

European Social Charter
Turin Process

Interparliamentary Conference on the European Social Charter

Turin Forum on Social Rights in Europe

17 and 18 March 2016, Turin, Italy

Official speeches and interventions

The opinions expressed in this publication are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe.

The only official versions are those delivered orally.

Reproduction of the texts in this publication is authorised provided the full title and the source, namely the Council of Europe, are cited. If they are intended to be used for commercial purposes or translated into one of the non-official languages of the Council of Europe, please contact publishing@coe.int.

Cover photo:

© Shutterstock, Council of Europe

Cover design:

Documents and Publications Production
Department (SPDP), Council of Europe©

© Council of Europe, November 2016
Printed at the Council of Europe

Table of Contents

INTRODUCTION

by Riccardo PRIORE, Coordinator of the Turin Process for the European Social Charter, Council of Europe	4
---	---

INTERPARLIAMENTARY CONFERENCE ON THE EUROPEAN SOCIAL CHARTER, 17 MARCH 2016

Official speeches	8
Piero FASSINO, Mayor of Turin, Italy	9
Mario MARAZZITI, Chairman of the Social Affairs Committee of the Chamber of Deputies, Italy	11
Gabriella BATTAINI-DRAGONI, Deputy Secretary General of the Council of Europe	14
Michele NICOLETTI, President of the Italian Delegation to the Parliamentary Assembly of the Council of Europe and General Rapporteur of the High-level Conference on the European Social Charter, Turin 2014	18
Sílvia Eloísa BONET, Member of the General Council of Andorra, Rapporteur of the Parliamentary Assembly of the Council of Europe on “The Turin process: reinforcing social rights in Europe”	23

TURIN FORUM ON SOCIAL RIGHTS IN EUROPE, 18 MARCH 2016

Official speeches and interventions	27
Piero FASSINO, Mayor of Turin, Italy	28
Gabriella BATTAINI-DRAGONI, Deputy Secretary General of the Council of Europe	31
Jean-Paul FITOUSSI, Professor of Economics, Institute of Political Studies, Paris	33
Olivier DE SCHUTTER, Professor of Law at the Louvain University and at the College of Europe, Member of the United Nations Committee on Economic, Social and Cultural Rights	37
Rudi DELARUE, Representative of the Directorate General Employment, Social Affairs and Inclusion, European Commission	58
Andrey ISAEV, Deputy-President of the State Duma, Russian Federation	60
Angelo FARRUGIA, Speaker of the House of Representatives, Malta	63
Giuseppe PALMISANO, President of the European Committee of Social Rights, Council of Europe	65
Georgios KATROUGALOS, Minister of Labour, Social Security and Social Solidarity of the Hellenic Republic	67
Cesare DAMIANO, Chairman of the Committee on Public and Private Sector Employment of the Chamber of Deputies, Italy	69

Notes	72
-------------	----

Introduction

by Riccardo PRIORE

Co-ordinator of the Turin Process for the European Social Charter, Department of the European Social Charter, Directorate General of Human Rights and Rule of Law, Council of Europe

The Interparliamentary Conference on the European Social Charter and the Turin Forum on Social Rights in Europe (Turin, 17-18 March 2016) were organised as part of the Turin Process launched by the Secretary General of the Council of Europe at the High-Level Conference on the European Social Charter (Turin, 17-18 October 2014) - hereafter referred to as "Turin 1".¹

"Turin 1" - an event organised by the Council of Europe in conjunction with the Italian presidency of the Council of the European Union and the City of Turin - focused the attention of the governments of the 47 member states of the Council of Europe and European Union authorities on the importance of guaranteeing and promoting the social rights enshrined in the European Social Charter treaties in a highly challenging international context which can be properly addressed only through the implementation of those rights.

"Turin 1" also offered an opportunity to reiterate the unity and indivisibility of human rights, and to stress that the social rights guaranteed by the European Social Charter are an integral part of human rights, on an equal footing with the civil and political rights guaranteed by the European Convention on Human Rights.

On this basis, "Turin 1" was able to stimulate a political debate between the representatives of the governments concerned and led to the identification of a series of objectives for the Turin Process, which were subsequently included in the final report of the Conference and in the action plan linked to that report, which was drawn up by Michele Nicoletti, Chair of the Italian delegation to the Parliamentary Assembly of the Council of Europe – referred to below as the "Nicoletti Report".

In the Council of Europe, the "Nicoletti Report" represented a starting point for the discussions initiated at inter-governmental level (in the Committee of Ministers) and at inter-parliamentary level (in the Parliamentary Assembly) in relation to the priority objective of the Turin Process: reinforcing the treaty system of the European Social Charter within the organisation and its relationship with European Union law.

The objectives laid down in the "Nicoletti Report" were also endorsed by the Conference on the "Future of the Protection of Social Rights in Europe", organised in Brussels on 12 and 13 February 2015 by the Belgian Chairmanship of the Committee of Ministers of the Council of Europe. This event provided an opportunity to deepen and enrich the discussions initiated during "Turin 1" on both a political and academic level.² The debates held during the Brussels Conference were summarised, by subject area, in a document drawn up by a group of experts chaired by the General

¹ The main documents relating to that event are available on the website of the Council of Europe www.coe.int/socialcharter. This website also contains detailed information on the treaty system of the European Social Charter and the Turin Process.

² The main documents relating to the Brussels Conference are available on the website mentioned above.

Co-ordinator of the Academic network of the European Social Charter and Social Rights ('Brussels Document'). The 'Brussels Document', which was forwarded to the Committee of Ministers by the Belgian Chairmanship, was acknowledged as a key contribution to the Turin Process.

As was stated in the "Nicoletti Report", the proposals put forward in the "Turin 1" process included an event to be held under the Turin Process focusing specifically on the parliamentary dimension. This idea came to fruition with the organisation of the Interparliamentary Conference on the European Social Charter. This conference, held in Turin City Hall on 17 March 2016, was followed on 18 March by the Turin Forum on Social Rights in Europe. Both events – which will be referred to below as "Turin 2"³ - were organised by the Council of Europe, the City of Turin and the Italian Chamber of Deputies.

The decision to organise "Turin 2" took account of the decision by the Parliamentary Assembly, which was involved in the Interparliamentary Conference, to draw up a policy report on the Turin Process, expected to be presented in 2017. On the basis of this report the Parliamentary Assembly may decide to submit a recommendation to the Committee of Ministers and a resolution to the Council of Europe member states.

Following the meeting of governmental representatives as part of "Turin 1", the objective of "Turin 2" was to bring together the representatives of the parliaments of the 47 Council of Europe member states with the aim of promoting: 1) the political discussion concerning the acceptance of the Social Charter treaty system; 2) greater consideration of its provisions in domestic legislative processes; 3) improved implementation of its provisions at national level (taking account of, amongst other things, the conclusions and decisions of the European Committee of Social Rights).

On the basis of this programme, at the Interparliamentary Conference around one hundred members of national parliaments from 25 different member states of the Council of Europe were able to discuss the issue of implementation of the Social Charter with reference to the major global challenges which the authorities of various countries are currently addressing in socio-economic terms, at both national and European level.

In this context, following the welcome speeches by the organisers and the introductory speech by Mr Nicoletti, as General Rapporteur for "Turin 1", the members of parliament present – which included the Speaker of the State Duma of the Russian Federation, the Speaker of the House of Representatives of Malta, the Deputy Speaker of the Turkish General Assembly and the Deputy Speaker of the Hungarian Parliament, as well as various chairs of parliamentary committees competent in the area of social rights – discussed how the implementation of these rights, which are guaranteed under the European Social Charter, could help bring about positive solutions to the challenges referred to above.

The discussion focused in particular on the way in which the enjoyment of fully implemented social rights could help to: resolve the economic crisis; promote societies in which radicalisation ceases to be an option for young persons; ensure migrants' integration into and contribution to the creation of increasingly stronger societies; and increase citizens' trust in democratic institutions and the process of European construction. The question of the exploitation for electoral purposes of the anxieties of members of the general public in relation to some of the points mentioned above by political parties that are ready to foment xenophobic and nationalist sentiments leading to refusal or introspection was also discussed during the Interparliamentary Conference. The exchange of views on this issue made it possible to contextualise and provide input to the deliberations on the initiatives and processes which national parliaments could put in place to promote acceptance of

³ Documents and information on the 'Interparliamentary Conference on the European Social Charter' and the 'Turin Forum on Social Rights in Europe' are available on the website mentioned above.

the European Social Charter treaty system and greater consideration of its provisions within legislative processes.

The debates at the Interparliamentary Conference were moderated by the European Parliament Rapporteur on the situation of Fundamental Rights in the European Union (2013-2014) and by the Chair of the Parliamentary Assembly's Sub-Committee on the European Social Charter. The conclusions were presented by the Assembly's Rapporteur on the Turin Process.

The Forum on Social Rights in Europe held on 18 March 2016 in the Great Hall of the University of Turin was a public event and, for this reason, was also streamed live over the internet (the video recording is available on the website mentioned above). In addition to the various speakers and the Italian authorities, the Forum was attended by participants from the Interparliamentary Conference, the chairs of the relevant Committee of Ministers' Rapporteur Groups, interested members of the Parliamentary Assembly and other authorities from the Council of Europe, including the European Committee of Social Rights, the Bureau of the Steering Committee for Human Rights and the Bureau of the Governmental Committee of the European Social Charter and European Code of Social Security.

Following the welcome speeches by the organisers, the Forum provided an opportunity to discuss in public the implementation of social rights in relation to the challenges described above. In her inaugural speech, the Deputy Secretary General of the Council of Europe Gabriella Battaini-Dragoni made a series of political points: a) respect for social rights is the antidote which enables our societies to remain united and to overcome difficulties; b) respect for social rights restores and reinforces the trust of citizens in their political leaders and in the state; c) respect for social rights is the antidote to social exclusion as it helps to integrate vulnerable and marginalised people back into society; d) respect for social rights is even more necessary in times of crisis and economic difficulties than during ordinary times. She concluded that the strongest and most solid societies are those that know how to draw on the talents of all and are capable of maintaining a high level of social cohesion: inclusive societies and inclusive democracies based not only on political and civil freedoms but also on social rights.

The debate which followed, with input from politicians, experts and officials, built on the introductory reports presented by two internationally renowned academics who, speaking from their own viewpoints – economic and legal respectively – shared with the members of the public and the authorities present not only their concerns but also their ideas and proposals concerning the obstacles that need to be overcome in order to ensure that the implementation of social rights can contribute to the construction of a more prosperous and unified Europe based on solidarity. This discussion addressed, on the one hand, economic issues involving the complex relationship between growth, the cost of labour, investment, productivity, well-being, social rights, human capital, European governance and democracy, and on the other, legal questions concerning the problem of the erosion and fragmentation of the status of workers, the growth in inequality and discrimination at work, difficulties in accessing fundamental social rights and, more specifically, discrepancies between European Union law and the Social Charter.

Speakers in the discussion moderated by the editor-in-Chief of the daily newspaper "La Stampa" included representatives of national parliaments and the President of the European Committee of Social Rights, who presented specific proposals for strengthening the Social Charter system and implementing its provisions more effectively. The European Commission representative contributed to these exchanges by presenting the initiative on the creation of a "European pillar of social rights" and confirming the Commission's aim to step up its co-operation with the Council of Europe in order to improve the synergy between EU law and the Social Charter. In this regard, he

referred to the appointment of “*focal points*” in both the Commission and the Council of Europe Secretariat.

The Forum’s conclusions, which were presented by the Chair of the Employment Committee of the Italian Chamber of Deputies (substituting the Speaker of that House), followed on from a series of considerations concerning the consequences of austerity policies by the Greek Minister for Employment, Social Security and Social Solidarity, who attended the Forum in order to deposit the instrument of ratification of the revised European Social Charter by Greece with the Deputy Secretary General of the Council of Europe.

There is no doubt that “Turin 2”, which as was the case for “Turin 1” was generously hosted by Mayor Piero Fassino, enabled the Turin Process to be expanded and deepened, reinforcing its impact in the Council of Europe and the European Union. On the basis of this result, it is expected that the issues, approaches and proposals formulated during the Interparliamentary Conference on the European Social Charter and the Turin Forum on Social Rights in Europe could in some way contribute to the initiatives which the parliaments of the 47 Council of Europe member states could devise and implement in order to achieve the objectives of the Turin Process in relation to their own institutional powers: first and foremost a broader and deeper acceptance of the revised Social Charter and the Protocol on collective complaints, and greater consideration for the provisions of the Charter within domestic legislative processes.

It is hoped that the quality of debates, evidenced by the papers brought together in this publication, can offer a stimulus or act as a source of inspiration also for governments, both individually and collectively, within the Committee of Ministers of the Council of Europe. Taking account of the importance of the issues under discussion, it would be highly desirable for the Committee of Ministers to endorse the Turin Process after having validated its key objectives, possibly through its own Chairmanships, with a view to the full achievement of those objectives.

As far as the Parliamentary Assembly is concerned, over and above its involvement in “Turin 2”, it is significant that, in her concluding remarks on the Interparliamentary Conference, the Rapporteur for the Turin Process said that she would take account of the results of the discussions when drawing up her report in order to ensure that the challenges and issues it covers are addressed within the Assembly.

To paraphrase the words used by Mr Nicoletti in his introductory speech to the Interparliamentary Conference, it is necessary to uphold social rights, not only because we have the destiny of the weakest people at heart, but also because we have at heart the destiny of our continent, since we believe that it is by discussing together how to protect the life and dignity of individuals and by creating common instruments that we can reinforce that common fabric of civilisation, that way of being that is shared throughout the 47 states comprising the Council of Europe, and in which we see the essence of Europe.

In this context, as was stated at the conclusion of the Forum, it is hoped that the European Commission’s initiative concerning the creation of a “European pillar of social rights” can lead to the award of a “social triple-A” rating to the European Union, by ensuring that labour markets and social protection systems work fairly throughout all of its 28 member states. With this in mind, it would be desirable for the revised European Social Charter and the collective complaints procedure to be recognised, respectively, as the *base* and *capital* of the pillar.

However, over and above the metaphors, all of this, along with other issues and proposals, will perhaps be addressed in “Turin 3”.

Interparliamentary Conference on the European Social Charter

17 March 2016

Official speeches

Piero FASSINO

Mayor of Turin, Italy

Inaugural speech

Hello to you all. Welcome to our city. A warm welcome to all the parliamentarians from the delegations of the 47 member States of the Council of Europe.

I would like to extend a particular welcome to the President of the State Duma of the Russian Federation. I would also like to thank the Chairman of the Social Affairs Committee of the Italian Chamber of Deputies, Mario Marazziti; the Deputy Secretary General of the Council of Europe, Gabriella Battaini Dragoni, who has been the inspiration and conceptual force behind this gathering; and the Chairman of the Italian parliamentary delegation to the Council of Europe, Michele Nicoletti.

This Conference, known as "Turin 2", takes place about one year after a similar meeting – the first of this kind – which we hosted here in Turin on the theme of social rights and respect for such rights within our countries and elsewhere.

Turin is the city where the European Social Charter was signed on 18 October 1961. Since then it has often hosted meetings, conferences and roundtables focusing on the Charter and its state of implementation. Today's gathering is in point of fact an interparliamentary conference dedicated to the Charter, as an emanation of the Turin Forum on Social Rights in Europe, which we set up last year.

The European Social Charter is one of the fundamental instruments for our continent and deals above all with the application of rights that affect the lives of our communities, our nations, our families and ourselves as individuals. With the Charter the Council of Europe sought to offer all the countries of our continent a series of fundamental rights essential for civil coexistence and for the full assertion of a democratic process guaranteeing equality of rights. They encompass the rights relating to work, to life within society, to gender equality and to recognition of the individuality of every person.

If we look at the constitutions that govern the lives of European nations, we see that the constitutions of the member States of the Council of Europe enshrine the very rights set forth in the Charter. It may therefore indeed be said that the Charter is one of the sources of fundamental rights for every country in the sphere of social and democratic rights. However, this does not mean that these rights are automatically recognised and applied, as we know that their actual recognition and application is dependent upon the social, political and economic circumstances of each country.

We are emerging from a period of deep economic crisis which has affected the whole world, and Europe in particular. We know that times of economic and social crisis are also times when rights are undermined.

When work and wages become less certain, when the conditions of everyday life are more exposed to the uncertainties arising from an economic and social crisis, respect for those rights is weakened. Therefore, it is not a mere formality that, today, after years of crisis, we are debating the state of application and implementation of the principles enshrined in the Charter and the extent of the commitment requiring each of us to assume responsibility for the protection and enforcement of these rights. This debate assumes even greater importance at this moment when we are all aware of

how a crisis can trigger a retreat into nationalism, the emergence of populist movements and impulses towards intolerance, all of which clash with the principles of the European Social Charter and stand in the way of its application.

We all have in mind the troubled and complex manner with which our continent is handling the issue of migration, whether driven by economic factors or linked to an explosion of crises and conflicts, particularly within the Mediterranean basin but also farther afield, which have led to an influx of refugees. We are also aware of how the management of this delicate and difficult issue is having a strong impact on our way of life and our society. In the face of this phenomenon, we have witnessed with concern a retreat into attitudes of closure and the emergence of forces that feed on selfish and intolerant mindsets, which not only make it more difficult to deal with migration but also entail a negation of the fundamental rights of persons to whom equal guarantees should be afforded, rights which are in fact present within the Charter. That vests this debate being held today among representatives of the parliaments of all the countries concerned with a particular significance, linked to the issues with which we have to contend.

The parliamentarians who are here today will discuss these issues that are high on their own agendas and the agendas of their countries. This Conference can thus provide some extremely useful inputs for reasserting forcefully the central role of the Charter rights and their relevance, while inviting parliaments and governments to recognise those rights and to implement all the policies permitting their tangible assertion by citizens. We have two days of work ahead of us during which each of us will be able to make his or her own contribution so as to ensure that this conference can be a forum for discussion, reflection and the development of proposals which are useful for all of us.

I can only thank you once again for having chosen to take up my city's invitation, and I hope that your stay here will also offer you an opportunity to get to know it. It is a city which has undergone a major transformation over the last 20 years, after having been the industrial and manufacturing centre of Italy for more than a century.

Today Turin remains a great industrial city, but its horizons have become enlarged to the entire knowledge economy. It is increasingly hosting activities associated with technology, innovation and scientific and industrial research, and is a major university city, which invests a great deal in education. It is also a great cultural capital, a city that has recently discovered a tourism vocation, becoming one of the main tourist cities in Italy, which opens up entirely new prospects. This shows how identities are never static but can change and evolve, becoming opportunities for work and investment, sowing the seeds for value creation and the assertion of rights that are fundamental for all of us.

I thank you sincerely. We receive you in a spirit of true friendship, hoping that you will also fall a little bit in love with our city and will have frequent occasions to come back here. We will always welcome you with affection and friendship.

Thank you once again.

Mario MARAZZITI

Chairman of the Social Affairs Committee of the Chamber of Deputies, Italy

Opening speech

The Interparliamentary Conference which I have the honour of introducing today, following the sincere words spoken by Piero Fassino, is part of what is known as the "Turin process", which was launched in October 2014, again in Turin, at the initiative of Mayor Fassino and Secretary General Jagland. I convey to you the best wishes of the President of the Chamber of Deputies, Laura Boldrini, and my own personal wishes.

I am truly grateful to the organisers of today's event who are here alongside me: the Deputy Secretary General of the Council of Europe, Gabriella Battaini-Dragoni, and Mayor Fassino, who has also played a significant role in our recent democratic history. I likewise thank the Chairman of the Italian Delegation to the Council of Europe, Mr Nicoletti, who, together with the President of the Chamber of Deputies, promoted this initiative and presented the conclusions of the conference held two years ago.

The event taking place over these two days is enriched by the holding of this Interparliamentary conference, bringing together, for the first time, the Chairpersons of the competent committees from the 47 Council of Europe member states. I consider it indeed important to involve parliaments as well as governments, for, while it is a government responsibility to implement treaties, it is for parliaments to verify that decisions taken during the downstream law-making process are consistent with the international treaty rules.

Parliaments, if I may say so, truly are the most direct expression of citizens' participation in political life. I believe that there is a need not just for parliamentary diplomacy, to reinforce cooperation and collaboration between governments and between States, but also, in mature democracies, for parliaments to become the place where a country's leaders, in order to assume their role as such, have the possibility and the responsibility to resist populist, plebiscitary or authoritarian pressures in times of crisis. Without checks and balances and without the use of mediation, and the place for it, the danger is that the pressure of public opinion, which may fluctuate, will ultimately transform the leaders into mere "followers". Parliaments, however, can come to their assistance by playing a screening role, thereby providing a place for the construction, mediation and continuous renewal of the essence of democracy. This is a very topical challenge for all of our democracies.

I welcome the broad participation in this initiative, since 30 out of the 47 Council of Europe member States are represented here. I wish to extend my personal greetings to each of the Chairpersons present, and in particular Mr Sergei Naryshkin, President of the State Duma of Russia, and Mr Angelo Farrugia, Speaker of the House of Representatives of Malta. I would also like to applaud all of you here today, if I may!

In the face of Europe's current struggles, political Europe must move forward. The world needs this, and the penalty for failure is lack of relevance and decline.

I understand the difficulties which some member States of the European Union are experiencing. However, we must emerge from the crisis with more, not less, Europe. If some countries wish a temporary reduction in their share of joint European responsibility, I believe it only right to consider

that, temporarily, they may also share in proportionately fewer of the benefits of belonging to Europe, if that is what they want, and without making a fuss.

The crisis that has been taking place in Europe in recent years has revealed differences in the ways in which States protect fundamental rights, particularly social rights. However, we need social rights in Europe and we need the rule of law. The crisis has brought to the fore the true importance of social rights and of the European Charter.

There is now increasingly widespread support for the political belief that respecting fundamental social rights is the best way of enhancing citizens' participation in democratic processes, and their faith in European integration and the fight against fundamentalism and radicalism, by fostering processes of social inclusion and cohesion. That is the true objective of the Turin Process – to make the European Social Charter the focal point of the European political landscape.

