabled People's International (DPI)
63. World Organisation Against Torture (OMCT)
64. Rehabilitation International (RI)

65. European Anti Poverty Network (EAPN)
66. Mental Health Europe (MHE)
67. European Blind Union (EBU)
68. European Union of Women (EUW)
69. European Union of Rechtspfleger (EUR)
70. European Union of the Deaf (EUD)
71. International Association of Lawyers (UIA)
72. International Union of European Guides and Scouts (IUEGS)
73. International Humanist and Ethical Union (IHEU)
74. International Professional Union of Gynecologists and Obstetricians (UPIGO)
75. Zonta International (ZI)

Appendix IV – Greece and the European Social Charter

(http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Greece_en.asp)

Ratifications

Greece ratified the European Social Charter on 6 June 1984 and accepted 67 of the Charter's 72 paragraphs.

It signed the Revised European Social Charter on 3 May 1996 but has not yet ratified it.

It ratified the Additional Protocol to the European Social Charter on 18 June 1998.

It ratified the Additional Protocol providing for a system of collective complaints on 18 June 1998, but has not yet made a declaration enabling national NGOs to submit collective complaints.

Table of accepted provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	3.1	3.2	3.3
4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3	6.4	7.1	7.2
7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1	8.2	8.3	8.4
9	10.1	10.2	10.3	10.4	11.1	11.2	11.3	12.1	12.2	12.3	12.4
13.1	13.2	13.3	13.4	14.1	14.2	15.1	15.2	16	17	18.1	18.2
18.3	18.4	19.1	19.2	19.3	19.4	19.5	19.6	19.7	19.8	19.9	19.10
AP1	AP2	AP3	AP4								

AP = Additional Protocol

Green = Accepted provisions

The Charter in domestic law

Under Article 28.1 of the Constitution: "International conventions as of the time they are sanctioned by statute and become operative according to their

respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity."

Reports

Between 1986 and 2009, Greece submitted 20 reports on the application of the Charter.

The 20th report on the accepted provisions of Thematic Group 3 "Labour rights" (Articles 2 and 4 of the Charter and Articles 2 and 3 of the Additional Protocol of 1988) was submitted on 9 December 2009. Conclusions in respect of these provisions were published in December 2010.

The next report will focus on the accepted provisions relating to Thematic Group 4 "Children, families, migrants", that is:

- the right of children and young persons to protection (Article 7);
- the right of employed women to protection of maternity (Article 8);
- the right of the family to social, legal and economic protection (Article 16);
- the right of children and young persons to social, legal and economic protection (Article 17);
- the right of migrant workers and their families to protection and assistance (Article 19).

It was due by 31 October 2010.

Situation of Greece with respect to the application of the Charter

Examples of progress achieved in the implementation of social rights under the Social Charter:

Children

- Minimum age for employment set at 15 (Act No. 1837/1989). Application of the general ban on employment of children to children working in

family businesses in the agricultural, forestry and livestock sectors (Presidential Decree No. 62/1998)

- Extension of the ban on night work to young persons employed in family businesses in the agricultural, forestry and livestock sectors (Act No. 2956/2001) and in the maritime and fishing industries (Presidential Decree No. 407/2001).
- Measures to combat trafficking in human beings, sexual and economic exploitation and child pornography (Act No. 3064/2002).
- Explicit ban on the corporal punishment of secondary school pupils (Act No. 3328/2005).

Non-discrimination (nationality)

- Equal employment rights for Greek citizens and all foreign nationals lawfully working in Greece, with no discrimination, racial or otherwise (Presidential Decrees No. 358/97 and 359/97).
- Eligibility of foreign nationals of states parties for all vocational guidance and training programmes organised by the state employment office (OAED) and for equal treatment regarding all types of training allowances (Act No. 2224/1994).

Non-discrimination (sex)

- Same criteria for both sexes for admission to police training college (Act No. 3103/2003).
- Adoption of Law 3488/2006 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Non-discrimination (disability)

- Anti-discrimination legislation explicitly prohibiting direct and indirect discrimination in employment on the ground, *inter alia*, of disability (Act No. 3304/2005).

