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STEERING COMMITTEE FOR HUMAN RIGHTS /

COMITE DIRECTEUR POUR LES DROITS DE L'HOMME
(CDDH)

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DRAFTING GROUP ON SOCIAL RIGHTS /

**GROUPE DE REDACTION SUR LES DROITS SOCIAUX
(CDDH-SOC)**

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Further contributions until 1 September 2017 from experts on the initial draft Report of the CDDH on the legal framework of the Council of Europe for the protection of social rights /

Nouvelles contributions reçues d'ici le 1er septembre 2017 des experts sur le projet de Rapport initial du CDDH sur la protection juridique des droits sociaux au sein du Conseil de l'Europe

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Introduction:

1. The present document contains the contributions received by 1 September 2017 from experts on the initial draft Report of the CDDH on the legal framework of the Council of Europe for the protection of social rights, prepared for the Drafting Group on Social Rights (CDDH-SOC). These contributions were sent following a call for contributions issued at the 87th CDDH meeting (6–9 June 2017).[1]

2. Contributions were received from the Netherlands and Poland.

* * *

Introduction :

1. Le présent document contient les contributions reçues jusqu'au 1 septembre 2017 de la part des experts sur le projet de Rapport initial du CDDH sur la protection juridique des droits sociaux au sein du Conseil de l'Europe, préparé pour le Groupe de rédaction sur les droits sociaux (CDDH-SOC). Ces contributions ont été envoyées à la suite d'un appel à contributions lancé lors de la 87e réunion du CDDH (6–9 juin 2017).[2]

2. Des contributions ont été reçues de la part des Pays-Bas et de la Pologne.

[1] Doc. CDDH(2017)R87, § 37.
[2] Doc. CDDH(2017)R87, § 37.

NETHERLANDS / PAYS BAS

With comments by the Netherlands

Strasbourg, 17 May 2017 CDDH-SOC(2017)001

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

DRAFTING GROUP ON SOCIAL RIGHTS
(CDDH-SOC)

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Draft report of the Steering Committee for Human Rights (CDDH) on the legal framework of the Council of Europe for the protection of social rights

[…]

I. INTRODUCTION

1. Background of the work and methodology of the report

[…]

20. Another point to note is that the collective complaints procedure is a protection system complementing the reporting system. It is ~~and a~~ different system ~~and complementary to~~ from the jurisdictional protection, in the field of social rights, afforded by the Court under the Convention, with its own characteristics thereby offering complementary protection of social rights. Because of their collective nature, complaints may only raise questions concerning the possible unsatisfactory application of the Charter ~~of a state's law or practice~~ – and may not submit individual situations. Unlike the Convention, therefore, a complaint may be lodged with the ECSR without domestic remedies having been exhausted and consequently, without delay and without the complainant organisations necessarily being a victim of the alleged violation of the Charter. It should also be noted that the Convention protects everyone within the jurisdiction of a state party (article 1 of the Convention), while foreigners who are not

lawfully residing on the territory of a state party are excluded from the scope of the Charter (paragraph 1 of the Appendix to he Charter)

[…]

46. During the conference, participants exchanged views on three main challenges: social rights and economic crises, the synergy between European Union law and the Charter, and the relevance and effectiveness of the collective complaints procedure. Some participants also raised the ~~Two other important issues were discussed:~~ the need to reinforce the status and position of the ECSR and the need for the Council of Europe to implement a communication policy capable of sending a clear message on the legal nature of the Charter and the scope of the ECSR's decisions.[3]

Comment [PM1]: *{**PL**: Those were suggestions voiced by some participants not representing Member states. Those suggestions were not discussed.}*

47. At the end of the Conference, states and European institutions were invited to start a political process (the "Turin Process") which would promote greater acceptance of the normative system of the Charter and better implementation of its provisions. This initiative was deemed necessary so that the normative system of the Charter could be strengthened and finally express its full potential alongside the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, in the name of the aforementioned overarching principles, namely the indivisibility and interdependence of fundamental rights.[4]

~~48. The "Turin Process" thus marks a vital step towards a fresh start for the process of uniting Europe, given that it is essential for Europe to be based on the fundamental values around which its task is to bring states and their citizens together, and especially on the values of the European Social Charter, which is "Europe's social constitution".~~[5]

Comment [PM2]: *{**PL**: Such a view of the "process" is somewhat exaggerated taking into account the current state of it, especially limited involvement of the states (it is solely up to them to adopt any decisions). The para should be deleted or mitigated. See also para 51 on position of the States.}*

49. The "Turin Process" ~~also~~ represents an ~~genuine~~ opportunity ~~to turn declarations of principle, at national and European level, into targeted political actions, in order~~ to reinforce the effectiveness of the implementation of social rights~~.~~

50. The General Rapporteur of the "Turin I" Conference, M. Nicoletti, Vice-President of the Parliamentary Assembly (PACE), ~~accordingly~~ included an Action Plan (see Appendix) in his General Report above mentioned ("Nicoletti Report" : a driving force for the "Turin Process")[6]. It should be noted~~, however,~~ that these documents do not have the status of agreed outcome documents and, as such, are no common basis for further action. S~~s~~everal States have explicitly distanced themselves from the findings and conclusions of the "Nicoletti Report" (see below, the current status of the "Turin Process").

[…]

~~5~~5. ~~The "Brussels Document" provides a useful reminder that: "*The crisis is thus not just a threat to social rights, legality and social justice in Europe – it is also a call to action. The Charter can serve as the basic framework for an economic recovery that is social rights-compliant, and contributing to a recalibration of European rule of law. The model of the "highly competitive social market economy" referred to in article 3 of the Treaty on the European Union should in the future integrate this requirement.*"~~[7]

[3] ~~Ibid: Executive Summary, pages 2 and 3 of the "Nicoletti Report".~~
[4] Ibid: Executive Summary, page 2 of the "Nicoletti Report".
[5] ~~Ibid: Executive Summary, page 4 of the "Nicoletti Report".~~
[6] See the entire Nicoletti Report: https://www.coe.int/en/web/turin-european-social-charter/conference-turin).
[7] ~~See Appendix "Brussels Document", February 2015, page 4 (point 1: protecting social rights in the time of crisis).~~

[…]

63. Concluding remarks were presented by Giuseppe Palmisano, President of the ECSR. According to him, it is clear from the Conference that social rights are not only a fundamental value but that they are of a fully legal nature – forming part of the legislation in force in Europe : European international law on human rights, Community law and national laws. As legal norms, they must be applied, interpreted and judicially guaranteed by national and European courts. To this end, the most relevant "law" is the Social Charter – being the most comprehensive and complete instrument for the protection of social rights at pan-European level. However, it is clear from the Conference that, for various reasons, the ECHR and the ECJ do not fully exploit the full potential of the Charter system and do not always seem to regard it as a source of law to be taken as a reference or to apply regarding social rights issues. As to the courts of the States Parties to the Charter, mr Palmisano observed that they should increasingly regard and perceive it as an "*integral part of domestic law*" – taking into account, of course, the specific legal characteristics of each national legal order and the specific nature of the provisions of the Social Charter, which are not all directly applicable, nor all of them able to produce direct effects.

(v) Current status of the follow-up to the "Turin Process"

64. ~~Several initiatives have been introduced and measures adopted since the "Turin Process" was launched in October 2014. The following in particular are worth highlighting:~~
The Committee of Ministers, at the level of the GR-SOC, had a detailed exchange of views on the "Turin Process", especially on the proposals in the "Nicoletti Report", in light of the "Brussels Document" on 26 May 2015[8]. The delegations considered that priority should be given to encouraging further ratifications of the Revised Charter and the system of collective complaints, in particular by examining the obstacles to them. With regard to the appointment and increase of the members of the ECSR, delegations expressed mixed views. A number of delegations were in favour of further simplification of the Charter monitoring procedures and/or for it to address the most pressing issues. Finally, delegations supported the suggestion to invite the Council of Europe Development Bank to finance more projects related to social rights.
GR-SOC meeting of 26 May 2015[9] ~~–~~: ~~detailed exchange of views on the "Turin Process", especially on the proposals in the "Nicoletti Report", in light of the "Brussels Document".~~

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[new para]It should also be pointed out that during the discussions several delegations opposed other aspects of the "Nicoletti Report", in particular the following: the parallelism between the Convention and the Charter systems, while their legal binding obligations are different; the opportunity of EU accession to the Charter; the lack of formal status of the Turin Action Plan – its proposals having not been endorsed by the "Turin I" Conference. Finally, some delegations invited the ECSR to reflect on its working methods and its approach to the interpretation of the Charter. One delegation said that it creates a lack of clarity as to the scope of the obligations undertaken by member States.

Comment [PM3]: *{**FR** : Ajout de la Pologne qui montre son désaccord sur certains points (augmentation du nombre de membres du CEDS, parallélisme entre le système de la Convention EDH et celui de la Charte). Pourtant, il est communément admis que la procédure de réclamations collectives établie dans le cadre de la Charte représente un **système de protection parallèle et complémentaire à la protection juridictionnelle assurée dans le cadre de la Convention européenne des droits de l'homme.** En effet, la Charte a été élaborée comme un instrument des droits de l'homme destiné à compléter la Convention EDH. Mais nous sommes d'accord avec cet insert car il ne fait que montrer les divergences entre les Etats membres à ce sujet.}.*

Comment [AK4]: Comment NL : in view hereof this report should refrain from constantly making a parallel between Court and ECSR and stick to neutral descriptions

[8] See GR-SOC(2015)CB3 – Rapporteur Group on Social and Health Questions (GR-SOC) of the Committee of Ministers.
[9] ~~See GR-SOC(2015)CB3 – Rapporteur Group on Social and Health Questions (GR-SOC) of the Committee of Ministers.~~

[new para] In November 2015 the Committee of Ministers adopted ~~Adoption by the Committee of Ministers in November 2015 of~~ the Programme and Budget 2016-2017, specifying that: "*emphasis will be given to strengthening the application of the Charter in today's Europe. The Council of Europe will maintain a dialogue with the European Union on this matter. The key objective is to improve the implementation of social rights at national level, in order to reduce economic and social tensions. Efforts will be made (...) to simplify the monitoring procedures, which could make further ratifications of the Revised Social Charter and its Additional Protocol on Collective Complaints more attractive, and (...) to enhance targeted co-operation with member States in the field of social rights...*".[10] With this in mind, the Committee of Ministers decided to: 1) create two new lawyer posts in the Social Charter Department in connection with the collective complaints procedure; 2) transfer a third post in connection with the new European Social Cohesion Platform (see below), and 3) increase the financial resources earmarked for boosting co-operation activities focusing on the Charter system.

~~With this in mind, the Committee of Ministers decided to: 1) create two new lawyer posts in the Social Charter Department in connection with the collective complaints procedure; 2) transfer a third post in connection with the new European Social Cohesion Platform (see below), and 3) increase the financial resources earmarked for boosting co-operation activities focusing on the Charter system.~~

- ~~[new para]~~ On 19 January 2016, following up on the discussions of May 2015, ~~Approval on 19 January 2016 by~~ the GR-SOC endorsed the following ~~of the December 2015~~ proposals from the General Secretariat~~/CoE concerning numerous objectives of the "Turin Process"~~:[11] high-level meetings in member states in order to promote further ratifications and acceptance of more of the Charter's provisions; simplifying the monitoring procedures, particularly for states which have accepted the collective complaints procedure; improving targeted technical co-operation with member states; strengthening the synergy between European Union law and the Charter (these four "courses of action" are elaborated on below: Part II, B and Part IV).

[new para]
In the annual e~~E~~xchange of views~~, on 30 March 2016,~~ between the President of the ECSR and the Ministers' Deputies ~~–~~on 30 March 2016 and 22 March 2017 - the President discussed ~~– presentation by the President on~~ the progress made and the remaining challenges (see below).[12]

~~Exchange of views, on 22 March 2017, between the President of the ECSR and the Ministers' Deputies – state of art by the first of the advances and remaining challenges (see below)~~[13]

~~– May 2016: 3rd report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law: Chapter 5 on inclusive societies, one of the five main components of democratic security where there are ample references to social rights, the Charter and the "Turin Process" (also mentioned in the 2014 and 2015 reports).~~

Comment [AK5]: NL comment : This is business as usual – not worth highlighting

[10] Council of Europe Programme and Budget 2016-2017, CM(2016)1, 21 December 2015.
~~[11] GR-SOC(2016)CB1, meeting of 19 January 2016, and the Secretariat General/CoE's proposals referred to therein and as set out in CM(2015)173 of 17 December 2015 : in Appendix.~~
~~[12] Introductory speech by the President of the ECSR during his exchange of views with the Committee of Ministers, 30 March 2016: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806304fc .~~
~~[13] Speech of the President of the ECSR, 22 March 2017 : https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680701 0f3~~

- Launch on 10 December 2015 of the new European Social Charter website ~~– thus helping to achieve the aforementioned objective of the "Turin Process" regarding communication~~ (~~see above:~~ one of the six priority sectors identified by the Committee of Ministers in its 2011 Declaration on the Charter).

[…]

71. The aim here is to attempt to examine, through examples of case law, whether since September 2008 (when the final version of the document cited above was published[14]), there are significant developments~~the Court has made any significant progress~~ as regards the protection of social rights by the Court.

[…]

92. With regard to education for Roma children,[15] mention should be made of the Grand Chamber's *Orsus and Others v. Croatia* judgment of 16 March 2010 concerning 15 Croatian nationals of Roma origin placed in Roma-only classes during their schooling. This case should be distinguished from that of *D.H. and Others v. the Czech Republic*,[16] as in this case the two schools in question did not apply a general policy of segregation of Roma children. In *Orsus and Others* it was alleged that the special classes only included Roma children because of their poor command of the Croatian language. Yet the tests used to determine their placement did not really relate to their language skills, the curriculum did not address language problems and nothing was done to monitor the pupils' progress in this area. In contrast with its Chamber judgment of 17 July 2008, the Court found that there had been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1 as there were no clear or transparent criteria for the applicants' transfer to mixed classes. As in *D.H.*, ~~it is surprising that~~ the Court referred to many different sources but did not~~failed to~~ mention the ECSR's position on this subject (separate school facilities for Roma children violate Article 17§1 of the Charter).

[…]

116. With regard also to migrants' living conditions,[17] the Court found in its initial *V.M. and Others v. Belgium* judgment of 7 July 2015, as in the *M.S.S.* judgment (§162), that there had been a violation of Article 3 in respect of a family of asylum-seekers who had been exposed to conditions of extreme poverty for four weeks (reference to the ECSR's finding of non-conformity with Article 17§1 of the Charter in the context of Complaint No. 69/2011, *DCI v. Belgium*). However, the case was struck off the Court's list by a Grand Chamber judgment of 17 November 2016 under Article 37, paragraph 1a) of the Convention (after contact was lost with the applicants).

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[14] http://www.coe.int/t/dghl/standardsetting/cddh/GT_DH_SOC/Recent%20developments%20in%20the%20field%20of%20social%20rights_publication_EN.pdf

[15] See, in particular: http://www.echr.coe.int/Documents/FS_Roma_ENG.pdf: factsheet on Roma and Travellers (January 2017: see pages 19 to 21).

[16] It should be recalled that in its Grand Chamber judgment of 13 November 2007, the Court considered that it did not need to examine the applicants' individual cases, it having been established that the application of the impugned law (on the placement of children in special schools) had, at the time of the facts, had harmful and disproportionate effects on the Roma community. The Court consequently found that there had been indirect discrimination against the applicants – based primarily on statistics. In this way, the Court aligned itself with the evaluation mechanism of the Charter (relating to a general situation).

[17] It is worth noting the pending case, *B.G. and Others v. France* (63141/13), concerning the emergency accommodation in tents of asylum-seekers accompanied by minors.

[NL: add new para] With regard to the living conditions of asylum seekers unlawfully on the territory of a state party, the inadmissibility decision in *Hunde v. the Netherlands* of 5 July 2016 can be mentioned. In this case the applicant, a rejected asylum seeker who was not entitled to state-sponsored care or accommodation, based his complaint mainly on the findings of the ESCR in the context of complaints No. 90/2013 and No. 86/2012 (*Conference of Churches v. the Netherlands and Feantsa v. the Netherlands*) that the Netherlands had breached articles 13 and 31 of the Charter. The Court found that there had been no violation of Article 3. The Court considered the situation of irregular migrants to be significantly different from the situation in the M.S.S. judgment (see above) and found the application manifestly ill-founded.[18]

[…]

126. The Court also delivered several judgments where it found there had been a violation of Article 6 due to the failure to execute final judgments.[19] One such example in the employment field is the *Garcia Mateos v. Spain* judgment of 19 February 2013 (according to which the failure to provide the applicant with compensation amounted to a violation of article 6.1, when Spanish Constitutional Court had already declared that the response to the applicant's request for a reduction in working time so that she could look after her child amounted to discrimination on grounds of sex). In the environmental field, there is the *Apanasewicz v. Poland* judgment of 3 May 2011 (decision ordering closure of a production plant). Lastly, in the field of housing, it is worth noting the *Tchokontio Happi v. France* judgment of 9 April 2015 relating to the failure to enforce a decision ordering that the applicant be re-housed as a matter of urgency, under a procedure provided by the "DALO" Act.[20] The Court held that the explanation given by the government for the authorities' failure to enforce the judgment, namely that there was a shortage of available housing, was not a valid reason – given that it was not open to a state authority to cite lack of funds or other resources as an excuse for not honouring a judgment debt.[21] However, the Court declared the complaint under Article 1 of Protocol No. 1 inadmissible, considering that the right to a "social tenancy" did not constitute a possession within the meaning of this provision.

[18] The Court did not accept the applicant's argument that the findings by the ECSR under the Charter should be considered to lead automatically to a violation of Article 3 of the Convention. The Court considered the actions by the Netherlands and concluded that it could not be said that the Netherlands authorities have fallen short of their obligations under Article 3 by having remained inactive or indifferent.

[19] Mention may also be made of older cases still relevant with respect to execution, such as the *Piven* and *Zhovner v. Ukraine* judgment of 29 June 2004 (non-execution of judgments ordering the payment of length-of-service bonuses and sick pay: violation of Article 6§1 and Article 1 of Protocol No. 1): see Interim Resolutions CM/ResDH(2010)222, CM/ResDH(2011)184 and CM/ResDH(2012)234 regarding execution of the pilot judgment of 15 October 2009 in the case *Yuriy Nikolayevich Ivanov v. Ukraine* and 389 other cases.