Migration is top of the European agenda today, as confirmed by the fact that, right now as we speak, the European Council is holding its third meeting in Brussels on this topic in the space of a few weeks.

Migratory movements require that social rights become the first item on the political agenda.

During its history Europe has witnessed periods, above all during economic crises or transitions, when pogroms sullied the continent, right up to the Ural Mountains. Europe has grown; it was born out of the rejection of war and totalitarianism, based on the dream and the necessity of inclusive democracy and on the painful memory of the Holocaust, which must never be repeated. Today, as in the past, Europe is nurtured by a history in which Christianity and secular, humanist values, pluralism and coexistence – a new humanist and humanitarian democracy – became part of Europe's DNA, for the benefit of the entire world.

For this reason, I consider that social rights truly are central to the challenges facing Europe and the Council of Europe. Either they become entrenched or we will regress. When I say this, I am thinking of the social rights of the Roma, the first, albeit stateless, European citizens, who are still too often treated more as a problem than as people, as refugees permanently unsettled and marginalised despite being the first Europeans. I am thinking of the non-conjunctural challenge of our age, that of forced migration, which concerns some 60 million people around the world, while only a few million stand at the gates to our continent.

Many of these refugees are also refugees because of mistakes we have made. Let us bear in mind that the basis for initiating a political solution to the Syrian conflict, the political rather than military solution which is now actively being sought, already existed five years ago, before 400,000 people died in Syria and Iraq and before 11 million became internal and external refugees, before global terrorism made such frightening headway and before Daesh.

We cannot give in to the temptation of fear when social rights are under discussion. Last year, there were 32,700 victims of terrorism worldwide, with more than 30,000 in Pakistan, Iraq, Syria, Nigeria, India and other non-Western countries. 96% of the victims are not from the West, as we have seen in Tunisia, the Ivory Coast and, over the last few days, Turkey. Our thoughts are for these victims.

Social rights constitute the medium and long term alternative, also in the face of the challenge of terrorism. In the immediate future, the answer is not to surrender to fear and to those who preach words of hate - not to become like them, or how they would want us to be. As Mr Renzi, the Italian Prime Minister, reminded us yesterday, while we send spacecraft to Mars, Europe is at risk of suffocating behind walls and barbed wire. We cannot backtrack on Schengen – that would be like

building our own prison. Europe is growing old, it needs other people or it will forget what it stands for. It can either go forward or come to a standstill and grow old, whether in Idomeni or Calais. I'll say it again: humanist and humanitarian democracy. The duty to welcome and protect people, so we do not end up commemorating the decline of Europe.

European citizenship, European asylum and the Dublin Treaty need rethinking: European refugee status, positive and not just negative solidarity, joint management of borders, of the reception of refugees and of repatriation.

It is short-sighted that, at this point in time, 3 billion euros have been allocated to the refugee crisis in Turkey and only 2 billion are being invested in 23 African and North-African countries.

There was one initial positive breakthrough in Europe a few weeks ago with the first humanitarian corridor, a civil society initiative taken by the Community of Sant'Egidio, the Federation of Evangelical Churches in Italy and the Tavola Valdese (here in Piedmont, the Waldensians have their own historic homeland), along with the Ministry of Foreign Affairs. I hope that this experiment will catch on. This project made use of Article 25 of the European visa regulations of 2009, which provides a legal means of enabling people to flee from war and desolation, without leaving them to die at the hands of traffickers, by granting them a visa with limited territorial validity, a derogation from the rules as an exceptional humanitarian measure. A precedent of this kind had already been tested for Kosovo.

The Turin Process also supports the idea of promoting social rights as an integral component of a system founded on the rule of law, democracy and human rights, including the rights of others. The Charter may therefore rightly be considered the "Social Constitution of Europe".

The Turin Process represents an opportunity; we must move on from a declaration of principles, at the national and European levels, to targeted political actions. We hope that, as a result of this conference, there will be an increase in the number of ratifications of the revised Social Charter (1996) by member States of the Council of Europe and the EU, that they will accept more Charter articles, and that there will also be an increase in ratifications of the Additional Protocol. Another key objective is to ensure that greater consideration is given to the Charter standards, and particularly the interpretations of those standards by the European Committee of Social Rights.

This is an ambitious plan, but it is a plan that is necessary. It is therefore the only plan, because it is the only realistic plan. The outcome is in our hands and your hands. I wholeheartedly wish you a very successful conference.

Gabriella BATTAINI-DRAGONI

Deputy Secretary General of the Council of Europe

Opening speech

Economic hardship and the refugee crisis: a dual challenge for social rights

How the world can change in less than two years.

When we first launched the Turin process in October 2014, to elevate social rights in Europe our continent was still picking itself up from the global financial crisis.

It still is.

Indeed, it was only last summer when we watched the stand-off between Brussels and Athens which took the Eurozone – once again – to the edge of collapse and, today, our economic challenges remain huge.

They have, however, been overtaken on the front pages of our newspapers at least by a refugee crisis which is testing European solidarity and generosity to their limits.

When the Turin process began I, like many, believed that we needed to prioritise social rights in order to protect the worst off in our societies, during a period of prolonged austerity.

I still think this – but I also believe that the rationale for recommitting to social rights has become even more profound.

Because, not only do many of our citizens face ongoing economic hardship, they now also see migrants and refugees arriving in large numbers.

Migration is not a new challenge: our societies have been growing steadily more diverse for some time.

But public anxiety is now at a high.

And while, today, the migration debate might be dominated by questions of quotas and borders, tomorrow it will be about whether or not there are enough jobs to go around; or school places; housing; access to healthcare and social security.

Populists and xenophobes are in their element: telling citizens that newcomers will take their jobs and their homes, stirring up resentment and jealousy towards foreigners.

And it is therefore more important *than ever* that we, by contrast, pursue the policies and approaches that will help our societies hang together.

Where political systems are able to deliver social rights – without discrimination – tensions and jealousies will be reduced.

It is how we rebuild trust and confidence in state institutions, including parliaments.

And, by the way, if our nations can work together to guarantee social rights, through our European Social Charter complementing the European Convention on Human Rights, which safeguards civil and political rights with protections for vulnerable groups, [including the elderly, children, people with disabilities] [and, I should point out, migrants and refugees] then all the better for reviving our presently embattled European project, too.

Keeping up momentum

With all this in mind I am greatly encouraged to see you here today.

We have made some meaningful progress since the Turin process began:

- ▶ Ratification of the revised Social Charter by Greece, for example.
- ▶ Acceptance of new articles by Belgium, another example.

43 out of 47 member states are now party to either the original 1961 Treaty or the revised text.

We continue to work closely with the European Union including, for example, over current plans to amend the directive on posted workers.

In Strasbourg, our Committee of Ministers has agreed to more resources for Charter-related activities in the 2016/17 budget.

The Parliamentary Assembly has also begun preparing its political report on the Turin process.

Ms Sylvia Eloisa Bonet has been appointed rapporteur, and she will conclude for us later on.

We will also shortly hear from Mr Michele Nicoletti, the Chair of the Italian Delegation to the Parliamentary Assembly and the General Rapporteur of the High-Level Conference on the European Social Charter whose report provides a vital road map as we move ahead.

The need for political commitment

So we have kept up momentum.

But the truth – as you all know – is that our efforts to further embed the Social Charter into the national fabric of member States depend, ultimately, on political will.

The Turin process needs renewed backing and, as parliamentarians – as legislators and agenda setters – your commitment is decisive.

My question to you is a straightforward one:

- ▶ Promote the Charter; become strong advocates for it at home; use the Turin process to turn declarations of principle into reform on the ground.

The Social Charter remains the most comprehensive and far-reaching set of international, legal, binding social rights in the world.

It is backed by a robust and effective system of monitoring, ensured by the European Committee of Social Rights.

It is a hugely valuable tool in building more inclusive, socially cohesive societies.

At a time of fragmentation and anxiety in Europe, this should not be downplayed

Using the Charter to build socially cohesive societies

I therefore urge you to use the Charter and the Turin Process – in two ways.

First, send a clear and reassuring message to your citizens:

- ▶ Demonstrate your determination that – despite the pressures in your economies and at your borders – *no one* should slip through the net.
- ▶ Push for ratification of the revised Charter, if your state has not already done so.
- ▶ If it has, push for acceptance of more of the Charter's provisions.
- ▶ Push for effective implementation of the conclusions and decisions of the European Committee of Social Rights.
- ▶ And, if you are not from one of the fifteen member states who have ratified the collective complaints procedure, push for this too.

Under this procedure, representative bodies like international NGOs, trade unions and employer organisations can raise their concerns with the European Committee of Social Rights on behalf of otherwise silent victims.

The first time it was ever used was by the International Commission of Jurists to highlight child labour practices.

These were children who were not going to find themselves at the European Court of Human Rights.

Yet, thanks to the collective complaints procedure, the exploitation stopped and the practices were changed – helping not just one child, but many more.

It is an important and ground-breaking innovation and it needs your support.

Second, use the Charter to help integrate the most vulnerable individuals and groups in your societies; those most at risk of marginalisation.

The refugee crisis is a case in point.

We know that many of the people arriving in Europe are living in poor conditions – we have all seen the news reports.

But, despite the pressures on states to process these people, certain standards must be upheld.

And we must not forget: many of these asylum seekers are here to stay.

They are future members of our societies and it is in our interests to help them, as quickly as possible, stand on their own two feet.

This is why, for example, the European Committee for Social Rights has been clear: anyone entering Europe – migrant, irregular migrant, asylum seeker, refugee, whichever label or category – has a right to certain basic living conditions while they are within a state's territory.

This includes, at a minimum, safe and clean shelter, food, clothing and medical assistance, for anyone. And, of course, there is a wider package of Charter rights for those migrants who have obtained lawful residence, for recognised refugees and for stateless persons.

How else can these people begin their new lives? How can they even begin their journey to becoming active and self-sufficient, able to work and make their contribution?

When we see individuals being pushed to the peripheries, the Charter and the decisions from the European Committee of Social Rights are there to be invoked as we seek to draw these people back into mainstream society.

These decisions are a rich resource for parliamentarians looking to hold executives to account.

By drawing on them, you can be even more confident that the measures you advocate will promote social cohesion, meet international standards and therefore stand the test of time.

The whole point of the Charter system is that it is a dynamic tool, for practical use by member States.

Sum up

To conclude, before the detailed discussions begin, I think it is useful for us to keep in mind the one question which has brought us here today; the question behind the whole Turin Process:

What kind of societies are we trying to build?

At a time of great pressure and change in Europe – of economic uncertainty and demographic change – what can we do to make sure our societies emerge intact – stronger and more resilient than they were before?

At the Council of Europe we are clear: the strongest, most resilient and most cohesive societies are inclusive societies.

Inclusive democracies, filled with individuals who not only have well-protected civil and political liberties but who also enjoy social and economic security, enabling them to fulfil their potential; individuals who have real, enacted social rights – this, for us, is true freedom.

It is an ambition which crosses national boundaries and party lines – and I am hugely grateful to all of you for being here today as we strive to make it a reality.

Your time and commitment make the difference.

I wish you the best for our conference.

Michele NICOLETTI

President of the Italian Delegation to the Parliamentary Assembly
of the Council of Europe and General Rapporteur of the High-level
Conference on the European Social Charter, Turin 2014

Introductory report

Thank you Mr Mayor. Thank you for your hospitality and the receptiveness which you have always shown towards the issues pursued by the Council of Europe, in particular the European Social Charter and the rights enshrined in that text.

Thank you Mr Marazziti and Deputy Secretary General Battaini-Dragoni for your words here today, not only words of welcome but what you have said has also provided an important basis for the discussions to be held over the next two days.

I thank all of you, in particular the Speakers of the Russian and Maltese parliaments as well as all of the committee chairpersons from the member states and their representatives, for having accepted this invitation to come together here to discuss current issues surrounding the Social Charter.

As has been mentioned, these are not easy times. The first conference in Turin, held in 2014, was also profoundly marked by the effects of the ongoing financial crisis throughout Europe, which has exacted a very high price precisely on the weakest members of society, and has in some way called into question a whole range of social rights. The effects of this crisis are still with us and have been exacerbated, as you have reminded us, by the refugee and migrant crisis. This is the greatest human tragedy that we have experienced since the end of the Second World War, and affects not only Europe but the whole world. I think that we are all aware that history will look at this tragedy as the event that in some sense characterises these times, and we will be judged on the way in which we have dealt with this dramatic emergency.

But why is it dramatic? It is so not only because of the large numbers of victims but also the powerlessness of the political authorities, including in particular the supranational political authorities that should be tackling it effectively.

As far as Europe is concerned, I must admit that what is most striking is that, in the face of this dramatic emergency, we are unable to overcome our divisions.

Faced with these divisions, we should recall the warning sounded by the founding fathers of the Council of Europe meeting in 1948 in the immediate aftermath of the Second World War. The opening words of the Message to Europeans of the 1948 Hague Conference, out of which our organisation the Council of Europe was eventually created, were that: "Europe is threatened, Europe is divided, and the greatest danger comes from her divisions". *The greatest danger*. A generation that had lived through the dangers of war and persecution saw *the greatest danger* in divisions within the European continent.

If we consider the economic, military, legal, cultural and social instruments with which Europe is nowadays equipped, there is no challenge that this continent cannot tackle and overcome. There are much poorer countries around the world that are much less well-equipped than Europe, which have to deal with even greater pressures.

For this reason we have to say, both to ourselves and to others, that it is not the external challenges that we must be afraid of. It is our internal fears, internal divisions and internal despondency that we must combat, and to this end we have to re-establish unity between our countries. This is a further purpose of this meeting – a rallying call to all member states of the Council of Europe. Not an artificial external unity, but a deep-seated unity, built on our very roots, because when faced with the tragedies of 20th century, Europe sought to affirm for itself and to the world that its own unity did not lie in closing ranks against the outside, but in the protection of human dignity and fundamental rights and freedoms.

Again in this text from 1948 we read: “Human dignity is Europe's finest achievement, freedom her true strength”. We must not be afraid to repeat it whenever we see one of our own countries look elsewhere for strength: in controlling people, in clamping down on freedom of the press or freedom of speech, in undermining the independence of the judiciary, including the supreme courts, and in denying the rights of minorities, irrespective of who they are.

To those who say that Europe is weak we must repeat that “*freedom is her true strength*”, and for this reason we have to combat our divisions.

Herein lies the mission of the Council of Europe and its special responsibility towards all other European institutions. The Council of Europe is the seed out of which all initiatives of European unity were born, including the European Union, and should be its proudest guardian. Its history is a history of progressive unification of the common European home leading, following the fall of the Berlin Wall, to embracing the countries of Eastern Europe, through to Russia, thereby achieving the ideal of the great unified Europe within a shared ethical and legal framework of human rights, democracy and the rule of law. For us in the Council of Europe, there can be no real Europe without the twin lungs of the West and the East, and without its North and South.

After having completed this major task of unifying the continent, the Council of Europe has the historical responsibility of guarding and reinforcing this unity (and we must not allow the unity handed down to us by the previous generations to be weakened or destroyed) in order to ensure that it is an instrument of peace and justice within the European continent and around the world. And we have to promote between ourselves a relationship between equals, because we must learn respect for human rights and democracy from each other, avoiding any approach of paternalism, in the common interest of serving our citizens.

This is the aim of this initiative. We believe that it is urgently necessary to reflect on rights and, over the next two days, in particular on social rights, not only because we have the fate of the most vulnerable people at heart, but also because we have at heart the fate of our continent; we believe that by discussing together how to protect the life and dignity of individuals and by creating common instruments – such as charters, conventions, courts and committees – we can reinforce that common fabric of civilisation, that shared way of being, to be found from Lisbon to St. Petersburg, from Oslo to Athens, and which we term European.

Unfortunately, we do not see that “civilisation” expressed and honoured in the 10,000 child refugees scattered throughout Europe, in those who have died on our seas, on barbed wire and in the mud, where we leave those who have fled persecution to sink in their own despair.

The dignity of human beings will be Europe's greatest achievement only if Europe is ready to defend the dignity of all persons, and not only that of its own more fortunate citizens. As the European

Court of Human Rights has pointed out on various occasions, each member state is responsible for protecting the human rights of every person present in its territory, wherever he or she is from.

Either human rights are universal or they cannot be called human rights. The 2014 Turin Conference sought to reiterate clearly this universality of human rights, and to assert that social rights are an integral part of human rights.

The Social Charter is based on the idea of the unity and indivisibility of the fundamental rights expressed in the Universal Declaration of 1948 and reiterated in Vienna in 1993, which referred to freedom of thought and also to freedom of access to education, social security and so on.

Whenever we cite human rights we should cite them all. Whenever we cite the European Convention on Human Rights we should cite the Social Charter because it is only in this way that we can convey the idea of this unity and indivisibility. The unity of rights refers to the unity of the person, because there is no person who can divide himself or herself between thinking, work, the sphere of personal relations and basic necessities. And unity presupposes indivisibility. Consider how our case law today constantly asserts the indivisibility of fundamental rights. As it does for the right to asylum: it is sufficient that only one fundamental right is violated in a country in order to conclude that there is a person who deserves protection.

The Turin Conference has reminded us that social rights are without doubt different from civil and political rights because they involve different policies. As far as civil rights are concerned, it is often sufficient that some - so to speak - "negative" policy is pursued by the political authorities: it is necessary to remove obstacles, and to leave people with the freedom to express themselves. As regards social rights on the other hand there is a need for positive policies, and therefore for financial resources, and it is clear that we have to face up to the fact that those resources are limited.

However, during that Conference we recalled an important expression by the Turinese philosopher Norberto Bobbio, which I would like to mention here, that social rights are the "prerequisite" for other rights, because if it is not possible to have access to food, housing and employment, then it is also not possible to enjoy full freedom of thought and of speech, and the freedom to pursue all other activities.

The defence of social rights it not therefore important solely for the material life of a society but also for its spiritual life and for democracy. Accordingly, to weaken these rights is to undermine the basis for our cohabitation, at both national and European level. Perhaps we have appointed Europe as the guarantor of certain rights, delegating to the member states the administration of all other issues, including the protection of social rights. And we have thereby created a risky dualism. This may be a weak link in the process of European integration, and it is therefore right to once again reflect with determination on European citizenship and the possibility for each European citizen to access minimum levels of subsistence and dignity. To fail to do so may give rise to dangerous disparities, different standards from one country to another, differences in treatment for citizens and foreigners, and attitudes of defensive isolationism which result from nothing else than attempts to defend particular standards of living within one particular country or within one particular social group against threats originating from the outside.

This is why it is important to once again look at the issue of social rights, the Charter in which they are enshrined and the instruments which protect them. When in 1948 the founding fathers of the Council of Europe devised not only the Convention but also the European Court of Human Rights, this principle was clear for them: it is not enough to write down on paper what the fundamental

human rights are - specific safeguards also have to be put in place; it is not enough to have a Social Charter - effective procedures are also necessary.

And for this reason, as has been stated, it is important not only that the Charter be signed and ratified by all countries in relation to as many points as possible, but also that the instrument provided for under the Social Charter be used, i.e. collective complaints. In its very title, this instrument refers to a vision rooted not in individualism but in solidarity. The complaints are "collective" and not "individual". This is because certain situations do not affect merely a single person but a group of people and the assertion of a particular right does not call for respect of a personal condition only, but of a social condition. Accordingly, by bringing a complaint individuals enter into a movement for emancipating the society to which they belong. They fight for all others who are in the same situation, and not only for themselves.

The specific objectives of the Turin process, including in particular a greater number of ratifications of the Social Charter, have already been referred to, so I do not intend to dwell too much on this point.

This is why we have brought together parliamentarians here: so that they may take action within their parliaments and with their governments to exert pressure to sign and ratify the Charter, where this has not yet been done, so that it may be used to the full, including all of its articles and the additional protocol providing for the system of collective complaints.

This is an important objective of this meeting: to ascertain the situation regarding social rights within each participant state, to understand the most critical issues and at the same time to get parliaments on board (including through the Parliamentary Assembly of the Council of Europe) so as to encourage them to pursue parliamentary inquiries into the state of social rights, and above all, launch initiatives to activate all instruments for protecting and defending such rights.

The small yet significant steps we have made since that first conference have already been referred to and they give us good cause for hope. The Turin process is a slow and difficult path, but we are moving forward. There is a growing awareness in all countries of the inter-linkage between respect for social rights, economic development, the championing of democracy and the fight against terrorism.

I now conclude. We are currently confronted with a difficult moment in which we may sometimes feel powerless. All the arguments appear to have no effect on those with whom we speak. In attempting to address the migrant crisis, we appeal to the ideals of human dignity, solidarity and hospitality, but our calls appear to have fallen on deaf ears. So we turn to emotional arguments, to feelings of pity: we have seen the deep concern aroused by images of a child lying dead on a beach, and something appeared to change in the short term. However, today those emotions appear to have abated. We turn to legal arguments, to rulings made by the Court against states concerning expulsions, to the consequences in terms of adverse judgments and sanctions. However, these arguments also appear to have little effect. Finally, the arguments relating to instrumental rationality appear to have no impact: demographic studies clearly show that in ten or twenty years' time the European continent will be unable to sustain its productive system or its welfare system if it does not increase the number of immigrants, and yet this argument is political anathema, even though demographic experts and economists are constantly calling on us to consider this fact.

However, in such a situation we must not give in to a feeling of powerlessness. We must in contrast refocus on our task, tirelessly repeat these arguments and reiterate the lessons of history on our continent.

Consider the Europe of the 19th century, when the seed of racism – which subsequently bloomed in the 20th century – first took root within society. It was possible for this to happen because a feeling of decadence had pervaded the Europe of the time; it felt that it was in decline – a decline which it was thought was due to external agents who had contaminated it. The danger was seen to lie in so-called intermingling between races. The weakening of Europe was associated with external contamination by theories of absolutely no scientific value. This gave rise to the ideals of blood purity and the politics of racial hygiene that would supposedly heal an ailing continent. We all know the tragedy that was the result: ethnic cleansing and extermination, death and destruction: anything but the recovery of a renewed youth, or a European rebirth!

That European rebirth occurred later when the courage was found once again to say that Europe's identity does not lie in ethnic cleansing but in the dignity of every person.

