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[Français](#)

**STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)**

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**WORKING GROUP ON SOCIAL RIGHTS  
(GT-DH-SOC)**

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**REPORT**

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**2<sup>nd</sup> meeting  
Strasbourg, 4-5 November 2004**

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## **Introduction**

1. The Working Group on Social Rights (GT-DH-SOC) held its 2<sup>nd</sup> meeting in Strasbourg, on 4-5 November 2004. The meeting was chaired by Mrs Deniz AKÇAY (Turkey). The list of participants appears in [Appendix I](#). The agenda, as it was adopted, is reflected in [Appendix II](#).

2. Following the work of its first meeting, the Group continued its reflection on the possible social rights which might be made justiciable in the framework of [the European Convention of Human Rights](#), whilst keeping in mind that fact that it will need to draw up an activity report for [the CDDH](#). In this perspective, it exchanged views on the methodology to adopt, with a view to submitting its report to the CDDH at its meeting in June 2005.

3. During this meeting, the Group also discussed recent developments concerning the revised [European Social Charter](#), as well as the impact that the imminent entry into force of [Protocol No. 12](#) may have with regard to the protection of social rights.

### **Item 1:        Opening of the meeting and adoption of the agenda**

4. See introduction.

### **Item 2:        Exchange of views on the justiciability of social rights**

5. The Group noted that its terms of reference were not to take stock of the developments in other bodies with regard to the protection of social rights, but to consider whether, in the framework of the [Council of Europe](#), any possible new rights or aspects of such rights might be appropriate for justiciability under the control system established under the European Convention on Human Rights

6. This reflection process was, in particular, to include full and due consideration of the current European Social Charter and its mechanisms and of the evolution of the European Court of Human Rights' case-law in social matters and the future entry into force of Protocol No. 12.

### **European Social Charter**

7. Mr Regis Brillat, Head of the Secretariat of the Social Charter, made a brief presentation of developments with regard to the Social Charter. He indicated that the most important development could be seen in the high increase of ratifications by member States to the Charter. **Currently, thirty-five ratified the Charter either in its version of 1961, or in its revised version of 1996.** Mr Brillat added that to date, 28 collective complaints have been received of which 13 have already been **declared well-founded** by the European Committee for Social Rights.

8. **Whilst it may be too early to pronounce on the consequences of these developments, it can be said that there is a notable influence between the approach**

**of the European Social Charter and that of the European Convention on Human Rights with regard to social rights.**

9. With regard to the Charter, there is no obstacle for social rights to be included in the Convention. Some rights are already present in the both of instruments – the Social Charter and the European Convention of Human Rights (eg: right to association or prohibition of forced work). Mr Brillat also added that the distinction that has been made in the past between civil and political rights and social rights is one that is no longer relevant. The European Union Charter of Fundamental Rights is a recent and clear illustration of this.

10. In the general exchange of views, a number of points were raised with regard to the European Social Charter and the role of its mechanisms. Some experts were in favour of social rights being included in the Convention, **others were unsure about the added value and emphasized** that the work of the Social Charter's mechanisms should not be underestimated, for example with regard to taking measures in member States following reports of the mechanism of control. Several experts underlined that **whether it was important to include social rights in the Convention**, it was also important to identify and remedy what prevented the social rights' enjoyment, and the role of the Social Charter in this respect was an important one. **One expert stressed that judicial, economic and social considerations, equally important, could be taken into account with respect to the implementation of those rights and that the supervision by a (political) institution was an important one.**

11. **In Mr. Brillat's view**, were additional social rights to be included in the Convention, **this should not necessarily have an effect** on the current Social Charter mechanism. In any event, **it would not seem making for the inclusion of all the rights of the Social Charter in the Convention.**

12. In response to a query as to why the European Social Charter decided on a collective complaints procedure and not a system of individual complaints, Mr Pierre-Henri Imbert, Director General of Human Rights explained that that it was not the subject matter that had determined that decision, but it was more **the parallel almost natural made with other instruments - in particular mechanisms of International Labour Organisation - and the importance of the part played by employers and labour.**

13. Mr Imbert also pointed out that, following an individual complaint, the Court more and more often requires member States to take general measures **in the framework of the execution of a Court's judgment.** In addition, whilst some governments are wary of social rights being made justiciable before the Court, it should not be forgotten that many social rights are in fact already justiciable **within some States.**