[20] See below the decisions of 5 December 2007 concerning France (Collective Complaints Nos. 33/2006 and 39/2006) where the ECSR found that there had been several violations in the field of housing (in a 2008 Resolution, the Committee of Ministers noted the adoption of the "DALO" Act, but in December 2015, in the context of the simplified reports procedure – see below – the ECSR noted that the situations had not been brought into conformity with the Charter – given the lack of information or insufficient information provided by the Government). The judgment of the Court reflects the difficulty of implementing the "DALO" Act, but – ~~an illustration of the complementarity that exists between the Convention and Charter mechanisms~~. ~~It is surprising therefore that the Court~~ makes no reference in this judgment to the monitoring mechanism of the ECSR.

[21] See also the *Levishchev v. Russia* judgment of 29 January 2009 where the Court found that there had been a violation of Article 6 and Article 1 of Protocol No. 1 (4 years to allocate housing after a final judgment) and the *Gerasimov and Others v. Russia* pilot judgment of 1 July 2014 where the Court found there had been a violation of Articles 6 (non-enforcement or delayed enforcement of judgments ordering the allocation of housing or obligations in kind) and 13 (Compensation Act not applicable to such decisions) and Article 1 of Protocol No. 1.

[…]

d. Findings

184. It is difficult to draw any clear lessons from the Court's burgeoning case law, particularly as, in accordance with its terms of reference, it decides in the light of the circumstances of each individual case (with the aforementioned exception of *DH and Others v. Czech Republic,* where, after considering statistics pointing to a strong presumption of indirect discrimination in the relevant field, it chose not to focus on the applicants' individual circumstances). Nevertheless, the Court's findings sometimes extend beyond the scope of the individual cases before it, by criticising legislation or practices of a general nature or, in more exceptional circumstances, under Article 46, recommending that states adopt general measures. ~~In doing so, the Court moves closer to the supervisory system of the Charter, in which the ECSR rules on general situations from a collective standpoint, without, however, ever prescribing general measures to be adopted by States.~~

Comment [AK6]: NL: The foregoing does not warrant this conclusion.

[…]

187. There also appears to have been some development~~progress~~ in two areas where little change had been noted in the previous publication: protection against social insecurity and disabled persons' right to social integration.

188. With regard to social insecurity,[22] the Court had already acknowledged that insufficient income might fall within the scope of Article 3, though without ever finding a violation. Once again, in its inadmissibility decision of 18 June 2009 in *Budina v. Russia*, the Court found that the threshold of severity had not been reached, but at the same time it took an important step by arguing, for the first time, that serious deprivation could be incompatible with human dignity. This was followed by the first finding of an Article 3 violation based on social insecurity, in the *M.S.S. v. Belgium and Greece* judgment of 21 January 2011.[23] However, this concerned not insufficient income or social benefits to live in dignity but rather the specific circumstances of an asylum-seeker who had been forced to live on the street for several months with no means of subsistence, thereby making him particularly vulnerable. In its inadmissibility decision of 5 July 2016 in *Hunde v. the Netherlands*, the Court found that Article 3 requires state parties to take action in situations of the most extreme poverty (such as the situation in the *M.S.S* judgment), but there is no right to social assistance as such under the Convention. This case concerned an irregular migrant who was no longer entitled to state-sponsored care and accommodation for asylum seekers.

[…]

190. Despite this significant development ~~progress~~ and the Court's expanding case law on a number of social rights, there are still certain limits to the protection it offers. In the Grand Chamber's judgment of 15 March 2012 in *Austin and Others v. United Kingdom*, the Court stated that "*the Convention is a living instrument which must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic states today…. This does not, however, mean that to respond to present-day needs, conditions, views or standards the Court can create a new right apart from those recognised by the Convention … or that it can whittle down an existing right or create a new 'exception' or 'justification' which is not expressly recognised in the Convention …*" (§53).

[22] Aside from living conditions in prison and other forms of residential institution (see, for example, the following judgments finding violations: *Nencheva and Others v. Bulgaria* of 18 June 2013, *Centre for legal resources on behalf of Valentin Câmpeanu v. Romania* of 17 July 2014 and *Stanev v. Bulgaria* of 17 January 2012).

[23] In a similar case, *V.M. and Others v. Belgium,* the Court found a violation on 7 July 2015, but the case was struck from the list in the Grand Chamber on 17 November 2016, because contact with the applicants had been lost.

[…]

193. Finally, it should be noted that the Court appears to have been making increasing reference to the decisions and conclusions of the ECSR in recent years, sometimes in support of its findings,[24] and sometimes differing from them.[25] However, these references are often of a general nature, and accompanied by other sources.[26] Finally, it has to be noted that the Court still often does notfails to make any allusion to the Charter system in cases in which this might nevertheless be quite appropriate.[27]

194. This applies particularly to the aforementioned cases dealing with austerity measures, despite several ECSR decisions concerning Greece and its conclusions on this subject relating to various States (see below). In a general manner, it appears important to encourage a maximum of cross-references between the Convention and Charter systems, as a mean of emphasising their complementary nature[28] and, in certain cases, their synergies.

Possible action NL comment: In view of CDDH guidance no follow-up proposals at this stage (analysis).

195. Although the aforementioned "Turin Action Plan" (see Appendix) is addressed to many Council of Europe stakeholders, it is important to point out that it includes no reference to any measures for the Court. In view of the above, however, the Court and its Registry can be encouraged to engage in more dialogue and discussion with the ECSR and European Social

[24] Particularly in the following aforementioned cases: The *Demir and Baykara v. Turkey* Grand Chamber judgment of 12 November 2008 (violation of the right to conduct collective bargaining – the Court also noted states' wish to strengthen the mechanism of the European Social Charter), *Matelly v. France* of 2 October 2014 (violation concerning the freedom of association of military personnel, in which the Court went beyond the requirements of the ECSR), *Junta Rectora Del Ertzainen Nazional Elkartasuna v. Spain* of 21 April 2015 (non-violation concerning police officers' right to strike), *Çam v. Turkey* of 23 February 2016 (violation for refusal to admit a blind person to music school), *Yordanova and Others v. Bulgaria* of 24 April 2012 (violation following the eviction of Roma without the offer of alternative accommodation – relying partly on collective complaint No. 31/2005 v. Bulgaria), *Efe v. Austria* of 8 January 2013 (non-violation following refusal to grant family allowance for children living abroad – subsequently contradicted in ECSR conclusions) and *Stefanetti and Others v. Italy* of 15 April 2014 (violation following a substantial reduction in pension payments).

[25] Particularly in the following aforementioned cases: the *Stummer v. Austria* Grand Chamber judgment of 7 July 2011 (non-violation following refusal to affiliate working prisoners to the old-age pension system: no European consensus), *National Union of Rail, Maritime and Transport Workers v. United Kingdom* of 8 April 2014 (non-violation following a legal ban on secondary trade union action: states enjoy a wide margin of appreciation and the applicants produced no evidence of a negative impact on the enjoyment of their rights) and *Berger-Krall and Others v. Slovenia* of 12 June 2014 (non-violation following reduced security of tenure for tenants who were "specially protected" under the previous regime: with regard to the applicants' situation, the transition to a market economy could be deemed reasonable and gradual).

[26] Particularly in the following areas: the right to leave employment, the right not to join a trade union, the right to strike, refusal to register a trade union, public officials' freedom to form or join trade unions, the right to secondary education, harassment of persons with disabilities, unfair dismissals, harassment in the workplace and the right to parental leave.

[27] Particularly in the following aforementioned cases: the *DH and Others v. Czech Republic* Grand Chamber judgment of 13 November 2007 and *Orsus and Others v. Croatia* of 16 March 2010 (violations concerning the education of Roma children: numerous ECSR conclusions on this subject), *Tchokontio Happi v. France* of 9 April 2015 (violation following failure to execute a decision ordering urgent rehousing: two collective complaints on this subject against France), *Dhahbi v. Italy* of 8 April 2014 (violation, prior ECSR conclusions) and *Andrle v. Czech Republic* of 17 February 2011 (non-violation, *idem,* prior ECSR conclusions on this subject, cited above) and the case *Cam v. Turkey* of 23 February 2016 (violation for refusing access to musical education to a blind person) and more generally, the judgments of the ECHR concerning the rights of persons with disabilities (while it exists a specific Article 15 of the Charter on this topic).

[28] See the aforementioned *Tchokontio Happi v. France* judgment of 9 April 2015, an individual case that illustrates the practical difficulties associated with the implementation of legislation examined by the ECSR – and, more generally, all the cases where the Court and the ECSR adopt different positions – bearing in mind their different supervisory systems.

~~Charter Department to ensure that its members and all its staff have a better knowledge of the Charter (more references where appropriate).~~

B. European Social Charter ("The Charter")

a. State of signatures, ratifications and number of provisions accepted

[…]

203~~. Unlike the Convention with the exception of its Optional Protocols, t~~The Charter is based on an "à la carte" system of acceptance of its provisions, which allows states to choose the provisions they are willing to accept as obligations under international law. Accordingly, while explicitly encouraging them to gradually accept all of its provisions, the Charter allows states, at the time of ratification, to adapt their undertakings to fit the level of protection of social rights achieved in their country, in law and/or in practice.

204. Part I of the Charter sets forth the rights~~, like the Convention,~~ and Part II details States' obligations with respect to their implementation. In spite of its "à la carte" system, when States ratify the revised Charter, they must accept a minimum of rights (16 articles, including at least six of the "so called" nine hard core articles – or 63 numbered paragraphs)[29]. Concerning the European Social Charter of 1961, States must accept at least five of seven articles (Articles 1, 5, 6, 12, 13, 16 and 19) and a number of articles or numbered paragraphs of Part II of the Charter, as it may select, provided that the total number is not less than 10 articles or 45 numbered paragraphs[30].

[…]

~~207~~. In 2002, in order to encourage states to accept more of the Charter provisions, and bearing in mind that "à la carte" acceptance is of a temporary nature like reservations in respect of international instruments ~~(Article 57 of the Convention which, furthermore, does not permit reservations of a general nature)~~, the Committee of Ministers decided to implement Article 22 of the 1961 Charter on reports concerning provisions which are not accepted.[31] In practice, once they have ratified the revised Charter, States are obliged to submit a report, every five years, on provisions they have not accepted for examination by the ECSR.

b. Conclusions and decisions of the European Committee of Social Rights (ECSR)

(i) Nature of ECSR conclusions and decisions

~~208~~.NL proposal: replace this para by a description of the relevant articles of the Charter (role ECSR, Governmental Committee and Committee of Minister] ~~Insofar as they refer to legally binding provisions and are adopted by a monitoring body established by the Charter and the 1995 Protocol providing for a system of collective complaints, the Conclusions (in the context of the reporting system) and Decisions (in the context of the collective complaints procedure) of the ECSR must be implemented by the States concerned.~~

~~209. However, when the ECSR finds that the situation in a given country is not in compliance with the Charter, the authorities of that country cannot be required to adapt their domestic~~

[29] Part III of the Charter, Article A "Undertakings", §1.
[30] Article 20 of the European Social Charter of 1961.
[31] Decision of the Committee of Ministers adopted on 11 December 2002 at the 821st meeting of the Ministers' Deputies.

Comment [PM7]: *{**PL**: Verification procedure ends with a decision of the Committee of Ministers which (NOT the conclusions or decisions of the CIE) are conclusive for Member States. They should consider them in their legislative or policy processes, as appropriate. To write that states parties are mandated to abide by the conclusions and decisions of the CIE, degrades the other two verifying bodies, i.e., the Governmental Committee and the Committee of Ministers and unduly expands the powers of the CIE. This para should accurately describe the competencies of the respective verifications bodies. The following paras should be adjusted accordingly.}*

*{**PT** : Au par. 199, "Insofar…; il faut quand même garder une référence au pouvoir décisionnel qui resulte du jeu des différents organes du système de la CSE. Nous pourrions mettre, si cela convenait à toutes les parties, dans le sens du respect d'une plus grande exactitude dans la description du fonctionnement de ce système: … the conclusions (in the context of the reporting system) and decisions (in the context of the collective complaints procedure) of the ECSR, which give rise, on consultation with the Governmental experts committee, to a Resolution or a Recommendation of the CM, possess a particular, tendencially binding, authority.}*

*{**GR** supports **PT**}*

Comment [AK8]: NL comment : This text is not very clear and should be replaced by a more neutral description of the relvant articles of the Charter.

~~legislation to bring it into conformity with the ECSR's finding as would be the case with a ruling by the national courts or by the Court in Strasbourg (no equivalent in the Charter to Article 46§1 of the Convention).~~ However, the fact that the Decisions and Conclusions of the ECSR are not enforceable does not mean that a State can ignore them. These are thus declaratory, in other words they set out the law and should serve as a basis for positive developments with respect to social rights through the passing of new laws, case law or practices at national level.

210. Furthermore, it can happen that national courts declare invalid or set aside domestic legislation if the ECSR has ruled that it is not in compliance with the Charter (see below, point f). Lastly, ~~as with the judgments of the Court,~~ it is possible for ECSR members to append their dissenting opinions to Conclusions and Decisions adopted by the ECSR.

(ii) State reporting procedure

211. The state reporting system is set out in Part IV of the 1961 Charter as amended by the 1991 Protocol (known as the "Turin Protocol") and has been further elaborated in several decisons of the Committee of Ministers. In the course of time the reporting system has become very complex ~~.~~

[new para]Although the 1991 Protocol has not yet entered into force,[32] it is applied on the basis of a decision of the Committee of Ministers.[33] This decision ~~It has improved the reporting system, by~~ clarifiesying the prerogatives and responsibilities of the organs in charge of the control of the Charter, and has also enabled the social partners and non-governmental organisations (NGOs) to be more closely involved.

212. Under the reporting system, States Parties are under the obligation to regularly submit a report on how the provisions of the Charter they have accepted are applied in law and in practice. The reports are examined by the ECSR which decides, from a legal point of view, whether or not the national situations they describe comply with the Charter. The decisions of the ECSR – known as "Conclusions" – are published annually.

213. When sending the Secretary General a report pursuant to Articles 21[34] and 22[35], states must also send a copy of the report to such of its national organisations as are members of the international organisations of employers and trade unions invited, under Article 27, paragraph 2, to be represented at meetings of the Governmental Committee.[36] These organisations may send any comments they have on the national reports to the Secretary General, who then sends a copy of their comments to the states concerned, so that they have an opportunity to respond. Moreover, there is also a provision whereby the Secretary General sends a copy of the national reports to the international non-governmental organisations who have consultative status with the Council of Europe and have particular competence in the matters governed by the Charter (Article 1 of the Turin Protocol– see below, Part III, E: Conference of INGOs). Lastly, given that the reports are published on the website dedicated to the European Social Charter, any national or other organisation ~~(such as the European Union, for example, although so far it has never happened)~~ may submit its comments to the Department of the European Social Charter,[37] and it falls to the ECSR, if it

Comment [PM9]: *{**PL**: Examples of court decisions listed in para 279 do not confirm " that national courts declare invalid or set aside domestic legislation if the ECSR has ruled that it is not in compliance with the Charter". The Polish courts regard positions taken by international verification bodies as supplementary in their interpretation and application of the law. They clearly distinguish between the rulings of the ECHR which they respect and the positions of those other verification bodies. In any case, in principle, there is no automatic recognition of CIE conclusions or decisions. As a rule, national courts determine the application of those conclusions/decisions on an case by case basis.}*

*{**PT**: Je garderais le texte qu'il est proposé de rayer dans la mesure où il y est dit: "it can happen": l'objection de la Pologne y est déja contenue.}*

*{**GR:** supports **PT**}*

Comment [AK10]: NL: it might be useful to summarize in bullits all the different reports.

[32] It should be recalled that it requires ratification by all States Parties. To date, four states have yet to ratify it.
[33] On 11 December 1991 the Committee of Ministers adopted a decision calling on the states and monitoring bodies to consider already applying some of its measures if permitted to do so by the text of the Charter.
[34] Part IV, Article C, Article 21 of the Charter : "Reports on accepted provisions".
[35] Part IV, Article C, Article 22 of the Charter : "Reports on non-accepted provisions".
[36] In practice, this concerns the following three organisations: the European Trade Union Confederation (ETUC), Business Europe and the International Organisation of Employers (IOE).
[37] For example, in 2015, shadow reports were submitted by the Belgian Interfederal Centre for Equal Opportunities (UNIA), the Danish Institute for Human Rights (INDH) and the Scottish Human Rights Commission

sees fit, to take them into account when assessing a national situation. In practice, it is not often that national and international organisations send any comments on the state reports.

214. In 2007, following a decision by the Committee of Ministers, the provisions of the Charter were divided into 4 thematic groups: Group 1: Employment, training and equal opportunities; Group 2: Health, social security and social protection; Group 3: Labour rights; Group 4: Children, families, migrants.[38] Every year, states submit a report on one of these four thematic groups. Consequently, each provision of the Charter is reported upon every four years.

215. In 2014, the Committee of Ministers adopted changes to the Charter reporting and monitoring system, primarily to simplify the system of national reports for those states (currently 15) that have accepted the collective complaints procedure. In practice, this means that every two years they submit a simplified national report in which they explain the follow-up action taken in response to decisions of the ECSR on collective complaints brought against them.[39] Depending on the case, the ECSR may then conclude that the national situation has been brought into conformity with the Charter. The new system has been in force since October 2014 for states that have accepted the collective complaints procedure. For the other states, it will come into force one year after their acceptance of the 1995 Protocol providing for the collective complaints procedure.

Comment [PM11]: *{**PL**: Yes, but even such simplified reports are comprehensive, i.e., they cover all articles by which a state party is bound. They are not just replies to CIE findings in regard to the particular collective complaints. On top of that the control cycle has been extended to 8 years, as opposed to 4 years in the case of those states parties which have not adhered to the collective complaints procedure.}*

Comment [AK12]: NL Comment :it should made clear which report – if so - is replaced by this so-called simplified report, otherwise it is not clear what the simplification amounts to. Furthermore, for states with many cases, this report may not be considered a simplification.

[…]

218. It should be noted ~~the fact~~ that in ..[year] the Governmental Committee also started to ~~is now also~~ deal~~ing~~ with the European Code of Social Security. Since then ~~has~~ it has less time (eighth meetings days in stead of the usual ten days) to prepare the decisions for the Committee of Ministers. This has posed a challenge to~~undermined~~ the effectiveness of the Charter system.~~, since it is devoted now only eight meetings days (on ten) of the Governmental Committee~~. ~~Thus, A~~a~~ccording to an informal working method, decided in 2015, between the Governmental Committee and the ECSR, the latter selects henceforth a maximum of situations for discussion by the Governmental Committee from among its negative conclusions (currently 80 per cycle). Many negative conclusions are therefore no longer discussed and "handed over" to the ECSR's assessment four years later (in the next cycle on the articles concerned). According to the ETUC, practice demonstrates that this new working method should be improved - in particular by allowing the ECSR to select more cases and by better arguing the reasons for non-selection of cases of non-conformity with the Charter.

