



CDDH-SOC(2018)08

20/04/2018

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

DRAFTING GROUP ON SOCIAL RIGHTS
(CDDH-SOC)

**Preliminary draft overview
over the possible contents of the “second report”
presenting proposals with a view to improving the implementation of social rights**

Introduction

1. This document contains an overview drawn up by the Secretariat of different proposals made about the possible contents of the “second report” to be drafted by the CDDH-SOC for the CDDH, namely, a report presenting proposals with a view to improving the implementation of social rights and to facilitate the relationship between the Council of Europe instruments with other instruments for the protection of social rights.
2. This “second report” is an answer to the mandate the CDDH received from the Committee of Ministers. It will be discussed in depth in 2019.
3. At its meeting in May 2018, the CDDH-SOC is invited to exchange views and give guidance to the Secretariat concerning the structure and contents of the “second report”.

PRELIMINARY DRAFT OVERVIEW OVER THE POSSIBLE CONTENTS OF THE “SECOND REPORT” PRESENTING PROPOSALS WITH A VIEW TO IMPROVING THE IMPLEMENTATION OF SOCIAL RIGHTS

1. At its 1300th meeting (21–23 November 2017), the Committee of Ministers adopted the CDDH's terms of reference for the biennium 2018–2019. In this context it charged the CDDH with the following tasks in the field of social rights:

“On the basis of the analysis of the legal framework of the Council of Europe for the protection of social rights in Europe, identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights (deadline: 31 December 2019).”¹

2. In accordance with this mandate, an Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe² has been drafted and is submitted to the Drafting Group on Social Rights (CDDH-SOC) for its meeting on 2–4 May 2018. This is a "first report" aimed at giving a factual overview over the legal framework of the Council of Europe for the protection of social rights.

3. Furthermore, good practices on the implementation of social rights at national level have been described by the Member States in reply to a questionnaire prepared by the CDDH-SOC³. These practices have been summarised and analysed by the Secretariat with a view to their discussion at the May meeting of the CDDH-SOC.⁴

4. It is on the basis of the Analysis and of the aforementioned good practices that the CDDH is called upon to submit possible proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights. These proposals will be addressed in a "second report".

5. With a view to this "second report", the present document draws up a list (categorised by concerned actors) of proposals aimed at improving the implementation of social rights (I). The document contains also proposals aimed at facilitating the relationship with other social rights instruments (II). These various proposals emanate, in particular, from the draft report prepared by Ms C. Gallant for the first meeting of the CDDH-SOC as well as from the work undertaken in the context of the “Turin process”. The list of proposals appearing in the present document does not intend to be exhaustive; it is rather to be understood as a summary of the proposals which have been made in the aforementioned contexts. This list is aimed at facilitating the first exchange of views on the structure and contents of the "second report" to be held at the CDDH-SOC May meeting.

¹ Document [CM\(2017\)131-addfinal](#).

² Document [CDDH-SOC\(2018\)04](#).

³ See for the questionnaire document [CDDH-SOC\(2018\)02](#) and for the replies to the questionnaire related to the good practices on the implementation of social rights at national level document [CDDH-SOC\(2017\)04](#).

⁴ See for a summary of the replies to the questionnaire document CDDH-SOC(2018)07 and for a short analysis of the replies to the questionnaire document CDDH-SOC(2018)06.

I. PROPOSALS AIMED AT IMPROVING THE IMPLEMENTATION OF SOCIAL RIGHTS CONCERNING DIFFERENT ACTORS

1. Proposals concerning the Council of Europe Member States

In accordance with the principle of subsidiarity, under which the Council of Europe Member States have the primary responsibility to safeguard the human rights laid down in Council of Europe instruments at the national level, the Member States could be encouraged to