European Court of Human Rights

14. In the light of the overview of the case-law prepared by the Secretariat ([GT-DH-SOC\(2004\)001](#)), the Group **noted that the Court has already pronounced decisions of**

**admissibility which touch social aspects. It noted that the case-law potential has not yet been exhausted with regard to social issues underlying certain Articles of the Convention. The Court has indicated in its inadmissibility decisions regarding social matters that the alleged social right was not guaranteed by the Convention. However, the Court has not given rise to understand that social rights could not one day be included in the Convention.**

**15. Experts noted that Protocol No. 12, which is likely to enter into force in the first few months of 2005, will conceal the difference between social rights and others rights. It will supply the case-law with an additional tool with regard to social matters.**

16. This being so, a number of experts stressed the need to take into account the work-load of the Court, which has reached a critical level, and this situation should be borne in mind during any discussion over whether it would be appropriate to include other social rights in the Convention.

#### Identification of possible rights

17. As a preliminary remark, several experts expressed their reticence with regard to any new right which might be incorporated in the Convention and which could have unforeseen economic implications for the defendant State, notably as a result of general measures that the execution of judgments may include. **They noted that if new rights were added to the Convention, member states would also have to provide for effective domestic remedies for violations of those rights.**

18. **Some experts expressed concern that justiciability of social rights can serve to secure the enjoyment of such rights, in the first instance, to persons who litigate, instead of those in greatest need. They considered that this would be an inefficient use of the state's resources and would not strengthen the protection of social rights.**

19. Some experts questioned the fact as to whether it would be appropriate for this type of right to be under the control of the Court. They also questioned the scope "ratione personae" of an additional Protocol on social rights; they were not convinced that this type of right, which is costly, could be guaranteed to any person under the jurisdiction of a member State of the Convention.

20. However, other experts considered that the Group **should** have an open discussion on the nature of the rights which, nevertheless, may one day deserve to be incorporated into the Convention. It could be **at this stage** a limited number of rights.

21. The Group **bore in mind** it is in no way required, at this stage, to pronounce on the need to begin drafting work on a Protocol, but it should further its reflections in this field with a view to providing the CDDH with sufficient elements which will allow it to decide on the future work.

22. Bearing this exchange of views in mind, the group began its consideration of the list of possible rights that may be appropriate for justiciability under the Convention. This list, which had already been presented during the 1<sup>st</sup> meeting, is non-exhaustive, was intended merely as a working basis for the group and in no way prejudged the subsequent course the work would take.

23. **A preliminary discussion begun on the whole list and the Group examined in particular** the right to satisfaction of basic material needs, a concept that took in food, clothing, shelter and **basic** medical care.

24. In one expert's view the content of the right was already implicit in Article 3 of the European Convention of Human Rights as it stood at present. Other experts said that the point of having an article dealing specifically with the right to satisfaction of basic material needs was to place *positive obligations* on the state in that regard.

25. Several experts said that the new rights as worded at present contained quite a few very open-ended legal concepts, which in their view created great uncertainty as to the right's justiciability. Other experts did not see this as a major obstacle in that the Court's decisions would gradually clarify the content of **these new** rights, as had happened with other Convention rights. They consider that the Court **would leave** states a margin of appreciation as to what was and what was not reasonable and proportionate in a particular matter in the light of national circumstances. **However, some experts questioned the added value of any additional Convention right, given the wide margin of appreciation which would be allowed to States.**

26. The Group suggested that the information accompanying the list (right hand column) refers also to provisions in International Labour Organisation instruments.

27. In addition, the Group took note of the suggestion of the representative of the European Committee for Social Cohesion (CDCS) to restructure the list mentioned above as follows: the right to protection from poverty and social exclusion; the right to social security, the right of the family to social, legal and economic protection; the right to education; the right to work; the right to fair working conditions; the right of workers to information and consultation within the undertaking. Moreover, he suggested the addition of new rights to this list such as the right to the protection of dignity at work and the right to the protection of personal data. **An expert questioned about the advisability of recognizing the right of access to justice, in particular that of a legal aid.**

