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High-level Conference “Environmental Protection and Human Rights”

Organised under the aegis of the Georgian Presidency
of the Committee of Ministers of the Council of Europe

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Intervention by Giuseppe Palmisano,

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First of all, let me express my gratitude to the Georgian Presidency of the Committee of Ministers for organising this important high-level Conference on environmental protection and human rights, and for inviting me, in my capacity as President of the European Committee of Social Rights, to propose some reflections on this topic.

From a social rights perspective, that is from a “human rights in everyday life” perspective, I would say that the answer to the question raised in the title of this session of the Conference — “Environmental protection and protection of human rights: contradictory or complementary?” — is relatively simple, and even quite obvious. Environmental protection and protection of social rights are indeed complementary, and closely — mutually — linked to each other.

Such a complementarity and mutual relationship emerges clearly when considering, first, that the deterioration of the environment has an undeniable impact on the enjoyment of many social rights. Neglect by States of environmental issues therefore amounts to not complying with their obligation to fulfil such rights. Second, that not taking measures to avoid or reduce deterioration of the environment may amount, in itself, to infringing some specific social rights (such as the right to protection of health, or the right to adequate housing). By contrast, adequately respecting social rights obligations may indeed contribute to improving environmental protection by States.

The European Committee of Social Rights is well aware of this and, in its activity of monitoring and interpreting the European Social Charter, it has made an important contribution to clarifying and putting into practice such a complementarity and mutual relationship, 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.

Let me provide you with some examples.

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 health systems must respond appropriately to avoidable health risks, i.e. risks that can be controlled by human action.

Since the beginning of this Century, the Committee 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 should be designed to remove the causes of ill health resulting from environmental threats such as pollution.¹

For example, the Committee found a violation of State's obligations with respect to the right to protection of health under the Charter in a situation where the State had not managed "to strike a reasonable balance between the interests of persons living in the lignite mining areas and the general interest"² or when the authorities had failed to take appropriate measures to remove, as far as possible, the causes of ill-health and to prevent, as far as possible, diseases in view of pollution of a river due to discharge of industrial waste³. Other cases concerned the failure of the authorities to take appropriate measures to address the environmental hazards and unhealthy living conditions faced by Roma communities⁴ or the lack of protective measures to guarantee clean water in Romani neighbourhoods, as well as inadequacy of measures to ensure public health standards in housing in such neighbourhoods.⁵

Further, according to the Committee's conclusions, under Article 11, States are under an obligation to protect their population against nuclear hazards and against the consequences of nuclear accidents⁶ as well as against health risks related to asbestos⁷. And a situation where availability of drinking water represents a problem for a significant proportion of the population is considered to be in breach of Article 11 of the Charter.⁸

As regards States' obligations related to tackling pollution or the protection of the environment more generally, which are clearly obligations of progressive realisation, the Committee clarified

¹ Conclusions XV-2 (2001), Poland, Article 11§1; and Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, § 202

² Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, § 221

³ International Federation of Human Rights Leagues (FIDH) v. Greece, Complaint No. 72/2011, decision on the merits of 23 January 2013, §§ 153-154 and §§159-160

⁴ European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 46/2007, decision on the merits of 3 December 2008, §§ 49-51, violation of Article 11

⁵ European Roma and Travellers Forum (ERTF) v. Czech Republic, Complaint No. 104/2014, decision on the merits of 17 May 2016, §§ 124 and 127, violation of Article 11 and 16

⁶ Conclusions XV-2 (2001), France

⁷ Conclusions XVII-2 (2005), Portugal; Conclusions XVII (2005), Latvia

⁸ Conclusions 2017, Georgia, Article 11§3: "The Committee concludes that the situation in Georgia is not in conformity with Article 11§3 of the Charter on the ground that the measures taken to ensure access to safe drinking water in rural areas have been insufficient."

that States must nevertheless strive to attain this objective within a reasonable time, by showing measurable progress and making best possible use of the resources at their disposal.⁹

