



CDDH-SOC(2018)R2
04/05/2018

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**DRAFTING GROUP ON SOCIAL RIGHTS
(CDDH-SOC)**

MEETING REPORT

2nd meeting
2–4 May 2018

Item 1: Opening of the meeting, adoption of the draft agenda and of the order of business

1. The CDDH Drafting Group on Social Rights (CDDH-SOC) held its second meeting in Strasbourg from 2 to 4 May 2018. The list of participants is contained in Appendix I.

2. The Chair, Mr Vít A. SCHORM (Czech Republic) opened the meeting. He welcomed the fact that both the President of the European Committee of Social Rights (ECSR) and the Head and Deputy Head of the Department of the European Social Charter participated in the meeting and expressed the hope that the Drafting Group would arrive at convincing results in cooperation with them.

3. In his opening remarks, Mr Christos GIAKOUMOPOULOS, Director General of the Directorate General Human Rights and Rule of Law, welcomed that the President of the ECSR had accepted the Drafting Group's invitation. He stressed the importance of an effective protection of social rights for social cohesion and democratic stability in the Council of Europe Member States. He further expressed the hope that the intergovernmental work within the CDDH-SOC and the CDDH would lead to a reinforcement of the protection of social rights within the framework of the treaties elaborated within the Council of Europe, in particular the European Social Charter (see for the full text of the opening remarks Appendix IV).

4. The Group adopted the agenda (see Appendix II) and the order of business (CDDH-SOC(2018)OT1).

Item 2: Working methods and planning

5. The Chair recalled that the draft Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH-SOC(2018)04), as prepared by the Secretariat for the 2nd meeting of the CDDH-SOC, is to give a factual overview over the Organisation's legal framework for the report). Proposals, as appropriate, with a view to improving the implementation of social rights and to facilitating in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights, will be the subject of a second report.

6. The Group adopted the provisional planning of its work in the biennium 2018–2019 (see Appendix III).

Item 3: Discussion on, and adoption of the draft Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe

7. The Chair recalled that the draft "Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe" (document CDDH-SOC(2018)04) was a revised version of the (initial) "Draft report of the CDDH on the legal framework of the Council of Europe for the protection of social rights" (document CDDH-SOC(2017)001) prepared by the former rapporteur Ms C. Gallant for the 1st CDDH-SOC meeting. Ms C. Gallant has joined the Secretariat of the Council of Europe (Department for the Execution of Judgments of the European Court of Human Rights) in the meantime and ended her work as a Rapporteur. Amendments to the initial report have been made by the Secretariat in the light of the contributions received from the Member States and the ETUC on the initial draft report (documents CDDH-SOC(2017)003 and CDDH-SOC(2018)05) and the instructions given to the CDDH-SOC by the CDDH in its 87th and 88th meetings in June and December 2017 (documents CDDH(2017)R87 and CDDH(2017)R88).

8. In its general discussion on the draft Analysis, there was a consensus within the Group that chapter I on the legal framework of the Council of Europe for the protection of social rights should first address the supervisory mechanism of the European Social Charter and then the European Convention on Human Rights and that the structure of the text should be changed accordingly. The Group considered, in particular, that within the Council of Europe, the European Social Charter was the legal instrument specifically conceived to protect social rights and that the inversion of the order in which the Convention and the Charter were addressed in the Analysis was without prejudice to the assessment of the effectiveness of the respective systems.

9. The Group then proceeded to the examination of the draft Analysis paragraph by paragraph and agreed on a number of amendments to the Analysis in the light of the discussions and the written contributions received from the experts on the new draft Analysis (document CDDH-SOC(2018)09).

10. The Group adopted the revised draft Analysis (CDDH-SOC(2018)R2, Addendum) with a view to its submission to the Bureau of the CDDH at its 99th meeting (17–18 May 2018) and to the CDDH for adoption at its 89th meeting (19–22 June 2018).

Item 4: Exchange of views on the replies to the questionnaire related to the good practices on the implementation of social rights at national level

11. The Group held an exchange of views on the replies of the Member States to the questionnaire related to the good practices on the implementation of social rights at national level prepared by the Group (document CDDH-SOC(2017)04). It further had before it a summary of these replies (document CDDH-SOC(2018)07) and an analysis thereof (document CDDH-SOC(2018)06) prepared by the Secretariat.

12. The Group welcomed the high number of Member States (31) which had submitted a reply to the questionnaire. It considered that the replies to the questionnaire as well as the summary and analysis thereof shall be used in the work on the future second report containing proposals, as appropriate, with a view to improving the implementation of social rights. This will reflect how member States are implementing social rights, national developments in this respect as well as problems which the States are facing in this respect.

Item 5: First exchange of views on the structure and essential contents of the second report

13. The Group proceeded to a first exchange of views on the structure and essential contents of the second report on the basis of a draft overview over the possible contents of the second report (document CDDH-SOC(2018)08).

