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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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DRAFTING GROUP ON SOCIAL RIGHTS
(CDDH-SOC)

Compilation of selected background material

relevant for the "second report" identifying good practices and making proposals with a view to improving the implementation of social rights in Europe

It is recalled that the CDDH-SOC, in its 2nd meeting (2–4 May 2018), adopted its Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (first report). On this basis, the CDDH-SOC, in accordance with its mandate, shall further "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" in a second report.

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[1] The document and report referred to under this heading were drawn up by independent experts and a General Rapporteur respectively and have not been adopted as official documents or conclusions at the High-level Conferences in question.

A. Selection of Resolutions of the Committee of Ministers adopted with regard to reports transmitted by the European Committee of Social Rights (ECSR) in respect of collective complaints (including information provided by the respondent Governments in this regard)

1. Resolution CM/ResChS(2017)8, *Finnish Society of Social Rights* v. Finland, Complaint No. 108/2014

Resolution CM/ResChS(2017)8
Finnish Society of Social Rights v. Finland
Complaint No. 108/2014

(Adopted by the Committee of Ministers on 14 June 2017 at the 1289th meeting of the Ministers' Deputies)

The Committee of Ministers,[2]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 29 April 2014 by the Finnish Society of Social Rights against Finland;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

- ***unanimously that there is no violation of Article 12 § 3 of the Charter.***

Article 12 § 3 requires States to improve their social security system. The expansion of schemes, protection against new risks or increase of benefit rates are examples of improvement (Statement of interpretation on Article 12, Conclusions, 2009).

A restrictive development in the social security system is not automatically in violation of Article 12 § 3 (Statement of interpretation on Article 12, Conclusions XVI-1, 2002).

Restrictions or limitations to rights in the area of social security are compatible with the Charter in so far as they appear necessary to ensure the maintenance of a given system of social security (Statement of interpretation on Article 12 § 3, Conclusions XIII-4) and do not prevent members of society from continuing to enjoy effective protection against social and economic risks. In view of the close relationship between the economy and social rights, the pursuit of economic goals is not incompatible with Article 12 (see e.g. Federation of Employed Pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, § 71).

The government has progressively raised the age limit for receipt of earnings-related unemployment benefits and has abolished the unemployment pension. According to the government, the system was altered as studies showed that this would improve the employment situation of older workers.

The measures complained of were introduced with the aim of keeping older workers in the workforce for longer, and do not prevent members of society from continuing to enjoy effective protection against social and economic risks. In addition, the measures taken were proportionate to the aim, in

[2] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.

particular as the age limit for receipt of the prolonged earnings-related unemployment benefits is lower for the oldest unemployed persons and increases gradually for younger generations.

The situation in Finland has previously been found to be in conformity with Article 12 §§ 2 and 3 of the Charter in this respect (Conclusions, 2013). No new elements have been adduced which would lead to the alteration of the previous assessment of the situation.

- ***unanimously that there is a violation of Article 13 § 1 of the Charter.***

Article 13 § 1 provides for the right to benefits, for which individual need is the main criterion for eligibility and which are payable to any person on the sole ground that he or she is in need (Conclusions 2013, Article 13 § 1, Bosnia and Herzegovina).

The entitlement to social assistance arises when a person is unable to obtain resources "either by his own efforts or from other sources, in particular by benefits under a social security scheme" (Statement of interpretation on Article 13 § 1, Conclusions XIII-4, 1996).

Social assistance must be at a level sufficient to ensure adequate assistance. When assessing the level of assistance, regard is had to basic benefits, any additional benefits and the poverty threshold in the country, which has been set at 50% of median equivalised income as calculated on the basis on the Eurostat at-risk-of-poverty threshold (e.g. Conclusions XIX-2, Article 13 § 1, Latvia, 2009).

As regards the labour market subsidy, it amounted to €702 per month in 2014. According to Eurostat data, 50% of the median equivalised income corresponded to €987,57 in 2014. The labour market subsidy hence corresponded to 35.5% of median equivalised income. The labour market subsidy is subject to income tax of 20% and the net value of the subsidy is thus about €561.6 per month or about 28.4% of median equivalised income. This is clearly not sufficient to ensure conformity with the Charter.

Recipients of the labour market subsidy may apply both for housing allowance and also for social assistance to cover housing costs in excess of the housing allowance. The amount of the housing benefit is determined by criteria and the ceiling stipulated by the law relating to the said allowance. The maximum amount of this assistance is 80% of reasonable housing expenses, adjusted for household size and income and the location of the dwelling. In 2013, the maximum amount of rent or housing expenses taken into account was €488 per month.

The housing allowance is limited by the various objective criteria mentioned above; nothing in the information available indicates that the beneficiaries of the labour market subsidy are always entitled to the maximum amount of the allowance. No information was found either in the current complaint or in information obtained through other means, (such as from Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, or reports under the reporting procedure), on the level of social assistance benefits that may be payable to beneficiaries of the labour market subsidy. The labour market subsidy has previously been found to fall below the level required by the Charter (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, § 121).

In view of the above, the labour market subsidy combined with the other benefits referred to, is not sufficient to enable its beneficiaries to meet their basic needs.

Having regard to the information communicated by the Finnish delegation at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 23 March 2017 (see Appendix to the resolution),

1. takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the report of the European Committee of Social Rights (see Appendix to this resolution);

2. looks forward to Finland reporting, at the time of the submission of the next report concerning the relevant provisions of the Revised European Social Charter, on any new developments regarding their implementation.

Appendix to Resolution CM/ResChS(2017)8

Address by the Representative of Finland at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 23 March 2017
Finnish Society of Social Rights v. Finland, Complaint No. 108/2014

Comments by the Government of Finland

"In its decision adopted on 8 December 2016 concerning Collective Complaint No. 108/2014, Finnish Society of Social Rights v. Finland, the European Committee of Social Rights considers that the labour market subsidy combined with the other benefits referred to, is not sufficient to enable its beneficiaries to meet their basic needs and that therefore there is a violation of Article 13 § 1 of the Charter.

The government takes note of the Committee's findings and firstly, notes with pleasure having been found to be in compliance with Article 12 § 3 requirement of satisfactory development of the social security system.

Secondly, the government observes that the Committee found that the requirements under Article 13 § 1 of the European Social Charter are not being met.

The government maintains its position expressed in the previous statements to the Committee, namely that social security is provided by a comprehensive social security system that consists of a variety of complementary monetary benefits, such as labour market subsidy, housing allowance and social assistance. In addition, monetary benefits are supplemented with other targeted benefits, payment ceilings and reliefs, and a variety of personal services provided according to the exigencies of an individual situation, which is why looking at the amount of some monetary benefits in isolation of the system as a whole is not indicative of the final levels of social security granted to an individual applicant.

The government stresses that the Finnish social security system covers the entire population and ensures individual subsistence and a life of dignity, including for elderly unemployed persons who are outside the labour market.

The government further observes that the sufficiency of the basic social security rate is examined at national level in the form of regularly conducted overall assessments. The most recent evaluation was published by the National Institute for Health and Welfare on 26 February 2015 and is based on an examination into the sufficiency of social security and social assistance by an independent expert group.

Similarly, the government draws the attention to the OECD calculations which indicate that the level of minimum income benefits for a single person in Finland in 2014 is above the poverty line which is attached to 50% of the equivalent median disposable income (Society at a Glance 2016, p. 107, figure 5.8, OECD 2016). It is further stressed that the relative level of minimum-income benefit in Finland is higher than in most other countries included in these OECD calculations.

The government appreciates constructive dialogue with the Committee and wishes to draw your attention to some circumstances in support of the position taken by Finland in this matter.

The government is of the view that the Committee's decision (paragraphs 65-68) does not fully reflect the Finnish social security system. The Committee based its decision on labour market subsidy and an average amount of housing allowance. As housing allowance is granted on the basis of actual housing costs, the average amount of housing allowance is not indicative of actual level of benefits in individual cases. Equally, the Committee only noted the social assistance without fully taking it into its consideration in its decision.

The government stresses in this connection that viewing labour market subsidy alone or only in combination with the housing allowance is too limited, particularly as many labour market subsidy

receivers also receive both a housing benefit and income support. The housing allowance receiver can also receive social assistance for remaining housing and other living costs if his/her combined income is not sufficient despite receiving social assistance, to secure means necessary for their basic needs. The government maintains that when evaluating Article 13 § 1, due consideration must be given to the discretionary benefits that are by their very nature intended to secure necessary means for basic needs in individual cases, when other benefits are insufficient.

Furthermore, in this case, attention should also be drawn to the following facts. Labour market subsidy has no maximum payment time. If the jobseeker participates in active measures, he/she is entitled to receive an additional monetary benefit for 200 days and cost compensation during the duration of the measure. If an unemployed person has children he/she is entitled to receive a child addition. Furthermore, the means testing considering spouses income was abolished in 2012 and means testing is not applied if a person is over 55 years or is participating in an active measure. In addition, under the Finnish system, a person becomes eligible for earnings-related unemployment benefit relatively quickly by being employed for 26 weeks. All these factors impact and increase the level of social security benefits of unemployed persons.

The government observes that the attempt to evaluate the income level in this manner is not reflective of the actual benefits provided by the social security system for elderly unemployed persons. As the Finnish social security system is complex and includes different components which in different combinations aim at providing necessary assistance in particular situations, attention to the combination of benefits and the system as a whole remains essential.

The government takes note of the Committee's views and will maintain the issue in the review report and examine ways to address the violations found by the Committee."

2. Resolution CM/ResChS(2017)4, *Associazione sindacale "La Voce dei Giusti"* v. Italy, Complaint No. 105/2014

Resolution CM/ResChS(2017)4
Associazione sindacale "La Voce dei Giusti" v. Italy
Complaint No. 105/2014

(Adopted by the Committee of Ministers on 5 April 2017
at the 1283rd meeting of the Ministers' Deputies)

The Committee of Ministers,[3]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 22 April 2014 by the *Associazione sindacale "La Voce dei Giusti"* against Italy;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

- ***unanimously, that there is a violation of Article E in conjunction with Article 10 § 3 a) and b) of the Charter;***

[3] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the following Contracting Parties to the European Social Charter or the revised European Social Charter participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

A. Regarding comparability

The situation of supply teachers must be examined, not with regard to domestic qualification or status, but in an autonomous manner with regard to the duties assigned; hierarchic authority; and tasks performed, the latter being determinant (European Council of Police Trade Unions (CESP) v. France, Complaint No. 101/2013, decision on the merits of 27 January 2016, §§ 54-59).

With regard to the exercise of teaching functions, the appointment of supply teachers is subject to special conditions, and the exercise of such duties is restricted to the effective duration of these conditions. However, Italian legislation does not provide for any distinction between supply teachers and teachers who hold the teaching qualification with regard to the duties exercised (correction of written work, signature of official documents, setting examinations for pupils, management within the body of teaching personnel) or their induction with the teaching staff.

Therefore, supply teachers and teachers who hold the teaching qualification are in a comparable situation with regard to Article 10 § 3 a) and b) of the Charter.

Regarding the existence of differential treatment

Regulations on specialist training in support teaching establish a differential treatment of supply teachers and teachers who hold the teaching qualification as they exclude the former from access to that training.

The government does not question the existence of such differential treatment, but argues that under its obligation to ensure sound administrative management and the quality of support teaching, the law may restrict access to support teaching to conditions that come in addition to those considered necessary for the exercise of the teaching profession.

The reasons put forward by the government serve a legitimate aim, as States Parties may, without exceeding their margin of appreciation (*Confédération française démocratique du travail* (CFDT) v. France, Complaint No. 50/2008, § 39) under Article 10 § 3 a) and b) of the Charter, tie the access to support teaching to requirements that come in addition to those considered necessary for the exercise of the teaching profession, if these requirements aim to ensure the quality of support teaching.

However, the aim and purpose of the Charter is to protect rights not merely theoretically, but also in fact (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, § 32). Therefore, differential treatment in matters of access to vocational training cannot be legitimate if it undermines the effective exercise of the right to vocational training guaranteed under Article 10 § 3 a) and b) of the Charter.

In this regard, access to specialist training in support teaching depends on the arrangements under which supply teachers may acquire the teaching qualification, which are made under the active traineeships (TFA) or the specialist training courses (PAS). Article E of the Charter prohibits both direct and indirect discrimination, and it is therefore necessary to examine whether supply teachers are being disproportionately affected under these programmes in practice with regard to access to specialist training in support teaching.

Regarding the existence of discrimination

With regard to Article 10 § 3 of the Charter, States Parties must provide facilities for training and retraining of adult workers (Conclusions XIX-1 (2008), Spain). The existence of these preventive measures supports active workers at risk of becoming unemployed as a consequence of technological and/or economic developments (Conclusions 2003, Italy). In addition, the existence of legislation on individual leave for training and its characteristics is assessed, in particular its length, remuneration, and requesting party; as well as of the sharing of the burden of the cost of vocational training among public bodies, unemployment insurance systems, enterprises, and households (Conclusions 2003, Slovenia).

In the present case, the government does not demonstrate how the terms of admission to the TFA leading to the teaching qualification in the 2014/2015 academic year, allow supply teachers to enroll in that TFA in practice and subsequently apply for the specialist training in support teaching. Missing provisions on cost or expense relief can in practice dissuade supply teachers employed on the basis of precarious, temporary, interrupted and relocated appointments from applying for that TFA, even where they meet the terms of admission. If access to the TFA may indeed be restricted by selection and/or limitation of available places, such restrictions may not undermine the effective exercise of supply teachers' right to vocational training.

The methods under which the TFA operates imply, besides taking mid-term and final exams, obtaining 60 university credits (CFU) (equivalent to 1,500 hours of lessons) in a year-long programme; mandatory attendance at 70% of lessons; journeys or relocation to the universities offering the courses. The requirements of the PAS are similar, i.e. obtaining 42 university credits (equivalent to 1,025 hours of lessons) and mandatory attendance at 70% of lessons. However, the government does not demonstrate how these methods, and especially mandatory attendance in a year-long programme, are made compatible with the supply teachers' professional activity based on precarious, temporary, interrupted and relocated appointments, for instance by providing for flexible working hours; opportunities for training leave; exemption from presence where training premises are distant from the workplace; or distance training.

Also, the government does not demonstrate that the TFA or the PAS leading to the teaching qualification allow for recognition, by a system of certification of work experience, of any prior work experience that some supply teachers who did not undergo specialist training may have acquired in support teaching.

Therefore, the terms of admission to the TFA or the PAS leading to the teaching qualification, these trainings' operating methods, and the lack of recognition of prior work experience, disproportionately affect the group of supply teachers to acquire the teaching qualification and subsequently pursue the specialist training in support teaching guaranteed under Article 10 § 3 a) of the Charter, thus creating a situation of indirect discrimination in comparison with teachers who hold the teaching qualification and do therefore not have to undergo the TFA or the PAS prior to exercising their right to vocational training. This situation also leads to an indirect discrimination in view of the obligation to provide or promote special facilities for the retraining of workers guaranteed under Article 10 § 3 b) of the Charter.

Having regard to the information communicated by the Italian delegation at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 7 February 2017 (see Appendix to the resolution),

1. takes note of the statement by the Italian Government and the information it has provided on the follow-up to the decision of the European Committee of Social Rights (see Appendix to this resolution);

2. looks forward to Italy reporting, at the time of the submission of the next report concerning the relevant provisions of the Revised European Social Charter, on any new developments regarding the implementation of the European Social Charter.

Appendix to the Resolution CM/ResChS(2017)4

Address by the Representative of Italy at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 7 February 2017
***Associazione sindacale "La Voce dei Giusti"* v. Italy, Complaint No. 105/2014**

"We duly took note of the decision of the European Committee of Social Rights. The Italian authorities consider the European Social Charter as a guiding example for justice and equality in Europe.

Likewise, they appreciate the relentless work of the European Committee of Social Rights in identifying priorities and fostering reforms in member States for higher social standards throughout Europe.

It is vital that each one of us complies with the commitments undertaken, and we have sincere intentions to act accordingly also on the matter we are discussing today.

Education has been at the centre of the political debate over the last few years in my country. I would like to underscore that Italian institutions have enacted compelling measures to modernise school institutions, and broaden teachers' opportunities.

Indeed, an overarching reform of the school system was initiated in 2015, with the clear objective to foster a higher skilled workforce and managerial class. The package of improvements that has been introduced, known as the Good School, also included permanent positions for more than 100,000 temporary teachers and new investments in the sector worth €3bn.

It goes without saying that support teachers play a key role in the school system for the benefit of the social development and well-being of students with special needs. By the same token, vocational training is of paramount importance for the well-functioning of our education system, with a view to ensuring the effective exercise of the rights of special needs students to have access to qualified and experienced professionals.

University courses will be created in the coming months, to help specialise and advance teachers even further, and ensure a common standard level of training nationwide. Furthermore, let me mention that the past December, the Ministry of Education hired more than 5,000 recently trained teachers for students with special needs.

Significant measures have already been taken, and we are aware of the fact that more has still to be done. Yet, we strongly believe that Italy is on the right path, and we are confident about positive change and developments with respect to this matter in the near future."

3. Resolution CM/ResChS(2017)2, *European Roma and Travellers Forum (ERTF)* v. Czech Republic, Complaint No. 104/2014

Resolution CM/ResChS(2017)2
European Roma and Travellers Forum (ERTF) v. Czech Republic
Complaint No. 104/2014

(Adopted by the Committee of Ministers on 22 February 2017,
at the 1278th meeting of the Ministers' Deputies)

The Committee of Ministers,[4]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 3 March 2014 by the European Roma[5] and Travellers Forum (ERTF) against the Czech Republic;

[4] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

- ***unanimously, that there is a violation of Article 16 of the 1961 Charter on the ground of insufficient access to housing, poor housing conditions and territorial segregation;***

In a recent conclusion under Article 16 of the 1961 Charter, it was found that the situation was not in conformity on the ground that housing conditions of Roma families were not adequate (Conclusions XX-4 (2015), Czech Republic).

The government has provided very general information on measures to increase the availability of housing such as the Social Housing Policy until 2020, subsidies and loans and specific programmes targeted at Roma, however there are few details. Measures have been taken by the government to improve more generally the integration of Roma: Integrated Operational Programme (IOP), Roma co-ordinators and the work of the Social Inclusion Agency. However, there is no information on needs in the housing field, targets or achievements to date (number of beneficiaries of loans subsidies, number of housing units, constructed or renovated etc.), and little concrete evidence has been provided that sufficient action has been taken or that measurable progress have been made in the field of housing for Roma.

There is considerable evidence of the poor housing situation of Roma from other sources: the European Commission against Racism and Intolerance (ECRI) conclusions adopted in 2012 and in 2015 ECRI's report of the Czech Republic (fifth monitoring cycle) adopted June 2015 (CRI(2015)35), the Commissioner for Human Rights in his report of 2013 (CommDH(2013)1), the UN Committee on Economic, Social and Cultural Rights (Concluding Observations on the second periodic report of the Czech Republic, June 2014, E/C.12/CZE/CO/2), the report commissioned by the European Commission (Roma Health Care report, the Health Status of the Roma Population, Data collection in the member States of the EU, August 2014).

- ***unanimously, that there is a violation of Article 16 of the 1961 Charter on the ground of forced evictions;***

Legislation permits the eviction of individuals and families without requiring the provision of alternative accommodation. Furthermore, not all legislation permitting evictions ensures the necessary safeguards required by Article 16 of the 1961 Charter, such as the prior consultation of affected parties, or the obligation to propose alternative accommodation.

There have been examples where local authorities did not proceed in accordance with the law when trying to evict Roma families, for example in Ostrava and Usti nad Labem.

- ***unanimously, that there is a violation of Article 11 of the 1961 Charter on the grounds of exclusion in the field of health and of inadequate access to health care services;***

The principle of universal access to health care is embodied in Article 31 of the Czech Charter of Fundamental Rights and Freedoms, which provides for the right of the citizens to health protection. More precise provisions are included in the Act No. 20/1966 Coll. on Care of People's Health which in Section 11 sets out the following principle:

"Availability of health care without direct payments, based upon the public health insurance (within the extent stipulated by a separate Act), or based upon a contractual health insurance."

Under Article 11 of the Charter, the health care system must be accessible to everyone, especially the health care should be available to all who require it, and free of charge to those without the necessary

[5] The terms "Roma and Travellers" are being used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term *"Gens du voyage"*, as well as persons who identify themselves as Gypsies.

resources. States Parties must ensure the best possible state of health for the population according to existing knowledge. Health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action (Conclusions XV-2 (2001), Denmark).

In the instant case, as regards the situation of persons who have not registered with the Labour Authority or who have been excluded from the register of unemployed persons, such persons are left without health coverage (unless they pay the contributions themselves) given that eligibility for "non-contributory" state health coverage is linked to unemployed persons being on the Labour Authority register. A job seeker can be excluded from the job seeker register on many grounds, e.g. if a job seeker: works illegally and receives unemployment benefits at the same time; refuses to take up a suitable employment or retraining; obstructs co-operation with the Labour Office; does not present him/herself at the relevant branch of the Labour Office or to the contact point of public administration at the arranged time; or withdraws his/her consent to personal data processing.

There is no evidence that a person without resources requiring medical services would receive the necessary care. The measures adopted by the government do not sufficiently ensure health care for poor or socially vulnerable persons who become sick, such as Roma who have lost health insurance.

Moreover, data on the health status of Roma families is limited but shows disparities between the health status of the Roma and non-Roma communities.

Numerous sources confirm that Roma families face disproportionate health risks and discrimination in accessing health care, for example: Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on the Czech Republic, §§19,50, 1 July 2001, ACF/OP/III/(2011)008; UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the second periodic report of the Czech Republic, June 2014, §9; Roma health report, Health Status of the Roma population, data collection in the member States of the European Union (Executive Summary written by Matrix, for the European Commission). There is sufficient evidence which shows that Roma communities, in many cases, do not live in healthy environments.

Despite the measures taken by the government, there is little evidence of progress. ECRI's report on the Czech Republic (fifth monitoring cycle) adopted in June 2015 (CRI(2015)35) noted that the first Concept for Roma Integration was widely regarded as having had little effect and little progress had been made.

The State has failed to meet its positive obligations to ensure that Roma families enjoy adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services.

The problems encountered by many Roma families in accessing health care services, as well as the failure of the authorities to take appropriate measures to address the exclusion and marginalisation in the field of health to which Roma communities are exposed, constitute a breach of Article 11 §§ 1, 2 and 3 of the 1961 Charter in light of the Preamble.

- ***unanimously, that there is no violation of Article 11 of the 1961 Charter on the grounds of segregation of Roma children.***

As regards the segregation of Roma children in education and in particular their placement in schools for children with disabilities due to discrimination and/or the use of allegedly unreliable diagnostic tools, this falls outside the ambit of the right to health as guaranteed by the 1961 Charter.

Having regard to the information submitted by the delegation of the Czech Republic during the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 17 November 2016 (see Appendix to the resolution),

1. takes note of the report of the European Committee of Social Rights (ECSR);

2. looks forward to the Czech Republic reporting, on the occasion of the submission of the next report concerning the relevant provisions of the European Social Charter, on the implementation of

the measures adopted, and keeping, within this framework, the Committee of Ministers informed of all progress made.

Appendix to the Resolution CM/ResChS(2017)2

Information submitted by the delegation of the Czech Republic during the meeting of the GR-SOC of 17 November 2016 –
European Roma and Travellers Forum (ERTF) v. Czech Republic, Complaint No. 104/2014

Response of the Czech Republic to the Council of Europe Committee of Ministers on the Report of the European Committee of Social Rights in Complaint No. 104/2014, European Roma and Travellers Forum (ERTF) v. Czech Republic

The Czech Republic has given careful consideration to the report of the European Committee of Social Rights (ECSR) in respect of the above-mentioned complaint and welcomes this opportunity for providing its opinion on the report and to update the Committee of Ministers on recent developments in the respective fields.

As regards the alleged violation of Article 16 of the Charter:

1. The government repeatedly stated its disagreement with the extensive interpretation of the 1961 Charter in the light of the revised Charter by the ECSR. This being said, the confirmation provided by the ECSR in para 69 of the decision, namely that "the interpretation given under the European Social Charter of 1961 remains valid for those provisions that were not amended by the revised Social Charter", is on the one hand welcomed, on the other, however, can hardly be considered reassuring. Reading through the Decision on the Merits, it is obvious that the ECSR did not prevent itself from applying obligations arising from the revised Charter, for example by referring to "individuals" or by using a notion of "adequate housing", thus applying Article 31 of the revised Charter to a country which has not ratified this instrument. Another example *sui generis* is paragraph 128, where the ECSR obviously acted beyond its powers when assessing what violation would a situation amount to should the Czech Republic ratify the revised Charter.

2. Secondly, the government regrets that the ECSR did not take fully into consideration the arguments submitted as well as the policies implemented by the government in the respective fields. While the text of the decision admits that the government had provided information on measures to increase the availability of housing, such as the Social Housing Policy until 2020, it is the assessment of the Committee that "there are few details" and that "little concrete evidence has been provided that sufficient actions and measureable progress has been made in the field of housing for Roma". This statement causes certain difficulties: according to the experts, it is more and more obvious that the issue of the housing of Roma cannot be dealt with separately, as this would only lead to further segregation. The only possible solution when creating tools for accessible social housing in general is to take into consideration a specific situation of Roma and other groups with similar characteristics, such as large families, for example. Based upon these arguments, the government adopted the 155 pages long Social Housing Policy, which does not explicitly target Roma, but, more generally, encompasses vulnerable groups and ethnic minorities and provides an important and detailed background for improving the access to housing by these groups.

3. Adoption of the Social Housing Policy was a significant step forward in creating a background for the new Law on Social Housing, which, being one of the priorities of the government, is currently in its final stage of completion. Moreover, the government adopted the Policy on Prevention and Coping with the Problem of Homelessness and Social Inclusion Strategy 2014-2020, both documents aimed at coping with issues raised within this collective complaint. The government is fully aware of the seriousness of the problem of persons facing the threat of social exclusion and, among these, of the specific position of Roma population. As proven by the respective policies and strategy mentioned above, the government pays due attention to these issues and makes efforts to eliminate risks which may lead to social exclusion. In this framework, the government does its best to proceed conceptually and systematically, being aware of the fact that these issues require long-term and intensive attention of all parties involved.

As regards the alleged violation of Article 11 of the 1961 Charter:

1. The Czech Republic welcomes the observation of the Committee that current exemption from paying health care contributions for unemployed persons registered with the Labour Authority ensures that some of the most disadvantaged sections of the community have access to health care.

2. However, the government cannot concur with the ECSR holding that the Czech Republic is in breach of Article 11 of the Charter due to problems encountered by Roma in accessing health care services. The government cannot but insist that health care in the Czech Republic is accessible to all. According to the Law No. 372/2011 Coll., on medical services, every medical facility is obliged to provide all necessary care to everyone without being directly reimbursed. In relation to this collective complaint, there was no single piece of evidence proving that any practitioner refused to provide such a treatment. The ECSR claim that a person without resources requiring medical services would not receive the necessary care is wrong and does not correspond to reality.

3. When providing its reasoning, the ECSR worked upon its previous decision in the case of Collective Complaint No. 46/2007 ERRC v. Bulgaria. This complaint alleged a violation of Article 11 (the right to protection of health) and Article 13 (the right to social and medical assistance) of the revised Charter, while the Collective Complaint ERTF v. Czech Republic encompasses Articles 11 and 16 of the 1961 Charter. Although the direct reference to Article 13 had been partly deleted from the quotations copied from the complaint ERRC v. Bulgaria, the ECSR did not prevent itself from its application when repeatedly dealing with a question of "medical assistance" in its assessment. For obvious reasons, the government did not put forward any arguments related to an article the violation of which had not been alleged by the complainant organisation and the ECSR consequently noted that "the Committee has been provided with no evidence that a person without resources requiring medical services would receive the necessary care", which may have led to its final conclusion of the Czech Republic being in violation of Article 11 of the 1961 Charter.

4. Another issue is raised by para 124 of the report, which is, without being properly referenced, a complete copy-paste from the above-mentioned decision on ERRC v. Bulgaria. This paragraph mentions the lack of protective measures put forward by the government to guarantee clean water in Romani neighbourhoods. However, the government is not aware of any reference to the problem of clean water in any expert report on the situation in the Czech Republic, nor is such a report being quoted in the decision.

The government regrets these discrepancies as they to a great extent depreciate the impact of the decision and from an external point of view may cast doubts on the work of the ECSR as a monitoring body of the Council of Europe. Needless to add, they are in no way instrumental in supporting efforts for further signatures and ratifications of the Protocol providing for a system of collective complaints.

In conclusion, while disagreeing with some parts of the report, the Government of the Czech Republic will continue its efforts in the area of Roma integration, recognising the importance of the role and responsibility of the Roma community themselves in progressing this objective. The Czech Republic remains ready to update the Committee of Ministers on future developments, in the context of the annual reporting mechanism on compliance with the provisions of the 1961 European Social Charter.

4. Resolution CM/ResChS(2015)9, *Association for the Protection of All Children (APPROACH) Ltd* v. Ireland, Complaint No. 93/2013

Resolution CM/ResChS(2015)9
Association for the Protection of All Children (APPROACH) Ltd v. Ireland,
Complaint No. 93/2013

(Adopted by the Committee of Ministers on 17 June 2015
at the 1231st meeting of the Ministers' Deputies)

The Committee of Ministers,[6]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 4 February 2013 by Association for the Protection of All Children (APPROACH) Ltd against Ireland;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded unanimously:

- that there is a violation of Article 17 § 1 of the Charter

The Charter contains comprehensive provisions protecting the fundamental rights and human dignity of children – that is persons aged under 18 (Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 25-26). It enhances the European Convention on Human Rights in this regard. It also reflects the provisions of the United Nations Convention on the Rights of the Child, on which in particular Article 17 is based.

There is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. Reference is made, in particular, in this respect to the General Comment Nos. 8 and 13 of the Committee on the Rights of the Child.

Most recently, the following interpretation of Article 17 of the Charter as regards the corporal punishment of children was made in the decision World Organisation against Torture (OMCT) v. Portugal, Complaint No. 34/2006, decision on the merits of 5 December 2006, §§ 19-21:

“To comply with Article 17, States’ domestic law must prohibit and penalise all forms of violence against children that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, States must act with due diligence to ensure that such violence is eliminated in practice.”

In the decision World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, §§ 65-66 it was found that:

”the corporal punishment of children within the home is permitted in Ireland by virtue of the existence of the common law defence of reasonable chastisement. Although the criminal law will protect children from very serious violence within the home, it remains the fact that certain forms of violence are permitted. The Committee therefore holds that the situation is in violation of Article 17 of the Revised Charter.

As regards the situation of children in foster care, residential care and certain child minding settings, the Committee takes note of the fact that there exist guidelines, standards, registration schemes and inspections. However it notes that these do not have the force of law and do not alter the existence of the common law defence which remains *prima facie*

[6] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.

applicable. It therefore finds that children in these situations are not adequately protected against corporal punishment."

However, as regards the protection of children from corporal punishment within the family, there have been no developments since the decision in OMCT against Ireland (cited above), notwithstanding "the intention of the Department of Health and Children to seek legal advice in relation to amending the regulations to make more explicit the prohibition of corporal punishment of children in care, and on the need for any change required in primary legislation and "…the intention of the government to keep the introduction of an outright ban on corporal punishment under review"(Resolution ResChS(2005)9 of the Committee of Ministers). The common law defence of "reasonable chastisement" continues to exist.

As regards children in care, foster care or residential care, the relevant guidelines and practice provide children with a significant degree of protection. Nevertheless these do not amount to a statutory prohibition and the government has not referred to any decisions of the domestic courts which would indicate that they would restrict the common law defence of "reasonable chastisement". There have been no significant developments since the previous complaint. None of the legislation referred to by the government sets out an express and comprehensive prohibition on all forms of corporal punishment of children that is likely to affect their physical integrity, dignity, development or psychological well-being.

Finally, turning to children in child care (pre-school settings), while corporal punishment is prohibited in pre-school establishments by the Child Care (Pre-School Services) Regulations 2006, Section 58 of the Child Care Act 1991 exempts child minders caring for children of relatives, children of the same family or not more than three children of different families from the scope of this provision.

Therefore, domestic law does not prohibit and penalise all forms of violence against children within the family, in certain types of care or certain types of pre-school settings, that is acts or behaviour likely to affect their physical integrity, dignity, development or psychological development or well-being.

Having regard to the information communicated by the Irish delegation on 31 March 2015,

1. takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the decision of the European Committee of Social Rights (see Appendix to this resolution);

2. looks forward to Ireland reporting, at the time of the submission of the next report concerning the relevant provision of the Revised European Social Charter, on progress made.

Appendix to Resolution CM/ResChS(2015)9

Address by the Representative of Ireland at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 31 March 2015 – Association for the Protection of All Children (APPROACH) Ltd v. Ireland, Complaint No. 93/2013

Ireland has given careful consideration to the report and decision of the European Committee of Social Rights in respect of the above-mentioned complaint.

Ireland acknowledges that its existing statutory arrangements prohibiting the corporal punishment of children fall short of a total prohibition on all kinds of corporal punishment in all situations and consequently do not achieve the standard required under the European Social Charter.

Ireland wishes to assure the Committee that it takes its responsibilities in this area very seriously and is fully committed to working towards the elimination of corporal punishment.

By way of making further progress towards that goal during the current year, Ireland will take such steps as are permissible within the existing legal framework to establish an explicit statutory prohibition of corporal punishment in those areas where there are currently only administrative and/or statutory criteria in place (such as in foster care settings).

Under Better Outcomes Brighter Futures: The National Policy Framework for Children & Young People 2014-2020 (published in April 2014) the government has committed to reviewing and reforming, as necessary, the Child Care Act 1991. Work has commenced on this action. As part of that process, removal of the exemption that exists under section 58 of Part IV of that Act dealing with supervision of pre-school services, as referred to by the Committee, will be carefully examined.

More generally, the introduction of a ban on corporal punishment in all circumstances will be kept under review, including having regard to developments at the constitutional level and to the related jurisprudence. Ancillary to this process, arrangements are to be initiated to examine the potential, under the Irish legal framework, to remove the common law defence of "reasonable chastisement" which may be availed of in proceedings under the Non-Fatal Offences Against the Person Act 1997 and under section 246 of the Children Act 2001.

In parallel with these approaches, the work to enhance child protection will continue in terms of initiatives including:

• Proposed enactment of the Children First Bill 2014 and the revision of the related Children First: National Guidance for the Protection and Welfare of Children (2011). The Bill includes provision for mandatory reporting of child welfare and protection concerns by certain professionals. It is also intended to improve child protection arrangements in organisations providing services to children as well as raising awareness of child abuse and neglect. The Children First Guidance (2011) will be revised and updated to take account of new legislative obligations so as to provide in one place a complete reference resource for individuals and organisations.

• Development of the capacity of the Child and Family Agency (established in January 2014) in the area of prevention and early intervention by way of parenting support and family support initiatives and in relation to combatting domestic violence. The statutory functions of the Child and Family Agency require it, *inter alia*, to support and promote the development, welfare and protection of children and to support and encourage the effective functioning of families. There is a statutory obligation on the Agency when making decisions in relation to these functions to have regard to the best interests of the child in all matters.

• Implementation of commitments in Better Outcomes Brighter Futures: The National Policy Framework for Children and Young People, particularly as regards promoting integrated responses to the needs of children and their families and developing greater capability for children and young people to have real agency through actions under the identified Better Outcome of their being connected, respected and contributing to their community. *Better outcomes Brighter Futures* is the first overarching national policy framework comprehending the age ranges spanning children and young people (0-24 years) in the history of the State. This framework sets out and centralises common outcomes, captures 163 policy commitments and prioritises key transformational goals necessitating action. It is a whole of government policy framework which brings together all relevant government departments to have responsibility for the national outcomes relevant to their areas of work. These outcomes are as follows:

- Active and healthy with physical and mental well-being;
- Achieving full potential in all areas of learning and development;
- Safe and protected from harm;
- Enjoying economic security and opportunity;
- Connected, respected and contributing to their world.

Ireland will keep the Council of Europe informed of developments in relation to eliminating corporal punishment through the annual reporting mechanism to the Council.

5. Resolution CM/ResChS(2015)4, *European Federation of National Organisations working with the Homeless (FEANTSA)* v. the Netherlands, Complaint No. 86/2012

Resolution CM/ResChS(2015)4
European Federation of National Organisations working with the Homeless (FEANTSA)
v. the Netherlands,
Complaint No. 86/2012

(Adopted by the Committee of Ministers on 15 April 2015
at the 1225th meeting of the Ministers' Deputies)

The Committee of Ministers,[7]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 4 July 2012 by European Federation of National Organisations working with the Homeless (FEANTSA) against the Netherlands;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

- unanimously, that there is a violation of Article 31§2 of the Charter

Applicability of Article 31§2 to persons concerned by the complaint

In certain cases and under certain circumstances, the provisions of the Charter may be applied to migrants in an irregular situation. In connection with complaints concerning children, the Committee has held that this is the case with regard to health, medical assistance, social, legal and economic protection and shelter.

Eviction from shelter of persons present within the territory of a State Party in an irregular manner should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness, which is contrary to the respect for their human dignity. States are nevertheless not obliged to provide alternative accommodation in the form of permanent housing within the meaning of Article 31§1 for migrants in an irregular situation.

Alleged violation of Article 31§2 of the Charter

Access to shelter

The government has introduced financial measures for the purposes of guaranteeing access to shelter, as well as undertaken regular reviews of the national situation. It similarly has put in place legislation regulating access to shelter.

So-called community shelter is nevertheless provided only to those who fulfil the criteria of the relevant domestic law (the WMO), that is, to applicants with multiple problems and not self-sufficient. In the non-binding guidelines issued by the Association of Dutch Municipalities, this group of homeless persons is referred to as "the target group".

[7] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

The local connection criterion further restricts the access to community shelter. Pursuant to it, homeless persons are obliged to establish having resided within the same region for the period of two out of the three years prior to their application for a placement at an emergency shelter.

Those accommodated in community shelters must moreover fulfil any additional criteria in force for shelter distribution in the municipal area. These criteria vary between the responsible municipalities.

The government aims to guarantee the access to community shelter by means of the nationwide access principle for those who do not fulfil the local connection criterion. In accordance with the law, community shelter services are accessible to all those who live in the Netherlands.

Pursuant to the government's own submissions, the national access principle is not fully applied in practice. It follows that the government has failed to supervise the provision of shelter by the responsible municipalities in a manner ensuring the provision of community shelter, even without a local connection.

Binding rules have not been issued to the responsible municipalities and to other providers of community shelters on the criteria for the granting of shelter. Similarly, no binding instructions have been issued on the distribution of responsibilities between the municipalities in cases where shelter is ultimately granted outside the municipality of first application.

The authorities acknowledge that the mechanism in force does not cover everyone with a valid claim for shelter. Governmental funding, moreover, only covers the provision of the community shelter to the target group.

The municipalities may on their own initiative provide shelter also to those who do not fall within the target group. Neither party has however provided information on a nationwide practice to this end. It may accordingly not be established that alternative shelter accommodation is available in sufficient numbers with regard to the estimated number of the homeless, who remain outside the community shelter mechanism. No statistics are maintained on the estimated shelter demand.

A significant segment of the homeless is provided shelter neither in law, nor in practice and the scope of the obligation to provide shelter has been restricted in an excessive manner.

Nationals of the Netherlands, as well as all foreigners staying in the Netherlands in a regular manner, have a right to be offered more permanent housing than emergency shelter within a reasonable period. Social housing is insufficiently available in certain areas, which is partially due to the general economic situation. The States Parties should match the increase in need of shelter and the related social housing regardless of the economic situation in order to achieve the steady progress towards the elimination of homelessness, as required under Article 31§2.

In view of the foregoing, the legislation and practice fail to ensure access to community shelter for the purpose of preventing homelessness.

