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### Moving towards a social right to a sustainable environment: the potentials of the ESC system

As we all know, at the international legal level the areas of environmental protection, on the one hand, and protection of human rights, and particularly social rights, on the other hand, originated and developed separately.

However, their interdependence and interaction has become more and more evident through the decades.

Environmental protection and protection of social rights are indeed complementary, and closely — mutually — linked to each other.

Complementarity and mutual relationship emerge clearly if one considers that the deterioration of the environment has an undeniable impact on the enjoyment of many social rights, such as – for example – the right to health, or the right to safe and healthy working conditions.

And this is especially evident in light of the increasingly worrying environmental situation.

In fact, as our natural habitat is depleted and climate change advances, also as a result of poor governance, neglect and inaction, many other human social rights protected by the European Social Charter, and not only the right to protection of health, will be – and already are – inevitably affected: I am thinking for example of the right to work and to earn a decent living, or the rights of children and older persons to social protection. The right to housing may also be compromised: we are already witnessing the dramatic consequences of natural disasters partly caused by climate change on the right to adequate housing.

And the same can happen in respect of the right to protection against poverty and social exclusion. Climate change and deterioration of the environment can be expected to have alarming effects on the labour markets and on employment levels. Global warming related migration and “climate refugees” will raise a host of additional social rights issues in pace with accelerated demographic change. Many experts and authorities, including Philip Alston, the former UN Special Rapporteur on extreme poverty and human rights, forecasted that climate change would drive, in the best-case scenario, tens of millions of people into poverty.

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In spite of the importance of environmental protection for the object and purpose of a human rights instrument covering the area of social and economic rights, the European Social Charter, unfortunately, does not contain – not even in its “revised” version of 1996 – any provisions which refer expressly to environmental issues, nor any specific provision on the right to a healthy or decent environment.

It has to be said, however, that the European Committee of Social Rights (ECSR) in its activity of monitoring and interpreting the European Social Charter, has been nonetheless able to make an important contribution to clarifying and putting into practice the complementarity and mutual relationship between environmental protection and social rights, to the benefit of both social rights and environmental protection.

This has been possible, in particular, with regard to the application and interpretation of the right to protection of health, which is enshrined in Article 11 of the European Social Charter.

Under Article 11 of the Charter, States are obliged to take appropriate measures to remove as far as possible the causes of ill health, and to prevent epidemic, endemic and other diseases.

This means that public health systems must respond appropriately to avoidable health risks, i.e. risks that can be controlled by human action. And, since the beginning of this Century, the ECSR has repeatedly pointed out that avoidable risks include those which result from environmental threats, and that the right to protection of health does therefore include the right to a healthy environment.

Following such an approach, the Committee has clarified that measures must be designed by States to remove the causes of ill health resulting from environmental threats such as pollution, and to protect the population against, for example, nuclear hazards and against the consequences of nuclear accidents, as well as against health risks related to asbestos. And even a situation where availability of drinking water represents a problem for a significant proportion of the population has been considered by the Committee to be in breach of Article 11 of the Charter.

As regards States' obligations related to tackling pollution or the protection of the environment more generally, the Committee also clarified that States are required to implement an appropriate strategy which should include at least the following measures: develop and regularly update sufficiently comprehensive environmental legislation and regulations; take specific steps to prevent air pollution at local level; and, on a global scale, help or contribute to efforts towards reducing pollution; and also ensure that environmental standards and rules are properly applied through appropriate supervisory machinery.

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It is clear therefore that something positive has been done by the European Committee of Social Rights with a view to reinforcing environmental protection through the protection of social rights, and vice versa.

But, of course, much could still be done by the ECSR in this direction, especially when considering the increasingly worrying environmental situation.

I am thinking in particular of further exploring and developing the potential for better protection of environment through the existing mechanism and procedures afforded by the European Social Charter system.

In this regard, the reporting system under the Charter is very important and should be firstly taken into consideration. As you know, this system is currently evolving from a general and rather formal reporting by States on each Charter provision, to a targeted and strategic choice of issues that States are called upon to report on. Such a positive swift represents indeed an opportunity to include within the procedure issues related to the environment and social rights.