More specifically, in order to combat air pollution States are required to implement an appropriate strategy which should include the following measures: develop and regularly update sufficiently comprehensive environmental legislation and regulations¹⁰; take specific steps to prevent air pollution at local level, such as modifying equipment, introducing threshold values for emissions and measuring air quality,¹¹ and, on a global scale, help or contribute to efforts towards reducing pollution¹²; ensure that environmental standards and rules are properly applied through appropriate supervisory machinery¹³; inform and educate the public, including pupils and students at school, about both general and local environmental problems.¹⁴

The European Committee of Social Rights has also stressed that when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, the State must take precautionary measures consistent with the high level of protection provided for in Article 11 aimed at preventing those potentially dangerous effects.¹⁵

In light of the above, I can say that something positive has indeed 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. Of course, much has still to be done, and should be done, especially if we consider the increasingly worrying environmental situation.

In fact, as our natural habitat is depleted and climate change advances as a result of poor governance, neglect and inaction, many other human social rights protected by the European Social Charter will be affected: the right to work and to earn a decent living, the right to safe and healthy working conditions, the rights of children, women, the family and older persons. Social protection may also be compromised, or even the right to protection against poverty and exclusion and the right to housing. We are already witnessing the dramatic consequences of natural disasters partly caused by climate change on the right to adequate housing and other fundamental social rights.

Climate change 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. Philip Alston, the 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.

⁹ Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, § 204

¹⁰ Conclusions XV-2 (2001), Addendum, Slovak Republic

¹¹ Conclusions 2005, Republic of Moldova, Article 11§3

¹² Conclusions XV-2 (2001), Italy, Article 11§3

¹³ Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §§ 203, 209, 210 and 215

¹⁴ Conclusions 2005, Republic of Moldova, Article 11§2

¹⁵ International Federation of Human Rights Leagues (FIDH) v. Greece, Complaint No. 72/2011, decision on the merits of 23 January 2013, §§ 150-152

So, what is the way forward? What can realistically be done by the Council of Europe to improve the protection of the environment by means of the protection of social rights?

From a European Social Charter and “human rights in everyday life” perspective, I would advance the following.

The monitoring arrangements under the Charter include a reporting system that is evolving from formal detailed reporting on all provisions to a targeted and strategic choice of issues that states are called upon to report on and that the European Committee of Social Rights will examine. This could —and in my opinion should, even must— in the future include issues related to the environment and social human rights.

Monitoring arrangements also include, as you know, collective complaints, a mechanism that allows social partners —trade unions and employers organisations, as well as civil society organisations— to take the initiative in raising issues about compliance by states of their social rights commitments. I hope that in the near future, collective complaints will seek to articulate and plead issues related to the environment and social human rights.

On this, I have to recall that only 15 countries have accepted the collective complaints procedures, but the 15 have recently encouraged others to enrol themselves in the collective complaints system that was designed to assist states to enhance implementation of social rights and assist them in their endeavours to comply with their social rights commitments, including the right to a healthy environment.

I would also add that, when conclusions under the reporting procedure and decisions concerning collective complaints in respect of social rights related to the environment start reaching a follow-up stage, involving the Governmental Committee and the Committee of Ministers of the Council of Europe, it is crucial that they live up to their responsibilities by recommending that the situation be brought into conformity with the European Social Charter and the findings of the European Committee of Social Rights.

And another step that the Committee of Ministers could take —picking the gauntlet thrown by its Georgian Chairmanship— in order to respond to the challenge that environmental issues pose to human rights, is to make arrangements for drafting a new protocol to the European Social Charter to incorporate (as has already been done in the Americas) environmental issues into human rights protection.

In this respect, I really believe that the European Social Charter would be the most appropriate legal framework to do this, more so than the European Convention on Human Rights, which, as we all know, focuses on civil and political rights with an “individual protection” approach.

To conclude, Mr President, ladies and gentlemen, supporting the human rights dimension of environmental issues and climate change within the European Social Charter framework would be the right thing to do and it would be applauded by all sensible stakeholders in Europe and worldwide.