The quality and quantity of shelter available to vulnerable groups

Regardless of the significant steps taken for the purpose of ensuring access to shelter by women and women with children, according to FEANTSA, the number of special shelter places on offer for these groups remains insufficient.

The government has not provided data establishing the sufficiency of shelter places reserved for the vulnerable groups, nor excluded that women may be sheltered in general shelters. Only 35 of the 43 municipalities responsible for shelter provision maintain special women's shelters. Both parties furthermore refer to an established, genuine need for additional family shelters. No specific information is provided on the situation of children in shelters.

Shelter provided for women and women with children thus fails to fulfil the requirements of Article 31§2 with regard to quantity.

No information has been provided on the situation of those young homeless people, who do not have multiple problems and thus are not eligible for a placement in youth shelter. It therefore cannot be established whether these adolescents are provided with sufficient shelter or not.

With regard to the quality of the shelters available to vulnerable groups, emergency shelters must always meet the safety requirements established by the Committee. The States Parties should provide members of vulnerable groups with shelters that are adapted to the needs of those belonging to such groups, as well as ascertain the availability and suitability of special shelters.

It follows that the quality and quantity of shelters available to vulnerable groups do not fulfil the requirements of the Charter.

- unanimously, that there is a violation of Article 13§§1 and 4 of the Charter

Applicability of Article 13 to persons concerned by the complaint

Pursuant to the established practice of the Committee, foreigners who are nationals of States Parties to the Charter and are regularly residing in the territory of another State Party without adequate resources, enjoy an individual right to appropriate assistance under Article 13§1 on an equal footing with nationals, i.e. beyond emergency assistance. Conditions such as the length of residence, or conditions which are harder for foreigners to meet, may not be imposed. Article 13§1 concerns also refugees and stateless people.

Emergency social assistance should be provided under Article 13§4 to all foreign nationals without exception. Also migrants having exceeded their permitted period of residence within the jurisdiction of a State Party have a right to emergency social assistance.

Alleged violation of Article 13 of the Charter

Pursuant to a survey referred to by the government, emergency shelter is not systematically made available to all categories of persons covered by Article 13 with a valid claim for shelter.

The homeless who do not belong to the target group in general have at least one serious problem in addition to the fact of being homeless. No information has been issued on a comprehensive, nationwide practice of granting another type of shelter to this group of homeless. It has moreover not been established how recourse to the general social services or a debt reorganisation would help to ensure immediate emergency housing to a homeless person.

Even though the need for shelter placements cannot be statistically measured, it is nevertheless possible to provide an estimation on the basis of administrative data. No such estimation has been provided.

According to the government, emergency shelter is not provided to migrants in an irregular situation in the overwhelming majority of cases. Emergency shelters are furthermore reserved to those genuinely in serious and acute need. In light of the Committee's case law, the aim as such is in keeping with Article 13.

The reasons for the immigration policy behind this situation are noted. The denial of emergency shelter to those individuals who are still in the territory of the Netherlands is nevertheless not an absolutely necessary measure for achieving the aims of the immigration policy. No indication on the concrete effects of this measure has been given.

Even when maintaining the current aims of the migration policy, less onerous means remain available with regard to the emergency treatment provided to those individuals who have

overstayed their legal entitlement to remain in the country. Halting the provision of such very basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a precarious situation, cannot be accepted.

The legal and practical measures denying the right to emergency assistance restrict, in a disproportionate manner, the right of adult migrants in an irregular situation and without adequate resources.

The scope of application of Article 13§4 extends also to those whose asylum claim has been rejected. The right to emergency social assistance is not limited to those belonging to vulnerable groups, but extends to all individuals in a precarious situation pursuant to their human dignity.

With regard to the right to appeal in matters concerning the granting of emergency assistance, there is nothing to establish the efficiency of this right in practice. A functioning appeal mechanism before an independent judicial body is crucial for the proper administration of shelter distribution. It is for the government to ensure that this right is made effective also in practice.

- unanimously, that there is a violation of Article 19§4(c) of the Charter

Applicability of Article 19§4(c) to persons concerned by the complaint

Article 19§4(c) obliges the States Parties to secure the rights provided to migrant workers who are within their territories in a regular manner. Migrants in an irregular situation do nevertheless not prima facie fall within the scope of the Article. Pursuant to the wording of Article 19, the protection granted to migrant workers also extends to the members of their families.

Alleged violation of Article 19§4(c) of the Charter

Pursuant to domestic law, access to shelter may be provided to foreigners who are lawfully resident in the country. Furthermore, the said provision enables the exceptional provision of emergency shelter to those in an irregular situation.

Instead of referring to measures taken to ensure the equal access to emergency accommodation for migrant workers and their families, the government refers to legislation adopted in order to limit the access to emergency accommodation by this group. The right to emergency shelter has especially been proscribed in respect of citizens of the European Union during the first three months of their residence.

The restriction pursues an aim of social and employment policy, as it purports to reserve the right of free residence during the first three months to those EU citizens who are able to sustain themselves and their families without needing to resort to the social assistance system of the receiving member State.

In this context, and taking into account in particular the short duration of the restriction, the limitation is proportionate with regard to the aim it pursues, as well as in light of the rights to emergency social assistance of those individuals to whom it is applied.

Insofar as the right to appeal to an independent body regarding decisions relating to the distribution of accommodation to migrant workers and their families is concerned, reference is made to the findings under Article 13. The situation also amounts to a violation of Article 19§4(c).

- unanimously, that there is a violation of Article 30 of the Charter

Applicability of Article 30 to persons concerned by the complaint

It follows from the Committee's case law that the States Parties are not obliged to apply to migrants in an irregular situation the range of economic, social and cultural measures that are to be taken in order to secure the right to protection against poverty and social exclusion. The co-ordinated approach required by Article 30 involves the adoption of positive measures, most of which cannot be regarded as being applicable to groups not covered by the personal scope of the Charter. Article 30 is thus not applicable to migrants in an irregular situation.

Alleged violation of Article 30 of the Charter

"The aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact". This human rights approach emphasises the very close link between the effectiveness of the right recognised by Article 30 and the enjoyment of the rights recognised by other provisions, such as Articles 13 and 31 of the Charter.

In light of the findings made under Articles 31§2, 13§§1 and 4, as well as 19§4, the legislation and policy concerning the access to emergency shelter has brought about a situation where homeless persons in need of shelter are not always offered shelter regardless of genuine need. This is not in keeping with the obligation to prevent poverty and social exclusion.

It furthermore appears from the latest relevant national survey that measures to improve the co-ordination between the responsible municipalities were envisaged for addressing the situation. The co-ordination between the responsible authorities is currently insufficient for the purposes of Article 30.

Having regard to the information communicated by the delegation of the Netherlands on 16 September 2014 (see appendix to the resolution),

1. takes note of the report of the ECSR and in particular the concerns communicated by the Dutch Government (see appendix to the resolution);

2. recalls that the powers entrusted to the ECSR are firmly rooted in the Charter itself and recognises that the decision of the ECSR raises complex issues in this regard and in relation to the obligation of States parties to respect the Charter;

3. recalls the limitation of the scope of the European Social Charter (revised), laid down in paragraph 1 of the appendix to the Charter;

4. looks forward to the Netherlands reporting on any possible developments in the issue.

Appendix to Resolution CM/ResChS(2015)4

Address by the Representative of the Netherlands at the GR-SOC meeting of 16 September 2014 –
European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012

The ECSR has issued two decisions against the Netherlands (CEC and FEANTSA). My government has serious concerns about these decisions and today I would like to share with you those concerns.

Naturally, we realise that it is not unusual for States to have difficulties with decisions of the Committee, especially when decisions are not entirely favourable for a State. The Netherlands acknowledges that reports and decisions of the ECSR should be given appropriate follow-up in order to repair any violations found and prevent future violations.

However, in the cases now on the agenda, it seems that a straightforward provision of the European Social Charter to which we are all parties, is being ignored. As this should be of concern to all parties, I would like to focus my intervention on that aspect.

The Netherlands is one of the 15 Council of Europe member States that have ratified the collective complaints protocol of the European Charter. In both the decisions against the Netherlands, the ECSR has concluded that the Netherlands is in violation with several provisions of the Social Charter, because the Netherlands has – according to the ECSR – not recognised certain rights enshrined in the Charter to persons unlawfully present on Dutch territory.

In the appendix to the Social Charter, the Contracting Parties aimed to exclude from the scope of the Charter all aliens who are not lawfully residing on the territory of a Party. This provision is fully coherent with the sovereign right of States to decide on the entry of foreigners on their territory.

It is unchallenged that by introducing this provision, State Parties had in mind a limited personal scope of the Charter. And they still do so, given the lack of favourable response to a letter dated 13 July 2011 of the President of the ECSR, by which States Parties were invited to abandon the provision.

The ECSR's unwarranted interpretation risks jeopardising the trust that States place in what they have agreed upon in treaty law. Any interpretation of a treaty should be in good faith and cannot unilaterally impose completely new obligations upon member States. The decisions by the ECSR do not merely contain an extensive interpretation of the treaty provisions; they contain an interpretation which is simply *contra legem*.

We have serious concerns how this will affect the authority of the Committee in the long run and how this will affect the effectiveness of the Social Charter itself. As one result, the majority of States not having accepted the collective right of complaint may be discouraged from doing so.

Therefore, the Netherlands seeks the support of you, our fellow States Parties to the Charter, in confirming the validity of the limitation of the personal scope of the Charter.

6. Resolution CM/ResChS(2014)7, *Federation of Employed Pensioners of Greece (IKA-ETAM)* v. Greece, Complaint No. 76/2012

Resolution CM/ResChS(2014)7
Federation of Employed Pensioners of Greece (IKA-ETAM) v. Greece,
Complaint No. 76/2012

(Adopted by the Committee of Ministers on 2 July 2014
at the 1204th meeting of the Ministers' Deputies)

The Committee of Ministers,[8]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 2 January 2012 by Federation of Employed Pensioners of Greece against Greece;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

[8] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

That there is a violation of Article 12§3 of the 1961 Charter

Reductions in the benefits available in a national social security system will not automatically constitute a violation of Article 12§3 of the Charter.

However, even when reasons pertaining to the economic situation of a State Party make it impossible for a State to maintain its social security system at the level that it had previously attained, it is necessary by virtue of the requirements of Article 12§3 for that State Party to maintain the social security system on a satisfactory level that takes into account the legitimate expectations of beneficiaries of the system and the right of all persons to effective enjoyment of the right to social security. This requirement stems from the commitment of State Parties to "endeavour to raise progressively the system of social security to a higher level" which is expressly set out in the text of Article 12§3, and is distinct from the requirement set out in the last part of Article 12§2 to maintain the social security system at a satisfactory level at least equal to that required for ratification of the European Code of Social Security (and for the 1961 Charter, the International Labour Convention No. 102 concerning Minimum Standards of Social Security).

When issuing provisions that will restrict the rights guaranteed in the 1961 Charter, the States Parties must, pursuant to Article 31 of the 1961 Charter, be capable of establishing that any restrictions or limitations are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.

It has on many occasions been held that the income of the elderly should not be lower than the poverty threshold, defined as 50% of median equalised income as calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

With regard to the level of pension benefits under the 1961 Charter, reference is made to Article 4§1(a) of the 1988 Additional Protocol, which entered into force with regard to Greece on 1 July 1998. This provision, which also appears with identical wording in Article 23§1(a) of the 1996 Revised Charter, provides for the right of the elderly to adequate resources in order to enable them to lead a decent life.

Some of the restrictions introduced by the government and criticised by the complainant trade union do not in themselves amount to a violation of the 1961 Charter. This is particularly the case in relation to the restrictions introduced in respect of holiday bonuses, the restrictions of pension rights in cases where the level of pension benefits is a sufficiently high one, and in cases where people are of such a low age that it is legitimate for the State to conclude that it is in the public interest for such persons to be encouraged to remain part of the workforce than to be retired.

In contrast, the cumulative effect of the restrictions, as described in the information provided by the complainant trade union, and which were not contested by the government, is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned.

Despite the particular context in Greece created by the economic crisis and the fact that the government was required to take urgent decisions, the government has not conducted the minimum level of research and analysis into the effects of such far-reaching measures that is necessary to assess in a meaningful manner their full impact on vulnerable groups in society. Neither has it discussed the available studies with the organisations concerned, despite the fact that they represent the interests of many of the groups most affected by these measures.

Research was not undertaken to discover whether other measures could have been put in place, which may have limited the cumulative effects of the contested restrictions upon pensioners.

> The government has not established, as is required by Article 12§3, that efforts have been made to maintain a sufficient level of protection for the benefit of the most vulnerable members of society, even though the effects of the adopted measures risk bringing about a large scale pauperisation of a significant segment of the population, as has been observed by various international organisations.
>
> Any decisions made in respect of pension entitlements must respect the need to reconcile the general interest with individual rights, including any legitimate expectations that individuals may have in respect of the stability of the rules applicable to social security benefits. The restrictive measures at stake, which appear to have the effect of depriving one segment of the population of a very substantial portion of their means of subsistence, have been introduced in a manner that does not respect the legitimate expectation of pensioners that adjustments to their social security entitlements will be implemented in a manner that takes due account of their vulnerability, settled financial expectations and ultimately their right to enjoy effective access to social protection and social security. However, other mechanisms are more suited to address complaints relating to the effects of the contested legislation on individual pensioners' right to property. In this regard, domestic courts can also play a significant role.

Having regard to the information communicated by the Greek delegation at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 24 April 2014,

1. takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the decision of the European Committee of Social Rights (see appendix to the resolution);

2. looks forward to Greece reporting, at the time of the submission of the next report concerning the relevant provisions of the European Social Charter, that the situation has been brought into conformity.

Appendix to Resolution CM/ResChS(2014)7

Measures taken by the Greek Government regarding Complaint No. 76/2012: Federation of Employed Pensioners of Greece (IKA-ETAM) v. Greece

The principle of the social welfare State and of the fundamental social rights (social security, employment, education, health and medical insurance/benefits), enshrined in the Greek Constitution, along with the inclusion, in the Greek legal system, of basic supranational regulations in the field of social security, based upon the EU acquis and the acquis of relevant international organisations, depict that the Greek State recognises the necessity of guaranteeing a certain level of social protection as a fundamental element of the national system of social security.

Social Security is enshrined in Article 22§5 of the Greek Constitution. It functions via self-administered organisations, extends upon the entire working population in Greece, by means of obligatory payment of their social security contributions, and is fully intertwined with active employment. The basic role of the Social Security System in Greece is to guarantee social protection in the country and to ensure that everyone, and especially the elderly and weaker/vulnerable social groups, can enjoy an income which allows them to maintain their living standards at a logical level, especially in periods of illness, unemployment or after retirement.

Concerning the pension system in particular, its success lies in securing its financial viability (and thus its capability in providing in the long-run sufficient pensions), in coping successfully with future, as well as unpredictable situations (population ageing, new forms of employment) and in better reflecting the citizens' changing needs (as for example the new family models).

It is for the abovementioned reasons that the measures, cited below, were adopted, being the product of a long social dialogue, with the participation of both political forces and social partners, in order to reform the Social Security System and to guarantee its functioning for the future, rendering it modern, rational, socially just, and viable in the long term. Our main objective in this effort was to retain the

public, obligatory, global and redistributive character of the Social Security, while at the same time to deal with the accumulated problems of the last few decades (the fragmentation of the Social Security Funds and the lack of actual exploitation of their financial assets).

Specifically:

A. For the protection of vulnerable groups

1) Starting from 1/1/2013, the pensions below 1000 euros are guaranteed while cuts on those above 1000 euros are introduced on a scale from 5% up to 20%, depending on the amount or number of pensions (Law 4093/2012).

2) For the protection of the elderly with low pensions, the Benefit of Social Solidarity (EKAS) which is a non-retributive benefit, continues to be granted (Law 4151/2013).

3) Based on Law 4093/2012, for the non-insured elderly, a pension of 360 euros is granted based on certain conditions (not receiving another pension/residing legally in the country for 20 years/fulfilling other family and income conditions).

4) According to Law 4052/2012, the programme "Pensioner's homecare" was established, funded by the Insurance Capital for Solidarity among Generations-AKAGE (ΑΚΑΓΕ). The beneficiaries are: pensioners of the main social security bodies of the Ministry of Employment & Social Security/pensioners of the public sector/elderly pensioners with no insurance (under the social security body OGA), who have temporary or permanent problems of health or incapability. Its objective is to help them live in their own home, by offering, among others, organised and systematic services provided by social workers, psychosocial support, services of nursing, physiotherapy and home assistance.

B. For the improvement of the social security system

1. Dealing with problems of fraud in social security

Under Laws 4144/2013, 4172/2013, 4046/2012 and 4127/2013, reform measures were adopted in order to fight incidents of fraud/error in the social security system and incidents of "contribution evasion".

a. The network ARIADNE (as provided by Law 414/2013) is a system of rapid registration on all demographic and family changes of the beneficiaries of social security (death, marriage, divorce). Through this system which constitutes a form of digital interconnection and interaction between all bodies responsible (Body for the Social Security E-Governance – IDIKA/ΗΔΙΚΑ, Social Security Funds, State Registry Offices), updated data of the situation of beneficiaries are automatically notified to the relevant social security bodies. All of the abovementioned changes are processed by:

- for births/deaths: State Registry Offices under the authority of the Ministry of Interior;
- for marriages: General Secretariat for Information Systems (GGPS/ΓΓΠΣ) under the authority of the Ministry of Finance;
- for cohabitation pacts: Notary Offices;
- for divorces: Judicial authorities and courts.

By the same Law, it is provided that payment of all pensions which are not verified through both the relevant Social Security Registry Number (AMKA) and Tax Registry Number (AFM) of the beneficiary is automatically suspended, pending the necessary cross-checks.

Besides the network Ariadne, a Global System of Control of Pension Payments called Helios was created. This system connects electronically, the 93 different systems of pension payments of 4.407.288 pensions for 2.714.034 beneficiaries currently in Greece. Both systems are connected so that cross-checks can be performed. Helios also provided for a National Registry of Pensioners and Pensions which, by use of a database, allows for fighting against fraud.

b. The establishment of a National Centre for collecting Social Security Contributions (KEAO/KEAO)

By virtue of Law 4172/2013, the National Centre for all Social Security Contributions (KEAO) has been established. Its aim is to establish common mechanisms and procedures for the timely collection of debts and of due social security contributions of the social security organisations, with a view to reinforcing the viability of the system of social security. That is a first step towards a wider reform which aims at fully integrating the revenues of the social security organisations with the tax administration and at unifying the process of collecting tax and social security debts, by 01.07.17. It also aims at solving problems that, in the past, rendered the process of collection and that of compulsory measures too complicated and time consuming, as a result of which the social security organisations were unable to collect their due contributions.

In particular, KEAO's objectives are:

- to collect due social security contributions to all the Social Security Bodies under the responsibility of the Ministry of Employment;
- to create an electronic database including a Registry of persons with pending due contributions towards the Social Security Organisations and all relative data for statistical and analysis purposes;
- to study and submit proposals for legislative regulations;
- to proceed with the planning and execution of the necessary actions for the attainment of its purpose.

KEAO will be self-sufficient in terms of finance and logistics and under the supervision of IKA.

2. The establishment of the Insurance Capital for Solidarity among Generations-AKAGE (ΑΚΑΓΕ), as another safeguard for the future generations, is also provided. It aims at creating reserve funds for the financing of the pension sector of the social security organisations. Its resources will stem from: privatisations of State Companies and Organisations (10%), allocated 4% of annual revenues of VAT (value-added tax) and allocated 10% of the social resource, which, thus, is reinstated to the society in its entirety, to which it belongs.

3. By virtue of Law 4093/2012, a pilot programme is being established in two Greek regions, based on socioeconomic criteria, called "Pilot Programme for minimum guaranteed income". This programme concerns persons and families who live in extreme poverty, by contributing to their income and engaging them in actions of social reintegration.

It is a fact that in the current adverse economic conjunction, Greece's efforts to deal with the grave fiscal problem and the structural weaknesses of the Greek economy, in the context of the country's obligations towards the financial support mechanism, entails the exercise of a restrictive fiscal policy, with effects on the household income. In the above-mentioned context and during the current conjuncture, the Greek authorities keep implementing support measures of the vulnerable groups of the population while striving to alleviate their burden or even exempt them from the austerity measures that run into force.

Such measures are indicatively:

- favourable regulations regarding the payment of the Extraordinary Special Property Tax, (which may involve reduction of the amount or even exemption) for the vulnerable groups which include people in poverty or threatened by poverty, large families, long term invalids, long-term unemployed and unemployed people who receive unemployment benefit (Law 4152/2013 a.1);
- tax exemptions for certain types of salaries, pensions, as those granted to war victims, war invalids, blind persons or invalids and beneficiaries of EKAS (Greek Tax Code, a.6);
- cuts on pensions are not made if the beneficiary or members of his family receive small pensions, or are invalids (Laws 4024/2011 a.1, 4051/2012 a.1, 4093/2012 a.1 as amended by Law 4111/2013);
- possibility for facilitating arrangements for the payment of debts towards the State in cases of 'financial inability" (Law 4152/2013 a.1).

7. Resolution CM/ResChS(2014)1, *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO)* v. Sweden, Complaint No. 85/2012

Resolution CM/ResChS(2014)1
Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012

(Adopted by the Committee of Ministers on 5 February 2014 at the 1190th meeting of the Ministers' Deputies)

The Committee of Ministers,[9]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 27 June 2012 by Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) against Sweden;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on admissibility and the merits, in which it concluded:

- by 13 votes to 1, that there is a violation of Article* 6§2 *of the Charter

The exercise of the right to bargain collectively and the right to collective action, guaranteed by Article 6§§2 and 4 of the Charter, represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter.

The right to collective bargaining and action receives constitutional recognition at national level in the vast majority of the Council of Europe's member States, as well as in a significant number of binding legal instruments at the United Nations and EU level.

On the basis of Article 6§2, States Parties undertake not only to recognise, in their legislation, that employers and workers may settle their mutual relations by means of collective agreements, but also actively to promote the conclusion of such agreement if their spontaneous development is not satisfactory and, in particular, to ensure that each side is prepared to bargain collectively with the other.

States should not interfere in the freedom of trade unions to decide themselves which industrial relationships they wish to regulate in collective agreements and which legitimate methods should be used in their effort to promote and defend the interest of the workers concerned.

In Sweden, on the basis of Section 5a and Section 5b of the Foreign Posting of Employees Act (1999:678 / Amendments: up to and including SFS 2012:857, SFS 2013:351), as regards foreign posted workers, collective agreements requested by trade unions may only regulate, with the backing and by means of a collective action, the minimum rate of pay or other minimum conditions – or, as regards the particular case of posted agency workers, the pay or other conditions – within the matters referred to in Section 5 of the above-mentioned Act.

[9] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

Such provisions impose substantial limitations on the ability of Swedish trade unions to make use of collective action in establishing binding collective agreements on other matters and/or to reach agreements at a higher level.

Moreover, following the changes in Section 2 of the Foreign Branch Offices Act (1992:160, Modified 2009-11-24 by SFS 2009:1083), foreign companies which conduct their economic activities in Sweden are not obliged to create a branch office with independent management in Sweden if the economic activity is made subject to the provisions on free movement of goods and services in the Treaty on the Functioning of the European Union or the corresponding provisions of the Agreement on the European Economic Area (EEA). Swedish trade unions willing to conclude agreements with the above-mentioned foreign companies are therefore forced to negotiate and conclude such agreements with the responsible employers abroad.

As regards posted workers, this statutory framework does not promote the development of suitable machinery for voluntary negotiations between employers and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.

- by 13 votes to 1, that there is a violation of Article 6§4 of the Charter

A restriction to the right to collective action can be considered in conformity with Article 6§4 of the Charter only if, as set forth by Article G, the restriction: a) is prescribed by law; b) pursues a legitimate purpose – i.e. the protection of rights and freedoms of others, of public interest, national security, public health or morals – and, c) is necessary in a democratic society for the pursuance of these purposes, i.e. the restriction has to be proportionate to the legitimate aim pursued.

A national legislation which prevents a priori the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards would infringe the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers.

Within the system of values, principles and fundamental rights embodied in the Charter, the right to collective action is essential in ensuring the autonomy of trade unions and protecting the employment conditions of workers: so that the substance of this right is respected, trade unions must be allowed to strive for the improvement of existing living and working conditions of workers, and its scope should not be limited by legislation to the attainment of minimum conditions.

Legal rules relating to the exercise of economic freedoms established by States Parties either directly through national law or indirectly through EU law should be interpreted in such a way as to not impose disproportionate restrictions upon the exercise of labour rights as set forth by, further to the Charter, national laws, EU law, and other international binding standards.

National and EU rules regulating the enjoyment of such freedoms should be interpreted and applied in a manner that recognises the fundamental importance of the right of trade unions and their members to strive both for the protection and the improvement of the living and working conditions of workers, and also to seek equal treatment of workers regardless of nationality or any other ground.

The facilitation of free cross-border movement of services and the promotion of the freedom of an employer to provide services in the territory of other States – which constitute important and valuable economic freedoms within the framework of EU law – cannot be treated, from the point of view of the system of values, principles and fundamental rights embodied in the Charter, as having a greater *a priori* value than core labour rights, including the right to collective action to demand further and better protection of the economic and social rights and interests of workers.

Any restriction imposed on the enjoyment of the right to collective action should not prevent trade unions from engaging in collective action to improve the employment conditions, including wage levels, of workers irrespective of their nationality.

Section 5a of the Foreign Posting of Employees Act, taken together with the provisions of Section 41c of the Co-determination Act (1976:580 / Amendments: up to and including SFS 2012:855), provides that no form of collective action can be taken by trade unions if the employer shows that workers enjoy conditions of employment (including wage levels and other essential aspects of work) that are at least as favourable as the minimum conditions established in agreements at central level.

Section 5b of the above-mentioned Act, taken together with the provisions of Section 41c of the
Co-determination Act, provides that no form of collective action can be taken by trade unions if the employer shows that workers enjoy conditions of employment (including wage levels and other essential aspects of work) that are at least as favourable as the conditions established in agreements at central level or in the user undertaking.

Furthermore, under Section 41c of the Co-determination Act, collective action taken in violation of Section 5a and 5b is unlawful, and trade unions acting in breach of the Foreign Posting of Employees Act shall pay compensation for any loss incurred (cf. Section 55 of the Co-determination Act).

This statutory framework constitutes a disproportionate restriction on the free enjoyment of the right of trade unions to engage in collective action, since it prevents trade unions taking action to improve the employment conditions of posted workers over and beyond the requirements of the above-mentioned conditions.

- unanimously, that there is a violation of Article 19§4 a of the Charter

According to Article 19§4 *a*, with a view to assisting and improving the legal, social and material position of migrant workers and their families, States Parties are required to guarantee certain minimum standards with respect to, *inter alia*, remuneration and other employment and working conditions.

For the period of stay and work in the territory of the host State, posted workers are workers coming from another State Party and lawfully within the territory of the host State. In this sense, they fall within the scope of application of Article 19 of the Charter and they have the right, for the period of their stay and work in the host State to receive treatment not less favourable than that of the national workers of the host State in respect of remuneration, other employment and working conditions.

According to Section 5a of the Foreign Posting of Employees Act, as regards wages and other working conditions, it is admissible to grant foreign posted workers, irrespective of their age or level of occupational experience and skills, minimum standards equivalent to those enjoyed by national workers under the correspondent central collective agreements (unless employers voluntarily grant more favourable conditions).

However, in practice, collective agreements do not very often provide for rules concerning minimum wages, and the minimum wage can be considerably lower than the normal rate of pay generally applied throughout the country to Swedish workers (working in the same professional sector). In addition, minimum wages rules, when they are provided for by collective agreements, are normally applied only to people without occupational experience, such as young people; the collective agreements often oblige the employer to pay a higher rate to workers with professional experience and skills.

According to Section 5b of the above-mentioned Act, posted agency workers can benefit from normal standards but there is still a limited scope of working conditions that applies to them and which could be regulated in a collective agreement.

In the light of the above, the Swedish legislation, in respect of remuneration and other working conditions, does not secure for posted workers the same treatment guaranteed to other workers with permanent employment contracts.

- unanimously, that there is a violation of Article 19§4 b of the Charter

According to Article 19§4 *b*, with a view to assisting and improving the legal, social and material position of migrant workers and their families, States Parties are required to guarantee certain minimum standards also with respect trade union membership and the enjoyment of benefits of collective bargaining.

Bearing in mind the considerations made in paragraph 29 above, posted workers have the right, for the period of stay and work in the territory of the host State, to receive treatment not less favourable than that of the national workers of the host State also in respect of the enjoyment of the benefits of collective bargaining.

Applying the principle of non-discrimination, as set out in Article 19§4 *b* of the Charter to the context of collective bargaining, requires that States Parties have to take action to ensure that migrant workers enjoy equal treatment when it comes to benefiting from collective agreements aimed at implementing the principle of equal pay for equal work for all workers in the workplace, or from legitimate collective action in support of such an agreement, in accordance with national laws or practice.

Posted workers, for the period of their stay and work in the territory of the host State, should be treated by the host State as all the other workers who work in that State; and foreign undertakings should be treated equally, by the host State, when they provide services by using posted workers.

On the contrary, the Committee underlines that excluding or limiting the right to collective bargaining or action with respect to foreign undertakings, for the sake of enhancing free cross border movement of services and advantages in terms of competition within a common market zone, constitutes, according to the Charter, discriminatory treatment on the ground of nationality of the workers, on the basis that it determines, in the host State, lower protection and more limited economic and social rights for posted foreign workers, in comparison with the protection and rights guaranteed to all other workers.

As indicated, the provisions contained in Sections 5a and 5b of the Foreign Posting of Employees Act, as well as Section 41c of the Co-determination act, constitute a disproportionate restriction of the enjoyment of the right of trade unions to engage in collective action. On the other side of the coin, which is from the standpoint of the rights of posted workers, this does not guarantee for foreign posted workers lawfully within the territory of Sweden treatment not less favourable than that of Swedish workers respect to the enjoyment of the benefits of collective bargaining.

Having regard to the document distributed at the request of the Representative of Sweden at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 26 November 2013,

1. takes note of the report of the European Committee of Social Rights and of the information communicated by the Swedish delegation on the follow-up to the decision of the European Committee of Social Rights (see Appendix to the resolution);

2. notes Sweden’s concerns, as they appear in the Appendix to the present resolution, and recognises that the decision of the European Committee of Social Rights in this case raises complex issues in relation to the obligation of EU member States to respect EU law and the obligation to respect the Charter;

3. looks forward to Sweden reporting of any possible evolution in the issue.

Appendix to Resolution CM/ResChS(2014)1

Observations of the Government of Sweden in reply to the report of the European Committee of Social Rights on Complaint No. 85/2012, Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden

INTRODUCTION

The Swedish Government welcomes this opportunity to provide further information, clarification and comments in respect of this important case. Needless to say, the government appreciates the work of the European Committee of Social Rights (the Committee) and considers the European Social Charter (the Charter) to be of fundamental importance for the protection of social rights. It should be emphasised that the government takes all its international obligations, including those towards the Council of Europe, most seriously.

However, Sweden is, together with many other states, not only a member of the Council of Europe, but also a member of the EU. The EU membership implies that Sweden also has to comply with the sui generis legal framework of the EU. Even though the competence to regulate industrial action remains with the individual member states of the EU, the legislative changes at issue have been deemed necessary in order for Swedish legislation to comply with EU law.

As will be elaborated on in this memorandum, the government does not consider that the Swedish implementation of EU law runs counter to the Charter, and hence does not agree with the Committee's conclusions.

* * *

Information from the Swedish Government

The Swedish labour market model, EU law and the Charter

An important characteristic for the Swedish labour market model is that it is to a large extent self-regulated by its social partners – the organisations of the employees and of the employers. There is a broad consensus among the Swedish political parties in the parliament, as well as the parties on the labour market, that our labour market model functions well and is important to safeguard. Therefore, where it has been necessary to adapt Swedish law to EU law, the legislative changes have been designed in order to preserve the Swedish labour market model.

The government can conclude that the report of the Committee to a large extent concerns the implementation of EU law. According to the Treaty of Lisbon, which entered into force in 2009, the Union shall recognise the rights, freedoms and principles set out in the EU Charter of Fundamental Rights. Under the EU Charter of Fundamental Rights, which is still relatively new, certain articles derive from articles in the Charter.

Lex Laval and its relationship with EU law

In the Laval case (C-341/05), the European Court of Justice (ECJ), *inter alia,* provided further clarification as regards the contents of the EU Posting of Workers Directive (96/71/EC), and concluded that the industrial action at hand was contrary to the freedom to provide services in the Treaty on the Functioning of the European Union. After the Laval case, it was deemed necessary to amend the Swedish legislation on industrial action with regard to posted workers in order to comply with EU law. The core of the legislative changes, commonly referred to as lex Laval, is a new section in the Swedish Foreign Posting of Employees Act (1999:678). The changes restrict the Swedish trade unions' possibilities to take industrial action against a foreign employer who posts workers to Sweden, if the industrial action aims at regulating employment conditions which go beyond the minimum requirements of the so-called hard core of the EU Posting of Workers Directive. Nevertheless, the regulations ensure that posted workers are guaranteed a certain level of protection in terms of pay and other employment conditions, in accordance with the EU Posting of Workers Directive. With regard to posted temporary agency workers, the regulation was modified when the EU Directive on

Temporary Agency Work (2008/104/EC) was implemented in Sweden, with increased possibilities to take industrial action with respect to posted temporary agency workers.

These new legislative changes were, to the extent possible, designed to preserve the Swedish labour market model. The trade unions are still responsible for the monitoring and enforcement of safeguarding workers posted abroad and to ensure that providers of services from other countries do not compete unfairly by means of low conditions of pay and service in the fields indicated by the EU Posting of Workers Directive.

New initiatives in Sweden and the EU regarding posted workers

In September 2012, a Commission was assigned by the government with the task to evaluate the enforcement of the changes of the Foreign Posting of Employees Act after the Laval case. Lex Laval entered into force 2010 and the legislation is thus still fairly new. There has, as of yet, not been any unbiased and comprehensive investigation of the consequences of the legislative changes after the Laval case. During its initial phase, the Commission shall examine the situation of posted workers in Sweden. After the initial investigation, the Commission shall evaluate the legislative amendments after the Laval case and propose any necessary amendments. The Commission shall further consider necessary changes to safeguard the Swedish labour market model in an international context. The proposals of the Commission shall further include an analysis of the consequences in relation to relevant international regulations. The Commission is composed of representatives of all parties in the parliament. The Commission shall also during the course of its work pursue a dialogue with representatives of the social partners on the Swedish labour market.

With regard to the conclusions of the Committee regarding the contact person in Sweden with respect to posted workers, the government would like to submit the following information. A change of the Foreign Branch Offices Act (1992:160) was made, whereby the requirement for a representative responsible for the business operations in Sweden was removed as regards natural persons resident in the EEA. The change was deemed necessary in order for the legislation to comply with the EU Services Directive (2006/123/EC). However, an amendment to the Foreign Posting of Employees Act entered into force in July this year, according to which a foreign employer must report that it posts workers to Sweden. Further, the employer must appoint a contact person in Sweden, which shall be authorised to receive notice on behalf of the employer. The contact person shall be able to provide documentation demonstrating that the requirements of Foreign Posting of Employees Act, as regards employment conditions for posted workers, are met. With regard to the Committee's report and in addition to the government's answer to the complaint, the government would like to clarify that should the contact person receive notice of a request for collective bargaining negotiations, the foreign employer must participate in negotiations in order to prevent being subject to industrial action, according to the Co-Determination Act (1976:580). It is the opinion of the government that this regulation may facilitate negotiations regarding collective bargaining agreements. It shall further be noted that the recent legislative changes has been drafted in order to comply with relevant EU law.

There are furthermore ongoing initiatives with respect to posted workers at EU level, where a directive to improve the application of the EU Posting of Workers Directive is currently being negotiated.[10] The aim of the directive is to reconcile the exercise of the freedom to provide cross-border services with appropriate protection of the rights of workers temporarily posted abroad for that purpose, and to prevent abuse of the regulations.

Posted workers and the scope of the Charter

With regard to the Committee's report and in addition to the government's answer to the complaint, the government would like to draw the attention to that the legislation concerns employees which are posted from and employed in and normally working in another country, and thus in essence are covered by the laws of another country according to international provisions regarding applicable law.

[10] COM(2012)131 final – Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

In light of the above, as regards article 6 of the Charter, the government would like to draw attention as to whether posted workers are to be considered as "lawfully resident or working regularly within the territory of the Party concerned", as stated in the appendix of the Charter regarding the scope of its protection.

Further, the government would like to raise concerns regarding the Committee's interpretation of Article 19 of the Charter, whereby posted employees should be considered as migrants and thereby equally treated with other workers under the Charter. It is the opinion of the government that an interpretation of the Charter which creates an obligation to treat posted workers equally with other workers in the host country, despite that another country's law is applicable, may contradict international provisions regarding applicable law. The government would further like to point out that where there is no conflict of law situation, Swedish employment legislation applies in full for migrant workers, in the same way as for any other worker on the Swedish labour market.

With respect to the Committee's report regarding article 19.4 a in particular, the government would further like to recall that as the Swedish labour market is, to a large extent, self-regulated by the social partners and wage levels are not regulated by law or regulations, as prescribed in article 19.4 a.

Information on EU level regarding the Committee's report

Finally, as the report of the Committee to a large extent concerns EU legislation and therefore the relationship between EU law and the Charter, the government would like to inform the Committee of Ministers that it will in due course raise relevant aspects of the conclusions of the Committee in an EU context.

Conclusion

In the government's view, the Committee's interpretation of the Charter is quite far reaching. The government disagrees with the Committee's opinion that the Swedish implementation of EU law in this case runs counter to the wording or the meaning of the relevant provisions of the Charter. The Committee's interpretation of the Charter creates, in the government's opinion, an unnecessary tension between the obligation of EU member States to respect EU law and the obligation to respect the Charter. It goes without saying that when an international human rights body such as the Committee, questions the legality of a lawful implementation of EU law in an EU member State under the human rights instrument the body in question has been set to interpret, that State is put in a very delicate position.

Nevertheless, the government has recently taken several new initiatives, and has assigned a Commission with the task to evaluate the situation on the Swedish labour market following the changes of the Foreign Posting of Employees Act after the Laval case.

As the report of the Committee to a large extent concerns EU law, the government will further raise relevant aspects of the conclusions of the Committee in an EU context.

The government will at the time of the submission of reports to the Council of Europe concerning the relevant provisions of the Revised European Social Charter provide further information on the development.

In light of the above, it is the opinion of the government that the Committee's report should not be the basis for criticism against Sweden by the Committee of Ministers. It is proposed that a resolution be formulated in a neutral manner.

8. Resolution CM/ResChS(2013)18, *European Council of Police Trade Unions (CESP)* v. Portugal, Complaint No. 60/2010

Resolution CM/ResChS(2013)18
European Council of Police Trade Unions (CESP) v. Portugal
Collective Complaint No. 60/2010

*(Adopted by the Committee of Ministers on 11 December 2013
at the 1187th meeting of the Ministers' Deputies)*

The Committee of Ministers,[11]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 18 March 2010 by the European Council of Police Trade Unions (CESP) against Portugal;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

– **by a majority of 13 to 1, that there is a violation of Article 4§2 of the Revised Charter on the grounds that police officers on active prevention (prevenção activa) duties and shift duties (serviço de piquete) do not receive increased remuneration as required nor even remuneration equivalent to their basic hourly pay.**

It is recalled that the principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker and must be compensated. Therefore, as a general rule, not only must the worker receive payment for overtime, therefore, but also the rate of such payment must be higher than the normal wage rate (Conclusions I, Statement of Interpretation of Article 4§2). Compensation for overtime work may also be granted as time off in lieu, however in that case Article 4§2 requires that this time be longer than the additional hours worked (Conclusions XIV-2, Belgium).

