



**Exchange of views between Giuseppe Palmisano,
President of the European Committee of Social Rights,
and the Committee of Ministers of the Council of Europe
Strasbourg, 25 November 2020**

Mr Chairman,
Permanent Representatives,
Madam Secretary General,
Mr Director General,
Ladies and Gentlemen,

First of all, let me thank you for confirming and maintaining, even at such a difficult time, this traditional appointment with the President of the ECSR. Our Committee attaches high importance to this annual exchange of views.

As you can imagine, the ongoing pandemic crisis has had and is having a big impact on the activities carried out by the monitoring body of the European Social Charter.

I refer first of all to our working methods and to how we communicate and present the outcomes of our monitoring work. For example, in March 2020, due to restrictions related to the Covid-19 outbreak, the Committee was unable to present its annual Conclusions at a press conference, as it usually does. The Conclusions concerned a number of crucial issues such as children's rights, domestic violence, the right to housing and homelessness, which would have deserved more attention by the media and civil society across Europe.

As the pandemic unfolded, the Committee was no longer able to hold its regular sessions in Strasbourg, as well as its usual meetings in other countries with the authorities of States Parties to the Charter within the framework of the procedure on non-accepted provisions. We decided to hold all our sessions and meetings entirely by remote participation and to intensify written exchanges by e-mail among the Committee members and, of course, with the Secretariat.

Despite this situation, we have nonetheless been able, in the last months, to make substantial progress in all our monitoring activities, thanks also to the remarkable commitment and untiring work of the Secretariat.

As regards our work on the Conclusions on the thematic group "employment, training and equal opportunities", being examined this year, I am confident that we will complete our assessment at the beginning of next year and that the Conclusions will be adopted no later than in March 2021.

With respect to collective complaints, after adopting in December 2019 the decisions concerning the 15 complaints on the gender pay gap, we have been able to adopt, during the pandemic, 12 decisions on admissibility and 7 decisions on the merits in important complaints. In this respect, let me just refer to Complaint n° 148, concerning the protection of children below the age of criminal responsibility in juvenile justice procedures in the Czech Republic, to Complaint n° 142, about the freedom of a trade union to freely choose its own representatives in France, to Complaint n° 146, concerning the reiterated renewal of fixed-term employment contracts in the public sector in Italy, and to Complaint n° 157 concerning the institutionalisation of children under the age of three in the Czech Republic.

But the pandemic had and is having an impact not only on the timing and working methods of the ECSR, but also – and mostly, I would say – on the substantive agenda and contents of our activities.

Let me point out that already in March this year we adopted an insightful statement of interpretation on the right to protection of health in times of pandemic, where – on the one hand – we endorsed many measures adopted by states in response to COVID-19, but – on the other hand – we also warned States Parties that such measures must be designed and implemented in accordance with relevant human rights standards, recalling also the need for adequate public health provision and resourcing, including for research, vaccine development and prevention. We further noted, in that statement, that pandemics – and state responses thereto – can pose significant risks to many other rights set out under the Charter. These include, inter alia: the right to safe and health working conditions; the right of families and children to social legal and economic protection, including education, and the rights of the elderly. And the major impact of a pandemic, and of state measures in response to it, on employment and labour rights should also not be overlooked. Precisely for this reason, we have decided to elaborate a further statement of interpretation which will address these issues in greater detail. This statement will probably be ready at the beginning of next year.

Furthermore, the Committee decided to address without any delay the issues of pandemic threat and prevention within the framework of the reporting system. In fact, in the targeted questions sent earlier this year to States Parties to the Charter for Conclusions 2021, relating to the provisions belonging to the thematic group on health, social security and social protection, we have invited States to provide information on their responses to the pandemic crisis and on the (provisional) results achieved. Let me just add that the Committee expects that the pandemic will be a recurring theme in the reporting procedure over the coming years, when it will be examining other thematic groups of provisions, on labour rights, on the rights of children, family, women and migrants.

Despite the difficult times, the Committee does not stop its efforts in improving the effectiveness and efficacy of the monitoring system of the European Social Charter, along the lines of what we already started doing in the last two years and also on the basis of certain proposals made by the CDDH in its Report of June 2019 on “Improving the protection of social rights in Europe”.

In this respect, the Committee is striving to make the reporting procedure evolve from a general and rather formal exercise where States report on each Charter provision based on a standardised, and sometimes outdated or too generic questionnaire, and into a targeted and strategic exercise based on a selection of topical issues and questions relating to the thematic group under consideration. The targeted questions sent to States earlier this year for their reports for Conclusions 2021 relating to health, social security and social protection is full of examples in this direction.

Moreover, our efforts to improve the quality of the Charter monitoring system also concern the collective complaints procedure. Our closer scrutiny of the admissibility of complaints, which in the last year led the Committee to declare 5 complaints inadmissible, out of 16 examined complaints – a much higher proportion than in any other preceding year –, is a clear example of this. Another example is the Committee’s frequent request for observations under Article 32A of its Rules to organisations, institutions and experts, with a view

to obtaining information and insights on the issues at stake in a complaint, and enabling the adoption of a decision on the merits with full enough knowledge of the legal and factual situation at stake.

