Exchange of views between President of the European Committee of Social Rights, Aoife Nolan, and the Committee of Ministers Delegates
Council of Europe

18 October 2023

Dear President,

Dear Ambassadors,

Dear colleagues.

I am delighted to have this opportunity to speak to you today.

As you will know, we are at a crucial juncture in terms of the development of the European Social Charter system. It is a crucial time for the European Social Charter, the social constitution of Europe. It is also a crucial time for social rights in Europe as we live through the cost of living, climate, pandemic and Ukraine-related polycrisis that stalks our continent.

Responding to this, our Committee is working at full tilt – not just in terms of our collective complaints work and the final year of the old statutory reporting process but also in terms of implementing the reforms based on the CM's decisions of last September. We have continued to develop our work in relation to the key challenges facing Europe – including the climate emergency, the role of digital technology and AI, increased inequality, immigration and of course the conflict in Ukraine. We have been greatly energised by the focus on social rights in the Reykjavik outcome document – to which I will return later – and the increasing attention paid to social rights within the COE as a result of the summit and, of course, the reform efforts on the part of GT-Charte and the CM. All of these reflect commendable and very welcome state commitment to social rights.

I want to begin by providing you with a sense of what we have done in the last year.

Let me start with our reporting system work.

Last year – 2022 – as part of the reporting procedure, the Committee examined the national reports submitted by 33 States Parties on the provisions of the Charter relating to the thematic group "Labour rights".

In addition to detailed consideration of the 33 national reports, the Committee examined the submissions of trade unions, national human rights institutions and non-governmental organisations.

The application of the reporting procedure in 2022 led to the adoption of a total of 611 conclusions: 255 conclusions of conformity and 245 conclusions of non-conformity. In 111 cases the Committee was unable to assess the situation due to lack of information ("deferrals"). We also adopted three Statements of interpretation – namely, authoritative guidance for states on specific elements of the Charter. These pieces of guidance deliberately engaged with pressing issues faced by the social rights-holders in Europe, including online harassment at work and reasonable periods of notice for termination of employment.

It is important to note that our work in terms of reporting has increased hugely over the years. In 1998, there were 23 States Parties, mostly to the 1961 Charter, having accepted a grand total of **1,400** Charter provisions that had to be examined by the ECSR. In 2023, there are 42 States Parties, mostly to the revised Charter which contains many more provisions. The grand total of accepted provisions that must be examined now stands at around **3,160**.

While the reformed statutory reporting process will help us to adopt a more focused approach, the fact remains that we are responsible for monitoring over double the number of provisions that we had 25 years ago. And I would remind the CM that we have not had a meaningful increase in committee membership over that time – we have been 15 since 2005. And during

certain periods we have had to function with a reduced number, as has been the case now for almost two years, due to having only 14 members for nearly all of 2022 and 2023.

Let me now turn to our other key monitoring process: the collective complaints system.

It remains very unfortunate that only 16 states are parties to the Additional Protocol providing for the complaints system. It is deeply worrying from the perspective of the system that so many states remain outside the complaints system. This situation runs directly contrary to the spirit of the Charter. It is important to stress that not signing up to the complaints system does not mean that they are unaffected by it: the standards developed in the context of the complaints system feed directly into our assessment of states as part of our reporting process. Where states participate in the complaints mechanism, they have an important opportunity to shape those standards in a way that is not available to states who do not participate. There is also of course - rightly - a very significantly reduced reporting burden for the states who are parties to the complaints system. And indeed should all states parties to the Charter accept the collective complaints procedure, the reporting dimension could be reduced further and considerably.

Our Committee regards our role and that of the collective complaints system as supportive of state efforts to give effect to social rights. The collective complaints mechanism is adversarial – as it should be – but it is not punitive. With our decisions, we provide guidance to states on the parameters of social rights-compliant law and policy. While states will not always be found in conformity, they will come away with a sense of how they can better give effect to the social rights that they have already made clear they are committed to. We know that some states are moving towards accepting the complaints procedure and we would welcome states considering doing so to be in contact with us about any concerns they might have about the process.

In terms of our collective complaints work, in 2022, we adopted 10 decisions on admissibility and 14 on merits. So far in 2023, we have adopted 10 on admissibility and 9 merits decisions

and will have many more by the end of the year. These have ranged in topic from the nature, purpose and limits of 'internships' for the purpose of the Charter, to compensation and remedies for unlawful dismissal, to disabled people's rights during COVID, to forced evictions of Roma.