219. The role of the Committee of Ministers in the reporting system comes into play in the final phase. Once it has received the ~~Conclusions of the ECSR~~report of the Governmental Committee, it adopts, by a two-thirds majority of votes cast, a resolution which brings each supervision cycle to a close and may contain individual recommendations addressed to the states concerned. ~~, given that l~~In the event of a non-conformity conclusion by the ECSR, states are required to remedy the situation to bring it into conformity with the Charter. If a state fails to respond to the ECSR's finding(s) of non-conformity, the Committee of Ministers can issue a formal Recommendation to the respondent state based on social and economic policy considerations, requesting that it change its law or practice. Given the importance of this decision, it also requires a two-thirds majority of the number of votes cast. Only States Parties to the Charter are entitled to vote on resolutions and recommendations[40].

(INDH), whereas in 2014 and in 2017, shadow reports were also submitted by the Greek National Commission for Human Rights (NCHR).

[38] See Appendix concerning 2015 (submission of reports) and 2016 (publication of conclusions) to 2018/2019.

[39] See Appendix: the 15 states currently concerned by the simplified reporting procedure have been split into two groups according to the number of complaints lodged against them (from the highest to the lowest number).

[40] Part IV, Article C, Article 28 of the Charter.

220. Lastly, it is important to stress that it falls to the ECSR, which assesses states' compliance with the Charter from a legal standpoint (Part IV, Article C, Article 24§2), to establish whether or not a situation has been brought into conformity with the Charter. It can rule on the subject in the context of both the state reporting system and the collective complaints procedure.

Comment [PM13]: *{PL: Paragraph. to be deleted - the process has been presented already.}*

Comment [AK14]: NL proposal- move the gist of this para to para 208 in its revised form – i.e. description of roles the actors involved

(iii) Collective complaints procedure[41]

221. The Additional Protocol providing for a collective complaints system was opened for signature on 9 November 1995 and came into force on 1 July 1998. Its aim was to increase the effectiveness, speed and impact of the activities carried out to monitor implementation of the Charter.

222. The collective complaints procedure has also enhanced the role of the social partners and NGOs by making it possible for them to submit a direct request to the ECSR for a decision on the possible unsatisfactory application of provision(s) of the Charter in States that have accepted the procedure. The organisations entitled to lodge collective complaints are: a) the aforementioned international social partners (Business Europe, ETUC[42] and IOE) ; b) INGOs enjoying participatory status with the Council of Europe whose application to bring collective complaints has been accepted by the Governmental Committee[43] and ; c) national social partners. In addition, the Protocol provides that any State may grant the right to lodge complaints to representative national NGOs with particular competence in the matters governed by the Charter. However, out of 15 States, so far only Finland has done so. At present [number] organisations are entitled to lodge collective complaints.

223. As already indicated, the primary objective of the collective complaints procedure is to reinforce the effective implementation of the Charter. As already also stated in the introduction, this procedure complements the jurisdictional protection afforded, in the field of social rights, by the Court under the Convention. In view of their collective nature, complaints can raise questions pertaining only to possible unsatisfactory application of the Charter in a State's law or practice; they cannot . They cannot submit individual situations. Unlike the procedure under the Convention, Tthere is no need to have exhausted the domestic remedies before lodging a complaint, and the claimant organisation or their members do not necessarily have to have been victim(s) of the alleged violation(s).

[…]

233. Following its deliberations, the ECSR adopts a decision on the merits of the complaint finding that there has or has not been a violation of the Charter. This decision is then forwarded to the parties and to the Committee of Ministers. The average length of the procedure is roughly 18 months between registration of a complaint and the decision on the merits. It can be seen, therefore, that the procedure is rather faster than before the Court and that it can also produce wide more effects more rapidly in view of its collective nature. In contrast, unlike the Court's judgments, it should be noted that Tthe decisions of the ECSR are not made public until the Committee of Ministers has adopted a resolution, or at the latest four months after the decision has been forwarded to the latter (Article 8§2, the 1995 Protocol).

Comment [AK15]: During meeting with agents on 3 July last, ECSR President mentioned that due to increase of complaints procedure now takes about 3 years.

[41] http://www.coe.int/en/web/turin-european-social-charter/conference-turin: information note in preparation for the Turin I conference.

[42] To date, the ETUC and its national affiliates have filed two collective complaints: 32/2005 (*ETUC, CITUB et PODKREPA v. Bulgaria*) and 59/2009 (*ETUC, CSC, FGTB et CGSLB c. Belgium*). On the contrary, no complaint has yet been lodged neither by Business Europe, nor by the IOE.

[43] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680684ffd : the list of INGOs entitled to submit collective complaints (71 in total, as of 1 January 2017).

[…]

c. Standards and practices concerning the functioning of these procedures

236. Pursuant to the Charter and its Rules, the ECSR comprises fifteen members, independent and impartial, elected by the Committee of Ministers from a list of independent experts of the highest integrity and of recognised competence in international social questions, proposed by the States Parties. ~~Accordingly, in contrast to the Court, the ECSR is a select body – not comprising one member per Council of Europe member state (47), or per State Party to the Charter (43).~~

237. ~~It is worth pointing out that~~ The latest increase in the number of ECSR members dates from May 2001, when there were just 27 ratifications (9 states: revised Charter – 18 states: 1961 Charter), whereas now, there are 43 ratifications (34 states: revised Charter – 9 states: 1961 Charter). Moreover, the ECSR is currently composed of 14 nationals of States from the European Union (EU) and one Norwegian – which entails a problem of legitimacy for the numerous States parties to the Charter which are not from the EU (15 States).

238. The ECSR members' term of office is six years (renewable once). Lastly, in accordance with the Turin Protocol, they should be elected by the Parliamentary Assembly (PACE) but this provision in the Protocol is the only one which, for the time being, has not yet been implemented, pending the formal entry into force of the Protocol (see above).[44]

239. ~~Unlike the Court,~~ The ECSR is not a permanent body. It meets seven times a year – in principle in Strasbourg. ~~– and it is~~ The Council of Europe Secretariat (the Charter Department) ~~which~~ ensures the continuity of the~~its~~ work between sessions. In view of the increasing workload, a result, amongst other things, of the aforementioned increased number of ratifications of the Charter, it does not have sufficient resources to carry out all its tasks (in particular the co-operation activities with states and training and awareness-raising with regard to the Charter) – despite a recent slight increase in staff and its budget (see above: current status in terms of follow-up to the "Turin Process").

240. In the States reporting system, the ECSR may – like the various UN committees – adopt statements of interpretation through which, in general terms, it sets out the requirements of the Charter in respect of certain of its provisions. Furthermore, to date, the ECSR has adopted general statements of interpretation on the following issues[45] :

- 2015: Statement on the rights of refugees under the Charter, published on an urgent basis in October – in advance of the publication of the annual ECSR report;
- 2013: Statement on the rights of stateless persons under the Charter;
- 2008: Statement on the burden of proof in discrimination cases;
- 2006: Statement on the nature and scope of the Charter;
- 2004: Statement on the personal scope of the Charter;
- 2002: Statement on the application of the revised Charter.

241. With regard to the collective complaint procedure, r~~R~~ule 25 of the ECSR Rules provides that "States shall be represented before the Committee by the agents they appoint". Since 2014, four~~three~~ meetings have been held between the ECSR bureau and the government agents during which various procedural and technical issues relating to the system of collective complaints were discussed. In 2016, the idea was discussed (by whom?) and, in principle, accepted by the Charter Department also to have such meetings with

Comment [PM16]: *{**PL**: This section needs to be revised to include the description of the role of the Governmental Committee and the Committee of Ministers (including GR-SOC). Under the Charter there are THREE bodies involved in the verification procedure (TWO for the collective complaints). This should not to be ignored in this report.}*.

Comment [AK17]: Should this nit be elaborated on. There is a sutem of A,B,C

Comment [AK18]: There is a quite complicated method for electing ECSR members, shouldn't this be explained here?

Comment [PM19]: *{**PL**: Rule 25 applies solely to the collective complaints procedure.}*

Comment [AK20]: NL : Latest meeting took place on 3 July 2017

Comment [AK21]: Not during the Agents meeting

[44] To enhance the legitimacy of the processes of monitoring social rights, PACE encourages those states which have not yet done so (of which, it will be recalled, there are four) to ratify the Turin Protocol (AS/Soc/ESC(2014)03rev, 17 October 2014): see below, Part III, B).

[45] Search by year of Conclusions and tick the "Statements of interpretation" box: http://hudoc.esc.coe.int/eng#.

representatives of INGOs - at least with those submitting regularly complaints and/or observations.

d. Examples of ECSR decisions and conclusions

[…]

(iii) Overview of the collective complaints submitted so far[NL: numbers need updating]

252. To 21 April 2017, since the entry into force in 1998 of the 1995 Protocol providing for a system of collective complaints, the ECSR has registered a total of 149 complaints, 40 of which are currently being examined. The majority (roughly 60%) of complaints have been lodged by INGOs having participatory status with the Council of Europe, whereas approximately 30% have been lodged by national trade unions, and the rest (10%) by the international social partners (to date, for reminder, only by the ETUC), national employers' organisations and nationals NGOs[46]. In his above mentioned exchange of views with the Ministers' Deputies on 22 March 2017, the President of the ECSR underlined a recent increase in the number of complaints lodged: 21 in 2016, 6 in 2015 and 10 complaints in 2014[47].

253. To 21 April 2017, the ECSR has delivered 101 decisions on the merits[48] of complaints relating to a wide range of issues – including the rights of Roma, assistance and the right to shelter for irregular migrants, the rights of persons with disabilities, the right to organise and the right to strike. In the vast majority of cases, at the level of the merits,, the ECSR has found one or more violation(s) of the Charter (in about 96% of the cases)[49].

Comment [PM22]: *{**PL**: Footnote should be deleted. What does it matter that the CIE and the Court have a similarly high rate of negative findings? The only purpose of the „comparison" would be to show a „similarity" between CIE and the Court. But, the fundamental fact is that the CIE is not a court.}*

254. With regard to the states concerned, the distribution has been relatively uneven: roughly one third of complaints relate to France, 14% to Greece, 10% to Portugal and Italy – whereas other states have had only two or three complaints lodged against them over a period of more than 15 years. Lastly, it should be pointed out that recently, an INGO (University

[46] For reminder, to date, only Finland has acknowledged the right of nationals NGOs to lodge complaints – 7 complaints have been lodged by 3 nationals NGOs : Complaints Nos. 70/2011 and 71/2011 by *The Central Association of Carers in Finland* ; Complaints Nos. 88/2012, 106/2014, 107/2014 and 108/2014 by the *Finnish Society of Social Rights* and Complaint No. 139/2016 by *Central Union for Child Welfare* (CUCW).

[47] Speech by the Chairman of the ECSR, 22 March 2017: http://rml.coe.int/doc/09000016807010f3 (see above).

[48] So far there have been just 6 inadmissibility decisions: decision of 5 December 2006, Complaint No. 36/2006 (*Frente Comum de Sindicatos da Administração Pública v. Portugal*) – insufficient evidence that the representative of the complainant organisation had the authority to act; decision of 14 June 2005, Complaint No. 29/2005 (*SAIGI-Syndicat des Hauts Fonctionnaires v. France*) – the complaint did not pertain to the applicable rules but rather to the manner in which they were being applied in a particular case in a set of proceedings over a period of eight years before administrative and criminal courts and disciplinary bodies; decision of 13 June 2005, Complaint No. 28/2004 (*Syndicat national des Dermato-Vénérologues v France* – the facts adduced were not of a nature to enable the ECSR to conclude that there had been a violation of the right guaranteed by the combination of Article E with Articles 1§2 and 4§1; and decision of 13 October 1999, Complaint No. 3/1999 (*European Federation of Employees in Public Services v. Greece*) – as Greece had not accepted the provisions relied upon; decision of 18 October 2016, Complaint 120/2016 (*FFFS v. Norway*) – due to the validity of the reservation to Article 12§4 of the 1961 Charter to which Norway was bound before 1994, it was not obliged to grant before this date social security rights to foreign seamen not domiciled in Norway and ; . Decision of 24 March 2017, Complaint No. 122/2016 (*Movimento per la libertà della psicanalisi-associazione culturale italiana v. Italy*) - the activities carried out by the complainant organization are not within the essential prerogatives of a trade union and the movement cannot be considered as a trade union organization.. In general, it should be emphasised that the fact that the vast majority of complaints have been declared admissible by the ECSR – a contrary situation to the applications lodged with the Court – can largely be explained by the fact that there is no requirement to exhaust domestic remedies in the collective complaints procedure.

[49] According to the ECHR statistics (1959 to 2016), there are 91.70% of judgments finding at least one violation of the Convention (16399 judgments against 1491 judgments concluding to no violation).

Women of Europe) lodged complaints relating, for the first time, to equal pay between women and men against all the 15 States Parties to the 1995 Protocol.[50]

(iii) Examples of significant decisions and conclusions[51]

[…]

259. In these decisions, the ECSR referred to treaties such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the UN Convention on the Rights of the Child, none of which, like the Convention, provides for any restriction similar to the one in the above-mentioned Appendix. In its *FEANTSA v. Netherlands* decision of 2014, the ECSR highlighted the principles of its interpretation of the rights which must be guaranteed: "*the restriction of the personal scope of the Charter included in its Appendix should not be read in such a way as to deprive migrants in an irregular situation of the protection of the most basic rights enshrined in the Charter, or to impair their fundamental rights, such as the right to life or to physical integrity or to human dignity. On the other hand, its application to migrants in an irregular situation is justified solely where excluding them from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental rights, and would consequently place the foreigners in question in an unacceptable situation regarding the enjoyment of these rights, as compared with the situation of nationals or foreigners in a regular situation*."[52]

[New para proposed by NL]It should be noted that the Committee of Ministers in its resolutions concerning *FEANTSA v. the Netherlands* and *CEC v. the Netherlands* explicitly recalls that the powers entrusted to the ECSR are firmly rooted in the Charter itself and recognises that the decision of the ECSR raises complex issues in this regard and in relation to the obligation of States parties to respect the Charter. It further recalls the limitation of the scope of the European Social Charter (revised), laid down in paragraph 1 of the appendix to the Charter.[53]

[…]

f. Examples of national implementation of the Charter

[…]

(iv) Examples of the Charter's applicability by national courts[54]

[…]

296~~. It is also important to recall that~~A ~~a~~t the aforementioned Conference in Cyprus in February 2017, it was concluded that the courts of the States Parties to the European Social Charter should increasingly regard it and perceive it as an "integral part of domestic law" – taking into account the specific legal characteristics of each national legal order and the special nature of the provisions of the Charter – which are not all directly applicable, nor all of them able to produce direct effects.

297. Finally, ~~as in the case of the ECHR,~~ exchanges take place between national courts and the ECSR. By way of example, on 28 February 2017, an exchange of views was held with

[50] See collective complaints Nos. 124/2016 to 138/2016 – all registered on 24 August 2016.
[51] For all the ECSR's decisions and conclusions and their follow-up, consult the aforementioned site: http://hudoc.esc.coe.int/eng#.
[52] Aforementioned Complaint No. 86/2012 (*FEANTSA v. Netherlands*), §58.
[53] CM/ResCh S(2015)4 and CM/ResCh S(2015)5
[54] In particular, see the relevant parts on this subject of the Annual Activity Reports of the ECSR.

the Ukrainian Constitutional Court on the effective protection, in the light of the Charter and the conclusions and decisions of the ECSR, of pension and social security rights[55].

[…]

h. Findings

[…]

320. Moreover, in addition to the crisis, the following main points have been identified as challenges to~~undermining~~ the effectiveness, credibility and legitimacy of the Charter system:

- Non-ratification of the Charter by all Council of Europe member States – 4 States are not parties – moreover, 9 States are still not bound by the Revised Charter of 1996 ;
- Significant differences in States' obligations due to its "à la carte" system ;
- Non or inadequate reporting: i~~I~~n practice, some States no longer submit their reports and attend meetings of the Governmental Committee, while other States submit incomplete and/or out of time reports ;
- 15 States Parties to the collective complaints procedure even though 43 States have signed up to the Charter (34 States : Revised Charter and 9 States : 1961 Charter) ;
- Among these 15 States, fairly significant variations in the number of complaints lodged, probably due to a continuing lack of awareness of this procedure at national level ;
- Still not many third parties observations in connection with complaints, again probably due to a continuing lack of awareness of this procedure ;
- ECSR decisions and conclusions unenforceable and without real monitoring by the Committee of Ministers (see below) – with the result that many of them remain unimplemented in practice[56] – even though the texts relating to the Charter are binding legal instruments ;
- ~~ECSR members not elected by the PACE despite the Turin Protocol of 1991 which contains a provision to this effect (the said Protocol is still not in force, precisely because of this issue) ;~~
- ECSR : restricted organ of 15 members not reflecting all the legal traditions and social realities in Council of Europe member States ;
- ECSR ~~: not a permanent body (7 sessions per year), despite its G~~growing workload ECSR by the increase in the number of ratifications of the Charter and increase of collective complaints~~;~~
- Insufficient resources of the ECSR, the Governmental Committee and the Charter Department despite their growing workload also ~~,~~ generated ~~mostly by the aforementioned increase in the number of ratifications of the Charter and~~ by their complementary competence regarding the European Code of Social Security – around 22 staff members working for the two systems ;
- Inadequate communication inside the Council of Europe regarding the Charter ;
- Few activities specifically dedicated to the Charter within national Assemblies ;
- Charter provisions of limited and varied applicability in domestic courts;
- Not enough training, awareness raising, co-operation and sharing of good practices on the Charter – because mostly of a lack of human and material resources.

[…]

~~**e. Possible action**~~ NL comment: In view of CDDH guidance no follow-up proposals at this stage (analysis).

Comment [PM23]: *{**PL:** The problem is practical effectiveness. The system is perfectly legitimate as states parties established it by a proper international instrument.}*

Comment [PM24]: *{**PL**: It seems such dereliction of duties is quite exceptional, while incomplete and/or late reporting are real problems.}*

Comment [PM25]: *{**PL**: These are real reasons why CIE's conclusions are sometimes set aside. The problem is not that they are not legally binding. This finding reflects what was identifies above in para 289bis.} REQUEST TO DELETE*

Comment [PM26]: *{**PL**: It is explained that the CIE is not elected by the PACE because states parties do not wish it to be thus elected. Apparently, they do not want the CIE to be a semi-court. So, what is the point of listing this as a problem?}*

Comment [PM27]: *{**PL**: This is not a problem of social rights implementation. The Charter is simply (for the most part) not directly applicable. The enjoyment of social rights depends on the availability of resources and government policy priorities as resources are always limited. Court decisions can only be applicable to certain issues, like discrimination, noncompliance with procedures set by the law in implementing social protection legislation, etc.} REQUEST TO DELETE*

[55] Speech by the President of the ECSR, 22 March 2017: http://rml.coe.int/doc/09000016807010f3

[56] More precisely, under the aforementioned new simplified reporting procedure, in 2015, there were 13 "corrected" violations (out of 114 violations of 40 decisions: just over 10% of compliance) and, in 2016, 4 "corrected" violations (out of 21 violations of 9 decisions: less than 20% of compliance).