28. **In addition, the Group noted with interest the contribution of ATD Fourth World which would make object of discussion at its 3rd meeting and the study on Fundamental Social Rights in Europe, presented in 2000 to the European Parliament with a view to contribute to the elaboration of the Charter of Fundamental Rights of the European Union. This study could provide useful information on the protection of these rights in constitutional law of member States. It will be completed and up-dated (see b)-(i) below).**

Working methods

29. The GT-DH-SOC observed that its main task in the period to June 2005 was to draw up an activity report to the CDDH on its thoughts in particular as to:

a) whether the Council of Europe was the right place to conduct the exercise, bearing in mind that other international bodies were also interested in development of social rights;

b) what resources were needed if investigation of the various questions was to be taken further. In the group's view, before any decision was taken on the case for drawing up a binding instrument (and particularly if a protocol to the Convention was to be involved), it was essential to:

- i. have a complete overview of the present justiciability of social rights in member states' legal systems. **Several experts** suggested that, at an appropriate stage in the work, the secretariat obtain **information on this subject, if appropriate, with the assistance of a consultant;**
- ii. decide, in the light of this information, what added value was to be derived from drawing up a legal instrument, in particular a protocol, and set out the possible drawbacks of that approach, on the understanding that the Group's role was a purely technical one and that any decision in the matter would be taken by the CDDH and ultimately the [Committee of Ministers](#). At the present stage **several experts** stressed that no binding instrument could be drawn up without an **adequate information on justiciability of social rights at national level;**
- iii. have an update of the extremely interesting case-law overview that the secretariat had produced ([GT-DH-SOC\(2004\)001](#)). Such an update might also attempt to highlight any conclusions to be drawn from the Court's inadmissibility decisions and consider whether the Court might have found the cases concerned admissible if there had been a specific social right in the Convention;
- iv. have an overview of the state of execution of judgments relating to social issues;
- v. have an exploratory document, which the secretariat might prepare in close co-operation with the Social Charter secretariat, on why some parties to the Social Charter and/or Revised Social Charter had not seen fit to bind themselves to certain rights in those instruments;
- vi. have an update from the secretariat on work in progress in other international bodies.

30. **Several experts suggested** likewise that the CDDH consider holding a hearing on social rights.

**Item 3: Future work**

31. It was agreed that at its 3<sup>rd</sup> meeting [31 March-1 April 2005] [**31 March – 2 April 2005**] the Group would consider list of possible rights that warranted justiciability under the Convention and **deepen criteria of selection of these rights**. The list, presented at the 1<sup>st</sup> meeting, is non-exhaustive, was intended merely as a working basis for the group and in no way prejudged the subsequent course the work would take. It appears in Appendix III.

32. The experts were asked to send the secretariat any comments (proposals on possible additions/ deletions) they consider appropriate **by 31 January 2004**.

33. The items it selected from the list would be specified in the June 2005 progress report to the CDDH.

34. In the Group's view **a three days** meeting would be required at least for drawing up an activity report with a list of possible rights and supporting **favorable and unfavorable arguments for a feasible addition to the Convention**.

**Item 4: Date for the next meeting**

35. 3th GT-DH-SOC      31 March – 1<sup>st</sup> April 2005  
                                  [**31 March – 2 April 2005**]

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Appendix I**LIST OF PARTICIPANTS****WORKING GROUP ON SOCIAL RIGHTS  
(GT-DH-SOC)****BELGIUM / BELGIQUE**

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**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

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**TURKEY / TURQUIE (Chairperson/Présidente)**

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Ms Catherine DAVIDSON, Lawyer, Department for Work and Pensions, New Court, 48 Carey Street, WC2A 2LS LONDON

\* \* \*

*Observers / Observateurs*

**HOLY SEE / SAINT-SIEGE**

Apologised/Excusé

**PARLIAMENTARY ASSEMBLY / ASSEMBLEE PARLEMENTAIRE**

Apologised/Excusé

**EUROPEAN COMMITTEE FOR SOCIAL COHESION / COMITE EUROPEEN POUR LA COHESION SOCIALE**

M. François VANDAMME, Conseiller Général, Division des Affaires Internationales, service public fédéral « Emploi, Travail et Concertation sociale », rue Blérot, 1, B-1070 BRUXELLES

