



Committee on Social Affairs, Health and Sustainable Development

Sub-Committee on the European Social Charter

Hearing on “Overcoming the socio-economic crisis sparked by the Covid-19 pandemic”

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Session 1: The role of the State in securing social and economic rights across Europe: focus on the rights to work, social protection and equal opportunities

Intervention by

Giuseppe PALMISANO,

President of the European Committee of Social Rights (ECSR)

First of all, I would like to thank you for inviting me to this hearing, giving me the opportunity to offer a contribution to your important work on the European Social Charter (ESC) and the protection of social rights in Europe.

As you all know, in the last decade social justice and social rights – including the **right to work, social protection, and the right to equal opportunities** – are under big stress, mostly as a result of the crises that Europe has experienced in the last years. And I am referring to the economic crisis, of course, but also to the migration crisis, and now to the pandemic crisis.

Since 2008, the economic crisis had an extremely negative impact on workers, families and the most vulnerable. The measures adopted by States and EU institutions to cope with such crisis, in particular the so-called austerity measures, also disproportionately affected those who are most vulnerable – the poor, the elderly, the sick.

As for the refugee and migrant crisis, millions of migrants and refugees arrived in Europe in the last years, seeking protection from war, terror, torture, persecution and poverty, and creating division in Europe, namely in the EU and EU member States, over how best to deal with resettling people. Guaranteeing hospitality to these people, respect for their dignity and fundamental rights, prompt and proper social integration in host countries is a major challenge for the European civilization and European democracies, one that cannot be missed.

Such crises revealed and are still revealing the gaps in States’ legal arsenal for the protection of social rights.

Traditional and consolidated high standards in the protection of social rights, and some basic features of the welfare state – which are essential for the enjoyment of such rights, and of which European States should be proud – have been indeed put in danger.

Increasing poverty and unemployment rate – in particular youth unemployment –; social and economic inequalities; lack or shortcomings in migrant integration; job insecurity for many categories of employees; regressive changes in social security schemes and benefits; cuts in public healthcare systems and increase in the cost of healthcare: these are – and they already were, before Covid-19 - among the most worrying signals about the state of health of social rights in Europe.

And now we have a pandemic crisis to deal with.

As I had the opportunity to say on other occasions, **the Covid-19 crisis is painfully revealing that pandemic-preparedness is all about social rights**. I did not mean it as a rhetorical statement, far from it.

Our unprepared and unprotected frontline workers, our defenceless older people in care homes, our children stranded for months without schooling, many workers losing their job, and many others are, to a large extent, the result of decisions that have been taken (or not taken) much earlier, sometimes years, sometimes more.

In fact, just to make a few important examples, an effective and successful pandemic-readiness requires:

- universal health care and well-equipped and resourced, resilient public health services,
- ensuring health and safety at work,
- arrangements to ensure protection of the rights of older people,
- employment security,
- a minimum income and adequate guarantee of the right to housing,
- adequately resourced and solid public education and protection of children from all forms of violence, abuse and exploitation.

Fulfilling all these requirements, which are inherent in the European Social Charter, is clearly crucial when confronted with a crisis such as the present one. But all this cannot be improvised, nor easily realised in times of serious and dramatic emergency. Compliance with such requirements should rather be a permanent feature, the default setting. Fulfilling them is necessary both in order to deal with the enduring effects of the crisis and the persistence of the coronavirus, and also to respond to the crises that the future holds in store.

So, if you ask me to speak about the role of the State in securing social and economic rights across Europe, with a focus on the rights to work, social protection and equal opportunities, I would just say that such role already emerges from the provisions of the Social Charter, as well as from the conclusions, decisions and findings of the European Committee of Social Rights. They are there, an impeachment of the inaction and the lack of preparedness, fundamental rights recipes that could have saved – and still can save – lives, that could spare suffering and preserve human dignity, for the current crisis and for the future.

Having said this, and in view of our times constraints, I shall now confine myself to only a few examples, concerning in particular the right to work, the right to social assistance and the right to equal treatment of women and men in matters of employment and occupation.

According to **Article 1§1 of the Charter**, “with a view to ensuring the effective exercise of the right to work, States Parties undertake to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible”.

So, in this case, the role of the State is to pursue a policy of full employment. This means that the State:

- must adopt and follow an economic policy which is conducive to creating and preserving jobs;
- and must take adequate measures to assist those who become unemployed in finding and/or qualifying for a job.

Of course, this is an obligation of conduct rather than of result, which means that failure to achieve full employment, not even the existence of high rate of unemployment will not as such be regarded as being a breach of the Charter. However, the efforts made by the State to reach the goal of full employment must be genuine and adequate, in the light - of course - of the economic situation and the level of unemployment.

This means that there are indeed some situations where the State does not properly play its role in securing the right to work under Article 1§1 of the Charter. I refer, for example, to cases:

- where there is an absence, on the part of the governmental authorities, both of a declaratory commitment to full employment and of any concerted employment policy;
- or, where unemployment, and notably youth unemployment and long-term unemployment, is extremely high and the measures taken are clearly insufficient (as indicated, inter alia, by a low number of participants in active measures and a low level of expenditure);
- or, where there are negative developments in the employment policy, both in terms of the extent of activation of unemployed persons and the level of overall expenditure, at a time when unemployment, despite economic growth, is increasing sharply;
- or situations where too few job seekers have access to training;
- or where public expenditure on active labour market policies amounts to a very low % of GDP.