324. In the light of these findings, various courses of action can be suggested, several of which flow from the above-mentioned "Turin Action Plan" (see Appendix).

325. This section, however, deals only with suggestions which are of relevance primarily to the ECSR[57], the Governmental Committee and/or the Charter Department. The other proposals aimed at improving the functioning of the Charter system appear in the sections which deal with the stakeholders to whom the proposals are addressed.

326. The first possible course of action involves securing more ratifications of the Charter's standard-setting system.[58] Mention of this is made in various parts of the report, as the "Turin Action Plan" calls on everyone involved in implementing the Charter to take steps along these lines.

327. In order to improve the effectiveness of the Charter in all Council of Europe member states, it has been emphasised, in the context of the "Turin Process", that the priority is to promote ratification of the Revised Charter by all states together with gradual acceptance of all its provisions, starting with the "core" ones. The "Turin Process" has also highlighted the need for those states which have not yet done so to ratify the 1995 Protocol establishing a system of collective complaints.

328. To this end, as has already been briefly stated (see above, Part I, current status of the follow-up to the "Turin Process"), the GR-SOC of the Committee of Ministers, for whom this course of action is also a priority, has suggested initiating a discussion on possible barriers to further ratifications.[59] It is accordingly planned to hold high-level meetings in member states to discuss acceptance of the Charter system. These meetings would bring together the competent political representatives from national governments and parliaments and, where appropriate, relevant national and international organisations and senior officials from the Council of Europe, including representatives of the Parliamentary Assembly. When planning these meetings, due account should be taken of the timing of the ECSR meetings on non-accepted provisions (see above), while the decision as to which states should host these initial meetings would depend on various factors.

329. A second possible course of action, also mentioned by the GR-SOC, and which is closely linked to acceptance of additional provisions of the Charter and the complaints procedure, involves simplifying the monitoring procedures, in particular for states which have accepted the complaints procedure. The Ministers' Deputies have therefore called for further simplification of procedures,[60] following on from the ways of streamlining and improving the reporting system (see above).[61] A meeting was held in early 2016 on this subject between the Bureau of the ECSR and the Bureau of the Governmental Committee to prepare the ground for such an objective.[62] Further simplification would have two advantages. First, it

Comment [PM28]: *{**PL**: No proposal in this section of the report pertains to the Governmental Committee. Proposals on the possible enhanced role of the Governmental Committee (resulting in a better cooperation with the CIE), more staff, more meetings, etc. need to be developed.}*

Comment [PM29]: *{**PL**: Actually, the opinions and proposals on the future of the reporting procedure presented by the chairperson of the Committee of Independent Experts, were met with objections. Those objections were presented at the meeting of the bureaus (expressed by the Chairperson of the Governmental Committee) and at the Governmental Committee meeting in May of 2016. Subsequently a letter of May 13, 2016 was sent to the Chairperson of the Committee of Independent Experts with the position of the Governmental Committee on the matter. No changes in the state reporting system are currently under consideration, in particular any simplification of reports. The Governmental Committee discussed that issue at its May and September 2016 sessions. Representatives from states parties to the collective complaints procedure were of the view that it would be premature to simplify the state reporting procedure for the collective complaints countries at this stage. It is important to gather more experience first.}*

[57] The Turin Action Plan calls on the ECSR to take the following measures: its decisions and conclusions must take account of the new scenarios and situations; inform the social partners and NGOs about the complaints procedure (see below: enhance the role played by national stakeholders through more training/awareness activities focusing on the Charter); encourage the use of the third party mechanism by EU bodies and NGOs and; various measures as regards the synergies to be developed between EU law and the Charter (see below, Part IV).

[58] It will be recalled that this course of action featured, as such, in the Declaration made by the Committee of Ministers in 2011 and in Priority No. 5 of the strategic vision presented by the Secretary General of the Council of Europe for his second term.

[59] GR-SOC(2016)CB1, meeting of 19 January 2016 and the proposals referred to therein by the General Secretariat/CoE as set out in (CM(2015)173) of 17 December 2015: in Appendix.

[60] This course of action also stems from the Declaration made by the Committee of Ministers in 2011: "secure the effectiveness of the Charter through an appropriate and efficient reporting system".

[61] GR-SOC(2016)CB1, meeting of 19 January 2016 and the proposals referred to therein by the General Secretariat/CoE as set out in (CM(2015)173) of 17 December 2015: in Appendix.

[62] Above-mentioned introductory speech by the President of the ECSR during his exchange of views with the Committee of Ministers: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806304fc.

would create a fairer balance between states accepting and states not accepting collective complaints, thereby making for greater equality in Europe in terms of how social rights are monitored, and, second, it would encourage the latter states – by this supplementary simplification – to ratify the 1995 Protocol. During its aforementioned exchange of views with the Ministers' Deputies on 22 March 2017, the Chairman of the ECSR stressed the need to further simplify the reporting procedure in order to better identify the real and serious problems of implementation of the Charter[63].

330. One idea here might be to exempt states which have accepted the complaints procedure from having to report on provisions in respect of which the ECSR has already concluded that the situation is in conformity (on the understanding, however, that monitoring may still be carried out in connection with complaints so as to be able to address any changes in the situation, to be noted that States rejected this idea in 2015). In addition, other ideas for making the complaints procedure more attractive for States could be developed, such as, for example, more screening of complaints regarding admissibility[64], or in the long term, the inclusion in the ECSR of an independent expert member from all the States which have accepted the collective complaints procedure, without prejudice of the presence of independent members of other States.

331. A third possible course of action involves providing the ECSR with a more robust institutional framework. In order to give it more independence and authority, the "Turin Action Plan" calls for the entry into force of the 1991 Protocol (see above) which provides for ECSR members to be elected by the Parliamentary Assembly. The "Turin Action Plan" further recommends increasing of the staff of the Charter Department and of the members of the ECSR, to enable them to manage their growing workload and better reflect the wide range of legal systems and social models that exist in Europe[65]. This crucial point, among others, was also recalled by the President of the ECSR in his above mentioned exchange of views of 22 March 2017 with the Ministers' Deputies[66]. It should also be noted that the resources of the Governmental Committee should also be strengthened.

332. A fourth course of action involves improving targeted co-operation with member States in the field of social rights[67], an objective that has likewise been approved by GR-SOC[68]. For example, co-operation activities could be improved by holding regular meetings between the governments' agents and the ECSR Bureau (not limited to the States Parties to the Protocol of 1995) and between the ECSR Bureau and the Governmental Committee, by holding more country-specific meetings focusing on implementation of the Charter and by providing technical support to States as part of the follow-up to ECSR decisions and/or conclusions where necessary. It should be noted that direct exchanges between the ECSR and representatives of international social partners and INGOs should also be encouraged.

333. A fifth possible course of action, which is also mentioned in the "Turin Action Plan" and the "Brussels Document" (see Appendix), involves doing more to promote the key role played by national stakeholders, in particular the courts, in implementing the Charter.

Comment [PM30]: *{**PL**: Decisions on whether to ratify an international instrument so consequential to the ratifying party as the collective complaints protocol, are never made over the reporting procedure. Such views were expressed in the Governmental Committee when it was discussing the simplified reporting procedure.}*

Comment [PM31]: *{**PL**: This would significantly reduce the monitoring of legislative changes by states parties. It could be possible to monitor those changes in the collective complaints procedure. Yet, it would not work in regard to those states against which no or few complaints are lodged. It was considered in 2015 when the states were deciding on the simplified country reporting and rejected.}*

Comment [PM32]: *{**PL**: Whom would that member represent and how. Who would give him/her instructions? What would be his/her role in the CIE proceedings?}*

Comment [PM33]: *{PL: The CIM Chair's proposals were not supported by Member States at the March 22, 2017 session.}*

[63] Statement by the President of the ECSR, 22 March 2017: http://rm1.coe.int/doc/09000016807010e3 (see above).
[64] In particular, by allowing States to always submit observations on the admissibility, which is not currently the case.
[65] Both of these ideas can be traced back to the Declaration made by the Committee of Ministers in 2011, in which the latter expressed its determination "to ensure the expertise and independence of the European Committee of Social Rights".
[66] Speech of the President of the ECSR, 22 March 2017: http://rm1.coe.int/doc/09000016807010e3 (see above).
[67] Again, this course of action was mentioned, as such, in the Declaration made by the Committee of Ministers in 2011 and in Priority No. 5 of the strategic vision presented by the Secretary General of the Council of Europe for his second term.
[68] GR-SOC(2016)CB1, meeting of 19 January 2016 and the proposals referred to therein by the General Secretariat/CoE as set out in (CM(2015)173) of 17 December 2015: in Appendix.

334. It will be noted that this fifth course of action also applies to players other than the ECSR and the Social Charter Department, such as PACE, the INGO Conference and ENNHRI.

335. As with the principle of subsidiarity regarding the implementation of the Convention and in keeping with the spirit of the "Brussels Declaration" adopted on this subject in March 2015, better information and training should be provided for legislative, administrative and judicial authorities (through, for example, regular contact between the ECSR and the highest national courts) concerning the Charter system in order to give them greater responsibility for its implementation (ratifications, acceptance of more provisions, monitoring/compliance with ECSR decisions and conclusions). This could be done, to a large extent, at country-specific meetings of the kind mentioned above, organised by the ECSR and the Social Charter Department, or during visits to Strasbourg by the national authorities concerned.

336. This suggestion about more training and information on the Charter system applies to other national stakeholders as well, such as national human rights institutions, representatives of civil society and professionals with an interest in the Charter (in particular lawyers and the social partners).[69]

337. Accordingly, the ECSR and/or the Social Charter Department could be encouraged to, for example: organise and/or participate in more training/awareness activities on the Charter at national level, with an emphasis on the collective complaints procedure; play an active part in the abovementioned Council of Europe-FRA-Equinet-ENNHRI Platform, which aims to pool skills and information in the interests of better social rights protection in Europe.

338. The role of national human rights institutions and equality bodies in implementing the Charter is worth emphasising here[70], and indeed has been set out in detail by ENNHRI in a contribution to this report. Broadly speaking, ENNHRI states that in recent years it has condemned the economic and social rights impact of government decisions about allocating resources in times of economic crisis. ENNHRI has also set up a working group on these rights, which seeks in particular to enhance the capacities and activities of its members with a view to assessing the impact of economic policy on human rights.

339. As a practical example of its members' involvement in implementing the Charter, mention has already been made above of the shadow reports submitted to the ECSR by various national human rights institutions and observations received from them concerning complaints. It is also worth noting that some national human rights institutions draw on the Charter and the decisions and conclusions of the ECSR in their reports at international level (in particular to the United Nations Committee on Economic, Social and Cultural Rights)[71] and national level (including in recommendations to governments and in assessments)[72] as well as in domestic legal proceedings.[73]

[69] The Declaration made by the Committee of Ministers in 2011 also called for efforts to raise awareness of the Charter at national level among professionals and to inform the public at large of their rights.

[70] The UN Committee on Economic, Social and Cultural Rights has asked for these rights to be sufficiently reflected in the activities of the NHRIs (E/C.12/1998/25).

[71] For example, the shadow report produced in 2015 by the Irish national human rights institution and the recent submission by the Equality and Human Rights Commission of a report on the United Kingdom.

[72] For example, various reports by the Danish national human rights institution (recommending, amongst other things, ratification of the Revised Charter and the Complaints Protocol), opinions from the Northern Ireland Human Rights Commission and numerous reports by the Greek national human rights institution (consistently referring to ECSR decisions: e.g. its report of 5 May 2016 on the right to social security and its statement of 15 July 2015 on the impact of the continuing austerity measures).

[73] For example, the Belgian equality body UNIA refers extensively, in relation to the treatment of people with disabilities, to the ECSR decision of 29 July 2013 (above-mentioned complaint No. 75/2011, *FIDH v. Belgium*).

III. OTHER COUNCIL OF EUROPE ACTIVITIES RELATING TO THE PROTECTION OF SOCIAL RIGHTS

A. Committee of Ministers

a. Main activities relating to social rights/the Charter

[…]

342. With regard to the "Turin Process", mention has already been made of the steps taken to date by the Committee of Ministers to provide some follow-up to this process (see above Introduction, para… ~~: introduction).~~ ~~, specifically:~~

- ~~exchanges of views on the "Turin Process" on 4 February and 26 May 2015 as well as on 30 March 2016 and 22 March 2017 ;~~
- ~~adoption of the Programme and Budget for 2016-2017 in November 2015,[74] leading to the creation of two new posts in the Social Charter Department in connection with the complaints procedure, a 3rd post for the aforementioned Social Cohesion Platform and an increase in funding for the purpose of stepping up co-operation activities relating to the Charter system;~~
- ~~approval by the GR-SOC, in January 2016, of the following objectives:[75] 1) hold high-level meetings in states in order to secure more ratifications and the acceptance of additional provisions of the Charter; 2) simplify the Charter monitoring procedures, in particular for states which have accepted the collective complaints procedure; 3) enhance targeted technical co-operation with states in the field of social rights (for details of these three objectives: see above, Part II, B, i) and; 4) strengthen the synergy between European Union law and the Charter (for more on this fourth objective, see below, Part IV).~~

b. Findings

~~343~~. As regards the Committee of Ministers' role in implementing the Charter, it has been observed that it hardly ever adopts recommendations in the context of reporting and collective complaints procedures. So far, ~~for example, it has carried out no real follow-up comparable to its role in supervising states' execution of judgments handed down by the European Court of Human Rights, as~~ in adopting "resolutions" connected with the Charter, the Committee of Ministers merely takes note of the commitments announced by states, without exercising any supervision whatsoever.

344. Yet despite the fact that the Committee of Ministers does not have the authority to challenge the ECSR's legal assessments (see above), ~~just as it cannot question the content of judgments handed down by the Court~~, it does nevertheless have a very important role to play, in that it could do more to make the ECSR's decisions and conclusions operational, and so help to give concrete effect to the rights guaranteed under the Charter[76]. This essential point was also recalled by the Chairman of the ECSR during his exchange of views on 22 March 2017 with the Ministers' Deputies, inviting them to reassess their involvement in the

~~[74] It will be recalled that the Programme and Budget for 2016-2017 contain the following priorities: strengthening the application of the Charter; dialogue with the EU on this matter; improve the implementation of social rights at national level; simplify the monitoring procedures to make further ratifications of the Revised Social Charter and the Additional Protocol on Collective Complaints more attractive, and; enhance targeted co-operation with member states in the field of social rights.~~

~~[75] GR-SOC(2016)CB1, meeting of 19 January 2016 and the proposals referred to therein by the General Secretariat/CoE as set out in (CM(2015)173) of 17 December 2015: in Appendix.~~

[76] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168047e16b: see brochure on collective complaints.

follow-up of ECSR decisions (recall in the persistent cases of non-compliance with the Charter of the utility of "peer pressure")[77].

~~345~~. As regards the "Turin Process", so far the Committee of Ministers has not yet adopted an official text supporting the "Turin Process" ~~it should be stressed that, despite the aforementioned objectives approved by the GR-SOC, numerous measures addressed to the Committee of Ministers in the "Turin Action Plan" (appended hereto: see below, possible action) remain unimplemented.~~

~~346. Also, despite having been launched by the Secretary General in October 2014, it is worth noting that the Committee of Ministers has not yet to adopted an official text openly supporting the "Turin Process" (see below: Part V: conclusions and suggestions).~~

~~c. **Possible action**~~ NL comment: In view of CDDH guidance no follow-up proposals at this stage (analysis).

~~347. Notable examples of the measures addressed to the Committee of Ministers in the above mentioned "Turin Action Plan" (see Appendix) include the following:~~

- ~~Open a political debate on the Turin Process (action already under way – to be continued) ;~~

~~Promote the ratification of the Revised Charter and/or of its provisions as well as the 1995 Protocol on Collective Complaints (for reminder this is the top priority of the Committee of Ministers – to this end, the GR-SOC has set the objective of holding high-level policy meetings in States, see above : no action taken as yet) ;~~

- ~~Reinforce the position / visibility of the Charter within the Council of Europe (the terms of reference of the European Social Cohesion Platform are a move in this direction – the work of the CDDH could also usefully contribute to this key objective – see below: part V) ;~~
- ~~Allow the election of members of the ECSR by the PACE[78] – to this end, promote the ratification of the 1991 Protocol (no action taken as yet: institutional strengthening of the ECSR – see above: it will be recalled that only four states have not yet ratified this Protocol) ;~~
- ~~Increase the number of members of the ECSR[79] (no action taken as yet: institutional strengthening – see above) ;~~
- ~~Reinforce the position and structure of the Social Charter Department within the Council of Europe Secretariat and increase the number of lawyers working in the department (action already under way via the Budget for 2016-2017 – to be continued, as the Social Charter Department still does not have sufficient human and financial resources, particularly in the light of the planned increase in its co-operation activities and the suggestion about organising more training/awareness activities relating to the Charter) ;~~
- ~~Reinforce its monitoring of ECSR decisions (to be initiated) ;~~
- ~~Where necessary, use its ability to make Recommendations to States (to be initiated) ;~~
- ~~Respect the adversarial principle in the complaints procedure and prevent States from questioning the ECSR's decisions and conclusions (in the sense of the aforementioned clarification of the role of each of the organs of the Charter) ;~~
- ~~Encourage States to authorise national NGOs to bring complaints (to be initiated – see above: it will be recalled that to date, only Finland has availed itself of this option) ;~~

[77] Speech of the President of the ECSR, 22 March 2017: http://rml.coe.int/doc/09000016807010e3.