We therefore have to combat the proliferation of a sense of malaise and decadence, and will be able to do so only if we are able to open up prospects for the future.

In this respect, not only today's meeting but also tomorrow's will be very important. Along with renowned scholars such as Professors Fitoussi and De Schutter, we shall reflect together on the need to end the politics of austerity and to relaunch public investment in culture, research and infrastructure in order to bring about renewed growth, which also means a period looking to the future. This will be possible only if we are able not merely to change our social and economic policies but also to give new life to that exemplary instrument which has been decisive for the assertion of social rights.

The defence of social rights is in fact born out of ideas that have so impassioned those people who have then translated them into social institutions and practices. We need to rediscover these ideas and the passion they inspire. On many occasions in the Parliamentary Assembly over the last few months we have discussed in impassioned tones both the fight against terrorism and the backgrounds of foreign fighters, noting how these very young persons embrace certain ideals so strongly as to end up fighting for them and sacrificing their lives and those of others. These are mistaken ideals, practices that we regard as criminal; and yet the force with which those ideas can motivate people is remarkable.

Perhaps we also should be able to deploy not only good policies but also good ideas that are capable of mobilising people, of giving a sense of openness and hope, of saying that there is something for which it is worth giving up part of oneself. This ideal does not involve killing others but giving everyone the possibility to live life in peace, freedom and justice. This is the model of life which Europe has been able to construct, and which we have a duty to maintain and pass on to future generations.

Thank you.

Sílvia Eloísa BONET

Member of the General Council of Andorra, Rapporteur of the Parliamentary Assembly of the Council of Europe on “The Turin process: reinforcing social rights in Europe”

Conclusions

Preliminary remarks

This Interparliamentary Conference was organised in the framework of the Turin Process under which different European stakeholders wished to provide a response to current democratic and social challenges.

The Council of Europe has a specific mission and a special responsibility in comparison with the other European institutions. It is the institutional seed from which all European unity initiatives were born, including, as the final stage, the European Union. A united Europe fostering common ethical and legal values of human rights, democracy and the rule of law is needed more than ever.

As parliamentarians, we must promote the respect of fundamental rights and democracy amongst our peers and learn from each other with the aim of serving our citizens. This was precisely the objective of the Interparliamentary Conference in Turin. We should take action to protect the lives and dignity of people, and deepen our unity by adhering to common instruments such as the European Social Charter, which strengthens the common social fabric of our civilization.

Dear Ladies and Gentlemen, dear colleagues,

This morning at the opening of our separate meeting of the Parliamentary Assembly’s Sub-Committee on the European Social Charter, our Chairperson, my colleague Tuur Elzinga, reminded us all: social rights are fundamental human rights! Only the enjoyment of socio-economic rights, and social inclusion, allows people to fully enjoy their civil and political rights, thus fundamental rights. It is by reminding us all of this important fact that I would like to conclude this conference.

The Parliamentary Assembly, in recent years, has taken targeted action to support the promotion and follow-up of the Charter’s implementation, in legislative and political terms. It has notably done so through yearly “capacity-building seminars”, which have had a lot of success and positive reception by parliaments attending.

However, I am convinced that parliamentary action needs to be further stepped up. At the level of the Parliamentary Assembly, and for those delegations and members who regularly participate in our debates in Strasbourg and Paris, I would suggest that we reserve more time for explicitly exchanging on progress made in different countries. Once a year, we could have a mutual exchange on the following questions:

- ▶ What progress has been made at the legislative level, i.e. in terms of ratifications of the European Social Charter or of further articles of the Charter (i.e. by lifting existing reservations);

- ▶ What progress has been made in terms of political action, i.e. how concretely have social rights guarantees been improved in certain areas or for certain groups of population;
- ▶ And what were the processes for achieving this, i.e. what were the obstacles to fully guaranteeing certain rights and how have they been overcome?

With regard to the European Social Charter, the importance of the relation with the European Union and EU legislation is regularly underlined. As rapporteur on the Turin process, I am willing to take this challenge on board and to make sure that the dialogue between the Parliamentary Assembly of the Council of Europe and the European Parliament is stepped up. I have had the pleasure to discuss with my colleague, Laura Ferrara from the European Parliament, earlier today, and I would be happy if we could launch a substantial exchange and dialogue between our two European bodies this year.

To conclude today's debates, let me also share with you some of the essential ideas that I have retained from this afternoon's discussions and the presentations made by various high-level representatives here present, without trying to be exhaustive:

- ▶ Mr Fassino, Mayor of Turin, whilst showing to what extent social rights are a concern for local authorities, such as the City of Turin, recalled that social rights are very often anchored in national legislations, sometimes even in constitutions, but that their application is strongly influenced by the specific socio-economic context. Legislation therefore is one step; its application and implementation needs to be the second one.
- ▶ Mr Marazziti, for the Italian Chamber of Deputies, reminded us that, in very practical terms, we as parliamentarians have a special responsibility in guaranteeing the effective application of social rights in the national context, in a long-term perspective, and in response to topical challenges such as the refugee crisis.
- ▶ Ms Battaini-Dragoni, Deputy Secretary General of the Council of Europe, outlined an upcoming change in paradigm: Whilst today, we are trying to welcome large numbers of refugees and migrants, and providing emergency services to them, their social inclusion and provision of decent jobs, education, housing and social services to them whilst fighting xenophobia and discrimination, will be the main challenges tomorrow. We as parliamentarians play a crucial role in setting political agendas and achieving political commitment to social rights for all, whilst reassuring our citizens that this does not represent a threat to their well-being. We are amongst the main players in building truly inclusive societies.
- ▶ Mr Nicoletti, head of the Italian delegation of the Parliamentary Assembly, reminded us that it is not the external threats, which are most dangerous, but the internal gaps dividing our countries. The Council of Europe, and its 47 parliaments, have a special responsibility in guaranteeing European unity at all levels – for all people on its territory, from all backgrounds and all income categories – and by promoting the full treaty system of the European Social Charter, including its basic texts and its various protocols, and in particular the collective complaint mechanism.

Session 1: What role for social rights in responding to topical challenges (crisis exist, globalisation, European integration etc.)?

- ▶ Ms Laura Ferrara, Chairperson and moderator, highlighted the following essential social rights challenges:

- Economic development should be the result of a great economic and social process, and ensuring the social rights in order to get to fight against poverty and social exclusion, increase the protection of more vulnerable groups and avoid the decrease in social protections
- fighting social exclusion and poverty
- defining minimum levels of rights
- protecting the most vulnerable

► The following elements were put forward by speakers during the debate:

- Mr Naryshkin, Speaker of the State Duma, presented the major social policy achievements including halting the decline in the population through social programmes, as well as remaining challenges in the Russian Federation. The refugee crisis was an emergency but responding to it also was a humanitarian duty. The international context and especially trade agreements represent a threat to parliamentary sovereignty and to the social interests of citizens as guaranteed by the European Social Charter.
- Mr Farrugia, Speaker of the Parliament of Malta, recalled the need to re-establish trust at the international level and the need for a common vision in order to maintain peace in the Mediterranean and to tackle the challenge posed by the refugee crisis, which could also be considered as an opportunity to affirm our common values. The importance of orienting the benefits of economic growth towards the fight against poverty was also underlined as a moral duty going beyond political divisions.
- Mr Aydin, the Deputy Speaker of the Turkish parliament, affirmed his country's commitment to fundamental values guaranteed by the Council of Europe and the ESC as the second most important Council of Europe instrument, before qualifying the refugee crisis as the biggest one that Europe has had to face in recent years, underlining the Turkish commitment to hosting great numbers of refugees from Syria, and calling upon European countries for their solidarity.
- Ms Jarvinen, representative of the Finnish parliament, hoped for the meeting to conclude that "one floor societies" were still a European aspiration and that the European dialogue on social policies would be kept alive;
- Ms Pettersson, representative of the Swedish parliament, underlined that welcoming refugees in Europe was a necessity, and an influx of population was needed to keep European countries strong, but that the welcoming capacities of individual countries were limited;
- Ms Veselova, representative of the Verkhovna Rada of Ukraine, recalled the situation in Ukraine, underlining the importance to ensure full respect of social rights for all citizens, including internally displaced persons. Ukraine would continue the co-operation for the acceptance of additional provisions of the Charter, for the Turin Process and for the implementation of the national Action Plan on social rights, which also comprised measures strengthening social security.

Session 2: How to improve the acceptance of the ESC and its provisions – what role for national parliaments?

► The challenges as recalled by Mr Elzinga were:

- The need to take political action to improve the social rights for all citizens;

- The fact that the main difference between global social rights systems (between the US and Europe for example) resided in the “social wage”: working conditions, sick leave, holiday entitlements, maternity leave, pensions, equal treatment of part-time jobs, access to health care and education were amongst the European “acquis” to be protected.

► Essential arguments put forward during the debate were:

- Ms Matrai, Deputy Speaker of the Hungarian Parliament, recalled that it was important to ensure equal access to public services for all, including national and ethnic minorities, such as the Roma people who should have the equal rights;
- Ms Kasimati, representative of the Greek Parliament, remarked that budgetary cuts and austerity put democracy at risk, and called upon parliaments to develop essential social programmes to fight against poverty; she also pointed to existing contradictions between economic measures taken by the EU and the European Social Charter; these measures were causing the increase in inequalities across Europe; social rights could not be negotiated;
- Ms Doucet, representative of the French National Assembly, reported on national measures taken to improve the guarantee of social rights, in particular through equal access to education and health care.

As parliamentarian of the Parliament of Andorra, I hope that, when going home after today's conference, we will all find some inspiration in these ideas shared by some of our colleagues, and that we will manage to achieve some progress in social rights matters, both in terms of topical challenges linked to the current refugee crisis and some of the more long-term challenges related to ensuring equal social rights to all Europeans. We need to take action in our respective national parliaments and to encourage our governments to ensure that the Revised Social Charter will soon be ratified where this has not yet been done, and that a greater number of its provisions and the collective complaints procedure will be accepted.

Finally, may I add that, it is my intention to also take the outcomes of the present conference into consideration for my report on the Turin process to ensure that the challenges and arguments provided be addressed in a debate by the Parliamentary Assembly. I also encourage all of us to pursue our interparliamentary exchange on the European Social Charter by continuing to involve the Presidents of social rights and social affairs committees of national parliaments, members of the Parliamentary Assembly as well as members of the European parliament, so I sincerely hope to see you all again at an upcoming meeting.

As members of the Council of Europe, we have a major responsibility. Promote all human rights in their indivisibility and interdependence, and ensure that they become a reality, thus protecting the dignity of all European citizens. The defense of social rights will remain essential to democracy, and for strengthening social cohesion both at national and European level.

Turin Forum on Social Rights in Europe

18 March 2016

Official speeches and interventions

Opening speech

Thank you for coming here today. One year ago, the Council of Europe organised here in Turin a Conference devoted to the European Social Charter and to the need to relaunch it. The European Social Charter was signed in Turin on 18 October 1961. Since then, it has been one of the fundamental sources of law used to govern everyday life in democratic countries, especially in the 47 countries which make up the Council of Europe.

A year ago, while discussing and examining the key importance of the issues which the European Social Charter raises, in particular social rights, the decision was made to set up a forum, the Turin Forum, which is meeting today, to act as a permanent venue for reflecting on, developing and comparing such issues.

Therefore, we are here today to honour the commitment made a year ago. This commitment was supported yesterday by staging an Interparliamentary Conference, attended by the Chairs, or their representatives, of the social affairs committees of the 47 member states of the Council of Europe.

I would like to thank Gabriella Battaini Dragoni, Deputy Secretary General of the Council of Europe. I would like to extend a welcome from Thorbjorn Jagland, the Secretary General, to the Forum. I would also, of course, like to thank the Chair of the Italian Parliamentary Delegation to the Council of Europe, Michele Nicoletti, who gave a speech yesterday and will also take the floor today.

I would like to thank all the parliamentarians who attended the proceedings yesterday, a large number of whom are guests of today's Forum.

I would also like to give special thanks to Jean-Paul Fitoussi and Olivier De Schutter, who will deliver the keynote speeches, which will be followed by a debate.

What objective are we proposing to achieve with this Forum? We have just gone through several years of economic and social crisis which have been particularly tough. As we are aware, crisis periods are always times when rights, the enjoyment of rights and the protection of rights are at risk, or are likely to be less prevalent. During periods of economic and social crisis, jobs are less secure, as are incomes, while rights and safeguards are subject to uncertainty and precariousness. This is a paradoxical situation because logic would lead us to think that during periods of crisis, rights ought to be, if anything, reinforced as the demand for protection and support grows among those who are exposed to risk. However, we are well aware that the dynamics driving the world's development are not only based on logic. There are also much more complex dynamics which control the economy, the social impacts of economic processes, individual and collective behaviour. Therefore, periods of economic and social crisis are times when safeguards and rights are at risk. This creates the need to use the relevant tools and make the political choices to avoid this risk and allow citizens instead to rely on safeguards, protection and support instruments geared to promoting the full enjoyment of social rights.

The fundamental importance of social rights is demonstrated by their presence in constitutions. Whether they are then put into practice is a different matter. But in terms of asserting rights, the Charter's principles are basically incorporated into all the constitutions of the democratic countries.

This provides definite acknowledgement of the key importance of the Charter and of the rights featuring in it for our societies.

Whether these rights are viewed as ever more important also depends on the processes and paths of economic and civil growth which have developed in every society. Nowadays, people are much more aware of the social rights they have than in the past. We only need to think about how recently gender equality has been fully acknowledged and how this needs to be applied in practice in every social sphere.

We only need to think about the key place given in the everyday life of every community to child protection and its associated policies. Awareness has also increased about the guarantees which need to be in place in the employment sphere. We have all been better informed for some time of the need to at least protect the dignity of work, even in the new forms in which it is currently carried out, particularly involving greater mobility and flexibility. In other words, work is respectable when the psychological and physical integrity of the worker is respected, when that person's work is given professional recognition, protected by a contract and decently paid.

We also need to think about how the issue of multi-ethnic, multi-cultural and multi-faith communities has been presented to us on the political agenda in recent years, and about how this issue has become a particularly urgent priority due to the influx of migrants, whether economic or fleeing from conflict, into our communities. All this highlights again the key importance of social rights, the need to guarantee them to everyone, as well as the Charter's vital importance as a tool of daily governance for tackling the daily issues encountered in the lives of our communities.

I have summarised the reasons why we felt this Forum to be extremely beneficial in terms of having a venue which will offer over time the opportunity to monitor the relationship between the economic and social dynamics which affect our continent and world, as well as the social rights which feature in the daily lives of our communities. We therefore have a forum where we can compare the various issues and experiences and use this also to produce proposals and reports which can reinforce and consolidate social rights. This is especially true at a time when the crisis which the world is going through, and which has been particularly tough in Europe for years, is not only undermining safeguards and rights, but is also forming, in the sections of public opinion most exposed to the risk, attitudes and tendencies which can easily be hijacked by people with populist inclinations, adopting introverted nationalist views or displaying selfish parochialism. These are all attitudes which are certainly prevalent and are widespread in various European countries. During these years of crisis, the awareness of the fundamental importance of European integration to policies for protecting rights has significantly diminished among a section of the public.

On the other hand, there is a section of the public who have convinced themselves that if they shut themselves off from us and become withdrawn from us, they will have more chance of defending themselves. This is a fatal illusion. By making themselves smaller, they will just be smaller and will not defend themselves better. By shutting themselves off, they are only more withdrawn with regard to their own problems and contradictions. But this illusion is alive and well and is being encouraged. Therefore, the Charter needs to be relaunched, along with the enjoyment of its rights. This is a forward-looking, positive response to this issue.

This is why we gave our forum the title "Europe restarts in Turin". It is precisely by restarting with a focus on the key importance of social rights and their confirmation that we can devise responses for our citizens, primarily for those who are most exposed to risk, which will dispel any populist illusions or desire to become withdrawn.

This is why we feel that the Forum is extremely relevant and linked to issues which we encounter in our daily lives. We are sure that these reflections will raise talking points which will be beneficial to our work.

Gabriella BATTAINI-DRAGONI

Deputy Secretary General of the Council of Europe

Opening speech

It is a great pleasure for me to welcome you to our Forum on social rights.

The Council of Europe – the organisation I represent – is Europe's biggest human rights organisation.

Our starting point is simple: social rights are an integral part of human rights.

Civil and political rights are an essential precondition for guaranteeing freedom. However, the exercise of freedom – the fulfilment of human dignity in the full sense of the term – requires many other conditions to be met. True freedom is the chance to stand on one's own two feet, to be able to seize opportunities and make choices, to achieve one's full potential.

For this, you need social rights: a good education; a decent home; the opportunity to work, and social protection to satisfy people's needs at the critical moments in their lives and help them get back on their feet.

These rights are guaranteed in the European Social Charter which, in a way, is Europe's social constitution, which to date has been ratified by 43 of the 47 Council of Europe member states.

And Turin, where the Charter was first signed in 1961, is, perhaps, its spiritual home, if international conventions can have such a thing.

It is therefore fitting that we meet here, together, to discuss the future of social rights in Europe today.

I am especially pleased that we will be hearing from our two distinguished speakers – Professors Fitoussi and De Schutter, who will be passing on to us their views on these matters.

The topic we are discussing is a complex one.

We all believe in social rights, how could it be otherwise?

But our dilemma is how to make them real – and how to do so in a deeply challenging economic climate, in which recovery is slow and uneven, the global economic outlook is uncertain, there is still a high level of unemployment in many countries, the financial markets remain volatile and geopolitical tensions in various parts of the world are not conducive to economic growth and investment.

When state budgets are under pressure, how do we guarantee social rights for all, without discrimination?

How can we strike the right balance between strict tax policies and essential structural reforms – including infrastructure investment – between a healthy banking system and support for families and businesses, between policies which strengthen demand and those that sustain supply? How can we create new models of growth with due regard for each country's own traditions? In short, how

can we achieve our shared objective of strong, sustainable and balanced growth while respecting everyone's social and economic rights?

In this context, what role falls to civil society, businesses, workers and the international institutions?

Such questions are urgent. The answers require political leadership and courage at national level and concerted action internationally.

Years of hardship are taking their toll on cohesion within our societies: public anxiety is at a high.

Many citizens have grown cynical towards their democratic institutions and resentful towards others, those they feel are taking their opportunities – their families' opportunities.

All around we see populists and xenophobes exploiting this climate of anxiety and fear, especially with regard to the waves of refugees arriving en masse in our countries.

And so, we have an *even greater responsibility than ever* to pursue the policies and approaches which will ensure that our societies are cohesive and united.

Respect for social rights is the remedy that will enable our societies to remain united and overcome difficulties.

Respect for social rights restores and strengthens citizens' trust in their political leaders and the state.

Respect for social rights is the antidote to social exclusion, as it offers a way for the vulnerable and marginalised to reintegrate society.

In short, respect for human rights is even more necessary in times of crisis and economic difficulties than in ordinary times.

For me, this debate comes down to one question: *In what type of society do we wish to live and what type of society do we wish to build?*

In the Council of Europe we firmly believe that the strongest and most robust societies are those can draw on the talents of all their citizens and are able to maintain a high level of social cohesion. They are inclusive societies, inclusive democracies, based not only on political and civil liberties, but on social rights too.

In its efforts to put this aspiration at the top of the European political agenda, the Council of Europe has brought together governments, members of parliament and academics. Yesterday we discussed these topics with members of parliament from many countries in Europe.

Today, it is your turn to take part in the debate that will follow, in the presence of two distinguished experts who will open the debate on the issue I have referred to.

I am most grateful to all of you for giving up some of your time to attend this event which will conclude with the ceremony to mark the ratification of the Revised Social Charter by Greece, to be attended by the Greek Minister of Labour, Social Security and Social Solidarity.

I wish you a productive meeting and stimulating discussions.

Jean-Paul FITOUSSI
Professor of Economics, Institute of Political Studies, Paris

Introductory Report

Thank you very much, Mr Director. You say so many nice things about the speakers that I hope I will not disappoint the audience. [Mr Fitoussi then said in Italian that he was not sure what language to speak in but opted for French].

The previous two speakers spoke very wisely and said most of what needs to be said about social rights. It is now for me to say the rest.

I am going to be highly critical because I am angry. I am angry about the current situation in Europe and because the policies being pursued in Europe run completely counter to what the previous two speakers want. The reason for this is clear: the watchword for all economic policy in Europe is competitiveness. And what, I ask you, does competitiveness mean?

It means reducing labour costs more than one's neighbour and hence, by extension, reducing social rights. This is what is referred to as "structural reform" and the question is why it is called that as it is a process that belongs to the past – in fact the distant past. People try to absolve themselves from any blame for going back in history by claiming that structural policies are modern and that policies for the dismantling of social rights on the labour market are modern, whereas they are actually totally out-dated.

So, how did we arrive at such a state of affairs? I have my own theory about this, which is that there is no Europe or at least not enough Europe. I'm sorry to have to tell you that I am a federalist and I believe that Europe will not be able to solve our current problems, have some influence on the world and impose its own geopolitical view unless it has its own government. Otherwise it would be the only region in the world not to have a government.

And, if we do not have a government, how do we protect social rights? If the way in which they are to develop is to be determined by competitiveness, how do we uphold them? I do not really know what we should be doing. We have searched in all directions, but the first, which seems to me to be the most promising, is to show that social cohesion is a means of promoting productivity and that general productivity in cohesive, united and inclusive societies increases output, in other words, it is a factor which reduces the private sector's operating costs. Yet, instead of seeking such social cohesion, we are eroding social rights and so we are losing with one hand what we gained with the other. There are various conflicting theories on this matter but I am convinced that the theory of solidarity is the best and the one that is most justified by history.

We should remember the thirty-year post-war boom, during which we built our social system and were not yet dismantling it, and in which overall productivity and the productivity of the workforce in the economy increased the most. However, productivity implies investment and at the moment, we are told, states are poor and cannot invest. But why can they not invest? Because they cannot borrow, we are told. But why can they not borrow when the lending rate is at 0% or even negative? Nobody has been able to tell me this or answer my question.