14. The discussion showed the following:

- In accordance with the Council's reference for the 2018–2019 biennium, the second report should identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitating in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights;
- The second report should be prepared on the basis of the “Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe” as well as other relevant sources, such as the replies to the questionnaire

(see Item 4) or the interventions of the President of the ECSR before the Committee of Ministers;

- The second report should focus on the Charter system and address the grounds why Member States have not to date given it a more important role and how these grounds could be addressed; in this context, the importance to give reasons to the Member States for ratifying the Revised Charter and accept the collective complaints procedure, notably to promote social cohesion, was equally stressed;
- The complexity of the system of the State reporting procedure under the Charter and how it could be improved, as well as the positive aspects and added value, but also the issues raised by the collective complaints procedure, should equally be addressed in the second report;
- The following further particular aspects could be discussed in the second report: the level of acceptance of different articles of the European Social Charter; the universality and indivisibility of human rights; the scope of application of the European Social Charter *ratione personae*; the relationship between the European Social Charter organs and the Committee of Ministers; the synergy between the European Social Charter and the European Union' and the United Nations' (in particular the International Labour Organisation' s systems and instruments of protection of social rights; awareness-raising and training activities; and the national implementation of social rights;
- The Group further agreed that the ECSR and the Department of the European Social Charter should be asked for technical assistance in the preparation of the second report and thanked them for having declared their readiness to provide such assistance.

15. The Group instructed the Secretariat to provide basic preparatory work for the structure and essential content of the second report for the 3rd meeting of the CDDH-SOC (5–7 September 2018), taking into account possible further instructions given by CDDH in its 89th meeting in June 2018. It asked the Secretariat, in particular, to draw up a working document combining the draft overview over the possible contents of the second report presenting proposals with a view to improving the implementation of social rights (document CDDH-SOC(2018)08) with elements of the Summary (CDDH-SOC(2018)07) and of the Short analysis of the replies to the questionnaire (CDDH-SOC(2018)06) and including also the conclusions drawn from the Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH-SOC(2018)04).

Item 6: Invitees

16. The Group heard a presentation by Professor Giuseppe PALMISANO (Italy), President of the ECSR. In his presentation, Professor Palmisano stressed, in particular, that the Charter was the most wide-ranging instrument specifically devoted to the protection of social rights and that it was important to strengthen its role, and thereby the European model. He argued that the following issues needed to be addressed regarding the Charter system: 1) the fact that the Revised European Social Charter has not been ratified by all Member States of the Council of Europe as well as t h e “ à l a c a r t e ” 2) the fact m o f t that the 1995 Additional Protocol providing for a system of collective complaints has not been ratified by all Member States; 3) the workload and effectiveness of the State reporting procedure; 4) the limited personal scope of application of the Charter in accordance with the Appendix to the Charter; and 5) the need to reinforce the ECSR by an increase in the number of its members as well as the reinforcement of the Department of the European

Social Charter (see for the full text of the presentation [Appendix V](#)). The presentation was followed by an exchange of views between Professor Palmisano and the Group.

Item 7: Organisation of upcoming work

17. As regards the organisation of its work, the Group, in the light of the outcome of the meeting, confirmed the provisional planning of its work in the biennium 2018–2019 (see [Appendix III](#)). It further instructed the Secretariat to prepare a working document as set out above (see paragraph 15) for its 3rd meeting (5–7 September 2018).

18. The Group further suggested that the members of the CDDH are asked to send written comments, if any, on the d r a f t “ A n a l y s i s o f t h e l e g a l f r a m e w o r k for Europe for the protection of social rights in Europe” which shall be submitted to the CDDH for adoption at its forthcoming meeting (19–22 June 2018) to the Secretariat by **12 June 2018** at the latest.

Item 8: Adoption of the meeting report

19. At the end of its meeting, the Group adopted the present meeting report and thanked the Secretariat for all its exemplary work.

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APPENDIX I

List of participants

AUSTRIA / Autriche *Apologised*

BELGIUM / BELGIQUE

Ms Virginie VAES, Attachée, Federal Public Service Employment, Labour and Social Dialogue, Division of international affairs

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Mr Vít A. SCHORM (*Chair*), Government Agent, Ministry of Justice

FRANCE

Mme Eglantine LEBLOND, Rédactrice, Ministère de l'Europe et des Affaires étrangères, Direction des affaires juridiques, Sous-direction des droits de l'Homme

GREECE / GRECE

Mr Elias KASTANAS, Legal Counselor, Legal Department, Ministry of Foreign Affairs

ITALY / ITALIE

Mr Daniele LOI, Adjoint au Représentant Permanent, Représentation Permanente de l'Italie auprès du Conseil de l'Europe

Ms Carlotta BERIONNI, Trainee/Stagiaire, Représentation Permanente de l'Italie auprès du Conseil de l'Europe

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

Ms Oxana OLARU, senior adviser in the Representation to the ECtHR Department, Government Agent General Department, Ministry of Justice

POLOGNE

Mr Jerzy CIECHANSKI, Counsellor to the Minister, Department for International Cooperation at the Ministry of Family, Labour and Social Policy