It is also acknowledged that there may be mixed systems for compensating overtime, for example where an employee is paid the normal rate for the overtime worked but also receives time in lieu, or where the extra time worked is "banked". Exceptions may be authorised in certain specific cases such as that of managers with particular responsibilities and staff whose activities warrant exceptions. Therefore some high-ranking police officials need not receive supplements/increased remuneration for overtime work but this exception cannot be extended to all ranks of police officers performing management duties but having no particular responsibilities, irrespective of what the corps to which they belong is called (CESP v. France Complaint No. 57/2009, decision on the merits of 1 December 2010).

It was found in the case CESP v. France (Complaint No. 57/2009, abovementioned decision, §53) that neither the members of the supervision and enforcement corps nor those of the command corps of the national police force could all be categorised as staff to which the exceptions provided for in Article 4§2 of the Charter could apply; and therefore the flat-rate nature of the remuneration paid for overtime by the supervision and enforcement corps constituted a violation of the Charter and this was not the case for the command corps, because overtime pay amounted to 1.5 times the normal hourly rate.

[11] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

Also, the notion of overtime exceeding normal working hours or hours of service may be viewed differently depending both on the type of responsibility exercised or the nature of the activity and on the way in which the work is organised and the basic means of calculation.

Many of the States Party which have accepted Article 4§2 have adopted schemes providing for flexible working hours, in which working hours are calculated as an average over given reference periods. The result of these schemes is that hours worked in excess of the average number are compensated in practice by rest periods in the course of other weeks within the reference period. Such arrangements are, *prime facie*, not in breach of Article 4§2 (General Introduction to Conclusions XIV-2).

The special nature of police activities, particularly those of the criminal investigation branches, implies that in order to provide the continuous service required by the Portuguese Organic Law of 2000, patterns of work organisation and methods of calculating pay need to be adjusted.

It is in the light of these considerations that will be examined in turn the remuneration of passive prevention (*prevenção passiva*), active prevention (*prevenção activa*) and shift duties (*serviço de piquete*).

As regards to passive prevention duties, when police officers are on these duties they are not in fact required to work but are on call. The employees on call or standby but not actually working must be compensated for this (CESP v. Portugal, Complaint No. 37/2006, decision on the merits of 3 December 2007, §33). Once the situation arises in which employees have to give up any private activity which would prevent them from responding immediately to a request from their employer, the only acceptable form of remuneration is one which is based on a variable percentage according to the amount of time spent on call. It has been repeatedly held that it is a breach of the Charter, for employees on call or standby to be paid at a lower rate if they are actually called on to work. This reasoning applies to all such situations in the police regardless as to what name they are given (CESP v. France, Complaint No. 57/2009, abovementioned decision).

When it dealt with this issue in 2006, however, the Committee considered that the payment of Portuguese police officers' on-call duties should be regarded as having been covered by the on-call allowance which formed part of their basic pay and hence that the situation was not incompatible with Article 4§2 of the Revised Charter (CESP v. Portugal, Complaint No. 37/2006, abovementioned decision, §33). None of the evidence in possession leads to reverse this position on this matter in the present case.

With regard to active prevention duties, which arise when police officers on passive prevention duties must in fact work, it is noted that according to the very precise calculations provided by the CESP, that were not disputed by the government, the remuneration for this type of duty is always lower than the basic hourly rate of pay, at €2.79 to €7.79 per hour depending on the time at which the work is performed and the officer's grade. It is, however, considered whether these tasks should be regarded as being remunerated like those of passive prevention, by the allowance included in the officers' basic pay. This interpretation should not be ruled out straight away but is impossible to be adopted since the law sets no precise limit and therefore there may be an almost unlimited extension of working hours. Consequently, there is a violation of Article 4§2 of the Revised Charter.

As to shift duties, unlike for prevention tasks, it is impossible to see how payment for these tasks could be included in basic pay. The documents provided by the CESP, which were not disputed by the government, show that the extra pay supplement awarded for each working day (of 17 to 24 hours according to whether the day in question was a weekday or weekend, to which this task had been partly ascribed) amounts to an hourly rate which is hardly any higher or slightly lower than the basic hourly wage, between €2.00 and €2.50 depending on the time when work is carried out and the officer's grade. Therefore there is a violation of Article 4§2 even without taking into consideration the ceiling on payments for overtime which the CESP describes and whose existence the government does not deny.

– **unanimously, that there is no violation of Article 6§§1 and 2 of the Revised Charter.**

The submissions of the CESP do not distinguish between a violation of Articles 6§§1 and 2 of the Revised Charter, but generally allege that the right of police staff to collective negotiation and to consultation as guaranteed by these provisions is not respected. Given the close link between Article 6§1 and 6§2 of the Revised Charter as regards the right to collective bargaining, the Committee treated these provisions together CESP v. Portugal, Complaint No. 40/2007, decision on the merits of 23 September 2008).

The complainants have not developed this argument; no information on consultation mechanisms, procedures etc. has been provided, nor has it been stated that there are no such mechanisms or procedures. This allegation was also made in CESP v. Portugal, (Complaint No. 37/2006, abovementioned decision, §37) and then it found no violation on the grounds that the argument was presented somewhat summarily and the CESP did not adduce enough evidence. The same approach is followed in this case.

– **unanimously, that there is no violation of Article 22 of the Revised Charter.**

It is recalled that this provision guarantees the right of workers to take part in the determination and improvement of their working conditions and working environment within the undertaking. Pursuant to the Appendix, Part II, to the Revised Charter, the term “undertaking” is understood as referring to “a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy”.

Consequently, even though Article 22 may apply to workers in State-owned enterprises, public employees are as a whole not covered by these provisions (Conclusions XIII-5, Norway). It follows that the right of police staff to participation in the determination and improvement of their working conditions and working environment in the case at hand does not fall within the scope of application of Article 22 of the Revised Charter and therefore there is no violation of this Article (CESP v. Portugal, Complaint No. 40/2007, abovementioned decision).

Having regard to the information communicated by the delegation of Portugal during the meetings of the Rapporteur Group on Social and Health Questions (GR-SOC) of 25 October 2012 and 10 October 2013,

1. takes note of the statement made by the respondent government indicating that Portugal maintains its efforts in finding a satisfactory solution to the issues raised by the European Committee of Social Rights and undertakes to bring the situation into conformity with the Revised Charter (cf. Appendix to the present resolution);

2. looks forward to Portugal reporting that, at the time of the submission of the next report concerning the relevant provisions of the revised European Social Charter, the situation is in full conformity with the revised European Social Charter.

Appendix to Resolution CM/ResChS(2013)18

Information communicated by the delegation of Portugal during the meetings of the Rapporteur Group on Social and Health Questions (GR-SOC) of 25 October 2012 and 10 October 2013

Statement by the Permanent Representative of Portugal at the GR-SOC meeting of 25 October 2012 (document DD(2012)1010):

Missão Permanente de Portugal
junto do
Conselho da Europa

INTERVENTION OF THE PERMANENT REPRESENTATIVE OF PORTUGAL ON COMPLAINT No. 60/2010

This Delegation would like to share with you information just received from the Portuguese authorities on the steps taken in connection with complaint nº 60 of the European Council of Police Unions under the collective complaints protocol to the European Social Charter.

The Ministry of Justice of Portugal has been in negotiations with the Union Association of the Criminal Investigation Officers of the Criminal Police (ASFIC/PJ) in order to find a solution acceptable for both parties on the payment of active prevention, shift duties and overtime work, that could lead to the drafting of a proposal for a legal instrument, in the framework of the compromise between the Association of the Criminal Investigation Officers of the Criminal Police (ASFIC/PJ) and the Ministry of Justice, since the beginning of the current legislative period.

Taking into consideration the present financial and economic situation and the related budgetary constraints of Portugal, that goal has not yet been reached. However, the parties are continuing their best efforts in order to reach agreement on a draft legislation that can meet the concerns expressed on the Decision of the European Committee of Social Rights on complaint nº 60 and that, at the same time, is viable within the framework of the above mentioned budgetary circumstances.

Portuguese authorities are hopeful that a solution can be found in the near future, as a result of mutual understanding between the Government and the police officers Union.

We believe the ongoing process of negotiation is the most appropriate measure to bring the situation into conformity with the Charter.

Intervention of the Portuguese Delegation at the GR-SOC meeting of 10 October 2013 (document DD(2013)1073):

"This delegation would like to inform that the Portuguese Government is still in negotiations with the Criminal Police to find a solution that can be acceptable to both parties in order to find the best model for the payment of active prevention, shift duties and overtime work to the criminal law enforcement officers. We just received information on the strong commitment of the Portuguese authorities to find the right solution.

These efforts are being pursued in good faith and with a sincere wish to provide a sustainable solution, through the adoption of a legal instrument, which will contain a set of rules for the proper regulation of the issues raised in the Collective Complaint No. 60.

The Portuguese authorities recognise and understand the steps that need to be taken and would have been very satisfied if a solution had already been found. However, this has not yet been possible.

As a Party to the Revised Social Charter, of which we accepted to be bound by all articles, and also as a Party to the collective complaints protocol, Portugal is one of Europe's most advanced countries concerning social rights and has been at the forefront of the protection and promotion of these rights for all its citizens.

The Social Charter and the collective complaints protocol have an evolutive nature. By ratifying these instruments, the Parties commit themselves to pursue by all appropriate means the attainment of the conditions for the realisation of the rights enshrined in the Charter.

In this context, the Portuguese authorities are using the means available to them to comply with the Charter. In the case of this complaint, these means have not been enough for the moment, taking into account, in particular, the financial and economic circumstances of the country.

These circumstances led to the adoption by the Portuguese Government, in co-operation with European partners and international institutions, of very hard but provisional measures and policies, that will, in the future, bring benefit to all our citizens.

In light of the above, this delegation proposes the drafting of a resolution acknowledging the strong commitment of the Portuguese authorities which are doing their best efforts in the framework of their commitments to their obligations under the Social Charter and the collective complaints Protocol, but need more time and, as soon as possible, would provide further information to the Committee of Ministers on the results of the steps taken towards bringing the situation in conformity with the Social Charter."

9. Resolution CM/ResChS(2013)17, *Fellesforbundet for Sjøfolk (FFFS)* v. Norway, Complaint No. 74/2011

Resolution CM/ResChS(2013)17
Collective Complaint No. 74/2011
Fellesforbundet for Sjøfolk (FFFS) v. Norway

(Adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers' Deputies)

The Committee of Ministers,[12]

[12] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro,

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 27 September 2011 by *Fellesforbundet for Sjøfolk* (FFFS) against Norway;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded unanimously that:

- **there is a violation of Article 24 of the Charter**

In general, the conditions of the right of everyone to earn his living in an occupation freely entered upon, as well as any discrimination in that connection, are assessed under Article 1§2. However, where the termination of employment may take place solely on grounds of age, the circumstances of the complaint may amount to a restriction of the right to protection in cases of termination of employment and fall under Article 24.

The Seamen's Act does not oblige any employer to terminate contracts of employment, but abolishes the protection of an employee against such a termination. This opportunity is in practice made use of by many employers. This is however not the case for the totality of them, as it has been established that 430 of over 62-years-old seamen have continued working. The age limit of 62 years does therefore not amount to mandatory retirement.

The wording of the provisions allows the dismissal of the affected seamen at the age of 62 years regardless of their capacity or conduct, as well as of any operational requirements of the undertaking, establishment or service. As no other grounds than age are required in national law for the justification of dismissal, the contested provision clearly falls within the scope of application of Article 24.

The age limit of 62 years has been founded on considerations of employment policy, operational requirements, as well as the goal of ensuring the health and security of those at sea. These considerations fall within the margin of appreciation of the States Parties.

Even when based on a legitimate aim, an age limit must however also be necessary for the attainment of its aims. In this regard, note is again taken of the variety of specific aims and purposes of the legislation.

With regard to the aim of ensuring the health and security of those working at sea, it is noted that no evidence has been produced on the alleged degeneration of seamen's health at the particular age of 62 years.

Where a certificate of medical fitness for the purpose of certain types of tasks aboard a ship may be issued to a seaman having reached the age of 62 years, and where such a seaman may be re-employed by means of a new employment contract for the tasks of a seaman regardless of age, the age limit of 62 years may not be considered as necessary for the attainment of the desired goals.

No sufficiently detailed arguments have been advanced in order to justify the difference in treatment. No specific evidence has been submitted demonstrating how the age limit of 62 years corresponds to essential professional requirements imposing the earlier retirement of seamen in the present-day conditions. The age limit is accordingly not based on objective grounds. Moreover, it has not been shown that the desired aims could not have been attained by less intrusive means. The age limit therefore disproportionately affects the rights of the seamen within its scope of application and no valid reasons within the meaning of Article 24 are required for the termination of employment.

Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.

As concerns the argument that dismissal pursuant to the obtaining of pension rights is not forbidden in the Annex to the Charter as a reason not justifying dismissal, it is reiterated that not all forbidden grounds of discrimination are listed in the Annex.

The contested provision enables dismissal directly on grounds of age and does therefore not effectively guarantee the seamen's right to protection in cases of termination of employment. This is the situation irrespective of whether the seaman in question will be entitled to pension following the termination of his employment relationship.

- **there is violation of Article 1§2 of the Charter**

Article 1§2 requires the States having accepted it to effectively protect the right of workers to earn their living in an occupation freely entered upon. The obligation consists, firstly, of the elimination of all forms of discrimination in employment, whatever the legal nature of the professional relationship. The said article also covers issues related to the prohibition of forced labour, as well as certain other aspects of the right to earn one's living in an occupation freely entered upon. The complaint raises issues mainly relating to the first aspect of the article.

Under Article 1§2, domestic legislation must prohibit discrimination in employment on grounds of, *inter alia*, age. It must cover both direct and indirect discrimination. Discriminatory acts and provisions prohibited by the Article may apply to all aspects of recruitment and employment conditions in general, including also dismissal. Exceptions to the ban of discrimination may be authorised for essential occupational requirements or to permit positive action.

The contested provision was argued to be discriminatory in relation to any seamen employed on ships registered to a State where the retirement age of seamen is higher than in Norway. The examination of collective complaints does however not entail any comparison between the States Parties having ratified the Charter. Moreover, no international standards on the advisable retirement age of seamen were referred to.

The examination is accordingly limited upon the situation of Norway. In particular senior pilots and senior oil workers may be considered as comparable categories of workers for the purposes of the current complaint. These categories of employees work in circumstances that may be sufficiently similar in terms of in particular professional hardship and physical strain.

The application of the Seamen's Act has the consequence of treating less favourably the seamen within its scope of applicability than anyone who may continue to work in Norway without restrictions to that right after having reached the age of 62 years. It thus establishes a difference in treatment on grounds of age between these categories of employees.

The contested legislation does according to its wording not prescribe a lower retirement age. According to information provided by the government moreover, on 1 January 2013 a total of 430 seamen had been able to continue working at sea despite having reached the contested age limit.

No information had been provided on the overall number of seamen no longer employed in the seaman profession at the age of 62 years or thereafter and therefore no comparison could be made between them and those who remain in employment. According to the national Committee moreover, the contested piece of legislation has in combination with the applicable pension law “led many businesses […] to adopt internal systems with the automatic retirement of sailors at the age of 62”. A significant number of seamen are in practice dismissed at 62 years pursuant to the contested provision. This was not contested by the government. Even though the provision does not according to its wording amount to a mandatory retirement age of seamen, it is often applied as such.

Under Article 1§2, elderly persons cannot be excluded from the effective protection of the right to earn one's living in an occupation freely entered upon. This aspect of the right to earn one's living in an occupation freely entered upon is consistent with one of the primary objectives of Article 23, which is to enable elderly persons to remain full members of society

and, consequently, to suffer no ostracism on account of their age. The right to take part in society's various fields of activity should be granted to everyone active or retired, including measures to allow or encourage elderly persons to remain in the labour force.

Pursuant to the findings under Article 24, according to which the arguments advanced as grounds for the age limit did not amount to a sufficient justification for the difference in treatment, the established difference in treatment constitutes also discrimination contrary to the right to non-discrimination in employment guaranteed under Article 1§2.

Having regard to the information communicated by the Norwegian delegation by a letter dated 12 September 2013 stating that Norway has amended its legislation (cf. Appendix to the present resolution),

1. takes note of the information that Norway has repealed the Seamen's Act of 1975 and has adopted the Maritime Labour Act, which came into force on 20 August 2013, section 5-12, first paragraph, of which states that employment can be terminated when an employee turns 70;

2. invites Norway to submit all relevant information on the situation on the occasion of the submission of the next report concerning the relevant provisions of the European Social Charter.

Appendix to Resolution CM/ResChS(2013)17

Information provided on 12 September 2013 by the Permanent Representative of Norway concerning Complaint No. 74/2011

The European Committee of Social Rights transmitted its report in respect of Collective Complaint No. 74/2011 lodged by *Fellesforbundet for Sjøfolk* (FFFS) against Norway to the Committee of Ministers on 17 July 2013.

The complaint

The complaint lodged by the FFFS was registered on 27 September 2011. The complainant trade union alleged that the Norwegian Seamen's Act (*sjømannslov* of 30 May 1975 No. 18), which stipulated retirement for seamen upon reaching the age of 62 years, was to be construed as an unjustified prohibition of employment and a discriminatory denial of seamen's right to work as such, in breach of Article 1§2 (right to work) and 24 (right to protection in cases of termination of employment) read alone or in conjunction with Article E (non-discrimination) of the European Social Charter.[13]

The report of the European Committee of Social Rights

In its report, the European Committee of Social Rights concluded unanimously that there was a violation of Article 24 and Article 1§2 of the Charter.

In its assessment, the Committee held that Article 19§1, subsection 7,[14] of the Seamen's Act constituted a violation of Article 24 of the Charter, as it enabled dismissal directly on grounds of age and did therefore not effectively guarantee the seamen's right to protection in cases of termination of employment.[15] Furthermore, the Committee considered that the age limit set out in the above-mentioned provision disproportionally affected the seamen who came within its scope of application compared to employees in other occupations and that under Article 1§2 of the Charter, the difference in treatment constituted discrimination contrary to the right to non-discrimination in employment guaranteed under the said Article. In view of this, the Committee held that the established discrimination amounted to a violation of the effective right of a worker to earn one's living in an occupation freely entered upon, as provided for under Article 1§2 of the Charter.[16]

[13] Cf. paragraphs 1 and 2 in the Committee's decision on the merits.
[14] The correct reference is Article 19 (1), paragraph 6 of the Seamen's Act.
[15] Cf. paragraphs 99 and 100 in the Committee's decision on the merits.
[16] Cf. paragraphs 117 and 118 in the Committee's decision on the merits.

Information about measures taken

As mentioned in the Committee's report, a Norwegian committee appointed by Royal Decree submitted an official report on 1 November 2012 (NOU 2012: 18 *Rett om bord – ny skipsarbeiderlov*) on revision of the Seamen's Act.

On 21 June 2013, prior to the report of the European Committee of Social Rights, the *Storting* (Parliament) repealed the Seamen's Act of 1975 and adopted the Maritime Labour Act (*Lov om stillingsvern mv. for arbeidstakere på skip*). The Maritime Labour Act came into force on 20 August 2013.

Based on the recommendations of official report NOU 2012: 18, section 5-12 first paragraph of the Maritime Labour Act states that employment can be terminated when an employee turns 70. This corresponds to the general provision on termination of employment due to age in the Working Environment Act (*arbeidsmiljøloven*), section 15-13a (1).

In the Proposition to the *Storting* (Prop. 115 L (2012-2013)) presenting the rationale for the introduction of the Maritime Labour Act, the government highlights its aim of keeping elderly workers in employment longer.

The government emphasises the importance of aligning the rights of seamen with the rights given to workers in general in the Working Environment Act, as far as these rights are congruent with the special conditions in the shipping industry.

Conclusion

Referring to the adoption and entry into force of the Maritime Labour Act, the Government of Norway considers that its legislation is in full conformity with the European Social Charter.

10. Resolution CM/ResChS(2013)11, *Defence for Children International (DCI)* v. Belgium, Complaint No. 69/2011

Resolution CM/ResChS(2013)11
Defence for Children International (DCI) against Belgium
Complaint No. 69/2011

(Adopted by the Committee of Ministers on 11 June 2013 at the 1173rd meeting of the Ministers' Deputies)

The Committee of Ministers,[17]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 21 June 2011 by the Defence for Children International (DCI) against Belgium;
Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

- ***unanimously that there is a violation of Article 17 of the Charter***

[17] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

i. Applicability of Article 17 to the persons concerned by the complaint

The restriction of the personal scope included in the Appendix should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity (Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 19; International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30 and 31).

In the light of the mandatory, universally recognised requirement to protect all children – requirement reinforced by the fact that the United Nations Convention on the Rights of the Child is one of the most ratified treaties at world level, paragraph 1 of the Appendix should not be interpreted in such a way as to expose foreign minors unlawfully present in a country to serious impairments of their fundamental rights on account of a failure to guarantee the social rights enshrined in the Charter.

However, although the restriction of personal scope contained in the Appendix does not prevent the application of the Charter's provisions to unlawfully present foreign migrants (including accompanied or unaccompanied minors) in certain cases and under certain circumstances, an application of this kind is entirely exceptional. It would in particular be justified solely in the event that excluding unlawfully present foreigners from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental rights (such as the right to life, to the preservation of human dignity, to psychological and physical integrity and to health) and would consequently place the foreigners in question in an unacceptable situation, regarding the enjoyment of these rights, as compared with the situation of nationals and of lawfully resident foreigners.

Since it is exceptional to apply the rights enshrined in the Charter to persons not literally included in the Charter's scope under paragraph 1 of the Appendix, this category of foreigners (which includes accompanied or unaccompanied minors not lawfully present in a country) is not covered by all the provisions of the Charter, but solely by those provisions whose fundamental purpose is closely linked to the requirement to secure the most fundamental human rights and to safeguard the persons concerned by the provision in question from serious threats to the enjoyment of those rights.

Moreover, the risk of impairing fundamental rights is all the more likely where children – *a fortiori* migrant children unlawfully present in a country – are at stake. This is due to their condition as "children" and to their specific situation as "unlawful" migrants, combining vulnerability and limited autonomy. As a result, in particular, of their lack of autonomy children cannot be held genuinely responsible for their place of residence. Children are not able to decide themselves whether to stay or to leave. Furthermore, if they are unaccompanied, their situation becomes even more vulnerable and should be managed entirely by the State, which has a duty to care for children living within its territory and not to deprive them of the most basic protection on account of their "unlawful" migration status.

Consequently, children and young persons concerned by this complaint come within the scope of Article 17 of the Charter.

ii. Application

Article 17 concerns the aid to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such aid. The failure to apply paragraph 1 (b) of Article 17, would obviously expose a number of children and young persons to serious risks to their lives or physical integrity.

The only substantive complaint of DCI relates to the lack of reception places, which allegedly renders ineffective any access to accommodation and all the other measures providing for legal, economic, medical and social protection.

In connection with illegally resident accompanied minors, such families, with their children, have no longer been taken in since 2009 because of network saturation. In 2011, the Federal Agency for the Reception of Asylum Seekers (FEDASIL) received 43 court orders to provide accommodation for families and the Federal Ombudsmen addressed a series of recommendations to FEDASIL. According to the DCI, 774 families received a negative response to their applications for accommodation between January 2011 and April 2012. These decisions concerned 3 011 persons (the DCI did not know how many children were involved). In 2011, 553 families were refused accommodation; the latter comprised 901 adults and 1 242 minors. The government provides no data, but acknowledges that they were unable to find an alternative accommodation solution for these families.

Where unaccompanied foreign minors are concerned, statistics on the number of such minors seem to be approximate, varying widely according to the source of information used. According to the DCI, Guardianship Department statistics suggest that 461 such minors were refused accommodation in 2011 as compared with 258 in 2010. On the other hand, when taking into consideration the number of arrivals of unaccompanied foreign minors, this figure is much higher. According to the DCI, over 1 300 young people were not accommodated in appropriate structures. There are no data as to the number of asylum seekers among non-accommodated unaccompanied foreign minors, but it emerges from the complaint that such minors are prioritised for reception facilities. The government does not supply statistics on the number of such minors who failed to obtain a reception place.

The DCI estimates the number of unaccompanied foreign minors put up in hotels at 668, while the government estimates 166 such minors in hotels at 12 March 2012.

Immediate assistance is essential and allows for the assessment of the material needs of young people, the need for medical or psychological care in order to set up a child support plan (Guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona and adopted by the United Nations Human Rights Council on 27 September 2012, §§ 32 and 34)

In the light of the above, the fact that the government has, since 2009, no longer guaranteed accompanied foreign minors unlawfully present in the country any form of accommodation in reception centres (neither through the FEDASIL network nor through other alternative solutions) is in breach of Article 17§1 of the Charter. The persistent failure to accommodate these minors shows, in particular, that the government has not taken the necessary and appropriate measures to guarantee the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity. Similarly, the fact that at least 461 unaccompanied foreign minors were not accommodated in 2011 and the problems posed by inappropriate accommodation in hotels lead to the conclusion that the government failed to take sufficient measures to guarantee non-asylum-seeking, unaccompanied foreign minors the care and assistance they need, thereby exposing a large number of children and young persons to serious risks for their lives and health.

- ***unanimously that there is a violation of Article 7§10 of the Charter***

i. Applicability of Article 7§10 to the persons concerned by the complaint

Article 7§10 guarantees to children and young persons a special protection against the physical and moral hazards to which they are exposed. Above all regarding protection against physical hazards, this is clearly a very important requirement to States Parties so as to ensure that certain fundamental rights are effectively guaranteed, in particular the right to life and to physical integrity. For this reason, not considering States Parties to be bound to comply with this obligation in the case of foreign minors who are in a country unlawfully would therefore mean not guaranteeing their fundamental rights and exposing the children and young persons in question to serious impairments of their rights to life, health and psychological and physical integrity.

Consequently, the children and young persons concerned by this complaint come within the scope of Article 7§10 of the Charter.

ii. Application

Pursuant to paragraph 10 of Article 7, States undertook to protect children not only against the risks and forms of exploitation that result directly or indirectly from their work, but also against all forms of exploitation. In particular, States must prohibit the use of children in forms of exploitation resulting from trafficking or "being on the street, such as ... domestic exploitation, begging, pickpocketing, servitude or the removal of organs, and ... take measures to prevent and assist street children" (Conclusions 2006, Article 7§10, Moldova).

In the light of the available data and the government's submissions taken into consideration above to assess the alleged violation of Article 17, the government has failed to find a care solution for a significant number of foreign minors unlawfully present in the country (accompanied or unaccompanied). According to the ECPAT network's observation "sexual exploitation of minors and child trafficking are significant problems in Belgium and are priorities in the Federal Plan for Security and Prison Policy. Child trafficking is closely linked with the problem of unaccompanied minors who are in Belgium and do not receive sufficient protection". Information was requested from the government on the incidence of sexual exploitation and trafficking of children, including those not lawfully present, and reserved its position on this point in the meantime (Conclusions 2001, Belgium).

The available data are not sufficient to conclude that exploitation of begging is a widespread phenomenon in Belgium or to show that there are close links between begging, trafficking or sexual exploitation of minors in Belgium and the reception facilities' incapacity to care for a large proportion of the foreign minors unlawfully present in the country, or that these phenomena are substantially enhanced as a result of this incapacity.

Nonetheless, the Belgian reception facilities' lasting incapacity to care for a significant proportion of the unlawfully present minors (whether or not accompanied by their families) has the effect of exposing the children and young persons in question to very serious physical and moral hazards, resulting from the lack of reception homes and from life on the street, which can even consist in trafficking, exploitation of begging and sexual exploitation (Conclusions 2006, Article 7§10, Moldova). The important and persistent failure to care for foreign minors unlawfully present in the country therefore shows that the government has not taken the necessary measures to guarantee these minors the special protection against physical and moral hazards required by Article 7§10, thereby causing a serious threat to their enjoyment of the most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity.

- ***by 13 votes to 1, that there is a violation of Article 11 §§1 and 3 of the Charter***

i. Applicability of Article 11 to the persons concerned by the complaint

Article 11, paragraph 1 requires States Parties to take appropriate measures to remove the causes of ill health and this means, *inter alia*, that States must ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire population.

In this connection, health care is a prerequisite for the preservation of human dignity, which is a fundamental value at the core of positive European human rights law – whether under the European Social Charter or the European Convention on Human Rights (International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 31). For this reason, teleological interpretation of the personal scope of the Charter in respect of Article 11§1 has already been applied, noting that the States Parties "have guaranteed to foreigners not covered by the Charter rights identical to or inseparable from those of the Charter by ratifying human rights treaties – in particular the European Convention of Human Rights – or by adopting domestic rules whether

constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals. In so doing, the Parties have undertaken these obligations." (Conclusions 2004, Statement of interpretation of Article 11, p. 10).

In the light of the above, Article 11 is applicable to the persons concerned by this complaint. Not considering the States Parties to be bound to comply with the requirement to protect health in the case of foreign minors unlawfully present in their territory and, in particular, with the requirement to ensure access to health care would mean not securing their right to the preservation of human dignity and exposing the children and young persons concerned to serious threats to their lives and physical integrity.

ii. Application

With regard to the right of access to health care (Article 11§1), it is noted that the total lack – since 2009 – of reception facilities for accompanied foreign minors and the partial lack of such facilities for unaccompanied foreign minors, leading some of them to live in the street, makes it difficult for foreign minors unlawfully in the country to access the health system. This is because the FEDASIL reception and assistance network has reached saturation point and because it is hard for the persons concerned to prove that they have fixed addresses or *de facto* addresses.

With regard to Article 11§3, the complainant organisation does not provide any detailed information on specific cases of shortcomings by the State in the removal of the causes of ill health among the minors covered by this complaint or specific cases of shortcomings in preventing epidemic or endemic diseases. Nonetheless, the lasting incapacity of the reception facilities and the fact that, consequently, a number of the minors in question (particularly those accompanied by their families) have been consistently forced into life on the streets exposes these minors to increased threats to their health and their physical integrity, which are the result in particular of a lack of housing or foster homes. In this connection, providing foreign minors with housing and foster homes is a minimum prerequisite for attempting to remove the causes of ill health among these minors (including epidemic, endemic or other diseases) and the State therefore has failed to meet its obligations as far as the adoption of this minimum prerequisite is concerned.

- ***by 11 votes to 3, that there is no violation of Article 13 of the Charter***

i. Applicability of Article 13 to the persons concerned by the complaint

The importance of Article 13 concerning the right to social and medical assistance from the angle of effectively securing the most fundamental human rights, in particular the rights to life, physical integrity and the preservation of human dignity is noted. For this reason, any "legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter" (International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 32).

In the case of exceptional application of the provisions of the Charter, extending beyond the restriction set out in paragraph 1 of the Appendix, Article 13 can apply to the persons concerned by this application (foreign minors present unlawfully) only insofar as any shortcomings in the implementation of the obligations set out in the article are likely to impair the most fundamental rights of the persons in question such as the rights to life, psychological and physical integrity and preservation of human dignity.

The minors concerned by this complaint fall solely within the scope of Article 13, in particular concerning the right to appropriate medical assistance.

ii. Application

Pursuant to Article 13 of the Charter the right of migrant minors unlawfully in a country have the right to receive urgent medical assistance or health care extending beyond urgent medical

assistance including primary and secondary care, as well as psychological assistance. Concerning the access to the health system and to health care in general, reference is made to Article 11.

In Belgium, unlawfully present migrant minors are, in principle, entitled to medical assistance on the same basis as the country's nationals. As can be seen from the parties' arguments and the observations of the Platform for International Co-operation on Undocumented Migrants (PICUM), in practice this assistance essentially takes the form of the right to "urgent medical assistance", which is provided by public social welfare centres. In its observations, PICUM explains that the concept of "urgent medical assistance" is not clearly defined, which gives rise to differing interpretations. In the light of the data at disposal and of the actual implementation of "urgent medical assistance", even though the title of the legislation ("Urgent Medical Assistance") is ambiguous, it covers not only life-threatening medical situations but also curative and preventative assistance, as well as essential psychological assistance.

In view of the existence of a form of medical assistance guaranteed by law, which operates effectively in practice, and of the lack of precise data showing serious shortcomings in this system of assistance in respect of the persons concerned by this complaint, the situation does not constitute a violation of Article 13 of the Charter. The situation does not indicate that the Belgian State has failed to take appropriate measures to provide foreign migrants unlawfully in the country with urgent medical assistance or primary and secondary health care, or essential psychological assistance, thereby impairing their rights to life, physical integrity and preservation of human dignity.

- ***unanimously that Article 30 of the Charter does not apply in the instant case***

i. Applicability of Article 30 to the persons concerned by the complaint

Article 30 essentially requires States Parties to adopt an overall and co-ordinated approach consisting of measures to promote access to social rights, in particular employment, housing, training, education, culture and social and medical assistance (Conclusions 2003, France, statement of interpretation on Article 30).

Living in poverty and suffering social exclusion obviously undermine human dignity (Conclusions 2005, Statement of interpretation on Article 30). Nevertheless, the overall and co-ordinated approach provided for in Article 30 involves the adoption of positive measures entailing economic, social and cultural promotion which are required of States Parties under a series of Charter provisions, most of which cannot be regarded as being applicable to persons who are not mentioned in paragraph 1 of the Appendix, such as unlawfully present foreign minors. This is because these are not provisions whose fundamental purpose is closely related to the requirement to secure the most fundamental human rights and to safeguard the persons covered by the provisions in question from serious threats to the enjoyment of those rights.

For this reason, the Committee does not consider that the range of economic, social and cultural measures to be taken under an overall, co-ordinated approach to secure the right to protection against poverty and social exclusion can be deemed to be an obligation on States Parties applicable in respect of foreign minors who are in a country unlawfully.

- ***unanimously that Article E of the Charter does not apply in the instant case***

i. Applicability of Article E to the persons concerned by the complaint

The prohibition of discrimination enshrined in Article E of the Charter establishes an obligation to ensure that any individuals or groups falling within the scope *ratione personae* of the Charter equally enjoy the rights of the Charter (Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 72-73).

Furthermore, the principle of equality, which results from the prohibition of discrimination, means treating equals equally and unequals unequally (Autism-Europe v. France, Complaint

No. 13/2002, decision on the merits of 4 November 2003, § 52). It follows from the above that States Parties may treat individuals differently depending on whether or not they are lawfully on their territory and that they may also treat foreign minors unlawfully present differently depending on whether or not they are accompanied or whether or not they are asylum seekers.

Having regard to the document distributed at the request of the delegation of Belgium at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 9 April 2013,

1. takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the decision of the European Committee of Social Rights and welcomes the measures taken by the authorities of Belgium with a view to bringing the situation into conformity with the Charter (cf. Appendix to the present resolution);

2. looks forward to Belgium reporting, at the time of the submission of the next report concerning the relevant provisions of the European Social Charter, on measures to ensure that the situation has been brought into conformity over the long term.

Appendix to Resolution CM/ResChS(2013)11

Memorandum submitted by the Representative of Belgium at the GR-SOC meeting of 9 April 2013
(translation)

In this report, the Committee notes that the rights enshrined in Articles 17§1, 7§10 and 11§§1 and 3 of the Charter are not effectively guaranteed. In the instant case therefore, it was not the Committee's aim to identify any shortcoming with regard to the transposition of the Charter into Belgian law, but to ascertain whether these rights were effectively guaranteed.

The Committee decided, in view of the fact that unaccompanied foreign minors and foreign minors residing in Belgium with their parents (hereinafter "illegally resident families") do not always have access to reception facilities, that there were violations of the right to social, legal and economic protection under Article 17 of the Charter, the right of children and young persons to protection against the physical and mental dangers to which they may be exposed, particularly against those resulting directly or indirectly from their work, under Article 7§10, and the right of children to protection of their health, under Article 11 §§1 and 3.

In this memorandum, you will find the arguments that Belgium wishes to put forward against the Committee's findings, particularly the measures taken to remedy the alleged infringements.

Above all else, it should be noted that DCI seems to consider in its complaint that all young people who declare themselves to be minors are in need of reception facilities and a guardian. However, the actual situation is more complex and calls for a more subtle approach taking account of the varying profiles of young people in Belgium and what they expect from the Belgian authorities.

Unaccompanied foreign minors not seeking asylum do indeed have several different profiles, involving differing problems and differing expectations vis-à-vis the authorities. Some do present themselves to the authorities with the chief aim of being admitted to a reception centre and having a guardian assigned to them but others, for various reasons, do not ask for this kind of support. This may be because the young person has a network of acquaintances in Belgium, a different lifestyle (particularly among the Roma) or a desire to travel to another European country (a young person in transit).

The authorities also have to contend with a lack of information about these people. They give little information about themselves to the police, associations and lawyers who register them. This lack of information (about their personal details, their multiple identities and whether or not they are with their parents) makes it difficult, particularly if they are not invited to do so by the authorities, for their

situation to be followed up in terms of access to reception facilities or, where they are unaccompanied minors, the appointment of a guardian.

This highly complex situation also explains the difficulty of obtaining accurate figures concerning the number of unaccompanied foreign minors in Belgium. If young people fail to respond to the authorities' requests, it is very difficult and, in fact, often impossible, for it to be established that a young person is not accompanied by a person exercising parental responsibility.

It is essential therefore for the Committee of Ministers to take these factors into consideration when determining what its approach will be.

1. Reception of unaccompanied foreign minors

First of all it should be pointed out that what we are talking about here is minors who have not requested asylum, as unaccompanied minors seeking asylum are allocated a place through the network of the FEDASIL (the Federal Agency for the Reception of Asylum Seekers).

It is true that because of the accommodation crisis, FEDASIL has not been able to find solutions for all unaccompanied minors not seeking asylum. The Agency does not have any accurate figures on this because it is impossible to determine how many unaccompanied minors not seeking asylum were in Belgium and could therefore have requested practical assistance from the Agency during this period.

Despite the constant increase in the number of places, it was impossible to offer all the unaccompanied foreign minors who approached FEDASIL satisfactory accommodation. As a result FEDASIL had no choice but to give priority to young people who had applied for asylum and only thereafter to provide facilities for the most vulnerable of those who had not applied for asylum. Consequently, FEDASIL was forced to accommodate unaccompanied foreign minors in rooms usually reserved for adults in federal centres or hotels.

However, various measures taken in 2012 by both FEDASIL and the Belgian State have fulfilled their purpose, which was to ensure that the reception facilities for unaccompanied foreign minors would no longer be saturated.

Below is an overview of the latest measures introduced to achieve this result.

1.1 Reduction in the number of asylum requests, acceleration of the procedure set up by the Office of the General Commissioner on Refugees and Stateless Persons (CGRA)

Figures from the Aliens Office show that 1 530 asylum applications were filed in 2012 by persons declaring themselves to be minors, which is lower than the figure for 2011 (2 040 applications). This change has had a positive influence on the figures for the occupation of reception centres, affecting the first, second and third stage of the reception process for unaccompanied minors.

Furthermore, processing of asylum applications by the CGRA speeded up in 2012 meaning that larger numbers of people have been able to leave the reception network.

1.2 Increase in the number of reception places for unaccompanied foreign minors

The Agency points out that the accommodation of unaccompanied foreign minors in hotels ceased in December 2012.

In May 2012, FEDASIL opened a third Observation and Guidance Centre (COO) at the Sugny reception centre, which currently provides 15 places for unaccompanied foreign minors not requesting asylum. In principle, young people reside at Sugny for no more than four months. This time is necessary to ascertain whether they can be transferred to an ordinary FEDASIL reception centre or whether they need specialised reception arrangements as part of a youth assistance programme.

Winter plan (from 24 December 2012 to 31 March 2013)

As part of the winter programme set up by the government for the reception of vulnerable people, FEDASIL undertook to reserve 200 places for unaccompanied foreign minors over the winter months. 100 places were provided through FEDASIL's ordinary network and the other 100 could be made available very quickly thanks to its co-operation with reception partners or by means of temporary over-occupation in existing centres.