However, while decisions are worked on and advanced constantly, this is against a large and increasing backlog. To give some background: 39 complaints were registered during the years 1998 to 2006, rising to 80 in the period 2007 to 2015, and 104 between 2016 and 2023. In parallel, the ECSR has enriched the while enhancing the adversarial dimension by offering respondent Governments the opportunity to reply at every stage of the process and ensuring that they have the "last word". It is strongly regrettable, however that while we were once celebrated for the speed of our decision-making compared to other human rights complaints bodies, this is no longer the case. While the average duration of the admissibility stage stands at 7.4 months, the average time for the ECSR to reach a merits decision remains around 40 months, which is too long. States parties and the people they serve stand to lose when the procedure is unable to provide results rapidly.

We are hugely aware of the need for efficiency and we seek to maximise it. Let's take the complaints mechanism as an example. Here, the last few years have seen us adopt a series of measures focused on enhancing our efficiency, ranging from deploying new software to changes to our rules and working methods. We have streamlined length of deadlines in complaints, developed the possibility of joining complaints, and developed strict rules around closing written procedure. In the reporting procedure the introduction of targeted questions has been a major efficiency gain. But here the much increased engagement by civil society in recent years has increased the workload considerably: we now process many times more "third-party" comments than we did just ten years ago. This increase in workload and stakeholder

engagement is clear indicator of success but we do not currently have the resources we need to build on this success.

Let me now turn to the CM reform decisions. We are currently pushing forward with the changes envisaged by the CM. 2024 will see us engage with a huge challenge faced by the 700 million persons of the COE: namely, the cost of living crisis. We are using the opportunity afforded by the new system of ad hoc reports to address this urgent, transversal and Pan-European issue. An ad hoc report does not, of course, involve legal assessment of state performance in terms of the Charter. Rather, we will be using this report to provide guidance to states and others about how the Charter applies to the cost-of-living crisis, the standards the Committee will use when seeking to establish whether the situation in a specific State satisfies the requirements of the Charter in this context, as well as examples of best practice.

We have also pushed ahead with the enhanced dialogue part of the reforms, which we particularly welcome. We are keen to deepen our engagements with states and other stakeholders. So far we have held two such dialogues – one with Ukraine, one with Finland and we have a number of others planned. I should issue a note of caution here, however – and this is, again, to do with resources. The reforms have increased our functions and, as a result, the resources needed to carry out those functions effectively. If there is not an increase in resources commensurate with the requirements of these functions, we cannot give proper effect to them. Ultimately, we are mandated by treaty to do the collective complaints and reporting work. Where resources are insufficient, we will need to prioritise these activities. There is a real risk that a failure to finance reform-related activities adequately will serve to undermine the vision of the CM, particularly when it comes to elements such as enhancing dialogue which are not treaty-mandated. Let me be clear: this is not a question of Committee will − we are fully committed to giving effect to all aspects of the reform. Rather, it is a question of capacity.

We have now at a point where it is my considered opinion that the balance (or rather the imbalance) between workload and available resources for our two key monitoring processes has reached a level at which the quality of the ECSR's monitoring is endangered. This is a profound threat to the effectiveness of our monitoring work and our ability to do justice to our mandate. The Internal Oversight evaluation report of the Council of Europe monitoring bodies stressed that if the gap between resources available and the needs is too significant , this will affect the quality of the analysis delivered by monitoring mechanisms and the quality of their outputs. The report went on to highlight the negative impact that this could have on the implementation of those outputs, with the risk that parties lose interest in the monitoring mechanisms concerned. It would be irresponsible of me not to flag that resources issues mean we risk fast approaching this point with our monitoring work and that the CM reforms of September 2022 will not prevent this from happening, certainly in the first few years of the new system.

I will finish by speaking again about Reykjavik which was such a significant and inspiring moment in COE history. You will all know that the outcome document states that: "Social justice is crucial for democratic stability and security and in this regard COE STATES reaffirm our full commitment to the protection and implementation of social rights as guaranteed by the European Social Charter system." In that document, states committed to considering the organisation of a High-Level Conference on the Charter, "as a step to take further commitments under the Charter where possible." The Committee is delighted that Lithuania is considering hosting the conference and I thank the ambassador and permanent representation for all their work around this. I also want to stress that the timing of such a conference is vital: if it goes beyond the end of 2024, we risk losing the excellent momentum and state support that has emerged from the reform process.

The last year has provided us with excellent opportunities to engage with and collaborate with states and we look forward greatly to advancing this work in future.

Thank you and I welcome questions.