Employment

- Increased penalties for discrimination and new right of redress before the courts (Act No. 2639/1998).
- Clarification of the definition of state of emergency and thus of the circumstances when the population can be mobilised (Act No. 2936/2001).
- More restrictive definition of cases where criminal penalties may be imposed on seamen refusing to work, where the safety of persons, the vessel or the cargo is imperilled or where there are threats to the environment, public order and public health (Act No. 2987/2002).
- Reduction in the period of duty of career military officers from 25 to about 10 years (Act No. /2003).
- Prohibition of dismissal of employees of the merchant navy during pregnancy (presidential decree of 1997).

Movement of persons

- Simplification of the procedures for issuing work and residence permits (Act No. 3386/2005 on foreign nationals' entry into Greece, and their residence and social integration).
- Repeal of Article 19 of the Nationality Code, under which Greek nationals leaving the country with no intention of returning could be deprived of their Greek nationality (Act No. 2623/1998).

Social Protection

- The National Social Cohesion Fund was established in 2008 (Law 3631/2008) with the aim to support the most vulnerable groups at risk of poverty through targeted income support.

Education

- Adoption of Law 3304/2005 on equal treatment explicitly prohibits direct and indirect discrimination in access to all kinds and levels of vocational orientation, vocational training, advanced training and vocational reorientation.

Cases of nonconformity

Thematic Group 1 “Employment, training and equal opportunities”

- Article 1.2 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects):
 - access to civil service posts and to “related activities” is closed to non-EU and non-EEA nationals;
 - the length of alternative service, usually double that of compulsory military service, constitutes a disproportionate limitation on the worker’s right to earn a living in an occupation freely entered upon (Conclusions XIX-1).
- Article 15.1 (and Article 1.4) – Right of physically or mentally disabled persons to vocational training, rehabilitation and social settlement – Education and training for persons with disabilities:
 - there is no legislation protecting persons with disabilities from discrimination in education (Conclusions XIX-1).

Thematic Group 2 “Health, social security and social protection”

- Article 3.1 – Right to safe and healthy working conditions - Safety and health regulations:
 - self-employed workers are not sufficiently covered by the occupational health and safety regulations (Conclusions XIX-2).
- Article 3.2 – Right to safe and healthy working conditions – Enforcement of safety and health regulations:
 - it has not been established that the labour inspection services are effective (Conclusions XIX-2).
- Article 11.3 – Right to protection of health – Prevention of diseases and accidents:
 - it has not been demonstrated that the measures taken to reduce the high level of tobacco consumption are adequate;
 - it has not been demonstrated that sufficient measures have been adopted during the reference period to improve the right to a healthy

environment for persons living in lignite mining areas (follow up to *Marangopoulos Foundation for Human Rights v. Greece* complaint 30/2005, decision on the merits of 6 December 2006) (Conclusions XIX-2).

- Article 12.1 – Right to social security – Existence of a social security system:
 - the minimum unemployment benefit for beneficiaries without dependants is manifestly inadequate (Conclusions XIX-2).
- Article 12.4 – Right to social security – Social security of persons moving between states:
 - accumulation of insurance or employment periods completed by nationals of States Parties not covered by Community regulations or by bilateral agreements is not guaranteed (Conclusions XIX-2).
- Article 13.1 – Right to social and medical assistance – Adequate assistance for every person in need:
 - there is no legally established general assistance scheme that would ensure that everyone in need has an enforceable right to social assistance (Conclusions XIX-2).
- Article 13.4 – Right to social and medical assistance – Specific emergency assistance for non-residents:
 - it has not been established that all persons, without resources, unlawfully present in Greece may be granted emergency medical and social assistance (Conclusions XIX-2).

Thematic Group 3 “Labour rights”

- Article 2.2 – Right to just conditions of work – Public holidays with pay:
 - work performed on a public holiday is not compensated at a sufficiently high level (Conclusions XIX-3).
- Article 2.4 – Right to just conditions of work – Reduced working hours or additional holidays in dangerous or unhealthy occupations:
 - some workers in the mining industry do not benefit from compensatory measures due to the arduous nature of their work (Conclusions XIX-3).