- ratify the Revised Charter or all provisions thereof;
- ratify the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (or accept the procedure pursuant to Article D § 2 of the Revised Charter), a powerful bottom-up tool for the enforcement of social rights at national level;
- ratify the (Turin) Protocol amending the European Social Charter of 21 October 1991 in order to allow for the members of the European Committee of Social Rights (ECSR) to be elected by the Parliamentary Assembly and thereby contribute to strengthening the position, status and composition of the ECSR;
- pending the entry into force of the said Amending Protocol, authorise the Parliamentary Assembly to elect the members of the ECSR or involve the members of the Parliamentary Assembly in the process of the election of the members of the ECSR by the Committee of Ministers;
- remove paragraph 1 of the Appendix to the (revised) Charter which stipulates that the rights embodied in the Charter do not extend to certain foreign nationals, so that the Charter applies to everyone, or, alternatively, to encourage the Member States to extend the scope of the (revised) Charter in terms of the persons protected, as foreseen in paragraph 1 of the Appendix;
- provide sufficient data/information in the proceedings before the ECSR (despite the costs and some difficulties to which this may give rise and with due safeguards for privacy), in order to permit the ECSR to establish (i) whether a concrete situation is or is not in conformity with the Charter and (ii) whether a finding of non-conformity has been remedied by the concerned State or not;⁵
- share good practices concerning the implementation of social rights and innovative approaches in the field of social cohesion, notably on limiting negative impacts of some State restrictive measures on social rights;⁶
- translate the decisions of the ECSR or at least the most important of those decisions for the State concerned into their national languages.

⁵ See also ECSR, *ERRC v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 27; and *ERRC v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 23.

⁶ See, for instance, the examples mentioned in the Commissioner for Human Rights' Human Rights Comment on "[National human rights structures can help mitigate the effects of austerity measures](#)" of 31 May 2012, *inter alia* a study on the situation of people who could not pay their mortgages which had helped the authorities adopt measures to increase the protection of these people from the risk of exclusion and poverty; see also CDDH(2015)R84 Addendum IV, § 41.

Furthermore,

- national courts and national human rights structures should be encouraged to increase their use of the conclusions and decisions of the ECSR and to apply them transnationally, without awaiting a decision or conclusions concerning a comparable situation in their own country.

2. Proposals concerning the European Committee of Social Rights and/or the Department of the European Social Charter

The European Committee of Social Rights (ECSR) and/or the Department of the European Social Charter could be encouraged to

- bear in mind the importance of legal certainty for the Member States as to the scope of their obligations under the Charter;
- ensure, as far as possible, a harmonious interpretation of the provisions of the Charter with those of the Convention;
- participate in simplifying the reporting procedure under the Charter so as to create a less heavy workload both for the States and for the ECSR without reducing the efficiency of the system;
- pursue and extend cooperation activities with the States;
- pursue the dialogue with the other stakeholders and competent institutions, notably the Committee of Ministers, the Parliamentary Assembly, the Governmental Committee of the European Social Charter, the Government Agents before the ECSR, the European Court of Human Rights, the Conference of INGOs, as well as the Court of Justice of the EU, the European Commission, the European Union Agency for Fundamental Rights (FRA), the International Labour Organization (ILO) and the United Nations bodies working in the field of social rights;⁷
- foster the Charter's visibility, for instance, by awareness-raising activities in the Member States, public hearings before the ECSR and press work concerning the conclusions and decisions of the ECSR (subject to the allocation of the necessary resources);
- pursue and widen its training activities disseminating knowledge on the Charter to relevant stakeholders in the Member States, possibly with the help of the CoE-FRA-ENNRHI-EQUINET Collaborative Platform on social and economic rights;
- pursue its training activities disseminating knowledge on the Charter within the Court in seminars for judges and the Registry and/or within the Court's internal training programme. Moreover, short overviews / updates on the decisions of the ECSR in the field of social rights touched upon in the Court's case-law could be provided to the Court's Registry to encourage and facilitate cross-references to the Charter in the Court's judgments;

⁷ See also the [2018 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers' Deputies on 21 March 2018.

- train lawyers seconded from the Court's Registry to the Department of the European Social Charter for one-year periods.

3. Proposals concerning the European Court of Human Rights and/or its Registry

The European Court of Human Rights and/or its Registry could be encouraged to

- ensure, as far as possible, a harmonious interpretation of the provisions of the Convention and those of the Charter;
- make more cross-references to the Charter and to the case-law of the ECSR, as a means of emphasising the complementary nature of the Convention and the Charter and, in certain cases, the existing synergy between both instruments;
- engage in a dialogue and discussion with the European Committee of Social Rights and the Department of the European Social Charter to ensure that its members and staff have a better knowledge of the Charter;
- organise / host training events on the Charter in the context of seminars or of the Court's internal training programme;
- provide short overviews / updates on the Court's case-law in the field of social rights on the Court's website to facilitate knowledge of and references to its case-law.