The French Community's winter plan

Drawing on the lessons of previous winters, namely the lack of sufficient places offered by FEDASIL to unaccompanied minors not requesting asylum in the first reception stage, a transitory solution has been found this year within the youth assistance sector in Belgium's French Community to ensure that unaccompanied foreign minors do not have to sleep on the street.

There are two parts to the emergency winter measures set up by the youth assistance department:

1) 10 places in excess of capacity in the certified youth assistance services in Brussels and Wallonia. They were made available to unaccompanied foreign minors from 10 December 2012 to 31 March 2013, under the authority of the Chief Youth Assistance Officer, at the following services: Le Tamaris (2 places), Le Logis (1 place), Abaka (1 place), Synergie 14 (2 places), La Hutte (1 place), El Paso (1 place) and Jules Lejeune (2 places). These are all 24-hour residential services;
2) 10 other places have been available for the night since 1 January at Le Chenal de l'Amarrage in Hennuyères. Transport from Brussels to this centre is organised accordingly and it is made available whenever the temperature drops below 0°C at night. The first unaccompanied foreign minors arrived therefore as soon as temperatures dropped. The centre offers them guidance and food.

In total therefore, 20 unaccompanied minors were taken care of by the youth assistance service this winter. This was the very first time that such measures had been taken by the Belgian French Community.

This arrangement was made in addition to a whole range of measures taken to help unaccompanied foreign minors since the beginning of the legislature such as reception in certified services, special reception in specialised services and pilot projects. It should be pointed out, however, that under the Decree of the French Community of 4 March 1991 on youth support, such measures are taken only after a decision-making authority (a Chief Youth Assistance Officer or Youth Assistance Director or a youth court) has established that the young person concerned is in danger or difficulty.

Action taken by the Flemish Community

Intersectoral aid networks for young people in crisis situations can rapidly set up support services for minors in particularly difficult situations. These networks are accessible round the clock seven days a week and offer guaranteed assistance. In response to the fact that unaccompanied foreign minors have also been reported at contact points, a practical directive was drawn up in October 2012 for the attention of crisis networks. This directive stipulates that such minors can be registered with crisis-situation offices regardless of their status or their place of residence. Various parties including the minor's guardian may carry out this registration. While aid for young people in crisis situations does not form part of the usual or standard reception procedure for unaccompanied foreign minors, it must be regarded as a separate and distinct form of assistance intended for vulnerable minors in crisis situations who are not entitled to any other form of aid. Every time a case is brought to its attention, the contact point will conduct an independent assessment of the situation and decide whether it is appropriate to intervene or to provide reception facilities or support. In 2011 and 2012 about 60 unaccompanied foreign minors per year were registered with the Community's crisis situation offices.

1.3 New measures relating to unaccompanied minors not requesting asylum

Having reviewed the winter plan and following the various measures taken (such as the increase in the number of reception places), it was decided to confirm that unaccompanied foreign minors not requesting asylum would be admitted by FEDASIL to Observation and Guidance Centres (COO)

under certain conditions (newly arrived migrants, registered with the Aliens Office, directed to the Sugny Observation and Guidance Centre, etc.).

On the basis of the observation carried out, young people without any particular needs falling into the category of specialised assistance (by the Communities) will be steered towards the second reception phase of the FEDASIL network.

As of 29 March 2013, the FEDASIL network has 1 363 places for the reception of unaccompanied foreign minors. The current occupation rate is 75%.

There are enough free places to accommodate those in need.

1.4 Co-operation between FEDASIL, the Guardianship Department and the Aliens Office

The Aliens Office, the Guardianship Department and FEDASIL have recently established a co-operation agreement on the registration of persons declaring themselves to be unaccompanied foreign minors and not seeking asylum registered in Belgium.

FEDASIL has now undertaken to admit any unaccompanied minor who is not an asylum seeker to a COO for a period of no more than fifteen days (first stage) provided that he or she has registered with the Aliens Office, been interviewed by an official from the Guardianship Department and been confirmed to be a minor.

Unaccompanied foreign minors who have not applied for asylum will also be registered, meaning that in future it will be easier to determine the number of such minors in Belgium.

If these specific places in the FEDASIL network become saturated, the young person concerned may approach the Guardianship Department, which will contact other accommodation facilities and appoint a guardian. In this way, even if reception places are oversubscribed, support for unaccompanied foreign minors will continue to be guaranteed.

Depending on the outcome of the observation and guidance carried out during the first stage of reception, the unaccompanied foreign minor may be transferred to the second stage of reception within the FEDASIL network.

If there is still a doubt as to whether the person is a minor and age testing is carried out, the person will be accommodated for no more than two days in a FEDASIL reception facility, after which, once it has been confirmed that the person is a minor, the Guardianship Department will look for a reception place, where appropriate within the FEDASIL network.

As a result of this improved co-operation between the authorities concerned, young people can be identified and assigned a guardian within a much more comfortable time frame for them.

1.5 Increase in the number of guardians

The Guardianship Department has certified some 100 guardians since the beginning of 2012. In late 2012 and early 2013, recruitment was stepped up as 52 independent guardians and two guardians employed by the Red Cross were certified by the Guardianship Department.

There are currently 319 guardians certified by the Guardianship Department and hence capable of providing support for unaccompanied foreign minors.

For 2013, the Guardianship Department plans to continue to recruit independent guardians, particularly those employed by associations which have experience in assisting unaccompanied minors.

It is also planned to set up a system of coaching and support for other guardians by employed guardians in 2013.

2. Reception of illegally resident families

Because of the saturation of federal reception centres since 2009, it has been impossible for FEDASIL to respond positively to the requests for accommodation sent to it pursuant to the Royal Decree on illegally resident families. It will be recalled that the memorandum of 15 March 2012 gives a detailed explanation of FEDASIL's position on this subject. It has to be said however that while in 2011 only 43 families were accommodated, in 2012, 127 families comprising 567 persons were accommodated.

Furthermore, at FEDASIL's request, the emergency welfare service, the *SAMU social*, opened 50 additional places this winter to accommodate families covered by the aforementioned Royal Decree. As a result of the various measures taken by the Belgian State and by FEDASIL, ordinary reception centres (other than those reserved for unaccompanied foreign minors) are no longer overcrowded.

The reception of families including minors is not unconditional. Decisions on residence must be respected. Any structural solution provided for this target group must therefore abide by the principle that they will return quickly to their country and not result in the unlimited extension of initial accommodation arrangements.

The Belgian State has decided that in April 2013 it will set up an open centre for returning migrants. For this purpose, the draft Royal Decree on the operating rules for this centre will shortly be submitted for royal assent. This centre will provide facilities for unsuccessful asylum seekers and illegally resident families to prepare and organise their return home. In this connection, FEDASIL and the Aliens Office have undertaken to co-operate in efforts to organise the voluntary return of these families to their countries of origin or to a country in which they are authorised to reside.

Conclusion

With regard to unaccompanied foreign minors, as a result of various measures taken by the Belgian State, FEDASIL and the Communities, the reported infringements of the rights enshrined in Articles 17, 7§10 and 11 §§1 and 3 came to an end in 2012.

Furthermore, FEDASIL has established means of preventing any future infringements of these rules, particularly by increasing its accommodation capacity through enhanced co-operation between the bodies concerned in the event that a new accommodation crisis were to arise.

11. Resolution CM/ResChS(2013)6, *Médecins du Monde – International* v. France, Complaint No. 67/2011

Resolution CM/ResChS(2013)6
Médecins du Monde – International v. France,
Complaint No. 67/2011

(Adopted by the Committee of Ministers on 27 March 2013
at the 1166th meeting of the Ministers' Deputies)

The Committee of Ministers,[18]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

[18] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

Taking into consideration the complaint lodged on 19 April 2011 by *Médecins du Monde – International* against France;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

I. ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 31 OF THE CHARTER

i. Violation of Article E taken in conjunction with Article 31§1 by reason of non-access to housing of an adequate standard and degrading housing conditions (unanimous)

The wording of Article 31 cannot be interpreted as imposing on States Parties an obligation of "results". However, the rights recognised in the Charter must take a practical and effective, rather than a purely theoretical, form.

Given that it is exceptionally complex and particularly expensive to realise the rights enshrined in Article 31§1, States Parties must take measures allowing them to achieve the objectives of the Charter within a reasonable time, making measurable progress and to an extent consistent with the maximum use of available resources.

Under Article 31§1, persons legally residing or regularly working in the territory of the State Party concerned who do not have housing of an adequate standard must be offered such housing within a reasonable time.

Given the different means made use of by the government in the field of housing, it is considered that plans, declarations of intention, exploratory processes, roadmaps to identify the main objectives and other "special tools" for the future may be necessary to achieve the targeted results but cannot be deemed as efficient and sufficient measures, while their elaboration seems to use up a considerable part of the budgetary resources to the detriment of concrete action.

It is recalled that pursuant to Article 31§1, in order for housing to be considered to have reached the level of adequacy, it must be in a location which allows access to public services and where there are possibilities of employment, health care services, schools and other social services. States should be vigilant when implementing housing policies so as to prevent spatial or social segregation of ethnic minorities or migrants. The complainant organisation has not demonstrated the existence of social exclusion of the Roma[19] living in integration villages. Nevertheless, a balance needs to be found between the creation of such villages and the place where they are located. With regard to alleged discrimination in the selection of Roma families wishing to have access to housing in an integration village, there is in the end no other satisfactory selection mechanism than the voluntary participation of those concerned.

Nevertheless, the integration villages offer a housing solution to only a very limited number of the Roma, while the living conditions of the others continue to be in non-conformity with Article 31§1.

The government has omitted to take into account the differences in situation of the Roma migrants who reside lawfully or work regularly in France, as well as to take measures adapted to improve their housing situation. The means made available by the government for the purpose of taking concrete action within this area are too limited to change the poor living conditions of a large number of Roma. Therefore they have been subjected to discriminatory treatment.

ii. Violation of Article E taken in conjunction with Article 31§2 by reason of the eviction procedure of migrant Roma from the sites where they are installed (unanimous)

It has been recognised that the illegal occupation of a site may justify the eviction of the occupants. However, the criteria of illegal occupation should not be interpreted too widely. Therefore, persons or

[19] The term "Roma" used at the Council of Europe refers to Roma, Sinti, Kale and related groups in Europe, including Travellers and the Eastern groups (Dom and Lom), and covers the wide diversity of the groups concerned, including persons who identify themselves as Gypsies.

groups of persons who cannot effectively benefit from the rights enshrined in national legislation, such as the right to housing, may be forced to take up reprehensible behaviour in order to satisfy their needs. This circumstance in itself cannot be used to justify any sanction or enforcement concerning these persons, nor a continued deprivation of their recognised rights.

It is recalled that in order to comply with the Charter, legal protection for persons threatened with eviction must be prescribed by law and include:

- an obligation to consult the affected parties in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- access to judicial legal remedies;
- access to legal aid; and
- compensation in case of illegal evictions.

Furthermore, when evictions do take place, they must be:

- carried out in conditions respecting the dignity of the persons concerned;
- governed by rules sufficiently protective of the rights of the persons; and
- accompanied by proposals for alternative accommodation.

The conditions of the eviction procedure described above apply to all migrants, irrespective of their legal situation in France, since these are rights linked to life and dignity.

According to several sources, the evictions of migrant Roma are conducted without respect of the basic conditions prescribed by the Charter, in particular in breach of the dignity of the persons concerned (for example, without consideration of the presence of children, pregnant women, elderly, sick or disabled persons; destroying possessions).

The legal protection afforded to the Roma under threat of eviction is insufficient and eviction procedures can take place at any time of the year including winter and at night or during the day. This does not ensure the respect of human dignity.

Evictions must not render the persons concerned homeless. The principle of equal treatment implies that the State should take measures that are appropriate in the particular circumstances of the Roma in order to safeguard their right to housing and prevent them, as a vulnerable group, from becoming homeless.

France has failed to demonstrate that offers of appropriate alternative accommodation of a sufficiently long-term are made to the Roma urged to leave, or evicted from, an illegally occupied site. Under such circumstances, urging them to leave sites on which they have settled – even illegally – and evicting them if they refuse to comply while not offering suitable long-term alternative accommodation, contributes to the non-respect of these people's right to housing. In the light of these criteria, the Committee has held that the situation in France constituted a breach of Article E read in conjunction with Article 31§2 of the Charter in its decision of 24 January 2012 on the merits in complaint European Roma and Travellers' Forum (ERTF) v. France, No. 64/2011, §§130-135.

With regard to their eviction from sites where they have settled illegally, the situation of migrant Roma has not improved.

iii. Violation of Article E taken in conjunction with Article 31§2 by reason of a lack of sufficient measures to provide emergency accommodation and reduce homelessness (unanimous)

They are differences between the right to housing (provided by Article 31§1) and the right to shelter (provided by Article 31§2). A finding of violation regarding the right to shelter with regards to Roma of Romanian and Bulgarian origin has been established in the decision on the merits in complaint European Roma and Travellers' Forum (ERTF) v. France, No. 64/2011, decision of 24 January 2012, §§126-129. It has previously been considered that the housing conditions described in the present complaint failed to comply with the requirements of Article 31§1 concerning housing.

As regards the right to shelter and to Article E (non-discrimination), notably to establish whether the housing conditions take into account the specific situation of the groups of people concerned, the situation has not changed since the above-mentioned decision and that the violation persists.

II. ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 16 OF THE CHARTER (UNANIMOUS)

Roma of Romanian and Bulgarian origin referred to in this complaint include families. In accordance with the principle of equal treatment, Article 16 requires States Parties to ensure the protection of vulnerable families, including Roma families. Consequently, the finding of a violation of Article E taken in conjunction with Article 31 concerning the right to housing of the Roma of Romanian and Bulgarian origin either lawfully residing or working regularly in France also brings about a violation of Article E taken in conjunction with Article 16.

It is noted that the issue raised by the complainant organisation with regard to family benefits concerns exclusively migrant Roma not lawfully resident in France. Article 16 is not applicable to them due to the limitations in the Appendix to the Charter and there is therefore no violation of Article 16 on this matter.

III. VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 30 OF THE CHARTER (UNANIMOUS)

With a view to ensuring the effective exercise of the right to protection against social exclusion, Article 30 requires States Parties to adopt an overall and co-ordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access to fundamental social rights. Also control mechanisms should be put in place involving all relevant persons, including civil society representatives and individuals affected by exclusion. This approach must link and integrate policies in a consistent way. Adequate resources are one of the main elements of the overall strategy to fight social exclusion, and should be allocated to attain the objectives of the strategy. Finally, the measures should be adequate in their quality and quantity to the nature and extent of social exclusion in the country concerned. Living in a situation of social exclusion undermines human dignity.

It follows from the conclusions under Article 31 that the housing policy in favour of the migrant Roma lawfully residing or regularly working in France is insufficient. Consequently, France has not demonstrated a co-ordinated approach to promoting effective access to housing for these persons who live or risk living in a situation of social exclusion.

No specific measures have been taken in this field towards the migrant Roma population. Treating them in the same manner as the rest of the population when they are in a different situation constitutes discrimination.

IV. VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 19§8 OF THE CHARTER (UNANIMOUS)

Article 19§8 applies only to migrant workers lawfully residing within the territory of States Parties and not to migrants in an irregular situation.

Migrant workers residing lawfully within the territory of a State Party cannot be deported unless they endanger national security or contravene public interest or morality. A decision on a deportation may be made only on the basis of a reasonable and objective examination of the particular situation of each individual. A possibility to appeal against the deportation decision in courts is not sufficient to fulfil this obligation.

It appears that only a small proportion of the migrant Roma of Romanian and Bulgarian origin seems to reside legally in France. No distinction seems, however, to be made among them on the basis of the legality of their residence upon their deportation. In fact, neither *Médecins du Monde* nor the government provide documents demonstrating that the legal French residence status of the person

deported is taken into consideration. In particular, the length of residence within the territory is not mentioned in the orders to leave the country.

Article 19§8 is a provision imposing an obligation of result, guaranteeing the right to protection for each individual of the affected group. Moreover, in cases where a fundamental right such as the right of residence is at stake, it is up to the government to demonstrate that a person does not reside legally on its territory (in the instant case for longer than three months).The government states, having submitted no evidence thereof, that each deportation measure is adopted following an examination assessing the personal circumstances of the applicant. It appears from other sources however, that expulsion procedures have been launched without any evidence of the person having entered the French territory for more than the period of three months. As a consequence, there has been no real individual examination of the situations but, in fact, collective deportations.

In the decision on the merits of Complaint No. 64/2011 (European Roma and Travellers' Forum (ERTF) v. France) adopted on 24 January 2012, the Committee held that there was a violation of Article E taken in conjunction with Article 19§8. Basing its consideration on the case file, there has been no change in the situation.

V. VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 17 OF THE CHARTER (UNANIMOUS)

Access to education is considered as crucial for every child's life and development. Its denial will exacerbate the vulnerability of a child who is unlawfully resident. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, a child who is denied access to education will suffer the consequences in his or her life. States Parties are therefore required, under Article 17§2 of the Charter, to ensure that children unlawfully resident in their territory have effective access to education like any other child.

Article 17 as a whole requires States to establish and maintain an educational system that is both accessible and effective.

The legal texts referred to by the government seem to be in conformity with the requirement of the Charter. Nevertheless, they have not been implemented in a satisfactory manner, in particular concerning the effective access to education for Roma children of Romanian and Bulgarian origin, as demonstrated by various studies and several decisions of the French Equal Opportunities and Anti-Discrimination Commission ("HALDE").

According to the 10th report of France on the implementation of the Charter, the enrolment rate in schools for the general population is 100%. This differs appreciably from the information provided by the complainant organisation on the school enrolment figures of Roma children of Romanian and Bulgarian origin.

It appears from the case file that the government does not take special measures for the benefit of members of a vulnerable group in order to ensure equal access to education for Roma children of Romanian and Bulgarian origin. The French education system is not sufficiently accessible to these children.

VI. VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 11 OF THE CHARTER

i. Violation of Article E taken in conjunction with Article 11§1 by reason of difficulties of access to health care (unanimous)

The health care system must be accessible to everyone, in particular to disadvantaged groups which should not be victims of discrimination. The right of access to health care requires that the cost of health care should be borne, at least in part, by the community as a whole. This also requires that the cost of health care does not represent an excessively heavy burden for the individual. Steps must therefore be taken to reduce the financial burden on patients, in particular those from the most disadvantaged sections of the community.

When ruling on situations where the interpretation of the Charter concerns the rights of a child, the Committee considers itself bound by the internationally recognised principle of the best interests of the child. In this regard, it refers to the Convention on the Rights of the Child of 20 November 1989, in particular to Article 24 thereof on the enjoyment of the highest attainable standard of health by children.

The allegations by *Médecins du Monde* on breakdowns in medical care and treatment due to evictions are not contested by the government. In addition, they are underlined by the HALDE, noting that the State authorities confirm that during the eviction operations, the personal situation of the individual, from the standpoint of the continuation of their health treatment, is not taken into consideration or monitored. The HALDE also underlines that the migrant Roma of Romanian and Bulgarian origin residing in France for less than three months do not benefit from any social protection and that, despite the fact that minor children may benefit from State medical assistance without restrictions, in practice their requests are usually rejected. Also the Council of Europe Commissioner for Human Rights has found that the Roma in France have in practice little access to medical care.

The State has failed to meet its positive obligation to ensure that migrant Roma, whatever their residence status, including children, enjoy an adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often insalubrious living conditions and difficulties they encounter accessing health care.

ii. Violation of Article E taken in conjunction with Article 11§2 by reason of a lack of information and awareness-raising for the migrant Roma and of counselling and screening on health issues (unanimous)

It is recalled that free consultations and screening must be provided for pregnant women and children throughout the country.

National rules must provide for the provision of information to the public, as well as its education and participation, with a view to developing a sense of individual responsibility in health matters. States must also, through concrete measures, demonstrate that they implement a public health education policy for the benefit of the population in general and the population groups affected by specific problems in particular.

It has been found that the situation was in conformity with the Charter with regard to the awareness-raising of the general population. However, special attention should be paid to the migrant Roma population due to their particular vulnerability on health issues resulting from their poor living conditions.

Free and regular consultation and screening for pregnant migrant Roma women and for children may be provided on the basis of a circular of the Ministry of Labour, Employment and Health. However, it follows from the information communicated by *Médecins du Monde* and not called into question by the government that the real possibilities of benefitting from such consultations and screenings are insufficient. The government does not mention any concrete action directed at the migrant Roma population in order to inform them of and raise their awareness on health issues.

iii. Violation of Article E taken in conjunction with Article 11§3 by reason of a lack of prevention of diseases and accidents (unanimous)

The poor living conditions of the migrant Roma demonstrate that Roma communities do not live in a healthy environment.

States Parties have to take appropriate measures to prevent, as far as possible, epidemic, endemic and other diseases, as well as accidents. Article 11§3 requires States to ensure high immunisation levels, in order to not merely reduce the incidence of these diseases, but also to neutralise the reserves of viruses and thus to reach the objectives set by the World Health Organisation (WHO). Vaccinations on a large scale are recognised as the most efficient and most economical means of combating infectious and epidemic diseases. This concerns the population in general, but with special attention directed at the most vulnerable groups.

A high proportion of infectious diseases, in particular tuberculosis, has been noted among migrant Roma. The Health Observatory Authority of the Ile-de-France region gives explanations on the difficulties encountered by the people working in the health sector, such as a lack of health education provided to Roma, their distrust towards institutions, their limited use of health apparatus and the fact that repeated evictions contribute to weaken access to care and support. On this point, an example is given on the eviction of a Roma camp by police forces on the eve of a vaccination campaign planned in co-operation with the Administrative Department in the context of a measles epidemic.

Infectious diseases and risk of domestic accidents largely results from the poor living conditions in the migrant Roma camps. There is a very low vaccination coverage among the migrant Roma. The government provides no information on preventive measures taken for migrant Roma to address these problems, but refers only to the emergency care which is not sufficient. The particular situation of migrant Roma requires the government to take specific measures in order to address their particular problems. Treating the migrant Roma in the same manner as the rest of the population when they are in a different situation constitutes discrimination.

VII. ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 13 OF THE CHARTER

i. Violation of Article E taken in conjunction with Article 13§1 by reason of a lack of medical assistance for migrant Roma lawfully resident or working regularly in France for more than three months (unanimous)

Legislation or practice denying entitlement to medical assistance from foreign nationals in the territory of a State Party is contrary to the Charter. It is recalled that Article 13§1 provides that in the event of sickness, people without adequate resources should be granted financial assistance for the purpose of obtaining medical care or provided with such care free of charge.

According to French legislation, migrants lawfully resident or working regularly in France benefit from sickness and maternity insurance in the same conditions as the French population. In order to be affiliated to the general scheme of the universal sickness coverage (CMU), it is nevertheless necessary to justify having resided in France for an uninterrupted period of over three months.

Even though the legislation is applied to the migrant Roma residing lawfully or working regularly in France for more than three months, it emanates from the case file that the implementation of the legislation is problematic and is insufficient.

ii. Violation of Article 13§4 by reason of a lack of medical assistance for migrant Roma lawfully resident or regularly working in France for less than three months (unanimous)

As stated above, the universal sickness coverage (CMU) is not applicable to the migrant Roma having resided in France lawfully or worked there regularly for less than three months. This constitutes an unjustified difference in treatment in comparison to nationals.

iii. Non violation of Article 13§4 by reason of the failure to provide emergency medical assistance to migrant Roma not residing lawfully or not working regularly in France (unanimous)

Under Article 13§4, States are required to provide appropriate short-term assistance (such as accommodation, food, emergency medical care and clothing) to those in immediate and urgent need. The beneficiaries of this right include foreign nationals who are lawfully present in the territory of a given State but do not have resident status, as well as foreign nationals unlawfully present in the country.

It has already been stated that the situation in France with regards to emergency medical assistance for non-residents is in conformity with Article 13§4 because all foreigners present in the French territory, whether lawfully or unlawfully, are entitled to emergency medical assistance.

Having regard to the information communicated by the delegation of France during the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 15 January 2013,

1. takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the decision of the European Committee of Social Rights (see Appendix to this resolution) and welcomes the measures already taken by the French Government;

2. calls for to France to report, on the occasion of the submission of the next report concerning the relevant provisions of the Revised European Social Charter, on the implementation of the measures adopted, and keeping, within this framework, the Committee of Ministers informed of all progress made.

Appendix to Resolution CM/ResChS(2013)6

Observations by France on the conclusions of the European Committee of Social Rights (ECSR), submitted by the Representative of France at the GR-SOC meeting of 15 January 2013

Liberté • Égalité • Fraternité
RÉPUBLIQUE FRANÇAISE

PERMANENT REPRESENTATION OF FRANCE TO THE COUNCIL OF EUROPE

GR-SOC meeting of 15 January 2013

Collective Complaint No. 67/2011 - *Médecins du Monde – International* v. France
Submissions by the government in reply to the ECSR's report

It should first be pointed out that the "Roma" are foreign migrants, originating in the main from central and eastern Europe, and are sedentary in their countries of origin. They come under the legislation governing the entry and residence of foreign nationals in French territory. They are different from "Travellers" ("Gens du voyage"), a designation used in French law for a population group, mainly of French nationality, characterised by its specific lifestyle, namely a tradition of living in mobile dwellings.

In the case of the population qualified as "Roma", the French authorities address the situation without regard to their ethnic origin and solely in the light of their status as migrant EU nationals. In accordance with Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective or racial or ethnic origin, French law moreover prohibits all forms of discrimination on grounds of ethnic origin.

The French authorities have implemented a general policy aimed at taking into account the specific problems linked to these migrant population groups.

Concerning those living in camps, since the summer of 2012 the French Government's action has consisted in applying the interministerial circular of 26 August 2012 on forward planning and support for operations to dismantle illegal camps. This instrument marked a new stage in the policy implemented by France. The operational measures taken must be perceived as part of an overall framework aimed at integrating the population groups concerned through employment, housing, access to health care and education.

Other measures are under way: an interministerial inspection has been launched to review the existing arrangements in terms of specific and general social support and welfare measures and regarding schooling.

The task of co-ordinating the action taken by the different ministries concerned and providing an interface with the voluntary sector has also been entrusted to the interministerial delegate for accommodation and access to housing (DIHAL), who reports direct to the Prime Minister.

In practical terms the participants' work involves:

- Mobilising and co-ordinating the various ministerial departments concerned through the creation of an **interministerial steering committee.** This committee, which held its founding meeting on 1 October 2012, was convened for the second time on 12 November 2012.

- Consultation with associations working in the camps and in contact with the groups concerned, as well as with those groups themselves. The DIHAL has established a **national monitoring group**, bringing together associations, field workers and representatives of the ministries concerned. This body, which has held two meetings, on 22 October and 18 December 2012, is a forum for debate and consensus-seeking concerning the measures to be proposed. It carries out collective expertise work to identify, develop and enrich the ingredients of the policy to be pursued and submits proposals to the interministerial steering committee. At its first meeting it decided to set up four working groups:

    - Group 1 "Cultural enhancement and the right to culture", the main aim of which is to promote knowledge of the historical and sociological aspects so as to make it possible to improve the work done for and with the populations concerned;
    - Group 2 "Accommodation / housing";
    - Group 3 "Access to rights" so as to consider means of effectively securing lasting access to the rights generally enjoyed by everyone, in all situations;
    - Group 4 "Forward planning and co-ordinated management prior to evacuation of camps".

- The motivation and involvement of the decentralised state agencies through the creation of a **network of *département* level correspondents, appointed by the prefects.** The DIHAL organised a first meeting of these correspondents on 20 November 2012. Their role consists, *inter alia*, in informing the DIHAL of the various situations, initiatives, needs and expectations noted in the field and of good practice and experience existing at that level. They are tasked with rapidly taking stock of the situations existing in their geographical areas (number of camps, of families and of persons concerned, number of school places proposed for the children, number of accommodation or housing solutions offered, number of medical check-ups, number of offers of integration through employment). This inventory will make it possible to gauge the impact of the measures implemented. The correspondents are also responsible for organising consultations with local stakeholders.

- Involvement of local authorities and **establishment of a local government network**, through the creation of a group of volunteer local elected representatives, which met on 3 December 2012 and which aims to pool experience, improve practices at local level and implement decentralised forms of co-operation with the countries of origin.

I. Housing [§§ 43 to 66; §§ 67 to 82; §§ 83 to 91; §§ 92 to 101; §§ 102 to 108]

The European Committee of Social Rights considered that Articles 16, 30 and 31, §§ 1 and 2 had been violated on account of the inadequate housing solutions offered to migrant groups originating from central and eastern Europe.

1) The government points out that the **right to housing as provided for in the Charter is intended to apply to French citizens and foreigners residing lawfully** in French territory.

In this connection, it should be noted that foreigners with documented status can apply for social housing subject, under Article R. 441-1 of the Building and Housing Code, to a lawful and permanent residence requirement. The Act of 5 March 2007 establishing an enforceable right to housing provides that the right to decent and independent housing shall be secured by the State to all persons who, while residing lawfully and on a permanent basis in French territory, themselves have insufficient resources to obtain or keep such housing. A decree of 30 October 2012 lays down the criteria for determining the permanency of residence of beneficiaries of the right to decent housing: citizens of European Union member States are not required to hold a residence permit, except for citizens of a member State subject to transitional measures, such as Bulgaria and Romania, who must prove they have a gainful occupation.

The requirements concerning gainful occupations held by persons originating from Bulgaria and Romania have been considerably relaxed. The transitional measures restricting access to salaried employment for nationals of these countries have been eased. Firstly, the list of accessible occupations has been expanded with effect from 1 October 2012, and the new list includes 291 occupations, compared with 150 on the previous list, representing over 72% of the job offers sent to job centres. Secondly, the fee payable by the employer to the French Immigration and Integration Office (OFII) has been eliminated.

In addition, vocational integration measures are being studied. In particular, instructions are being prepared so as to open up to Romanian and Bulgarian nationals the benefits of the "single integration contract" (a State subsidised contract combining vocational training and salaried employment) and of work permits entitling the holder to live in France and work under State subsidised contracts, which thus entails a waiver of the hitherto more stringent legal requirements applicable during the transitional period.

These measures are intended to foster the integration of migrants originating from Bulgaria and Romania and to ensure that they can become lawfully resident in France, a requirement conditioning their entitlement to housing.

2) At the same time all the ordinarily available resources can be mobilised to facilitate access to housing for those living in the camps:

- utilisation of so-called ordinary public or private housing stock, along with social support adapted to these households' needs where necessary. Such solutions must be sought through the existing ordinarily applicable arrangements: use of the reserved housing contingents, the *département*-level action plan for the disadvantaged (PDALPD), collective agreements, local partnerships with landlords, and so on.
- recourse to the supported housing sector: temporary furnished social housing, intermediation with landlords, "sliding leases", and so on. This field offers a range of solutions making it possible to provide both housing and services: appropriate forms of tenancy management, assistance with finding and keeping housing, liaison with the environment agency's services.

3) Apart from these binding measures intended to secure housing for persons with lawful residence status, in accordance with the objectives of the European Social Charter, mention must also be made of the fact that, confronted with situations of extreme vulnerability among members of Roma groups occupying undeveloped sites, many local authorities have implemented a deliberate policy of **support regardless of requirements linked to the lawfulness of the recipients' immigration status** by developing "integration villages", of which examples can be found in Saint Denis, Aubervilliers, Saint Ouen, Bagnolet and Montreuil. This has necessitated large-scale government investment in co-operation with the local authorities concerned. This co-operation has made it possible to implement several projects for the long-term integration of families, both economically and socially and in terms of housing. The first essential step was to organise their temporary accommodation. The State intervened by providing funding for urban and social studies (MOUS) to assess families' social circumstances and identify long-term housing solutions. In 2010, six studies of this sort were launched in Seine Saint Denis for the purposes of its integration villages, costing €844 000 altogether. Similarly, in Bordeaux, financing has been made available for 40 wooden chalets to be used to re-house Roma who were squatting a site, and for a MOUS study costing €150 000 to prepare a diagnosis concerning a community estimated at between 400 and 600 individuals. Two ERDF funding packages, providing a total budget of €470 184 were approved for use to fund the 40 chalets at the Regional Planning Committee meeting of 8 April 2011. The cities of Lille, Marseille and Lyon are also considering building such "integration villages".

A scheme for building low-rent housing has also been launched, in addition to development of the existing social rental housing offer and the building of dwellings suitable for people needing social assistance. The means of supporting social housing tenants will be reinforced. In the same vein, an emergency plan – notably for the Ile-de-France region – will be implemented to re-house a further 15 000 households recognised as having priority status under the Act establishing an enforceable right to housing.

II. Emergency accommodation [§§ 83 to 91]

The European Committee of Social Rights considered that the measures taken to provide emergency accommodation and reduce homelessness were inadequate. In this respect it concluded that there had been a violation of Article 31§2 of the Charter.

The compulsory requirement to provide emergency accommodation involves no condition of lawful presence in France. This accommodation must enable the household to make use, in conditions showing due regard for human dignity, of "*services providing board and lodging and sanitary facilities and an initial medical, psychological and social welfare evaluation, conducted either within the accommodation facility itself or, through an agreement, by external professionals or bodies, and to be referred to any professional or body capable of affording them the assistance warranted by their state, including residential social reintegration centres, stable accommodation centres, boarding houses, hostels, establishments for dependent elderly persons, short-stay medical care beds or hospital services."* The Roma population has access to these general means of accommodation where places are available.

The number of places in emergency accommodation reached 83 000 in 2010, having risen by 32 000 places since 2004, corresponding to a 62.2% increase in capacity. Spending on gateway social support services, accommodation solutions and suitable housing increased by 50% over the period 2006 to 2010.

Under the five-year plan to combat poverty and promote social inclusion, to be presented in January 2013, 9 000 places in emergency accommodation will be created or placed on a permanent footing so as to ensure continuity of support, equal treatment and unconditional access. 5 000 of these places will be destined to meet the needs arising from the numerous calls made to the telephone hotline run by the gateway social support services (number 115) and 4 000 places to house asylum seekers.

Moreover, a circular of 23 October 2012 on implementation of accommodation, housing and integration measures during the 2012-13 winter season stipulates that, when the weather conditions are such as to increase the health risk factors for homeless persons, care must be taken to ensure that no one is refused access to accommodation for lack of places.

As for any other population group, the integrated reception and counselling system (SIAO) can be contacted as soon as a need for shelter becomes apparent. It must play its liaison and co-ordination role. The SIAO has to ensure that contact is maintained with persons given shelter so as to prepare for their orientation, following a social evaluation, towards long-term housing solutions or, failing that, provisional accommodation facilities.

III. Conditions for eviction from illegally occupied sites [§§ 67 to 82]

The interministerial circular of 26 August 2012 made it possible to adopt a new approach based on a reference framework which was distributed to prefects placing emphasis on the need for forward planning and individual tailoring of the solutions proposed when illegal camps were being dismantled. At local level, operations to dismantle camps take place after an assessment involving the local authorities and relevant associations and are run by a project implementation team, with the participation of mediators from the camps concerned.

The DIHAL supports the public services in this respect by providing them with reference points and methodological tools, helping them to identify technical engineering and financial solutions for the implementation of workable schemes for suitable housing on the ground and, lastly, proposing a multidimensional work programme for the support of the populations concerned.

The **practical results** of this can already be seen, such as the eviction of a camp occupied by over 150 people on the banks of the Garonne in Toulouse on 22 November 2012. This operation followed on from a judicial decision of May 2012. On this occasion, the time was taken for consultation and diagnosis, and individual and differentiated solutions were applied, including voluntary return for five families and access to housing, accommodation and vocational integration for others. The eviction took place peacefully and involved both the police force and State social welfare officers.

IV. Examination of the personal circumstances of each individual concerned before deciding to issue a deportation order [§§ 109 to 117]

According to the Committee *"No distinction seems … to be made among the migrant Roma of Romanian and Bulgarian origin on the basis of the legality of their residence in France upon their expulsion"* (depending on whether they have been residing in France for more or less than three months). From this, the Committee infers that there was no real examination of individual circumstances and hence that there was a collective expulsion procedure.

1°) With regard to the procedure, the finding of a violation seems to be based exclusively on a document drawn up by an NGO stating that, out of 198 orders to leave the country served on Romanian Roma between August 2010 and May 2011, 71 contained no evidence that the person concerned was residing illegally in France. The government considers that this evidence on which the Committee bases its finding is fragmentary and unverifiable. The Committee recognises moreover in paragraph 113 that at no time was it shown documents demonstrating that the legal residence status in France of the persons concerned was taken into consideration or not. The government points out that it is willing to provide the Committee with any documents that may be useful for the investigation of the complaint, particularly the disputed administrative decisions, whose existence would bear out the allegations of practices that were incompatible with the Charter. In order to do this, it would, however, need to be given information that would enable it to identify the decisions concerned, such as the identity of the persons and the date and place of the events in question. Unless it obtains this information, the government is completely incapable of providing the documents enabling it to demonstrate that "legal residence status" was "taken into consideration" and can but reiterate the applicable legislation. At no point, moreover, does the Committee state exactly what kind of documents it would have liked to receive from the government.

2°) On the merits, the government would like to point out that there is a proper judicial review in France of expulsion measures taken against foreign nationals. The administrative courts will cancel an expulsion order if the authorities cannot show that they carried out a specific investigation of the situation of the person concerned. With regard to the burden of proof, the *Conseil d'Etat* found, in its Silidor decision of 26 November 2008, that "where there is a dispute on the length of residence of a European Union citizen whom it has been decided to expel, it is for the authorities which took the decision to present the evidence on which they based their finding that the person no longer met the requirements to reside in France". This shows that, in the administrative courts, the authorities must prove that the foreigner has been residing in France for more than three months, which is in line with the Committee's arguments in paragraph 114 with regard to the burden of proof.

V. Education [§§118 to 133]

While the Committee considered the existing legislation on education to be in conformity with the Charter, it found that there had been a violation of Article 17§2 of the Charter because the measures taken to provide a proper education for Roma children were inadequate.

It should be pointed out that Article L. 111-1 of the Education Code establishes the principle of the right to education for all, without any discrimination, and Article L. 131-1 makes education compulsory "for French and foreign children of both sexes between the ages of six and sixteen". Under Article L. 131-6, it is for mayors to draw up a list of all the children in their municipality who are subject to compulsory schooling.

In the sphere of education, three new circulars have been issued which make a series of recommendations on arrangements for schooling of children from itinerant and Traveller families and newly arrived non-native-speaker pupils, supervision of arrangements, combating absenteeism and non-attendance, suitable educational provision and the acquisition of elementary knowledge. The circular of 2 October 2012 on the education and schooling of children from itinerant and Traveller families states that even if they do not have any documents authorising them to reside in France, children may be enrolled provisionally in an elementary school and that, at secondary school level, children from an itinerant family are assigned to a school by the education authorities.

At national level, a co-ordinated network of Education Authority Centres for the schooling of new arrivals and Travellers (CASNAVs) has been set up in order to co-ordinate national policies and the general schooling conditions of these pupils and to facilitate the pooling of educational experience.

Under the CASNAV system, the chief education officer of each region appoints a person in charge of "pupils from itinerant and Traveller families" and another in charge of "newly arrived non-native-speaker pupils" and co-ordinates activities in the *départements*.

At *département* level, each education director appoints an officer in charge of "schooling for pupils from itinerant and Traveller families", whose role is described in the letter of appointment. These officers work in close co-operation with the education inspectors in charge of primary school districts and head teachers in order to facilitate the organisation and co-ordination of all activities relating to the schooling of these children.

At local level, closest to the people concerned, there is thorough supervision to ensure that full and effective schooling is provided, particularly in the three priority areas of schooling for girls, primary schools and lower secondary schools. There should be a genuine local and regional network between district education inspectors, head teachers, local government representatives and the State's other decentralised services.

