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Exchange of views with the European Committee of Social Rights

On-line speech by Dunja Mijatović
Council of Europe Commissioner for Human Rights

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Good afternoon to you all and thank you very much for the invitation to this exchange of views!

This is the first time that we meet, and the timing is certainly good.

Even though there are signs of relief now, at least in Europe, the Covid-19 pandemic has been much more than a health crisis: our entire societies and economies are deeply affected. It is said to have triggered the most severe economic recession in nearly a century, pushing millions world-wide into extreme poverty and having devastating consequences also in Council of Europe member states. While the impact of the pandemic varies from state to state, large redundancies have made unemployment surge in all of them, which has been a particular focus for the EU, including at its Social Summit in Porto. Countless small and medium-sized businesses risk bankruptcy after months of lockdown, school closures have affected millions of children, exposing them to online schooling experiments in the best case, and to isolation, despair, and an increase of violence in the worst. Recent studies point to growing levels of anxiety and depression among youth, which is particularly alarming. It is reassuring that most states have taken wide-ranging measures to strengthen health care systems, extend sick leave entitlements and unemployment benefits, and reinforce workplace and family support. But are those measures based firmly on human rights? On the lessons that we have learned from working to protect and promote social rights in Europe during past decades? Are they built on the awareness that any effective response to today's challenges *must* address the deep and structural inequalities that exist in all European societies and that have been perpetuated rather than disrupted over repeated cycles of austerity?

The indivisibility and interdependence of all human rights has consistently been underlined by my predecessors and myself over the years. Already in 2006, my Office published a Human Rights Comment entitled '[Social rights require adequate protection in Europe too](#)', reminding member states that social and economic rights support civil and political rights – and vice versa. People who are forced to spend all their time trying to find ways to survive are prevented from taking part in public life. Social rights, therefore, are not a 'nice to have' or a luxury, although these ideas, unfortunately, still linger. On the contrary, social rights generate important obligations that have immediate effect. In addition, the notions of 'non-retrogression' and 'progressive realisation' mean that we should continuously aim at *higher* levels of protection, as the full social inclusion of all members of society is a moving target.

Successive Commissioners have called on member states to ratify the revised European Social Charter and agree to be bound by the Collective Complaints Procedure and I am very pleased to have learned of Spain's ratification of the revised Social Charter just today. My predecessor stated in 2014 that this is crucial in order to [preserve the European social model](#). Yet, still only France, Portugal and now Spain have ratified all provisions of the revised Charter and only 16 countries have accepted the system of collective complaints. I consider the collective complaint procedure a powerful bottom-up tool for the enforcement of social rights at the national level and welcome in this context your proposal of overcoming its optional nature. I also believe that national courts, tribunals and national human rights structures could increase the use of the decisions and conclusions of your Committee by applying them transnationally.

These steps would all help create a homogeneous European space where citizens enjoy comparable social protection.

The protection and promotion of social and economic rights have since the institution of my office played a fundamental role in its activities. The adverse impacts of austerity measures on human rights protections, such as regarding education opportunities, access to quality health care or the rights of persons in long-term institutional care, have been highlighted in relevant country work, for instance, in [Greece](#) and [Moldova](#) by myself. Findings of successive Commissioners have often been strengthened by references to the Social Charter and to the relevant conclusions and decisions adopted by your Committee, such as in the [Netherlands](#) with respect to the social rights of undocumented migrants. In addition, social rights have of course also featured prominently in the thematic work, focusing on topics including child poverty, homelessness and the right to affordable housing, discrimination at the work place, the protection of persons with disabilities and their right to live independently, the social exclusion of Roma, the particular rights challenges faced by older persons, inclusive education, women's access to rights, including sexual and reproductive health rights, gender pay gaps – and many more.

Incidentally, we have now seen that the groups whose access to social rights have been most precarious over decades, including Roma, older persons, women, persons with disabilities, the homeless – have also proven to be the most vulnerable in the face of COVID-19, for a variety of often interrelated reasons.

In 2020, I underlined the broader impacts of COVID-19 on the access to and exercise of social rights from the beginning of the pandemic. In my human rights comment of April '[Learning from the pandemic to better fulfil the right to health](#)', I emphasised that the right to health is closely interconnected with other social rights. These include the rights to social security and protection, the right to housing and the broader issue of poverty. It was clear already then that certain labour rights, such as related to health and safety at work, were going to be critical for health and social care professionals, who are in their [majority](#) women. I expressed concern already then about the fact that inequalities in health status between different social groups across Europe had remained the same or had even become worse over the last 10-15 years. It must alarm us that health gaps between socioeconomic groups increase with age, still significantly affecting life expectancy. I believe that we now face the risk that these gaps will become even larger.

The unaffordability of health care remains an important barrier to the full realisation of universal health coverage in Council of Europe member states. Significant out-of-pocket payments continue to impede access to healthcare or lead to financial hardship. In addition to universal access to health care, social protection, housing, education and employment are significant factors in improving health status. Remarkably, the WHO argued in 2019 that the most cost-effective means of closing the health divide in Europe would be the increased investment in housing and community amenities. But unfortunately, affordable housing remains in short supply in Europe and the overall average spending by governments on social housing still stands at below 1% of the European GDP.