Yet social rights are key elements of citizens' and populations' well-being. As we have been shown in various works including those of Stiglitz and Sen, there are objective determining factors for well-being such as employment – decent employment not unstable employment – economic security,

security per se, the environment and health. I would link the environment and health because currently, regardless of the matter of how sustainable our development is, our environment and our health are interconnected. It is enough to see what happens to our children when they live in polluted towns. They all end up with asthma, as do many adults, as well as developing allergies. There are therefore certain fundamental keys to well-being which only social rights can uphold. I was, of course, forgetting education which is also a deciding factor in well-being.

What then are we seeking in truth? Are we seeking the highest growth rate or the highest level of well-being? I would not say that the two are incompatible but it has to be understood that if we secure well-being, we also simultaneously secure growth. Why is it not our sole aim to seek the highest possible growth rate? Because growth rates do not tell us anything about people's situations, including their degree of equality and their social rights. You can have a very high growth rate, or at any rate greater than in Europe – which, you will tell me, is not difficult – but, as in the United States, this can be combined with a totally terrifying rise in inequality. This increase in inequality means that the growth in question is actually only of benefit to 1% of the population, or, not to exaggerate, 10% of the population, though degressively. In other words, it is most advantageous for the top 1%, then a little less for the next 1% and so on. What we are interested in, however, is the type of growth that benefits the most people. A model of growth which benefits only a very small number of people is of no interest to us as a social objective or an objective of our countries.

What we want instead is a form of growth which secures the equality of peoples before the future, if I might put it that way. Something which is ingrained in the thinking of all families is that their children's destinies should be better than theirs. This is a platitude though, because today the dismantling of social rights means that families' futures are not secured because we do not know what type of pensions workers will receive when they grow old. In this way, we have created two layers of uncertainty: uncertainty among the present generations themselves and uncertainty about future generations. This is a quite awful situation and, most importantly in my view, it is one which affects the very core of our democracies.

Democracy, or at least what we call democracy, is a combination of conflicting principles. On the one hand, there is census suffrage, which is ensured by the market and can be summed up by the motto one euro, one vote, and on the other, universal suffrage, which is secured by democracy and comprised in the maxim, one person, one vote. These conflicting principles mean that the attempt to manage the democracy of markets properly implies an ongoing quest for compromise to ensure that all people are as equal as they can be before the future. In the mid-twentieth century, an American Supreme Court judge said that you could either have a situation in which wealth was concentrated in the hands of a small number of people or you could have democracy, but you could not have both at once, and I believe he was right. Yet, what is the situation to which the policies pursued by our government are leading us? It is a situation in which the middle class, in other words democracy's mainstay, will have practically disappeared.

What we see is a gradual decline of the middle class and the ever increasing enrichment of the smallest section of the population and this development will inevitably result in the end of democracy. Why is this inevitable? Well we can see it happening. What is the meaning of the increase in extremism or the significance of the rise of Trump in the United States? It comes to the same thing. In the United States 90% of the population are not benefiting from the country's progress or growth. We are in a situation in which democracy itself is in grave danger. And this, I believe, along with Stiglitz and Sen, is the result of the fact that we are failing to measure the key variables of our economies. And what we measure determines what we do.

If I were to try to present the results of any economy in very simplistic terms, I would say that one would find, in the debit column, the debt burden – consisting of public and private debt – and, in the credit column, a whole series of capital assets. The first of these would be intangible capital, and this intangible capital would be democracy and the people's attachment to democracy. Next would come private and public economic capital, human capital and social capital, which we cannot measure. After this there would be natural capital, which it is also impossible to measure. So can anyone tell me what point there is in policies which attempt to reduce one component of the debit column on the back of the nation? Well, the answer is that the effect of these policies is to undermine the nation's wealth and to reduce its assets. We know this because we have seen it and experienced it first-hand. All that these policies have achieved is to raise unemployment to levels which we have not experienced since the 1930s or even to exceed the levels of that time, in other words to result in the wide-scale destruction of human capital.

We live in ageing societies and we are faced with the paradox that young people and young people's contributions and work are considered to be worthless. As any first-year student could tell you, anything that is scarce is valuable and since young people are scarce, they should be valued. But, alas, this is not the case and we are destroying our human capital. And we are destroying it for a long time into the future because we know that when young people botch their entry into the labour market, they feel the effects of this for the rest of their career. However, we are also destroying social capital. How can we have confidence in a society which is prepared to reduce human capital by 10 points to reduce debt by one? Consequently social capital, which is based on the mutual trust of economic operators, without which there would be no real growth, is on the decline. And it is also clear that economic capital, whether private or public, is dwindling.

There have never been as many bankruptcies during these crises as there are now, and it is clear to everyone that infrastructure is not being renewed and that states are failing to exercise their sovereign powers. We no longer have an army, a police force or a gendarmerie! I am exaggerating of course but, as I told you, I am angry. What this means is that we are sacrificing our fundamental social rights to stupid policies. Because, of course, in this kind of context, we no longer have anything to invest in nature conservation. How can we be expected to preserve our natural assets when we are counting every penny or at least, avoiding exaggeration, all the figures after the decimal point of the public debt, if I can put it that way - although we know that it is very poorly measured? The question therefore is how much longer we are intending to pursue these policies? And my answer is that we will continue for as long as there is no European government. And my answer is also that until there is a European government, the most basic things, such as the right to immigration and the right to live within secure and recognised borders, will not exist.

We also need to solve the problem of immigration, which is an extraordinarily simple problem to solve in one way or another, rather than accusing the Greeks or Italians of being lax when in fact they are simply being humane. We should be sharing the burden of the world's troubles rather than deciding today to ask a mercenary – or should I say a country which we should perhaps not be associating with, to guard our borders for us. I am sorry but I prefer to describe this as I see it. I know that it is not very politically correct but I stand by what I say.

This then is where the destruction, or the dismantling of social rights has led us. Yet, what we need to do today more than anything is to establish new social rights rather than dismantling old ones.

We need to develop social rights which secure an equal future for the sexes, enable life expectancies to continue to climb and allow states to place the greatest possible emphasis on educating their children. This though is not what is happening today as education budgets are being cut. It is also quite clear that in a number of countries, less priority is being placed on keeping people healthy. I am sorry to have to say it, but life expectancy has fallen in Greece and this is not because the Greek

government decided itself to reduce health spending but because it was forced to pursue a policy of truly unbelievable harshness towards its own population.

Is this what modernity is all about? I do not think so. Thank you for your attention.

Olivier DE SCHUTTER

Professor of Law at the Louvain University and at the College of Europe, Member of the United Nations Committee on Economic, Social and Cultural Rights*

Introductory Report

The European Social Charter in a time of crisis

The European Social Charter was negotiated between 1955 and 1961, in very different circumstances from those prevailing today. It was updated in 1988, with an Additional Protocol to supplement the catalogue of rights, and then again in 1996 with the signature of the Revised European Social Charter. Its role today is more vital than ever. This is due, firstly, to certain contemporary developments in labour law (Part I). It is further due to the economic downturn, which began as an open financial crisis in 2008 but led on to a sovereign debt crisis in Europe in 2010, forcing European Union Member States in particular to focus on reducing debt even if this meant further adding to inequality and undermining the right to social security (Part II). Lastly, it is due to the problems encountered by attempts to deepen integration of the European Union following the successive enlargements of 2004 and 2007-2014 and to the imbalance that is threatening to become entrenched between economic freedoms and social rights (Part III).

This paper obviously makes no claim to cover, even cursorily, all the developments relating to interpretation of the European Social Charter by the European Committee of Social Rights, the committee of independent experts whose role, according to the Turin Protocol, is to 'assess from a legal standpoint the compliance of national law and practice with the obligations arising from the Charter for the Contracting Parties concerned'.⁴ The purpose of this paper is more modest: to highlight how the Committee's reading of the Charter has confirmed and even increased the latter's relevance in the face of developments that have fundamentally changed the landscape of European social law since the Charter was first adopted in 1961. To illustrate this, it takes three major changes that we have witnessed over the past two decades and relates them to the case-law developed by the European Committee of Social Rights.

I. The Charter and changes in labour law

The importance of the European Social Charter's role is apparent first and foremost from the structural changes that have taken place in the world of work. In 1961 the prevailing impression was one of continuous progress in living and working conditions. European treaties attest to this fact, citing it as one of the objectives of post-war European integration, and the European Social Charter itself echoes this.⁵ However, for some twenty years now this initially optimistic outlook has given

* The opinion in this paper, which is based on the author's keynote speech at the Turin Forum on Social Rights in Europe, are given in a personal capacity and do not commit the UN Committee on Economic, Social and Cultural Rights.

⁴ Article 2 of the Protocol amending the European Social Charter, signed in Turin on 21 October 1991 (ETS No. 142); this article rewords Article 24 of the European Social Charter. Although the Turin Protocol never entered into force, the undertakings that it contained have been implemented to the extent that this has not required formal amendment of the Charter (that is, in compliance with existing provisions). Amongst other things, this Protocol clarifies the division of responsibilities between the European Committee of Social Rights and the Governmental Committee.

⁵ Article 2.1 of the Revised European Social Charter requires states having accepted this clause to reduce the working week progressively 'to the extent that the increase of productivity and other relevant factors permit'; under Article 12.3 of this

way to a dull concern that social benefits are being called into question by globalisation and by demographic changes that are threatening the viability of our social security systems.⁶

1. Mounting concern

These fears have been prompted firstly by changes in undertakings themselves. While the 1960s and 1970s saw more and more vertical integration and the emergence of large multinational firms,⁷ this was offset from the 1980s by a new development. Businesses increasingly operated as networks, using cascade subcontracting, with highly specialised suppliers of certain goods and services coming into the production process, which was split up among a large number of players.

This compartmentalisation of the production process has clearly identifiable consequences for corporate responsibility. The company coordinating the production process (which may not actually produce anything itself but just look after its brand name and explore markets) will limit demand-related risk as much as it can. It will not enter into any long-term commitments with its suppliers, which bear the lion's share of the risk. As for the company supplying goods or services, it outsources constraints. But its dependence on the contractor paradoxically strengthens its position in relation to the unions, from which it can always demand more because of competition between different suppliers in the same group and the shakiness of markets for its products. We thus have a double lack of responsibility: in both respects, businesses create conditions in which they have no responsibilities towards their workers.

At the same time the liberalisation of trade and investment has altered the balance of power between employers and workers. The removal of barriers to trade and to movement of capital is a global phenomenon that has been picking up speed since the mid-1980s. But it has gone even further, of course, in the European Union. Given the ease with which companies can use freedom of establishment (the conditions imposed by the Court of Justice are quite mild),⁸ it is tempting for

charter they undertake 'to endeavour to raise progressively the system of social security to a higher level'. The wording in both cases is identical to that in the 1961 version of the Charter.

⁶ For a fuller assessment, see Olivier De Schutter, 'Welfare State Reform and Social Rights', *Netherlands Quarterly of Human Rights*, Vol. 33 No. 2 (2015), pp. 123-162.

⁷ See in particular J.K. Galbraith, *The New Industrial State*, Princeton University Press, 1967.

⁸ CJEC, C-212/97 (ECLI:EU:C:1999:126), *Centros*, judgment of 9 March 1999 (in which the Court found that it was contrary to the articles of the Treaty of Rome relating to freedom of establishment 'for a Member State to refuse to register a branch of a company formed in accordance with the law of another Member State in which it has its registered office but in which it conducts no business where the branch is intended to enable the company in question to carry on its entire business in the State in which that branch is to be created, while avoiding the need to form a company there, thus evading application of the rules governing the formation of companies which, in that State, are more restrictive as regards the paying up of a minimum share capital' whilst pointing out that 'that interpretation does not [...] prevent the authorities of the Member State concerned from adopting any appropriate measure for preventing or penalising fraud, either in relation to the company itself, if need be in cooperation with the Member State in which it was formed, or in relation to its members, where it has been established that they are in fact attempting, by means of the formation of a company, to evade their obligations towards private or public creditors established in the territory of the Member State concerned') and CJEC, C-167/01 (ECLI:EU:C:2003:512), *Inspire Art Ltd*, judgment of 30 September 2003 (it is contrary to the same provisions of the Treaty 'for national legislation [...] to impose on the exercise of freedom of secondary establishment in that State by a company formed in accordance with the law of another Member State certain conditions provided for in domestic company law in respect of company formation relating to minimum capital and directors' liability. The reasons for which the company was formed in that other Member State, and the fact that it carries on its activities exclusively or almost exclusively in the Member State of establishment, do not deprive it of the right to invoke the freedom of establishment guaranteed by the EC Treaty, save where the existence of an abuse is established on a case-by-case basis'). Although subsequent decisions of the Court of Justice have qualified this position, these two judgments have been widely understood by legal opinion to legitimate establishment of letterbox companies, increasing competitive deregulation within the European Union: see W.F. Ebke, 'Centros - Some Realities and Some Mysteries', *American Journal of Comparative Law*, Vol. 48 (2000), pp. 623-660; A. Looijestijn-Clearie, 'Centros Ltd: A Complete U-Turn in the Right of Establishment for Companies', *International and Comparative Law Quarterly*, Vol. 49 No. 3 (2000), pp. 621-642; W.H. Roth, 'From Centros to Ueberseering: Free Movement of Companies, Private International Law and Community Law',

them to resort to relocation blackmail or even to regulatory optimisation strategies by choosing to set up wherever regulatory constraints, including those relating to labour law, are lightest. In addition, an employer may point to the need to be competitive with regard to an ever-increasing number of rivals, real or imagined, on ever larger markets. The financialisation of the economy is increasing this pressure: shareholders expect immediate returns. Last but not least, paying company executives in stock options, and therefore on the basis of the company's stock market performance, encourages them to opt for management geared to short-term profit maximisation.

Taken together, these developments have exercised downward pressure on workplace rights, weakening unions and lessening their bargaining power. They are reflected in what might be termed a fragmentation of the work force.

Following the adoption of major pieces of social legislation after the Second World War, there was a gradual standardisation of employees' status. This was reflected in the predominance, in the employment contract of aspects relating to employment conditions over aspects that were still purely personal, or *intuitu personae*, negotiated individually between the worker and the employer. In most European countries, contracts of service were left behind for good in the 1950s, and the aspects of the employment contract regulated by law came to prevail over all the others.⁹ Standardisation also meant bringing under standard conditions categories of worker traditionally subject to special arrangements. Domestic employees, dockers, seafarers and farm workers would gradually come under the same arrangements as other wage-earners. This standardisation of labour conditions went hand in glove with high levels of unionisation: this was not only a gain for the unions but also increased their influence in collective bargaining on pay and conditions of employment, since a union's claim to represent a specific group of workers was obviously easier to maintain if that group was relatively uniform and therefore had interests that were more or less identical.

Yet nowadays, conversely, we are seeing a fragmentation of employment conditions that is barely disguised by window-dressing in the form of gradual harmonisation of the conditions of non-manual workers ('white-collar' workers or *Angestellte*) and manual workers ('blue-collar' workers or *Arbeiter*). At the top of the salary scale this is reflected in exceptional measures for managers and senior executives with the intention of excluding them from ordinary labour law. The European Committee of Social Rights has from time to time attempted to stem this tide. In 2001, in the case of the *Confédération générale de l'encadrement et Confédération générale des cadres (CGE-CGC)*, it thus found that Article 2.1 of the European Social Charter (promoting progressive reduction in working time) was contravened by the system of annual working days established for managerial staff in the second Aubry Act of 19 January 2000 on negotiated reduction of working time,¹⁰ a revised version of France's famous law on the 35-hour working week originally passed in 1998:¹¹ because this new version of the law could lead to excessive weekly working hours for managerial

International and Comparative Law Quarterly, Vol. 52 (2003), pp. 177-208; M. Siems, 'Convergence, Competition, Centros and Conflicts of Law: European Company Law in the 21st Century', *European Law Review*, Vol. 27 (2002), pp. 47-59; S. Deakin, 'Two Types of Regulatory Competition: Competitive Federalism Versus Reflexive Harmonisation. A Law and Economics Perspective on *Centros*', *Cambridge Yearbook of European Legal Studies*, Vol. 2 (1999), pp. 231-260; E. Wymeersch, 'The Transfer of the Company's Seat in European Company Law', *Common Market Law Review*, Vol. 40 (2003), pp. 661-695; C. Kersting and C.P. Schindler, 'The ECJ's *Inspire Art* Decision of 30 September 2003 and its Effects on Practice', *German Law Journal*, Vol. 4 No. 12 (2003), p. 1277.

⁹ See the remarkable review offered by Alain Supiot in *Critique du droit du travail* (Paris, Presses universitaires de France, 1994, reissued in *Quadrige* series, 2002).

¹⁰ Law No. 2000-37 of 19 January 2000 on the negotiated reduction of working time, *Official Gazette of the French Republic* No. 16 of 20 January 2000, p. 975.

¹¹ Law No. 98-461 of 13 June 1998 on reduction of working time, *Official Gazette of the French Republic* No. 136 of 14 June 1998, p. 9029.

staff (up to 78 hours per week), the Committee held that this reform put France in breach of its undertakings.¹²

But it is mainly at lower levels of the occupational hierarchy that fragmentation of employment conditions has made itself felt, ever since Spain's reform of workers' conditions by the law of 2 August 1984 – a date that may be said, in retrospect, to signal a turning point.¹³ Firstly, the idea was to create more flexibility for businesses, particularly by facilitating redundancies and lightening the tax burden on employers. Greater flexibility of this sort is unlikely to create jobs: while some employers may be persuaded to take on workers more readily in the certainty of being able to lay them off in the event of problems, this is more than offset by a propensity on the part of others to use redundancy as a strategy to meet changes in demand, even if temporary, thus counteracting the goal of full employment.¹⁴ Yet, this has been the trend of successive labour market reforms over the past twenty years, in the name of combating labour market 'rigidities' that are supposedly a barrier to higher employment rates. Secondly, given particularly low youth employment rates, governments in Europe have encouraged the creation of new types of employment contracts (more insecure, more flexible, part-time or flexitime) to promote young people's access to the labour market through apprenticeship or training contracts. France offered a typical example of this ten years ago with the 'first job' contract put forward by the Villepin government in 2006 for young people aged under 26.¹⁵

The most immediate consequence of this fragmentation of employment conditions is to be found in the inroads it has made into the idea of continuous improvement in living and working conditions and also in the idea of widespread introduction of the protection guaranteed by labour legislation. But this fragmentation into a number of different systems – the transition from *one* status for workers to a *variety* of more or less precarious conditions – has also had indirect consequences: it has led to divisions among workers, which hinders collective action, given the growing difficulty of articulating joint demands. The link between better conditions for wage earners and the high rates of unionisation that characterised the thirty-year boom after the Second World War has been broken. In its stead we have individualised paths and competition between workers of different statuses, as well as between 'insiders' within the labour market and 'outsiders' who are excluded from it but hope to enter it, particularly through the introduction of special arrangements departing from ordinary law.¹⁶

The European Social Charter offers essential guidance in response to these changes in employment conditions. It sets limits to the fragmentation that has been the main feature of recent developments in labour rights in European States (Section 2 below). And it guarantees the role of

¹² ECSR, Complaint No. 9/2000, *Confédération française de l'encadrement et Confédération générale des cadres (CFE-CGC) v. France*, decision on the merits of 16 November 2001.

¹³ In 1984, under the first Socialist government of Felipe Gonzalez, Spain decided to promote use of fixed-term employment contracts by passing Law No. 32/1984 of 2 August 1984 on reform of workers' conditions. See, amongst many other studies, M. Casas Baamonde and F. Valdes Dal Re, 'Les nouvelles formes d'emploi dans la législation espagnole', *Travail et emploi*, Vol. 39 (1989), pp. 17-34.

¹⁴ Richard Layard and Stephen Nickell, 'Unemployment in Britain', *Economica*. Vol. 53 No. 210, Supplement: Unemployment (1986), pp. S121-169; Richard Layard and Stephen Nickell, 'The Thatcher Miracle?', *American Economic Review*. Vol. 79 No. 2 (1989), pp. 215-219.

¹⁵ The 'first job' contract was provided for by section 8 of the Equal Opportunities Act (Law No. 2006-396) of 31 March 2006. However, this clause resulted in strong opposition and, following large-scale mobilisation of a section of public opinion, was eventually repealed by Law No. 2006-457 of 21 April 2006 on young people's access to working life, *Official Gazette of the French Republic* No. 95 of 22 April 2006, p. 5993.

¹⁶ On these developments see Robert Castel, *From Manual Workers to Wage Laborers: Transformation of the Social Question* (trans. Richard Boyd, New Brunswick (N.J.), Transaction Publishers, 2003) and, by the same author, *La montée des incertitudes : travail, protections, statut de l'individu* (Paris, Éditions du Seuil, 2009).

the social partners and the dialogue between them in order to prevent economic constraints from leading to their gradual marginalisation (Section 3 below).

2. Maintaining employees' status

The European Committee of Social Rights originally promoted the trend towards standardisation of employment conditions by calling into question special arrangements for certain occupations: it thus found that Article 24 of the Charter (guaranteeing the right to protection in cases of termination of employment) was violated by the Norwegian Seamen's Act, which allowed employers to dismiss seamen aged over 62 without having to justify this decision on the grounds of ability or economic necessity.¹⁷ But mainly the Charter has controlled the gradual introduction of greater flexibility in the labour market encouraged by the spread of competition and fiscal consolidation programmes. In the recent past, the reform adopted by Greece in 2010, allowing termination of employment without notice or severance pay during the probation period in an open-ended contract, is a striking example: in a decision of 23 May 2012, the European Committee of Social Rights found that this reform entailed a violation of Article 4.4 of the European Social Charter, which required 'a reasonable period of notice for termination of employment'.¹⁸ Among the labour market reforms carried out by Greece to satisfy the demands of its creditors following the assistance that it had been granted, there was the introduction of 'special apprenticeship contracts'. These contracts were concluded between employers and young workers (aged 15 to 18) without the latter having a number of safeguards provided for by labour and social security law, while the employers had the option of paying workers aged under 25 less than the minimum wage for their first job. In response to Complaint No. 66/2011, lodged by a number of Greek unions, the Committee came to the conclusion that the introduction of these 'special apprenticeship contracts' was a violation of Article 4.1 of the Charter, which guarantees 'the right of workers to a remuneration such as will give them and their families a decent standard of living'.¹⁹ The Committee considered that:

it is permissible to pay a lower minimum wage to younger persons in certain circumstances (e.g. when they are taking part in an apprenticeship scheme or otherwise engaged in a form of vocational training). Such a reduction in the minimum wage may enhance the access of younger workers to the labour market and may also be justified on the basis that it reflects a statistical tendency for them to incur lower expenditure on average than other categories of workers when it comes to housing, family support and other living costs. However, any such reduction in the minimum wage should not fall below the poverty level of the country concerned.²⁰

No doubt the European Social Charter is not perforce hostile to the coexistence of general conditions applying to the majority of workers and special rules applying to some specific categories of worker. But this multiplication of treatments is considered acceptable only under stringent conditions. On the one hand, some differences of treatment between categories of workers could be considered unjustifiable and therefore discriminatory.²¹ On the other, the European Social Charter

¹⁷ ECSR, Complaint No. 74/2011, *FFFS Union v. Norway*, decision on the merits of 2 July 2013.