The aim of these new measures is to prevent any problems with schooling on the ground and to identify the most suitable solutions as quickly as possible.

In addition, the interministerial circular of 26 August 2012 asks prefects to take measures relating to the material aspects of school which have an impact on school attendance, namely school transport, canteens and stationery supplies. These objectives are taken up in the circular of 2 October 2012. The result is that both prefects and chief education officers must ensure that local authorities, which have the main responsibility for these practical aspects as well as their own services, facilitate access for Roma children to these public services, which, although optional, still have an impact on school attendance.

VI. Access to health care, screening and prevention [§§ 134 to 182]

The Committee considered that the measures taken by the national authorities in relation to access to health care, screening, vaccination and prevention were inadequate. It found therefore that there had been violations of Articles 11 and 13 of the Charter.

With regard to health care it should be pointed out that State medical assistance (AME) makes it possible to cover the health costs of persons who are unable to benefit from health insurance. This is the case with unlawfully resident foreigners. The care covered is the same as for people with social insurance.

AME is accessible to foreigners without residence permits who are not currently involved in a regularisation procedure. There are two residence requirements however:

- the person needs to have been present in France for three consecutive months or more (this requirement does not apply to children, who are entitled to AME immediately);

- the person must reside in France on something other than a purely occasional basis, showing at least some stability. The only persons excluded are persons passing through France without any plans to settle or those who have come to France specifically to receive medical care.

Since 2011, the ministry in charge of health (Directorate General of Health) has been supporting an experimental health mediation programme whose aim is to promote the health of women and young children living in France in squats and shanty towns. It is co-ordinated by the Association for the Reception of Travellers (ASAV) and is designed to help 150 women and their children and families (1 000 people in all) living in squats and on sites in four *départements*, with the support of other associations. The four health mediators (one per site) are employed by these associations. At local level, the programme is supported by regional health agencies and regional authorities. An initial review has highlighted improvements in access to an official residence, health care and prevention. In 2012 support for the programme and its development cost the ministry in charge of health €55 000. It is planned to continue or even to extend the programme in 2013 in the context of activities supervised by the DIHAL.

Lastly, mothers and children living in camps have free access with no nationality requirements to the services provided by the mother and child welfare centres (PMIs) run by the *départements* (through their councils). It has been confirmed that children supervised by these centres show an improved state of health compared to other children living in camps, particularly in terms of vaccination rates.

In paragraph 176, the Committee states that "*universal sickness coverage (couverture maladie universelle – CMU) is not applicable to the migrant Roma having resided in France lawfully or worked there regularly for less than three months. The Committee considers that this constitutes an unjustified difference in treatment with nationals"* and finds that there has been a violation of Article 13§4.

The government points out that, to be eligible for CMU, claimants are required to have been in the country for three months or more and this applies as much to nationals as it does to legally resident foreigners. Accordingly, a French national returning from a period abroad must also prove that he or she has been in the country for three months or more to be eligible for CMU. Contrary to what the Committee seems to infer in paragraph 176, there is no difference in treatment in this respect.

VII. The discriminatory nature of the violations

The ECSR found that the violations of Articles 11, 16, 17, 19§8, 30 and 31 were of a discriminatory nature in breach of Article E of the Charter. The government notes, however, that the ground on which the Committee found that there was discrimination was the lack of any specific measures for Roma people in particularly vulnerable situations. According to the ECSR's interpretation, **it is discriminatory to treat people in the same way when they are in a different situation.** The ECSR infers from this that the lack of positive discrimination vis-à-vis the Roma population in France constitutes discrimination.

The government notes with satisfaction that the ECSR's decision does not identify any applicable legal provisions or practices which would limit the access of Roma people to their guaranteed rights solely on the basis of their ethnic origin.

The government would point out, moreover, that while the wording of Article E is identical to that of Article 14 of the European Convention on Human Rights, the very broad interpretation by the ECSR of Article E of the Social Charter differs substantially from the narrower interpretation of Article 14 by the European Court of Human Rights. The government also notes that the ECSR's very broad interpretation of Article E of the Social Charter prompts it almost systematically to hold that the violations of the Charter it has found are discriminatory whenever this complaint is raised by the complainant organisation.

The government points out that French national law does not recognise the principle of positive discrimination on the basis of membership of an ethnic group. Article 1 of the Constitution of 4 October 1958 declares that the Republic must ensure equality before the law without distinction of origin, race or religion. The French Government therefore rejects any differentiation of rights (or positive discrimination) on the ground of ethnic origin. Likewise, the authorities must respect the constitutional principles laid down in the decision of the Constitutional Council of 15 November 2007, in which it was held that the collection of objective ethnic data is an infringement of Article 1 of the Constitution.

12. Resolution CM/ResChS(2012)4, *Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" (CL "Podkrepa") and European Trade Union Confederation (ETUC)* v. Bulgaria, Complaint No. 32/2005

Resolution CM/ResChS(2012)4
Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" (CL "Podkrepa") and European Trade Union Confederation (ETUC) against Bulgaria,
Complaint No. 32/2005

(Adopted by the Committee of Ministers on 10 October 2012
at the 1152nd meeting of the Ministers' Deputies)

The Committee of Ministers,[20]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 16 June 2005 by the Confederation of Independent Trade Unions in Bulgaria (CITUB), the Confederation of Labour "Podkrepa" (CL "Podkrepa") and the European Trade Union Confederation (ETUC) against Bulgaria;

Having regard to the report transmitted by the European Committee of Social Rights, in which it concluded unanimously:

a) that the general ban of the right to strike in the electricity, healthcare and communications sectors (Section 16 (4) of the Collective Labour Disputes Settlement Act) constitutes a violation of Article 6§4 of the Revised Charter.

The right to strike in Article 6§4 of the Revised Charter is not absolute and may be restricted, but any restriction to certain categories of employees or in certain sectors is only in conformity with Article 6§4 if it respects the conditions laid down in Article G. Thus, any restriction has to be (i) prescribed by law, (ii) pursue a legitimate purpose, i.e. the protection of the rights and freedoms of others, of public interest, national security, public health or morals and (iii) necessary in a democratic society for the pursuance of these purposes, i.e. the restriction has to be proportionate to the legitimate aim pursued.

(i) The prohibition of strikes in the electricity, communications and healthcare sectors is prescribed by Bulgarian statutory law.

[20] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

(ii) The provision of electricity, communications and healthcare may be of primary importance for the protection of the rights of others, public interest, national security or public health. A restriction of the right to strike in these sectors may therefore serve a legitimate purpose within the meaning of Article G.

(iii) However, there is no reasonable relationship of proportionality between a general ban on the right to strike, even in essential sectors, and a legitimate aim pursued. Simply prohibiting all employees in these sectors from striking constitutes a restriction that cannot be regarded as being necessary in a democratic society within the meaning of Article G.

b) that the restriction to the right to strike in the railway sector pursuant to Section 51 of the Railway Transport Act goes beyond those permitted by Article G and therefore constitutes a violation of Article 6§4 of the Revised Charter.

(i) The scope of Section 51 of the Railway Transport Act (RTA) requiring the maintenance of satisfactory transport services for the population of not less than 50% of the level of transport service provided prior to strike action and the restrictions to the right to strike resulting from this provision are not sufficiently clear to allow workers in the sector concerned wishing to call or to participate in a strike to assess what is the scope of minimum services required by the law in order to meet the required 50% threshold. It is further unclear what the criteria are for determining the 50% threshold. The law does not satisfy the requirements of precision and foreseeability implied by the concept of "prescribed by law" within the meaning of Article G.

(ii) The transportation of passengers as well as commercial goods may constitute a public service of primary importance in which strikes could pose a threat to the rights and freedoms of others, public interest, national security, public health or morals. A statutory requirement to provide minimum transport services during strike action may serve a legitimate purpose within the meaning of Article G.

(iii) It has not been established that the restriction of the right to strike imposed by Section 51 of the RTA pursues a legitimate purpose in the meaning of Article G. The alleged and not further specified consequences for the economy do not qualify as a legitimate aim in this respect. In the absence of a legitimate purpose, the restriction to the right to strike according to Section 51 of the RTA may not be considered as being necessary in a democratic society within the meaning of Article G.

c) that allowing civil servants to only engage in symbolic action which the law qualifies as strike and prohibiting them from collectively withdrawing their labour (Section 47 of the Civil Service Act) constitutes a violation of Article 6§4 of the Revised Charter.

(i) Section 47 of the Civil Service Act limits the exercise of collective action in respect of all civil servants to wearing or displaying signs, armbands, badges or protest banners. Civil servants thus are only entitled to engage in symbolic action which the law qualifies as strike and do not have the right to collectively withdraw their labour. This restriction amounts to a complete withdrawal of the right to strike for all civil servants.

(ii) Restrictions to the right to strike of certain categories of civil servants, for example those whose duties and functions, given their nature or level of responsibility are directly affecting the rights of others, national security or public interest, may serve a legitimate purpose within the meaning of
Article G.

(iii) However, there is no reasonable relationship of proportionality between prohibiting all civil servants from exercising the right to strike, irrespective of their duties and function, and the legitimate aims pursued. Such a restriction can therefore not be considered as being necessary in a democratic society within the meaning of Article G.

Having regard to the information successively communicated by the Bulgarian delegation, in particular by a letter dated 24 November 2006 (cf. Appendix to the present resolution),

1. takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the decision of the European Committee of Social Rights and welcomes the measures already taken by the Bulgarian authorities and their commitment to bring the situation into conformity with the Charter;

2. looks forward to Bulgaria reporting, at the time of the submission of the next report concerning the relevant provisions of the European Social Charter, that the situation has been brought into full conformity.

Appendix to Resolution CM/ResChS(2012)4

Letter from the Ministry of Labour and Social Policy

REPUBLIC OF BULGARIA
MINISTRY OF LABOUR AND SOCIAL POLICY

№ 92 /980
24. 11. 2006

TO

MR REGIS BRILLAT
EXECUTIVE SECRETARY OF THE
EUROPEAN SOCIAL CHARTER

ABOUT: Collective complaint № 32/2005 vs Bulgaria pending before the ECSR according to the system of Collective Complaints.

DEAR MR. BRILLAT,

I have the pleasure to send you the latest changes in the Settlement of Collective Labour Disputes Act, promulgated in "State Gazette" № 87/27.10.2006, concerning the right to strike of some categories of workers and employees.

Until the amendments the Settlement of Collective Labour Disputes Act – art.16 (4), denied the right to strike of workers in production, distribution and supply of energy, communications and healthcare. After the latest changes in the law these restrictions were revoked.

According to Constitutional procedure the Parliament repealed the text – art.16, (4) of the SCLDA. The actual wording of the art.16, (4) is the following:

Article 16. Strike shall not be admissible:

1. if the claims put forward by the workers contradict the Constitution;
2. (Amended, SG 25/2001) when the requirements of Article 3, 11, paragraphs 2 and 3 and Article 14 have not been observed, as well as in respect of issues on which there is an agreement or an arbitration decision;
3. during natural calamities and related urgent and emergency rescue and restoration works;
4. (Repealed, SG 87/2006);
5. for the settlement of individual employment disputes;
6. (Amended, SG 57/2000, 87/2006) in the system of the Ministry of Defence, the Ministry of Interior, the judicial, prosecution and investigation bodies;
7. by which political claims are laid.

We would appreciate your co-operation in presenting this information in front of the ECSR, regarding Collective Complaint № 32/2005.

Yours faithfully,

DEPUTY MINISTER:

DIMITAR DIMITROV

ARRIVÉE
08 DEC. 2006
CHARTE SOCIALE EUROPÉENNE

Directorate European Integration and International Relations

déjà reçu par fax le 24/11/06.
envoyé le 24/11/06.

13. Resolution CM/ResChS(2011)7, *European Federation of National Organisations working with the homeless (FEANTSA)* v. Slovenia, Complaint No. 53/2008

Resolution CM/ResChS(2011)7
Collective Complaint No. 53/2008
by the European Federation of National Organisations working with the homeless (FEANTSA) against Slovenia

(Adopted by the Committee of Ministers on 15 June 2011
at the 1116th meeting of the Ministers' Deputies)

The Committee of Ministers,[21]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 28 August 2008 by the European Federation of National Organisations working with the homeless (FEANTSA) against Slovenia;

Having regard to the report transmitted by the European Committee of Social Rights, in which it concluded:

(i) unanimously that the situation in Slovenia constituted a violation of Article 31§1 of the Revised Charter;

The Committee has consistently held that the right to adequate housing means, *inter alia,* a right that is protected by law. It considers that the status conferred to tenants of non-profit flats in Slovenia prior to the 1991 Housing Act clearly fitted this definition. The rules introduced by the 1991 Act allowing former holders of the Housing Right – which the Act abolished – to purchase at an advantageous price the flats in respect of which they had previously held this right, also ensured sufficient legal security of tenure for the persons concerned. The Committee considers, however, that as regards the situation of former holders of the Housing Right over flats which were restored to their private owners, that the combination of insufficient measures for the access to or purchase of a substitute flat, the changes in the rules on tenancy and the increase in rents, are, at the end of the Slovenian Government's reforms, likely to place a significant number of households in a very precarious position and to prevent them from effectively exercising their right to housing.

(ii) unanimously that the situation in Slovenia constituted a violation of Article 31§3 of the Revised Charter;

The Committee considers that, in order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income, something that is clearly not the case with former holders of the Housing Right, in particular elderly persons, who have been deprived not only of this right, but also of the opportunity to purchase the flat they live in, or another one, on advantageous terms, and of the opportunity to remain in the flat, or move to and occupy another flat, in return for a reasonable rent.

[21] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the following Contracting Parties to the European Social Charter or the Revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

(iii) by 9 votes to 5 that the situation in Slovenia constituted a violation of Article E of the Revised Charter in conjunction with Article 31§3;

The Committee considers that the treatment accorded to former holders of the Housing Right in respect of flats acquired by the state through nationalisation or expropriation, and restored to their owners, is manifestly discriminatory in relation to the treatment accorded to other tenants of flats that were transferred to public ownership by other means, there being no evidence of any difference in the situation of the two categories of tenants, and the original distinction between the forms of public ownership in question, of which, moreover, they were not necessarily aware, being in no way imputable to them, and having no bearing on the nature of their own relationship with the public owner or administrator.

(iv) by 13 votes to 1 that the situation in Slovenia constituted a violation of Article 16 of the Revised Charter;

The Committee considers that in view of the scope it has constantly attributed to Article 16 as regards housing of the family, the findings of a violation of Article 31, taken alone or in conjunction with Article E, amount to a finding that there has also been a breach of Article 16.

(v) by 11 votes to 3 that the situation in Slovenia constituted a violation of Article E of the Revised Charter in conjunction with Article 16.

The Committee considers that in view of the scope it has constantly attributed to Article 16 as regards housing of the family, the findings of a violation of Article 31, taken alone or in conjunction with Article E, amount to a finding that there has also been a breach of Article 16, and of Article E in conjunction with Article 16.

Having regard to the information communicated by the Slovenian delegation by letter dated 20 May 2011,

1. takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the decision of the European Committee of Social Rights and welcomes the measures already taken by the Slovenian authorities and their commitment to bring the situation into conformity with the Charter (cf. Appendix to the present resolution);

2. looks forward to Slovenia reporting, at the time of the submission of the next report concerning the relevant provisions of the European Social Charter, that the situation has been brought into full conformity.

Appendix to Resolution CM/ResChS(2011)7

European Federation of National Organisations working with the homeless (FEANTSA) against Slovenia

Slovenian delegation paper
(letter from the Permanent Representation of Slovenia dated 20 May 2011)

1. Slovenia ratified the Revised European Social Charter on 7 May 1999, accepting 95 of the Revised Charter's 98 paragraphs.

2. Slovenia ratified the Additional Protocol providing for a system of collective complaints on 7 May 1999.

3. Between 2000 and 2010, Slovenia submitted 10 reports on the application of the Revised Charter.

4. Slovenia fully recognises the importance of the Social Charter and of all its provisions. It shares the philosophy of the Charter and of the mechanism of collective complaints.

5. As a member state of the United Nations, the Council of Europe and the European Union, Slovenia is committed to applying international legal acts in the area of human rights, EU legislation and the case law of the European Court of Human Rights and the Court of Justice of the European Union. Slovenia is, as part of its international treaty obligations, subject to supervision by appropriate treaty bodies. Slovenia reports regularly on the human rights situation, and has open dialogue with supervisory bodies and implements their recommendations in good faith.

At the international level, Slovenia advocates a progressive human rights policy by committing to the enforcement and implementation of existing and the development of new international human rights standards. At the government level, Slovenia actively monitors developments in the area of human rights through the interministerial working group. This working group also includes representatives of civil society (non-governmental organisations) and the human rights ombudsman.

Slovenia showed its commitment to attaining the highest standards possible in the area of human rights protection by ratifying the European Social Charter, including the mechanism for collective complaints.

6. Slovenia received with due respect the report addressed to the Committee of Ministers by the European Committee of Social Rights in connection with the Collective Complaint No. 53/2008 presented by the European Federation of National Organisations working with the homeless (FEANTSA) against Slovenia.

7. The delicate issue results from the situation created in 1991 when Slovenia turned into a market economy from a socialist economy. In that period, through the Denationalisation Act, property was returned to owners whose property was seized and confiscated after the Second World War. Dwellings were returned to the original owners in kind; in most cases, holders of housing rights lived in them.

Prior to 1991, the former social housing (owned by municipalities and socially owned enterprises) was constructed from budget funds that were provided by all employed citizens from their salaries. Social housing included also nationalised and confiscated dwellings built before the Second World War by individuals from their own funds. Dwellings were awarded in the order of arrival of applications to entitled persons who applied for housing. Those people were granted the housing right to this dwelling. A household that was granted the housing right could permanently remain in the dwelling for low rent (administratively established by the state), irrespective of their later income or their financial situation.

It should be noted here that about 30% of all households acquired the so-called “Housing Right” in Slovenia, while the remaining households had to solve their housing needs by themselves, irrespective of the fact that they also provided funds from their salaries for the construction of social dwellings on a monthly basis.

Because of the change in the social system, the former owners acquired ownership of returned housing units. However, they did not acquire the right to dispose of them, since tenants could continue to use the housing in question without limitations; this is still the case. The new Housing Act protects tenants who maintained all their rights (such as those acquired before 1991), whereas the owners of denationalised housing may charge only administered non-profit rents to tenants for the use of housing (on average about 30% of market rents).

8. While taking note with the utmost attention of the contents and results of the above-mentioned report, Slovenia will make use of its indications in order to improve its engagement towards resolving the main concerns of the former holders of the housing rights in respect of dwellings acquired by the state through nationalisation or expropriation.

9. Tenants in denationalised dwellings maintained all their rights irrespective of their social situation and financial standing; however, the latter does not apply to new tenants of non-profit housing units that were awarded after 2003. All tenants in Slovenia facing a difficult financial situation are entitled to a subsidy amounting to as much as 80% of the rent, in line with the Housing Act from 2003. They are also entitled to extraordinary assistance to be financed by municipalities if they find themselves in financial hardship and are not capable of paying the non-profit rent (death in the family,

loss of employment, serious illness, etc.). The owners cannot terminate tenancy to tenants who ask for extraordinary assistance. In the case of a long-term inability to pay rent and other costs in addition to rent, a municipality may be asked to move a tenant into other suitable non-profit housing or a residential unit intended for temporary solution of the housing needs of persons at social risk. In view of the above, we believe that this cannot result in homelessness.

Deprivation felt by tenants or the Association of tenants of (denationalised) dwellings has no impact on their social situation in terms of their exposure to risk. Namely, they are on an equal footing, and in a specific way even more protected than, other tenants of non-profit housing.

In spite of the above stated fact, we would like to emphasise that the Constitution of the Republic of Slovenia lays down that Slovenia is a welfare state providing all the mechanisms for the social inclusion of individuals. Within the mechanisms of the welfare state and in meeting statutory conditions, they have the right to benefits and services in terms of providing social inclusion of all population groups if they experience social deprivation for any reason.

It is also necessary to emphasise that the owners may initiate the procedure of terminating the tenancy agreement only in the case that the tenant breaches the tenancy agreement for reasons provided by law; this applies to all tenants. Prior to termination, the owner must inform the tenant of the breach of the tenancy agreement and define a time limit to remedy the breach. Only if the breach is not remedied the procedure may continue before the court which assesses whether the termination is well-founded.

In the case that an owner of a denationalised dwelling terminates the tenancy agreement due to “no fault” reasons, he/she may terminate the tenancy agreement, but only if he/she provides another suitable substitute dwelling. This is a housing unit which does not signify any essential worsening of the housing conditions of the tenant and his household. He/she must provide housing with non-profit rent for an indefinite period suitable in terms of size and location and built in compliance with construction standards. In the event that the tenant does not agree with such a termination, the courts shall decide on the suitability of other housing in a non-litigious civil proceeding.

Tenants in denationalised dwellings are, due to sensitivity to the issues, legally protected. Therefore, eventual judiciary proceedings, in the event that they do not breach the provisions of tenancy agreement, cannot be completed to the detriment of the tenant. So far, there has not been a single case in which the tenancy agreement was terminated in which there were not “at fault” reasons for termination.

Tenants of denationalised dwellings that for any reason feel threatened may always request assistance from the competent institutions (ministries, municipalities), where they may be offered professional and legal assistance (as regards verification of rent, possibility of obtaining other housing, explanation regarding housing legislation, etc.).

10. The Constitutional Court has reviewed several times the provisions of the Housing Act (Uradni list RS, No. 69/03, 18/04-ZVKSES, 47/06-ZEN, 45/08-ZVEtL and 57/08-SZ-1A) concerning the:

- position of tenants in denationalised flats;
- non-profit rent for the use of such flats; and
- the right to material incentives for tenants in denationalised flats in the event that they vacate or repurchase a denationalised flat.

The Constitutional Court explicitly stressed in one ruling that “both categories of former housing right holders (those living in dwellings constructed from budget funds on one hand and those living in denationalised dwellings on the other hand) now enjoy equal legal status with regard to tenancy agreements which have replaced the former housing right. As for the possibility of purchasing a flat to which a tenant had the housing right, both categories of housing right holders, on the other hand, cannot enjoy equal legal status since the privatisation of these flats have already been carried out through denationalisation”.

11. Out of a total of 4,700 former holders of housing right living in denationalised flats, 2,566 of them accepted material incentives offered by the government and permanently resolved their housing problem by purchasing another flat or buying a house. Slovenia estimates that fewer than 1,500 tenants will remain in the aforementioned flats (for various reasons such as old age, inability to purchase another flat etc) with a tenancy agreement for an indefinite period and a non-profit rent).

12. The allegation that the Housing Act has led to evictions and an increase in homelessness is completely unsubstantiated. Namely, the 12 fault-based grounds on which the owner may unilaterally terminate a tenancy agreement by filing suit, provided he or she gives the tenant prior written notice, are legitimate.

13. Furthermore, the complainants' allegations that the 2003 Housing Act has introduced new prohibitions for tenants, including a prohibition on increasing the number of family members living in the flat once a tenancy agreement has been signed, are completely unfounded. On the contrary, the new Housing Act states that the tenancy agreement may not be terminated on the ground that there has been an increase in the number of the tenant's family members.

14. Slovenia likewise refutes the complainant organisation's allegations that the tenancy agreement may also be terminated on the grounds of the tenant's absence from the flat for more than three months. The Housing Act explicitly states that "if the tenant is under treatment, in a home for the elderly for a period shorter than six months, or if the housing is not used for other justifiable reasons (business transfer or education elsewhere, doing military service, serving a prison sentence and similar)", the tenancy agreement can not be terminated.

As already mentioned, the owner may terminate the tenancy agreement on a "no fault" basis only exceptionally and on condition that the tenant is provided with an adequate substitute flat, with the costs of the move to be borne by the owner.

15. With regard to improvements made by the tenant to the flat, the government maintains that under the terms of the Housing Act, the owner may not deny the tenant the right to make any alterations to the flat if these alterations are in compliance with the relevant technical requirements, if it is in the tenant's personal interest to make them, if they are made at the tenant's expense, if these alterations do not affect the interest of the owner and other flat owners in the building, and if they do not harm the common areas or appearance of the building.

16. As regards non-profit rent, which is defined as a rent that is determined at national level, and which is much lower than a commercial rent as it covers only the maintenance costs associated with the flat and the common areas, the management costs, depreciation costs over a useful life of 60 years and the capital costs associated with the flat, and is subject to a ceiling.

17. The increase in rent, furthermore, has been far lower than that alleged by the complainant, and is around 128% rather than 613%, after allowing for inflation. In 2008, rent expenses represented only 16.5% of average net income in Slovenia.

18. Tenants of non-profit flats with low incomes who, after paying the rent, could not afford to support themselves in a decent manner are entitled to a subsidised rent. Depending on their income, for instance, families are entitled to subsidies which can amount to as much as 80% of the non-profit rent.

19. Tenants in denationalised dwellings have instituted numerous judicial proceedings concerning the continuation of the tenure in the event of the death of the holder of the housing right before the Slovenian Supreme and Constitutional Court. Both courts have, in all cases, confirmed the provisions of the Housing Act.

20. It needs to be stressed that in the case of tenants in denationalised dwellings, there is no discrimination within the meaning of Article E of the European Social Charter (discrimination based on race, colour, sex, language, religion, political and other views, nationality or social origin, etc.). However, uncomfortable situations may arise for certain individuals that are not based on any of the above-mentioned grounds, but on the fact that the housing in which they lived had been returned to owners on the basis of denationalisation. If tenants were granted the right to privatisation of these

dwellings, this would mean a new nationalisation as established by the Constitutional Court of the Republic of Slovenia.

As already stated, the government has adopted several measures by means of which it has maintained the status quo – the unchanged rights of these tenants, even after the return of housing to previous owners.

In view of this, the following measures were adopted:

- Applicable housing legislation that fully protects all acquired rights of tenants in denationalised housing in the context of safe and permanent rent and payment of non-profit rent. One of the essential objectives is to provide a safe home to tenants; therefore, the Housing Act lays down that the owner of a dwelling may enter the dwelling only twice a year. The owner is obliged to maintain the housing in a condition that provides normal use throughout the period of rent. In the event of dispute, tenants are provided with legal protection.

- Since 1994, housing legislation has provided tenants of denationalised housing with the possibility of resolving their housing issue themselves. Thereby, they have three different possibilities: they could either purchase the dwellings in which they reside or any other housing on the market or build a house if they are financially capable of doing this on the basis of non-refundable means provided by the state and provision of favourable loans. Based on the above initiatives, about 50% of tenants living in denationalised housing have resolved their housing issues.

- Applications to vacate denationalised housing and to purchase the same or other housing on the market are still being submitted to the competent ministry. Applications are currently being processed at the ministry so that every day, there are less cases of this type. In the last two years, about 150 applications have been favourably resolved.

- A professional service has been established at the competent ministry with a view to offering the necessary assistance to tenants. Anyone may contact the ministry in writing, by phone or in person if an acute problem occurs.

- The responsible minister adopted rules according to which tenants in denationalised housing may make a request for the award of another non-profit rental housing units if they wish to leave their current denationalised housing units for whatever reasons.

- In the event that the owner of denationalised dwelling does not maintain denationalised dwellings in accordance with the standards prescribed, the tenant has the right to refer directly to the housing inspectorate, which by a decision requests that the owner eliminates all deficiencies. If the owner does not eliminate deficiencies within a certain period of time, the deficiencies shall be eliminated by the municipality at the expense of the owner. In such cases, professional services, in particular, are engaged in solving any potential problems.

21. As regards safeguarding families' rights to social, legal and economic protection including families' right to adequate housing, the state has formulated a housing policy aimed at:

- families who themselves wish to solve housing issues (purchase, building, renovation, etc.), for which non-refundable means, for eight years from the purchase or issuance of the construction permit, are offered;

- families or individuals who decide to solve their housing issues by renting non-profit dwellings (and normally do not have enough income for building or purchasing their own dwellings) can apply for non-profit rental housing is offered by local authorities (municipalities, housing funds, non-profit housing organisations). Families and individuals who do not exceed the income and property threshold, which is relatively favourable, have a right to these dwellings;

- individuals and families that have solved their housing issues by renting dwellings at the market rate because non-profit housing units are not available. Since 1 January 2009, these have been entitled to subsidies for paying market rental rates, provided that they do not exceed a certain income threshold so that they are on the same footing as tenants of non-profit housing.

22. Slovenia is duly aware of its obligations pertaining from ratification of European Social Charter and the Additional Protocol and is investing great efforts in finding appropriate means that would enable it to be in conformity with the Charter.

23. With the respect to this collective complaint, we would like to point out that the Government of the Republic of Slovenia has carefully reviewed the conclusions of the European Committee for Social Rights. Therefore, various possible ways to tackle the concerns of former holders of Housing Right that are living in denationalised dwellings are under consideration. Some of them are within jurisdiction of the Ministry for Environment and Spatial Planning and others have a much broader (mainly financial) effect.

24. Because of the decision taken in connection with the collective complaint, we have started to amend the rules governing the award of non-profit rental housing. The rules are under negotiations and will be adopted within the shortest possible time. Proposed amendments to the rules are prepared in such a way that tenants of denationalised housing who wish (for whatever reason) to obtain other rental housing, should be awarded housing considerably faster. Namely, according to the proposed rules, they are classified in the category of applicants who are placed on the priority list among applicants for non-profit rental housing. In this way, non-profit rental housing owned by municipalities, housing funds, non-profit housing organisations and the state will be provided considerably more quickly than before.

In addition, a new housing policy is being formulated by the Slovenian Government for the 2012-2021 period through the National Housing Programme with a view to speeding up the process of acquiring non-profit housing. Professional support for the new Housing Programme is provided by the Housing Council, consisting of representatives of relevant ministries, experts in housing and representatives of non-governmental organisations, including a representative of tenants of denationalised dwellings. This expert group will establish guidelines for the formulation of a long-term housing policy. Housing legislation will be adjusted accordingly immediately after the National Housing Programme has been adopted.

25. In the short term, a high-level interministerial group is to be established with the aim to thoroughly analyse the existing situation of tenants in denationalised dwellings and, if deemed necessary, to identify the additional measures required to treat the tenants in denationalised dwellings in line with the provisions of the European Social Charter. Namely, Slovenia is well aware of the importance and sensitivity of the issue in question and will therefore consider also new possibilities to address the concerns of the tenants more effectively.

26. In the future, we will continue to make all efforts to provide all available assistance to vulnerable population groups and individuals in seeking satisfactory solutions, with both legal advice and better information on possible methods of solving housing issues (free legal assistance, assistance in completing the forms for calls for applications for the award of non-profit rental housing and assistance in completing the forms for obtaining subsidised rents, legislation interpretation and expert advice to individuals).

With regard to the fact that vulnerable population groups are most often threatened by serious social exclusion, we will continue to seek solutions to prevent their homelessness, while also providing solutions for a more permanent resolution of housing issues. This will be addressed in the new National Housing Programme.

27. Finally, it is to be recalled that Slovenia firmly believes that the European Social Charter contributes considerably to the promotion of social rights and that the mechanism of collective complaints plays an important role in their effective implementation. In this context, the Slovenian Government will continue to regularly report on the implementation of the provisions of the European Social Charter and to consider the conclusions adopted by the European Committee of Social Rights

thoroughly when adopting new measures aimed at promoting social rights.

14. Resolution CM/ResChS(2009)7, *International Centre for the Legal Protection of Human Rights (INTERIGHTS)* v. Croatia, Complaint No. 45/2007

Resolution CM/ResChS(2009)7
Collective complaint No. 45/2007
by the International Centre for the Legal Protection of Human Rights (INTERIGHTS) against Croatia

(Adopted by the Committee of Ministers on 21 October 2009
at the 1068th meeting of the Ministers' Deputies)

The Committee of Ministers,[22]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 12 October 2007 by Interights against Croatia;

Having regard to the report transmitted by the European Committee of Social Rights, in which the situation in Croatia as regards the right to health education, in particular sexual and reproductive health education in school, is found to constitute a violation of Article 11§2 in the light of the non-discrimination clause of the Charter for the following reasons:

"Having regard to the non-discrimination clause in the Preamble to the Charter, sexual and reproductive health education must be provided to school children without discrimination on any ground, direct or indirect, it being understood that the prohibition of discrimination covers the entire range of the educational process, including the way the education is delivered and the content of the teaching material on which it is based. This requirement that health education be provided without any discrimination has two facets: children must not be subject to discrimination in accessing such education, which should also not be used as a tool for reinforcing demeaning stereotypes and perpetuating forms of prejudice which contribute to the social exclusion of historically marginalised groups and others that face embedded discrimination and other forms of social disadvantage which has the effect of denying their human dignity.

With respect to the national school curricula, the Committee does not consider that it is its role to assess in fine detail their contents. The setting and planning of such curricula involve resolving complex and overlapping questions of pedagogical methodology, the maximisation of resource allocation and other practical considerations, the solution to which may vary according to the country and the particular circumstances in question. As a result, the Committee considers that the authorities must enjoy a wide margin of discretion in determining the cultural appropriateness of the educational material used in the ordinary Croatian school curriculum. Moreover, the Committee notes that the main indicators relating to sexual and reproductive health among youth do not clearly establish that the level of awareness of sexual and reproductive health is notably worse than in many other European countries. Finally, the Committee also attaches weight to the fact that the government in recent years has taken a number of initiatives to revise and develop the curricula in this field. In the light of all these considerations, the Committee does not consider that it has been established that the overall content of the ordinary curriculum in general is sufficiently deficient so as to fall short of the substantive requirements imposed by Article 11§2.

[22] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

However, the Committee does find that certain specific elements of the educational material used in the ordinary curriculum are manifestly biased, discriminatory and demeaning, notably in how persons of non-heterosexual orientation are described and depicted. The conclusion in this respect is based on an examination of specific material contained in the evidence provided by the complainant organisation (Response from INTERIGHTS to the questions of the Committee – Case document No. 7, paragraphs 8-16 together with Annex A (1)), in particular the extracts from the mandatory biology course textbook used at secondary school level (Biology 3: Processes of Life) in which it is stated that:

> 'Many individuals are prone to sexual relations with persons of the same sex (homosexuals – men, and lesbians – women). It is believed that parents are to blame because they impede their children's correct sexual development with their irregularities in family relations. Nowadays it has become evident that homosexual relations are the main culprit for increased spreading of sexually transmitted diseases (e.g. 'AIDS') or 'The disease [AIDS] has spread amongst promiscuous groups of people who often change their sexual partners. Such people are homosexuals because of sexual contacts with numerous partners, drug addicts because of shared use of infected drug injection equipment and prostitutes'."

These statements stigmatise homosexuals and are based upon negative and degrading stereotypes about the sexual behaviour of all homosexuals. Although the government maintains that all curricula are taught in compliance with domestic law as well as international standards, it does not dispute the existence of the above-mentioned statements. The Committee holds that such statements serve to attack human dignity and have no place in sexual and reproductive health education: as such, their inclusion in standard educational materials constitutes a violation of Article 11§2 in the light of the non-discrimination clause of the Preamble to the Charter.

In effect, by officially approving or allowing the use of the textbooks that contain these anti-homosexual statements, the Croatian authorities have failed in their positive obligation to ensure the effective exercise of the right to protection of health by means of non-discriminatory sexual and reproductive health education which does not perpetuate or reinforce social exclusion and the denial of human dignity. As the European Court of Human Rights has stated in the field of the right to education, the public authorities have a duty which

> "is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the 'functions' assumed by the state […]. In addition to a primarily negative undertaking, it implies some positive obligation on the part of the state (see Case of Folgerø and others v. Norway, judgment of 29 June 2007, § 84).
>
> In the context of the right to protection of health through the provision of sexual and reproductive health education as set out in Article 11§2, this positive obligation extends to ensuring that educational materials do not reinforce demeaning stereotypes and perpetuate forms of prejudice which contribute to the social exclusion, embedded discrimination and denial of human dignity often experienced by historically marginalised groups such as persons of non-heterosexual orientation."

1. Takes note of the statement made by the respondent government and of the information it has communicated and welcomes the measure already taken by the Croatian authorities (see Appendix to this resolution);

2. Looks forward to Croatia reporting that, at the time of the submission of the next report concerning the relevant provisions of the European Social Charter, the situation has been brought into conformity.

Appendix to Resolution CM/ResChS(2009)7

Information provided by the Permanent Representative of Croatia during consideration by the Committee of Ministers of the report transmitted by the European Committee of Social Rights concerning Collective complaint No. 45/2007

First of all, this being the first collective complaint against Croatia, our delegation would like to express the high esteem in which my authorities hold the valuable work of the European Committee of Social Rights and to assure the latter that its reports and assessments are seriously taken into account. We would also like to welcome this opportunity, provided for by the collective complaint procedure, which allows us to give an explanation to the Committee of Ministers in relation to the complaint. Following the European Committee of Social Right's decision on the merits in the complaint and findings of the violation of Article 11§2 in the light of the non-discrimination clause in the Preamble of the Charter – which is the only violation found in relation to this collective complaint – as regards providing comprehensive or adequate sexual and reproductive health education for children and young people, we are pleased to inform the Committee of Ministers of the following:

The Croatian authorities fully share the Committee's view that statements such as the ones identified in the disputed textbook attack human dignity and have no place in sexual and reproductive health education. Furthermore, our National Textbook Standard (stipulating various standards and criteria to which a textbook must adhere for being authorised for use) sets out, among other things, clear criteria for eradicating any form of discrimination by promoting gender equality, equality of individuals and social groups and right to diversity. Alongside with legislative reforms, education and training in promoting tolerance, awareness and respect represent one of the most powerful tools in combating all forms of phobia and discrimination and in creating a safe environment.

Bearing this in mind, we are pleased to inform the Deputies that the Croatian Ministry of Education has withdrawn the textbook in question (Biology 3: Processes of Life, authors Regula and Slijepčević, published by Školska knjiga) from the list of standard educational material, and from the school year 2009/2010 this textbook is no longer used in the ordinary curriculum.

We are of the view that this measure constitutes a direct response to the Committee's comments and that Croatia, having done this, has brought the situation into conformity with the requirements of Article 11§2 of the Charter. We therefore ask the Deputies to reflect this positive step in the resolution before us and to adopt it, thus bringing an end to the examination of the ECSR's reports in relation to this complaint.

Finally, we would like to use this opportunity to stress that our government in recent years has developed a strong non-discrimination legislative framework (e.g. Anti-discrimination law accompanied by the National Anti-discrimination Strategy, upgraded Gender Equality law, as well as the introduced notion of hate crime in the Criminal Code) which bans all forms of discrimination, including discrimination based on sexual orientation and gender identity. In addition, Croatia was one of the core group supporters of the cross-regional initiative for the UN Declaration on sexual orientation and gender identity. Last, but not least, Croatia actively participates in the work of the Council of Europe's 9-member Committee of Experts on discrimination on grounds of sexual orientation and gender identity (DH-LGBT).

We therefore reassure the Committee that we remain fully engaged in further honouring our obligations under the Charter and in pursuing the efforts to ensure the effective implementation of the rights protected by the European Social Charter."

B. Exchanges of views of the Committee of Ministers with the President of the European Committee of Social Rights

1. Speech by Professor Giuseppe Palmisano, the President of the ECSR, of 21 March 2018

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

21 March 2018

Introductory speech by Professor Giuseppe Palmisano,
President of the European Committee of Social Rights (ECSR)

Mr Chairman,
Permanent Representatives,
Secretary General/Deputy Secretary General,

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

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

Traditional and consolidated high standards in the protection of social rights, and some basic features of the welfare state – which are essential for the enjoyment of such rights, and of which European States should be proud – are indeed in crisis and under stress.
Increasing poverty and unemployment rate – in particular youth unemployment –; social and economic inequalities; lack or shortcomings in migrant integration; job insecurity for many categories of employees; regressive changes in social security schemes and benefits, notably with respect to old age benefits; increases in the cost of healthcare: these are among the most worrying signals about the state of health of social rights worldwide and in Europe.