4. Proposals concerning the Committee of Ministers

The Committee of Ministers could be encouraged to

- extend its involvement in the follow-up to ECSR decisions, in the light of the utility of "peer pressure" in cases of non-compliance with the Charter;⁸
- highlight the indivisibility of human rights by resuming consideration of Social Charter issues within the GR-H;
- pursue its engagement with regard to strengthening social rights in Europe and keep regularly inviting the Member States who have not yet done so to consider ratifying the Revised Charter⁹ or accept additional provisions thereof, as well as the system of collective complaints;
- further reform and simplify the State reporting procedure under the Charter, especially for States having accepted the collective complaints procedure, in order to reduce both the State authorities' and the ECSR's workload and to permit the ECSR to timely identify the most serious problems concerning the implementation of the Charter in each State.¹⁰ It is recalled that the reporting procedure has already been simplified in

⁸ See also the [2017 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers' Deputies on 22 March 2017.

⁹ See also the Reply adopted by the Committee of Ministers on 13 December 2017 on Parliamentary Assembly Recommendation 2112 (2017) on "The 'Turin Process': reinforcing social rights in Europe", document [CM/AS\(2017\)Rec2112-final](#).

¹⁰ See for detailed proposals in this respect the [2018 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers' Deputies on 21 March 2018.

2014 for States having accepted the collective complaints procedure. Nevertheless, States are emphasising the need to simplify this procedure still further so that the ECSR can focus its follow-up on the most pressing issues;

- allow for a reimbursement of the costs of complainant organisations in the collective complaints procedure before the ECSR in certain circumstances;¹¹
- increase the number of Members of the ECSR in order to ensure a better overall balance of representation of the different legal traditions and social models in Europe within this Committee as well as to better cope with the workload;¹²
- ensure that the Department of the European Social Charter is sufficiently staffed with appropriately qualified lawyers to be able to perform its work thoroughly.¹³

5. Proposals concerning the Secretary General

The Secretary General could be encouraged to

- keep supporting an enhanced role for the Charter, in line with his priorities for his second term (2014–2019) and with the “Turin Process”;¹⁴
- encourage Member States to consider ratification of the Revised Charter or further provisions thereof and of the 1991 and 1995 Protocols to the Charter in his bilateral meetings with State representatives.

6. Proposals concerning the Parliamentary Assembly

The Parliamentary Assembly could be encouraged to

- keep supporting the “Turin process” and keep calling on the Member States to contribute strengthening the Charter as a normative system, in particular by ratification by the Member States of the Revised Charter or all of its provisions and of the 1991 and 1995 Protocols to the Charter;
- transfer the competence to deal with Social Charter issues to the Committee on Human Rights;
- strengthen the pan-European dialogue on social rights, *inter alia* by continuing to organise inter-parliamentary seminars and debates on the Charter, also in the framework of its project “parliaments and social rights”, in order to improve compliance with the social rights standards at the national level;¹⁵
- foster the co-ordination of legal and political action with other European institutions, notably the European Union;

¹¹ See in this respect the [2017 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers’ Deputies on 22 March 2017.

¹² See in this respect the [2017 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers’ Deputies on 22 March 2017; and the [2016 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers’ Deputies on 30 March 2016.

¹³ See also the [2018 CM speech by the President of the ECSR](#) during an exchange of views with the Ministers’ Deputies on 21 March 2018.

¹⁴ See document [SG/Inf\(2014\)34](#) of 16 September 2014.

¹⁵ See [PACE Resolution 2180 \(2017\)](#) of 30 June 2017.

- pursue its activities of assessing the impact of public policies in the Member States on social rights standards.

7. Proposals concerning the Congress of Local and Regional Authorities

The Congress of Local and Regional Authorities could be encouraged to

- pursue its activities aimed at raising awareness on human rights among local and regional authorities and continue giving concrete guidance on how to implement human rights at the local level, *inter alia*, by the preparation of further volumes of the Handbook on Human Rights, a compendium of good practices for local and regional authorities to respond to human rights challenges in different fields in their municipalities and regions.¹⁶

8. Proposals concerning the Commissioner for Human Rights

The Commissioner could be encouraged to

- confirm the full support for the "Turin Process" expressed by her predecessor in his Comment entitled "*Preserving Europe's social model*" (2014),¹⁷ to keep calling upon States to honour their obligations with regard to social rights and to keep promoting the ratification of the Revised Charter and/or all provisions thereof as well as of the system of collective complaints;
- inform social partners and NGOs about the collective complaints procedure and submit, where appropriate, written observations in connection with collective complaints (see Rule 32A of the ECSR's Rules).