~~[78] Pending the entry into force of the Protocol, a compromise solution might be for members to be nominated by the PACE and appointed by the Committee of Ministers (as is the case with ECRI and the CPT).~~

~~[79] Note that provision has been made in the Programme and Budget 2016-2017 for an additional six members. Alternatively, the number of ECSR members could be increased by 2 at zero cost by reducing the number of sessions from 7 to 6.~~

Comment [PM34]: *{**PL**: It would be important to explain the reasons. Otherwise, we will be running in circles. We should liberate ourselves from the ideological position that legal symmetry between the EHRC system and the Social Charter system is needed to improve the realization of social rights. It is not needed. There is no agreement among Member States on this. Once that reality is accepted, practical solutions could be discussed and found on how to improve the enjoyment of social rights.}*

Comment [PM35]: *{**PL**: It would be important to explain the reasons. Otherwise, we will be running in circles. We should liberate ourselves from the ideological position that legal symmetry between the EHRC system and the Social Charter system is needed to improve the realization of social rights. It is not needed. There is no agreement among Member States on this. Once that reality is accepted, practical solutions could be discussed and found on how to improve the enjoyment of social rights.}*

Comment [PM36]: *{**PT**: "respect of the adversarial principle in the complaints procedure and prevent states from questioning a Resolution of the CM at the end of a given social rights procedure".*

This point is not the result of an ideology or of legalism. It results of a need to give authority to the solution the CoE organs gave, under the due Charter process, to an identified social rights difficulty}

*{**GR** support **PT**}*

Comment [PM37]: *{**FR** : Ajout bienheureux du principe du contradictoire souhaité dans le cadre de la procédure de réclamation collective.}*

Comment [PM38]: *{**PL**: This still represents this legalistic ideology. States obviously resist movement in this direction. Insistence on this ideological position will not help in the implementation of social rights in practice.}*

- Allow the immediate publication of ECSR decisions (to be initiated: see above: it will be recalled that, at present, such decisions are not published until after the Committee of Ministers has commented on them or, failing that, four months after they have been forwarded to the Committee of Ministerslatter at the latest) ;
- Promote systematic notification by states of the steps taken to implement decisions of the ECSR (to be initiated) ;
- Encourage the emergence of an integrated, common normative system of protection of fundamental rights[80] (to be initiated: see below: Part IV: relationship between the Charter and EU law);
- Promote the accession of the EU to the Charter[81] (to be initiated: see below: Part IV).

348. Below are some additional suggestions for action that could be taken by the Committee of Ministers, as set out in the "Brussels Document" (see Appendix):

- Firmly reaffirm the roles of the various Charter bodies (e.g. by means of a Declaration – to be initiated) ;
- Support the pooling of good practices between states as regards national implementation of the Charter (action already under way – to be continued: the terms of reference of the aforementioned European Social Cohesion Platform include this objective, which is also mentioned in connection with the results to be achieved through the work of the CDDH – see below: Part V).

349. One final course of action is also worth recalling: further simplification of the Charter monitoring procedures, in particular for States which have accepted the collective complaints procedure (see above: Part II, B, i) – 2nd course of action). It will be recalled that the GR-SOC has already approved this objective, although it has yet to be translated into practical measures. It is worth re-emphasising the importance of this measure, because it is about making the Charter system "more attractive" for States and so paving the way for the gradual acceptance of additional provisions of the Charter and the collective complaints procedure by a greater number of States. In this regard, the ETUC stresses that the further simplification of procedures should, above all, aim at improving the effectiveness of the Charter system.

Comment [PM39]: *{**PL**: No changes in the state reporting system are currently under consideration, in particular any simplification of reports. The Governmental Committee discussed that issue at its May and September 2016 sessions. Representatives from states parties to the collective complaints procedure were of the view that it would be premature to simplify the state reporting procedure for the collective complaints countries at this stage. It is important to gather more experience first.}*

Comment [PM40]: *{**PL**: request to delete the paragraph}*

B. Parliamentary Assembly

a. Main activities relating to social rights/the Charter

[…]

b. Findings

[…]

357. In its different Resolutions and Recommendations relating to the European Social Charter, the Assembly has always called for further ratification and implementation of the European Social Charter and its Protocols, including the Additional Protocol of 1995 providing for a system of collective complaints, to ensure that the Charter is a living instrument, effectively monitored and implemented in all member states. Of particular importance for the Parliamentary Assembly is the full ratification of the Amending Protocol of 1991, the so-called "Turin Protocol" through which the election of ECSR members would be assigned to the Parliamentary Assembly. The outstanding ratification by Denmark, Germany,

[80] Measure mentioned in the "Turin Action Plan", to be implemented by the following: Committee of Ministers, PACE, ECSR, European Council, European Commission, European Parliament, EESC, FRA and CJEU.
[81] Measure mentioned in the "Turin Action Plan", to be implemented by the Committee of Ministers and the PACE. "Work towards the proposed accession of the EU to the Charter": European Council, European Commission, European Parliament, EESC and FRA.

Luxembourg and the United Kingdom of this Additional Protocol (or the revised Charter) stands in the way of this election procedure. ~~which is already practiced long since for Judges of the European Court of Human Rights and which would certainly increase the democratic legitimacy of the ECSR, and possibly the acceptance of the Charter monitoring systems by member states.~~ It should be noted ~~further needs to be underlined~~ that all other provisions contained in the "Turin Protocol" have entered into force by decision of the Committee of Ministers. ~~Rather than waiting for the last four ratifications, the Committee of Ministers could also decide on this last provision as already recommended by the Assembly in Recommendation 1976 (2011) on "The role of parliaments in the consolidation and development of social rights in Europe".~~

~~c. **Possible action**~~[82] NL comment: In view of CDDH guidance no follow-up proposals at this stage (analysis).

~~358. According to proposals made by the plenary Committee and the Sub-Committee on the European Social Charter, the following further action should be taken by the Assembly in 2016 and 2017:~~

- ~~Further promoting the ratification of the revised Charter and all of its provisions and Protocols, in particular the Turin Protocol, introducing the election of the members of the ECSR by the Assembly and the Additional Protocol providing for a system of collective complaints;~~
- ~~Reinforcing the Assembly's own monitoring procedures with regard to the Charter;~~
- ~~Continuing to organise inter-parliamentary seminars and debates on the Charter, also in the framework of its project "parliaments and social rights" (CEAD 3525, for which voluntary contributions from member states and parliaments have already been received in 2016 and are sought in 2017);~~
- ~~Communicating issues related to the Charter and its monitoring mechanisms to its partners (European Commission and Parliament, international organisations, INGOs).~~[83]

~~359. Further action could also be stimulated within national parliaments, such as:~~

- ~~Organising political debates on the European Social Charter;~~
- ~~Stepping up measures required to ratify the revised Charter and its Protocols;~~
- ~~Reinforcing the position of the Charter in respective national legal frameworks;~~
- ~~Promoting action implementing the Charter in response to ECSR conclusions;~~
- ~~Better informing national stakeholders regarding the collective complaint procedure.~~

C. Congress of Local and Regional Authorities

a. Main activities relating to social rights/the Charter

[…]

366. This Action Plan finds its origins in the Graz Declaration of May 2015, which underlines the four strategic stages of action that the Congress considers indispensable for effectively promoting human rights at local and regional level: 1) identifying human rights related issues

[82] ~~Furthermore, the Turin Action Plan sets out the following additional measures to be carried out, including by the PACE: open a political debate on the "Turin Process" (already initiated: aforementioned report currently being drafted by Ms Bonet), encourage the emergence of an integrated, common normative system of protection of fundamental rights (included in the aforementioned report concerning relations between the Charter and the EU) and promoting its accession to the Charter (already the case).~~

[83] ~~In this connection, the Turin Action Plan addresses the following additional measure, in particular to the PACE: inform social partners and NGOs about the collective complaints process.~~

; 2) exchanging good/best practices ; 3) strengthening co-operation between all levels of governments and : 4) regularly assessing the outcomes of implemented actions.

367. In that light, it is foreseen that the activities of the Congress will cover activities in line with each one of these four pillars. Concerning the above mentioned Human Rights Action Plan 2016-2017, it includes the following activities: a Congress Expert Group on human rights at the local level ; a Congress human rights Manual for local authorities and ; an international Colloquy on the challenges in the implementation of human rights at local level.

368. The Congress Expert Group is currently working on the human rights Manual, which is a straight-forward handbook for local and regional authorities. It aims at raising awareness on human rights aspects in their daily work, including the responsibilities and opportunities that a human rights tailored approach to policy making entails, by putting the spotlight on the best practices conducted by other authorities and giving incentives to come up with locally adapted responses. The Manual will therefore set the basis for exchanging initiatives among local authorities and guide them in the implementation of a human rights approach to local policy making, by giving precise recommendations on the planning, co-ordination, participation of civil society and communication as well as monitoring of the action taken. The first edition will concern the "non-discrimination" and focus on the human rights of vulnerable groups (refugees and asylum seekers; Roma; LGTBIQ; religious communities) in local communities and, in particular, their access to social services and rights. It is foreseen that the human rights Manual will be published by June 2017 and serve as the basis for the aforementioned international Colloquy, to be organised in September 2017 in Middelburg (Netherlands).

b. Findings

[…]

~~**c. Possible action**~~[84] [NL comment: the following does not reflect possible (future) action and is better placed under a.]

~~366. This Action Plan finds its origins in the Graz Declaration of May 2015, which underlines the four strategic stages of action that the Congress considers indispensable for effectively promoting human rights at local and regional level: 1) identifying human rights related issues ; 2) exchanging good/best practices ; 3) strengthening co-operation between all levels of governments and : 4) regularly assessing the outcomes of implemented actions.~~

~~367. In that light, it is foreseen that the activities of the Congress will cover activities in line with each one of these four pillars. Concerning the above mentioned Human Rights Action Plan 2016-2017, it includes the following activities: a Congress Expert Group on human rights at the local level ; a Congress human rights Manual for local authorities and ; an international Colloquy on the challenges in the implementation of human rights at local level.~~

~~368. The Congress Expert Group is currently working on the human rights Manual, which is a straight-forward handbook for local and regional authorities. It aims at raising awareness on human rights aspects in their daily work, including the responsibilities and opportunities that a human rights tailored approach to policy making entails, by putting the spotlight on the best practices conducted by other authorities and giving incentives to come up with locally adapted responses. The Manual will therefore set the basis for exchanging initiatives among local authorities and guide them in the implementation of a human rights approach to local~~

~~[84] The "Turin Action Plan" presents the following measures of action in particular to the Congress of Local and Regional Authorities: promoting the ratification of the Revised Charter and/or of all its provisions; promoting the ratification of the Protocol on collective complaints.~~

~~policy making, by giving precise recommendations on the planning, co-ordination, participation of civil society and communication as well as monitoring of the action taken. The first edition will concern the "non-discrimination" and focus on the human rights of vulnerable groups (refugees and asylum seekers; Roma; LGTBIQ; religious communities) in local communities and, in particular, their access to social services and rights. It is foreseen that the human rights Manual will be published by June 2017 and serve as the basis for the aforementioned international Colloquy, to be organised in September 2017 in Middelburg (Netherlands).~~

D. The Commissioner for Human Rights

a. Main activities relating to social rights/the Charter

[…]

b. Findings

[…]

393. Accordingly, in his activities, the Commissioner often calls on States to honour their obligations with regard to social rights, referring to the Revised Charter and drawing on the conclusions and decisions of the ECSR. The Commissioner has also given his unconditional support to the "Turin Process", in particular by calling on States to accept all the provisions of the Charter and the collective complaints procedure and by encouraging national courts and human rights institutions to make greater use of the decisions and conclusions of the ECSR (aforementioned Comment in 2014).

~~c. Possible action~~ NL comment: In view of CDDH guidance no follow-up proposals at this stage (analysis).

~~394. It is worth noting that action is already being taken in respect of all the measures addressed to the Commissioner in the "Turin Action Plan" (see Appendix):~~

- ~~promote ratification of the Revised Charter and/or all provisions as well as the Protocol on Collective Complaints (action to this effect is already being taken through the Commissioner's country reports and a number of his assessments and issue papers);~~
- ~~inform social partners and NGOs about the collective complaints procedure (action already under way through the Commissioner's awareness-raising activities and country visits).~~

~~395. The Commissioner can further be encouraged to:~~

- ~~press ahead with his numerous activities in the field of social rights;~~
- ~~continue actively supporting the "Turin Process";~~
- ~~submit, where appropriate, written observations in connection with collective complaints (see above: Rule 32A of the ECSR's Rules).~~

E. The Conference of INGOs

a. Main activities relating to social rights/the Charter

[…]

b. Findings

411. The INGO Conference's interest and continued involvement in social rights (through the Charter's reporting and collective complaints procedure ~~and complaints relating to the Charter~~, its publications and other advocacy work) received a further boost with the "Turin Process" (trainings concerning the collective complaints procedure, co-ordination of its Call to Action to support it).

412. Likewise, in the context of the CDDH, the Conference of INGOS has supported the setting-up of a working group on social rights and strongly emphasised the need to address, within the group, the issue of "the impact of the economic crisis and austerity measures on human rights in Europe" (see above).

~~**c. Possible action**~~ NL comment: In view of CDDH guidance no follow-up proposals at this stage (analysis).

~~413. It should be noted that action is already being taken on all the measures addressed to the INGO Conference in the "Turin Action Plan":~~

- ~~promote the ratification of the Revised Charter and/or all provisions as well as the Protocol on Collective Complaints (action already under way, reiterated in the above-mentioned Call to Action to support the "Turin Process");~~
- ~~inform social partners and NGOs about the collective complaints procedure (action already under way: advocacy and training activities proposed in the said Call to Action).~~

~~414. Lastly, in its 4th and final column, the "Turin Action Plan" calls on NGOs/partners to take the following measures (see Appendix):~~

- ~~open a political debate on the "Turin Process" (this was done through the Call to Action issued by the INGO Conference to national members);~~
- ~~promote the ratification of the Revised Charter and/or all provisions;~~
- ~~encourage states to ratify the Collective Complaints Protocol;~~
- ~~inform NGOs about the collective complaints procedure and encourage them to accede thereto if they have participatory status;~~
- ~~use the third party mechanism (for the European social partners) or, where appropriate, submit written observations on collective complaints (Rule 32A of the ECSR's Rules – see above);~~
- ~~promote the accession of the EU to the Charter;~~
- ~~adapt communication to improve the visibility of the Charter and place it on a level with the ECHR;~~
- ~~promote expert awareness and inform NGOs about the Charter and the collective complaints procedure (such measures are also provided for in the INGO Conference's Call to Action – in particular through training and advocacy);~~
- ~~promote knowledge of the Charter and collective complaints procedure among NGOs and citizens.~~

~~415. It is worth noting that all these action measures could be recommended to the NHRI's, whose major role in implementing the Social Charter was highlighted earlier (see above: Part~~

~~II, section B, i)) – even though they are not specifically mentioned in either the "Turin Action Plan" or the "Brussels Document".~~

F. International Organisations of Employers and Workers

a. The European Trade Union Confederation (ETUC)

- *Main activities relating to social rights/the Charter*

[…]

- *Findings*

422. The ETUC uses its privileged role in the reporting and complaints procedures of the Charter. Depending on their involvement, European social partners can achieve relevant results.

- ~~*Possible action*~~ NL comment: In view of CDDH guidance no follow-up proposals at this stage (analysis).

~~423. In order to raise the awareness/knowledge and better use of the Convention and Charter by these European social partners (and their affiliates), the following actions could be envisaged:~~

- ~~Organize meetings between ECSR and representatives of the European social partners in the framework of the collective complaints procedure to discuss technical and procedural issues (see above) ;~~
- ~~Ensure the social partners (European and national) are associated to the high-level meetings mentioned above to increase ratifications of the different Charter instruments/provisions ;~~
- ~~Encourage the PACE to continue to organize hearings on specific social rights in the Charter and associate European/national social partners to these meetings ;~~
- ~~Strengthening of the consultation by the Committee of Ministers of European social partners at all levels (e.g. in the framework of the GR-SOC) ;~~
- Increase training opportunities/organi~~zation of seminars on the Convention and on the Charter by the Charter Department and the member States, involving/for European and national social partners~~.

[…]

IV. RELATIONSHIP BETWEEN EUROPEAN UNION (EU) LAW AND THE CHARTER

[…]

B. From the perspective of EU Law

[…]

d. Other acts and initiatives

[…]

456. The Fundamental Rights Agency (FRA) which, it will be recalled, is a member of the CoE-FRA-ENNHRI-EQUINET Collaborative Platform on economic and social rights,

publishes data and objective assessments via its reports and makes recommendations to EU member states, in particular where social rights are concerned.[85]

[…]

C. Findings

[…]

468. Meanwhile, the Secretary General of the Council of Europe, ~~drawing, too, on the "Turin Process"~~, has reiterated[86] (May 2016) the need for co-ordination between the various European systems and for enhanced dialogue with a view to "*the full consideration of the Charter and the decisions of the European Committee of Social Rights within European Union law*".[87]

~~**A. Possible action**~~ NL comment: In view of CDDH guidance no follow-up proposals at this stage (analysis).

~~469. As has already been pointed out, the "Turin Process" encourages more co-ordination and synergies between the European Social Charter and EU law. It is important to note, moreover, that one of the four objectives approved by the GR-SOC in January 2016 is greater co-operation between the Council of Europe and the European Union in the field of social rights.[88]~~

~~470. At the aforementioned Brussels Conference (February 2015), participants called for more consistency in the way fundamental rights and principles are implemented. Proposals included giving wider consideration to the Charter among the general principles of EU law, taking it into account when framing EU law and supplementing the European Commission's impact studies by including references to the Charter.[89]~~

~~471. The above-mentioned Brussels Document (see Appendix) accordingly suggests various measures that could be taken to settle conflicts between the European Social Charter and EU rules. Among other things, it is proposed that the Council of Europe and the EU set up a joint working group to, *inter alia*, identify the legal and technical issues raised by the EU's accession to the Revised European Social Charter (see below),[90] and that more account be taken of Charter rights in the Commission's impact studies.~~

[85] At the aforementioned meeting of the Social Cohesion Platform, the representative of the FRA provided information on the FRA's latest reports and handbooks, such as the ones on the rights of people with disabilities, the right to a reasonable standard of living and multiple discrimination in health care as well as social inclusion and the participation of migrants in society. The presentations given at this meeting should be available shortly on the Platform website: https://www.coe.int/en/web/turin-european-social-charter/1st-meeting-of-the-european-social-cohesion-platform.

[86] It will be recalled that in 2014, in his aforementioned strategic vision which led to the "Turin Process", the Secretary General emphasised the crucial importance of ensuring consistency between the standards of the Charter and the EU and of increasing synergies between the two protection systems.

[87] See his 3rd Report on the Situation of Democracy, Human Rights and the Rule of Law, mentioned above, May 2016, pp. 90-91. Likewise, in his first report published in April 2014, the Secretary General underlined the urgent need to find pragmatic solutions to settle conflicts between the two sets of standards.