¹⁸ ECSR, Complaint No. 65/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, decision on the merits of 23 May 2012.

¹⁹ ECSR, Complaint No. 66/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, decision on the merits of 23 May 2012.

²⁰ *Ibid.*, §60.

²¹ The question of the coexistence of different legal arrangements covering identical services provided came up in *CFDT v. France* (Complaint No. 50/2008), for example. However, the circumstances made it difficult to pinpoint discrimination. The issue was the status that should be granted to civilian employees with contracts governed by German law following the dissolution of French forces stationed in Germany. The Committee dismissed the claim of discrimination, based on Article E of the Revised European Social Charter, because of the difference in situation between employees with contracts governed by German law and employees with contracts governed by French law.

provides in principle that its labour law safeguards must apply to all workers without exception: special arrangements are therefore theoretically suspect. Admittedly, Article 1 of the Charter provides that a number of undertakings deriving from the Charter's Article 2 (right to just conditions of work), Article 7 (right of children and young persons to protection), Article 10 (right to vocational training), Article 21 (right of workers to be informed and consulted within the undertaking) and Article 22 (right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking) shall be regarded as effective 'if the provisions are applied [...] to the great majority of the workers concerned'.²² However, the European Committee of Social Rights has set clear limits to this tolerance: it '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'.²³ While practical difficulties may prevent full compliance with Charter safeguards (because the labour inspectorate is unable to ensure compliance with certain rules across all sectors of the economy, for example), and it is conceivable that a collective labour agreement putting into effect some of the Charter's safeguards might not apply to all workers, this would not justify a deliberate policy to exempt some categories of worker from universally applicable rules.²⁴ The rule is therefore that safeguards must apply across the board; exceptions are tolerated only in narrowly defined circumstances.

3. The role of collective bargaining

The Charter can also guide government responses to the economic downturn, for example by guaranteeing the right of workers to be informed and consulted in collective redundancy procedures (Article 29 of the Charter) or encouraging governments to invest in vocational training in order better to equip workers with the skills required by a constantly evolving economy: Article 10 of the Charter guarantees the right to vocational training, which also forms part of the right of persons with disabilities to integration, recognised in Article 15. Above all, the Charter seeks to ensure a certain balance between employers and workers for the purposes of social dialogue – a significant contribution in a context where pressure on workers is growing.

Of course, collective bargaining cannot lead to outcomes that conflict with the requirements of the European Social Charter: the Charter here provides a minimum set of rights that have to be respected by workers and employers in all circumstances, thus setting limits to the social partners' independent action.²⁵ However, the Committee has endeavoured to balance the relative strengths of workers and employers beyond this. It is a delicate task and one that constantly has to be taken up afresh, since it depends on the context in which social dialogue occurs. The case-law arising out of the Charter contains two main lessons in this respect.

1. Firstly, it seeks to maintain not only the right, and effectiveness, of collective action by the unions but also what is known as negative freedom of association: the right of each individual worker not to join a union, even if this means weakening the union's representation and its ability to influence collective bargaining.²⁶ In *Confederation of Swedish Enterprise v. Sweden*, for example, an employers'

²² The same rule appeared in Article 33 of the 1961 European Social Charter.

²³ ECSR, Complaint No. 9/2000, *CFE-CGC v. France*, decision on the merits of 16 November 2001, §40.

²⁴ In the *CFE-CGC* case the Committee dismissed France's argument that the number of managerial staff affected by the contested provisions in the second Aubry Act (concerning the system of annual working days mentioned above) would in any case be limited ('the proportion of persons concerned by agreements on annual working days is less than 5% of the total number of employees' (§26)). If the law has deliberately excluded a section of managerial staff from the requirements of the law on the 35-hour working week, this situation does not comply with the Charter. The dissenting opinion of Mr Stein Evju (joined by Mr Rolf Birk) further confirms this reading of the majority opinion.

²⁵ ECSR, Complaint No. 8/2000, *CFE-CGC v. France* (on reduction of working time for managerial staff under the second Aubry Act of 2000).

²⁶ Paradoxically, no doubt, negative freedom of association (the right not to become a member of a union) began to grow in importance in the case-law of the European Court of Human Rights under the influence of the European Social Charter in

organisation contested pre-entry closed shop clauses, which were not prohibited by Swedish law, although it did prohibit dismissal of workers who refused union membership. The ECSR found for the complainant organisation in the name of workers' freedom of choice: 'the freedom guaranteed by Article 5 of the Charter implies that the exercise of a worker's right to join a trade union is the result of a choice and that, consequently, it is not to be decided by the worker under the influence of constraints that rule out the exercise of this freedom'.²⁷

This does not mean that any encouragement to join an organisation defending its members' interests would, by definition, conflict with the requirements of freedom of association. The ECSR has, for example, refused to consider Finland in breach of Article 5 of the European Social Charter on account of the fact that only employers belonging to national employer organisations could derogate from certain aspects of labour legislation through local collective agreements: according to the Committee, these provisions did not affect the 'substance' of freedom of association, a term it borrowed from the European Court of Human Rights.²⁸ A clarification of this case-law can probably be expected in future in two respects: firstly, to specify the conditions under which the disproportion between the two alternatives available to a worker or employer – to join a union/association or not – would be such as to rule out genuine freedom of choice on the part of the interested party, leading to a situation in breach of Article 5 of the Charter, and, secondly, to prohibit any possibility of financial reward influencing a worker's choice, which otherwise would allow an employer in reality to pay workers not to join a union.²⁹

2. The Charter also seeks to keep intact real collective bargaining, which assumes the ability to use certain forms of pressure. When construing Article 6 of the Charter, which guarantees the right to bargain collectively, the Committee's main challenge is to determine how States Parties should regulate the balance of power between employers and workers, in what may be considered a sort of mutual restraint. Belgium provides a perfect example. Although their practice is not consistent in this respect, the Belgian courts have regularly intervened in respect of the exercise of the right to strike, under urgent procedures (on the basis of Articles 1024-1035 of the Judicial Code), in order to prohibit picketing, that is action taken by unions to block non-strikers' access to the workplace. Here again, the key factor is the individual worker's freedom of choice. According to the Committee, 'The exercise of the right to strike necessitates striking a balance between the rights and freedoms, on one side, and the responsibilities, on the other, of the natural and legal persons involved in the dispute.'³⁰ The right balance must be determined on the basis of 'the right of other workers to choose whether or not to take part in the strike action',³¹ with this freedom of choice being the key criterion: it has to be the foundation for assessing court interference with the exercise of the right to strike.

However, court intervention under urgent procedures regarding the exercise of the right to strike, particularly prohibiting pickets in the name of freedom to conduct business, must comply with conditions 'prescribed by law', that is, sufficiently stable and foreseeable. This follows from Article 31 of the 1961 European Social Charter (Article G of the Revised Charter), which lays down the

particular in the 1980s and 1990s, at the very time when unionisation rates and therefore union influence were already in steep decline.

²⁷ ECSR, Complaint No. 12/2002, *Confederation of Swedish Enterprise v. Sweden*, decision on the merits of 15 May 2003, § 29. The Committee upheld this approach in *Bedriftsforbundet v. Norway* (Complaint No. 103/2013, decision on admissibility of 14 May 2014).

²⁸ ECSR, Complaint No. 35/2006, *Federation of Finnish Enterprises v. Finland*, decision on admissibility of 16 October 2007, §29 (citing European Court of Human Rights, *Gustafsson v. Sweden*, judgment of 25 April 1996).

²⁹ See European Court of Human Rights, *Wilson, National Union of Journalists and Others v. the United Kingdom*, judgment of 2 July 2002.

³⁰ ECSR, Complaint No. 59/2009, *ETUC, CGSLB, CSC and FGTV v. Belgium*, decision on the merits of 13 September 2011, §34.

³¹ *Ibid.*, §36.

conditions under which restrictions on the Charter rights are permitted. In *ETUC, CGSLB, CSC and FGTB v. Belgium*, the Committee held that the decisions of the Belgian courts were not sufficiently consistent in this respect to provide adequate legal certainty for the parties concerned;³² furthermore, this kind of intervention followed a unilateral application by the employer, which in the Committee's opinion failed to respect the requirement for 'procedural fairness' that should surround the imposition of restrictions.³³ The challenge here is to strike the right balance between the need, on the one hand, for a contextualised approach heedful of the actual pressures brought to bear on workers, in order to ensure genuine freedom of choice for the latter, and the need for legal certainty on the other, implying a sufficiently stable and precise regulatory environment in which the rules governing exercise of the right to strike are clear to all.

II. The Charter and growing inequality

1. Rising inequality

While greater labour law flexibility is an underlying primary trend of the past two decades, its main consequence has been growing inequality, for the first time in the post-war period. The work of François Bourguignon and Thomas Piketty in France, Joseph Stiglitz in the United States and Anthony Atkinson in the United Kingdom has alerted governments to the need to do more to tackle this development.³⁴ In OECD countries the gap between rich and poor has continued to widen since the mid-1980s. For OECD countries overall, while real disposable household incomes rose by 1.7% a year between the late 1980s and the late 2000s, the incomes of the richest 10% grew faster than those of the poorest 10%, so that when the economic downturn began in 2008-2009, the income ratio between the richest decile and the poorest decile was nine to one.³⁵ This was a general trend across the OECD, although there were a few exceptions: inequality in Belgium, France and Hungary did not increase over this period, and it even declined in Turkey and Greece.

Rising inequality is a problem for a number of reasons.³⁶ Strong inequalities between households have an impact down the generations: Piketty's work emphasises how far parents' wealth today determines their children's entire lives, placing them in a privileged position in relation to their peers. Marked inequality also leads to political deadlock: the democratic processes that allow a society to change of its own volition are less effective if a small economic elite occupies such a dominant position that it can manipulate their outcome. Such inequality naturally affects enjoyment by the poorest households of social and economic rights such as access to education, health care and adequate housing.³⁷ Inequality does not just penalise those at the bottom of the social scale: as the work of Kate Pickett and David Wilkinson has shown, it affects the well-being of society as a

³² Ibid., §43.

³³ Ibid., §44.

³⁴ Anthony B. Atkinson, *Inequality: What Can Be Done?* (Cambridge (Mass.), Harvard University Press, 2015); François Bourguignon, *The Globalization of Inequality* (trans. Thomas Scott-Railton, Princeton, Princeton University Press, 2015); Thomas Piketty, *Capital in the Twenty-First Century* (trans. Arthur Goldhammer, Cambridge (Mass.), Harvard University Press, 2014); Joseph Stiglitz, *The Great Divide: Unequal Societies and What We Can Do About Them* (New York, W.W. Norton and Company Inc., 2015).

³⁵ OECD, *Divided We Stand: Why Inequality Keeps Rising* (Paris, OECD, 2011).

³⁶ On the links between inequality and enjoyment of human rights, see the Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, to the 29th session of the Human Rights Council (UN document A/HRC/29/31, 29 May 2015).

³⁷ For example, the Commission on the Measurement of Economic Performance and Social Progress has found that 'people from lower occupational classes who have less education and income tend to die at younger ages and to suffer, within their shorter lifetimes, a higher prevalence of various health problems' (*Report by the Commission on the Measurement of Economic Performance and Social Progress*, J. Stiglitz, A. Sen and J.-P. Fitoussi, September 2009, §81).

whole because of the weaker social ties that result.³⁸ It can be considered a source of social insecurity, and this affects everyone, whatever his or her income.

2. The non-discrimination requirement for implementing the European Social Charter

The Charter's contribution here is both fundamental and frequently underrated. Under Article E of the Revised European Social 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'. On the basis of this clause, the European Committee of Social Rights can assess whether a State's legislative, regulatory or political environment might result in some marginalised groups being disadvantaged, whether or not intentionally, and even without any express difference in treatment. Following the example of the European Court of Human Rights in its interpretation of Article 14 of the European Convention on Human Rights, the European Committee of Social Rights has held that:

Article E entails that, in a democratic society, not only should persons who are in the same situation be treated equally and persons whose situations differ be treated differently, but all responses should show sufficient discernment to ensure real and effective equality. On the same basis, the Committee considers that Article E also prohibits all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.³⁹

The prohibition on infringing the principle of equality places immediate obligations on States Parties (to eliminate any discriminatory provisions) as well as positive obligations to put in place policies to reduce inequality specifically affecting certain groups in society. As part of its supervision, the Committee may here have to compare the legal positions in States Parties across time in order to assess progress made in implementing the rights proclaimed by the Charter.⁴⁰ In its decision of 11 September 2013 on the merits of Complaint No. 81/2012, the European Committee of Social Rights pointed out in this respect that:

when the achievement of one of the rights protected by the Charter is exceptionally complex and particularly expensive to resolve, the measures taken by a State to achieve the Charter's objectives must meet the following three criteria: "(i) a reasonable timeframe, (ii) measurable progress and (iii) financing consistent with the maximum use of available resources" (*Autism-Europe v. France*, cited above, §53). The Committee reiterated this requirement in decisions on subsequent complaints, particularly those concerning the rights of persons with disabilities (*Mental Disability Advocacy Center (MDAC) v. Bulgaria*, Complaint No. 41/2007, decision on the merits of 3 June 2008, §39; *FIDH v. Belgium*, Complaint No.

³⁸ Kate Pickett and Richard Wilkinson, *The Spirit Level: Why More Equal Societies Almost Always Do Better* (London, Allen Lane, 2009).

³⁹ For successive versions of this idea, see *Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52; *European Action of the Disabled v. France*, Complaint No. 81/2012, decision on the merits of 11 September 2013, §133; and *Mental Disability Advocacy Centre v. Bulgaria*, Complaint No. 41/2007, decision on the merits of 3 June 2008, §50.

⁴⁰ In two decisions dated 23 May 2012 on the merits of Complaint No. 65/2011 and Complaint No. 66/2011, the European Committee of Social Rights prefaces its assessment of the various alleged violations with some preliminary observations in which it extends to labour law the conclusions that it had already drawn from the repercussions of the economic crisis on social rights: '[T]he economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries most need the protection' (§16 and §12 respectively).

62/2010, decision on the merits of 21 March 2012, §113).⁴¹

Given these interpretations, the non-discrimination clause in Article E of the Revised European Social Charter goes well beyond merely prohibiting differential treatment of different groups of people that cannot be objectively and reasonably justified or that is disproportionate: in actual fact it requires States Parties to implement genuine policies to tackle inequality in the fields covered by the Charter.

The European Social Charter can act as a bulwark against the apparently unlimited growth of inequality in at least three other ways: firstly, it encourages States to pursue redistributive wage policies; secondly, it stresses the importance of establishing inclusive education and guaranteeing the right to vocational training, in order to win the race against time to prevent workers' skills becoming obsolescent owing to the rapid changes brought about by both technological progress and economic globalisation; thirdly, by guaranteeing the right to social security, it acts as a bulwark against a reduction in the types of protection associated with establishment of the welfare state. These three processes, complementing prohibition of discrimination as such, enable the European Social Charter to help tackle the rise in inequality.

3. Processes complementing prohibition of discrimination

The European Social Charter encourages States Parties to reduce wage dispersion. Article 4.1 of the Charter guarantees the right to a remuneration such as will provide a decent standard of living. However, the European Committee of Social Rights has not wished to settle for a literal interpretation of this concept, which would have related it to a basket of essential goods, for example, or the satisfaction of vital needs such as food, housing, health and education, and also social protection if based on a contributory scheme. Instead, the Committee recognises the *relative* nature of the idea of the 'decent' standard of living that the remuneration is supposed to provide: individuals' assessments of their own living standards depend on the position they occupy on the social scale. To be deemed fair for the purposes of Article 4.1, the pay must not only be above the country's poverty level but also no less than 60% of national average earnings. This interpretation contrasts in part with the interpretation of the concept of fair pay in Article 7 of the International Covenant on Economic, Social and Cultural Rights.⁴² It links the requirement for fair remuneration with prevention of excessive wage dispersion within a State: this might be summed up as the requirement for a redistributive wage policy.

The Charter also emphasises inclusive access to education and vocational training: this again, it might be argued, is a tool to tackle growth in inequality. With the development of information and communication technology we are witnessing a quickening race between technological innovation and advances in training. The OECD has summed this up as follows:

The rise in the supply of skilled workers considerably offset the increase in wage dispersion

⁴¹ *European Action of the Disabled v. France*, Complaint No. 81/2012, decision on the merits of 11 September 2013, §79.

⁴² Cf. General Comment No. 23 (2016) on the right to just and favourable conditions of work, adopted by the Committee on Economic, Social and Cultural Rights on 11 March 2016 (UN document E/C.12/GC/23). The Committee on Economic, Social and Cultural Rights defines the concept of remuneration providing 'a decent living for workers and their families' within the meaning of Article 7.a (ii) of the International Covenant on Economic, Social and Cultural Rights on the basis of the need to guarantee enjoyment of the Covenant's rights (paragraph 18: 'remuneration must be sufficient to enable the worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing and additional expenses such as commuting costs'), although, in a specific allusion to the approach taken for the European Social Charter, it is suggested that the minimum wage could be defined with reference to the average wage in a given State (paragraph 21: 'The minimum wage might represent a percentage of the average wage, so long as this percentage is sufficient to ensure a decent living for workers and their families').

associated with technological progress, regulatory reforms and institutional changes. The upskilling of the labour force also had a significant impact on employment growth. The growth in average educational attainment thus appears to have been the single most important factor contributing not only to reduced wage dispersion among workers but also to higher employment rates.⁴³

This makes clearer the implications of cases brought before the European Committee of Social Rights such as, recently, *Associazione sindacale "La Voce dei Giusti" v. Italy*, in which a teachers' union alleged that some categories of teaching staff were being prevented from undertaking or continuing specialised training because of their increased workload, thus contravening Article 10 (right to vocational training).⁴⁴

Lastly, a number of the Charter's provisions are intended to guarantee the right to social security, that is, to protect people from the risks associated with the dismantling of the welfare state's redistributive mechanisms. The OECD believes that the welfare state has had a corrective effect over the past thirty years: in the late 2000s the level of earnings inequality after redistribution (therefore after tax and social transfers) was 25% less, measured by the Gini coefficient, than the level of gross earnings inequality. At the same time, it is worrying that the effectiveness of the redistributive policies associated with the welfare state (their impact on reducing inequality) has diminished since the mid-1990s: until then they had the effect of halving income inequality before redistribution – this means that welfare state mechanisms are today two times less redistributive than they were up until approximately twenty years ago. This goes to show the importance of Article 12 of the European Social Charter, which guarantees the right of workers and their dependants to social security, and also of Article 13 of the Charter, which recognises the right to social and medical assistance for persons without resources.

III. The Charter and European Union integration

The third major development that European States have witnessed over the past two decades, in addition to rising inequality and changes in labour law to allow greater flexibility, is unquestionably the deepening of integration within the European Union. Today this deepening is being questioned by a growing section of public opinion. The voices criticising the fact, rightly or wrongly, that the European Union favours economic freedoms over respect for social rights are becoming louder and louder. The European Social Charter's contribution is here again incontrovertible: by drawing attention to the need to make certain that protection of these rights is not sacrificed to the requirements of economic integration it ensures that advances in European integration will result in better protection of social rights rather than providing a pretext to challenge them. This need is sometimes seen as a constraint, delaying progress of the internal market. In actual fact, it is above all a guarantee of the latter's legitimacy. It constitutes a means of outlining the essential 'social' constitution that is concomitant of the 'economic' constitution laid out in the Treaty of Rome and its successive modifications up to the Treaty of Lisbon.⁴⁵

A decision delivered on 3 July 2013 by the European Committee of Social Rights offers a good illustration. In this decision, the Committee upheld a complaint lodged by the Swedish unions, which considered that the amendments made to Swedish legislation in 2010 to ensure that Sweden was in compliance with the *Laval* judgment of the Court of Justice of the European Union contravened various paragraphs of the Revised European Social Charter: the Committee found that these

⁴³ OECD, *Divided We Stand*, op. cit., p. 31.

⁴⁴ Complaint No. 105/2014. This complaint was held to be admissible on 17 March 2015.

⁴⁵ On this subject see O. De Schutter (ed.), *The European Social Charter: A social constitution for Europe*, Brussels, Bruylant, 2010.

amendments were not conducive to collective bargaining – in breach of the undertaking accepted by Sweden in Article 6.2 of the Charter to promote collective bargaining as a means of regulating terms and conditions of employment – and placed restrictions on the collective action in which workers ought to be able to engage that were such as to contravene Article 6.4 of the Charter.⁴⁶ Alluding to this decision, the Secretary General of the Council of Europe noted in his report on the *State of democracy, human rights and the rule of law in Europe*, prepared for the Council of Europe Summit in Vienna on 5 and 6 May 2014: ‘In 2013 the European Committee of Social Rights found a breach, inter alia, of the right to bargain collectively and the right to strike, important corollaries of the right to organise. The measures in question had been adopted as a result of a judgment of the Court of Justice of the European Union. The decisions of the States Parties (resulting directly or indirectly from EU law) must conform to the rights enshrined in the Charter. Therefore we see an urgent need to find pragmatic solutions to settle conflicts between the two sets of standards.’⁴⁷

Although it is the best known, this decision is not an isolated example: it was one of a number that paved the way for it. A brief outline will be given below of the position taken by the European Committee of Social Rights on the obligations of EU law that conflict with commitments under the European Social Charter (Section 1 below). This position is explained by the status accorded this charter by the Court of Justice of the European Union (Section 2 below), whence there is a real risk that the two sets of norms will come into conflict (Section 3 below).