PORTUGAL

Mr Paulo MARREAS FERREIRA, Juriste/Lawyer, Bureau de Documentation et de Droit Comparé de l'Office de Mme la Procureure Générale de la République

RUSSIAN FEDERATION / FEDERATION DE RUSSIE *Apologised*

SLOVENIA / SLOVENIE

Mr Matija VIDMAR, Secretary, Department for International Cooperation and EU law, Ministry of Justice

TURKEY / TURQUIE

Ms Burcu EKİZ ÖZÜM, Legal Expert, Permanent Representation of the Republic of Turkey to the Council of Europe

INVITES

Professor Giuseppe PALMISANO, President of the European Committee of Social Rights
Professor of International Law and EU law, Director of the Institute for International Legal Studies,
National Research Council of Italy

Mr Régis BRILLAT, Head of the Department of the European Social Charter / Chef du Service de la Charte sociale européenne

Mr Henrik KRISTENSEN, Deputy Head of the Department of the European Social Charter / Chef de Service adjoint du Service de la Charte sociale européenne

OBSERVERS/OBSERVATEURS

HOLY SEE / SAINT-SIEGE

Mr Peter VERHAEGHE, "Policy and advocacy officer", Caritas Europa

European Trade Union Confederation (ETUC) / Confédération européenne des syndicats (CES)

Mr Stefan CLAUWAERT, ETUI Senior Researcher, ETUC Representative in the European Social Charter Governmental Committee

Conference of INGOs of the Council of Europe / Conférence des OI NG du Co

Mr Jean-Bernard MARIE

Mme Marie-José SCHMITT, Chargée de mission pour la Charte sociale

Academic Network on the European Social Charter and Social Rights (ANESC) / Réseau académique sur la Charte Sociale Européenne et les Droits Sociaux (RASCE)

Ms Mélanie SCHMITT, Université de Strasbourg

SECRETARIAT

DGI – Human Rights and Rule of Law / Droits de l'Homme e
Council of Europe / Conseil de l'Europe

Mr Christos GIAKOUMOPOULOS, Director General / Directeur Général, Directorate General of Human Rights and Rule of Law / Direction Générale des

Mr Mikhail LOBOV, Head of the Human Rights Policy and Development Department / Chef du Service des politiques et du développement des droits de l'Homme

Mr Alfonso DE SALAS, Secretary to the CDDH / Secrétaire du CDDH, Head of Division / Chef de Division, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Ms Dorothee VON ARNIM, Head of the Unit on the system of the European Convention on Human Rights / Chef de l'Unité sur le système de Human Con ven
Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Ms Elisa SAARI, Assistant Lawyer / Juriste Assistant, Human Rights Intergovernmental Co-operation Division / Division de la coopération intergouvernementale en mati

Ms Corinne GAVRILOVIC, Assistant/Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernement

INTERPRETERS / INTERPRÈTES

Ms Corinne McGEORGE

Mr Didier JUNGLING

Mr Jean-Jacques PEDUSSAUD

APPENDIX II

Agenda

	ITEM 1: OPENING OF THE MEETING, ADOPTION OF THE AGENDA AND OF THE ORDER OF BUSINESS
CDDH-SOC(2018)OJ1	Draft agenda
CDDH-SOC(2018)OT1	Draft order of business
CDDH-SOC(2018)10	Annotations on the draft agenda
	Reference documents concerning all items on the agenda
CDDH-SOC(2018)01	Extract of the terms of reference given by the Committee of Ministers to the CDDH regarding the work of the CDDH-SOC during the 2018-2019 biennium
CDDH-SOC(2017)001	(Initial) Draft report of the CDDH on the legal framework of the Council of Europe for the protection of social rights <i>(prepared by Ms C. Gallant for the 1st CDDH-SOC meeting)</i>
CDDH(2017)R88	Report of the 88 th CDDH meeting (5–7 December 2017)
CDDH(2017)R87	Report of the 87 th CDDH meeting (6–9 June 2017)
CDDH-SOC(2017)R1	Report of the 1 st CDDH-SOC meeting (19–21 April 2017)
	ITEM 2: WORKING METHODS AND PLANNING
CDDH-SOC(2018)03	Draft provisional planning
CM/Res(2011)24	Committee of Ministers' Resolutions, committees and subordinate bodies, their terms of reference and working methods
	ITEM 3: DISCUSSION ON, AND ADOPTION OF THE DRAFT ANALYSIS OF THE LEGAL FRAMEWORK OF THE COUNCIL OF EUROPE FOR THE PROTECTION OF SOCIAL RIGHTS IN EUROPE
CDDH-SOC(2018)04	Draft Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe
CDDH-SOC(2018)09	Contributions received from experts on the new draft Analysis
CDDH-SOC(2018)05	Further contributions received from experts on the initial draft report until 1 September 2017
CDDH-SOC(2017)003	Contributions received from experts on the initial draft report on legal protection of social rights (<i>bilingual</i>)
Link Link Link Link	Legal Instruments European Social Charter of 1961 Revised European Social Charter of 1996 Additional Protocol to the European Social Charter of 1988 Protocol amending the European Social Charter of 1991

