



Exchange of views between Karin Lukas, President of the European Committee of Social Rights and the Committee of Ministers of the Council of Europe

Strasbourg, 3 November 2022

Dear Chair, dear Ministers' Deputies (Ambassadors), dear Secretary General, dear Ladies and Gentlemen,

It is with pleasure that I am here before you today to present the latest developments around the European Social Charter but tinged with a little sadness. This will be the last time that I speak to you not only as President of the European Committee of Social Rights but also as a member of this Committee as my second consecutive term will end next month. During my time in the Committee, our societies have gone through drastic transformations impacting social rights, and the European Committee of Social Rights has always strived to interpret the Charter in the light of present-day conditions to keep up with these evolutions and to better protect rights bearers, especially the most vulnerable.

These last couple of years have probably seen the most drastic changes to the social environment where Charter rights operate, with successive crises which need not to be detailed anymore, and which have put extreme strain on the enjoyment of social rights by many on our continent. Against such a backdrop, it appears all the more significant that, over the last couple of years, focus has been placed at your level on how to improve the implementation of Charter rights. This year has been a significant moment in time for the Charter system with the adoption, last September, of an ambitious reform package after a broad consultation process under the aegis of GT-CHARTÉ. The ultimate aim is as always better enjoyment of social rights by all and, in these hard times, in particular those in the most vulnerable situations.

Let me briefly highlight what I think are the most striking aspects of the changes that will benefit the Charter system. First of all, a more targeted and lighter reporting procedure coupled with a more active and effective follow-up by the Governmental Committee and regular proposals of Committee of Ministers recommendations that will act as stepping stones towards enhanced dialogue (exchanges of information, cooperation projects, etc.) with a view to resolving actively non-conformity situations. Secondly, the possibility of ad hoc reports will be a crucial tool to tackle emerging trends or immediate concerns outside the usual constraints imposed by the monitoring calendar. Finally, improvements to the collective complaints procedure, notably with a simplified system for reporting on follow-up to ECSR decisions in complaints.

In parallel to the reform, the European Committee of Social Rights has recently decided to strengthen its follow-up on non-accepted provisions. Since the beginning of the pandemic, this procedure has become entirely written, with no visits in the field. It is high time to recall that acceptance of new provisions should be actively pursued, and that the status quo is not an acceptable option for most states. This is also in the spirit of the reform process. For this reason, in addition to reporting on non-accepted provisions, meetings with the authorities and other stakeholders will resume in order to identify or even create opportunities for accepting further provisions. Importantly, and in line with decisions of the Deputies, this process will now also focus on States Parties bound by the 1961 Charter, with the aim not only of increasing the number of accepted provisions but also of them ratifying the Revised Charter. There again, the key to progress is through intensified dialogue.

While the reform package adopted this year is to be hailed, efforts to further assert social rights and ensure better implementation should not slacken, quite the contrary. The current context shows that this is no time for complacency. Allow me to say a few words on some interesting leads for further reflection amongst the topics raised within GT-CHARTÉ.

While there seems to be some hesitation for steps that require amendments to the treaties, I strongly believe that we cannot exclude some of these questions too hastily as they are closely linked to the effectiveness, and dare I say the credibility, of the system.

Firstly, while perhaps a longer-term objective, the addition of new rights should be given proper consideration in order to take full account of the evolving social context and expectations of the public, such as with the right to a healthy environment and rights related to atypical work. Such a reform process would require a body similar to CHARTÉ-REL, which involved States representatives and other relevant stakeholders in the review which led to the Revised Charter. It would then also be worth revisiting the personal scope of the Charter. If we think that social rights are human rights, and on an equal footing with civil and political rights, we need to do away with the reciprocity of the personal scope, something which is alien to a human rights perspective which assigns human rights to people regardless of their nationality.

While acknowledging that the immediate context might not be conducive to embarking on treaty amending work, one has to project oneself into the future and already prepare for the issues that will prove crucial to reinforce the Charter system and ensure its continued relevance.

A point that got more traction among delegations is the promotion of the acceptance of the collective complaints procedure. This is without doubt an important asset of the Charter system, deserving acceptance by more States. The procedure adds a democratic dimension by giving the initiative to the social partners in a genuinely adversarial procedure, that gives the States every opportunity to make their case and explain the situation as they see it. However, serious thought must be given as to what new measures can be taken to attract further acceptance of the collective complaints mechanism, as this is by no means a new endeavour. Another aspect that would deserve attention is the recognition of the right of national non-governmental organisations (NGOs) to lodge complaints by default for all States

Parties concerned, rather than needing special declarations from States as is currently the case.

Finally, let me stress that, for the reform to be truly successful, the unavoidable question of adequate resources to match the needs must be addressed in earnest. Now more than ever, this is crucial in order to maintain the quality, and therefore relevance, of the Charter system.

I have painted in broad brushstrokes aspects that I think should be taken up in priority in future steps of the ongoing reform process. Let me now quickly look back on what has been achieved since I was last before you.

In March, the 2021 conclusions on health, social security and social protection were published. Marked by the Covid-19 pandemic, this was reflected in several targeted questions addressed to States Parties following on the European Committee of Social Rights 2021 statement on Covid-19 and social rights. The issues tackled ranged from health and safety at work to the protection of health and measures to reduce poverty and social exclusion. The European Committee of Social Rights seized this opportunity to make statements of interpretation to clarify the way Charter rights should be interpreted in the light of today's circumstances, including on: Digital disconnect (or a right to disconnect) and the electronic monitoring of workers (Article 3§2); the social coverage for platform workers (Article 12§3); and age discrimination not only in employment but also in accessing services (Article 23).

The adoption by the Committee of Ministers of 19 recommendations on the pay gap between women and men following conclusions 2020 on Article 20(c) is a welcome development, very much in line with the general thrust of the reform that calls for stronger follow-up to conclusions from the Governmental Committee and Committee of Ministers as a basis for further dialogue between Charter organs and States Parties in order to improve the implementation of Charter rights.

Since our last exchange of views in October 2021, 13 new collective complaints have been lodged, raising issues pertaining, *inter alia*, to housing, protection of health during the pandemic, the legal and judicial protection of elderly persons, and collective bargaining, to name a few. During the same period, the European Committee of Social Rights has adopted a total of 14 decisions. The principled approach now taken by the Committee of Ministers in recommendations on complaints decisions is to be commended. At the same time, coming back to what I alluded earlier about adequate means, the European Committee of Social Rights with the resources currently at its disposal has difficulties in keeping up with the number of complaints being lodged and the considerable backlog of previous years has increased.

As evidence to the good dialogue already taking place with States Parties, a meeting with the government agents in the complaints procedure with the Bureau of the European Committee of Social Rights will take place tomorrow, on 4 November.

Let me conclude on this positive note, which is a good reminder that reinforced dialogue between Charter organs and States Parties, which is at the heart of the reform on operational measures that will enter into force next year, is vital to the effective implementation of

Charter rights. Dialogue with the ultimate aim to realise the implementation of social rights to the benefit of all.

Thank you very much.