~~[88] GR-SOC(2016)CB1, meeting of 19 January 2016 and the proposals referred to therein by the General Secretariat/CoE as set out in (CM(2015)173) of 17 December 2015: in Appendix. For a reminder the other three objectives are: to hold high level policy meetings in states to increase the number of ratifications of the Charter and acceptance of its provisions; to simplify the Charter monitoring procedures and; to improve targeted co-operation with states in the field of social rights.~~

~~[89] De Schutter, Olivier, "*Les synergies entre le Conseil de l'Europe et l'UE en matière de droits sociaux*", for the Brussels Conference on the future of the protection of social rights in Europe, 12-13 February 2015.~~

~~[90] It is important to note that the "Turin Action Plan" (see Appendix) had already called on the following to "work towards/promote the accession of the EU to the Charter": Committee of Ministers and PACE, European Council, European Commission, European Parliament, EESC and FRA, national authorities and NGOs/Partners.~~

472. Among the various new initiatives, in September 2015 the President of the European Commission, Jean-Claude Juncker, announced the setting-up of a "European pillar of social rights".[91] The ILO and the Council of Europe were directly involved in the public consultation launched in this connection in March 2016 by the Commission, and which concluded on 31 December 2016. The aim of the consultation was to assess the EU's social *acquis*,[92] to consider how Europe will need to adapt to new labour market and societal trends and to canvas opinions and comments on the principles set out in a preliminary outline of the future "European Pillar of Social Rights"[93]. It is referred to the European Social Charter, as a "reference document" in the Commission's Communication, in keeping with the spirit of the "Turin Process".

473. On 20 January 2017, the Secretary General of the Council of Europe published his Opinion on the European Union initiative to establish a "European Pillar of Social Rights".[94] Welcoming the initiative, he stated: "*Building a Europe more readily supported by its citizens, better attuned to their everyday needs and able to promote shared, sustainable growth*[95] *is one of the major challenges of our time. To meet this challenge effectively, it is necessary to consolidate the synergy between standard-setting systems protecting fundamental social rights across the continent. The establishment of a European Pillar of Social Rights by the European Union is a step in this direction*".

474. In the Secretary General's view, however, "it is necessary – with due regard for the competences and applicable law of the European Union – that:

1. *the provisions of the European Social Charter (Revised) should be formally incorporated into the European Pillar of Social Rights as a common benchmark for states in guaranteeing these rights; (…)*

   Incorporating the provisions of the Revised European Social Charter in the Pillar will be a political means of promoting:
   - i. *An EU social strand firmly linked to an extensive and comprehensive European treaty entirely devoted to social rights, in force in all of its member states; this linkage will foster social cohesion, socially sustainable growth and, on this basis, stronger public support within the European Union for the process of European integration;*
   - i. *Ratification of the Revised Charter, or acceptance of more of its provisions, by the European Union member states concerned, at least for the rights that they already have to guarantee under the European Union's primary and secondary legislation;*
   - ii. *Possible incorporation in the European Union's standard-setting system and its acquis of new rights that European Union member states have already undertaken to uphold under the European Social Charter treaty system.*

1. *The collective complaints procedure (…) should be acknowledged by the European Pillar of Social Rights for the contribution that it makes to the effective realisation of the rights established in the Charter and to the strengthening of inclusive and participatory social democracies. (…)*".

[91] Pillar announced in Mr Juncker's State of the Union address on 9 September 2015.
[92] Round table held on 1 June 2016 in Brussels: "*Stocktaking of the EU social "acquis": is it still relevant and up to date?*"
[93] Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Launching a consultation on a European Pillar of Social Rights": COM(2016)127final, 8 March 2016. This Pillar is intended for EU states in the euro area, although other EU states are allowed to participate as well.
[94] http://www.coe.int/en/web/turin-european-social-charter/-/secretary-general-s-opinion-on-the-european-pillar-of-social-rights: Secretary General's opinion of 2 December 2016, published on 20 January 2017: see Appendix.
[95] See §§ 29 to 34 of the Secretary General's Opinion: "*Growth that benefited only a minority would undermine states' social cohesion and democratic security*".

475. Moreover, on 19 January 2017, the European Parliament has adopted a Resolution on "The European Pillar of Social Rights".[96] Its makes explicit reference to "*the European Social Charter, its Additional Protocol and its revised version, which entered into force on 1 July 1999, in particular its Part I, its Part II and Articles 2, 4, 16 and 27 of the latter, on the right of workers with family responsibilities to equal opportunities and equal treatment*" and it "*calls on the Member States to sign and ratify the revised European Social Charter and the European Convention on Social Security (ETS No 078); encourages the Commission to examine the steps required for accession of the European Union to the revised Charter and to propose a time-line for this objective*". More generally, the Resolution calls on the Commission, the European External Action Service and the Member States to pursue external action coherent with the "European Pillar of Social Rights", by promoting, *inter alia*, the implementation of the relevant Council of Europe conventions.

476. On 23 January 2017[97], the European Commission held a Conference in Brussels "*The European pillar of social rights: going forward together*" which marked the close of the above-mentioned consultation, and helped to determine the future direction of the Pillar..

477. Finally, on 26 April 2017, the European Commission adopted the "European Pillar of Social Rights" under the form of a Recommendation and a proposal for a joint proclamation of the Parliament, the Council and the Commission (its final text will be the subject of negotiations between the three).

478. Announced as containing "20 principles and rights", it is expected that the Pillar will contribute to the smooth functioning and fairness of labour markets and social protection systems. Thus, the Pillar should constitute a frame of reference to be implemented through the various future initiatives, and will make it possible to examine the social performances and the results of the States in terms of employment. It will be taken into account in the context of the European Semester. The Pillar also aims to structure the European funds, such as the European Social Fund. Several legislative and non-legislative initiatives were presented by the Commission, illustrating the implementation of the Pillar[98].

479. The Recommendation[99] states that the 20 principles of the Pillar are based on the "*acquis*" of European Union law and on existing international law. The 1961 European Social Charter, the Revised European Social Charter and the European Code of Social Security are thus not only expressly mentioned but also taken into account for this purpose. The 20 principles are organised around three categories: 1) equal opportunities and access to the labour market, 2) fair working conditions and 3) social protection and inclusion.

Explanatory documents, such as thematic sheets, complement the Recommendation[100].

480. It is important to note that, in the context of both the "Turin Process" and the "European Pillar of Social Rights", staff members have been appointed as "focal points" by the Secretary General of the CoE and the First Vice-President of the European Commission, in the Social Charter Department and DG Employment, Social Affairs & Inclusion respectively, to allow closer co-operation between the two so that greater consideration can be given to the European Social Charter in EU law. The plan is that these focal points will meet on a regular

[96] Resolution 2016/2095(INI) : http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0010+0+DOC+XML+V0//EN.
[97] In the framework of the enhanced dialogue between the EU and the Council of Europe on social rights, a workshop "The European Social Charter and the European Pillar of Social Rights" was held in Strasbourg in December 2016.
[98] http://ec.europa.eu/social/main.jsp?catId=1310&langId=en.
[99] Recommendation of the European Commission of 26 April 2017 on the European Social Pillar, C(2017) 2600 final : https://ec.europa.eu/commission/publications/commission-recommendation-establishing-european-pillar-social-rights_en.
[100] https://ec.europa.eu/commission/publications/staff-working-document-explanatory-fiches-each-principle_en.

basis and a number of meetings have in fact already taken place. In the long term, they could also help to promote further ratifications of the Revised Charter and the collective complaints system by EU member states.

481. It is worth noting that, since the launch of the "Turin Process", there has also been more dialogue between the ECSR and the CJEU (last exchange in October 2016 at the session of the ECSR), with a view to achieving greater convergence of case law (the CJEU has been called on to take greater account of the Charter,[101] while the ECSR is invited in the "Turin Action Plan" (see Appendix) to continue identifying and using EU legislation and case law in its conclusions and decisions).

482. A further example of the enhanced dialogue between the Council of Europe and the EU, under the "Turin Process", can be seen in the above mentioned CoE-FRA-ENNHRI-EQUINET Platform on economic and social rights (see above: launched in October 2015).[102]

483. In the light of the above, therefore, it is important to support any moves towards greater dialogue between the Council of Europe and the EU in the field of social rights.

484. Lastly, the EU's accession to the European Social Charter would help to ensure compliance with the principles of interdependence and indivisibility of human rights because of the complementary nature of the Charter and the Convention. Above all, however, it would reduce the scope for conflict between the requirements of the European Social Charter and the obligations arising from EU law.[103]

485. The possibility of the EU's accession to the Charter was first mooted in the 1980s[104] and it is clear from the above that it is more relevant than ever. The European Parliament and the Parliamentary Assembly (PACE) are in favour of such accession, moreover (see the European Parliament Resolution of 27 February 2014 on the situation of fundamental rights in the EU and the PACE Resolution of 8 December 2014 on the implementation of the above-mentioned Memorandum of Understanding between the Council of Europe and the EU).

V. CONCLUSIONS AND SUGGESTIONS NL Proposal: rewrite this chapter with a view to summarizing the challenges and then mention that follow-up work is needed to formulate proposals for action. For these proposals inspiration may be found in the Turin and Brussels documents, but we have to bear in mind that these documents are not agreed outcome documents]

[101] The "Turin Action Plan" (see Appendix) calls on the CJEU to take the following measures: integrate the fundamental rights established in the Charter into the general principles of EU law; encourage the emergence of an integrated, common normative system of protection of fundamental rights (this measure is also addressed to the ECSR); take the Charter and the ECSR decisions and conclusions into consideration when interpreting and implementing EU law; reinforce the relationship and dialogue with the ECSR (this measure is also addressed to the latter) - create a system of reciprocal recognition similar to that of the European Court of Human Rights and work towards a greater convergence of case law (measure addressed to the CJEU).

[102] The "Turin Action Plan" (see Appendix) calls on the ECSR and the FRA to take the following measure: reinforce the links between the ECSR and FRA, share knowledge and data, exploit the advantages of both monitoring systems.

[103] See above, De Schutter, Olivier: "*L'adhésion de l'Union européenne à la Charte sociale européenne*" – 8 July 2014. In this, the author expresses the view that the CJEU Opinion 2/13 of 18 December 2014 on the EU's accession to the Convention would not apply to the European Social Charter, to which the EU could accede more easily.

[104] The EU's accession to the Charter had been advocated in the Spinelli draft Treaty on the European Union of 14 February 1984 (Article 4§2). As regards the PACE, it has already been called upon to consider this matter in its Resolution 931(1989) "*The Social Charter of the Council of Europe and possible accession thereto by the European Community*".

The main challenges to the effective protection and implementation of social rights identified in this report are:

-
-
-

Proposed follow-up work

A. Background to the work of the CDDH-SOC

[…]

491. The complementarity and interdependence of the Charter and the Convention (through the rights protected and their different monitoring procedures) could be given greater emphasis, by encouraging more mutual references between the two systems through increased contact between the Court and its Registry and the ECSR and the Social Charter Department.

492. The activities of the CDDH-SOC should therefore form part of the strategic priority set by the Secretary General of the Council of Europe for his second term 2014-2019, namely to "make the role of the Social Charter stronger". , and which led to the launch of the "Turin Process" in October 2014.

493. It will be recalled that the aim of the "Turin Process" is to strengthen the treaty system of the European Social Charter within the Council of Europe, its relationship and synergies with the European Union and to improve the implementation of social rights at national level.

494. The terms of reference assigned by the Committee of Ministers to the CDDH-SOC, namely "*to identify good practices and, as appropriate, make proposals to improve the implementation of social rights and facilitate the relationship between the various European instruments for the protection of social rights*" could therefore give rise to:

- the identification of national good practices regarding the implementation of the Charter: a compilation or guide to good practice (point B), possibly appended to a Declaration or Recommendation by the Committee of Ministers;
- proposals for improving the implementation of social rights at national level, at the level of the Council of Europe and in its relationship with the European Union; the drafting of one or more non-binding instruments (point C).

- **Identifying national good practices relating to the implementation of social rights, in particular of the European Social Charter**

495. The Committee of Ministers' desire to "*identify good practices*" could certainly help to improve the implementation of social rights at national level through a guide or compilation of good practices, enabling them to be usefully shared between member states.

496. The "Brussels Document" (see Appendix) endorses this idea, moreover: "*Ensuring the widest implementation possible of the European Social Charter also implies promoting the key role of national institutions, particularly the judicial authorities, through improved training and information targeting lawmakers, administrative authorities and judges,*[105] *as well as through the pooling of good practices and the systematic translation of the decisions of the*

[105] See above, Part II, section B, i).

~~*European Committee of Social Rights (…). This would be consistent with the principle of subsidiarity (…), and would be to be conceived of per analogy to what the Committee of Ministers of the Council of Europe recommends as regards the implementation of the European Convention on Human Rights*".~~

497~~. In its proposals for the "Turin I" Conference (see Appendix), ANESC, which drafted the "Brussels Document", had already stressed the need to promote the dissemination of good practice at the level of domestic courts and legislative authorities.~~[106]

[…]

~~500~~. Given the active role played by ANESC in the "Turin Process", it was invited to participate in the work of CDDH-SOC (drafting the said questionnaire and then preparing a compilation or guide to good practice~~) and, where appropriate, one or more non-binding instruments – see below: section C~~).

Comment [AK41]: Premature !

[…]

505. This guide/compilation could be appended to a ~~the~~ declaration or recommendation of the Committee of Ministers~~non-binding instrument(s)~~ which then would also be prepared by the CDDH-SOC at the same time~~. (section C: see below)~~. It could then be posted on the CDDH website and regularly updated by member states, as is the case with follow-up to the implementation of Recommendation (2014)2 of the Committee of Ministers to member states on the protection of human rights of older persons.

506. Lastly, to promote this guide/compilation, some activities (such as a round table or seminar) could conceivably be planned beyond 2017 to encourage states to share good practice regarding their implementation of the Charter.

B. Proposals for improving the implementation of social rights at national level and at the level of the Council of Europe and in its relations with the European Union

507. The CDDH-SOC could usefully prepare a document ~~one or more non-binding instruments~~ containing "*proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the various European instruments for the protection of social rights*" (see above: terms of reference assigned by the Committee of Ministers).

~~508. As in the "Brussels Declaration" of 27 March 2015 on the "Implementation of the European Convention on Human Rights, our shared responsibility",~~[107] ~~these proposals would be directed at those involved in the implementation of the Charter, at three levels: member states, the Council of Europe and, to a lesser extent, the European Union.~~

~~[106] Encouraging the application of the Social Charter by national courts "*could take the form of regular exchanges organised between the European Committee of Social Rights and the judges of the highest courts (…), of training of these judges where necessary, and of dissemination of good practices*". *The Academic Network further "considers that the Council of Europe could encourage states to adopt measures to see to it that more account of the Charter is taken in national policies and to promote and contribute to the dissemination of good practices.*"~~

~~[107] It will be recalled that the Action Plan appended to this Declaration contains three parts addressed to: A) the European Court of Human Rights; B) member states and; C) Council of Europe institutions (Committee of Ministers, Secretary General of the Council of Europe and, through him, the Department for the Execution of Judgments, all the relevant Council of Europe stakeholders, intergovernmental committees, Secretary General of the Council of Europe, Commissioner for Human Rights and Parliamentary Assembly/PACE).~~

- 509. The CDDH-SOC should work on proposals that could address the challenges identified in this report, subject to approval by the Committee of Ministers. This work could be guided by suggestions made by States in their replies to the aforementioned questionnaire (end August 2017), and elements of the CDDH's feasibility study on the impact of the economic crisis and austerity measures on human rights in Europe (December 2015; it will be recalled that in February 2016, the Committee of Ministers invited the CDDH to take account of this, where appropriate, in its work on social rights)-; As a further source of inspiration the following can be used:

and the. Further, the following elements can be used as a source of inspiration. ~~The content of the proposals could, subject to sufficient consensus among States, be based in particular on the following elements~~:

- ~~the "courses of action" mentioned in this report;~~
- the suggestions made by ~~States in their replies to the aforementioned questionnaire (end August 2017)~~ ;
- the "Turin Action Plan" ~~in its entirety~~ (see Appendix – October 2014) ;
- ANESC's proposals for the "Turin I" Conference (see Appendix – October 2014) ;
- the "Brussels Document" in its entirety (see Appendix - February 2015) ;
- conclusions produced in connection with "Turin II" (March 2016) ;
- conclusions produced at the end of the Cyprus conference (February 2017) ;
- ~~elements of the CDDH's feasibility study on the impact of the economic crisis and austerity measures on human rights in Europe (December 2015; it will be recalled that in February 2016, the Committee of Ministers invited the CDDH to take account of this, where appropriate, in its work on social rights) ;~~
- any elements that might be transposed from the instruments on implementation of the Convention, in particular part B of the Action Plan appended to the above-mentioned "Brussels Declaration" (March 2015) which suggests numerous action measures for States[108] ;
- Possible elements of the ETUC Declaration on the 50th anniversary of the Charter (2011) – which contains numerous measures addressed in particular to States and the Committee of Ministers.

510. The present report does not prescribe any courses of action for member states as there is no section devoted specifically to them. Under the subsidiarity principle, however, they clearly have a crucial role to play in implementing the Charter, one that has been outlined above (see Part II, B, i): need to provide better training/information on the Charter system for legislative, administrative and judicial authorities as well as national human rights institutions, representatives of civil society and the relevant professional circles).

~~511. Below are some examples, by way of illustration and not exhaustive[109], of the kind of measures prescribed to States under the "Turin Action Plan" (see Appendix, 3rd column – National) :~~

- ~~open a political debate on the Turin Process;~~
- ~~ratify the Revised Charter and/or all provisions and the Collective Complaints Protocol;~~

[108] Drawing on this Declaration, the following measures in particular (in addition to those mentioned in the "Turin Action Plan" and the "Brussels Document", see below) could be addressed to states: prevent violations and create effective national remedies for dealing with violations of the Charter; publication, dissemination and translation of the relevant documents (with priority being given to the conclusions and decisions of the ECSR – with the possible help of a Fund set up for this purpose by the Council of Europe) ; establish "Charter focal points" within the relevant executive, judicial and legislative authorities, and create networks between them; consider holding regular discussions on the implementation of the Charter involving these national authorities and, where appropriate, representatives of national human rights institutions and civil society.

[109] ~~Among other avenues of action that can be usefully addressed to States, the following proposed by the ETUC can be added : to respect their obligation to submit on time full reports and to attend the meetings of the Governmental Committee – which follow up the conclusions of the ECSR arising therefrom.~~

- reinforce the position/visibility of the Charter within the framework of sources of international law;
- allow the election of members of the ECSR by the PACE;[110]
- organise and facilitate inter-parliamentary debates on the Charter;
- reinforce the framework for ensuring the implementation of the Charter, as well as the decisions and conclusions of the ECSR;
- integrate social rights in economic recovery plans, adapt social impact indicators and new reference values to measure social wellbeing;
- central and local governments need to work together more closely to ensure the implementation of ECSR decisions/conclusions;
- inform social partners and NGOs about the collective complaints procedure;
- authorise national NGOs to bring complaints;
- systematically notify the steps taken to implement decisions of the ECSR;
- take the Charter into consideration when interpreting and implementing EU law;
- implement "early warning" procedures with respect to the compliance of national legislation with the Charter;
- adapt communication to improve the visibility of the Charter and place it at the level of the ECHR;
- promote training on the Charter for judges and experts;
- promote knowledge of the Charter and collective complaints procedure among NGOs and citizens.