1. The European Committee of Social Rights and EU law

The two, previously described, decisions on Greece delivered on 23 May 2012 by the European Committee of Social Rights were an initial warning. Note should be taken of the conclusion to which these decisions came: the Committee considered that the 1961 European Social Charter had been contravened by a number of measures to make Greek labour law more flexible – in particular, those authorising dismissal without notice or severance pay of persons hired with open-ended employment contracts and promoting recruitment of young workers through creation of special arrangements resulting in exemption from existing arrangements. In fact, these measures were intended as a response to the economic crisis and particularly the extremely high youth unemployment rate in Greece, and it seems they were adopted under pressure from the ‘troika’ (the

⁴⁶ European Committee of Social Rights, Complaint No. 85/2012, *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, decision on admissibility and the merits of 3 July 2013, §§116 and 120 in particular. In its *Viking and Laval un Partneri Ltd* judgments, delivered a few days apart in December 2007, the Court of Justice of the European Union concluded that there was a need to balance the right to collective action recognised in Article 28 of the Charter of Fundamental Rights (*OJ*, C 83, 30.3.2010, p. 389) against freedom of establishment and freedom to provide services when the exercise of these fundamental economic freedoms was hindered by union action (Court of Justice (Grand Chamber), 11 December 2007, *International Transport Workers’ Federation, Finnish Seamen’s Union v. Viking Line ABP*, C-438/05, and 18 December 2007, *Laval un Partneri Ltd*, C-341/05; see also Court of Justice, 3 April 2008, *Rüffert*, C-346/06). These judgments drew criticism, particularly from the unions but also from academia (see Christian Joerges and Florian Rödl, ‘Informal Politics, Formalised Law and the “Social Deficit” of European Integration: Reflections after the Judgments of the ECJ in *Viking* and *Laval*’, *European Law Journal*, Vol. 15, No. 1 (2009), pp. 1-19; Olivier De Schutter, ‘Transborder provision of services and “social dumping”: rights-based mutual trust in the establishment of the Internal Market’, in I. Lianos and O. Odudu (eds), *Regulating Trade in Services in the EU and the WTO: Trust, Distrust and Economic Integration*, Cambridge University Press, 2011, pp. 346-380; A. Bucker and W. Warneck, *Reconciling Fundamental Social Rights and Economic Freedoms after Viking, Laval and Rüffert* (Baden Baden, Nomos, 2011); A.C.L. Davies, ‘One Step Forward, Two Steps Back? The *Viking* and *Laval* Cases in the ECJ’, *Industrial Law Journal*, Vol. 37 No. 2 (2008), p. 126). The European Parliament and the European Economic and Social Committee also expressed concern (see European Parliament resolution of 22 October 2008 on challenges to collective agreements in the EU (2008/2085(INI)) and the Opinion of the European Economic and Social Committee on ‘The Social Dimension of the Internal Market’ (rapporteur: Mr Janson), adopted on 14 July 2010 by 143 votes in favour, 15 against and 19 abstentions (SOC/360 - CESE 970/2010, *OJ*, C 44, p. 90)).

⁴⁷ *State of democracy, human rights and the rule of law in Europe*, Report by the Secretary General of the Council of Europe, SG(2014)1 final, p. 41.

European Central Bank, the European Commission and the International Monetary Fund) set up to ensure that the country would take structural measures to reduce its national debt.⁴⁸

Some months later, the European Committee of Social Rights gave its opinion on the merits of a complaint lodged by the Federation of Employee Pensioners of Greece (IKA-ETAM) alleging that the changes made to the Greek pension scheme in 2010 were incompatible with Greece's commitments under the European Social Charter and especially Article 12, which required the social security system to be raised progressively to a higher level.⁴⁹ In reply, the Greek Government argued that the impugned measures were 'approved by the national parliament, are necessary for the protection of public interests, having resulted from Greece's grave financial situation, and, in addition, result from the Government's other international obligations, namely those deriving from a financial support mechanism agreed upon by the Government together with the European Commission, the European Central Bank and the International Monetary Fund ("the Troika") in 2010'.⁵⁰

The Committee rejected this argument. It noted that the limitations clause in Article 31.1 of the European Social Charter did not include 'economic or financial aims' among admissible grounds for restricting the rights guaranteed by the Charter.⁵¹ It added that 'the fact that the contested provisions of domestic law seek to fulfil the requirements of other legal obligations does not remove them from the ambit of the Charter'. In support of the latter position, the Committee cited the case-law of the European Court of Human Rights, which did not rule out the possibility, in the 1996 *Cantoni* case, that France might be guilty of infringing the principle of legality in criminal proceedings as a result of incorporating an EEC directive word for word into its criminal law.⁵² In short, in its own words, the Committee held that:

when states parties agree on binding measures, which relate to matters within the remit of the Charter, they should – both when preparing the text in question and when implementing

⁴⁸ European Committee of Social Rights, Complaint No. 65/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, decision on the merits of 23 May 2012; European Committee of Social Rights, Complaint No. 66/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, decision on the merits of 23 May 2012. The first decision relates to measures to increase Greece's labour market flexibility, introduced by a law of 17 December 2010 and making it possible to dismiss a worker without notice or severance pay during the probation period of an open-ended contract: the Committee considered that this measure undermined the safeguard contained in Article 4.4 of the 1961 European Social Charter, which guarantees 'the right of all workers to a reasonable period of notice for termination of employment'. The second decision establishes that provisions introduced into Greek labour law in 2010 concerning 'special apprenticeship contracts' for hiring of young people aged 15 to 18 and concerning employment of new entrants to the labour market aged under 25 contravene a number of safeguards in the European Social Charter. The 'special apprenticeship contracts' make no provision for young people to have at least three weeks' annual paid leave, in breach of Article 7.7 of the Charter; they do not promote training for the young workers, in violation of Article 10.2 of the Charter; and in practice they exclude these young workers from the protection offered by the social security system, in contravention of Article 12.3 of the Charter. Regarding the measures to promote employment of new entrants to the labour market aged under 25, the Committee considered that the authorisation to hire young people for a wage that was 68% of the statutory minimum wage did not comply with Article 4.1 of the Charter, which guaranteed the right to fair remuneration and did not allow payment of a wage below the poverty level; the Committee further noted that it resulted in age discrimination.

⁴⁹ European Committee of Social Rights, Complaint No. 76/2012, *Federation of Employed Pensioners of Greece (IKA-ETAM) v. Greece*, decision on the merits of 7 December 2012.

⁵⁰ *Ibid.*, §10.

⁵¹ *Ibid.*, §12. Article 31.1 of the 1961 European Social Charter states, '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.'

⁵² European Court of Human Rights, *Cantoni v. France*, judgment of 15 November 1996, §30.

it into national law – take full account of the commitments they have taken upon ratifying the European Social Charter.⁵³

This position of the European Committee of Social Rights is consistent with the position that it has adopted in other cases in which the question of interpreting the requirements of the European Social Charter in the light of obligations inferred from EU law has come up in similar terms. The Committee has always held that a State Party could not use the pretext of European Union obligations to restrict the scope of its obligations under the European Social Charter:

The Committee attaches the utmost importance to the need for the Contracting Parties to take the Charter into account when adopting directives in the areas covered by the Charter within the European Union. The Committee asks that when incorporating European Union directives into domestic legislation, Contracting Parties carry out this incorporation in compliance with their obligations under the Charter. This applies especially to directives which have not yet been included in the domestic legislation of a number of Contracting Parties.⁵⁴

However obvious this position may appear, the Committee felt the need to issue this reminder, given the tendency of EU Member States to consider that, in fields covered by directives, the latter constitute a satisfactory minimum standard – with the result that the more generous provisions of the European Social Charter are sidelined.⁵⁵ In the case of *Federation of Employee Pensioners of Greece (IKA-ETAM) v. Greece*, the European Committee of Social Rights was able to reassert its previous position all the more easily, as the Court of Justice of the European Union had not been able to verify whether the measures recommended by the ‘Troika’ were consistent with fundamental rights.⁵⁶ But the problem revealed here goes beyond the specific circumstances of this case: potential

⁵³ European Committee of Social Rights, Complaint No. 76/2012, *Federation of Employed Pensioners of Greece (IKA-ETAM) v. Greece*, decision on the merits, §51.

⁵⁴ *European Social Charter: Conclusions XIV-1* Vol. 1 (1998), General introduction, p. 28.

⁵⁵ According to a particularly well-informed observer, the European Committee of Social Rights ‘has had, for certain pieces of legislation submitted to it, some trouble in imposing its views in fields where the EU has passed legislation reflecting what it considers lower standards. Where EU directives cover a set of rules and principles in a particular field, this is considered by EU Member States [...] as a satisfactory minimum standard and the States concerned are reluctant to accept broader interpretations of the relevant provisions, often worded in more general terms, of the European Social Charter’ (J. Vandamme, ‘Les droits sociaux fondamentaux en Europe’, *Journal des tribunaux-Droit européen*, 1999, p. 55). This observation has lost none of its relevance. Thus, for example, in the case of *Confédération générale du travail (CGT) v. France*, lodged with the European Committee of Social Rights as Complaint No. 55/2009, the Government of Finland submitted observations referring to Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, in order to conclude that ‘the national situation is in compliance with the aforementioned Directive and, as a result, [...] is in conformity with the Charter’ (European Committee of Social Rights, *Confédération française de l’Encadrement CFE-CGC v. France*, Complaint No. 56/2009, decision on the merits of 23 June 2010, §29).

⁵⁶ The formalisation of the financial assistance mechanisms introduced to protect the stability of the euro area may change this situation. With the establishment of the European Stability Mechanism (ESM), which succeeded the European Financial Stability Facility (EFSF) on 1 January 2013, the European Commission – ‘in liaison with the ECB and, wherever possible, together with the IMF’ – was entrusted with the task of ‘negotiating, with the ESM Member concerned, a memorandum of understanding (an “MoU”) detailing the conditionality attached to the financial assistance facility’ (Article 13.3 of the Treaty Establishing the European Stability Mechanism, concluded in Brussels on 2 February 2012 under the simplified procedure provided for by the first subparagraph of Article 48.6 of the Treaty on European Union, by Decision 2011/199/EU of 25 March 2011). In response to a reference for a preliminary ruling on the validity of the amendment thus made to Article 136 TFEU to establish the ESM, the Court of Justice held in 2012 that adoption of Decision 2011/199/EU did not contravene the right to effective judicial protection recognised by Article 47 of the Charter of Fundamental Rights of the European Union because, when they established the ESM, Member States were not implementing EU law within the meaning of Article 51.1 of the Charter of Fundamental Rights defining its scope: the ground was, according to the Court, that ‘the EU and FEU Treaties do not confer any specific competence on the Union’ to establish the ESM, so that by amending Article 136 TFEU, Member States were acting in a field in which the Charter could not be raised (CJEU (Grand Chamber), 27 November 2012, *Pringle*, C-370/12, §180). However, it has since held that the European Commission and European Central Bank cannot disregard their obligations under the Charter of Fundamental Rights of the European Union,

conflicts between EU law and the requirements of the European Social Charter will continue to exist as long as the status of the European Social Charter in EU law remains unchanged.⁵⁷ In a 2010 decision,⁵⁸ the European Committee of Social Rights categorically stated that it did not intend to recognise a presumption – ‘even rebuttable’ – of conformity of European Union legal texts with the European Social Charter.⁵⁹ It was strengthened in this belief by ‘the lack of political will of the European Union and its Member States to consider at this stage acceding to the European Social Charter’.⁶⁰ In an allusion to the *Bosphorus Hava* judgment of the European Court of Human Rights,⁶¹ the Committee noted ‘that neither the situation of social rights in the European Union legal order nor the process of elaboration of secondary legislation would justify a similar presumption – even rebuttable – of conformity of legal texts of the European Union with the European Social Charter’, although it admitted that it would ‘review its assessment’ if there was evidence similar to that which had guided the European Court of Human Rights in its *Bosphorus* decision.⁶² The Committee’s attitude raises questions regarding the status accorded the European Social Charter by the Court of Justice of the European Union and the Committee’s interpretation of it.

2. The European Social Charter in EU law

The fact that the Court of Justice has so far rejected the view that the European Social Charter should guide interpretation of the European Union’s basic provisions in the social field – and, more broadly, the general principles of EU law – creates a genuine risk of conflicts of interpretation between the Court of Justice and the European Committee of Social Rights. The Court of Justice admittedly accepts that Member States can raise certain fundamental social rights – and their concern to protect them at the national level – as overriding reasons relating to the public interest and capable of justifying restrictions on free movement of goods,⁶³ on the freedom to provide services⁶⁴ or on the requirements of competition law.⁶⁵ But its case-law has obvious limitations.⁶⁶

including when adopting measures taken in connection with the ESM: see CJEU (Grand Chamber), *Ledra Advertising Ltd and Others v. European Commission and European Central Bank (ECB)*, Joined Cases C-8/15 P to C-10/15 P (ECLI:EU:C:2016:701), judgment of 20 September 2016.

⁵⁷ See O. De Schutter, ‘Le statut de la Charte sociale européenne dans le droit de l’Union européenne’, in *Mélanges en hommage à Jean-Paul Jacqué*, Dalloz, Paris, 2010, pp. 217-261.

⁵⁸ European Committee of Social Rights, Complaint No. 55/2009, *Confédération générale du travail (CGT) v. France*, decision on the merits of 23 June 2010, see §§32-42 in particular (conformity of France’s Law No. 2008-789 of 20 August 2008 on the reform of social democracy and working time with France’s commitments under the Revised European Social Charter).

⁵⁹ *Ibid.*, §35.

⁶⁰ *Ibid.*, §36.

⁶¹ European Court of Human Rights (Grand Chamber), *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, judgment of 30 June 2005 (App. No. 45036/98), in which the Court agreed to a ‘presumption of compliance’ with the Convention of State action implementing EU law as long as the Court of Justice had been able to verify whether this action was consistent with the requirements of fundamental rights; at the same time the European Court of Human Rights reserved the possibility of intervening if protection was ‘manifestly deficient’ (§§155-156). See Johan Callewaert, ‘The European Convention on Human Rights and European Union Law: A Long Way to Harmony’, *European Human Rights Law Review*, No. 6 (2009), pp. 768-783, here pp. 771-774, as well as Florence Benoit-Rohmer, ‘Bienvenue aux enfants de Bosphorus : la Cour européenne des droits de l’homme et les organisations internationales’, *Revue trimestrielle des droits de l’homme*, 2010, p. 18, and O. De Schutter, ‘The Two Lives of *Bosphorus*: Redefining the Relationships between the European Court of Human Rights and the Parties to the Convention’, *European Journal of Human Rights*, No. 4 (2013), pp. 584-624.

⁶² European Committee of Social Rights, Complaint No. 55/2009, *Confédération générale du travail (CGT) v. France*, decision on the merits of 23 June 2010, §37.

⁶³ CJEC, 28 April 1998, *Decker*, C-120/95, ECR, p. I-1831, §§39 and 40. For a systematic study, see O. De Schutter, ‘L’affirmation des droits sociaux fondamentaux dans la Charte des droits fondamentaux de l’Union européenne’, in A. Lyon-Caen and P. Lokiec (eds), *Droits fondamentaux et droit social*, Paris, Dalloz, 2004, pp. 145-184.

⁶⁴ CJEC, 17 December 1981, *Criminal proceedings against A.J. Webb*, 279/80, ECR, p. 3305; CJEC, 27 March 1990, *Rush Portuguesa*, C-113/89, ECR, p. I-1417, §17; CJEC, 28 March 1996, *Guiot*, C-272/94, ECR, p. I-1905, §16; CJEC, 28 April 1998, *Kohll*, C-158/96, ECR, p. I-1931, §41; CJEC, 23 November 1999, *Arblade*, Joined Cases C-369/96 and C-376/96, ECR, p. I-

The failure by the Court of Justice of the European Union to take account of the European Social Charter, as such, in its decisions is of particular concern. Despite the fact that the European Social Charter has been continuously gaining in importance in recent years and the European Committee of Social Rights has built up a genuine body of case-law, this consolidation has not led the Court of Justice of the European Union to the view that it should also protect the rights enshrined in the European Social Charter. Admittedly, in the 2007 *Viking* and *Laval un Partneri Ltd* judgments,⁶⁷ the Court of Justice consented to mention the European Social Charter signed within the Council of Europe as one of its sources of inspiration in identifying the fundamental rights recognised in the EU legal system.⁶⁸ But these decisions referred only to the 1961 European Social Charter, signed by all the Member States, rather than the 1996 Revised Charter. Moreover, this allusion to the earlier version was prompted by the express reference made to it in Article 136 TEC and the fact that the right at issue – the right to take collective action, including the right to strike – is recognised in Article 28 of the EU Charter of Fundamental Rights.

Recent case-law certainly shows an encouraging contrast to the Court's unwillingness, in earlier cases,⁶⁹ to take the European Social Charter as an instrument of reference for developing fundamental rights in European Union law. However, the European Social Charter is still taken into consideration by the Court of Justice only to the extent that it can be used to clarify rights referred to in the Charter of Fundamental Rights of the European Union, which partly draws upon it for its Chapter IV on 'Solidarity'.⁷⁰ The tribute paid, if tribute it is, is circumspect to say the least, and the reference is indirect.⁷¹ Furthermore, so far at least, the obligation, arising out of a combined reading of the third subparagraph of Article 6.1 TEU and Article 52.7 of the Charter of Fundamental Rights, to take account of the 'sources' from which the wording of the Charter of Fundamental Rights is derived (found in the relevant 'explanations') when interpreting this Charter, has not been reflected

8453, §36; CJEC, 15 March 2001, *Mazzoleni and ISA*, C-165/98, ECR, p. I-2189, §27; CJEC, 24 January 2002, *Infringement proceedings against Portuguesa Construções Lda*, C-164/99, ECR, p. I-787, §§20 and 21.

⁶⁵ CJEC, 21 September 1999, *Albany*, C-67/96, ECR, p. I-5751.

⁶⁶ On the question of the relationship between the European Social Charter and EU law generally, see O. De Schutter, 'Le statut de la Charte sociale européenne dans le droit de l'Union européenne', op. cit. For earlier studies, see J.-F. Akandji-Kombé, 'Charte sociale et droit communautaire', in J.-F. Akandji-Kombé and S. Leclerc (eds), *La Charte sociale européenne*, Brussels, Bruylant, 2001, and J.-F. Flauss, 'Les interactions normatives entre les instruments de droit européen relatives à la protection des droits sociaux', in J.-F. Flauss (ed.), *Droits sociaux et droit européen. Bilan et prospective de la protection normative*, Brussels, Bruylant-Némésis, 2002, p. 87.

⁶⁷ CJEC (Grand Chamber), 11 December 2007, *International Transport Workers' Federation, Finnish Seamen's Union v. Viking Line ABP*, C-438/05, and CJEC (Grand Chamber), 18 December 2007, *Laval un Partneri Ltd*, C-341/05.

⁶⁸ CJEC (Grand Chamber), 11 December 2007, *Viking*, op. cit., §43; CJEC (Grand Chamber), 18 December 2007, *Laval*, op. cit., §90.

⁶⁹ See CJEC, 27 June 2006, *European Parliament v. Council of the European Union*, C-540/03, §107. In this judgment, the Court refers to the European Convention on Human Rights among the sources of inspiration on which it draws to identify the fundamental rights recognised in the EU legal system and one which has long had 'special significance' (CJEC, 21 September 1989, *Hoechst AG*, Joined Cases 46/87 and 227/88, ECR, p. 2859 (§13); CJEC, 18 June 1991, *Elliniki Radiophonia Tilleorassi (ERT)*, 260/89, ECR, p. 2925 (§41)) as well as the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, which have both been accepted by all Member States of the European Union (§37). The European Social Charter is not granted the same status. It is not so very long ago that a member of the Court actually maintained that the 'structure' of the European Social Charter was such that 'the rights set out represent policy goals rather than enforceable rights, and the States parties to it are required only to select which of the rights specified they undertake to protect' (opinion of the Advocate-General F. Jacobs, CJEC, 21 September 1999, *Albany International BV*, C-67/96, op. cit., ECR, p. I-5751).

⁷⁰ CJEU, C-579/12 RX-II, *Commission v. Guido Strack*, 19 September 2013, §26.

⁷¹ Furthermore, the obligation, arising out of a combined reading of the third subparagraph of Article 6.1 TEU and Article 52.7 of the Charter of Fundamental Rights, to take account of the 'sources' from which the wording of the Charter of Fundamental Rights is derived (found in the relevant 'explanations') when interpreting this Charter, has not been reflected in Court of Justice decisions in the form of consideration of the interpretation given by the European Committee of Social Rights. The Court has contented itself with referring to the articles of the European Social Charter as proof of the fundamental nature of the principles that it is highlighting.

in Court of Justice decisions in the form of consideration of the interpretation given by the European Committee of Social Rights. The Court has contented itself with referring to the articles of the European Social Charter as proof of the fundamental nature of the principles that it is highlighting.

The tendency of the Court of Justice of the European Union is thus to accept, among the fundamental social rights raised to justify such restrictions, only those rights appearing in the EU Charter of Fundamental Rights. Yet the latter is selective, excluding, for example, the right to work, the right to a fair remuneration, the right to protection against poverty and social exclusion and the right to housing, which are nevertheless expressly recognised in the Revised European Social Charter.⁷² This selectiveness is explained by a concern on the part of the drafters of the Charter of Fundamental Rights to respect the instructions given by the Cologne European Council of 3-4 June 1999 to the effect that 'account should [...] be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), *insofar as they do not merely establish objectives for action by the Union*' (author's emphasis).⁷³ However, combined with an out-of-date interpretation of the distinction between civil and political rights on the one hand and economic and social rights on the other (although the understanding of the latter had progressed considerably over the past twenty years, and their justiciability was widely recognised),⁷⁴ the upshot of this approach was the adoption of a charter with serious omissions in the field of social rights that fell well short of Council of Europe standards.

