

EXCHANGE OF VIEWS BETWEEN THE PRESIDENT
OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS
AND THE MINISTERS' DEPUTIES

21 March 2018

*Introductory speech by Professor Giuseppe Palmisano,
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Mr Chairman,
Permanent Representatives,
Secretary General/Deputy Secretary General,

It is my honour and pleasure to address you for the fourth time in my capacity as President of the European Committee of Social Rights. Exchanging views with the Committee of Ministers is of the utmost importance for my Committee and I wish to express my gratitude to you for giving me this opportunity again.

Ladies and gentlemen, as you know in the last decade, the situation of social rights in Europe has become a major political and legal issue; and it is deserving of increased attention; even more – I would say – than the situation concerning other human 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 – are indeed in crisis and under stress.

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, notably with respect to old age benefits; increases in the cost of healthcare: these are among the most worrying signals about the state of health of social rights worldwide and in Europe.

But by consequence they also tell us that reinforced attention must be paid to the need for effectively protecting social rights at the European level, as well as to the need for ensuring access to remedies in case of violation of social rights.

With regard to such needs, which as you know underpin both the so-called Turin Process launched in 2014 by the Secretary General of the Council of Europe, and the more recent EU Pillar of Social Rights, let me recall that the European Social Charter still represents today the most important and widely accepted frame of reference for identifying what are social rights, and what their protection and progressive realization mean and require for European States. And it is also the only living legal instrument providing for a system, at the European level, of monitoring and remedies in case of violation of social rights, which is open to the beneficiaries and social stakeholders of these rights.

Some examples taken from the last year reveal how much the Charter and the Charter system are considered crucial, at various levels, when the protection and promotion of social rights are at stake.

One example is precisely the meaningful reference to the Social Charter made by the EU acts establishing the European Pillar of Social Rights: I refer namely to the explicit reference to the Charter in paragraph 16 of the Preamble to the European Pillar of Social Rights, as solemnly proclaimed by the European Parliament, the Council and the Commission, on 17 November 2017, in Gothenburg.

Another signal is the increasing application of the Charter by national judges and courts in many States, like Spain, Italy, Greece and France, particularly in areas such as labour relationships, workers' rights, and pensions; and I refer not only to ordinary judges but also to Constitutional Courts.

Moreover, I would like to refer to the consideration that, in 2017, the Charter received by the Ukrainian authorities and Constitutional Court, in assessing the implications, and adjusting the interpretation, of new Ukrainian legislation on social security; consideration which also had as a positive outcome the decision of Ukraine to accept Article 12 of the Charter.

Finally, let me point out that in the last year there has been a significant increase in the use of the Charter's collective complaints procedure by national trade unions: in fact, 13 out of the 19 complaints registered in the last 12 months have been lodged by national trade unions.

Within such a framework of growing consideration for the Charter, the European Committee of Social Rights is of course aware of its responsibility in monitoring respect for, interpreting and applying the rights enshrined in the Charter, seeking to do its best with a view to ensuring the widest and most complete possible protection of social rights in all the States Parties to the Charter, by means of its institutional functions and the mechanisms provided for by the Charter. I refer namely to the reporting procedure, the collective complaints procedure, and the procedure on non-accepted provisions.

As for the reporting procedure, in 2017 we examined 33 state reports on rights relating to the thematic group “health, social security and social protection”. Our Conclusions show a number of positive developments in some areas, but unfortunately they reveal serious and widespread problems concerning, for example: insufficient measures to reduce the high number of fatal accidents at the workplace, inadequate level of social security benefits (notably unemployment and old age), inadequate measures taken against poverty and social exclusion.

Regarding the collective complaints procedure, let me point out that 20 new complaints were lodged from the beginning of 2017 up to now, taking the total number of registered complaints to 160. During the last 12 months, the Committee adopted 30 decisions on admissibility, and 8 decisions on the merits. The decisions on the merits related inter alia to such complex and sensitive issues as: workers’ rights affected by the austerity measures in Greece; the situation with respect to social housing standards in Ireland; access to mainstream education for children with intellectual and mental disabilities in Belgium; the situation with respect to reception, accommodation and care of foreign unaccompanied minors, and access for Roma children to education and vocational training in France.

I would like to highlight that the Committee in performing all its tasks, with a substantial help from the Secretariat, always and continuously seeks to improve its working methods and interpretative approaches, taking into particular account the comments and reactions by the governments, and in a continuing dialogue with all the others stakeholders and competent institutions.