512. In addition, it will be recalled that in the "Brussels Document" (section 3: Enhancing the effectiveness of the European Social Charter, see Appendix), it is stated that "*Ensuring the widest implementation possible of the European Social Charter also implies promoting the key role of national institutions, (…), through improved training and information targeting lawmakers, administrative authorities and judges, as well as through the pooling of good practices and the systematic translation of the decisions of the European Committee of Social Rights (…)*".

513. As regards Council of Europe actors, the proposals aimed at them – in a non-binding instrument – could be based, to a large extent, on the courses of action featured in this report, under the relevant actors. For now, these proposals should be aimed primarily at the Committee of Ministers and the ECSR, as the main bodies responsible for monitoring implementation of the Charter. As far as the rest are concerned, including the Secretary General of the Council of Europe who is not dealt with in a specific section of the present report, most of the courses of action prescribed have already been initiated by the parties concerned.[111]

514. The European Union is the target of numerous action measures, as set out in the "Turin Action Plan" (see Appendix, 2nd column) and the "Brussels Document" (see Appendix). The present report, however, includes only those which directly concern the EU's relationship with the Council of Europe (see above: Part IV: "Possible action"), as it was not considered appropriate, in a non-binding Council of Europe instrument, to call on the EU to take measures that fall within its sole competence.

515. Lastly, it is for Tthe CDDH-SOC working group will also make a proposalto decide which instrument is the most appropriate for furtheringmaking the "*proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the various European instruments for the protection of social rights*" (e.g.

[110] See above: action measure likewise prescribed to the Committee of Ministers and the PACE.

[111] Chiefly: slight increased resources for the Social Charter Department; new website for the Charter and a promotional film on the Charter ; PACE report on the Turin Process (in progress); position papers by the Commissioner for Human Rights, including his Human Rights Comment "Preserving Europe's social model" and INGO Conference co-ordinating committee on the Turin Process.

Recommendation or Declaration). ~~It will also be for the CDDH-SOC to decide whether to prepare one or more instruments, given the various parties involved.~~

~~516. One idea might be to prepare a single instrument completing the above-mentioned Declaration of the Committee of Ministers of 12 October 2011 (adopted on the 50th anniversary of the European Social Charter, see Appendix), in the light of the "Turin Process". This Declaration, it will be recalled, was directed at the Committee of Ministers itself,[112] the member states[113] and the relevant Council of Europe bodies,[114] while being drafted in fairly general terms. It could be expanded on, therefore, by including new elements designed to improve the protection of social rights, and on which there is a sufficient consensus among member states.~~

~~517. In this way, the Committee of Ministers, which has not adopted an official text on this subject since the "Turin Process" was launched by the Secretary General in October 2014, could give its formal backing to the process. This idea would also tie in neatly with the following action measure addressed to the Committee of Ministers in the "Turin Action Plan" (see Appendix): "*Reinforce the position/ visibility of the Charter within the Organisation*".~~

POLAND / POLOGNE

General comment no. 1 – it would be appropriate to avoid suggesting in an official CoE document that the Court should have formulated its judgments otherwise. We propose to avoid formulations that could be read as criticism for the fact that the Court did not refer to the conclusions of other CoE bodies or that there is allegedly no progress in its case-law in this or that aspect. It is up to the Court to decide - independently - which elements it considers relevant for interpreting the Convention (which has its autonomous standing) and how it justifies its rulings.

One should also note that there are no equivalent critical comments in respect of the European Committee of Social Rights. If this type of expressions with regard to the Court were to be maintained, para. 249 should be supplemented with similar statements indicating cases where the Committee could have but failed to mention/rely on the Court's case-law.

We propose to delete the following parts:

~~70. On the other hand, in these reports, little progress was noted in other areas such as protection from social insecurity[69] or the right to integration of persons with disabilities.[70]~~
/Paragraph 70 is also not indispensable in the present report as its refers to some old opinions expressed in the previous reports that are not necessarily up-to-date anymore./

Footnote no. 69: On this subject, it was noted that the Court had always been very exacting with regard to the level of severity required to be in breach of Article 3 and had only ever given inadmissibility decisions in this respect. The Court also required "exceptional

~~[112] It will be recalled that in this Declaration, the Committee of Ministers expressed its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure, to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the ECSR.~~
~~[113] Call for member states to ratify the Revised Charter and the Protocol on collective complaints and to step up their efforts to raise awareness of the Charter at national level.~~
~~[114] The relevant bodies of the Council of Europe were likewise urged to increase their efforts to raise awareness of the Charter.~~

circumstances" when considering such matters under Article 2 and in relation to Article 8, it stated that states had "a wider margin of appreciation … in cases involving an allocation of limited State resources" (inadmissibility decision of 4 January 2005 in *Pentiacova and Others v. Moldova*). ~~More generally, it was noted that it was surprising that, when it was examining social insecurity cases, the Court did not simply refer to the concept of human dignity – which lay at the core, for instance, of its assessment of detention conditions.~~

96. The Court seems to have taken a major step forward in its *Çam v. Turkey* judgment of 23 February 2016, in which it found that there had been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1, holding that the refusal by the national music academy to enrol the applicant because she was blind (despite the fact that she had passed the entrance examination) and its failure to make reasonable accommodation constituted an infringement of her right to a musical education. The Court referred to Article 15 of the Charter and its explanatory report and to the United Nations Convention on the Rights of Persons with Disabilities, whose provisions on the right to education should be taken into account (§53). It pointed out that reasonable accommodation could take a variety of forms and it was not the Court's task to define the means of meeting the educational needs of children with disabilities. However, the Court was entitled to exercise some supervision in this area as discrimination based on disability extended to any refusal to provide reasonable accommodation (no effort was made in this respect in the case in question).[92] ~~We can note that the ECHR does not make any reference to the ECSR – even if the latter has often mentioned this point in its conclusions on Article 15§1st of the Charter.~~

Footnote no. 117: See below the decisions of 5 December 2007 concerning France (Collective Complaints Nos. 33/2006 and 39/2006) where the ECSR found that there had been several violations in the field of housing (in a 2008 Resolution, the Committee of Ministers noted the adoption of the "DALO" Act, but in December 2015, in the context of the simplified reports procedure – see below – the ECSR noted that the situations had not been brought into conformity with the Charter – given the lack of information or insufficient information provided by the Government). The judgment of the Court reflects the difficulty of implementing the "DALO" Act – an illustration of the complementarity that exists between the Convention and Charter mechanisms. ~~It is surprising therefore that the Court makes no reference in this judgment to the monitoring mechanism of the ECSR.~~

Footnote no. 120: It will be recalled that the previous reports referred to decisions where the rights relied on were also held to be too broad and indeterminate (therefore no evidence of a special link between the particular needs of the applicant's private life and the lack of access to the buildings in question). ~~We can once again notice that the ECHR does not make any reference, in its judgment, to the ECSR despite its several conclusions on this point regarding Article 15 and in particular 15§3 of the Charter.~~

Footnote no. 134: In its 2011 Conclusions, the ECSR held that the situation in Italy was incompatible with Article 16 of the Charter because of the unequal treatment of foreigners with regard to the granting of child allowances. ~~However, in its subsequent judgment in 2014, the Court did not refer to this finding.~~ To date, there have been no finding by the ECSR in respect of Greece on this subject.

Footnote no. 138. In its Conclusions XVI-2(2004) in respect of the Czech Republic, the ECSR also observed that: "States may, in the context of legal systems, fix different retirement ages for men and women, and considers that Article 1 of the Protocol permits different treatment which necessarily and objectively reflects the different retirement ages". ~~However the Court did not refer to this in its judgment.~~

Footnote no. 174 In all these decisions, the Court makes frequent references to the United Nations Convention on the Rights of Persons with Disabilities~~, but not to the Conclusions of the ECSR rendered on Article 15 of the Charter (right of persons with disabilities to independence, social integration and participation to the life of the community)~~.

190. Despite ~~this progress and~~ the Court's ~~expanding~~ case law on a number of social rights, there are ~~still~~ certain limits to the protection it offers. In the Grand Chamber's judgment of 15

March 2012 in *Austin and Others v. United Kingdom*, the Court stated that "*the Convention is a living instrument which must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic states today…. This does not, however, mean that to respond to present-day needs, conditions, views or standards the Court can create a new right apart from those recognised by the Convention … or that it can whittle down an existing right or create a new 'exception' or 'justification' which is not expressly recognised in the Convention …*" (§53).

193. Finally, it should be noted that the Court appears to have been making increasing reference to the decisions and conclusions of the ECSR in recent years, sometimes in support of its findings,[177] and sometimes differing from them.[178] ~~However, these references are often of a general nature, and accompanied by other sources.[179] Finally, it has to be noted that the Court still often fails to make any allusion to the Charter system in cases in which this might nevertheless be quite appropriate.180~~

194. This applies particularly to the aforementioned cases dealing with austerity measures~~, despite several ECSR decisions concerning Greece and its conclusions on this subject relating to various States (see below)~~. In a general manner, it appears important to encourage a maximum of cross-references between the Convention and Charter systems, as a mean of emphasising their complementary nature[181] and, in certain cases, their synergies.

~~489. It is impossible, furthermore, to predict how the Court's case law will develop with regard to social rights as long as there is no political will to include new social rights in the Convention (see above: work of the GT-DH-SOC from 2003 to 2005).~~

This paragraph is also unclear. It is difficult to see a logical link between the alleged unpredictability of the Court's case-law and the political will of States to include or not new social rights./

For the reasons stated above, it is also problematic to mention the concurring opinions as examples of references to the conclusions adopted under the Charter. This might be read as criticism directed against the majority view of the Court and praising the concurring opinions instead. We propose to delete the following:

146. ~~Lastly, m~~**M**ention may be made of three other decisions in relation to Article 10. In the *Lombardi Vallauri v. Italy* judgment of 20 October 2009, the Court found there had been a violation of Articles 10 and 6§1 concerning the refusal to allow the applicant to apply for a teaching post at a denominational university on account of his allegedly heterodox views. In the *Vejdeland and Others v. Sweden* judgment of 9 February 2012, the Court found that there had been no violation of Article 10 in respect of the applicants' convictions for having distributed homophobic leaflets in an upper secondary school. ~~In one of the concurring opinions appended to the judgment reference is made to Complaint No. 45/2007 v. Croatia in which the ECSR found there had been a violation of Article 11§2 of the Charter in light of the non-discrimination clause (teaching material on sexual and reproductive health).~~

155. Mention may also be made of the Grand Chamber's *Biao v. Denmark* judgment of 24 May 2016 in which the Court held that there had been a violation of Article 8 taken in conjunction with Article 14 with regard to the fact that the conditions relating to family reunion were more favourable for persons who had held Danish citizenship for at least 28 years. The Court took the view that the reply to the question as to how long it takes for a Danish citizen to have sufficiently strong ties with Denmark to allow family reunion could not depend solely on the length of time the citizen had held Danish nationality. The Court referred in its

judgment to several international treaties and held that the indirect difference in treatment by a state between its own nationals depending on their ethnic origin was contrary to Article14. ~~It is worth noting that only one separate concurring opinion referred to Article 19§6 of the Charter.~~[137]

We also propose to describe the Convention in neutral terms and avoid putting it in the negative perspective. There is no such need – in order to highlight the value of the Charter it is not indispensable to diminish at the same time the Convention and describe it as imprecise and narrowly-drafted document.

192. In the case of the direct protection offered by the Court for certain social rights (see above: Articles 4, 11 and 2 of Protocol No. 1), ~~the wording of~~ the Convention is **based on a different approach** ~~much less demanding~~ than that of the Charter, which is more wide-ranging**,** ~~and precise and imposes~~ **guarantees** more rights and **imposes more** obligations on states.[176]

488. As regards the Convention, despite an extensive body of case law in the field of social rights, as illustrated in this report, attention has also been drawn to the ~~limitations of the protection afforded these rights by the Court~~ **fact that its main focus is on the civil and political rights** ~~(mainly indirect protection, which does not in itself cover social rights; the rather narrow wording of those few articles in the Convention which do provide for social rights, as compared with the broader and more precise wording of the corresponding articles in the Charter)~~.

General comment no. 2. We would like to thank the Secretariat for the enormous effort undertaken to summarise the Court's case-law. We submit for consideration some ideas to improve further this presentation.

- We propose to delete all the footnotes in paras. 68-69 and – instead – integrate some of them as footnotes in the relevant parts of the subchapters dealing with the respective topics/rights (similarly as in footnote no. 142). At present it may be difficult for a reader to have a clear picture of the case-law in a given topic as it is described in various parts. Moreover, sometimes the subchapters also refer to the case-law adopted before the previous reports (see for instance footnote no. 111) and sometimes there is repetition (e.g. the case of Hutten-Czapska is mentioned twice).

- Instead of saying at the beginning of subchapters that some aforementioned, unspecified publications included references to decisions in the areas … – one could rather start by saying e.g. that: The Court case-law under Article … refers to such areas as …. . Since the adoption of the report x /publication y the Court has adopted the following new decisions/judgments ….

- To facilitate reading - it would be useful to slightly reformulate the paragraphs which contain long sentences with lists of sometimes unrelated decisions/judgments (e.g. paras. 151, 157, 162-164, 166-167). Rather than the formula "it is worth noting the following judgments finding a violation/no violation: … (see e.g. para. 162) it would be better to have separate sentences for each judgment (for instance: In the case of … the Court found violation of … on account of etc.) (compare e.g. paras. 114, 120).

Detailed proposals

12. The right to life and the right to protection against inhuman or degrading treatment or punishment (Articles 2 and 3 of the Convention) are also included in several articles in the Charter, relating for instance to specific measures to be applied in the workplace to protect

the life and health of workers, including in the case of maternity leave or young ~~or disabled~~ workers **or workers with disabilities** (Articles 3, 7, 8 and 15); the protection against domestic violence (Article 16); the right to social and urgent medical assistance for anyone who needs it (Article 13); the protection against sexual or psychological harassment in relation to work (Article 26) and, more broadly, any other right relating to the protection of human dignity (e.g. Articles 26, 30 and 31).

160. Finally, under Article 14 and Article 1 of Protocol No. 1, it is worth mentioning two other findings of a violation: the *Vrountou v. Cyprus* judgment of 13 October 2015 (discriminatory refusal to grant housing assistance to the children of displaced women compared with the children of displaced men – termination of this disputed measure after 40 years) and the *Guberina v. Croatia* judgment of 22 March 2016 (failure to take account of the needs of a ~~disabled~~ child **with disability** when determining his father's eligibility for tax exemption on the purchase of property adapted to his child's needs). The Court observed that although the relevant law was couched in general terms, other relevant provisions of domestic law provided some guidance with regard to the question of basic requirements of accessibility for persons with disabilities and that the state should also take into consideration the relevant principles of the UN Convention in this field. As the authorities had not taken account of these national and international obligations, the manner in which the legislation was applied in practice failed to sufficiently accommodate the requirements of the specific aspects of the applicant's case.

187. There also appears to have been some progress in two areas where little change had been noted in the previous publication: protection against social insecurity and **ensuring full respect for the dignity, equality and a right of** ~~disabled~~ persons~~.~~ **with disabilities** ~~right~~ to social integration.

Footnote no. 173 See also the aforementioned decisions relating to Articles 2 (in particular, failure to take account of a person's disability during police custody) and 3 (harassment of a **child with** physical~~ly~~ and mental~~ly disabled child~~ **disability**).

We propose to avoid expressions such as "disabled persons". Instead we propose to use coherently over the whole text expressions based on the formula "with disabilities" in line with the language of the UN Convention on the Rights of Persons with Disabilities.

17. The prohibition of discrimination is provided for in the Convention (Article 14 and Protocol No. 12), while specific provisions in the Charter deal with protection against any form of discrimination based on work (Article 1§2), but also on property status (Article 13), disability (Article 15), nationality (Articles 12, 13 and 19), ~~gender~~ **sex** (Article 20), age (Article 23) and family status (Article 27). In addition, Article E of the Revised Charter prohibits discrimination relating to the enjoyment of all the rights enshrined therein.

The proposal to align the terminology to that applied in paras. 199 and 205 and – first and foremost – in the Charter itself.

Footnote no. 56: See, from the standpoint of Article 2, the *Silih v. Slovenia* judgment of 28 June 2007 (violation confirmed by a Grand Chamber judgment of 9 April 2009: major delays and frequent changes of judge during proceedings concerning a death alleged to have occurred as a result of medical negligence) ~~and from the standpoint of Article 8, the *Tysiac v. Poland* judgment of 20 March 2007 (concerning procedures to exercise the right to a therapeutic abortion).~~

We propose to delete the reference to the *Tysiąc* case as is it is not linked with the theme of the present report.

Footnote no. 65: See the pilot judgment in *Hutten–Czapska v. Poland* of 19 June 2006, in which the Court (Grand Chamber) found that there had been a violation of the right to property while requesting in its final provisions that a mechanism be set up to establish a "fair

balance" between the interests of landlords and the general interest of the community~~,~~ ~~particularly by~~ **in** providing sufficient accommodation for the less well-off.

The proposal to make the text more clear. In any case, mentioning the Hutten-Czapska case in the context of "the right to housing" provokes confusion as its main object was to increase the protection of the landlords' rights. It would be more appropriate to mention in this context cases such as Pinc and Pincova v. the Czech Republic, Zvolsky and Zvolska v. the Czech Republic, or – more recently – McCann v. the United Kingdom (no. 19009/04), Ceni v. Italy or Ivanova and Cherkezov v. Bulgaria.

Finally, there is a reference to the same case in footnote no. 142. Delete or merge this footnote with the latter to avoid repetition.

Footnote no. 70. - It should be recalled that Article 8 **as interpreted by the Court** includes the right to personal development and the right to develop relationships with the outside world. From some inadmissibility decisions it had been noted that this article places states under certain positive obligations towards persons with disabilities without nonetheless specifying which, whereas the Court had not established any positive obligation as to the accessibility of public places for persons with reduced mobility (decisions of inapplicability, finding that the rights relied upon were too "broad" or "indeterminate": no evidence of a special link between the needs of private life and the inaccessibility of the places referred to). However, the inadmissibility decision of 11 April 2006 in *Molka v. Poland* was highlighted as possibly indicating the advent of new case law on the subject, it appearing to be decisive in this case that the incident complained of was an isolated case (reference by the Court to Article 15 of the Charter).