This is compounded by a very timorous interpretation by the Court of Justice of the European Union of the circumstances in which safeguards in the Charter of Fundamental Rights that it deems to be 'principles' can be invoked. Unlike 'rights', 'principles' can be brought before the court only if reflected in 'norms': that is, according to the Charter of Fundamental Rights, they are judicially cognisable only if implemented 'by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers' and in this case solely 'in the interpretation of such acts and in the ruling on their legality'.⁷⁵ In fact, the Court of Justice of the European Union has shown in recent judgments that there are strict conditions governing the circumstances in which 'principles'

⁷² See Articles 1, 4, 30 and 31 respectively of the Revised European Social Charter. The 'right to engage in work and to pursue a freely chosen or accepted occupation' recognised by Article 15.1 of the Charter of Fundamental Rights of the European Union does not mean that EU institutions or Member States acting within the ambit of EU law have to 'accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment', as required by the first subparagraph of Article 1 of the Revised European Social Charter. While the other safeguards contained in this article are taken into account in the EU Charter of Fundamental Rights (see Article 29 of the latter for access to the free employment services referred to in the third subparagraph of Article 1 of the Revised European Social Charter, and Article 14.1 of the Charter of Fundamental Rights for the right to vocational guidance and training), this fundamental guarantee that steps will be taken to ensure the right to work is thus missing. As regards the right to housing, the EU Charter of Fundamental Rights states in Article 34.3 that 'in order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices'. This offers less than the wording of Articles 30 and 31 of the Revised European Social Charter.

⁷³ Cologne European Council, 3-4 June 1999, Conclusions of the Presidency, Annex IV: European Council Decision on the drawing up of a Charter of Fundamental Rights of the European Union.

⁷⁴ To mention just three major contributions to a literature that has become extremely extensive, see Malcolm Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Cambridge, Cambridge University Press, 2009; Fons Coomans (ed.), *Justiciability of Economic and Social Rights. Experiences from Domestic Systems*, Antwerp-Oxford, Intersentia, 2006; Bertrand G. Ramcharan (ed.) *Judicial Protection of Economic, Social and Cultural Rights*, Martinus Nijhoff Publishers, Leiden-Boston, 2005.

⁷⁵ Article 52.5 of the Charter of Fundamental Rights of the European Union in the revised version adopted on 12 December 2007 for inclusion in the Treaty on European Union, *OJ*, C 83 of 30.3.2010.

can be invoked,⁷⁶ in practice preventing these ‘principles’ from having any effect other than promoting a consistent interpretation of the acts implementing them.⁷⁷ The very terminology of Court of Justice decisions on protection of fundamental social rights bears the mark of the Court’s reluctance to enshrine them fully: observers get confused by the distinctions between ‘rights’, ‘principles’ and ‘particularly important principles of Union social law’⁷⁸ (the latter term indicating differences of opinion within the Court of Justice when it comes to granting social rights full status as fundamental rights).⁷⁹

3. Conflicts between EU law and the requirements of the European Social Charter: a real risk

The reluctance of the Court of Justice of the European Union to take social rights seriously creates a specific weakness in the European Union legal system, since it is perfectly conceivable that a Member State might be required, under obligations arising out of its membership of the European Union, to cease safeguarding some fundamental social rights, or at least to cease doing so to a certain standard, although by providing this safeguard it could claim to be fulfilling its obligations under the European Social Charter.

Of course, the risk of conflict must not be overestimated. There is no question of conflict in fields where EU law obliges Member States merely to comply with minimum requirements. This is the case for the guidelines based on Article 153 TFEU for achieving the objectives laid down in Article 151 TFEU for social policy that are issued by the European Union and Member States ‘having in mind’, when they determine these objectives, ‘fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers’.⁸⁰

Nor can we, strictly speaking, point to a risk of conflict just because, for some fifteen years now, policy processes within the European Union have been encouraging modernisation of social protection and changes in labour law for more ‘activation’ of social security benefits by making them conditional on taking certain training courses or providing proof of job-seeking.⁸¹ This development,

⁷⁶ CJEU (Grand Chamber), 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, §§45 and 47 (concerning Article 27 of the Charter, ‘Workers’ right to information and consultation within the undertaking’, which provides that workers must, at different levels, be guaranteed information and consultation in the cases and under the conditions provided for by EU law as well as by national laws and practices); CJEU (Fifth Chamber), 22 May 2014, *Glatzel*, C-356/12, EU:C:2014:350 (concerning Article 26 of the Charter, covering the right of persons with disabilities to benefit from measures designed to ensure their integration).

⁷⁷ CJEU (Grand Chamber), 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233 (interpretation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents in the light of the importance attached to housing assistance by Article 34 of the Charter of Fundamental Rights of the European Union).

⁷⁸ S. Robin-Olivier, ‘La contribution de la Charte des droits fondamentaux à la protection des droits sociaux dans l’Union européenne : un premier bilan après Lisbonne’, *Journal européen des droits de l’Homme*, 2013, No. 1, pp. 109-134. We should note the slight change in terminology in a judgment of 19 September 2013 in which the Court of Justice states: ‘the entitlement of every worker to paid annual leave must be regarded as a particularly important principle of European Union social law, affirmed by Article 31(2) of the Charter, which the first subparagraph of Article 6(1) TEU recognises as having the same legal value as the Treaties’ (author’s emphasis). The order of precedence of ‘principles of Union law’ and the Charter of Fundamental Rights here seems – at last – to have been reversed. CJEU, C-579/12 RX-II, *Commission v. Guido Strack*, 19 September 2013, §26.

⁷⁹ S. Robin-Olivier, *op. cit.*

⁸⁰ In order to achieve the objectives for European Union social policy set out in Article 151 TFEU (formerly Article 136 TEC), the European Parliament and the Council ‘may adopt [...] by means of directives, minimum requirements for gradual implementation’ (Article 153.2(b) TFEU). The second indent of Article 153.4 TFEU further specifies that provisions adopted pursuant to this article ‘shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties’.

⁸¹ An extensive literature has started to grow up around this transformation. Among the best studies, see Anton Hemerijck, *Changing Welfare States* (Oxford, Oxford University Press, 2013), pp. 51-85; J.T. Weishaupt, *From the Manpower Revolution to the Activation Paradigm: Explaining Institutional Continuity and Change in an Integrating Europe*

conveniently encapsulated by the term 'active social state', may increase the risk of tensions, since the European Committee of Social Rights has expressed some doubt as to the compatibility of activation of social security benefits with an individual's freedom to enter freely upon an occupation.⁸² However, this takes the form of guidelines for Member States under the Europe 2020 strategy. These guidelines are recommendations that are supposed to be taken into account in their employment policies and more specifically through adoption of peer-reviewed national reform programmes: they are policy incentives rather than legal constraints.⁸³ This is therefore not, strictly speaking, a conflict of norms, even if the formal distinction between legal norms and policy recommendations here shows its limitations.

The risk of conflict is more obvious when Member States' concern to comply with the interpretation given by the Court of Justice of the European Union of the economic freedoms recognised by the EU treaties leads them to limit the protection of social rights, as illustrated by the above-mentioned repercussions of the *Laval* decision in cases before the European Committee of Social Rights. It may happen that, in given situations, the balance between economic freedoms and social rights is determined differently by the European Social Charter on the one hand and EU law on the other, and the Committee of Social Rights and the Court of Justice of the European Union therefore adopt different attitudes to the balance to be struck between these conflicting values. It must also be remembered that the case-law of the European Committee of Human Rights is continually changing: for States Parties to the Charter it may have the effect of highlighting obligations whose scope and effect was not necessarily foreseeable at the outset from the text itself.

In other fields covered by the Revised European Social Charter, it is harmonisation measures adopted in the European Union that create a risk of conflict. This is particularly true of measures taken to establish the internal market on the basis of Articles 114 and 115 TFEU.⁸⁴ This means that if such European legislation protects fundamental social rights to a lower standard than that provided

(Amsterdam, Amsterdam University Press, 2011); Anton Hemerijck, 'Two or three waves of welfare state transformation?', in N. Morel, B. Palier and J. Palme (eds), *Towards a Social Investment Welfare State? Ideas, Policies and Challenges* (Bristol, Policy Press, 2012), pp. 33-60; Pascale Vielle, Philippe Pochet and Isabelle Cassiers (eds), *L'Etat social actif. Vers un changement de paradigme ?* (Brussels, PIE-Peter Lang, 2005); Sylvie Morel, *Les logiques de la réciprocité. Les transformations de la relation d'assistance aux États-Unis et en France* (Paris, Presses universitaires de France, Le Lien social, 2000). Other comparisons also bring to light the diversity of activation models that have been pursued in different jurisdictions: see, for example, A. Serrano Pascual and Lars Magnusson (eds), *Reshaping Welfare States and Activation Regimes in Europe* (Brussels, PIE-Peter Lang, 2007); W. Eichhorst, O. Kaufmann, R. Konle-Seidl and H.-J. Reinhard (eds), *Bringing the Jobless into Work? Experiences with Activation Schemes in Europe and the U.S.* (Berlin, Springer, 2008). For Belgium, see Daniel Dumont, *La responsabilisation des personnes sans emploi en question* (Brussels, La Charte, 2012).

⁸² According to the European Committee of Social Rights, a worker's right to earn his or her living in an occupation freely entered on (Article 1.2 of the European Social Charter (wording unchanged in the revised version)) may be an obstacle to sanctioning persons whose unemployment results from refusal to take up proposed employment when this employment does not correspond to the person's occupational qualifications: see *Conclusions XVI-1* (2002), p. 11 (United Kingdom) and p. 98 (Belgium).

⁸³ The employment policy guidelines are adopted on the basis of Article 145 of the Treaty on the Functioning of the European Union, which requires Member States and the European Union to work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 3 of the Treaty on European Union. The most recent guidelines include a Guideline 7 for increasing labour market participation of women and men, reducing structural unemployment and promoting job quality. It states, amongst other things, that: '[a]ctivation is key to increasing labour market participation. Member States should integrate the flexicurity principles [...] into their labour market policies and apply them [...] with a view to increasing labour market participation and combating segmentation, inactivity and gender inequality, whilst reducing structural unemployment. Measures to enhance flexibility and security should be both balanced and mutually reinforcing. Member States should therefore introduce a combination of flexible and reliable contractual arrangements, active labour market policies, effective lifelong learning, policies to promote labour mobility, and adequate social security systems to secure labour market transitions accompanied by clear rights and responsibilities for the unemployed to actively seek work.' See Council Decision of 21 October 2010 on guidelines for the employment policies of the Member States (2010/707/EU), *OJ*, L 308 of 24.11.2010, p. 46.

⁸⁴ For an example concerning the right to protection of health (Article 11 of the European Social Charter), see below.

for in the 1961 European Social Charter – or its revised version – Member States will no longer be able to comply with their obligations under the Charter without contravening their obligations under EU law.⁸⁵

In fact the safeguards of the Revised European Social Charter go well beyond the fields covered by Article 153 TFEU – fields in which the European Union can support and complement the action of Member States, for example by adopting directives containing minimum requirements and by ruling out any harmonisation measures. Thus, for example, Article 11 of the Revised European Social Charter guarantees the right to protection of health. The European Committee of Social Rights decided, ‘in view of the threat to health represented by diseases related to food and the recent outbreaks of such diseases, in particular the new variation Creutzfeldt-Jakob disease, as well as the emergence of new food products derived from biotechnology, [...] to look at food safety measures in all states parties to the Charter. It recalls that under Article 11 states have a responsibility to ensure a high degree of safety in this area for their populations.’⁸⁶ The undertaking made by EU Member States to respect this right could have a bearing on, for example, the rules adopted within the European Union concerning use of genetically modified micro-organisms⁸⁷ or product safety,⁸⁸ in the form of harmonisation measures not confined to laying down minimum requirements.

The risk that conflicts between EU law and the European Social Charter will increase in future should not therefore be played down: solutions must be found that allow both sets of norms to coexist in harmony.⁸⁹

IV. Conclusion

The landscape of European social law has undergone far-reaching changes since the European Social Charter entered into force fifty years ago. Given the imperatives of, nowadays global, competition and the need to maintain the viability of social security systems in an ageing Europe, labour law has become more flexible: broadly standardised by the late 1970s, employment conditions have now been split up into a range of varying arrangements, including special arrangements for young workers to promote their entry into the labour market. The economic and financial crisis has led to a significant rise in inequality, from which few European states have been exempt. Lastly, economic integration within the European Union has sometimes been perceived as an additional threat to fundamental social rights, since businesses’ freedom of establishment and freedom to provide services could not only weaken the bargaining position of workers’ representatives, but also put pressure on the regulatory capacities of EU Member States in fields covered by the Charter: the risks of conflict are multiplying.

These are the challenges to which interpretation of the European Social Charter has had to rise; this is the transformation to which it has had to react. The way in which the European Committee of Social Rights has responded today enables it to support changes in European States’ labour law and

⁸⁵ See, for example, C. Sachs-Durand, ‘Comparaison de la Charte sociale européenne et des règles sociales de l’Union européenne’, in *Les droits sociaux dans les instruments européens et internationaux. Défis à l’échelle mondiale*, Nikitas Aliprantis (ed.), Brussels, Bruylant, 2009, pp. 253-265.

⁸⁶ European Committee of Social Rights, *Conclusions XVI-2*.

⁸⁷ Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms. See also Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms, *OJEC*, L 106 of 17.4.2001.

⁸⁸ Council Directive 92/59/EEC of 29 June 1992 on general product safety, amended by Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001.

⁸⁹ For a set of proposals on how to do this, see Olivier De Schutter, *The European Social Charter in the context of the implementation of the EU Charter of Fundamental Rights*, Study for the Committee on Constitutional Affairs (AFCO) of the European Parliament, Directorate-General for Internal Policies, Policy Department C: Citizens’ Rights and Constitutional Affairs, European Parliament, 2016.

social law by managing them on the basis of the principles laid down in the Charter. This is an urgent task. More even than international competition, and more even than the economic and financial crisis, it is a crisis of legitimacy that is threatening European societies: a lack of trust in governments and the emergence of doubts as to their ability to resist pressure from entrenched economic interests. It is this political crisis that should be of concern to us now, much more so than the economic or the legal crisis: rooting our response in scrupulous respect for the Charter, as a set of objectives that we have undertaken to pursue collectively, is the best way of overcoming this crisis.

Rudi DELARUE

Representative of the Directorate General Employment, Social Affairs and Inclusion, European Commission

Intervention

Ladies and Gentlemen, Chair, Ministers, thank you very much for giving the European Commission the opportunity to briefly present the new initiative, a forward looking initiative, on the European Pillar of Social Rights.

The President of the European Commission for the moment, Mr Juncker, is in the European Council and also the European Commissioner for Employment and Social Affairs, was not able to come to Turin because of obligations, but the European Commission is really grateful that we have this opportunity.

I would like to thank the Council of Europe and we appreciate also the cooperation with the Council of Europe.

First of all, I would refer to what President Juncker has said to the European Parliament in his statement on the State of the Union, that the European Commission will present a Pillar of Social Rights and the objective is to strengthen the social dimension of the European Union and in particular the Eurozone. However, the initiative will be open to other interested EU member States.

We need, as indicated by the President, to take into account a change in the realities of European societies and the world of work. We have to address also the increasing divergences within European countries, especially the Eurozone, and between the members of the Eurozone. So, this Pillar will be like a compass, a social compass, for renewed convergence within the euro area and for governance.

It is important to note that the pillar should complement what we have already jointly achieved when it comes to social rights. We will, of course, include the international legal instruments on social rights.

The Commission adopted last week the process of consultation by a Communication which is available. It is a short document but it is accompanied by a number of annexes, including, a preliminary outline of the Pillar. We have also background documents on key economic, employment and social challenges, and you will note also that in chapter 5 of the background document there is very explicit reference to the Revised European Social Charter and ILO conventions. There are technical background documents on 20 domains covered by the draft Pillar, with international social rights references.

The main aims of the consultation – (and to make it very clear, the Council of Europe will be directly consulted and involved; and it is of course also an open consultation. There are two elements: we have varied consultations and broader ones), there are three aims: to research the EU social “acquis”, reflect on new trends in work patterns and societies, and gather feedback on the preliminary outline of the Pillar. The consultation will last until 2016.

I will also very briefly inform you that there is cooperation between the European Commission and the Council of Europe on the European Social Charter. This has been addressed by the Commissioner

for Employment last year, and there has been a bit between the Vice President of the European Commission, Frans Timmermans and Mr Jagland, and they agreed to establish focal points for cooperation.

We take this very seriously and we are also looking forward to the cooperation with the Council of Europe on this important initiative, it is a forward thinking initiative. I would like to underline that the Commission at the same time adopted a new proposal on posting of workers in order to better address the problem of equal pay.

So we are looking to the future. Thank you very much.

Andrey ISAEV

Deputy-President of the State Duma, Russian Federation

Intervention

Turin Forum Esteemed chairpersons, ladies and gentlemen,

I am very pleased that we are engaging in such open discussion today. I think we all realise that the social guarantees that have been shaped in Europe and enshrined in the European Social Charter have had a serious challenge laid down to them. On the pretext of remedying the consequences of the economic crisis, some are trying to persuade us of the necessity of pulling the plug on social guarantees. They tell us that, for successful economic development, there must be less in the way of social guarantees and that state spending to support people's social rights must be cut.

Those who say that are putting the cart before the horse, as we say in Russia. It is not people who exist for the sake of the economy but the other way round. And if we are supposed to sacrifice the lives of people today for the sake of economic development, we regard that approach as totally unacceptable. The onslaught on social guarantees is targeting first and foremost people's rights to decent work and decent pay.

We understand that pensions and welfare benefits are derived from wages. It is precisely high wage levels and decent work that form the basis of any system of social guarantees. And yet unscrupulous employers, citing the crisis, pursue a policy of lowering workers' purchasing power in practice. This is a very worrying symptom.

In Russia take-home pay fell by 9% over the last year. We know that other countries are encountering similar situations. Employers say that there is a crisis and, accordingly, it is necessary to cut wages, so they reduce their own workers' purchasing power, which in turn adds a new spiral to the crisis. They are like a snake biting itself in the tail. For that reason, we have taken a number of serious steps towards stamping out so-called "flexible employment", as we are convinced that this term generally masks a desire to pull the plug on social guarantees and opt out of paying a decent wage.

Today we can distinguish three strategies which employers attempt to deploy in order to deliberately cut labour costs: using migrant labour as a means of undercutting the labour market; temporary contracts; and substituting civil law-style agreements for work contracts.

We know that a great many migrants are willing to work for less pay and in worse conditions than workers permanently resident in the country. In Russia there are currently one million officially registered unemployed. And there are one million job vacancies, which prompts the question: why are those job vacancies not filled by our citizens? It is because these vacancies intentionally offer low pay and unacceptable working conditions. Employers expect these vacancies to be filled not by citizens but by migrant workers. We believe that they must be disappointed in these expectations.

For that reason, in Russia we have taken a number of decisions aimed at increasing the price of migrant labour. We have set a higher rate of income tax to be paid by migrant workers, and to be paid by employers for them. We have established rules under which all migrant workers are subject to compulsory pension contributions and social and medical insurance contributions on a par with

other workers. This removes the economic stimulus for employers to recruit migrant workers rather than the country's own citizens, while creating social guarantees for migrant workers themselves.

Russia has concluded agreements on the mutual recognition of pension rights with most of the States with which it shares a border, which is why we are sure that the pension rights accrued by migrant workers working in Russia can be enjoyed by them in their own country.

Temporary contracts form a system of so-called trilateral relations, where the actual employer is a given person but the employer in the legal sense of the word is a temporary employment agency, which hires out staff to the actual employer. We believe that the temporary contract system generally results in a wage reduction of 40% and a restriction of essential social guarantees, such as privileged leave conditions in harmful working conditions, as well as less insurance cover for workplace accidents and occupational illnesses. I would like to inform you, therefore, that as of 1 January 2016 temporary contracts are banned in Russia. There are three cases where an employer is allowed to hire staff on a temporary basis or take on temporary agency staff: if they are private individuals seeking domestic staff; if there is a demonstrably temporary – no longer than 10 months – expansion of output, in the event of a sales drive for example; and if a vacancy is legally maintained for an absent staff member, in the event of illness for example. Only in these three cases can an agency act in the capacity of legal employer and send staff to work for the actual employer.

We have firmly stipulated on this point that an agency may not send staff to companies where there is an ongoing labour dispute or strike or to companies associated with harmful or hazardous working conditions or activities linked to state licensing.

For workers supplied by temporary recruitment agencies, the law stipulates that they must receive the same pay as regular company staff and be guaranteed the same level of pension and social insurance cover, as well as being covered by the collective wage agreement. In the event of staff recruited via a temporary work agency exceeding 10% of the total number of a company's staff, the employer is under obligation to seek trade union agreement to the hiring of staff via the temporary work agency.

We believe that this is absolutely the right approach. It was a long struggle to push through this law, which was examined over the course of three years, and each new reading in the State Duma took place before the first of May, prior to mass rallies of trade unions calling for this law to be passed. When the law was being examined, a whole host of organisations, including the American chamber of commerce, representing American companies, issued threats to the Government and the State Duma, demanding that this law banning temporary work arrangements not be passed. Even before sanctions were legally imposed against my country we were being threatened with sanctions for passing this law. Nevertheless, passed it was, and we are fully resolved to implement it.

Another issue is the use of civil law-style agreements instead of work contracts. A person might work as a driver for a company but it might be stated in an agreement that they are acting in the capacity of an individual entrepreneur without legal personality, providing services to transport goods or passengers of the hiring entity in a vehicle supplied by that hiring entity. In such a case this person is not regulated by the Labour Code, falls outside the scope of any collective wage agreement and has no trade union protection.