Link	Additional Protocol to the European Social Charter Providing for a System of Collective Complaints of 1995
	ITEM 4: EXCHANGE OF VIEWS ON THE REPLIES TO THE QUESTIONNAIRE RELATED TO THE GOOD PRACTICES ON THE IMPLEMENTATION OF SOCIAL RIGHTS AT NATIONAL LEVEL
CDDH-SOC(2018)06	Short analysis of the replies to the questionnaire
CDDH-SOC(2018)07	Summary of the replies to the questionnaire
CDDH-SOC(2018)02	Questionnaire related to the good practices on the implementation of social rights at national level
CDDH-SOC(2017)04	Replies to the questionnaire related to the good practices on the implementation of social rights at national level
	ITEM 5: FIRST EXCHANGE OF VIEWS ON THE STRUCTURE AND ESSENTIAL CONTENTS OF THE SECOND REPORT
CDDH-SOC(2018)08	Draft overview over the possible contents of the second report
<i>(see item 1 above)</i>	(Initial) Draft report of the CDDH on the legal framework of the Council of Europe for the protection of social rights <i>(prepared by Ms C. Gallant for the 1st CDDH-SOC meeting)</i>
<i>(see item 3 above)</i>	Further contributions received from experts until 1 September 2017 on the initial draft report
<i>(see item 3 above)</i>	Contributions received from experts on the initial draft report until 1 September 2017 <i>(bilingual)</i>
	ITEM 6: INVITEES
	ITEM 7: ORGANISATION OF UPCOMING WORK
<i>(see item 2 above)</i>	Draft provisional planning
	ITEM 8: ADOPTION OF THE MEETING REPORT

APPENDIX III

**Draft Provisional planning of the work of the CDDH-SOC
in the biennium 2018–2019**

2nd meeting: 2–4 May 2018

- Adoption of the working methods and of the draft Provisional planning
- Discussion and adoption of the draft Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (first report)
- Exchange of views on the replies to the questionnaire related to the good practices on the implementation of social rights at national level and on the analysis of these replies
- First exchange of views on the desired structure and essential contents of the report containing proposals, as appropriate, 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 (second report)

Transmission of the draft Analysis to the CDDH-BU (17–18 May 2018), then to the CDDH (19–22 June 2018).

At its 89th meeting (19–22 June 2018), the CDDH is expected to adopt the draft Analysis and take note of the replies to the questionnaire and of their analysis. Following possible instructions given at the 89th CDDH meeting, the Secretariat will then prepare a draft table of contents and a short context document as a basis to start the discussions on the second report at the 3rd CDDH-SOC meeting.

3rd meeting: 5–7 September 2018

- Discussion of the structure and essential contents of the second report

The CDDH is expected to take note of the on-going work of the CDDH-SOC at its 90th meeting (27–30 November 2018).

4th meeting: April 2019

- Discussion of the first draft of the second report

The CDDH is expected to take note of the on-going work of the CDDH-SOC at its 91th meeting (June 2019).

5th meeting: September 2019

- Discussion and adoption of the draft second report

Transmission of the draft second report to the CDDH-BU and the CDDH for adoption: November 2019.

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APPENDIX IV

(français uniquement)

Allocution de M. Christos GIAKOUMOPOULOS

Directeur général de la Direction Générale des droits de l'homme et de l'Etat de droit

Monsieur le Président du Groupe de rédaction du CDDH sur les droits sociaux,
Mesdames et Messieurs,
Chers Collègues,

- En tant que Directeur général des droits de l'homme, je suis heureux de pouvoir être avec vous pour l'ouverture de la 2^e réunion du Groupe de rédaction sur les droits sociaux et je me félicite de cette heureuse initiative consistant à renouer, au sein du CDDH, avec la tradition européenne des droits sociaux à un échange de vues.
- A cette occasion, je voudrais mettre vos travaux en perspective avec les réflexions et les défis que nos sociétés, nos institutions et notre Organisation doivent relever. La coopération entre votre Groupe de rédaction et le CEDS met en exergue le point 5 de la Déclaration de Vienne de 1993, et je cite :

« Tous les droits de l'homme sont universels et inaliénables. Ils sont intimement liés. La communauté internationale, globalement, de manière équitable et équilibrée, accordant la même importance. »

- Ces principes ont été réaffirmés régulièrement au sein du Conseil de l'Europe, notamment dans le préambule à la Charte sociale européenne révisée elle-même. Mais nous savons combien nous sommes loin de les appliquer. Je rappellerai le SG -rue de l'ONU' oBachas Kersaire de la 20^e Conférence de Vienne :

« La Conférence de Vienne a été un jalon important dans la quête de droits de l'homme universels que poursuit l'humanité. Sur ce chemin à faire pour traduire les principes de la Charte sociale européenne, nous commémorons le 20^e anniversaire de la Déclaration et de la Conférence de Vienne, redoublons d'efforts pour nous acquiescer à promouvoir et de protéger les droits et la dignité de chacun en tout lieu ».