Article 8 does not mention the right to personal development and the right to develop relationships. This is the concept developed in the Court's jurisprudence.

76. With regard to prison work,75 mention should be made of the Grand Chamber's *Stummer v. Austria* judgment of 7 July 2011. According to the applicant (who had spent 28 years in prison), European standards had changed to such an extent that prison work without affiliation to the old-age pension system constituted a violation of Article 4. The Court found that there had been no violation of Article 4 as there was no Europe-wide consensus on the subject and no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.76 The Court called on the respondent state to keep the issue raised by the case under review but considered that, by not having affiliated working prisoners to the old-age pension system, it had not exceeded its margin of appreciation. In its judgment, the Court referred to the ECSR's interpretation of Article 1§2 of the Charter.77 The Court also found that there had been no violation of Article 4 in its *Meier v. Switzerland* judgment of 9 February 2016 ~~– lack of a sufficient consensus among member states on~~ **in respect of** requiring prisoners to work after reaching retirement age.

The Court also referred to important substantive arguments to reach this conclusion. Alternatively, in view of the importance of this judgment and its direct link with social issues it may be useful to have a more detailed description of this judgment.

91. ~~Contrary to its~~ **Reversing the Chamber** judgment of 3 November 2009, the Court found in its Grand Chamber judgment of 18 March 2011 in *Lautsi v. Italy*, that there had been no violation of Article 2 of Protocol No. 1 as a result of the presence of a crucifix in the classrooms of Italian state schools ~~– particularly from the perspective of its impact on the applicants (as an essentially passive symbol).~~

The Court took into account also other arguments to reach this conclusion, among them the margin of appreciation of Member States in this field. Either shorten the text

as proposed above or use the agreed text of para. 117 of the Compilation of Council of Europe standards relating to the principles of freedom of thought, conscience and religion and links to other human rights, prepared by the CDDH. It is also not elegant to treat the Grand Chamber judgment as something which is contrary to the Chamber judgment.

101. In other judgments, the Court found that there had been violations of Article 2 (under its substantive and procedural heads) – noting certain shortcomings in the Turkish hospital services in the following judgments: *Mehmet Şentürk and Bekir Şentürk v. Turkey* of 9 April 2013 (death of a pregnant woman following errors by several hospitals and a failure to provide her with emergency medical treatment **owing to her inability to pay medical fees**); *Asiye Genç v. Turkey* of 27 January 2015 (death of a premature new-born baby owing to lack of treatment); *Aydoğdu v. Turkey* of 30 August 2016 (death of a premature new-born baby in hospital owing to lack of emergency treatment). In the latter judgment, the Court found that (as a result of inadequate expert opinions) the authorities had been unable to provide a coherent and scientifically grounded response to the problems arising and to establish any liability. On the basis of Article 46, the Court called upon Turkey to require independent and impartial administrative and disciplinary investigations to be carried out, affording victims an effective opportunity to take part; to ensure that bodies and/or specialists that might be called upon to produce expert opinions had qualifications and skills corresponding fully to the particular features of each case; and to require experts to give proper reasons in support of their scientific opinions.

It would be useful to highlight the aspect of medical fees.

110. With regard to general conditions of detention,[99] it is particularly worth noting the three pilot judgments (adopted to support execution procedures already under way) finding a violation of Article 3:[100] *Ananyev and Others v. Russia* of 10 January 2012 (violation also of Article 13),[101] *Torreggiani and Others v. Italy* of 8 January 2013,102 and *Varga and Others v. Hungary* of 10 March 2015 (violation also of Article 13).[103] **and – most recently: *Muršić v. Croatia* of 20 October 2016.** Reference can also be made to the *Vasilescu v. Belgium* judgment of 25 November 2014: violation of Article 3 (prison overcrowding and poor hygiene conditions).[104] Lastly, we can highlight two further findings of violations of Article 3 linked with passive smoking, namely the *Florea v. Romania* judgment of 14 September 2010 and the *Elefteriadis v. Romania* judgment of 25 January 2011.

The ruling in *Muršić* case seems to be the most relevant judgment now in this field.

Footnote no. 122: See also, for example, on access to experimental treatment or medicine: the *Hristozov and Others v. Bulgaria* judgment of 13 November 2012 (no violation of Article 8 – anti-cancer drug not authorised in other countries) and the inadmissibility decision of 6 May 2014 in *Durisotto v. Italy* (strict conditions of access to experimental treatment imposed by a legislative decree). Concerning domestic violence, among many others (in the *Opuz v. Turkey* judgment of 9 June 2009, the Court held, for the first time, that there had been a violation of Article 14 taken in conjunction with Articles 2 and 3), it is worth noting the *Eremia v. Republic of Moldova* judgment of 28 May 2013 (violation of Articles 8 and 14 – failure to take measures to protect the applicant and her daughters). ~~With regard to abortion, mention can be made of the *R.R. v. Poland* judgment of 26 May 2011 (Article 8 violation: pregnant woman carrying a malformed foetus denied access to prenatal genetic tests and, therefore, abortion) and the *P. and S. v. Poland* judgment of 30 October 2012 (Article 8 violation: minor refused unhindered and timely access to lawful abortion).~~

Describing a person – a child who was born alive and lives - in terms of a "malformed foetus" is contrary to respect for human dignity of everyone. Moreover, the case concerned access to prenatal tests which cannot be equated automatically with

abortion. Finally, both cases are not thematically linked with other cases mentioned in this footnote and the main paragraph.

142. In the *Siebenhaar v. Germany* judgment of 3 February 2011, the Court found there had been no violation of Article 9 concerning the Protestant Church's dismissal of the applicant, a childcare assistant and, later, kindergarten manager, for belonging to another religious community. The *Eweida and Others v. United Kingdom* judgment of 15 January 2013 concerned restrictions placed on wearing religious symbols at work in respect of two of the applicants (a British Airways employee and a geriatric nurse) and the dismissal of the other two applicants for refusing to carry out duties which they considered would condone homosexuality. The Court found there had been a violation of Article 9 only in the case of the British Airways employee as the courts had attached too much importance to her employer's wish to project a certain corporate image **and a fair balance between the applicant's desire to manifest her religion by wearing a cross and the interest of the private employer had not been struck.** In the *Ebrahimian v. France* judgment of 26 November 2015 the Court found, **bearing in mind the margin of appreciation afforded to the respondent State** that in respect of the decision not to renew the employment contract of a hospital social worker, because of her refusal to stop wearing the Muslim headscarf there had been no violation of Article 9, because the authorities had not exceeded their margin of appreciation in deciding to give precedence to the requirement of neutrality and impartiality of the state.

We propose to add more elements to the description of these judgments.

146bis. Lastly, in the *Tesic v. Serbia* judgment of 11 February 2014 concerning an applicant ordered to pay sums totalling 2/3 of her retirement pension, leaving her with 60 euros per month to live on (she could no longer afford her medication given that it cost her 44 euros per month), the Court found there had been a violation of Article 10 (excessive sanctions totalling more than 60% of the applicant's income).

We propose to mention the case of Tesic in a separate, more visible paragraph. It would also be useful to have more detailed description of this case as it concerned issues particularly relevant for this report, linked with the protection of vulnerable persons in a difficult financial situation. There is also some link with the case of Chitos, mentioned in para. 75 – aspects related to the manner of enforcement of debts.

160. Finally, under Article 14 and Article 1 of Protocol No. 1, it is worth mentioning two other findings of a violation: the *Vrountou v. Cyprus* judgment of 13 October 2015 (discriminatory refusal to grant housing assistance to the children of displaced women compared with the children of displaced men – termination of this disputed measure after 40 years) and the *Guberina v. Croatia* judgment of 22 March 2016 (failure to take account of the needs of a ~~disabled~~ child **with disability** when determining his father's eligibility for tax exemption on the purchase of property adapted to his child's needs). The Court observed that although the relevant law was couched in general terms, other relevant provisions of domestic law provided some guidance with regard to the question of basic requirements of accessibility for persons with disabilities and that the state should also take into consideration the relevant principles of the UN Convention in this field. As the authorities had not taken account of these national and international obligations, the manner in which the legislation was applied in practice failed to sufficiently accommodate the requirements of the specific aspects of the applicant's case.

It would be useful to split this paragraph into two as both cases concern quite different issues. The description of the Vrountou case could be extended slightly as it

may be difficult for a reader to understand at first glance. In addition, we propose to add a reference to the Guberina case in para. 127.

Footnote no. 142 – attached to words "The applicants, who were tenants" - The aforementioned publication referred essentially to judgments finding that there had been a violation of Article 1 of Protocol No. 1 in respect of the owners: the *Ghigo v. Malta* judgment of 26 September 2006 (a disproportionately low rent and the long period for which the applicant was unable to enjoy his property); the *Radovici and Stanescu v. Romania* judgment of 2 November 2006 (failure to comply with the formalities leading to the extension of leases on a property without payment of rent for several years); the *Urbarska Obec Trencianske Bisupice v. Slovakia* pilot judgment of 27 November 2007 (compulsory transfer of land, preceded by an obligation to lease the land at a disproportionately low price) and the aforementioned *Hutten-Czapska v. Poland* pilot judgment of 19 June 2006 (**a violation of the landlord's property rights on account of** a restrictive system of rent control **introduced to protect tenants** – judgment of 28 April 2008: case struck off list following a friendly settlement: redress to the applicant and general measures **adopted** ~~– including the law of 8 December 2006 on the need to offer the most disadvantaged groups different types of housing~~).

The drafting proposals aim at avoiding misunderstanding as to the actual scope and consequences of the Hutten-Czapska judgment.

It is also proposed to attach footnote no. 142 to para. 168 which concerns cases introduced by property owners rather than para. 167 which concerns cases introduced by tenants.

179. The speaker summarised the Court's response to the economic crisis as one of both prudence and firmness. It acted prudently in so far as, particularly in a time of crisis and in accordance with the subsidiarity principle, it left national authorities a wide margin of appreciation by refusing to intervene in large-scale decisions reflecting major political choices in economic matters. However, it continued to act firmly by refusing to take account of economic considerations when it was necessary to protect non-derogable rights (for example, ~~detention conditions must always be compatible with Article 3 – see~~ **in** the *Orchowski v. Poland* judgment of 22 October 2009, **although the Court was aware of the fact that solving the systemic problem of overcrowding might necessitate the mobilisation of significant financial resources, it considered, however, that lack of resources could not in principle justify prison conditions which were so poor as to reach the threshold of treatment contrary to Article 3 of the Convention and that it was incumbent on the respondent Government to organise its penitentiary system in such a way that ensured respect for the dignity of detainees, regardless of financial or logistical difficulties),** ~~and~~ **or** principles relating to the rule of law (reasonable length of proceedings and the execution of final judicial decisions – see the aforementioned *Tchokontio Happi v. France* judgment of 9 April 2015 : lack of social housing) ~~and~~ **or** non-discrimination (see the aforementioned *Ponomaryovi v. Bulgaria* judgment of 21 June 2011 – secondary education fees for foreign nationals without permanent residence permits).

It would be useful to present in more detail the reasoning of the Court in this respect. Alternatively, the proposed additional text, coming directly from the Orchowski judgment (para. 153), could be used as a footnote.

180. States' undertaking to abide by judgments of the Court in cases to which they are parties (Article 46§1 of the Convention), ~~combined with the *erga omnes* effects of its decisions, have~~ **has** resulted in numerous reforms in the social domain.

The reference to the erga omnes effect is not based on the Convention and contradicts the conclusions reached recently in the report on the long-term future of the Convention system – see its para. 37.

183. The following is a non-exhaustive illustrative list of legal reforms that have been introduced or are being considered in response to Court judgments:

…

- Numerous reforms ~~to end discrimination against homosexual couples~~ **to implement the Court's judgments regarding instances of discrimination on grounds of sexual orientation**;[155]

…

- ~~Fathers in Poland are now entitled to establish legal paternity through~~ **Introduction of** a procedure directly available to ~~them~~ **fathers to establish legal paternity**;[159]

…

The aim of the above proposals is to make the text more coherent with the general style of the report.

187. There also appears to have been some progress in two areas where little change had been noted in the previous publication: protection against social insecurity and **ensuring full respect for the dignity, equality and a right of** ~~disabled~~ persons~~'~~ **with disabilities** ~~right~~ to social integration.

In our opinion, the Court's case-law concerning persons with disabilities is not only about their social integration. It would be worth having a more general description.

189. As the Court's factsheet shows,[172] over the last few years it has been increasingly concerned with protecting persons with disabilities and their right to full integration. In its *Gherghina* decision, the Court noted that this was a relatively recent branch of domestic and international law, though it found that the applicant had not exhausted domestic remedies. The Court has handed down a number of interesting decisions in this field,[173] particularly concerning states' obligation to introduce measures and/or reasonable accommodations on their behalf. Examples include failure to provide a deaf-mute person in custody with the means of communication (no access to a lawyer – violation of Article 5 – *H. v. Hungary* judgment of 8 November 2011); absence of measures to enable a blind person to pursue her musical education (violation of Article 2 of Protocol No. 1 – *Cam v. Turkey* judgment of 23 February 2016); ~~inaccessibility of several public buildings, including the relevant court (decision of 14 September 2010 in *Farcas v. Romania*, inadmissible because there were no insurmountable obstacles in this case, but the Court stated that positive measures might be expected under both Article 8 and Article 34); inaccessibility of universities and courts (aforementioned Grand Chamber inadmissibility decision of 9 July 2015 in *Gherghina v. Romania* – the applicant should have asked the courts to order the authorities to adopt reasonable measures);~~ failure to take account of domestic and international accessibility requirements in connection with an application for tax relief on the purchase of suitably adapted property (violation of Articles 14 and 1 of Protocol No. 1 – *Guberina v. Croatia* judgment of 22 March 2016: this appears to be the first judgment finding a violation regarding physical accessibility).[174]

It is difficult to draw – from inadmissibility decisions – clear conclusions as to the "states' obligations to introduce measures and/or reasonable accommodations". Delete this information or move to the footnote (or make as a separate sentence in the end). The message of the whole paragraphs would thus become more clear.

323. Lastly, with regard to the collective complaints procedure, it is important to note that participants at the "Turin I" Conference expressed the view that this mechanism represents a more open and democratic monitoring system than the one based on national reports. It was also pointed out, several times, that if the collective complaints procedure was accepted by more States, this could reduce the number of cases that come before the European Court of Human Rights and the domestic courts, particularly as the complaints procedure is faster (no need to exhaust domestic remedies and shorter processing times than in the Court) and has the potential to make a greater impact, more swiftly, on account of its collective nature. A positive parallel has been drawn here between the collective complaints procedure and the Court's system of "pilot judgments". It will also be recalled that broader acceptance of the complaints procedure would, in theory, help to ease the workload of the national agencies responsible for drafting the reports, enabling them to focus on specific issues.[319] **During the works of the CDDH some have argued, however, that the collective and individual complaint mechanisms are different in nature and scope, and involve different complainants. Hence, the possible reduction of the number of new cases brought before the Court may be of a limited extent. They also pointed to the value of the principle of subsidiarity under the Convention (and of the corresponding requirement of the exhaustion of domestic remedies), which gives the domestic authorities and courts a chance to examine complaints and remove violations even before the need for action by international mechanisms arises.**

It would be useful to reflect various possible arguments.

Technical proposals:

(ii) Indirect protection of ~~a number of~~ social rights

For a heading it would sound better to have a more general text.

115. ~~Lastly, t~~The Court has come to many findings of violations of Article 3 with regard to the conditions of detention of migrants,109 including a very large number against Greece. A particular note can be made of the Grand Chamber's *M.S.S. v. Belgium and Greece* judgment of 21 January 2011, in which the Court found in particular that there had been two violations of Article 3 as a result of the applicant's conditions of detention and his living conditions in Greece. The Court found, in the light of the obligations imposed by the European Reception Directive, that the Greek authorities had not had due regard for the applicant's vulnerability as an asylum-seeker and should be held responsible, because of their failure to act promptly, for the situation in which he had found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs (§263).

The word „lastly" is overused. In this very chapter there are still two such references.

118. ~~Lastly, w~~With regard to social benefits, reference should be made to the inadmissibility decision of 18 June 2009 in *Budina v. Russia*, to which the Court referred in its *M.S.S.* judgment. The Court pointed out that state responsibility could arise where an applicant who was totally dependent on state support found himself or herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity. However, even though the applicant's income was low in this case, the Court held that she had not proved that her lack of funds had resulted in actual suffering and there was nothing to indicate that the level of her pension and her social benefits were insufficient to protect her from damage to her physical or mental health or from a situation of degradation incompatible with human dignity.[111]

137. Examples of cases where the Court found there had been no violation under Article 8 include the *Obst v. Germany* judgment of 23 September 2010 (Mormon Church's dismissal without prior notice of a director for adultery, in order to preserve the Church's credibility), the

Grand Chamber's *Fernández Martínez v. Spain* judgment of 12 June 2014 (Church's decision not to renew the employment contract of a religious education teacher, a married priest, father of 5 children and member of an organisation opposed to official Church doctrine, judging that the interference with the applicant's individual rights could be justified in terms of respect for the lawful exercise by the Catholic Church of its religious freedom in its collective or community dimension, and that in choosing to accept a publication about his family circumstances and his association with a protest-oriented meeting, the applicant had severed the bond of trust that was necessary for the fulfillment of his professional duties) ; ~~the *Barbulescu v. Romania* judgment of 12 January 2016 (dismissal for personal use of the Internet in the workplace – case referred to the Grand Chamber in June 2016).~~ It is also worth mentioning the inadmissibility decision of 5 October 2010 in *Köpke v. Germany* (dismissal without notice for theft following covert video surveillance).

It is not useful to rely on a still pending case.

151. With regard to dismissal, reference may be made to two judgments finding a violation of Article 8 taken in conjunction with Article 14: *I. B. v.* ***Greece*** ~~*Hungary*~~ of 3 October 2013 (on the ground of the applicant's non-contagious HIV status) and *Emel Boyraz v. Turkey* of 2 December 2014 (on the ground of the sex of the applicant, a female security guard).

Subject to verification by the Secretariat – it seems that the case at stake concerned Greece.

177. To date, there appears to have been only ~~one~~ **few** case**s** in which the Court has found a violation in connection with austerity measures, ~~namely~~ **notably** the aforementioned *N.K.M. v. Hungary* of 14 May 2013 (excessive rate of tax on severance pay following legislation to raise these rates in the public sector).

It seems that there was at least a similar case of R.Sz. v. Hungary, no. 41838/11