I think this shows how seriously my Committee is taking the commitment to give a concrete follow-up to what you, I mean the Committee of Ministers, identified as crucial objectives first, in November 2017, when you charged the CDDH with the task of making proposals with a view to improving the monitoring and implementation of social rights within the framework of the Council of Europe, and then – in your Decision of 11 December 2019 – when you invited, *inter alia*, the ECSR “to consider further ways of streamlining the reporting procedure, including the advisability of reviewing the current system of thematic reports”, “to pursue its reflection regarding closer scrutiny of the admissibility of collective complaints”, and “to make full use of existing modalities for receiving all information needed for the examination of a collective complaint”.

In addition, let me say that the Committee, together with the Secretariat, continues to reflect on possible improvements and steps to be taken to make progress towards a more effective implementation of social rights, and in particular of the Charter system in Europe, on the basis of the proposals which are contained in the CDDH Report of June 2019.

In fact, just a few weeks ago we were able to adopt a “Position paper on follow-up to the report and proposals of the CDDH”, where we have tried to react constructively to the CDDH proposals, by highlighting what are, in the ECSR’s view, the most important steps to be taken in the near future to strengthen and develop the protection of social rights in Europe by means of an improvement of the Charter monitoring system.

Let me recall some of these steps, for which explicit support from the Committee of Ministers would be highly desirable.

First, and I already referred to this, to make progress in providing the current system of thematic reports and reference periods with more flexibility, in order to allow the ECSR to set, in consultation with the Governmental Committee, priorities and targeting emerging issues which may sometimes involve provisions across the Charter or fall outside a strictly defined reference period.

Second, reconsider the Committee of Ministers own approach to its duties under the Charter, concerning the adoption of recommendations to States Parties to the Charter when the ECSR has found grounds for non-conformity on serious or persistent matters, or when it found violations of the Charter in decisions on collective complaints, as it is clearly established under Part IV, Article 28, of the Charter, and respectively Article 9 of the 1995 Protocol on collective complaints.

Third, subject to implementing the preceding proposal so as not to weaken the follow-up process in respect of collective complaints, limit State reporting on follow-up to the ECSR decisions in collective complaints, and the consequent ECSR findings on such follow-up, to two examinations only.

Fourth, increase the resources allocated to work related to the European Social Charter, especially as regards staff, so that resources and implementation capacity actually reflect the priority that the Council of Europe accords to this treaty system, in particular with a view to increasing the number of States that ratify the Revised Charter, and accept the collective complaints procedure, and also accept a higher number of substantive social rights provisions.

With respect to these latter objectives I am pleased to point out that some remarkable political initiatives have occurred since our last exchange of views, in October 2019, which testify to the increasing importance that some European States indeed attach to the Charter system as an effective instrument for the protection of social rights in Europe. I refer notably to the decision of Spain and Germany to finally ratify the Revised European Social Charter, as well as to Spain’s intention to also accept the collective complaints procedure.

But in addition to these steps, which deserve attention and support from the Committee of Ministers, the European Committee of Social Rights, and myself personally, are also convinced that the time is ripe for improving, strengthening and widening the Charter system as a whole, through a reform process aimed at making it fit for the social challenges of the 21st century, in order also to properly take into consideration the individual and collective social needs which are emerging in a changing world. A reform process similar to the one that more than twenty-five years ago led to the Revised Social Charter and the collective complaints Protocol.

For this reason, the ECSR would suggest that the Committee of Ministers pursue the discussion on strengthening the Charter system through an ad hoc Conference of the parties aimed at giving impulse to the reform process. The Conference could be invited not only to confirm ongoing developments and adopt decisions needed in the short term, but also to set the bases for longer term developments.

In particular, the agenda might include consideration of the desirability of a new Protocol to the Charter to possibly address some major topics, like

- improving the “à la carte” system (under Part III, Article A, of the Revised Charter) by increasing the minimum number of “core” provisions of the Charter to be accepted by States Parties;
- overcoming the entirely optional nature of the collective complaints procedure (under Part IV, Article D, of the Revised Charter);
- increasing the number of ECSR members and clarifying their desired profile (under Part IV, Article C of the Revised Charter); and also
- adding new rights or issues to those listed in the Revised Charter.

In this last respect, let me refer for example to the rights of gig economy workers, or the rights of workers in times of technological revolution, artificial intelligence and digitalisation. All issues that, as you know, are not covered neither by the 1961 Charter nor by the Revised Charter. Another example, possibly even more important, is environmental protection and the right to a decent or sustainable environment, which would really deserve – today more than 25 years ago – to be expressly included within the category of social human rights protected by the European Social Charter.

Let me add a short reflection and a suggestion in this respect. We all know that in recent months the idea of reinforcing the legal protection of the environment within the framework of the institutional tasks of the Council of Europe, and in particular of its human rights instruments, is rightly gaining attention and support. In this regard, there have been calls for a possible protocol to the European Convention on Human Rights on environmental human rights.

With all due respect, I do not think that this would be the best solution. As I had the opportunity to point out on the occasion of the High-Level Conference on environmental protection and human rights, organised earlier this year, in February, by the Georgian Presidency of the Committee of Ministers, the European Social Charter would be the Council of Europe human rights treaty most suited for inserting one or more provisions on the right to a decent or sustainable environment; more suited, in particular, than the European Convention on Human Rights which – as you know – relates essentially to individual civil and political rights and not to collective or solidarity rights.

Chairman, Ladies and Gentlemen, these are the few thoughts and proposals I wished to share with you. And looking forward to your reactions and views, let me conclude by expressing the hope that you will be able next year, in 2021, to worthily and concretely celebrate the 60th anniversary of the Charter and the 25th anniversary of the Revised Charter, by finally taking significant steps to strengthen and improve the Charter system.

Thank you for your attention.