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

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

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

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

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

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

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

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

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

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

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

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

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

Having said this, I have however to draw your attention on some problems that, notwithstanding the intense commitment of the Committee and the exceptional efforts of our Secretariat, risk jeopardizing the efficiency of the system of the European Social Charter and its capacity to meet the challenge of adequately monitoring State respect for social rights in Europe.
These problems are twofold: on the hand, they concern the scarcity of the human resources dedicated to the Charter system, in proportion to the growing workload of both the Committee and the Secretariat. On the other hand, they relate to the reporting procedure and the way in which it is organized and implemented.

As for the first kind of problems, we are all aware of the fact that the Council of Europe is currently facing serious budgetary restrictions. Such restrictions are inevitably having a negative impact on the number of the temporary and regular members of the Department of the Social Charter, which was already understaffed and overloaded with work, as well as on the organization of the working sessions of the Committee.
Let me say very frankly that, starting from the present year, such a situation will make it impossible for the Committee and the Secretariat to perform their tasks in the same thorough and scrupulous way that they are used to do. I know that the current situation makes it unlikely that additional resources will be allocated to the recruitment or assignment of additional qualified staff to the Department of the Social Charter. But, please, be aware that, without this – or, even worst, if the blatantly unfair cuts to the Charter system which have been proposed as an implication of the cessation of Turkey's major contributor status were approved and applied –, the system of the Charter will no more work efficiently, nor produce the outcomes that it is expected to do according to the Charter.
The principal tool for the protection of social rights at the European level will , by consequence, be seriously weakened and the fundamental normative frame of reference of social rights in Europe will lose visibility and importance. I wonder whether such a possible step backwards would be in line either with the priorities of the Secretary General, who – as you know – made the protection of social rights and the strengthening of the European Social Charter one of the imperatives of his

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

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

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

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

I see therefore an urgent and crucial need to rethink and really simplify the reporting exercise, in order to make it more efficient, more meaningful and more useful for an effective protection of the rights enshrined in the Charter.
In this respect, I would say that the budgetary restrictions, which I referred to before, could and should represent not a challenge, but an opportunity to reorganize and improve the reporting procedure, and to ease its not entirely useful burden on both state authorities and the European Committee of Social Rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Speech by Professor Giuseppe Palmisano, the President of the ECSR, of 22 March 2017

Giuseppe Palmisano
President of the EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Exchange of Views with the Committee of Ministers

March 22, 2017

Madam Chairman,

Permanent Representatives,

Secretary General,

It is my honour and pleasure to address the Committee of Ministers for the third time on behalf of the European Committee of Social Rights. I wish to express my gratitude to you for this opportunity and continuing the established tradition for recurring exchanges on crucial social rights issues. Let me also personally thank you for having reelected me, in last November, for my second term as a member of the Committee. I wish also to thank my colleagues of the Committee for having confirmed their trust on me as President of the ECSR.

As you all know, this is a critical period for Europe, for many economic, political and social reasons. Europe is at a crossroad, and respect for and enhancement of social rights, equality and solidarity are at the centre of the attention of all political institutions and decision-makers, at the European and national level, in crucial fields such as economic and budgetary policies, as well as labour and labour market policies.

The Turin process which was launched by the Secretary General of the Council of Europe on October 2014, and the decision of the EU Commission to establish the European Pillar of Social Rights, clearly show this central role of social rights, as well as the growing conviction that respect for social rights constitutes the best way forward to prevent and way out of crises, to increase citizens' participation in democratic processes, reinforce their trust in national and European institutions and combat fundamentalism and radicalisation, by promoting inclusion and social cohesion.

Against this backdrop, the European Social Charter is considered as the fundamental frame of reference for the protection of social rights in Europe, as well as for any possible development or update in the field of social rights. And rightly so.

In fact, the Revised Social Charter is today, at the European level, the most wide-ranging and comprehensive legal instrument for the protection of social rights. More than any other existing

legal instrument, it takes care of the essential social needs of individuals in their daily lives. At the same time, from the standpoint of the commitment required by States Parties, the Social Charter, more than any other international instrument, actually pushes European States to provide themselves with an advanced and efficient public welfare system.

And it is a living instrument. By virtue of the evolving jurisprudence of the European Committee of Social Rights and its interpretation of the Charter intended as a human rights treaty, the Revised Charter reveals enormous potential to continuously address emerging and persisting social needs, to cope with old and new problems in ensuring respect for social rights.

It is for this reason that the Secretary General of the Council of Europe in his recent Opinion on the EU initiative to establish a European Pillar of Social Rights rightly recommended that the provisions of the revised Charter - I quote - "be formally incorporated into the European Pillar of Social Rights as a common benchmark for States in guaranteeing these rights" and that EU member States and EU institutions "make more explicit and systematic references to the European Social Charter and the decisions of the European Committee of Social Rights".

The acknowledgement of the potential of the Charter as a living instrument, and the increasing need to take advantage of such potential, are well illustrated by three examples, concerning the activity of my Committee over the past year. Two of them concern in particular the collective complaints procedure.

Let me refer, in the first place, to the Complaint n. 111/2014, lodged by the General Confederation of Labour (GSEE) against Greece, concerning the social side effects of so-called austerity measures. With respect to this complaint, a public hearing took place here in Strasbourg the 20th of October 2016. At the hearing, the Greek State was represented by the Minister of Labour, Mr George Katrougalos, and the complainant organization by its President, Mr Yannis Panagopoulos. Representatives of the European Union, European Trade Unions Confederation (ETUC) and International Organisation of Employers (IOE) took also part in the hearing.

The high level and active participation in the hearing is clearly testimony not only to the importance of the issues at stake in this complaint, but also to the potential legal and political impact of the collective complaints procedure, which should not be intended as punitive, but aimed at strengthening the social dialogue at the domestic and European level.

And this is confirmed by my second example, that is the increasing number of complaints that have been lodged in 2016: 21 new complaints, as against the 6 complaints of 2015 and the 10 complaints of 2014.

The third example is the exchange of views that I held a few weeks ago, on 28 of February, in Kyiv, organised at the initiative of the President of the Constitutional Court of Ukraine. The topic of urgent interest for the Constitutional Court of Ukraine was, in particular, how to properly protect the right to pensions and social security in the light of the European Social Charter and the Committee's case law.

But these are just three examples.

Of course, the European Committee of Social Rights is fully aware of its responsibility to meet the widespread need to take advantage of the potential of the Charter, and of its crucial role in applying the Charter to ensure a better protection of social rights. Therefore, we have committed ourselves – over the past year – to increase our efforts in performing the whole range of the Committee's manifold activities, which have been only made possible by the substantial support of the entire staff of the Department of the European Social Charter.

Starting by the reporting procedure, in 2016 the Committee examined the implementation of the Charter's provisions belonging to the thematic group "Employment, training and equal opportunities", and we had the opportunity to deal with some important tools for overcoming the current economic and social crisis in Europe, such as employment, training and equal opportunities on the labour market, including equal treatment of non-nationals. In our scrupulous analysis of the situation in the States concerned, we took into careful consideration not only information provided for in the state reports and in documents adopted by international and European institutions, but also comments on state reports submitted by different trade unions and non-governmental organisations, which were often crucial in gaining a proper understanding of the national situations concerned. And even if the Committee was indeed able to identify some comforting and promising developments concerning the implementation of the Charter at national level, the analysis revealed a number of shortcomings in essential areas, such as the facilitation of vocational training, the protection of workers against moral/psychological harassment, and the right to strike.

I wish to recall that the Committee also examined, in 2016, the reports on conclusions of non-conformity for lack of information adopted the preceding year (2014). Let me say that this reporting exercise has indeed proved to be very useful. States parties provided further and more precise information on their respective national situations, and this led the Committee to timely reverse, from a finding of non-conformity to a finding of conformity, a number of 2013 conclusions pertaining to the thematic group "Children, families and migrants".

2016 has been an year of intense activity in what concerns the collective complaints procedure, too. Several decisions on the merits were adopted in complex cases, concerning inter alia: the right of workers to protection in case of termination of employment in Finland; the provision of family housing for Roma in the Czech Republic; the right of the members of the National Gendarmerie in France to organize and bargain collectively; social security protection for "Justices of the Peace" (Giudici di pace) in Italy.

But, apart from adopting conclusions on State reports and issuing decisions on collective complaints, in the last year the Committee committed itself to other noteworthy activities and initiatives.

Let me start by mentioning the ongoing exchanges with both the Governmental Committee and the agents of the Governments before the Committee, which is testified to by two fruitful

meetings, hold on last January and, respectively, July 2016. The aim of such meetings was, in one case, to clarify possible critical or controversial substantive issues stemming from the assessment of national reports, within the framework of the reporting procedure and, in the other case, to deal with procedural and practical issues relating to the collective complaints mechanism, with a view to improving the functioning and fairness of this procedure.

With regard to this last procedure, let me draw your attention to the letter I sent to the Committee of Ministers two months ago, concerning the question of reimbursement of costs in collective complaints. As you know, the complaints procedure is of a quasi-judicial nature and the preparation of a complaint and subsequent submissions are often time-consuming and costly for a complainant organisation. By lodging complaints, complainant organisations are making a valuable contribution to ensuring the proper application of the European Social Charter and this contribution should be recognized and encouraged. This is why the European Committee of Social Rights considers that reimbursement of costs is justified and appropriate under certain circumstances, and an important factor in enabling the complaints procedure to attain its objectives. Therefore, the Committee is at the disposal of the Committee of Ministers for a dialogue on the issue of reimbursement of costs and we really hope that you can take a positive stand on the conditions and circumstances under which reimbursement of reasonably incurred costs would be appropriate.

I wish also to recall that, consistently with one of the objectives of the "Turin process", that is improving the synergies between the Social Charter system and the European Union law, the Committee in the last twelve months continued and reinforced its dialogue with the EU institutions. In this regard let me refer to the exchange of views with the President of the Court of Justice of the European Union, Judge Koen Lenaerts, which was held in Strasbourg during the October session of the Committee. But I refer also to the dialogue between the Committee and the EU Commission about the forthcoming "European Pillar of Social Rights". Such a dialogue, which started on March 2016, on the occasion of the Turin Forum on social rights, progressed fruitfully with the Workshop on "The European Social Charter and European Pillar of Social Rights", which took place the past December in Strasbourg. In this respect, let me sincerely express the same hope as Secretary General Jagland that the drafting of the "Pillar" can give the European Union the opportunity to achieve the result of a better consideration of the European Social Charter in the process of adopting EU legislative acts, policy measures and judicial decisions.

Having said this, let me add that if it is true that taking advantage of the Social Charter system's potential represents indeed a major tool for building up a more social Europe, it is also true that such system has to be strengthened, improved and even updated if we want it to adequately meet the challenges that confront, today, the protection of social rights in Europe. I refer in particular to such challenges as the negative impact of the continuing economic crisis, the generalized increase in poverty and unemployment, the social integration in host countries of millions refugees and migrants, the rising of violent extremism, radicalization and populism.

In this regard, I would like to share with you some ideas about desirable steps to be taken in order to enhance the effectiveness and improve the efficacy of the Social Charter system.

Firstly, enhancing the Social Charter's effectiveness entails seeking to apply it as uniformly as possible throughout the regional space of the Council of Europe. This means bringing about greater acceptance of the Revised Social Charter: in fact, I remind you that 9 State parties to the Charter have not ratified yet the Revised Social Charter, but are still bound by the "old" Charter of 1961. Furthermore, as you know, a number of States have not accepted many important provisions of the Charter. Such States should be encouraged gradually to accept the outstanding provisions, beginning - of course - with those that form the core of the Charter. And the same goes for those States (28 out of 43) that have not accepted the collective complaints Protocol yet.

But enhancing the Social Charter's effectiveness and its uniform application in Europe implies also promoting the key role of national institutions, particularly the judicial authorities that, as you know, act as the principal conduit for ensuring respect for social rights at the national level. National judges should be therefore encouraged to take greater account, in their respective judgements and decisions, of the European Social Charter as a legally binding instrument under European and national law. In this respect, let me sincerely thank the Supreme Court of Cyprus for organizing, together with the Council of Europe, within the framework of the Cypriot Chairmanship of the Committee of Ministers, the Conference on "Social rights in today's Europe: the role of domestic and European courts". The Conference, which took place in Nicosia a few weeks ago, on the 24th of February, provided indeed an excellent opportunity both to examine the role of domestic jurisdictions for ensuring respect for social rights in Europe and, mostly, to encourage their potential contribution to the enforcement of the Social Charter's provisions.

As for the issue of improving the efficacy of the Social Charter's system, I wish to refer to the need to change and simplify the reporting procedure. This procedure has indeed many merits and it is still a key weapon in the Social Charter's arsenal. However, considering the way in which it is organized and implemented, it risks sometimes to reduce itself to a mere bureaucratic and routinaire exercise, and the conclusions of my Committee risk becoming quite slow and ineffective if, e.g., changes in domestic legislation and practices have intervened between each supervision cycle. Furthermore, the reporting procedure, as it works now, requires each year a heavy 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 side of the coin, this procedure entrusts the European Committee of social rights, that is only fifteen experts assisted by a small - albeit excellent – Secretariat, with the impossible task to assess the situation in all member States relating to such wide and different areas, in the light of the Social Charter's provisions. So, despite the States' commitment in drafting complete reports, and the exceptional efforts made by the Committee and the Secretariat in examining the different national situations, this cannot clearly lead to an entirely satisfactory outcome. Let me therefore draw your attention on the need to rethink and simplify this procedure, with a view to make it more apt to identify the

real and most serious problems concerning the implementation of the Charter, and by consequence to help European States to actually improve themselves in their respect for social rights. Needless to say, my Committee is at your disposal for a dialogue and tentative proposals on this issue.

Of course, the need to improve the reporting procedure's efficacy is made more evident and relevant due to the fact that for many States it is still the only available supervision mechanism, since they have not accepted the collective complaints procedure, which is much more efficient in terms of capacity to identify specific problems in the implementation of the Charter, as well as appropriate solutions for such problems.

Therefore, I cannot but insist again on the need to promote the acceptance by States of the collective complaints mechanism, also by means of further simplifying the reporting obligations for the States parties to the collective complaints procedure.

As for improving the efficacy of this last procedure, let me respectfully say that the Committee of Ministers could and should play a more incisive role in order to contribute to the good functioning of the system and, what is most important, to improve respect for social rights in Europe. I refer in particular to those cases where, after repeated findings of violation by the European Committee of Social Rights, the situation of violation continue to go unremedied for several years, and the State concerned fail to respond and take remedial action. In such cases, as you all know, creating peer pressure among States Parties can indeed be crucial to make more effective the system of protection of social rights provided for by the Charter. This means, for example, that States within the Committee of Ministers could step in - more often than they actually do - to invite or urge another member State to act in conformity with a decision of the Committee of Social Rights, in the same way as they do this for judgments delivered by the European Court of Human Rights. And in cases where the Committee of Social Rights finds that the Charter has not been applied in a satisfactory manner, the Committee of Ministers could and should indeed make use of its power to address a recommendation to the State Party concerned, as it is expressly provided for by Art. 9 of the Protocol on collective complaints. To improve the situation in this respect, it could maybe be useful to reconsider the process of involvement of the Committee of Ministers in the follow-up of the Committee's decisions on collective complaints.

Lastly, and to conclude, let me say that considering the increasing workload involved in the supervisory activities on social rights, and the importance attached to the Social Charter system, it would be indeed crucial both to strengthen the staff of the Secretariat of the Social Charter, and to increase the number of members of the European Committee of Social Rights. In this last respect, increasing the number of the Committee's members would be useful not only to cope with our increasing workload, but also to ensure a better overall balance in the Committee of the different legal traditions and social models in Europe. And this would also provide a much-needed opportunity for a revision of the distribution of States in the groups for the election process.

Chairman, Ladies and Gentlemen, these are the few thoughts and proposals I wished to share with you. And looking forward with high interest to your reactions and views, I thank you in advance for

the significant contribution you will continue to give to the Social Charter system and the protection of social rights in Europe, with the aim of continuing to base our living together and building up the wellbeing of our communities on the core, founding values of the European civilization: democracy, human rights and the rule of law.

C. Reference documents of the Turin process[23]

1. Brussels Document on the Future of the Protection of Social Rights in Europe (synthesis of the discussions at the Brussels High-level Conference on "The Future of the Protection of Social Rights in Europe" on 12 and 13 February 2015 prepared by a Working Group of independent academic experts)

Brussels' Document on the Future of the Protection of Social Rights in Europe
Belgian Chairmanship of the Council of Europe

Document de Bruxelles sur l'avenir de la protection des droits sociaux en Europe
Présidence belge du Conseil de l'Europe

[23] The document and report referred to under this heading were drawn up by independent experts and a General Rapporteur respectively and have not been adopted as official documents or conclusions at the High-level Conferences in question.

On 12 and 13 February 2015, the Belgian Chairmanship of the Committee of Ministers of the Council of Europe, in collaboration with the Council of Europe, organised in Brussels the European Conference on "the future of the protection of social rights in Europe".

The Conference brought together high level political representatives and experts. The presence of the Secretary General of the Council of Europe, a member of the European Commission, and the Vice-President of the Parliamentary Assembly should be emphasized.

Bringing together nearly 300 participants from the academic world, representatives of the Member States of the Council of Europe and international institutions (Council of Europe, European Union, International Labour Organisation, United Nations), social partners and INGOs, the conference was held in the continuity of the Turin process. This process, launched in the eponymous city by the Italian Presidency of the European Union and by the Council of Europe, aims to renew the political interest in social rights in Europe within the current context, taking into account the European Social Charter.

As announced at the Conference, academic experts have prepared the "Brussels Document".

It consists in a synthesis document summing up the main proposals made in the course of the Conference for further improving the protection of social rights considered as human rights. The working group was chaired by Prof. J.-Fr. Akandji-Kombé, Professor at Paris I-Panthéon-Sorbonne and coordinator of the Academic network of the European Social Charter.

These experts have worked with complete independence, while taking into account the conclusions resulting from the exchanges of Conference. The "Brussels Document on the future of the protection of social rights in Europe" was delivered to the Belgian Chairmanship on 13 March 2015, as set out hereafter.

It will be then up to the Member States of the Council of Europe, including the Belgian Chairmanship - but also the Chairmanships to come -, to give to this set of proposals the follow-up that they find appropriate.

Special thanks have to be given to the Working group of experts that developed the Brussels Document and to the Secretariat of the Council of Europe, and particularly to the Department of the European Social Charter for its active participation in and continued support for the organization of the Conference.

This document will be also available in a further stage in Dutch and German.

The website of the Council of Europe dedicated to the Turin process, on which the documents of the Brussels Conference are available :
http://www.coe.int/en/web/portal/high-level-conference-esc-2014

Les 12 et 13 février 2015, la Présidence belge du Comité des Ministres du Conseil de l'Europe, en collaboration avec le Conseil de l'Europe, a organisé à Bruxelles la Conférence européenne sur « L'avenir de la protection des droits sociaux en Europe ».

La Conférence a réuni des autorités politiques et des experts de haut niveau. La présence et les discours du Secrétaire Général du Conseil de l'Europe, d'un membre de la Commission européenne, et du Vice-président de l'Assemblée parlementaire sont à souligner.

Réunissant près de 300 participants issus du monde académique, des représentants des Etats Membres du Conseil de l'Europe, des institutions internationales (Conseil de l'Europe, Union européenne, Organisation internationale du travail, Nations Unies), des partenaires sociaux et des OING, la conférence s'est inscrite dans la continuité du processus de Turin. Ce processus, lancé dans la ville éponyme par la Présidence italienne de l'Union européenne et par le Conseil de l'Europe, vise à renouveler l'intérêt politique pour les droits sociaux en Europe dans le contexte actuel, à l'appui de la Charte sociale européenne.

Comme annoncé lors de la Conférence, des experts académiques ont préparé le « Document de Bruxelles ».

Il s'agit d'un document de synthèse résumant les principales propositions faites au cours de la Conférence, tendant à améliorer la protection des droits sociaux en tant que droits de l'homme. Le groupe de travail a été présidé par Prof. J.-Fr. Akandji-Kombé, professeur à Paris I-Panthéon-Sorbonne et coordinateur du Réseau académique de la Charte sociale européenne.

Ces experts ont travaillé en toute indépendance en tenant compte des conclusions auxquelles les échanges de la Conférence ont abouti. Le « Document de Bruxelles sur l'avenir de la protection des droits sociaux en Europe» a été remis à la Présidence belge le 13 mars 2015, tel que vous le trouverez ci-après.

Il appartiendra désormais aux Etats membres du Conseil de l'Europe, y compris à la Présidence belge -- mais également aux présidences à suivre --, de donner à cet ensemble de propositions les suites qu'ils jugeront approprié de devoir lui donner.

Des remerciements spéciaux sont à adresser au Groupe de travail d'experts qui a élaboré le Document de Bruxelles et au Secrétariat du Conseil de l'Europe, et plus particulièrement au Service de la Charte sociale européenne pour sa participation active et son soutien continu à l'organisation de la Conférence.

Le présent document sera également disponible ultérieurement dans une version néerlandaise et allemande.

Le site web du Conseil de l'Europe dédié au processus de Turin et sur lequel les documents de la Conférence de Bruxelles se retrouvent :
http://www.coe.int/fr/web/portal/high-level-conference-esc-2014

Processus de Turin

DOCUMENT DE BRUXELLES sur l'avenir de la protection des droits sociaux en Europe

12-13 février 2015

Le présent document, rédigé par un groupe d'experts indépendants, a pour objet de tirer les principales conclusions de la Conférence de Bruxelles sur l'avenir de la protection des droits sociaux en Europe convoquée les 12 et 13 février 2015 à l'initiative de la présidence belge du Comité des Ministres du Conseil de l'Europe. La Conférence de Bruxelles s'inscrit dans le cadre du processus de Turin, amorcé par la Conférence à haut niveau sur la Charte sociale européenne des 17-18 octobre 2014. Ce document se situe dans le prolongement du rapport général de la conférence de Turin.

Le document de Bruxelles contient un ensemble d'objectifs et de propositions en vue de l'amélioration de la protection des droits sociaux en Europe.

La Conférence de Bruxelles a confirmé un large consensus sur la nécessité de mieux prendre en compte les exigences des droits sociaux dans les politiques menées en Europe, notamment en réponse à la crise économique, financière et de la dette souveraine ; et de renforcer à cet effet la possibilité de recours juridiques contre les atteintes aux droits sociaux.

Un consensus se fait jour également sur la nécessité, à cet égard, de donner pleine effectivité à la Charte sociale européenne révisée, et d'améliorer la coordination entre les différents instruments européens de protection des droits sociaux, qu'ils proviennent du Conseil de l'Europe ou de l'Union européenne.

Turin Process

BRUSSELS DOCUMENT on the Future of the Protection of Social Rights in Europe

12-13 February 2015

This document, prepared by a group of independent experts, aims to draw the main conclusions from the Brussels Conference on the future of the protection of social rights in Europe convened on 12 and 13 February 2015 at the initiative of the Belgian chairmanship of the Committee of Ministers of the Council of Europe. The Brussels Conference took place within the framework of the Turin process, launched by the High-Level Conference on the European Social Charter of 17-18 October 2014. This document complements the general report of the Turin conference.

The Brussels document sets out a range of objectives and proposals for the improvement of the protection of social rights in Europe.

The Brussels Conference confirmed a broad consensus on the need to better take into account the requirements of social rights in policies implemented in Europe in response to the economic, financial and sovereign debt crises; and to strengthen to this effect the possibilities of legal remedies against violations of social rights.

A consensus emerges also in this regard on the need to give full effectiveness to the Revised European Social Charter, and to improve coordination across different European systems of protection of social rights, whether these have been established within the Council of Europe or within the European Union.

1. Garantir les droits sociaux en temps de crise

Les crises économiques et financières ont eu un impact très négatif sur la jouissance des droits sociaux en Europe. Après 2008, l'augmentation du chômage, du nombre de sans-abri, de la faim, de l'inégalité et de la pauvreté des enfants ont fait peser une grave menace sur les droits énoncés dans la Charte sociale européenne, ainsi que sur le modèle social européen de manière plus générale. En Europe, des coupes dans les dépenses relatives à la santé ont affecté le droit au meilleur état de santé susceptible d'être atteint, ainsi que l'a constaté le Commissaire aux Droits de l'Homme du Conseil de l'Europe. L'insécurité liée au logement et à l'emploi ont augmenté la proportion de personnes courant un risque d'atteinte à leur santé mentale. La crise économique a conduit à une augmentation du nombre de personnes sans abri en Grèce, en Irlande, en Italie, au Portugal, en Espagne et au Royaume-Uni entre 2007 et 2012. Le nombre de personnes sans emploi a augmenté depuis 2007, ainsi que la proportion de personnes employées à temps partiel ou pour une durée déterminée. Deux tiers des 30 Etats européens examinés par UNICEF ont vu augmenter le nombre d'enfants en situation de privation matérielle entre 2008 et 2012. La consolidation fiscale post 2007 a produit des impacts disproportionnés sur les femmes: dans certains Etats membres de l'UE, dans les Etats de l'EEE-AELE et dans les pays candidats à l'adhésion à l'UE, les reculs en matière d'emploi, de transferts sociaux et de services sociaux ont effacé les progrès récents en matière d'égalité de traitement entre les femmes et les hommes. Ces évolutions entraînent une régression potentielle dans le degré de réalisation d'un ensemble de droits protégés par les instruments du Conseil de l'Europe, y compris sous les articles 1, 4, 7, 11 et 12 de la Charte sociale européenne, et sous les articles 2, 3, 6, 8 et 1er du Premier Protocole additionnel à la Convention européenne des droits de l'homme. La jouissance des droits à la protection contre la pauvreté et l'exclusion sociale ainsi qu'au logement, énoncés aux articles 30 et 31 de la Charte sociale européenne révisée, a également été affectée.

Certains de ces impacts sur les droits sociaux ont pu être imputables à des résultats spécifiques liés aux crises telles que les turbulences sur les marchés et les possibilités d'emploi. D'autres résultent des politiques nationales et supranationales adoptées en réponse aux crises, en particulier les mesures d'austérité budgétaire.

L'Organisation internationale du travail a par ailleurs détaillé leurs effets sur la base du rapport des dernières tendances en protection sociale présenté lors de la conférence, en soulignant que des espaces budgétaires existent afin de renforcer la protection des droits sociaux (*Social protection global policy trends*

1. Protecting Social Rights in the Time of Crisis

The financial and economic crises have had a significant negative impact on social rights enjoyment in Europe. Increases in unemployment, hunger, inequality and poverty following 2008 have posed a serious threat to the rights set out in the European Social Charter, as well as to the European social model more broadly. In Europe, cuts in health-related spending have affected the right to enjoy the highest attainable standard of health, as noted by the Council of Europe Commissioner of Human Rights. Housing and job insecurity in particular have contributed to an increase in the proportion of people at risk of poor mental health. The economic crisis has been identified as a key driver of increased homelessness in Greece, Ireland, Italy, Portugal, Spain, and the UK from 2007-2012. Unemployment has increased in many EU member states since 2007, and the share of individuals engaged involuntarily in parttime and temporary employment has also grown sizeably. Two-thirds of 30 European countries surveyed by UNICEF saw child material deprivation worsen between 2008 and 2012. The post-2007 fiscal consolidation has disproportionately affected women: in some EU member states, EEA-EFTA countries and EU candidate countries, there is evidence that considerable retrenchment in employment, social transfers and social services may well be rolling back past progress in equality between women and men. These developments represent potential regression in terms of the realisation of a range of rights protected under Council of Europe human rights instruments, including elements of Articles 1, 4, 7, 11 and 12 of the European Social Charter, as well as Articles 2, 3, 6, 8, and Article 1 of Protocol 1 of the European Convention on Human Rights. Enjoyment of Articles 30 and 31 of the Revised European Social Charter, guaranteeing a protection from poverty and social exclusion and the right to housing, has also been significantly affected.

Some of these social rights impacts have been attributable to specific crises-related outcomes such as market turmoil and labour opportunities. Others result from national and supranational policy responses to the crises, particularly fiscal austerity measures.

The International Labour Organisation documented the impacts of such measures in its report on the most recent trends in social protection presented at the conference, underlining in this regard that budgetary margins exist to strengthen the protection of social rights (*Social protection global policy trends 2010-*

2010-2015: from fiscal consolidation to expanding social protection: key to crisis recovery, inclusive development and social justice (International Labour Office, Geneva: ILO, 2014). Le Comité européen des droits sociaux a admis pour sa part qu'il puisse être nécessaire d'introduire des mesures d'assainissement des finances publiques en temps de crise économique, afin d'assurer le maintien et la viabilité du système de sécurité sociale existant. Cependant, il a souligné que de telles mesures ne devraient pas porter atteinte au cadre essentiel du régime de sécurité sociale national ou priver les individus de l'opportunité de bénéficier de la protection que ce régime offre contre de sérieux risques sociaux et économiques (C.E.D.S., *GENOP-DEI et ADEDY c. Grèce*, réclamation n° 66/2011 § 47). De plus, bien qu'il soit raisonnable pour la crise d'entrainer des changements dans les législations et pratiques actuelles dans les domaines du droit à la santé, à la protection sociale et au travail afin de limiter certains éléments des dépenses publiques ou de libérer de contraintes les entreprises, « de tels changements ne doivent toutefois pas déstabiliser de manière excessive la situation de ceux qui jouissent des droits qui leur sont reconnus par la Charte » (C.E.D.S., *GENOP-DEI et ADEDY c. Grèce*, réclamation n° 65/2011, § 17). Etant donné le contexte politique et économique en Europe, il est significatif que les restrictions des droits soient dues aux obligations internationales des gouvernements dans le cadre de prêts souscrits auprès des institutions de l'UE et du Fonds monétaire international, le Comité considère cependant qu'elles ne se soustraient pas à l'empire de la Charte (C.E.D.S., *IKA-ETAM c Grèce*, réclamation n° 76/2012, § 50).

2015: from fiscal consolidation to expanding social protection: key to crisis recovery, inclusive development and social justice (International Labour Office, Geneva: ILO, 2014). As for the European Committee of Social Rights, it has recognised that it may be necessary to introduce measures to consolidate public finances in times of economic crisis so as to ensure the maintenance and sustainability of the existing social security system. However, the Committee has emphasized that any such measures should not undermine the core framework of a national social security system or deny individuals the opportunity to enjoy the protection it offers against serious social and economic risk. (E.C.S.R., *GENOP-DEI and ADEDY v Greece*, Complaint No. 66/2011 § 47). Furthermore, although it may be reasonable for the economic crisis to prompt changes in current legislation and practices in the areas of the rights to health, social protection and labour law so as to restrict certain items of public spending or relieve constraints on businesses, « these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter » (*GENOP-DEI/ADEDY v Greece*, Complaint No. 65/2011 id., §17). Given the current European political and economic context, it is notable that the fact that restrictions to rights have resulted from governments' international obligations in terms of loan arrangements with EU institutions and the International Monetary Fund, the Committee does not remove them from the ambit of the Charter (E.C.S.R., *IKA-ETAM v Greece*, Complaint No. 76/2012, § 50).

Le contexte de la crise a ainsi ouvert une brèche dans la protection des droits sociaux dans l'Union européenne, mettant en danger l'Etat de droit européen et la constitution sociale de l'Europe. En outre, les programmes de consolidation fiscale ont suscité des craintes en ce qui concerne leurs impacts de court et de long terme sur les procédures démocratiques de prise de décision (Résolution 1884 (2012) de l'Assemblée parlementaire du Conseil de l'Europe). Les crises ont érodé la citoyenneté sociale, venant menacer l'esprit de solidarité au sein de l'Europe et mettant à l'épreuve la loyauté des populations envers le projet européen.

A gap is thus emerging in terms of protection of social rights at the EU level in the crisis context, placing at risk European rule of law and the European social constitution. Furthermore, fiscal consolidation programmes have raised concerns from the point of view of their short- and long-term impact on democratic decision-making processes (Resolution 1884 (2012) of the Parliamentary Assembly of the Council of Europe). The crises have resulted in an erosion of social citizenship, posing a substantial threat to Europeans' sense of solidarity and loyalty to the European project.

Le Commissaire aux Droits de l'Homme du Conseil de l'Europe a souligné que les impacts sur les droits de l'homme des programmes de consolidation budgétaire ont été les plus significatifs dans le domaine des droits sociaux. La Comité a clairement affirmé à cet égard que la crise économique ne devait pas conduire à réduire la protection des droits reconnus par la Charte : « Les gouvernements se doivent dès lors de prendre toutes les mesures nécessaires pour faire en sorte que ces droits soient effectivement garantis au moment où

The Council of Europe Commissioner for Human Rights has emphasised that some of the most drastic and lasting human rights consequences of fiscal consolidation have been in the domain of social rights. Reflecting this, the Committee has made clear that the economic crisis should not result in the reduction of the protection of the rights recognised by the Charter: « Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when

le besoin de protection se fait le plus sentir » (C.E.D.S., Conclusions XIX-2 (2009), Introduction générale §15). La crise ne constitue ainsi pas seulement une menace aux droits sociaux en Europe – elle est également un appel à agir. La Charte peut servir de cadre pour une relance économique respectueuse des droits sociaux. Le modèle de « l'économie sociale de marché hautement compétitive » mentionné à l'article 3 du Traité sur l'Union européenne devrait à l'avenir intégrer cette exigence.

beneficiaries need the protection most » (E.C.S.R., Conclusions XIX-2 (2009), General Introduction §15). The crisis is thus not just a threat to social rights, legality and social justice in Europe – it is also a call to action. The Charter can serve as the basic framework for an economic recovery that is social rights-compliant, and contributing to a recalibration of European rule of law. The model of the « highly competitive social market economy » referred to in article 3 of the Treaty on the European Union should in the future integrate this requirement.

2. Assurer la cohérence de la protection des droits sociaux fondamentaux

La garantie des droits sociaux fondamentaux repose sur diverses sources issues de sphères juridiques distinctes – nationales (constitutions), européennes (Conseil de l'Europe, Union européenne) et internationales (Organisation des Nations Unies, Organisation internationale du Travail). Bien qu'elles reposent un fond normatif commun, ces différentes sources n'ont pas fait l'objet d'une harmonisation préalable. Elles ne sont pas unies entre elles par des rapports hiérarchiques.

Il est capital que les États, leurs législateurs et leurs juges, lorsqu'ils sont confrontés à cette pluralité de sources de protection des droits sociaux fondamentaux, demeurent respectueux du principe dit « de la clause la plus favorable », qui en articule les éventuelles divergences. Ce principe est exprimé par l'article 53 de la Convention européenne des droits de l'Homme, l'article H de la Charte sociale européenne révisée, ou encore, l'article 53 de la Charte des droits fondamentaux de l'Union européenne. Ces dispositions impliquent que la moindre protection accordée par tel ou tel instrument de protection des droits de l'Homme à un droit social déterminé ne peut jamais être, à elle seule, un motif valable de mettre entre parenthèse la protection plus exigeante accordée au même droit par un autre instrument (voy. par exemple, s'agissant de la liberté syndicale des membres des forces armées, Cour eur. D.H., arrêt *Matelly c. France* du 2 octobre 2014, § 74). La survenance d'obligations contradictoires dans le chef des États doit quant à elle continuer à être arbitrée, par ces États et les organes de surveillance auxquels ils sont soumis, à la lumière du principe de la relativité des traités. Comme l'affirme la Cour européenne des droits de l'Homme, « les Parties contractantes sont responsables au titre de l'article 1er de la Convention de tous les actes et omissions de leurs organes, qu'ils découlent du droit interne ou de la nécessité d'observer des obligations juridiques internationales » (Cour eur. D.H., arrêt *Al-Saadoon et Mufdhi c. Royaume-Uni* du 2 mars 2010, § 128). Cette même Cour estime encore qu'il serait contraire au but et à

2. Ensuring the consistency of the protection of social rights

The guarantee of fundamental social rights draws on diverse sources of law belonging to distinct legal spheres – national (constitutions), European (the Council of Europe and the European Union) and international (the United Nations and the International Labour Organization). Though they share a common normative inspiration, these sources have not undergone any prior harmonisation. They are not bound by hierarchical relationships.

It is vital that, in the face of this diversity of sources of law guaranteeing fundamental social rights, States, and their legislatures and judiciaries, continue to abide by the principle of the most favourable treatment. The principle is expressed, for instance, through Article 53 of the European Convention on Human Rights, Article H of the Revised European Social Charter, and Article 53 of the EU Charter of Fundamental Rights. These provisions stipulate that the fact that a given human rights instrument accords a lesser degree of protection to a specific social right must never, in itself, constitute a valid ground for setting aside the more demanding level of protection given to the same right by another instrument (see for instance, concerning the freedom of association of members of the armed forces, the *Matelly v. France* judgment delivered by the European Court of Human Rights on 2 October 2014, § 74). Any contradictory obligations incumbent on the States must continue to be weighed by the States themselves, and by the supervisory bodies scrutinising their action, in the light of the principle of the relativity of treaties. As recognised by the European Court of Human Rights, « a Contracting Party is responsible under Article 1 of the Convention for all acts and omissions of its organs regardless of whether the act or omission in question was a consequence of domestic law or of the necessity to comply with international legal obligations. Article 1 makes no distinction as to the type of rule or measure concerned and does not exclude any part of a Contracting Party's 'jurisdiction' from scrutiny under the Convention » (Eur. Ct. HR, *Al-Sadoon and Muhfdi*

l'objet de la Convention qu'un Etat contractant soit exonéré de toute responsabilité au regard de la Convention dans un domaine d'activité déterminé au motif qu'il lui incombe d'honorer des obligations découlant de son appartenance à une organisation internationale à laquelle il a transféré une partie de sa souveraineté (Cour eur. D.H., arrêt *Bosphorus Hava Yollari Turzim Ve Ticaret Anonim Sirketi c. Irlande* du 30 juin 2005, § 124). Le Comité européen des droits sociaux affirme quant à lui que « la circonstance que les dispositions nationales s'inspirent d'une directive de l'Union européenne ne les soustrait pas à l'empire de la Charte », et qu'il en va de même en présence de dispositions nationales fondées sur des décisions préjudicielles rendues par la Cour de Justice sur la base de l'article 267 du Traité sur le fonctionnement de l'Union européenne (C.E.D.S., *Confédération générale du travail de Suède (LO) et Confédération générale des cadres, fonctionnaires et employés (TCO) c. Suède*, réclamation n°85/2012, décision du 3 juillet 2013).

Les Etats doivent donc demeurer respectueux de l'autonomie normative de chacune des sphères juridiques auxquelles ils sont soumis : les engagements les plus forts en matière de droit sociaux ne peuvent être oubliés au profit d'engagements ultérieurs moins généreux, et ne peuvent *a fortiori* être totalement mis entre parenthèse pour honorer d'autres obligations – internationales ou européennes - qui leur seraient contraires. Il importe cependant que cette autonomie ne soit pas confondue avec un isolement total et une surdité complète vis-à-vis de ce qui se dit et se décide à l'extérieur de chacune de ces sphères. Les instruments de protection de droits sociaux ne peuvent être appliqués « dans le vide » par les juges – nationaux, européens et internationaux – qui en ont la garde. Ils gagnent tout au contraire à voir leur interprétation enrichie par les indications issues d'autres instruments ayant les mêmes objets ou préoccupations, ainsi que de l'interprétation de leurs organes de surveillance respectifs. La Cour européenne des droits de l'Homme prend ainsi en compte, pour concrétiser la garantie du droit de grève déduite de la Convention européenne des droits de l'Homme, les apports issus de la Charte sociale européenne et des conclusions du Comité européen des droits sociaux (Cour eur. D.H., arrêt *National Union of Rail, Maritime and Transport Workers c. Royaume-Uni* du 8 avril 2014). Cette même Charte sociale européenne doit également servir de point de repère pour l'interprétation de la Charte des droits fondamentaux de l'Union européenne et les principes généraux du droit qui, au sein de l'Union, protègent les droits fondamentaux. L'ouverture interprétative ainsi pratiquée n'a aucune raison d'être limitée aux frontières du Conseil de l'Europe, et il n'est plus rare de voir les instruments de l'OIT ou les traités des

v. the United Kingdom judgment of 2 March 2010, § 128). The Court has also held that it would be incompatible with the purpose and object of the Convention completely to absolve a Contracting State from its responsibility in a given field under the terms of the Convention on the ground that it is required to comply with obligations flowing from its membership of an international organisation to which it has transferred part of its sovereignty (Eur. Ct. HR, *Bosphorus Hava Yollari Turzim Ve Ticaret Anonim Sirketi v. Ireland* judgment of 30 June 2005, § 124). The European Committee of Social Rights takes the view that «the fact that national provisions are based on a European Union directive does not remove them from the ambit of the Charter » and that the same applies to national provisions based on preliminary rulings given by the Court of Justice of the European Union on the basis of Article 267 of the Treaty on the Functioning of the European Union (E.C.S.R., *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, Complaint No. 85/2012, decision of 3 July 2013).