- Cet engagement souligne aussi la volonté qui nous anime ensemble pour un renforcement effectif de la protection des droits sociaux dans le cadre des traités du Conseil de l'Europe et plus particulièrement de la Charte sociale européenne, en tant que contribution au « processus de Turin » lancé en 2014 par le Secrétaire Général du Conseil de l'Europe.
- Dans ce contexte, il y a lieu de se réjouir que les juridictions nationales appliquent des dispositions de la Charte et que ce phénomène se renforce régulièrement.
- Il y a lieu de se réjouir aussi que beaucoup de réformes significatives à la suite de conclusions ou de décisions du Comité européen des Droits sociaux qui contrôle le respect des dispositions de la Charte par la

procédure de rapports nationaux et par la procédure de réclamations collectives. Cela peut prendre parfois du temps, être précédé de débats au niveau national, sur le plan juridique ou politique. Mais le fait est que l'impact des décisions et conclusions du CEDS est absolument remarquable !

- Mais beaucoup de chemin reste à faire afin que la Charte l'importance européenne. La sienne, dans le contexte actuel.
- Les travaux intergouvernementaux au sein du CDDH en sont à leur phase je dirai « préparatoire », à savoir la rédaction d'une analyse au sein du Conseil de l'Europe de la protection des droits sociaux et politiques de la Convention ont de la Cour prend justement en compte notamment par l'interprétation des droits garantis par la Convention.
- Il convient de souligner que le but de la protection des droits sociaux dans le cadre des traités du Conseil de l'Europe système de parti c traités de la Charte n'est pas d'imposer au précise ou une harmonisation de leur législation nationale en matière des droits sociaux. La Charte met l'accent sur la protection au quotidien des droits de tous, et en particulier des personnes vulnérables. Elle exige que les Etats, dans la politique sociale qu'ils choisissent, respectent et int droits de l'homme, l'état objectifs statutaires du Conseil de la dém l'Eu + ne peuvent être atteints.
- Pour terminer, je voudrais citer le Secrétaire Thorbjørn Jagland, qui, dans son rapport de 2017 sur la situation de la démocratie, des droits de l'homme en Europe, affirmait : l'état de droit

« Le respect des droits sociaux permet à nos sociétés de rester unies et de surmonter leurs problèmes, qu'ils soient sociaux ou économiques. Cela renforce la confiance du public dans les institutions et les dirigeants politiques, au niveau tant national qu'euro péen. C'est un moyen de lutter contre la pauvreté et la pauvreté en faisant appliquer le principe de l'homme, qui fait l'objet d'un consensus dans sus i réinsertion sociale des personnes les plus vulnérables et de ceux qui, pour diverses raisons, ont été marginalisés.

De toute évidence, le respect des droits sociaux est encore plus nécessaire en temps de crise et de difficultés économiques. En effet, une croissance qui ne bénéficierait qu'à une minorité affaiblit la confiance dans la démocratie sur le continent. Quelle que soit la substance des politiques économiques mises en œuvre, la surveillance croissante que nement les droits fondamentaux qui répondent aux besoins quotidiens des citoyens puissent être exercés concrètement. Les États qui ne les respectent pas font le lit des mouvements antisociaux, antipolitiques, antieuro péens, racistes, ou des mouvements qui sont uniquement fondés sur l'exploitation.

Il apparaît donc indispensable aujourd'hui de garantir des droits sociaux tels que le droit au logement, à la non-discrimination, à l'emploi, à des conditions de travail décentes, économique, sociale et juridique. C'est dans ce contexte que le « processus de Turin » a été lancé en 2014, dans le but de placer la Charte au centre du débat

politique européenne. Le processus de Turin défend l'impact des droits sociaux en Europe est une contribution essentielle à la stabilité démocratique.

Un de ses objectifs est la ratification de la Charte par tous les États membres du Conseil de l'Europe et leur acceptation du protocole de système de réclamations collectives. Le processus vise également à coordonner les systèmes européens de droits sociaux, qu'ils soient en vigueur dans l'Union européenne ou dans d'autres pays européens.

- Notre ambition est que, au terme des travaux du CDDH-SOC puis du CDDH, des perspectives se dégagent pour assurer que nos recommandations soient pleinement les droits sociaux, élément essentiel à la stabilité démocratique.

Je vous souhaite plein succès dans cette ambitieuse tâche.

APPENDIX V

Presentation by Professor Giuseppe PALMISANO,
President of the European Committee of Social Rights*(English only)*

It is my honour and pleasure to address you in my capacity as President of the European Committee of Social Rights, and I wish to express my gratitude to you for giving me the opportunity of a presentation on the system of the European Social Charter – including its problems and prospects, today – within the framework of your work on the legal instruments for the protection of social rights.