In order to curtail this kind of activity, we have stipulated that full contributions must be paid into the pension fund and other extra-budgetary social funds, together with the fact that, should a court establish that labour relations are hidden behind such a civil law-style agreement, that agreement

must be reclassified as a work contract, running indefinitely from the time of being concluded. We envisage shortly affording the right to apply to court to have such agreements recognised as work contracts not only to the workers themselves but also to trade union organisations and works inspectorates.

Dear colleagues! We all perfectly well understand that, in a context of globalisation, social guarantees and standards must be equal in all country. Otherwise, capital would be channelled to where workers' pay is lower and less needs to be spent on their safety. In this connection, we propose that the issue of banning temporary work arrangements be discussed within the framework of the Council of Europe and of the entire European area. Temporary recruitment, reminiscent of the slavery of bygone centuries, is morally degrading for workers, who are hired out like objects, and does irreparable harm to a country's social and economic development. Russia has made a firm commitment to banning temporary work.

Thank you for your attention.

Angelo FARRUGIA

Speaker of the House of Representatives, Malta

Intervention

Thank you Mr President.

I have listened to the keynote speakers, Jean-Paul Fitoussi and Olivier De Shutter and I would like to make some observations about what you stated. With special reference to of course the European Community, European Union, we as Europeans; I'd like to put things straight.

With regards to the idea of having a European Government, you (Mr Fitoussi) were very angry when you were expressing yourself, and I am a little bit angrier now because if we are going to say that the problems we have today in the European Union, and the members of the Council of Europe, is because we don't have a European Union Government, I think that would be a little bit adventurous.

I'm saying this because, in order to go for a federal government, we are 28 in the European Union, and I would say that we would end up by 10 or 15 if that would be a modest number for those who would go for a total federal government.

So I think we should think differently. We should think about other alternatives. What's happening in the European Union? Well, you mentioned Greece, I mentioned Cyprus, I come from a different country, and I remember very well when I was addressing the Cypriot Parliament earlier last year, in the celebration of the democratic process after the *coup d'etat* against President Makarios, after 40 years.

One thing which I noticed among all the people in Cyprus, and I spoke with the people in the streets, I spoke with the Parliamentarians, there is one simple question: why were we treated discriminately within the EU with regards to the Cyprus bailout? I'll just give you an example. They were treated differently from other countries. Is that right? No. The EU was, of course, sending a wrong message to the people. Now, you can continue onwards. You mentioned Cyprus. The people voted for Cyprus, but they did not have the right information from the EU. So you have also here something which is not properly working.

One thing you have to do, I think – what we are doing in our small countries – that in order to have good governance, you have to have good governance throughout all the institutions. It is not good governance only in political authorities. But you have to have good governance across. So the right to be informed, and the people have the right to be informed, so that when it comes to experience democracy, we are talking about democracy, you don't think about democracy only because you go and cast your vote. You think about democracy because you have all the information in order to have a proper decision, to have the right people to govern with full transparency.

Now, what is happening in Europe? You mentioned, God forbid, Le Pen, Trump in the States. Well, we could be too late. Because what we should have done before, we are now thinking again that we should do it. This is the concept of writing politics, not revisit politics. Because what is happening within the political parties is that they want more for the economy growing to address the numbers, because the pressure was on the numbers, on the debt, on the figures, but they were not addressing the rights of the people.

If you say I want a bigger economy in my country, I want to address the debt, the fiscal debt, and you close your eyes to the rights of the workers, you can do it for 5 years, you might do it for 10 years, but then you will lose your value as a party and you will lose everything. And the people have no choice. You don't talk about them *blasé*, they will be extreme. Either on the left side or the right side. And that is what is happening here. Unfortunately. Because you have a series of problems that accumulated through the years.

I spoke about this when President Juncker came to Malta recently, and we had also the President of the European Council Donald Tusk. We did talk about the Lisbon treaty, which was a good treaty, the role of the national parliaments to have more power in the EU institutions. Is it now correct to say that this is not working? It is not working enough. We can realise that. And the state of the union itself which will have to have more power to the national parliaments.

Because how can you address the problem of democracy if you do not communicate all the time with the people? It is usual that we are the experts or that we are the ones who are in the upper hierarchy of the institutions and we don't have the ground with us. So I proposed that for example we should have a pilot project, because if you revisit the Lisbon Treaty it will take another 5 years, and the problem is going to accumulate.

There must be emergency plans for the address of these problems. We are talking about social rights; the Social Charter. Even the question of the economy: and you have ignorance of the economy, like yesterday when I was addressing the Conference, and no one is bothered. Any government knows about it. And the unions are silenced. Some of the unions are afraid to just put their hands up and say 'what's happening?' These are not the same unions that their behaviour was as it was in the 70s or perhaps the 80s. Now we are passing through a time where some people want to say something but they are afraid.

Because the pressure of addressing the numbers is greater than addressing the problem of the rights of the workers, of those who come from the lower strata. Now, if anybody thinks that things should be different I will ask one question: In any population in the world, Europe, 70% are workers, 20% might be middle class and then the upper 5-10% who take all the bites.

I think we have to revisit our policies, the political parties have to revisit their moral values, and I think as the European Union, we have to re-shape our direction. We don't even agree on one particular thing. You mentioned today the question of immigration. We are also disturbing our morality in such an important issue. If you look at the issue of immigration as something negative then you are missing the bus. You cannot have a stronger European Union if you don't have a collective answer for such a big, important issue.

One thing which we did in Malta is we are going to have a constitutional convention. We said that you cannot discuss constitutional issues, including values which are in the Social Charter, if you don't discuss what is in the constitution? How can you discuss a constitutional article if the people don't know that it exists as a written value? Or that it should be written down? We go to the schools, we talk with the children, we go to the factories, we talk with the workers, we go to the youth, NGOs and we discuss. Because democracy is about people. The Social Charter is about the rights of the people.

So I think we have to do a lot more. Thank you very much.

Giuseppe PALMISANO
President of the European Committee of Social Rights, Council of
Europe

Intervention

Thank you. Very briefly, I think that the Forum today is the perfect opportunity for us to move from words and theories to facts, or at least to identify the first steps towards achieving what we have been talking about until now: putting consideration and respect for social rights back at the heart of political and governmental choices, and also the expectations of the people within our communities.

I would therefore like to draw your attention towards some of the proposals that could offer some initial tangible initiatives with a view to making social rights once again the centre of our action through the European Social Charter: these proposals are aimed at using this important instrument which already exists and has great potential more effectively and ensuring that it produces the desired effects.

First and foremost, I address the parliaments and parliamentarians in the light also of yesterday's interesting interparliamentary conference. To them I ask: why not start launching at parliamentary level procedures – where they do not already exist – for assessing the social impact of governmental policies, at long last stipulating the requirement for effective compliance with the Social Charter as one of the fundamental parameters for assessment?

Secondly, I address once again the parliamentarians and governmental authorities of the member states: why not begin to enable – where this is not already possible – the Social Charter to be directly relied on by its real beneficiaries, by those who can best identify the problems associated with the implementation of and respect for social rights, in order to find appropriate solutions? In other words, this means asking: why not promote the acceptance of a procedure which already exists, but which at present is binding on only 15 out of the 43 states that are parties to the Social Charter system? I am talking here about the collective complaints procedure, to which Professor De Schutter so ably referred, which is effectively capable of identifying specific problems and also proposing solutions. I earnestly invite all parliamentarians, and not only people in government, to give thought to this possibility, and to press for the acceptance of the procedure by those states that have not already done so.

Thirdly, and here I address an important category of people, who are probably here with us today: national judges. It is in fact the national judges that act as the principal conduit for ensuring respect for rights. So dear judges, why not start taking greater account of the European Social Charter in your decisions, as a legally binding instrument under national law, in order to guarantee the social rights of individuals to the full? This would truly be the key to translating certain fundamental principles into facts, or rather into legislation, and not leaving them solely as principles.

Lastly, the normative system of the Social Charter is certainly a well-constructed system, which protects social rights more than any other treaty in Europe (or elsewhere in the world); however, it also has its limits. I refer above all to the situation of "foreigners", migrants and refugees, who have been a matter of much discussion both today and yesterday in the interparliamentary conference. There is no doubt that migratory flows and refugees, along with the recent significant inflows of non-European foreign nationals into Europe, pose problems from the viewpoint of the application of social rights. But consider this: does it make sense that, according to the Social Charter, Italy, France

or Germany are obliged – and rightly so – to respect the social rights of people who come from Azerbaijan, Turkey, Portugal, Ireland or Lithuania, in other words from anywhere in Europe, but not for example of the people – and there are many of them – who come from Syria, Tunisia, Bangladesh, Peru, Ecuador, Cameroon, Niger, and so on? Does this make sense? Is it “fair”? Or rather, is it acceptable from the viewpoint of respect for human rights? In my view, absolutely not. There is so much talk of inequality and of eliminating inequality; well, this is an inequality that is currently tolerated by the Social Charter as it does not oblige the states to apply and respect the social rights of people who are nationals of a country that is not a party to the Social Charter.

Today the problem is more critical than ever; it is critical because the number of people arriving in Europe from non-European countries is growing, for many reasons; lawful migrants, economic migrants, environmental migrants, displaced persons, asylum-seekers and refugees. And yet under the Social Charter there is no obligation to guarantee the same rights to these people which by contrast we rightly grant to Europeans. And this is above all an anomaly compared with any other international instrument for protecting human rights. It does not apply to the ECHR, nor to the international covenants adopted by the UN. I therefore earnestly invite you to take into consideration this aspect in order to improve the system of the Social Charter and to bring it into line with the times we are currently living through. This does not necessarily mean engaging in difficult complex procedures (including on a political level) to revise the Social Charter, but could, for example, simply mean that the governments of the States Parties to the Charter, encouraged by their parliaments, will unilaterally agree to broaden the extent of the Social Charter to include categories of persons who are not currently covered.

This would actually be possible, and relatively easy to achieve, and the European Committee of Social Rights proposed just this several years ago on the occasion of the 50th anniversary of the Social Charter. Unfortunately no positive responses have yet been received.

I think that today the need is felt even more keenly than several years ago, and for this reason I appeal to those who truly cherish respect for social rights and the dignity of all people to take action and tangible steps in this direction in order to improve the Social Charter yet further.

Thank you.

Georgios KATROUGALOS
Minister of Labour, Social Security and Social Solidarity of the
Hellenic Republic

Speech delivered on the occasion of the ceremony for the deposit of the instrument of ratification of the Revised European Social Charter by Greece

I am deeply honoured to be here in the native city of the European Social Charter.

As the Secretary General said very cautiously this morning, is it the constitution of Europe for the social rights? As you know, the Cold War has inherited us a legacy of distrust towards social rights. Initially, if they were not considered, purely and simply, fake rights, they were considered as just rights for the poor, and ultimately, poor rights.

Of course, this is a much distorted concept of human rights. All fundamental human rights, including the social ones, are complementary. One cannot undermine one category without harming the others. Bertrand Russell used to say that if you have to choose between democracy and a loaf of bread the only decisive factor is how hungry you are.

Fortunately, we have overpassed this misconception of social rights, at least at the level of international law. After the Vienna Declaration we know that all fundamental rights are indivisible and of equal legal force.

But we have to face now a much more formidable foe – an enemy at the level of the political implementation of these “principles of rights”. And I am speaking of course, of this marriage of the most aggressive ideology of the unleashed markets – neo-liberalism - with the dogma of State which prevails the last decades in Europe.

You know, the new dogma, because it's rather an anachronistic way of thought, not just an ideological one, says that social rights, social expenditure is an impediment to growth. However already this morning Professor Fitoussi said that besides all other things you need to plant glorious the golden era of the welfare state which does not have just high social protection but a range of growth which is much greater than the current stagnation, or very slow growth, that Europe has.

And of course, now the redistribution of wealth is completely different, extremely unequal, compared to the past. We have an explosion of inequalities. It is true that at a global level, due to the rise of India, China, the new economic powers, inequalities are lowering, but within our societies, in Western Europe, inequalities are now at extremes they have never been since the crisis of 1929.

So Pope Francis was right, this ideology kills. This type of economy kills. And it does not just kill the weakest, the poorest, the most vulnerable members of our societies, it kills also democracy. It kills also our way of life. Ultimately, and this is the most dangerous thing, it kills also our values, our identity, what we call European civilisation, not just a European social model. Impoverished societies, eroded with a glass throughout Europe, are trying to find who is guilty for their impoverishment. And as in the mid war they found Jews, now they found immigrants and refugees. So, it is important for preserving what makes Europe, Europe. The defence of social rights. As Professor De Schutter said this morning, Greece was an extreme case of dismantlement of the social

state, and all guarantees of individual and collective labour law, and the European Committee of Social Rights has been pivotal in addressing this situation. It has said, rightfully so, that we need the social rights, especially in times of crisis. Exactly, because we need an umbrella when we have a rainy day, not during the sunny days.

And in more than six cases it has declared that the policies imposed to Greece by the MoUs - these infamous memoranda - are clearly contrary to the European Social Charter.

Now, the Greek Government is trying to reverse this situation, and in very complicated circumstances, because we have been obliged, to a very painful for us, compromise in July in order to avoid a disorderly default, sensitive to the pressure exerted to us. We have signed a third MoU but we do not intend to continue the way of dismantling the social state.

Quite on the contrary. We want to reverse this vicious road and we consider exactly the ratification of the revised European Social Charter as a first step towards this direction. And we want to work closely with the Council of Europe and the International Labour Organisation so that in the negotiations that are pending to defend our model of society, the European social model.

Because what's happening now in Greece, is not any more tolerable. You know that there is no social dialogue in Greece. The social partners cannot negotiate salaries. The salaries are, in theory, dictated by the State. I say 'in theory' but it is not the Greek State, but our lenders that impose to us these basic - consensual in other countries in the European social model - decisions.

So, we have opted for a social Greece, in a social Europe, and we still believe that the royal road towards this direction is the European Social Charter.

Thank you very much.

Cesare DAMIANO
Chairman of the Committee on Public and Private Sector
Employment of the Chamber of Deputies, Italy

Closing address

First of all, I wish to convey the best wishes of the President of the Chamber of Deputies, Laura Boldrini, who is unable to participate in our proceedings and has asked me to give this closing address on her behalf.

I would also like to express the Chamber of Deputies' gratitude to the other two institutions which helped organise the Inter-parliamentary Conference and the Forum on Social Rights: the City of Turin and its Mayor, Piero Fassino, and the Council of Europe, represented here by the Deputy Secretary General, Gabriella Battaini-Dragoni.

Through their joint efforts, the three institutions have launched a highly significant political process. Thanks to the results of these two days in Turin and the preceding conference, which took place in October 2014, that which is known as the "Turin Process" has indeed become a key stimulating and mobilising factor for social policies in Europe.

The opening speeches of the Forum, delivered by two leading figures of the European political science scene, Professor Fitoussi and Professor De Schutter, provided us with contributions of great depth, which did not fail to highlight all the problematic aspects of the situation of social rights within our continent. The debate which followed further enriched this picture. I do not intend to summarise the terms of this interesting debate here. I will merely confine myself to a few general considerations, drawing inspiration from some of the topics that have emerged during the rich discussions held over these last few days.

As was noted during the debate, one of the many effects of the economic crisis of recent years, which began in 2008, has undoubtedly been an increased fragmentation of the social rights protection system in Europe, and an undermining of the level of those rights. It is necessary to avoid the Charter becoming an aspiration for a Europe which does not exist. There is a risk that we engage in abstract discussions about the political choices of governments and of Europe, the political Europe we do not have. Today, in the countries of Europe, the levels of protection granted to workers are significantly more varied than in the past. Whereas before we consistently strove to set social protection standards reflecting best practices in Europe, that objective was never attained. The opposite has occurred. For the most part, this is clearly a result of the way in which political responses to the crisis have been conceived up to the present day. Should we not acknowledge that the austerity policies have failed? If we continue to insist on austerity policies, we will be unable to envisage a social Europe. There is a contradiction here. The fruit of the political decisions is inequality. It was the liberal thinking which dominated the world for the last forty years that influenced the government decisions that led us to this highly contradictory situation. Fortunately, there also is the Charter. In the eurozone, in particular, it is no longer possible to utilise monetary stimulus, and the adaptation measures have mainly had an impact on the labour market and levels of social protection, which now serve as a relief valve in view of the impossibility of adjusting the value of the currency to take account of the countries' levels of competitiveness.

This has had decidedly negative consequences, such as the emergence of unacceptable inequalities between workers from different European countries, with a resulting resumption of large-scale

internal migration. More generally, the perception of the European Union as indifferent to people's needs and incapable of developing common forms of protection for workers has become increasingly widespread. Eurosceptic sentiments have been nurtured by this climate and have brought about a further decline in the cohesive elements of European unification, which constitute an essential characteristic of our identity and of our culture.

In this context, I consider that measures such as those provided for in the recent agreement reached by the European Council to prevent the exit of the United Kingdom from the European Union do not constitute a step in the right direction. The commendable aim of encouraging the United Kingdom to remain a member of the European Union is being pursued by introducing severe restrictions on workers' mobility and decreasing the level of social protection for new arrivals on British soil, thereby fuelling inequality between those who are European citizens and those who are not.

If we really want to end this crisis, I believe that there are other ways forward and other political choices to be made. The European Union needs an effective revitalisation of development policies, but this recognition must have consequences. We need to overcome the politics of austerity, the blind and absolute rigour which transforms the, albeit necessary, squaring of accounts into a tool for regulating social relationships. The European Union needs appropriate investments in improving infrastructure, promoting scientific and technological research, and enhancing service delivery in a number of crucial sectors such as health and education. This is the only way we can generate quality jobs and avoid the temptation of responding to global competition by levelling down social protection measures. At this juncture, I would like to go back to a question Professor Fitoussi asked earlier: What is modernity? Is it unregulated competition? Is it the deification of the almighty market? Is it commodifying the value of work? I do not believe that these are modernity. To have a truly social modern society, one still characterised by social relations as the dominant feature of European culture, we need to fight a political, philosophical and even cultural battle. To this end, the EU member States must give strong support to the foundation of the "European pillar of social rights", as launched by President Juncker in his speech on the state of the European Union in September 2015. Europe's ambition should indeed be to obtain a "social triple A" rating by ensuring that labour markets and social protection systems operate on a fair and equal footing in all the member States of the European Union. Implementing this European pillar of social rights involves guaranteeing equal opportunities and labour market access, ensuring equal working conditions by striking an appropriate balance between workers' and employers' rights and obligations, and developing high-quality essential services. However, I am also saying that we have to challenge the concept of social dumping. If we fail to achieve these objectives and to strike a balance between workers' interests and those of business, at a time when the priority is a low-cost workforce, the healthy, transparent and competitive companies will be penalised in favour of companies which are not.

The Social Charter of the Council of Europe provides a fundamental reference point in these efforts. I consider it very significant that today, here in Turin, we are celebrating the depositing of the instrument of ratification of the European Social Charter by the Minister of Labour, Social Security and Social Solidarity of the Hellenic Republic. This is an act of great political significance which demonstrates the growing importance of the Charter, particularly for the countries which have been more severely affected by the social consequences of the crisis of recent years and the austerity measures, countries which have shown their economic limits and have experienced the negative impact on employment and social cohesion. I'll say it again: let's challenge the politics of austerity, let's boost employment through investment. The Social Charter should also address the future of social systems in Europe. Why not set ourselves an objective of making our social systems more flexible in order to support an economic revival and, through employee turnover, young people's entry into the labour market? As things stand, there is a generational bottleneck. Once again, I'd like

to quote Professor Fitoussi on the topic of modernity. I am thinking of Italy's future. In thirty years' time – it sounds like a long time, but we know that time flies – the retirement age in Italy will be close to 70. I'd like to know what is so modern about retiring at the age of 70 while keeping our children and grandchildren unemployed at home. Taking the Charter rights seriously therefore means developing a common, exhaustive protection framework, capable of incorporating the guarantees afforded, in a very selective way, by the EU Charter of Fundamental Rights. The action of the European Committee of Social Rights has to be supported so as to give effect to the rights guaranteed by the Charter. Through uniform application of the Charter, effective advances must be made regarding the principle of the indivisibility of all civil, cultural, economic, political and social rights within the common European area. This is certainly a programme that will be difficult to implement and which will meet with resistance and obstacles. To overcome this, I believe that the political strength of national parliaments, the direct representatives of European citizens, will be indispensable. In my opinion, these two days in Turin, with the participation of MPs from the Council of Europe member States and representatives of civil society, have provided a fresh impetus for the creation of a sufficient critical mass to take on these significant challenges. It is accordingly important to distinguish between the governmental and the parliamentary dimensions, while at the same time ensuring they are united, even more so in the realm of social rights, whose realisation affects fundamental human rights, starting from the right to live in dignity. As also highlighted during the Inter-parliamentary Conference, due attention must be paid to the theme of migrants, which was discussed at length yesterday. A European Council meeting is taking place in Brussels this very day on this delicate issue, which has taken on momentous dimensions, not only because of the Syrian crisis which has displaced millions of people from the East to the West, but also, let us not forget, because of the huge mass of people migrating from North Africa towards the Italian and Greek coasts, which are the most exposed due to their geographical nature. In this respect, I would like to remind you of Italy's great commitment to addressing this issue, which has endured for many years now. This is an unprecedented phenomenon of enormous proportions. To escape wars, dictatorships and famine, millions of people will be on the move in future. Europe should establish a sort of new Marshall Plan for Africa, because if we do not invest in roads, hospitals and schools, namely the infrastructure required to modernise these countries and facilitate quality development for them, we will not stop the exodus of migrants. Implementing the Charter today, as the Italian Prime Minister, Matteo Renzi, has said, means building bridges, not walls, so as to obtain tangible results. Implementing the Charter therefore means not just implementing national policies, but devising joint actions to confront common challenges. And this is not what is happening. One last point I feel I must make is to draw attention to the importance of social policies also as a means of combating radicalisation, which fosters the spread of terrorist propaganda. Social inclusion, let us not forget, is also becoming a tool for the construction of a solidarity-based society which leaves no room for dangerous forms of marginalisation. I would like to conclude by saying that this is an ambitious work programme and one not easy to put into effect. However, it is worth the effort to fight this battle in order to perpetuate the idea of a social and inclusive Europe.