States should therefore acknowledge the normative autonomy of each legal sphere dealing with the protection of fundamental social rights: the more far-reaching commitments in the area of social rights cannot be set aside in favour of later and less demanding undertakings, and they cannot be side-stepped in order to honor other commitments – international or European – that they would be in conflict with. Such autonomy should not be confused with total isolation, however, or with a complete disregard for what is said and decided elsewhere. Instruments for the protection of social rights cannot be applied "in a vacuum" by the courts – whether national, European or international –. Instead, such instruments gain from being interpreted more broadly in the light of the provisions of other instruments addressing the same objectives or concerns or of the interpretation adopted by their respective supervisory bodies. For example, in order to consolidate the guarantee of the right to strike as recognized by the European Convention on Human Rights, the European Court of Human Rights takes into account the contributions of the European Social Charter and of the conclusions of the European Committee of Social Rights (Eur. Ct. HR, *National Union of Rail, Maritime and Transport Workers v. United Kingdom* judgment of 8 April 2014). The European Social Charter should also serve as a reference point in the interpretation of the EU Charter of Fundamental Rights and of the general principles of law that the Court of Justice ensures respect for, and that include fundamental rights. Nor is there any reason why this opening up should be restricted to Council of Europe instruments and bodies, and it is no longer unusual for the competent courts to make reference to the ILO's instruments or to United Nations treaties devoted in

Nations Unies dédiés en tout ou partie à la garantie de droit sociaux être invoqués aux fins d'interprétation, par leurs juges attitrés, des instruments européens. Ainsi, le Comité européen des droits sociaux interprète la Charte sociale européenne « en harmonie avec les autres règles du droit international dont elle fait partie », ce qui inclut par exemple la Convention des Nations Unies relative aux droits de l'enfant, dans l'interprétation qu'en donne le Comité des droits de l'enfant (C.E.D.S., *Défense des Enfants International (DEI) c. Belgique,* réclamation n°69/2011, décision du 23 octobre 2012). Pourvu qu'elle soit méthodologiquement transparente et qu'elle n'aboutisse pas à un nivellement par le bas, pareille démarche interprétative peut être approuvée dès lors qu'elle s'inscrit dans l'esprit de l'article 31 § 3 de la Convention de Vienne sur le droit des traités. Celui-ci rappelle en effet que, dans l'interprétation des traités, il sera tenu compte, notamment, de toute pratique ultérieurement suivie dans l'application du traité par laquelle est établi l'accord des parties à l'égard de l'interprétation du traité, ainsi que de toute règle pertinente de droit international applicable dans les relations entre les parties.

La pluralité des instruments juridiques de protection des droits sociaux ne peut conduire au nivellement par le bas de la protection qu'ils accordent, mais tout au contraire à une élévation de celle-ci : dans la pratique des états, des législateurs et de leurs juges, les différentes garanties doivent se compléter, se renforcer mutuellement, et, dans une approche intégrée, l'interprétation de chacune d'entre elles gagne à s'enrichir de la prise en considération des autres et du consensus, existant ou en devenir, qu'elles dessinent.

3. Améliorer l'efficacité de la Charte sociale européenne

Améliorer l'efficacité de la Charte sociale implique d'abord d'œuvrer à l'application la plus uniforme possible de cet instrument dans tout l'espace régional du Conseil de l'Europe.

Cela passe d'abord par le fait que l'ensemble des Etats membres du Conseil de l'Europe soient liés par le même texte de garantie des droits sociaux. La Charte sociale européenne révisée constitue l'expression la plus actualisée des conceptions européennes en matière de droits sociaux. Sa ratification par l'ensemble des Etats est dès lors prioritaire. Un appel solennel et une incitation à ratifier, venant tant des organes du Conseil de l'Europe que de ceux de l'Union européenne, serait à cet égard d'une grande utilité. De plus, les Etats qui n'auraient pas accepté l'ensemble des dispositions de cet instrument devraient être incités à accepter progressivement les dispositions restantes, à commencer par celles qui

whole or in part to the protection of social rights so as to interpret the European instruments. For instance, the European Committee of Social Rights has concluded that the European Social Charter should be interpreted "in harmony with the other rules of international law to which it belongs", such as the United Nations Convention on the Rights of the Child, as interpreted by the Committee on the Rights of the Child (E.C.S.R., *Defence of Children International (DEI) v. Belgium*, Complaint No. 69/2011, Decision of 23 October 2012). Provided it is methodologically transparent and does not result in a lowering of standards, such an approach is consistent with the spirit of Article 31 § 3 of the Vienna Convention on the law of treaties, which provides that, when interpreting treaties, « there shall be taken into account, together with the context: a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; c) any relevant rules of international law applicable in the relations between the parties. »

The plurality of legal instruments protecting social rights may not be allowed to result in the lowering of the level of protection provided by any one of them. Quite to the contrary, it should lead to strengthen the guarantee of social rights: in the practice of legislators and courts, the different guarantees should complement each other, strengthen one another, following an integrated approach, and the interpretation of each should be enriched by taking the other sources into account and by contributing to the emerging consensus that they point at.

3. Enhancing the effectiveness of the European Social Charter

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.

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 as a priority. Furthermore, States that have not accepted the full range of provisions of this instrument should be encouraged gradually to accept the outstanding provisions, beginning with those that form the core of the Charter – that is, the articles on the right to work (Article 1), the right to organise (Article 5), the right to bargain collectively (Article 6), the right of children and

forment le noyau dur de la Charte, à savoir les articles relatifs au droit au travail (art. 1), au droit syndical (art. 5), au droit de négociation collective (art. 6), au droit des enfants et adolescents à la protection (art. 7), au droit à la sécurité sociale (art. 12), au droit à l'assistance sociale et médicale (art. 13), au droit de la famille à la protection (art. 16), au droit des travailleurs migrants et de leurs familles à la protection et à l'assistance (art. 19), et au droit à l'égalité de chances et de traitement en matière d'emploi et de profession (art. 20).

young persons to protection (Article 7), the right to social security (Article 12), the right to social and medical assistance (Article 13), the right of the family to protection (Article 16), the right of migrant workers and their families to protection and assistance (Article 19), and the right to equal opportunities and equal treatment in matters of employment and occupation (Article 20).

L'uniformité d'application de la Charte sociale européenne passe aussi par l'acceptation par tous les Etats membres du Conseil de l'Europe des mécanismes de garantie des droits protégés, tant au plan européen qu'au plan national. La réalisation de cet objectif suppose la ratification générale du Protocole de 1995 instituant une procédure de réclamations collectives. Afin que cette ratification offre les meilleures chances pour une « mise en œuvre effective des droits sociaux » (Préambule du Protocole de 1995) et de promouvoir la participation citoyenne à ce processus, les Etats devraient être invités à l'assortir systématiquement d'une déclaration reconnaissant le droit de réclamation des ONG nationales (art. 2, § 1 du Protocole de 1995). Eu égard au caractère collectif desdites réclamations et au fait qu'elles peuvent être introduites de manière précoce, ceci permettrait en outre de diminuer sensiblement le nombre des saisines tant des juridictions nationales que de la Cour européenne des droits de l'homme.

The uniform application of the Charter also entails that all member States of the Council of Europe accept the mechanisms put in place to safeguard the rights protected, whether at the European or at the national level. This requires the generalised ratification of the 1995 Protocol providing for a system of collective complaints. In order for this ratification to afford the best chance of improving « the effective enforcement of … social rights » (Preamble to the 1995 Protocol), the States should be invited systematically to combine it with a declaration recognising the right of national non-governmental organisations to lodge complaints (Article 2§1 of the Protocol). As these are collective complaints that may be filed at an early stage, this would moreover allow to significantly reduce the number of cases filed both before domestic courts and before the European Court of Human Rights.

Assurer l'application la plus étendue possible de la Charte sociale suppose par ailleurs de promouvoir le rôle primordial des institutions nationales, notamment juridictionnelles, en la matière, moyennant une meilleure formation/information des législateurs, des autorités administratives et des juges, grâce à un échange plus structuré des bonnes pratiques, ainsi qu'au moyen d'une traduction systématique des décisions du Comité européen des droits sociaux dans la ou les langues nationales de l'Etat partie concerné, afin de les rendre plus accessibles. Ceci serait conforme au principe de subsidiarité privilégiant la recherche de solutions au plan national, et serait à concevoir par analogie à ce que recommande le Comité des Ministres du Conseil de l'Europe en ce qui concerne la mise en œuvre de la Convention européenne des droits de l'homme.

Ensuring the widest implementation possible of the European Social Charter also implies promoting the key role of national institutions, particularly the judicial authorities, through improved training and information targeting lawmakers, administrative authorities and judges, as well as through the pooling of good practices and the systematic translation of the decisions of the European Committee of Social Rights in the language(s) of the State party concerned, in order to ensure such decisions are accessible. This would be consistent with the principle of subsidiarity favoring the identification of solutions at the national level, and would be to be conceived of per analogy to what the Committee of Ministers of the Council of Europe recommends as regards the implementation of the European Convention on Human Rights.

L'adoption de certaines mesures pratiques pour stabiliser et renforcer le dispositif européen de protection permettrait encore d'améliorer la mise en œuvre effective de la Charte sociale européenne.

The adoption of certain practical measures to stabilise and reinforce the European protection system could further enhance the Social Charter's effectiveness.

Certaines dispositions du Protocole de Turin de 1991 restent inappliquées à ce jour, à défaut que ce protocole ait été ratifié par l'ensemble des Etats parties à la Charte sociale européenne de 1961. Il en

Certain provisions of the 1991 Turin Protocol have not been implemented, due to the failure of all States parties to the 1961 Social Charter to ratify the Protocol. This is the case in particular as regards the

va ainsi tout particulièrement de celle qui prévoit l'élection des membres du Comité européen des droits sociaux par l'Assemblée parlementaire du Conseil de l'Europe, à l'instar des juges à la Cour européenne des droits de l'homme. Quant à la disposition qui fixe le rôle du Comité européen des droits sociaux, elle souffre encore, dans son application, des contestations récurrentes de certains Etats. Le système dans son ensemble gagnerait en lisibilité et en sécurité juridique à ce que les rôles de chacun des différents organes de la Charte soient fermement réaffirmés : au Comité européen des droits sociaux, l'appréciation juridique des situations nationales ; au Comité des ministres du Conseil de l'Europe, le suivi de l'application des décisions du Comité européen des droits sociaux ; et au Comité gouvernemental, la préparation des travaux du Comité des ministres.

Une déclaration formelle du Comité des ministres, mais aussi le développement d'une pratique consistant à rendre publiques immédiatement les décisions du Comité européen des droits sociaux sur les réclamations collectives, contribueraient en outre à pareille clarification.

Conforter le dispositif européen de protection, c'est aussi lui donner les moyens matériels de son fonctionnement optimal : par l'augmentation du nombre de membres du Comité européen des droits sociaux, par l'accroissement du nombre de juristes l'assistant dans ses travaux, et par l'augmentation corrélative du budget dédié à la promotion et à la protection des droits sociaux.

Enfin, il serait conforme à l'indivisibilité de l'ensemble des droits civils, culturels, économiques, politiques et sociaux, de renforcer l'égalité de traitement entre la Convention européenne des droits de l'homme et la Charte. La mise en œuvre d'une politique rénovée de communication externe du Conseil de l'Europe, en ce compris les initiatives tendant à l'éducation aux droits de l'homme, en même temps que l'adoption de mesures de réorganisation interne appropriées, pourrait y contribuer. De même, pourrait y contribuer une politique d'exécution des décisions du Comité européen des droits sociaux alignée sur celle adoptée à l'égard des arrêts de la Cour européenne des droits de l'homme.

4. Maximiser le potentiel des synergies entre le Conseil de l'Europe et l'Union européenne en matière de droits sociaux

La protection des droits sociaux fondamentaux au sein du droit de l'Union européenne a progressé de manière notable depuis l'entrée en vigueur de l'Acte unique européen le 1er juillet 1987, qui a introduit pour la

provisions providing for the election of the members of the European Committee of Social Rights by the Parliamentary Assembly of the Council of Europe, as is provided for the judges of the European Court of Human Rights.With respect to the provision setting the role of the European Committee of Social Rights, it still suffers, in its implementation, from the recurring objections from some States. The clarity and legal certainty of the system as a whole would also be enhanced if the roles of the various Charter bodies were firmly reaffirmed: the European Committee of Social Rights dealing with the legal assessment of national situations; the Committee of Ministers of the Council of Europe monitoring the application of the decisions of the European Committee of Social Rights; and the Governmental Committee handling the preparation of the work done by the Committee of Ministers.

A formal declaration to that effect by the Committee of Ministers, as well as the immediate publication of decisions taken by the European Committee of Social Rights on collective complaints becoming standard practice, would contribute further to such a clarification of roles.

Reinforcing the European protection system also entails that it should, at last, be endowed with the resources it needs to function as effectively and efficiently as possible, which requires an increase in the number of members of the ECSR, an increase in the number of legal specialists assisting the committee in its work and a corresponding increase in the budget assigned to the promotion and protection of social rights.

Finally, it would be consistent with the indivisibility of the whole set of rights – civil, cultural, economic, political and social – to further the equality of treatment between the European Convention on Human Rights and the Charter. The Council of Europe's external communication policy, including initiatives in the field of human rights education, could contribute to this objective, in parallel with the implementation of appropriate internal reorganisation measures. Indeed, so would aligning the execution of the decisions of the European Committee of Social Rights on that of judgments adopted by the European Court of Human Rights would.

4. Maximizing the potential synergies between the Council of Europe and the European Union in the area of social rights

The protection of fundamental social rights in the EU legal order has made significant progress since the entry into force of the Single European Act on 1 July 1987, which introduced for the first time a reference

première fois une référence dans les traités européens à la Charte sociale européenne (voir à présent l'article 151 du Traité sur le fonctionnement de l'Union européenne). L'adoption de la Charte communautaire des droits sociaux fondamentaux des travailleurs lors du Conseil européen de Strasbourg des 11 et 12 décembre 1989, ainsi que l'adoption de la Charte des droits fondamentaux de l'Union européenne, proclamée en 2000 avant d'être intégrée dans les traités par le Traité de Lisbonne, ont encore renforcé à la fois le rôle de la Cour de justice dans la protection des droits sociaux, et le rôle du droit dérivé de l'Union européenne.

Des difficultés subsistent, cependant. La Charte des droits fondamentaux de l'Union européenne demeure sélective dans son inclusion des droits sociaux fondamentaux. Elle ne mentionne pas, par exemple, le droit au travail, le droit à une rémunération équitable, le droit à la protection contre la pauvreté et l'exclusion sociale, ou le droit au logement, que reconnaît la Charte sociale européenne révisée. En outre, bien que plusieurs dispositions de la Charte des droits fondamentaux de l'Union européenne soient directement inspirées de la Charte sociale européenne du Conseil de l'Europe, ces dispositions n'ont pas à être lues en fonction de l'interprétation qu'en donne le Comité européen des droits sociaux: le contraste avec le statut que reçoit la Convention européenne des droits de l'Homme est frappant (art. 52 § 3 de la Charte des droits fondamentaux de l'Union européenne).

Les engagements des Etats membres de l'Union européenne dans le système de la Charte sociale européenne demeurent en outre variables: tous les Etats membres n'ont pas ratifié la Charte sociale européenne révisée, et ils n'ont pas accepté les mêmes dispositions de la Charte sociale européenne. Confrontée à cette situation, la Cour de justice de l'Union européenne hésite à reconnaître la Charte sociale européenne comme source d'inspiration pour le développement des droits fondamentaux parmi les principes généraux de droit dont elle assure le respect conformément au mandat de l'article 6 § 3 du Traité sur l'Union européenne.

Il résulte de cette situation un cercle vicieux: parce que la Charte sociale européenne ne fait pas l'objet d'une réception matérielle dans le droit de l'Union européenne, à l'instar de la Convention européenne des droits de l'Homme, le Comité européen des droits sociaux estime qu'il est prématuré de présumer la compatibilité avec les exigences de la Charte sociale européenne des mesures prises par les Etats membres de l'UE afin de se conformer aux obligations qui découlent du droit de l'UE, sous le contrôle de la Cour de justice (Comité européen des droits sociaux, *Confédération générale du travail (CGT) c. France*, réclamation n° 55/2009, décision sur le bien-fondé du

to the European Social Charter in the European treaties (see, now, Art. 151 of the Treaty on the Functioning of the European Union). The adoption of the Community Charter on Fundamental Social Rights of Workers at the European Council meeting in Strasbourg on 11 and 12 December 1989, as well as the adoption of the EU Charter on Fundamental Rights, proclaimed in 2000 before being integrated in the EU treaties with the Treaty of Lisbon, further strengthened both the role of the Court of Justice of the European Union in the protection of social rights, and the role of EU secondary legislation.

Some difficulties remain, however. The EU Charter of Fundamental Rights remains selective in its inclusion of fundamental social rights. It does not mention, for instance, the right to work, the right to fair remuneration, the right to be protected from poverty and social exclusion, or the right to housing, which are recognized by the Revised European Social Charter. Moreover, although a number of provisions of the EU Charter of Fundamental Rights are directly inspired by the Social Charter of the Council of Europe, such provisions are not to be read in accordance with their interpretation by the European Committee of Social Rights: this stands in striking contrast with the status of the European Convention on Human Rights (art. 52 § 3 of the EU Charter of Fundamental Rights).

The commitments of the EU Member States in the system of the European Social Charter remain highly variable, moreover: some EU Member States have not acceded to the Revised European Social Charter, and they have not all accepted the same provisions of the European Social Charter. Faced with this situation, the Court of Justice of the EU hesitates to fully acknowledge the European Social Charter as a source of inspiration for the development of fundamental rights among the general principles of law it ensures respect for, in accordance with the mandate of Article 6 § 3 of the Treaty on the European Union.

This situation leads to a vicious cycle: because the European Social Charter has not been materially incorporated in the EU legal order in the way that the European Convention on Human Rights has been, the European Committee of Social Rights considers that it is premature to establish a presumption of compatibility with the requirements of the European Social Charter of the measures adopted by the EU Member States in order to discharge their obligations under EU law, under the control of the Court of Justice (E.C.S.R., *Confédération générale du travail (CGT) v. France*, Complaint n° 55/2009, Decision on the merits of 23 June 2010, paras. 33-42). This creates

23 juin 2010, paras. 33-42). Ceci crée un risque de conflit entre les deux ensembles de normes (Comité européen des droits sociaux, *Confédération générale du travail de Suède (LO) et Confédération générale des cadres, fonctionnaires et employés (TCO) c. Suède*, réclamation n° 85/2012, décision sur la recevabilité et le bien-fondé du 3 juillet 2013). C'est pourquoi, dans son rapport sur la *Situation de la démocratie, des droits de l'homme et de l'Etat de droit en Europe*, présenté à la 124e réunion du Comité des Ministres du Conseil de l'Europe tenue à Vienne les 5 et 6 mai 2014, le Secrétaire général du Conseil de l'Europe a considéré qu'il est urgent de trouver des façons pragmatiques de résorber les contradictions entre la Charte sociale européenne et les normes de l'Union européenne.

a risk of conflict between the two sets of norms (E.C.S.R., *Confédération générale du travail de Suède (LO) and Confédération générale des cadres, fonctionnaires et employés (TCO) v. Sweden*, Complaint n° 85/2012, Decision on the admissibility and on the merits of 3 July 2013). This is why, in his report on *The Situation of Democracy, Human Rights and the Rule of Law in Europe*, presented at the 124th meeting of the Committee of Ministers of the Council of Europe, held in Vienna on 5 and 6 May 2014, the Secretary General of the Council of Europe considered that there is an urgent need to find practical ways to resolve the contradictions between the European Social Charter and the norms of the European Union.

Cet appel doit être entendu. Afin de dépasser la situation actuelle, plusieurs mesures pourraient être prises:

This call must be heeded. In order to move beyond the current deadlock, a number of measures could be taken:

(i) La Commission européenne pourrait recommander à l'ensemble des Etats membres de l'UE de ratifier la Charte sociale européenne révisée et d'accepter un ensemble de dispositions de cet instrument, en fonction de leur pertinence pour les domaines de compétence de l'Union européenne. Ceci serait de nature à favoriser l'uniformité d'application du droit de l'Union européenne.

(i) The European Commission could recommend to the EU Member States that they ratify the Revised European Social Charter and that they accept a number of provisions of this instrument, due to their specific relevance to the areas of competence of the European Union. This would favour the uniformity of application of EU law.

(ii) De même, conformément au Mémorandum d'accord entre le Conseil de l'Europe et l'Union européenne, la Commission pourrait veiller à tenir compte systématiquement de la Charte sociale européenne dans l'élaboration des textes de droit dérivé de l'Union européenne qui concernent des domaines couverts par la Charte (voir notamment les paragraphes 17 et 19 du Mémorandum d'accord entre le Conseil de l'Europe et l'Union européenne). Cet engagement pourrait s'étendre à la préparation des protocoles d'accord conclus avec les Etats membres bénéficiant du Mécanisme européen de stabilité, afin d'assurer que les réformes prises afin d'assurer les équilibres macroéconomiques ne conduiront en aucun cas à apporter des restrictions aux droits de la Charte sociale européenne: pareilles restrictions, en effet, ne seraient pas justifiées au regard de la Charte (Comité européen des droits sociaux, Introduction générale aux Conclusions XIX-2 de 2009 sur les répercussions de la crise économique sur les droits sociaux). L'inclusion d'une référence à la Charte sociale européenne au sein des études d'impact préparées sous la responsabilité de la Commission européenne constituerait en même temps une application de la « clause sociale horizontale » de l'article 9 du Traité sur le fonctionnement de l'Union européenne, qui dispose que « L'Union prend en compte les exigences liées à la promotion d'un niveau d'emploi élevé, à la garantie d'une protection sociale adéquate, à la lutte contre

(ii) Consistent with the Memorandum of Understanding between the Council of Europe and the European Union, the Commission could seek to systematically take into account the European Social Charter in the design of EU legislation in the domains covered by the Charter (see in particular paragraphs 17 and 19 of the Memorandum of Understanding between the Council of Europe and the European Union). This commitment could extend to the preparation of Memoranda of Understanding concluded with the EU Member States benefiting from the support of the European Stability Mechanism, in order to ensure that the reforms adopted in order to safeguard macroeconomic balances do not lead to restrictions upon the rights of the European Social Charter. Such restrictions, indeed, would not be in conformity with the requirements of the Charter (European Committee of Social Rights), General Introduction to Conclusions XIX-2 of 2009 on the impacts of the economic crisis on social rights). The inclusion of a reference to the European Social Charter in impact studies prepared under the responsibility of the European Commission would at the same time constitute an application of the « horizontal social clause » of Article 9 of the Treaty on the Functioning of the European Union, which provides that « In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate

l'exclusion sociale ainsi qu'à un niveau élevé d'éducation, de formation et de protection de la santé humaine ».

(iii) Enfin, à l'occasion du cinquantième anniversaire de l'entrée en vigueur de la Charte sociale européenne, le Conseil de l'Europe et l'Union européenne pourraient créer un groupe de travail commun identifiant les questions juridiques et techniques soulevées par l'adhésion de l'Union européenne à la Charte sociale européenne révisée. Aussi bien le Parlement européen que l'Assemblée parlementaire du Conseil de l'Europe se sont déclarés favorables à pareille adhésion (Résolution du Parlement européen du 27 février 2014 sur la situation des droits fondamentaux dans l'Union européenne (2012) (2013/2078(INI)), para. op. 8; Assemblée parlementaire du Conseil de l'Europe, Résolution du 8 décembre 2014 sur la mise en oeuvre du Mémorandum d'accord entre le Conseil de l'Europe et l'Union européenne (rapp. K. Lundgren), para. 7), et c'est notamment l'absence de toute initiative en ce sens qui a conduit le Comité européen des droits sociaux a considérer qu'aucune présomption de conformité avec les exigences de la Charte sociale européenne ne pouvait s'attacher aux obligations découlant du droit de l'Union européenne (C.E.D.S., *Confédération générale du travail (CGT) c. France*, réclamation n° 55/2009, décision sur le bien-fondé du 23 juin 2010, para. 36).

social protection, the fight against social exclusion, and a high level of education, training and protection of human health ».

(iii) Finally, on the occasion of the fiftieth anniversary of the entry into force of the European Social Charter, the Council of Europe and the European Union could establish a joint working group identifying the legal and technical issues raised by the accession of the European Union to the Revised European Social Charter. This is supported by both the European Parliament and the Parliamentary Assembly of the Council of Europe (Resolution of the European Parliament of 27 February 2014 on the situation of fundamental rights in the European Union (2012) (2013/2078(INI)), op. para. 8; Parliamentary Assembly of the Council of Europe, Resolution of 8 December 2014 on the implementation of the Memorandum of Understanding between the Council of Europe and the European Union (rapp. K. Lundgren), para. 7), and it is in particular the absence of any initiative in this direction that has led the European Committee of Social Rights to consider that no presumption of the compatibility with the requirements of the European Social Charter could attach to the obligations imposed under EU law (E.C.S.R., *Confédération générale du travail (CGT) v. France*, Complaint n° 55/2009, Decision on the merits of 23 June 2010, para. 36).

Coord.: J.-F., AKANDJI-KOMBÉ (Paris)

B. ACIMUZ (Istanbul), N. BOCCADORO (Paris), N. BERNARD (Bruxelles), O. DE SCHUTTER (Louvain), C. DELIYANNI-DIMITRAKOU (Thessaloniki), C.-S. DIMITROULIAS (Strasbourg), K. DOGAN YENISEY (Istanbul), P. DORSSEMONT (Louvain), M. ENGIN (Istanbul), G. GUIGLIA (Verona), P. KENNA (Galway), J. KENNER (Nottingham), C. KOLLONAY-LEHOCZKY (Budapest), A.-M. KONSTA (Thessaloniki), S. LAULOM (Lyon), M. LE FRIANT (Avignon), K. LÖRCHER (Bruxelles), C. LOUGARRE (Southampton), J.-B. MARIE (Strasbourg), A. NOLAN (Nottingham), F. PROIETTI (Roma), A.T. RIBEIRO (Porto), N. RODEAN (Verona), A. RURKA (Paris), J. SARMENTO BARRA (Paris), D. SINOU (la Rochelle/Paris), S. VANDROOGHENBROECK (Bruxelles), I. VAN HIEL (Ghent), P. VIELLE (Louvain), Ö. YÜCEL DERICILER (Istanbul).

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For more information, please contact

Manuel Paolillo
Coordination of the Belgian Presidency of the Council of Europe – Social Affairs
Federal Public Service Social Security - DG Strategy and Research
Section "Multilateral relations"

+32 (0)2 528 64 08
manuel.paolillo@minsoc.fed.be

Responsible editor

Tom Auwers
Federal Public Service Social Security

Pour plus d'informations, merci de contacter

Manuel Paolillo
Coordination de la Présidence belge du Conseil de l'Europe – Affaires sociales
Service public fédéral Sécurité sociale - DG Appui stratégique
Section "Relations multilatérales"

+32 (0)2 528 64 08
manuel.paolillo@minsoc.fed.be

Editeur responsable

Tom Auwers
Service public fédéral Sécurité sociale - DG Appui stratégique

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2. General Report on the Turin High-level Conference on the European Social Charter on 17 and 18 October 2014 prepared by Michele Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe and General Rapporteur of the Conference *(without appendices)*

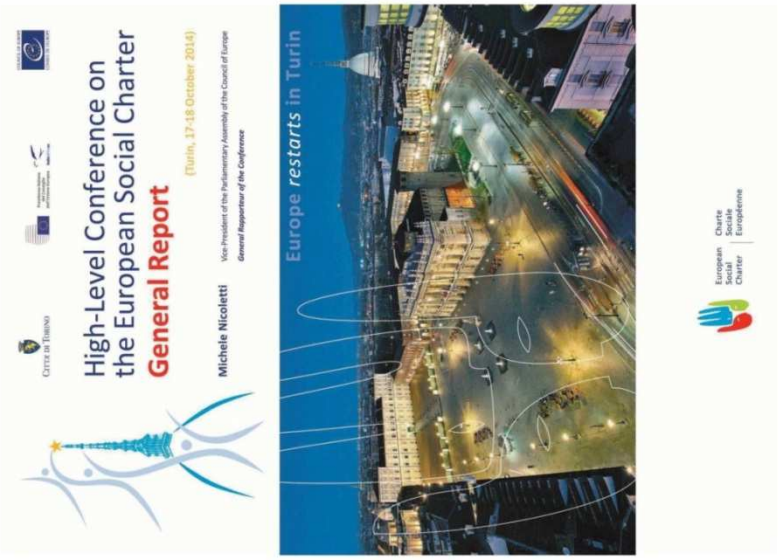
High-Level Conference on the European Social Charter

Turin, 17-18 October 2014

General Report

Michele Nicoletti
Vice-President of the Parliamentary Assembly of the Council of Europe

General Rapporteur of the Conference



Executive Summary

The High-level Conference on the European Social Charter was organised by the Council of Europe in co-operation with the Italian authorities, in the framework of the Italian Presidency of the European Union, and took place in Turin on 17 and 18 October 2014.

The decision to organise a High-level Conference on the Charter stemmed from the conviction that this fundamental treaty of the Council of Europe is facing a number of major challenges which impact on the effectiveness of its implementation, and require political decisions to be taken by the States Parties, the Council of Europe's political bodies and, to some extent, the European Union.

At a time when the political conviction is growing that respect for fundamental social rights constitutes the best way forward to increase citizens' participation in democratic processes, reinforce their trust in European construction and combat fundamentalism and radicalisation by promoting inclusion and social cohesion, the Conference put the Charter at the centre of the European political scene. This was necessary so that the normative system of the Charter can be strengthened and finally express its full potential alongside the European Convention of Human Rights and the Charter of fundamental rights of the European Union, in the name of the principles of the indivisibility and interdependence of fundamental rights.

The Conference itself gathered approximately 350 people, including delegations from 37 European States, including such political representatives as Ministers and Secretaries of State from fifteen countries. The Council of Europe and the European Union were represented at the Conference by top level representatives (see the programme at www.coe.int/turinprocess).

In this framework, participants agreed to compare their points of view with respect to three main challenges: social rights and economic crises, the synergy between EU law and the Charter, and the relevance and effectiveness of the collective complaints procedure.

There was agreement at the Conference that the crisis experienced by Europe in recent years has revealed the gaps in States' legal arsenal for the protection of fundamental rights. The crisis made evident, in case that was necessary, the fundamental relevance of social rights. For European society it represented an opportunity to grasp the importance of achieving those rights. In this context, the Charter has been recognised as a living, integrated system of guarantees, whose implementation at national level has the potential to reduce economic and social tensions, promote political consensus, and, where appropriate, draw on this agreement to facilitate the adoption of the necessary reforms.

As regards the changing relationship between the law of the European Union and the Charter, consensus was gathered around the idea that there is an urgent need to enhance existing synergies and find effective solutions to emerging conflicts. It must be ensured that the fundamental rights enshrined in the Charter are fully respected by decisions or legislation of the States Parties resulting directly or indirectly from changes in EU law. To that effect, the idea was raised of reinforcing co-operation between competent Council of Europe and EU bodies, in view of promoting the harmonisation of the two normative systems to improve states' abilities to comply with their international obligations. The proposal that a document identifying the legal and technical obstacles to the accession of

the European Union to the Charter be prepared was also discussed during the Conference.

With regard to the improvement of the supervisory mechanism of the Charter on the basis of collective complaints, the idea was shared that that this mechanism, allowing participation by the social partners and civil society in the monitoring of the application of the Charter, represents a more transparent, open and democratic monitoring system than the one based on national reports. Moreover, it was made clear that if the collective complaints procedure was accepted by more states (only 15 have accepted the relevant Protocol so far), this could reduce the number of pending cases before the European Court of Human Rights. It has been acknowledged that the collective complaints procedure shares positive traits of the 'pilot-judgment' procedure of the Court. Broader acceptance of the procedure would also have the advantage of reducing the workload of the national administrative departments involved in the Charter's reporting procedure, by focusing on specific issues.

The Conference provided the opportunity to discuss two other important issues. The first issue refers to the necessity of reinforcing the status and the position of the European Committee of Social Rights, with a view to contributing to filling the gap which exists within the Council of Europe with respect to the monitoring systems of fundamental rights, be they civil, political, social or economic. Such a reinforcement could also help to ensure adequate representation of the diversity of legal approaches and social models which exist across the continent.

The second issue refers to the need for the Council of Europe to implement a communication policy able to provide a clear message on the legal nature of the Charter and the scope of the decisions of the abovementioned Committee. Communication on the Charter should be regular, systematic and, above all, proportionate to the importance of the rights that the Charter guarantees. An increased parallelism between the Charter and the Convention in communication policies within the Organisation would also help to enhance the Council of Europe's role as the guardian of all fundamental rights at the continental level.

More generally, at the Conference it was recognised that the current era is marked by a loss of confidence in the European project, which is leading to a withdrawal into nationalism and, in some cases, the development of a belief that rights and values would be better upheld if this took place at national level rather than at European level. This trend is even more pronounced in the social sphere, insofar as it is held in many quarters that the social dimension is merely an economic adjustment variable. The conclusion was that social rights are therefore doubly undermined, firstly, because of the legal and institutional disequilibrium between the monitoring systems of the respect for fundamental rights in Europe and, secondly, because of the impact of the crisis, which is leading to restrictions of rights or the dismantling of the underlying policies.

With this in mind, States and European institutions are invited to start a political process which promotes a greater acceptance of the normative system of the Charter and a better implementation of its provisions. This process would represent a vital step towards a fresh restart for the whole process of uniting Europe, given that, as stated emblematically on the occasion of the Conference, it is essential for Europe to be based on the fundamental values around which its task is to bring states and their citizens together, and especially on

the values of the Charter, "Europe's social constitution". On this basis, at the Conference, the Secretary General of the Council of Europe launched the 'Turin process' for the European Social Charter.

The general report of the Conference aims to constitute a driving force for the 'Turin process'. With this in mind, an Action Plan for the 'Turin process' is included in the report. In the Action Plan, the ideas and proposals put forward during the Conference are combined in the form of a list of priority measures, divided according to their objectives, the responsible actors and the timetable for their implementation.

Contents

The General Report on the High-Level Conference on the European Social Charter is available on the Council of Europe website: http://www.coe.int/turinprocess
The full audio-video recording of the Conference is also available on this website.

I. Introduction

1. Following an initiative by the Deputy Secretary General of the Council of Europe, Gabriella Battaini-Dragoni, the proposal to hold a high-level conference on the European Social Charter was put forward by the President of the European Committee of Social Rights, Luis Jimena Quesada, when he met the Committee of Ministers of the Council of Europe on 11 September 2013 (1177th meeting of the Ministers' Deputies).

2. When that proposal was made, the Italian Government declared its willingness to host the Conference in the same city where, on 18 October 1961, the European Social Charter ("the Charter") had been opened for signature by the Member States of the Council of Europe. To mark the anniversary, the Conference was thus held in Turin, at the Teatro Regio, on 17 and 18 October 2014, in the context of the Italian Presidency of the European Union and in co-operation with the city authorities.

3. The Conference was attended by approximately 350 people, amongst them representatives of 37 Council of Europe Member States. Those representatives included, as well as the Italian Minister of Labour and Social Policies, 14 political personalities including ministers, deputy ministers and state secretaries from Azerbaijan, Bulgaria, Croatia, the Czech Republic, Lithuania, Luxembourg, Malta, Poland, the Russian Federation, Serbia, Slovenia and Turkey. The Speaker of the Italian Chamber of Deputies also took the floor on behalf of Italy.

4. Contributions to the debates were made not only by national delegations, but also, on behalf of the Council of Europe, by the Minister representing the Chairmanship of the Committee of Ministers, the President of the Parliamentary Assembly, the Vice-President of the European Court of Human Rights, the President of the Conference of INGOs, the Secretary General, the Deputy Secretary General, the General Rapporteur and the Italian member of the European Committee of Social Rights. Speakers on behalf of the European Union included the European Commissioner responsible for Employment, Social Affairs and Inclusion, and other speakers were the First Vice-President of the European Parliament, the Advocate General of the Court of Justice and the President of Group III of the European Economic and Social Committee. The Mayor of Turin opened and closed the Conference.

5. In addition to the experts who took part in the various panels, other representatives of the Council of Europe (Development Bank, Venice Commission) and European Union (Intergroup "Extreme Poverty and Human Rights" of the European Parliament, Fundamental Rights Agency) took part in the event. Speakers also took part from international organisations, both governmental (International Labour Organisation) and non-governmental (European Trade Union Confederation, International Organisation of Employers), and from academia (Academic Network on the European Social Charter and Social Rights). Large numbers of representatives of civil society and the mass media also

followed the Conference debates, in the foyer of the Teatro Regio or via the live streaming. A complete list of participants is attached (Appendix 1c).

1. The need for a Conference

6. The idea of holding a high-level conference on the European Social Charter sprang from a realisation that implementation of this fundamental treaty of the Council of Europe now faces a number of challenges which require political decisions to be taken by the contracting states and the Council of Europe's political bodies, and, to a certain degree, by the European Union. The purpose of the Conference was therefore to bring the Charter back to the centre of the European political stage, allowing it to show its full potential, alongside the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, in the name of the indivisibility and interdependence of fundamental rights.

7. In institutional terms, the Conference represented the culmination of a building process characterised by the adoption of a number of documents which highlighted the Charter's centrality and contemporaneity, as well as the need for new impetus. These include:

a. the declaration adopted by the Committee of Ministers of the Council of Europe on the occasion of the 50th anniversary of the Charter (2011);
b. Resolution 1792 and Recommendation 1958 of the Parliamentary Assembly of the Council of Europe on the monitoring of commitments concerning social rights (2011);
c. the joint declaration by the Committee of Ministers, Parliamentary Assembly, Congress of Local and Regional Authorities and Conference of INGOs on "Acting together to eradicate extreme poverty in Europe" (2012);
d. several decisions adopted by the European Committee of Social Rights in the course of the collective complaints procedure, relating to the observance of social rights during times of economic crisis and the relationship between European Union law and the Charter (2012 and 2013);[1]

[1] *Confédération Générale du Travail* (CGT) v. France, Complaint No. 55/2009, Decision on the merits of 23 June 2010; *Confédération Française de l'Encadrement* «CFE-CGC» v. France, Complaint No. 56/2009, Decision on the merits of 23 June 2010; Federation of Employed Pensioners of Greece (IKA –ETAM) v. Greece, Complaint No. 76/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Public Service Pensioners v. Greece, Complaint No. 77/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI.) v. Greece, Complaint No. 79/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012, Decision on the merits of 7 December 2012; Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and on the merits of 3 July 2013.

e. the research into certain subjects done by the European Union's Fundamental Rights Agency, which appeared in the annual reports on the Agency's activities (2012 and 2013).[2]

8. More recently, the Secretary General of the Council of Europe himself has referred to the centrality and relevance of the Charter, making sure that the observance of social rights and the strengthening of the Charter are central to his second term of office (2014). All the abovementioned documents are attached to this report in Appendix 4.