I move now to the right to social assistance. According to **Article 13§1** of the Charter, “States Parties undertake to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, be granted adequate assistance”.

Article 13§1 does not indicate what form social assistance should take. It may therefore take the form of benefits in cash or in kind. In this respect, although a State is not obliged to introduce an income guarantee system, the European Committee of Social Rights has indeed observed that most Contracting Parties have established one. However, the situation of all States Parties which have not introduced a general income guarantee system has been judged by the Committee not to conform with Article 13§1, on the ground that their systems of assistance have not proved to be able to cover everyone in need.

What is important is that social assistance guaranteed to persons in need must be “appropriate”, i.e. make it possible to live a decent life and to cover the individual’s basic needs. In order to assess the level of assistance, basic benefits, additional benefits and the poverty threshold in the country are taken into account, which is set at 50% of the median equivalised disposable income, and

calculated on the basis of the Eurostat at-risk-of-poverty threshold. In the absence of this indicator, the national poverty threshold is taken into account, i.e. the monetary cost of the household basket containing the minimum quantity of food and non-food items which is necessary for the individual to maintain a decent living standard and be in good health. And assistance is appropriate where the monthly amount of assistance benefits – basic and/or additional – paid to a person in need living alone are not manifestly below the poverty threshold in the above sense.

In addition, the right to assistance may not depend solely on the discretion of the administrative authorities: it must constitute an individual right laid down in law and be supported by an effective right of appeal. The law must lay down objective criteria and phrase them in sufficiently precise terms. So as not to leave the assessment of the state of need and the necessity of assistance entirely in the hands of the competent authority, the law must define the elements taken into account in order to assess the state of need and make the criteria for assessment of that need clear, as well as the procedure for determining whether a person lacks adequate resources, including the methods used to investigate resources and needs.

My last example is the right of women and men to equal pay for equal work or work of equal value, which is enshrined in **Articles 4§3 and 20 of the Revised Social Charter**. In particular, according to Article 20, States are committed to legally recognising that right and to taking appropriate measures to ensure and promote its application.

As you probably know, in December 2019 the ECSR adopted 15 decisions on state compliance with the right to equal pay, following complaints lodged by the international NGO University Women Europe (UWE) against all the 15 States which have accepted the collective complaints procedure.

These decisions identify clear and strong standards in the field of equal pay and, more precisely, they clarify that the role of the State in this field is:

- to recognise the right to equal pay for equal work in their legislation;
- to ensure access to effective remedies for victims of pay discrimination;
- to ensure and guarantee pay transparency and enable pay comparisons;
- to maintain effective equality bodies and relevant institutions in order to ensure equal pay in practice.

Moreover, the right to equal pay under Article 20 of the Charter, implies the obligation to adopt measures to promote it. This obligation has two essential elements: on the one hand, collecting reliable and standardised data to measure and analyse the gender pay gap and, on the other hand, designing effective policies and measures aimed at reducing the gender pay gap on the basis of an analysis of the data collected.

Among other measures that States could adopt to reduce the gender pay gap and which the Committee considers as relevant indicators for assessing compliance with the obligations laid down by the Charter, you may find:

- adoption and implementation of national action plans for employment which effectively ensure equality between women and men, including pay;
- requiring individual undertakings to draw up enterprise or company plans to secure equal pay;
- encouraging employers and workers to deal with equality issues in collective agreements;

- and raising awareness of the equal pay principle among employers, organisations and the public at large, including through the activities of equality bodies.

So, if you consider the three examples I have just made (right to work, right to social assistance and right to equal pay), you may easily find three main different aspects of the role of the State in securing the rights in question, depending on the kind of State activities involved (whether legal activities, operational measures, or general policies).

To be more precise, I refer, first, to the **legal recognition and protection of the right**, or the legal regulation and monitoring of a given field or specified sector, within the national domestic legal order.

The second aspect is the adoption of **concrete, operational measures** (including creation of bodies or procedures) aimed at ensuring the effective enjoyment of the right in question, or at attaining a specific social objective.

And third, **formulation and implementation of general policies** aimed at the attainment of wide social objectives, such as, for example, achieving and maintaining a high and stable level of employment, with a view to the attainment of full employment.

Well, in addressing you, as national parliamentarians, let me say that the way in which the State plays its role in effectively securing the above mentioned rights (namely, right to work, right to social assistance and right to equal pay) largely depends on how seriously parliaments take economic and social rights in their involvement in each of the three kinds of activities I just referred to. I am of course thinking of the **legislative function of Parliaments**, but also of the function of **providing political directions to the Government** and the role of political supervision over Government activities.

In this last regard, I think for example that it could be useful, first, to put in place an **“early warning” procedure in the parliamentary context**, to monitor the compatibility of European and national legislation with the principles of the Social Charter, and second, to organise regular meetings at European level between the competent committees of the different national parliamentary assemblies.

Last, but not least, with a view to reinforcing the protection and fulfilment by States of social rights throughout Europe, let me say that it is very important that the Parliamentary Assembly of the Council of Europe continue supporting the good cause of the European Social Charter within the treaty system of the Council of Europe. This means not only paying attention to compliance by States Parties with their obligations under the Charter and with the decisions and findings of the European Committee of Social Rights, but also – for example – taking initiatives to **promote a wider acceptance of the Charter provisions** by European States, and especially all the Charter core provisions, or to **accept the collective complaints mechanism**, which as you know, has been accepted only by 15 out of the 43 States Parties to the Charter.

This, in my view, would indeed be very important. Thank you!