To start my intervention, I think that it is hardly necessary to recall that, today, the European Social Charter is, at the European level, the major legal instrument, the most wide-ranging and effective legal instrument – I would say – specifically devoted to the protection of social rights.

Just like the European Convention on Human Rights, the Social Charter originates from the decision of the Council of Europe to adopt a treaty to give binding force to the rights enshrined in the 1948 Universal Declaration of Human Rights. The Council of Europe opted for adopting two separate treaties, one on civil and political rights, the 1950 Convention on Human Rights (which was and is not intended to cover social rights), and the other – the European Social Charter – to recognize and protect economic and social rights (which were and are neither recognized nor directly protected by the Convention).

Although it has been in force since the mid-1960s, the Charter remained for years a somewhat obscure and virtually ineffective instrument. It was only in 1990, at the end of the Cold War, that the Organization for the first time, would say – then c h ” Social Charter. The idea was both to make the Charter effective by aligning it as closely as possible with the European Convention on Human Rights, and to modernize it, by adding new rights, in order to properly take into consideration the individual and collective social needs which were emerging in a changed world. One could also say that, by virtue of the institutional reforms started in those years, the Council of Europe intended to give a substantial and effective meaning to the principle that human rights are indivisible, and that social rights are human rights on an equal footing with civil and political rights.

As you know, the institutional reforms that I have just mentioned took the form of three protocols, adopted in 1988, 1991 and 1995, and the Revised Social Charter, adopted in 1996. In 1988 came the first additional protocol which added new rights. In 1991, the Amending Protocol was adopted to improve the supervisory mechanism; and in 1995 another additional protocol, providing for a system of collective complaints, was adopted. The culmination of this reform process came in 1996 with the adoption of the Revised Charter, which added a number of new rights, while at the same time incorporating the basic content of the 1961 Charter and its protocols.

As a result of this reform process, today, the 31 substantive articles of the Revised Charter cover indeed a broad range of individual and collective rights, spanning across many social areas. Among such rights, are employment rights – including the right to work and to employment, rights at work, including the right to decent working conditions with respect to pay, working hours, holidays and protection against dismissal, as well as the collective rights of workers to organize (to form and join trade unions), to bargain collectively – which represent certainly one of the main pillars of the Charter, probably the most traditional one.

Social protection is another pillar of the Charter and a cornerstone in the construction of the Council of Europe concerning social rights. The Charter addresses all aspects of social protection. It provides for the right to social security in its various branches, such as pensions, sickness cover, unemployment benefits, occupational accident insurance and family benefits; and it guarantees an enforceable right to social and medical assistance for persons in need.

But the Revised Charter goes far beyond employment rights, labour law and social protection, providing an overarching approach to what are known today as “social” rights. I refer, for example, to the right to protection of health, the right to housing, the protection of the family, the protection and education of children and young persons, the right of persons with disabilities to social integration and participation in the life of the community, the right to protection against poverty and social exclusion (which requires States to adopt a global and coordinated approach to fighting poverty and social exclusion). And it is worth stressing that the Charter guarantees all the above rights in a non-discriminatory way. Non-discrimination is not only guaranteed in matters of employment and between men and women, but it is a fundamental principle which indeed applies to all the rights of the European Social Charter. In particular, according to Article E, the Charter applies regardless of race, sex, age, colour, language, religion, opinion, national origin, social background, state of health or association with a national minority. And it is clear from Article E that this list of grounds was not intended to be exhaustive.

Therefore, from the standpoint of persons protected, it is correct to say that the Charter, more than any other international (and European) normative instrument, ensures the essential social needs of individuals in their daily lives, and that the common rationale of all its provisions is the assumption that human beings must have the right to enjoy decent living conditions as members of the organized community in which they live: conditions such as to allow them to live in dignity, rather than merely survive. At the same time, from the standpoint of the political and legal commitment required by States Parties, it can be said that the European Social Charter, more than any other international instrument, pushes States to provide an advanced and efficient public welfare system.

Furthermore, the Charter is not a mere “bill of rights” which States declare to uphold, or which they try to promote. It also provides for a specific monitoring mechanism aimed at guaranteeing the implementation of the obligations assumed by States parties, which has a significant impact on national laws and practices (and by consequence, on the effective enjoyment of the rights by the individuals and groups protected by the Charter).

Such a mechanism, which focuses on the role played by the European Committee of Social Rights, envisages two distinct supervision procedures: one consisting in the evaluation by the ECSR of periodic reports presented by States on the implementation of the Charter in their legislation and actual practice. The other is the so-called “collective complaints procedure”, which is expressly accepted by the Charter (only 15 States at the moment, unfortunately). As you know, according to this procedure social partners and non-governmental organisations are entitled to directly apply to the European Committee of Social Rights for rulings on possible violations of the Charter in the country concerned.