This has indeed already started happening with regard to Article 11 of the Charter (the right to protection of health). In fact, within the framework of the Questions to States concerning Article 11, the ECSR asks the States parties to "provide information on measures taken to prevent exposure to air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites with contaminant or toxic emissions, leakages or outflows, including slow releases or transfers to the neighbouring environment, nuclear sites, mines, as well as measures taken to address health problems of the populations affected"; and to "provide also information about measures taken to inform the public, including pupils and students, about general and local environmental problems".

In the nearest future, something similar could be done, *mutatis mutandis*, with regard to other environmental issues (like, for example, reduction of CO2 emissions, green energy production, the production, use and disposal of plastics, deforestation, global warming and climate change), and the impact of mismanagement of such issues on a number of social rights: not only the right to protection

of health, under Article 11, but also – for example, and obviously in different ways – the right to safe and healthy working conditions (Article 3 of the Charter), the right of children and young persons to protection (Article 7 and 17), the right to housing (Article 31), and the right to protection against poverty and social exclusion (Article 30).

In addition, considering that deterioration of the environment can undeniably pose significant risks to many rights set out under the Charter, the ECSR could adopt one or more “statements of interpretation” specifically dedicated to some of the environmental issues mentioned before. The pattern for this could usefully be, *mutatis mutandis*, the two Statements on the right to protection of health in times of pandemic, and on Covid19 and social rights, that the Committee adopted on 2020 and 2021.

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But apart from any possible and desirable developments concerning the existing system of substantial provisions and monitoring procedures provided for by the European Social Charter, another crucial step the Council of Europe and the Member States of the Organisation could take in order to respond to the challenge that environmental issues pose to human rights, is to make soon arrangements for drafting a new protocol to the Charter to explicitly incorporate environmental issues into human rights protection.

Adding to the European Social Charter one or more specific provisions recognising the right to a healthy or decent environment as a social right, and regulating the State obligations to respect, protect and fulfil such right, would have the merit not only of updating and upgrading the range of rights and social areas covered by the Charter, but also of strengthening the legal protection of the environment by solidly linking such protection to the most appropriate European human rights instrument.

As regards the first positive aspect (that is updating the range of rights and social areas covered by the ESC), it is hardly necessary to recall that many other regional human rights instruments, dealing with individual and collective rights and societal issues, have already recognised the human right to a healthy environment. This is particularly the case for Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol), or Article 38 of the Arab Charter on Human Rights, Article 24 of the African Charter on Human and Peoples’ Rights, or even Article 28(f) of the ASEAN Human Rights Declaration. And it is hardly necessary recalling art. 37 of the Charter of Fundamental Rights of the EU.

Adding a new “environmental article” to the Social Charter would therefore make the European human rights system more in line with other regional human rights instruments dealing with collective rights and societal issues, as well as more current and thorough, as it would be more suited to the contemporary environmental reality.

With respect to the other positive aspect (namely strengthening the legal protection of the environment by linking it to a human rights instrument), the fact of adding to the ESC one or more provisions on the right to a healthy (or decent) environment, would mean providing environmental protection with a binding legal instrument which gives a role to civil society and grants the organised civil society and the world of workers the right to take legal action to make sure that European States comply with their duty to protect the environment more effectively.

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And it is worth highlighting that the Social Charter would be, at list in my view, the most suited Council of Europe human rights treaty system where to insert one or more provisions on the right to a healthy (or decent) environment: even more suited than the European Convention on Human Rights.

This is so for many reasons.

First of all, the Convention – which focuses essentially on civil and political rights – is characterised by an individualistic conception of human rights that does not fit well with collective and so-called solidarity rights, as the rights concerning environmental issues undoubtedly are. The European Social Charter

(especially in its “revised” version) is, on the contrary, perfectly suited to deal with collective and solidarity rights, as well as with environmental protection (as evidenced, inter alia, by the way in which Article 11 of the Charter has been interpreted and applied by the European Committee of Social Rights).