In this respect, let me mention the exchange of views and meetings that we had, during the last year, not only with the Governmental Committee and the Government Agents before the Committee, but also with the Parliamentary Assembly, the Conference of the International Non-Governmental Organizations of the Council of Europe, and the President of the European Court of

Human Rights. And I wish also to mention the meeting with the Constitutional Court of Ukraine and the President of the Inter-American Court of Human Rights.

Having said this, I have however to draw your attention on some problems that, notwithstanding the intense commitment of the Committee and the exceptional efforts of our Secretariat, risk jeopardizing the efficiency of the system of the European Social Charter and its capacity to meet the challenge of adequately monitoring State respect for social rights in Europe.

These problems are twofold: on the hand, they concern the scarcity of the human resources dedicated to the Charter system, in proportion to the growing workload of both the Committee and the Secretariat. On the other hand, they relate to the reporting procedure and the way in which it is organized and implemented.

As for the first kind of problems, we are all aware of the fact that the Council of Europe is currently facing serious budgetary restrictions. Such restrictions are inevitably having a negative impact on the number of the temporary and regular members of the Department of the Social Charter, which was already understaffed and overloaded with work, as well as on the organization of the working sessions of the Committee.

Let me say very frankly that, starting from the present year, such a situation will make it impossible for the Committee and the Secretariat to perform their tasks in the same thorough and scrupulous way that they are used to do. I know that the current situation makes it unlikely that additional resources will be allocated to the recruitment or assignment of additional qualified staff to the Department of the Social Charter. But, please, be aware that, without this – or, even worst, if the blatantly unfair cuts to the Charter system which have been proposed as an implication of the cessation of Turkey's major contributor status were approved and applied –, the system of the Charter will no more work efficiently, nor produce the outcomes that it is expected to do according to the Charter.

The principal tool for the protection of social rights at the European level will, by consequence, be seriously weakened and the fundamental normative frame of reference of social rights in Europe will lose visibility and importance. I wonder whether such a possible step backwards would be in line either with the priorities of the Secretary General, who – as you know – made the protection of social rights and the strengthening of the European Social Charter one of the imperatives of his

second term of office, or with the “Turin process”, and with the growing trend of attention to social rights in the policies of many European States as well as in EU policies.

As regards the other kind of problems, let me briefly recall what I already pointed out last year in my exchange of views with the Committee of Ministers.

Considering the way in which it is organized and implemented, the reporting exercise – on the one hand – requires each year an excessive workload on the part of State authorities that have to present detailed reports on policies and practices, legislative and judicial activities, and national social trends, spanning across many different areas, such as work and employment, social security, social assistance, health care, housing, family protection, and so on. And, on the other hand, the reporting procedure entrusts the European Committee of Social Rights with the impossible task of examining carefully all the reports and to assess the situation in all member States relating to such wide and different areas, in the light of the Social Charter’s provisions.

This way of proceeding cannot lead to a satisfactory outcome: in particular, it is not suited to timely identifying the real and most serious problems concerning the implementation of the Charter in each State and, by consequence, it is not sufficiently useful in helping European States to actually improve themselves in their respect for social rights.

In addition, let me say that the changes to the reporting system that were adopted by the Committee of Ministers on April 2014, also with the objective of simplifying the mechanism for those States Parties to the Charter that have accepted the collective complaints procedure, have not proved to reach the goal; on the contrary, they have aggravated the problems of the reporting exercise. As you know, following these changes, the system now comprises two new types of reports, in addition to the “ordinary” reports on a thematic group of Charter provisions. I refer, first, to the reports on follow-up to collective complaints for States bound by the collective complaints procedure, which do not have to submit in the same year the “ordinary” report on the thematic group of provisions under consideration. And the second new type of additional reports relate to the conclusions of non-conformity for repeated lack of information adopted by the Committee the preceding year.

I see therefore an urgent and crucial need to rethink and really simplify the reporting exercise, in order to make it more efficient, more meaningful and more useful for an effective protection of the rights enshrined in the Charter.

In this respect, I would say that the budgetary restrictions, which I referred to before, could and should represent not a challenge, but an opportunity to reorganize and improve the reporting procedure, and to ease its not entirely useful burden on both state authorities and the European Committee of Social Rights.

Let me share with you some initiatives and proposals about this.

First of all, I can inform you that, starting from the current year, the Committee in agreement with the Secretariat has decided to change the method for drafting its conclusions. We will no more elaborate long, analytical, text examining and discussing all the data and information provided for in each state report, but we will focus only on the most problematic issues concerning the implementation by the State of the Charter provision under examination. This will lead us to the production of much shorter texts for each conclusion, with the advantage of better highlighting, for each examined State, the problems which deserve priority and careful attention, as well as the positive or negative measures required to bring the national situation in conformity with the Charter.