-
- Article 2.5 – Right to just conditions of work – Weekly rest period:
 - domestic staff and seamen are not covered by the legislation guaranteeing a weekly rest period (Conclusions XIX-3).
 - Article 4.4 – Right to a fair remuneration – Reasonable notice of termination of employment:
 - manual workers with less than 20 years’ service are not entitled to an adequate payment in lieu of notice (Conclusions XIX-3).

Thematic Group 4 “Children, families, migrants”

- Article 7.5 – Right of children and young persons to protection – Fair pay:
 - the minimum wage paid to young workers, on the basis of which apprentices’ allowances are calculated, is too low (Conclusions XVII-2).
- Article 8.1 – Right of employed women to protection of maternity leave:
 - periods of unemployment are not taken into account when calculating periods of employment needed to qualify for maternity leave (Conclusions XVII-2).
- Article 16 – Right of the family to social, legal and economic protection:
 - family benefits are inadequate; the self-employed, who represent about 32% of the active population, do not receive family benefits;
 - Roma families have inadequate legal protection since many Roma people have no legal status; there are insufficient permanent homes and camping sites for Roma families; the criteria for and practice of forced evictions of Roma families are incompatible with families’ right to housing (Conclusions XVIII-1).
- Article 17 – Right of children and young persons to social, legal and economic protection:
 - there is no statutory ban on corporal punishment in the family and in other child care institutions and settings (Conclusions XVII-2).
- Articles 19.6 (and 19.10) – Right of migrant workers and their families to protection and assistance – Family reunion – equal treatment for the self-employed:

- the two-year residence condition in Act No. 2910/2001 for entitlement to family reunion is excessive; this also applies to self-employed workers (Conclusions XVIII-1).
- Articles 19.8 (and 19.10) – Right of migrant workers and their families to protection and assistance – Guarantees concerning deportation:
 - Migrant workers may be expelled if their presence in Greece poses a simple threat to public order, this also applies to self-employed workers (Conclusions XVIII-1).

The European Committee of Social Rights has been unable to assess compliance with the following provisions and has invited the Greek Government to provide more information in the next report:

Thematic Group 1 “Employment, training and equal opportunities”
(Report to be submitted before 31 October 2011)

- Article 10.1 – Conclusions XIX-1
- Article 15.2 – Conclusions XIX-1

Thematic Group 2 “Health, social security and social protection”
(Report to be submitted before 31 October 2012)

- Article 11.1 – Conclusions XIX-2
- Article 11.2 – Conclusions XIX-2
- Article 14.1 – Conclusions XIX-2
- Article 4 of the Additional Protocol – Conclusions XIX-2

Thematic Group 3 “Labour rights”
(Report to be submitted before 31 October 2013)

- Article 4.1 – Conclusions XIX-3
- Article 2 of the Additional Protocol – Conclusions XIX-3

Thematic Group 4 “Children, families, migrants”
(Report to be submitted before 31 October 2010, Conclusions to be published before end of 2011)

Lists of collective complaints against Greece and state of procedure

Collective complaints (under examination): *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece* (No. 49/2008)

Collective complaints (proceedings completed)

1. Complaints inadmissible or where the Committee has found no violation

European Federation of Employees in Public Services v. Greece (No. 3/1999)
Inadmissibility decision of 13 October 1999.

2. Complaints where the Committee has found a violation which has been remedied

International Federation for Human Rights v. Greece (No. 7/2000)
Violation of Article 1.2 (prohibition of forced labour), decision on the merits of 5 December 2000.

3. Complaints where the Committee has found a violation which has not yet been remedied

Quaker Council for European Affairs v. Greece (No. 8/2000)
Violation of Article 1.2 (prohibition of forced labour), decision on the merits of 25 April 2000.

World Organisation against Torture v. Greece (No. 17/2003)
Violation of Article 17 (children's right to social, legal and economic protection), decision on the merits of 7 December 2004.

European Roma Rights Centre v. Greece (No. 15/2003)
Violation of Article 16 (right of the family to social, legal and economic protection), decision on the merits of 8 December 2004.

Marangopoulos Foundation for Human Rights v. Greece (No. 30/2005)
Violation of Articles 11, 2.4, 3.1 and 3.2 (right to health and right to safety at work), decision on the merits of 6 December 2006.

International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece (No. 49/2008)
Violation of Article 16 (right of the family to social, legal and economic protection), decision on the merits of 11 December 2009.

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