Let me say that the collective complaints procedure – which is indeed a quasi-judicial procedure – has proved to be an effective and efficient mechanism for supervising State compliance. And this for many reasons. In the first place, the collective complaints procedure allows to identify specific cases of social rights violations, giving – on the one hand – the opportunity to the State concerned to remedy them and to prevent new violations, and giving also – on the other hand – the possibility to affected groups of individuals to obtain the re-establishment of their rights.

Second, such a procedure permits to put the abstract normative prescriptions of the Social Charter to the test of reality, that is, to the test of specific, concrete situations. In other words, it permits to specify what States actually have to do, or must refrain from doing, or have to prevent, in order to guarantee in given situations the rights of groups of individuals.

Last, but not least, the collective complaints procedure is important because it opens the door of the Social Charter to civil society, to NGOs and to the world of workers. This means opening the European system for the protection of social rights to its beneficiaries, who are – more than States and governments – directly and individually interested in the implementation and enjoyment of such rights. This kind of subjects are indeed the best guardians, I would say, of the rights established by the European Social Charter.

Evidence of this is the fact that, since its entry into force, the collective complaints procedure has become the Charter's flagship procedure, and a kind of media coverage it had never experienced before. And it also enabled the European Committee of Social Rights to build up an important body of case law, clarifying the meaning, implications and actual effects of the Charter rights with respect to many different subjects, such as child labour, the right to organize in the military and in the police, health and safety at work, maintenance of a social security system in times of economic crisis and austerity measures, discrimination in various contexts, including in respect of Roma, educational provision for autistic children, housing, sex education in schools and corporal punishment of children.

Therefore, it is neither an accident nor a coincidence that in the last two years there has been a very significant increase in the use of the collective complaints procedure, and that the number of registered complaints increased to 164 (it was around 120 at the beginning of 2016; that means more than 40 new complaints lodged in the last two years).

And it is also worth noting that it is precisely due to the contribution of the jurisprudence of the European Committee of Social Rights within the framework of the collective complaints procedure, which has clarified the content and also possibly the direct effect, of many provisions of the Charter, that in the last years we are seeing an increasing application of the Charter by national judges and courts in many States, such as Spain, Italy, Greece and France, particularly in areas such as labour relations. I refer not only to ordinary judges, but also to Constitutional Courts.

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Having said this, Ladies and Gentlemen, you all know that the crises experienced by Europe in the last years – and I am referring not only to the economic crisis, but also to the migration crisis – have revealed the gaps in the protection of social rights generally.

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.

The 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; 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.

Against this background, consensus has progressively gathered around the idea that there is an urgent need both to bring the European Social Charter back to the centre of the European legal and political stage, allowing it to show its full potential, and to enhance existing synergies at the European level to better protect social rights and strengthen the European model, centred on respect for social rights and advanced welfare systems. In this respect, the Charter has been rightly recognized as a living, integrated system of guarantees, whose implementation at national level has the potential to reduce economic and social tensions, and promote political consensus to facilitate the adoption of the necessary reforms.

The decision of the Council of Europe to launch, on October 2014, the so-called “Turin process” stemmed precisely from such conviction expressed by our Secretary General, who – as you know – has made the protection of social rights and the strengthening of the European Social Charter one of the priorities – better, imperatives – of his second term of office.

And it is also worth mentioning that the EU institutions recently decided to make a meaningful reference to the Social Charter within the framework of the EU acts establishing the European Pillar of Social Rights: I refer namely to the 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.

The conferences, initiatives, studies and public discussions organized within the framework of the “Turin process” have indeed generated many strengthening and improving the system for the protection of social rights established by the European Social Charter; but they also contributed to identify some shortcomings and problems of the Social Charter system.

Let me share with you some 5 points in this respect.

1) First of all, I hardly need to remind you that 9 States Parties to the Charter have not yet ratified the Revised Social Charter, and that 8 of them are EU Member States. In this respect, enhancing the Social Charter's effectiveness firstly entails seeking to apply it as uniformly as possible throughout the regional space of the Council of Europe. And this means first and foremost that all the member States of the Council of Europe should be bound by the same social rights protection instrument. The Revised European Social Charter represents the most up-to-date expression of the European perception of social rights. Its ratification by all the States concerned should be seen, therefore, as a priority.

Furthermore, as you know, the acceptance of the Charter provisions is regulated by a “carte” system, that enables States to choose, conditions, the provisions they are willing to accept. For the sake of a uniform standard in the protection of social rights in Europe, States that have not accepted a significant number of provisions of the Charter should be strongly encouraged to accept the outstanding provisions, beginning with those that form the core of the Charter. In this respect, a substantial change in the treaty system aimed at making mandatory the acceptance of all such core provisions, and possibly also further provisions, for States that wish to continue to be party to the Social Charter system would be welcomed.

2) Second: the uniform application and standard of monitoring of social rights in Europe also entails that all member States of the Council of Europe accept the same mechanisms put in place to safeguard the protected rights. This would require a general ratification of the 1995 Protocol providing for a system of collective complaints.