This is, why I believe that our approach to the protection of the right to health must be comprehensive. In my latest Issue Paper '[Protecting the right to health through inclusive and resilient health care for all](#)', I have called on member states to build health care systems that meet the needs of the entire population and are robust enough to respond effectively to public health emergencies. For that, we do not only need universal health coverage based on strong primary health care and fair and equitable access to essential medicines and vaccines for all. We also need a sound and transparent health communication policy and a broader social rights approach. Health and social policy making must be comprehensive, gender-sensitive and coherent and it must integrate economic, social, environmental and governance dimensions at all levels of the process, based on participatory and rights-based budgeting.

Transparency and accountability mechanisms must be embedded throughout the policy cycle with a protected space for the active participation of civil society organisations and national human rights structures. Finally, and this is vital for all health and social care services, non-discriminatory access must be ensured to everyone, including the groups who are most often marginalised and disadvantaged. These include migrants, LGBTI, Roma and other minorities, but also still women, children and older persons. They all must be provided with the care they need, as early as necessary and as dignified and least invasive as possible. We will not be able to achieve this without more adequate and sustainable financing and without a stronger commitment to a well-trained and well-equipped health and social care force that is treated and compensated with the respect it deserves.

I also paid particular attention in 2020 to a group of people whose rights have equally been of concern to you, as evidenced in many of your Committee's conclusions and in a number of processed and pending collective complaints. The [UN Special Rapporteur on Disability](#) recently acknowledged your Committee's important contribution to advance the right to inclusive education for children with disabilities. The pandemic has disproportionately affected persons with disabilities and exposed all the pre-existing shortcomings in Council of Europe member states: the absence of disability-inclusive emergency preparedness, lack of accessibility, the failure to implement the right of persons with disabilities to live independently and be included in the community, and inadequate participation and involvement of persons with disabilities in decision-making processes. This is an area, as is the field of mental health care, in which I have long advocated for reform of policies and practices. [Reform of mental health services](#) and those for persons with psychosocial disabilities is even more urgent now as the pandemic has created an enormous need for additional mental health care capacity in all our member states, particularly for children. Mental health is not only a health or medical question but also a psychosocial one, given the prevailing attitudes in society. The stigma is perpetuated by the continued excessive use of involuntary placements and coercive psychiatric practices. These are still widely in use across Europe despite the lack of evidence for their effectiveness and the fact that they are incompatible with the UN Convention on the Rights of Persons with Disabilities (CRPD), which 46 of our member states are party to.

I want to draw your attention to what I see as an important risk to the prestige of our organisation. As you know, an Additional Protocol to the Oviedo Convention concerning involuntary placements and treatments in mental health services is being presented in early June for approval by DH-BIO, with a view to its submission to the Committee of Ministers for adoption. As already argued by my [Office](#) and [myself](#), by the Parliamentary Assembly, all relevant UN bodies, the Fundamental Rights Agency of the EU, national human rights structures and all the representative NGOs of persons with disabilities, the Protocol appears based on an outdated and overly medical model of mental health. This is at odds with the CRPD. In addition, it is rather vaguely phrased, raising concerns that it would allow for even the worst practices in psychiatry to continue. This contradicts my own – and my predecessors - long-standing recommendation to eliminate coercive practices in all sectors of health, including sexual and reproductive, psychiatry, mental health care services and services for persons with psychosocial disabilities.

The adoption of this Additional Protocol, against the explicit wishes of the persons it is supposed to protect, would lead to an unprecedented legal collision between a Council of Europe and a UN instrument, undermining the work of other bodies working on disability. I believe that the Council of Europe cannot afford to have contradictory messages emerge from its respective organs and alienate European citizens with disabilities. I also think that it would constitute an odd message from the Council of Europe in 2021, in an environment where the grave dangers for persons in institutions have just so painfully become clear.

Unfortunately, we still find in many member states hesitation when it comes to accepting social rights as human rights and not mere aspirations. Therefore, the indivisibility of human rights is still an issue today and we must remain vigilant and keep reminding member states of their obligations, particularly with respect to the most vulnerable groups who are always affected more directly and more severely by economic crises.

Given the situation we face today, we are likely going into a prolonged period in which the exercise of social rights, including notably the right to protection against poverty, will remain challenged across Europe. At the same time, this is also a period in which enormous attention is paid at highest political level to the state of our health and social care systems and to inequalities as a collective risk factor for our societies. As a result, political leaders may be especially receptive to our proposals and recommendations now. It was encouraging to me, for instance, to have had a very substantive exchange on the Issue Paper with the Committee of Ministers in March, revealing a thorough interest in the underlying issues of concern and considerable commitment to work towards the implementation of the wide-ranging recommendations. I therefore highly appreciate this timely opportunity to exchange ideas with you on how we can advance our common goal of enhancing the protection of social rights in Europe.

Thank you for your attention, and I am looking forward now to our discussion.