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60 years of the European Social Charter and 25 years of the Revised European Social Charter*

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This year we celebrate the 60th anniversary of the European Social Charter, which was signed in Turin on 18 October 1961 and entered into force after the requisite number of ratifications on 26 February 1965.

In 1996, on 3 May to be precise, a Revised European Social Charter was signed in Strasbourg. This is the version that Slovenia ratified and is bound by. After the requisite number of ratifications, it entered into force on 1 July 1999. So this year we are also celebrating the 25th anniversary of the Revised European Social Charter.

The European Social Charter which together with the European Convention on Human Rights and other treaties establishes a binding catalogue of human rights within the Council of Europe, and is often referred to as the Social Constitution of Europe, is well known in Slovenia, at least in the field of labour and social law. Therefore, it does not need to be presented in more detail on this occasion. A number of factors and people can take credit for this. In this respect, I should certainly mention Professor Polonca Končar, a former member and president of the European Committee of Social Rights, who published works on it and incorporated it into the study process and curriculum of legal studies and thus equipped generations of students and current lawyers with the necessary knowledge and understanding of the Charter. With this, she made an important contribution in making the Charter more visible and its content more widely known, consequently enhancing its practical applicability. Thanks to her and many other persons who contributed in their own way to the promotion of the Charter as a legally binding human rights instrument, Slovenia now ranks among the numerous European countries in which the Charter is cited/applied in court decisions at all levels, in the judgments of labour and social courts, the Higher Labour and Social Court, the Supreme Court and also in the decisions of the Constitutional Court. The standards that stem from the Charter have also helped support and justify numerous solutions in draft laws in the

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field of labour and social law, including the existing Employment Relationships Act and others. The knowledge of the interpretation of the European Committee of Social Rights regarding the content of individual provisions of the Charter and the resulting minimum requirements – together with other factors, in particular the active trade union efforts in this respect – has led, for example, to a significant increase in the minimum wage and its adjustments towards the binding standards of the Charter. And so on. In Slovenia, the European Social Charter is therefore recognised as an important European legally binding human rights instrument.

However, the European Committee of Social Rights has identified other areas where Slovenia is in breach of the minimum standards of fundamental social rights stemming from the Charter, and Slovenia has not yet reacted accordingly. Furthermore, it seems that the number of detected cases of Charter violations in Slovenia is increasing from one monitoring cycle to the next. The situation is not yet alarming but cannot be ignored. Labour and social rights are under constant strain from dogmatic convictions of market efficiency, the ensuring of international competitiveness, the strengthening of employer power and so on. Labour and social rights must therefore be constantly justified, strengthened and protected, otherwise these hard-earned achievements of civilisation can be quickly lost. The welfare state cannot be taken for granted. The rights protected by the Charter, which also Slovenia has committed to respect, cannot be taken for granted either. Even though they should be.

We are talking about the right to just conditions of work, to healthy and safe working conditions, the right to a fair remuneration, the right to organise and to bargain collectively, the right to strike, as well as other labour rights, special protection rights in relation to maternity, parenthood, children, youth, the elderly and people with disabilities, which should ensure equal treatment and opportunities as well as the active inclusion of all people in society, the right to social security, to the protection of health, the right to protection against poverty and social exclusion, the right to housing etc. In its revised version of 1996, the Charter guarantees 31 economic and social human rights, also known as fundamental social rights.

The Charter is the Council of Europe's most comprehensive instrument on economic and social human rights: rights that are essential and indispensable for people in their daily lives, for each individual throughout their life; rights that give substance to the concept of human dignity.

60 years after its adoption and 25 years after its updated and revised version, the Charter has not lost its significance and relevance. It addresses current challenges, and the decisions of the European Committee of Social Rights answer a great many specific questions.

A special contribution to this year's important jubilee and at the same time a reflection of its relevance is the ratification of the revised Charter by two countries, Germany and Spain, wherein Spain has also accepted a system of collective complaints. This is an important international message to other countries that are still waiting and are still committed to the original Charter, which should be progressively replaced by a more recent revised version, updated and upgraded with additional rights. 36 European countries are bound by the Revised Charter, 7 by the original. 16 countries have also adopted a system of collective complaints, Slovenia among them.

In this context however, I would like to stress that Slovenia has not yet taken advantage of the potential of the collective complaints system. The collective complaint procedure is a specific mechanism for monitoring respect of the Charter rights in practice and has been put in place to be applied. However, eligible complainants from Slovenia, and I am referring to social partners and in particular trade unions, do not opt for collective complaints. Why not? To date, only three collective complaints have been filed against Slovenia, none by complainants from Slovenia, all by international NGOs. The submission of a collective complaint must not be (mistakenly) understood as an unfavourable act by the complainant against their country or as an act “against the State” in an international legal arena. It is quite the opposite! It is to the benefit of the country. The system of collective complaints should be seen as an additional instrument, as another option that can contribute to improving the situation in a given country regarding the respect of fundamental social rights. It can contribute to addressing problematic solutions or violations against labour and social rights in a country and is a useful contribution to the development of a country and society as a whole. In the context of the simplified system of regular monitoring on the basis of reports for countries that have accepted the collective complaints system, the non-submission of collective complaints by eligible Slovenian complainants means that monitoring respect of Charter rights in Slovenia remains stunted and may, therefore, even be ineffective. In fact, the representative national social partners should play an important role in the system of monitoring the enforcement of the Charter, not only in the system of collective complaints, but also in the system based on reports in which they may add their observations and comments to the country report, which is beneficial to the country. This is why I encourage eligible complainants, all national social partners, in particular representative national trade unions, to start using the collective complaints procedure and responsibly take on the role they have in the system of monitoring respect of Charter rights. For countries that are subject to a large number of collective complaints the benefits are twofold: on the one hand, they can identify and remedy violations of social rights and steer the situation in their country towards a more consistent respect for human rights, and on the other, they can contribute to the general development of human rights and their strengthened role in practice in Europe. If violations are not identified and revealed, it does not mean they do not exist. It only means that they remain hidden and issues unresolved, which does not benefit the country in question.

In conclusion, the development of the European Social Charter during the past 60 years has moved towards the strengthening and expansion of rights (substantive aspect) and towards building a system of supervision (procedural aspect). The European Social Charter is a living instrument that responds to current problems by guaranteeing human rights in the most important areas of people's daily lives. At this point, let me mention the Statement of Interpretation of the European Committee of Social Rights on the right to protection of health in times of pandemic, published last year, and the Statement of the European Committee of Social Rights on COVID-19 and social rights, published in March of this year. In any case, the main issues of the European Social Charter at the moment are when the other countries which have not yet ratified the Revised European Social Charter will follow the recent example of Spain and Germany, how to further develop the fruitful relationship between the European Social Charter and the European Convention on Human Rights, as well as its slightly more sensitive relationship with EU law (even though it is not expected that the EU will accede in the near future to the European Convention on Human Rights and the European Social

Charter, such initiatives should be kept on the agenda), and how to encourage a wider enforcement of the collective complaints system. Another important challenge is the appropriate updating of the Charter, especially its monitoring mechanism. Above all, its greatest challenge remains how to strengthen the actual effective implementation of economic and social human rights guaranteed by the European Social Charter in practice; there is no doubt that everyone can contribute in this respect, especially the social partners, experts and researchers, decision-makers at all levels, individual beneficiaries and rights-holders and, most importantly, the national courts, when they deliberate and decide on concrete issues arising from people's daily lives and interpret individual rights in the light of the requirements of the European Social Charter. Let this be an incentive for each and every one of us to reflect on what we can do.