The acceptance of the collective complaints procedure by a large majority, or all, the States Parties to the Charter would also be of extremely important value from the standpoint of the equality of treatment of States. From such a standpoint, it is in fact hardly acceptable that only 15 States are concerned by this 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.

Furthermore, I would add that the collective complaints procedure, in comparison with the reporting procedure, would also be much more convenient for the authorities of States that have not yet accepted it, in terms of the domestic overall inter-ministerial preparatory workload.

3) My third point relates to the reporting procedure. 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 and administration, 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, it entrusts the European Committee of Social Rights with the impossible task of examining carefully all the reports and assessing the situation in all member States relating to 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 a timely identification of the real and most serious problems concerning the implementation of the Charter in each State, and consequently it is not sufficiently useful in helping European States to actually improve their respect for social rights.

In addition, the changes to the reporting system that were adopted by the Committee of Ministers on April 2014, with the objective of simplifying the mechanism for those States Parties to the Charter that have accepted the collective complaints procedure, have not achieved their 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 thematic group of Charter provisions.¹ 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 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.

As you maybe know, I have already submitted some proposals in this respect to the Committee of Ministers a few weeks ago, on the occasion of the exchange of views on 21 March 2018.

4) A fourth issue concerns the personal scope of application of the Charter.

According to paragraph 1 of the Appendix to the Charter, the system for the protection of social rights provided for by the Charter (and they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned).

In essence, the effect of this paragraph is that the system for the protection and control of social rights provided for by the European Social Charter does not apply to third State nationals, and to nationals from other States Parties who, in a short but not appropriate definition, are usually referred to as "irregularly

Whatever the reasons for deciding – decades ago – not to extend the scope of the European Social Charter to non-European nationals that are within the jurisdiction of the States Parties, such a decision hardly appears consistent with the rationale and legal nature of the Charter, intended as a human rights instrument aimed at protecting human dignity and rights which are essential for upholding such dignity. In this respect, the Charter is indeed today a sort of anomaly: one cannot find the same kind of limitation in other international and European legal instruments aimed at protecting human rights in general, or social rights in particular.

It is hardly necessary to recall, in fact, that under Article 1 of the 1950 European Convention of Human Rights – in relation to which the European Social Charter is rightly considered as complementary – States Parties are under the obligation to secure the rights and freedoms enshrined in the Convention (and its successive Protocols) “to their own jurisdiction”, and not just to their own citizens. And the Charter of Fundamental Rights of the European Union, in Chapter IV and in Articles 15 and 23 to 26, extends the respect for social rights (in which the EU Charter is largely inspired by the European Social Charter) not only to nationals of EU members States, but to any person living and working legally within the European Union.

It has to be added that today, much more than a decade ago, the demographic and social changes brought about by increased migration to Europe, due also to the massive influx of refugees, make even more evident the inadequacy of the limits of the personal scope imposed by the Appendix to the European Social Charter, as well as the need to overcome this limitation. In other words, it becomes less and less understandable and acceptable that under the European Social Charter a State Party (e.g. Sweden, Italy or Germany) is obliged to ensure the right to a fair remuneration, or to safe and healthy working conditions, or to adequate medical assistance, to workers from another European country (nationals from, for example, Ukraine, Portugal or Turkey), while it is not obliged to ensure the same rights to workers from non-European states (e.g., Syria, Somalia, Afghanistan, or Mozambique), even if the person is permanently resident in the State or holds a long term residence or working permit. The fact that the latter persons, in contrast to the former, cannot – under the European Social Charter – invoke and obtain, from the State in which they live and work, respect for social rights constitutes serious discrimination.

Any initiatives aimed at changing this discriminatory limitation and, by consequence, the content and effects of the Appendix would therefore most welcome. As you maybe remember, my Committee already put forward some proposals in that respect 7 years ago, on the occasion of the fiftieth anniversary of the Charter. But unfortunately, without success.

5) My fifth, last, and very brief point concerns the need to strengthen the status and reinforce the composition of the European Committee of Social Rights. I refer in particular to the need for a slight increase in the number of members of the Committee – for example, to possibly 18 (we are now 15, as you know) – in order both to ensure a better overall balance in the Committee of the different legal traditions and social models in Europe, and to cope with our increasing workload, by allowing further improvement. This would also provide a much-needed opportunity for a revision of the distribution of States in the groups for the election procedure.

But also enhancing the profile of our Secretariat within the Council of Europe would be very important. In fact, the Committee considers that in order to strengthen its role and the performance of its institutional functions, its secretariat should be reinforced and its status should be upgraded; and we have already made proposals to this effect concerning the qualifications and experience of staff, the level of their grades, and their number. Despite the budgetary restrictions that, as we all know, the Council of Europe is currently facing, we really hope that such proposals could be taken into consideration.

So, Chairman, Ladies and Gentlemen, these are the few thoughts and proposals I wished to share with you. And I am looking forward with great interest to your reactions and views. I thank you again for the contribution you will give to the Social Charter system and the protection of social rights in Europe.