Then, speaking on the basis of my experience and reflections on the problem as President of the Committee, I would like to submit to your attention 4 very pragmatic proposals, aimed at simplifying the reporting obligations and burden for the States Parties to the Charter.

- First, when the Committee in its annual conclusions finds that the situation in a given State is in full conformity with a provision of the Charter, in the next cycle of supervision this State should be exempted, in my view, to report on the same provision; and in the following cycles it should just inform the Committee about possible relevant changes regarding its legislation or practice. In those cases where the Committee finds that, pending receipt of some kind of information, the situation seems to be in conformity with the Charter, in the next cycle of supervision the State should provide only the information requested, without submitting a complete report concerning the Charter provision in question.

- Second, the new reporting procedure, established by the Committee of Ministers in 2014, concerning the cases where the European Committee of Social Rights adopts conclusions of non-conformity for lack of information, in my view, should be abolished. This means that the Committee should no longer adopt “non-conformity” conclusions on the ground that it has not been established that the situation is in conformity with the Charter, and thus that States should no longer submit additional reports as a follow-up to this type of conclusions.

- Third, for those States Parties to the Charter that have accepted the collective complaints procedure, the reporting exercise should be further simplified. In my view, they should only submit every 4 years a synthetic and global report on the implementation of all the provisions of the Charter as a whole; and not – as the other States do – specific, analytical, reports on each of the thematic group of provisions of the Charter.

- In addition, and this is my fourth proposal, the obligation of such States – I mean, the States Parties to the collective complaints procedure – to submit every two years reports on follow-up to collective complaints, should be limited to only two cycles, and not ad infinitum as it is now. After this period of two cycles, should the Committee still find that the situation has not been brought into conformity with Charter, the case should be referred to the Committee of Ministers, which should adopt a final resolution or recommendation addressed to the State, thus closing once and for all the procedure.

I am convinced that these changes, that I have briefly outlined, could simplify considerably the reporting exercise and the bureaucratic reporting burden for the States Parties to the Charter, while at the same time improving the efficacy of the reporting procedure, in terms of impact of the Committee’s conclusions and findings.

Whatever may be the value and interest for you of my proposals, it is really necessary and urgent that we rethink and reorganize the reporting procedure, in order to ease the reporting burden on State authorities, but also to alleviate the workload for the Committee, making it feasible in light of the limited staff and resources of the Secretariat, the limited number of the Committee members, and the budget restraints that the Council of Europe is currently facing. And this, of course, seeking also to improve the efficacy and impact of the procedure.

But apart from the possible future improvements in the reporting procedure, let me point out once again that the most important step forward in the direction of improving and strengthening the Charter's system and the protection of social rights at the European level, would be enlarging the States' participation to the collective complaints procedure.

In fact, as you know, this procedure presents many advantages in comparison to the reporting exercise. In particular, and primarily, it has the advantage of putting the normative prescriptions of the Charter to the test of specific, concrete situations; it is able to identify – by way of a precise, objective assessment and a quasi-judicial procedure – what a State actually has to do, or must avoid to do, or has to prevent in order to guarantee, in specific situations, the social rights established by the Charter.

In addition, in comparison to the reporting procedure, it is also much more convenient for the State authorities in terms of domestic overall inter-ministerial preparatory workload.

Furthermore, the acceptance of the collective complaints procedure by a large majority, or all, the States Parties to the Charter would be of extremely important value from the standpoint of the equality of treatment of States and the uniform standard of monitoring of social rights in Europe. From such a standpoint, it is in fact hardly acceptable that only 15 States are concerned by this keen mechanism for monitoring State respect for social rights, in addition to the reporting procedure, and that national and European trade unions and international NGOs can trigger such a mechanism with respect to situations or cases concerning only certain States and not the others.

For all these reasons, and to conclude my intervention, I really hope that in the near future the Committee of Ministers could take concrete and effective initiatives to achieve the goal not only of simplifying and better reorganizing the reporting procedure, but also of considerably enlarging participation of States in the collective complaints mechanism.

All this would indeed be a substantial contribution to the Turin process, and would also be consistent with the position taken by the Committee of Ministers itself in 2011, on the occasion of the 50th anniversary of the European Social Charter.

Chairman, Ladies and Gentlemen, thank you very much for your attention.