**Other guest / Autre invité**

**EUROPEAN TRADE UNION CONFEDERATION (ETUC)**

Mr Klaus LÖRCHER, Legal Adviser, Head of Department for European and International Legal Affairs, Vereinte Dienstleistungsgewerkschaft – Verdi, Bundesvorstand – Ressort 5 – Rect, Potsdamer Platz 10, D-10785 BERLIN

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M. Pierre-Henri IMBERT, Director General of Human Rights / Directeur Général des Droits de l'Homme

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M. Alfonso DE SALAS, Head of the Division / Chef de la Division

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Mrs Katherine ANDERSON-SCHOLL, Administrative Assistant / Assistante administrative

Mme Michèle COGNARD, Assistant / Assistante

**Secretariat of the European Social Charter / Secrétariat de la Charte sociale européenne**

M. Régis BRILLAT, Executive Secretary / Secrétaire exécutif

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Interpreters/Interprètes  
Mme Marine CARALY  
Mme Anne CHENAIS

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Appendix II**Agenda****Item 1: Opening of the meeting and adoption of the agenda***Working document*

- Draft agenda [GT-DH-SOC\(2004\)OJ001](#)

**Item 2: Exchange of views on the justiciability of social rights in the framework of the Convention***Working documents*

- Report of the 1<sup>st</sup> meeting of the GT-DH-SOC (16-17 October 2003) [GT-DH-SOC\(2003\)005](#)
- Overview of the case- law of the Court in social matters [GT-DH-SOC\(2004\)001](#)
- Contribution of ATD Fourth World [GT-DH-SOC\(2004\)002](#)

**Item 3:       Future work**

**Point 4 :     Date for the next meeting**

**Item 5:       Other business**

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Appendix III**List of possible rights to be considered by the GT-DH-SOC  
at its 3rd meeting (31 March – 1<sup>st</sup> April 2005)**

**Experts are invited to send to the Secretariat (severina.spasova@coe.int) any comments (proposals on possible additions/ deletions) they consider appropriate by 31 January 2005.**

Right to the satisfaction of basic material needs (food, clothing, shelter and basic medical care) / right to an adequate standard of living	<a href="#">Recommendation R(2000) 3</a> of the Committee of Ministers / UDHR (art. 25), ICESCR (art. 11), ESC and ESC rev (art. 3), CFR (art. 34)
The right to freedom from hunger	ICESCR (art.11)
The right to housing	UDHR (art. 25), ESC rev (art. 31)
The right to medical care and social services	UDHR (art. 25), ESC and ESC rev (art. 13), ICESCR (arts. 9 et 12), CFR (art. 35)
The right to protection from poverty and social exclusion	ESC rev (art. 30), CFR (art. 34)
The right to social security	UDHR (art. 22), ESC and ESC rev (art. 12), ICESCR (art. 9), CFR (art. 34)
The right of the family to social, legal and economic protection	UDHR (art. 16), ESC and ESC rev (art. 16), ICESCR (art. 10), CFR (art. 33)
The right to education	UDHR (art. 26), ESC rev (art. 17), CFR (art. 14)
The right to work	UDHR (art. 23), ESC and ESC rev (art. 1), ICESCR (art. 6), CFR (art. 15)
The right to fair working conditions	UDHR (art. 23), ICESCR (art.23), ESC and ESC rev (art. 2), CFR (art. 31)
The right to safe and healthy working conditions	ESC and ESC rev (art. 3), ICESCR

	(art. 7)
The right to equal pay for equal work	ESC and ESC rev (art. 4), ICESCR (art. 7),
The right of collective bargaining	ESC and ESC rev (art. 6), ICESCR (art. 8), CFR (art. 28)
The right to vocational guidance and training	ESC and ESC rev (arts. 9 et 10), ICESCR (arts 6 et 13)
The right of workers to information and consultation within the undertaking	ESC rev (art. 21), CFR (art. 27)
Protection in the event of unjustified dismissal	ESC rev (art.24), CFR (art. 30)
The right to protection against unemployment	UDHR (art. 23)
The right of access to a free placement service	ESC and ESC rev (art. 1), CFR (art. 29)
The right to holidays with pay	UDHR (art. 24), ESC and ESC rev (art. 2), CFR (art. 31)
The right to rest and leisure	UDHR (art. 24), ESC and ESC rev (art. 2), CFR (art. 31)