9. Proposals concerning the Conference of INGOs

The Conference of INGOs could be encouraged to

- keep supporting the "Turin process" notably by engaging in activities to encourage wider ratification of the Revised Charter and/or all provisions thereof and to make the case for the acceptance of the system of collective complaints, to give the right to lodge a complaint to all INGOs enjoying participatory status or to increase the number of INGOs on the list of organisations authorised to lodge complaints, to encourage NGOs to participate in the reporting system and to further develop co-operation between NGOs and Governments in the interest of a better social rights protection in Europe;
- keep raising awareness (notably by running training sessions) of the Council of Europe INGOs and INGOs working with the European Union of the contribution which they can make to the collective complaints mechanism and which can potentially improve the enforcement of social rights in Europe;
- contribute to improving the visibility of the Charter in their communication policy;

¹⁶ See for further information [Resolution 427\(2018\) of the Congress of Local and Regional Authorities](#) on Promoting human rights at local and regional level.

¹⁷ See the [Human Rights Comment entitled "Preserving Europe's social model"](#).

- where appropriate, submit written observations on collective complaints (Rule 32A of the ECSR's Rules).

10. Proposals concerning the HELP programme

The European Programme for Human Rights Education for Legal Professionals (HELP) could be encouraged to

- review the course on labour rights¹⁸ in the programme of human rights education for legal professionals in the 28 EU Member States ("HELP in the 28") with the objective that this course assisting in the implementation of the Convention, the European Social Charter and the EU Charter of Fundamental Rights could benefit to all Council of Europe Member States under the "HELP in the 47" programme. Further capacity-building seminars on labour rights could be held;
- develop other training courses for all States on topics concerning the Charter and its complementarity with the Convention, thereby illustrating the principles of indivisibility and interdependence of human rights.

11. Proposals concerning the Council of Europe Development Bank

The Council of Europe Development Bank could be encouraged to

- keep financing projects related to social rights.

12. Proposals concerning non-State actors

Non-State actors, notably business enterprises, could be encouraged to

- respect the social rights of their employees;¹⁹
- contribute to securing a continuously higher standard of social rights in the context of their activities.

¹⁸ <http://www.coe.int/en/web/help/help-courses>: This course comprises the following modules: right to work; employment relationship and working time; pay and insolvency; termination of employment; discrimination and equal opportunities; collective labour rights; and health and safety (physical and mental) at work.

¹⁹ See also the Commissioner's Comment on "[Business enterprises begin to recognise their human rights responsibilities](#)" (2016).

II. PROPOSALS AIMED AT FACILITATING THE RELATIONSHIP BETWEEN THE COUNCIL OF EUROPE INSTRUMENTS WITH OTHER INSTRUMENTS FOR THE PROTECTION OF SOCIAL RIGHTS

- EU Member States could be called upon to ensure more consistency among them when it comes to accepting provisions of the Charter already covered by EU law;²⁰
- The relationship between the European Social Charter and other international obligations, in particular under international law, should be further clarified;²¹
- The EU could be called upon to implement the proposals made by the Secretary General in his Opinion on the European Pillar of Social Rights;²²
- The dialogue and exchanges which the “Turin Process” has already made possible with competent bodies of the European Union should be reinforced so that full consideration can be given to the European Social Charter and decisions and conclusions of the ECSR in the process of the adoption of European Union legislative acts, policy measures and judicial decisions. This would strengthen the synergy between EU law and the Charter;
- EU institutions and EU Member States could be encouraged to work together with the Council of Europe to strengthen the role of the Charter in accordance with Member States’ obligations and to examine the possibility of accession of the EU to the Charter.²³

²⁰ See also <http://www.coe.int/en/web/turin-european-social-charter/conference-turin>: document of 15 July 2014 on the “Relationship between European Union law and the European Social Charter”.

²¹ See for the ECSR’s approach to the relationship between EU law and the Charter, for instance, *CGT v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2010, §§ 31–42.

²² See the following link for the [Secretary General’s Opinion on the EU initiative to establish a European Pillar of Social Rights](#) of 2 December 2016.

²³ See also the [Resolution of the European Parliament on “The European Pillar of Social Rights”](#) (2016/2095(INI)) of 19 January 2017; and the FRA Fundamental Rights Forum, Vienna, 20-23 June 2016, Suggestion No. 49, available at: <http://fundamentalrightsforum.eu/>.