In this respect, I would also like to note that the large majority of the ESC provisions are drawn up in terms of positive legal obligations of States to take measures or elaborate and implement policies, rather than in terms of subjective rights of individuals, which is particularly suitable for possible human rights provisions concerning environmental protection.

Third, unlike the ECHR system – which is distinguished by a judicial mechanism devised to handle individual cases of human rights violation, as well as to satisfy individual interests, of victims of specific violations (most of the time by means of a pecuniary compensation) –, the ESC system provides two mechanisms – the reporting procedure and the collective complaints procedure – which are much better suited to monitoring State compliance with obligations concerning areas – like social rights and, even more, environmental protection – relating to collective human interests and shared damage. This is particularly true for the collective complaints mechanism: in fact, the purpose of such procedure is precisely to obtain the legal assessment not of an individual case, but rather of alleged violations characterized by elements of “collective importance” for many subjects. For this reason, it allows NGOs (including “environmental” NGOs) and social partners to bring claims before the European Committee of Social Rights without requiring neither standing as victims nor previous exhaustion of domestic remedies.

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Incorporating into the ESC system, by means of an additional Protocol, one or more provisions specifically concerning environmental protection obviously requires identifying the object and contents of such provisions, as well as harmonising them with the typical features of the other substantial provisions of the Charter.

For reasons of time, it is hardly possible to develop further on these issues. However, some preliminary ideas may perhaps be tentatively drawn.

First, as regards the name of the right and title of the provision(s) to be incorporated into the Charter, even though the ECSR understandably has so far referred to the “right to a healthy environment” in considering this as a part of the right to protection of health under Article 11 of the Charter, it would be probably more appropriate to use a wider and more “ecological” expression, such as – for example – the “right to a decent environment”, or the “right to live in a healthy, sustainable and decent environment”. Such expressions would indeed make clear that the purpose of the provision is not only protecting against any environmental damage which is likely to affect human health, but also legally ensuring that protection against any environmental degradation is essential to the preservation of human dignity and social well-being, also for future generations.

Moving to the potential object of the various legal engagements to be undertaken by the States Parties, under a new “environmental article”, some basic elements could be following:

- Recognising in national domestic legal orders the right to live in a healthy, decent and sustainable environment.
- Taking measures, within the framework of an overall and coordinated approach, aimed at preserving the quality and integrity of the environment, and ensuring that future generations are not exposed to pollution or environmental conditions which may endanger their health or their existence itself.
- Ensuring that enterprises and business activities introduce a system of environmental management covering environmental impacts, and ensuring the effective enforcement of the environmental standards against private actors.
- Ensuring that information concerning environmental issues that is held by public authorities is widely and effectively available.

- Promoting and facilitating environmental education.
- Promoting and developing international cooperation on environmental protection, by the conclusions of appropriate bilateral or multilateral agreements or by other means, as well as through exchanges and dissemination of scientific knowledge and technologies respectful of the environment.

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In conclusion, making arrangements for incorporating into the European Social Charter system, by means of an additional Protocol, a right to a healthy or decent environment would be the natural response to the challenge that environmental issues pose to human rights. It would also constitute a step forward in order to strengthen the protection of the environment, on the one hand, and the protection of social rights, on the other hand, which are closely interlinked. As shown above, the European Social Charter would be the best suited Council of Europe human rights treaty to do that and the monitoring system of the Charter is perfectly equipped for that purpose.

And I am happy to see that such an approach has also been endorsed by the Parliamentary Assembly of the Council of Europe. I am clearly referring to the Parliamentary Assembly Recommendation 2211 of September 2021, titled “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe”, where it recommended inter alia that the Committee of Ministers – I am quoting – “draw up an additional protocol to the European Social Charter on the right to a safe, clean, healthy and sustainable environment; the inclusion of this right in the ESC would make it possible to recognise the interrelationship between protection of social rights and environmental protection; it would also enable non-governmental organisations to lodge collective complaints on environmental issues”.

I sincerely hope that the Committee of Ministers may soon give a concrete follow up to such excellent recommendation. Thank you.