9. Having regard to the aforementioned documents, the Conference represented a decisive step with a view to the actuation of a political process portending initiatives and reforms at both national and European level, and equal to the challenges of the implementation of the Charter, considering the fundamental nature of the rights which it secures.

10. From a practical standpoint, the Conference was a major opportunity for building awareness in political circles and public opinion of the widespread social unease which obtains, and of the hardship linked with the economic recession. Whilst it is true that the first battle to win in the struggle for human rights is against indifference, one of the foremost challenges to meet is that of making the representatives of institutions ever more alert to citizens' needs and expectations. This alertness was the source, in the period following World War II, of the great declarations of human rights, and today this inspiration needs reviving not only to protect citizens to the full, but also to restore strength and credibility to democratic institutions.

11. In that sense the Conference sought to focus institutions' attention on citizens' sentiments. Over the two days of discussion, the issues of poverty, unemployment, housing shortage and deficient access to health care or education were raised several times. Participants also saw for themselves, in the parades and demonstrations around the Teatro Regio, workers' protests and the poverty affecting so many people.

12. In that perspective, the Conference confirmed that the "social question" and the "democratic question" are closely connected, and that European construction, whatever the content of the social and economic policies adopted, must always and in all circumstances concern itself with the fulfilment of the rights linked with these needs, thereby helping to prevent movements of an antisocial, anti-political, anti-European or racist nature, or those simply founded on political exploitation of social egoism, from imperilling the pillars of democracy - the rule of law and fundamental rights - values which have been ever championed and promoted by the Council of Europe. A democratic order cannot claim to be such unless it generates a model of society capable, through proper

[2] "The European Union as a Community of values: safeguarding fundamental rights in times of crisis", Publications Office of the European Union, 2013 and "Bringing rights to life: the fundamental rights landscape of the European Union", Publications Office of the European Union, 2012.

apportionment of the available resources, of addressing people's basic needs with due respect for their dignity.

13. The Conference was thus founded on the principle that the three pillars of the Council of Europe, as well as the values which they presuppose, should always be secured together. It has in fact been acknowledged that the realisation of each of the three sets of values cannot be guaranteed unless the other two are similarly and concurrently realised. Which means that there is no democracy if freedom of expression, assembly and movement is lacking, but also if the rights to housing and education are not secured for all; likewise, there is no democracy unless rules are laid down to limit the exercise of power and to provide that political responsibility must always go hand in hand with legal responsibility. In this same regard, there was consensus on the idea that it is not possible to guarantee human rights, including social and economic rights, without a law-based state, and especially without effective instruments of judicial protection, which must be secured to anyone who may consider that his or her rights have been violated.

2. Setting out the objectives

14. On the basis of the Conference programme (Appendix 1b), participants discussed three decisive challenges.

15. The first challenge, which came under Theme I of the Conference, discussed on 17 October, relates to the affirmation of the rights set out in the Charter following the far-reaching socio-economic changes which have, since 2008, had a sometimes dramatic impact on the meeting of people's everyday needs and on the realisation of their fundamental rights. On the basis of the principle that, within an advanced democracy, ensuring that these rights are fully realised is not a prerogative of the "Right" or "Left", but is a constitutional task of the state governed by the rule of law, the Conference gave participants the opportunity to discuss how the affirmation of these rights can contribute to reducing or neutralising the damaging effects of the crisis, giving consideration to the question of the balance between the requirements of economic recovery and social justice. In that context, the Charter was recognised as a system of safeguards, the application of which can help to reduce tensions, foster political consensus and possibly, on that basis, facilitate the adoption of reforms. The Charter, therefore, is an instrument at the service of socially sustainable economic development.

16. The second challenge, also examined under Theme I, concerns the advisability of increasing the impact of the system protecting the social rights enshrined in the Charter through the collective complaints procedure. That objective was based on the idea that this procedure, allowing participation by the social partners and civil society in the monitoring of application of the Charter, represented a more transparent, open and democratic monitoring system than the one based on national reports. In that context, the Conference made possible discussion of the idea that acceptance of the complaints procedure by a larger number of European states could help both to reduce the number of cases pending

in the European Court of Human Rights (hereafter "the Court"), which is responsible for monitoring application of the European Convention on Human Rights (hereafter "the Convention") and to lessen the workload of the national authorities which contribute to the Charter monitoring procedure based on the aforementioned reports.

17. The third challenge, which came under Theme II of the Conference, discussed on 18 October, concerned the relationship between European Union law and the Charter. The Conference started from the assumption that it is necessary to ensure that the fundamental rights guaranteed by the Charter are fully protected in those decisions by contracting states which stem directly or indirectly from changes in European Union law. The recent collective complaint against Sweden submitted by some Swedish trade unions to the European Committee of Social Rights (hereafter "the Committee") on the subject of the right to collective bargaining of workers detached to another state of the European Union (see footnote no. 1) provides a good illustration of this situation, which concerns not only Sweden, but all Member States of the European Union (hereafter "the EU"). The Conference raised the subject of this challenge, drawing attention to the urgent need for effective solutions designed to resolve possible or emerging conflicts between the two systems of standards, in the interest of both states and citizens. For the purposes of the debate on this subject, reference was made to the specific working document drawn up by the Committee for the Conference (see paragraph 17 and Appendix 3g).

18. The Conference highlighted the existence of another two challenges that the Council of Europe needs to face up to in order to achieve the objectives set by the challenges already mentioned. First and foremost, the institutional strengthening of the body which supervises application of the Charter.[3] The discussions at the Conference showed the urgent need to consolidate the Committee's independence and authority. In the framework of a document on its own role and status, adopted by the Committee on the occasion of the Conference (Appendix 3c), an explicit request was made for Committee members to be elected by the Parliamentary Assembly of the Council of Europe, as provided for by the Protocol amending the Charter, adopted in 1991 (but not yet in force). There is not a shadow of doubt that such election would consolidate the democratic basis and independence of the body responsible for monitoring states' compliance with their obligations under the Charter.

19. The Committee took advantage of the adopted document to put forward two additional requests. The first was for the number of its members to be increased, with a view to better management of its growing workload, ensuring adequate representation of the diversity of legal approaches and social models which exist across the continent. As was stated, that request could be met without additional costs, by, for example, reducing the number of annual meetings of the Committee. The second request was for the strengthening of the administrative structure of the Council of Europe responsible for

[3] For information about the standards in force relating to the European Committee of Social Rights, its composition, terms of reference, members, etc. see paragraph 37 and the website www.coe.int/socialcharter

assisting the Committee. That request seems very much justified, bearing in mind the challenges to be faced and the surprising differences that exist in the treatment of the systems for monitoring fundamental rights within the Council of Europe Secretariat. In this respect, there is a need to increase the number of posts of specialist legal experts, and to ensure that the structure concerned can be acknowledged to have a place and a status commensurate with the fundamental nature of the rights safeguarded by the Charter, to reiterate the view expressed by Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe.

20. The other challenge to be met in order to achieve the Conference objectives relates to communication. It is vital in this context for the Council of Europe to convey a clear and conspicuous message as to the legal nature of the Charter, the scope of the Committee's decisions and the importance of the complaints procedure to the effectiveness of social and economic rights in Europe. Thus the challenge that the Council of Europe must meet is that of designing and implementing specific communication on the Charter which is comparable to that dedicated to the Convention, which is regular and systematic and which, in particular, is proportionate to the importance that the Charter is acknowledged to have. All of that would enable a number of inaccuracies and ambiguities which remain in circulation about the Charter, to the detriment of the achievement of the rights that it safeguards, to be eliminated. In addition to the substantial progress which might be achieved through this proposal, the introduction of parallelism between the Charter and Convention in the communication sphere would enable the spotlight to be turned on the Council of Europe's role as the European guardian of the primary sources of European law relating to fundamental human rights.

3. The beginning of a process

21. The severe economic crisis suffered by Europe in recent years has given rise to social crises which could jeopardise the values on which the building of Europe has been based. In such a worrying situation, looking beyond the Council of Europe and the European Union, the Conference themes and debates were chosen to give substance to the very concept of Europe and its reality. Europe will be able to react to the crisis only if it starts afresh from its origins, from its wish to be a place of peaceful coexistence and protection of the fundamental rights of all persons, and so from its humane and social dimension, which it must place at the centre of all its activities. With a view to achieving that objective, the Charter represents an essential benchmark. It is for every institution concerned, both national and European, to play its part in the joint effort to develop and enhance this fundamental European treaty through appropriate measures in terms of both law and practice. The Conference afforded a splendid opportunity to give thought to the ways of achieving this objective.

22. In the "Action Plan for the Turin process", set out in chapter IV of this report, the ideas and proposals discussed at the Conference take the form of a table of *priority measures*, subdivided according to substance, stakeholders and timescale. This Action Plan sends a strong and immediate message to the persons for whom the Charter is intended, including those who turned out in force to demonstrate during the Conference, to people who abstain at election time, to all who reject the very idea of politics and to those who irresponsibly exploit social discontent and propose unachievable shortcuts.

23. As observed during the Conference, it is for us to approach these people, and on this path, the attachment of new value to the Charter, their Charter, is a decisive step. It will thus be vital for the promises and commitments announced at the Conference not to be abandoned, for as Europeans judge the future action of those, at both national and European level, who bear responsibility for the *res publica*, they will also take into consideration the extent of the achievement of the fundamental rights set out in the Charter.

24. In this context, the starting of a political process which can improve implementation of the Charter will be a vital step towards a fresh start for the whole process of uniting Europe. As stated emblematically on the occasion of the Conference, it is essential for Europe to be based on fundamental values around which its task is to bring states and their citizens together, and especially on the values of the Charter, "Europe's social constitution".

II. The European Social Charter in Motion

1. The evolution of fundamental social and economic rights in the Council of Europe framework

25. As is well known, the Council of Europe was set up in 1949, only a few months after the adoption of the Universal Declaration of Human Rights by the United Nations on 10 December 1948. The Universal Declaration is the catalogue of all the fundamental rights recognised by the international community so as to ensure the dignity of every individual. It embodies the solemn assertion that "Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality" (Article 22). With that, the unity and indivisibility of fundamental rights are clearly recognised, in their various dimensions: human, civil, political, social, economic and cultural. This unity and indivisibility have been constantly reaffirmed by the UN in the course of its history, as is evident from the Vienna Declaration (1993): "5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and

regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms".

26. The aim of the Council of Europe, as set out in Article 1 of the Statute, is "to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress". However, when it came to giving binding legal force to the rights in the Universal Declaration, the Council of Europe adopted two separate treaties, at an interval of about 10 years. It focused first on what are known as "civil and political" rights, which were incorporated in the Convention and in respect of which all individuals may submit applications to the Court if they believe that their rights have not been respected.

27. The Charter, in turn, was adopted in 1961. Even though the adjective 'social' appears both in the preamble and in Article 1 of the Statute of the Council of Europe, it took over 10 years after the adoption of the Convention for the Charter finally to be adopted. The Charter sets out those human rights which are described as "economic and social" rights and does so in a solemn manner. The text is called a 'Charter' rather than a 'Convention', even though this title has sometimes been perceived as suggesting that the Charter is less important, as though it were not an international treaty exactly as is the Convention. The duality of legal instruments for securing the rights concerned was intrinsically linked to the political and geostrategic conditions prevailing in Europe, where divisions were taking hold, as illustrated, in particular, by the building of the Berlin Wall a few weeks before the opening for signature of the Charter, in Turin where the present conference is hosted, on 18 October 1961.

28. For the first 40 years of the Council of Europe's existence, the Court expanded regularly and gradually established itself as "the conscience of Europe".[4] It is not unusual for the term 'human rights' to be used solely to describe civil and political rights to the exclusion of the other components, in particular the Charter. This is a mistake which will have to be remedied by means of appropriate communication.

29. While the Convention was ratified progressively by all Council of Europe member states, a process which was completed by 1974 and was subsequently imposed on all new member states, for many years, the Charter remained the "poor relative" in terms of ratifications. It is reassuring that all the central European countries which have joined the Council of Europe since 1990 have ratified the Charter (in most cases, the revised version) with varying speed. To date, only Liechtenstein, Monaco, San Marino and Switzerland have not ratified the Charter.

[4] "The conscience of Europe: 50 years of the European Court of Human Rights", ed. Jonathan Sharpe, 2011.

30. The same observation applies to the supervisory procedure: all member states progressively accepted the compulsory jurisdiction of the Court, which became an integral part of the Convention under Protocol No. 11, which entered into force in 1998 and established the single, permanent Court. In contrast, over 15 years after the procedure for collective complaints to the Committee came into force, only a minority (15) of the States Parties to the Charter have decided to accept it.

31. As mentioned several times during the Conference, the situation has, however, evolved favourably with regard to social rights in general and the Charter in particular. For instance, at the World Conference on Human Rights in Vienna in 1993, the international community reasserted its commitment to the principles of the Universal Declaration, among which the interdependence and indivisibility of human rights are particularly important. Of course, no matter how solemn it is, a declaration does not change the situation radically. But the Vienna Declaration provided a benchmark for reminding states of their commitment to treat social rights like civil and political rights.

32. Following the Vienna Conference, the Council of Europe undertook the process of 'relaunching' the Charter. The decision to renew the treaty had been taken symbolically at the October 1990 Rome Conference marking the 40th anniversary of the Convention. This led rapidly to the October 1991 "Turin Conference" to mark the 30th anniversary of the Charter, and the adoption of the amending Protocol concerning the reporting procedure, then a little later, the 1995 Protocol providing for the system of collective complaints and, most recently in 1996, the revised Charter (which entered into force in 1999).

33. Ten years later, on the occasion of the 50th anniversary of the Charter, the Committee of Ministers of the Council of Europe adopted a solemn declaration reaffirming the principle established in Vienna in 1993 that all human rights are universal, indivisible, interdependent and interrelated. In this connection, it reiterated its commitment to human dignity and the protection of all human rights and underlined the particular relevance of social rights and respect for them in times of economic difficulties, in particular for individuals belonging to vulnerable groups. In referring in the declaration to the paramount role of the Charter in guaranteeing and promoting social rights in Europe, the Committee of Ministers also expressed its resolve to secure the effectiveness of the Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure.

34. It must be pointed out here that in order to implement this resolve and given the unanimous agreement of the States Parties to the Charter, the Committee of Ministers decided in April 2014 that the reporting procedure for States Parties having accepted the collective complaints procedure should be simplified. In connection to this, it decided that states having accepted the collective complaints procedure would be invited to prepare a 'simplified' report every two years. The new system has already entered into force for all states which have currently accepted the procedure and, for other states, it will enter into

force one year after acceptance of the collective complaints procedure.[5] It is to be hoped that this change approved by the Committee of Ministers before the Conference is only the beginning of a broader reform of the system for supervising application of the Charter so that it remains in line with the social and democratic needs of our times.

2. The European Social Charter today

35. Following the changes described above, the Charter now forms an integrated and dynamic system of binding legal instruments which secures fundamental rights in the fields of housing, health, education, employment, legal, economic and social protection and protection against poverty and social exclusion. As is well known, the Charter lays specific emphasis on the protection of vulnerable persons such as elderly people, children, people with disabilities and migrants. The Charter requires that enjoyment of the rights it lays down should be guaranteed without discrimination.

36. Unlike the Convention, the Charter is still based on what is termed an 'à la carte' ratification system, enabling states, under certain circumstances, to choose the provisions they are willing to accept as binding international legal obligations. While signatory states are explicitly encouraged to make progress in accepting the Charter's provisions, they are also allowed to adapt the commitments they enter into at the time of ratification to the level of legal protection of social rights attained by their own system. Part I of the text of the Charter sets out the various rights, along the lines of the Convention, while Part II lays down states' obligations for implementing these rights. Part II therefore lists states' positive obligations, which arise from the text of the treaty, whereas in the case of the Convention, they derive directly from the case-law of the Court.

37. As is recognised, in spite of the changes in its status and the rules on its operation, the Committee still differs in many ways from the Court. Firstly, it is a select body which comprises only 15 members rather than one per Council of Europe member state (47) or per State Party to the Convention (43). Unlike the Court, the Committee is not a permanent body. It meets in Strasbourg seven times a year and the Council of Europe Secretariat ensures continuity between sessions. The Committee only supervises the application of the Charter by the States Parties through the system of national reports and the collective complaints procedure. Unlike the position at the Court, individual applications to the Committee are not possible.

38. Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter and the Protocol providing for the system of complaints, the decisions and conclusions adopted by the Committee must be respected by the States concerned; however, they are not directly 'enforceable' in the domestic legal system. In practice, this means that when the Committee rules that the situation in a country is not in compliance with the Charter, it cannot be required that the Committee's decisions or

[5] Cf. document adopted by the Ministers' Deputies on 2-4 April 2014 at their 1196th meeting.

conclusions be enforced in domestic law as would be the case with a ruling by a national court. However, it is not because the decisions and conclusions of the Committee are not 'enforceable' that a State can ignore them. As they refer to international binding provisions, States must respect the decisions taken by the body established to monitor their implementation. In this connection, in some cases domestic courts can declare invalid or set aside domestic legislation if the Committee has ruled that it is not in compliance with the Charter. Bearing that in mind, as stated several times during the Conference and expressed in the declaration adopted by the Committee of Ministers in 2011 on the occasion of the Charter's 50th anniversary (see paragraph 7 and Appendix 4d), it is vital for the Council of Europe to continue its involvement in information and education activities on the Charter and the Committee's case-law.

39. It should be noted here that, apart from this case-law and implementation at national level, when the Committee finds that there has been a violation of the Charter, it falls to the Committee of Ministers (as also applies with the Court) to make sure that the state concerned does bring the situation into conformity. For the purpose of this work concerning the conclusions which the Committee publishes every year under the reporting procedure, the Committee of Ministers is assisted by the Governmental Committee of the European Social Charter and the European Code of Social Security (the "GC"). The GC comprises ministerial representatives from the States Parties and, as observers, representatives of the European social partners.

40. The Committee of Ministers has the power, either directly under the complaints procedure or after the intervention of the GC under the reporting procedure, to invite states to bring situations into conformity, to encourage them to do so or to adopt recommendations insisting that they do so. It is very unusual for the Committee of Ministers to resort to the last option, as, in practice, most states undertake to bring the situations into conformity, which the Committee of Ministers then notes in resolutions, which indicate in varying degrees of detail the arrangements for implementing the undertakings.

41. Compared with its tasks concerning the Court's judgments, the role of the Committee of Ministers in terms of following up the Committee's conclusions and decisions only concerns the adoption of general or specific measures for compliance with the Charter, for instance changes in legislation, practices or case-law or the conclusion of collective agreements. This involves detailed work in often complex areas which necessarily takes time. The Committee of Ministers decides on the degree of insistence with which it asks the state concerned to make efforts to bring the situation into conformity, depending on economic and social considerations. The wording of the resolutions therefore varies according to the situations. It should be noted here that the questions raised in collective complaints are also examined regularly by the Committee under the reporting system, not only in respect of the respondent states but also, if appropriate, in respect of the other States Parties.

3. Challenges for the future

i. Overcome the crisis with social rights

42. The crisis experienced by Europe in recent years has revealed the gaps in European states' legal arsenal for the protection of fundamental rights. Mr Poletti, the Minister who spoke at the opening of the Conference, encapsulated this perfectly when he referred to the fragility of national systems for the protection of the rights of the most vulnerable people: the European *welfare* model can be protected only in a supranational context. It is precisely the negative context of the economic crisis that has helped us to rediscover supranational instruments such as the Charter, which, as has been said, seemed to have been tidied away, but in contrast, managed during the crisis to draw attention to its remarkable nature as a treaty uniting states, individuals, international organisations, workers' associations and NGOs, laying the foundations for the rebuilding of a Europe of values and rights. The crisis highlighted, in case that was necessary, the fundamental relevance of social rights. And for European society it represented an opportunity to grasp the importance of achieving those rights.

43. But account is also taken of the fact that the current era is marked by a loss of confidence both in international institutions in general and in Europe in particular, which is leading to a withdrawal into nationalism and, in some cases, the development of a belief that values and rights would be better upheld if this only took place at national level or, at least, if supervision of respect for them was performed only at national level and much less at European level. This trend is even more pronounced in the social sector, insofar as it is held in many quarters that the social dimension is merely an economic adjustment variable. Social rights are therefore doubly undermined, firstly, because of the inadequate legal and institutional equilibrium mentioned above and, secondly, because of the impact of the crisis, which is leading to restrictions of rights or dismantling of the underlying policies.

44. A frequent response to the current tensions is to assert that social rights should wait until after the crisis because the economic climate is depriving the authorities of the budgetary resources needed for upholding them. While some social rights, for instance, the right to organise, clearly do not entail high financial costs for the community, certain other social rights – and, indeed, certain civil and political rights – are much more complex and much more expensive for states to implement. Naturally, in times of economic crisis, these rights are immediately threatened. On the other hand, in times of economic difficulties, these rights are more important than ever because the economic crisis goes hand in hand with social hardship and failure to uphold social rights leads to deteriorating individual situations.

45. At this point in my report, it seems important to recall the case-law of the Committee on social security and social assistance. In its general introduction to Conclusions 2009, on the repercussions of the economic crisis on social rights, the Committee stated that,

while the "increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline", by acceding to the 1961 Charter, the Parties "have accepted to pursue by all appropriate means the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised." Accordingly, it concluded that "the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries most need the protection".

46. In this same sphere, it is noteworthy that, in the IKA–ETAM v. Greece complaint, No. 76/2012 (see footnote no. 1), the Committee specified that "even when reasons pertaining to the economic situation of a state party make it impossible for a state to maintain their social security system at the level that it had previously attained, it is necessary (…) for that state party to maintain the social security system on a satisfactory level that takes into account the legitimate expectations of beneficiaries of the system and the right of all persons to effective enjoyment of the right to social security". This requirement stems from the commitment of states parties to "endeavour to raise progressively the system of social security to a higher level". According to the Committee, that means that, as required under Article 12§3 of the Charter, the government concerned should have maintained "a sufficient level of protection for the benefit of the most vulnerable members of society, even though the effects of the adopted measures risk bringing about a large scale pauperisation of a significant segment of the population". The Committee specified that "the cumulative effect of the restrictions (…) is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned", stating that "any decisions made in respect of pension entitlements must respect the need to reconcile the general interest with individual rights, including any legitimate expectations that individuals may have in respect of the stability of the rules applicable to social security benefits".

47. In respect of labour law, again in the context of the collective complaints procedure, in the case of GENOP-DEI and ADEDY v. Greece, Complaint No. 65/201 (see footnote no. 1), the Committee stated that "what applies to the right to health and social protection should apply equally to labour law and that while it may be reasonable for the crisis to prompt changes in current legislation and practices in one or other of these areas to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter". The Committee also said that "a greater employment flexibility in order to combat unemployment and encourage employers to take on staff, should not result in depriving broad categories of employees, particularly those who have not had a stable job for long, of their fundamental rights in the field of labour law, protecting them from arbitrary decisions by their employers or from economic fluctuations. The

establishment and maintenance of such rights in the two fields cited above is indeed one of the aims of the Charter. In addition, doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance, unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection".

ii. A stronger commitment for the collective complaints procedure

48. The Additional Protocol providing for a system of collective complaints (hereafter "the Protocol") was opened for signature by Member States of the Council of Europe in November 1995, and came into force in July 1998. Unlike the Charter, which has been ratified by virtually all Council of Europe Member States, the Protocol has been accepted by only 15 countries, 14 of which are members of the EU, namely Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Slovenia and Switzerland.[6]

49. The purpose of the Protocol is to increase the efficiency, speed and impact of Charter monitoring activities. The complaints procedure has in fact strengthened the role of the social partners and non-governmental organisations, enabling them to address the Committee directly for verification of possible violations of the Charter at national level, particularly in states which have accepted both the Charter and the Protocol. The organisations which are allowed under the Protocol to submit collective complaints are: a) the European social partners: European Trade Union Confederation (ETUC) on behalf of workers; Business Europe (formerly UNICE) and the International Organisation of Employers (IOE) on behalf of employers; b) the international non-governmental organisations (INGOs) with participatory status at the Council of Europe and whose request is accepted by the Governmental Committee; c) social partners at national level. The Protocol provides for any contracting state to recognise the right of representative national non-governmental organisations (NGOs) within its jurisdiction to submit complaints. Regrettably, only Finland has used that facility to date.

50. Notwithstanding the small number of states which have accepted the Protocol and the still low number of complaints submitted to date (111; for updates, the Council of Europe website dedicated to the Charter may be consulted), the collective complaints procedure has enabled noteworthy results to be achieved in its early years of operation (1998-2014). Those results, which represent an indication of the procedure's potential, have been highlighted by the Committee of Ministers, which, in its declaration on the 50th anniversary of the Charter (see paragraph 7 and Appendix 4d), acknowledged its importance and expressly invited the Member States which had not yet done so to consider the possibility of accepting it. At the same time, the Committee of Ministers

[6] The chart of signatures and ratifications of the European Social Charter and its Protocols, and list of states' declarations and reservations are available at the following sites: http://www.coe.int/socialcharter, http://www.conventions.coe.int and http://www.coe.int/turinprocess

expressed its resolve to secure the effectiveness of the Social Charter, by reference to the decisions taken by the Committee in that sphere.

51. The collective complaints procedure represents a protection system that is parallel and complementary to the judicial system for which the Convention provides. However, as already pointed out, while the Court can examine individual applications, the Committee cannot. Because of their collective nature, complaints can only raise issues of non-conformity of a state's legislation or practice with one of the provisions of the Charter. Individual cases cannot be submitted. It is therefore important to point out here that complaints may be submitted without national remedies having been exhausted and without the complainant organisation necessarily having been a victim of the violation complained of.

52. In the light of all those facts, it was emphasised several times during the Conference that the collective complaints procedure is a credible and effective one which, in certain cases, could produce effects comparable to those of the Court's individual applications procedure. A parallel was drawn between the complaints procedure and the Court's "pilot judgment" system. Several speakers also highlighted the idea that, if the complaints procedure were better known, accepted and used, the number of applications pending in the Court could be reduced. In that context, an appropriate communication policy at the Council of Europe could make significant progress possible.

53. Acceptance of the collective complaints procedure by a larger number of countries would also offer the advantage of lessening the workload of the national authorities involved in the presentation of reports; in that context, if the path followed by the Committee of Ministers in terms of simplification of the Charter monitoring procedure based on reports for states which have accepted the complaints procedure (see paragraph 34) were pursued right to the end, it would also be possible to prevent – given the small number of states which have so far accepted the complaints procedure and the fact that those states are also subject to the procedure based on reports – the aforementioned monitoring from unduly becoming more of a burden on some states than on others.

54. Considering the fundamental contribution made by the collective complaints procedure to the achievement of human rights in Europe, the hope was expressed by several speakers at the Conference that its acceptance by the states concerned would subsequently and at several levels be encouraged by the institutions concerned at the Council of Europe and European Union. It is to be hoped that the ideas and proposals put forward at the Conference will impel those institutions to take initiatives, both political and diplomatic, to encourage those states which have not yet done so to ratify the Protocol, so that the collective complaints procedure becomes the most extensive and important monitoring procedure of fundamental social rights throughout Europe.

iii. Achieving greater synergy between European Union law and the European Social Charter

55. It seems important to highlight from the outset the preparation by the Committee of a specific working document on the subject of the synergy between European Union law and the Charter (Appendix 3g). That document, finalised in July 2014, was drafted as a contribution to the Conference, and was therefore forwarded to the European Commission, the Court of Justice and the European Union's Fundamental Rights Agency. It was intended to cast light on the relations between the two European systems of standards, those of the Council of Europe and the European Union, in terms of fundamental social and economic rights, with a view to contributing to a strengthening of the synergy between them. In that context, through its own contribution, the Committee provided the Conference with a valuable basis for discussion.

56. As observed during the Panel on the subject, a degree of competition, or – to be more precise – emulation began to emerge where social and economic rights are concerned when the European Community started to expand its own powers outside the economic dimension. To European citizens, that emulation has contributed to significant progress based on an interlinked arsenal of standards, both binding and declaratory, defending social and economic rights. As time went by, however, the overlapping of standards and of interpretations by the European bodies responsible for monitoring application of those standards has in some cases led to divergences, or even clashes.

57. Against this background, the rights established by the Charter are guaranteed in a more or less explicit and detailed manner by EU law. In addition to the relevant provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union, today most of the rights guaranteed by the (Revised) Charter are matched by corresponding safeguards in the Charter of Fundamental Rights of the European Union, but with significant exceptions relating to certain articles and paragraphs. In this context, it is important to point out that that document establishes that, where the level of protection is concerned, none of its provisions are to be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are parties.

58. In the case of secondary legislation (directives and regulations), the EU lays down requirements in a significant number of fields of specific relevance to social and economic rights. In this context, or in the context of other initiatives taken in the field of intergovernmental co-operation, the European Union has addressed, to varying extents and in varying detail, a large number of social rights-related issues. It has also looked into issues including work organisation and working conditions, occupational health and safety, co-ordination in social security matters, social dialogue, free movement of workers, social inclusion and the fight against poverty, non-discrimination and the needs of vulnerable people such as people with disabilities and elderly people. In this context, it should be also

noted that as can be seen from the Explanatory Report to the (Revised) Charter, some of its provisions draw on, or make express reference to, EU directives.

59. At present the 28 EU member states are parties to the "system" of the Charter treaties (the 1961 Charter, the Additional Protocol of 1988, the Additional Protocol of 1995 and the Revised Charter), albeit with differences regarding the commitments they have entered into: nine states are bound by the 1961 Charter (five of which are also bound by the Protocol of 1988) and nineteen by the Revised Charter. With the exception of two states, France and Portugal – which have accepted all the paragraphs of the Revised Charter - the others have ratified a greater or lesser number of provisions of either version of the Charter. Only fourteen EU member states have accepted the 1995 Protocol establishing a system of collective complaints.

60. As pointed out by the Committee in its working document on the relationship between EU law and the Charter, the situation described in the previous paragraph results in a variety of situations and contracted obligations. The Committee states in this respect that "There is a clear lack of uniformity in the acceptance of Charter provisions by the EU member states. This is the result of the choices made by each State Party when expressing its sovereign will on the basis of the Charter acceptance system described in paragraph 36. While not amounting to an anomaly in itself, this lack of uniformity sometimes reveals a lack of consistency. Where the protection of some fundamental social and economic rights is concerned, some states have chosen not to enter any undertaking under the Charter; yet, pursuant to the law of the European Union they have adopted legal instruments or measures providing equal or greater protection than that guaranteed in the Charter provision(s) they have not accepted".

61. Given this situation, the idea was shared during the Conference of identifying the Charter provisions which member states of the European Union could accept because they belong to the Union. In this respect, it was rightly observed that a greater consistency as regards EU member states' social rights commitments under the two standard-setting systems may contribute in future to the realisation of the European Parliament's proposal that the European Union should accede to the Charter (Appendix 4a).

62. As regards the dimension of judicial practice, it was observed by some that, while indeed the Court of Justice of the EU (hereafter "CJEU") had never hesitated to place civil and political rights among the general principles of the Union's law and ensure their observance by guaranteeing them particular prominence, for example under the Convention, conversely it had never raised social rights to the same status hitherto. Social rights appear in the case-law of the CJEU not so much as prerogatives of the individual, but rather as goals legitimately pursued by the Union Member States. Even if the CJEU accepts that the Member States can invoke certain social rights as compelling grounds of general interest such as to justify restrictions on free movement of goods or on free provision of services, or restrictions on the right of competition, the Charter does not constitute a mandatory benchmark instrument for specifying such rights. Bearing this

framework in mind, the wish was expressed during the Conference that relations between the CJEU and the Committee might in future be intensified with a view to interpretations – as happens in the case of the civil and political rights secured by the ECtHR – characterised by deeper mutual recognition and at least a tendency to greater convergence of case-law. Relying on the EU Charter of Fundamental Rights, which provides inter alia for a series of social rights inspired by the Social Charter, the CJEU might regard the latter as a reference point in the interpretation given in respect of Union law. Explicit mention of the Charter in the EU Treaties and its ratification by all states of the Union could be an incentive in that direction. In this connection it was observed that pursuit of these objectives would represent a significant contribution for placing the principle of the indivisibility of fundamental rights on a Europe-wide footing.

63. It seems useful to point out here that the subject of coordination between the European Union and the Council of Europe was also dealt with in general terms in the Memorandum of Understanding concluded by the two organisations in 2007. This document states inter alia that the European Union regards the Council of Europe as the Europe-wide reference source for human rights and will cite the relevant Council of Europe norms as a reference in its own documents. In this context, the EU institutions will have to take account of the decisions and conclusions resulting from the Council of Europe monitoring mechanisms when they are relevant. The Memorandum also states that while preparing new initiatives in this field, the Council of Europe and the European Union institutions will draw on their respective expertise as appropriate through consultations and that in the field of human rights and fundamental freedoms, coherence of Community and European Union law with the relevant conventions of the Council of Europe will be ensured.

64. It is impossible to finish this chapter without mentioning the contribution made by the Parliamentary Assembly to this particular challenge. In this context, it should be remembered that the Assembly has adopted Resolution 1756 (2010) and Recommendation 1935 (2010) on the need to avoid duplication of the work of the Council of Europe by the European Union Agency for Fundamental Rights, as well as Resolution 1836 (2011) and Recommendation 1982 (2011) on the impact of the Lisbon Treaty on the Council of Europe. More recently, it has adopted Recommendation 2027 (2013) on European Union and Council of Europe human rights agendas: synergies not duplication.

III. The Conference's Input

1. Contributions and proposals

65. The Conference provided a focal point for discussion of the imperative for, and practical aspects of, the reinforcement of the Charter as a key instrument to protect and promote social and economic rights across Europe. Not only were there sessions organised around highly relevant themes, with contributions from political representatives of States and European institutions, but a number of other meetings took place around the

Conference (see Box below), which all contributed to the final output, as well as provided increased impetus for the necessary follow-up.

Meetings related to the Charter held in conjunction with the Conference:

- 274th Session of the European Committee of Social Rights, 13-16 October 2014: Curia maxima, Turin
- 130th meeting of the Governmental Committee of the European Social Charter and the European Code of Social Security: 13-17 October 2014, ILO training Centre, Turin
- Meeting of the INGOs Conference of the Council of Europe organised on the occasion of the International Day for the eradication of poverty: 17 October 2014, Palazzo Civico, Turin
- General Assembly of the Academic Network on the European Social Charter and Social Rights (ANESC): 16 October 2014, Università di Torino, Campus Luigi Einaudi, Turin
- Round table organised by ANESC on the occasion of the High-level Conference on the European Social Charter: 16 October 2014, Università di Torino, Campus Luigi Einaudi, Turin
- Meeting of the Sub-Committee on the European Social Charter of the Parliamentary Assembly of the Council of Europe: 17 October 2014, Palazzo Civico, Turin

66. At the same time as the Conference, a number of international bodies adopted or published documents which further the debate surrounding the most effective manner of reinforcing the Charter and ensuring respect for social rights in the current time of crisis and, importantly, sustainably for the future (see Box below).

Documents adopted in view / on the occasion of the Conference:

- Statement by the Parliamentary Assembly's Sub-Committee on the European Social Charter (17 October 2014) (Appendix 3a)
- Declaration by the Council of Europe's Conference of INGOs (17 October 2014) (Appendix 3b)
- Document of the European Committee of Social Rights (adopted on 16 October 2014) (Appendix 3c)
- Contribution of the Academic Network on the European Social Charter and Social Rights (ANESC) (adopted on 16 October 2014) (Appendix 3d)
- Positions and Proposals of ANESC (adopted on 16 October 2014) (Appendix 3e)
- The Council of Europe Commissioner's human rights comment: Preserving Europe's social model (13 October 2014) (Appendix 3f)
- Working document of the European Committee of Social Rights on the "Relationship between European Union law and the European Social Charter" (15 July 2014) (Appendix 3g)

67. The following sections refer to the speeches and interventions given by speakers at the Conference.

i. Opening Session

68. The Conference was opened by Giuliano Poletti, Minister of Labour and Social Policies of Italy, who highlighted the need for a coherent approach to the questions which face Europe with regard to social and economic rights, both from international and supranational organisations, and from states. The need for reform of the labour market to increase job growth and secure the recovery of the economy was cast in the light of sustainable policy making, inspired by a common vision which promotes quality investments. He provided examples of how institutional reforms are supporting the broader drive towards social cohesion and mobility, and demonstrated that states may have much to gain from coordinated dialogue on the implementation of social and economic rights in this context.

69. The Secretary General of the Council of Europe, Thorbjørn Jagland, underlined from the outset that together with the Convention, the Charter embodies the best of the European democratic and social model. He stated that it is high time to give a new impulse to the Charter and called for social rights to be relaunched within the Council of Europe convention system, alongside the Convention which defends civil and political rights. With respect to austerity, the Secretary General pointed out that some measures, designed to stimulate recovery, may weaken the protection of social rights, which in turn, may affect social cohesion and threaten the European social model based on solidarity. He therefore invited governments to consider social and economic rights as an integral part of the recovery plans.

70. The Secretary General went on to identify four crucial imperatives, stemming from his report on the State of Democracy, Human Rights and the Rule of Law (2014), and the agenda for his second term of office (2014-2019). Firstly, all member states should ratify the Revised Charter and accept the collective complaints procedure. Secondly, the decisions and conclusions of the Committee must be followed up by States Parties. Thirdly, synergies between the Charter and EU Law need to be strengthened to avoid any conflict. Lastly, cooperation activities centred on the Charter need to be enhanced, including through national action plans and targeted training activities. Finally it cannot be denied, as identified by the Secretary General, that the success of the Conference will be defined by the quality of its follow up.

71. Before the first Ministerial Session began, Piero Fassino, Mayor of Turin, further underlined the need to coordinate the approach of international bodies, in order to give clear guidance to governments on how to comply with their obligations, and how best to realise the potential of the Charter and the rights enshrined within it.

ii. Theme I – The role of the European Social Charter in affirming social rights during the crisis period and the crisis exit phase

a. Ministerial Session

72. The first Ministerial Session allowed Ministers, Deputy Ministers and Secretaries of State, along with representatives from the Council of Europe's Committee of Ministers, the EU Commission and the EU Parliament, to take the floor in the context of Theme I of the Conference.

73. The Session was an opportunity to consider in detail both the importance of the Charter as a pan-European standard setting document, and also as a living, integrated system of guarantees, whose implementation at national level has the potential to reduce economic and social tensions, promote political consensus, and where appropriate facilitate the adoption of the necessary reforms. The Charter, thus, is an instrument at the service of economic development that can, as it must, also be socially sustainable. Some participants also commented on the relationship between the EU and the Charter; while this foreshadowed discussions under Theme II, it also shed valuable light on the position of the Charter in the international legal sphere, and enables us to see its true value in context.

74. Salim Musulmov, Minister of Labour and Social Protection of the Population of Azerbaijan, representing of the Chairmanship of the Council of Europe's Committee of Ministers, stressed the importance of embarking on a more comprehensive approach by considering the respect for all human rights, including social rights, as mutually reinforcing prerequisites for ensuring human dignity, prosperity and security. In this context, he underlined that we must attach the same degree of importance to social rights as we do with regard to civil and political rights and considered that in order to solidify its importance, the partnerships between the Council of Europe and relevant international and regional organisations, including the EU, need to be enhanced.

75. Furthermore, based on the Declaration adopted by the Committee of Ministers in 2011 on the occasion of the 50th anniversary of the Charter, he rightly pointed out that Member States need to increase their effort to raise awareness of the Charter at national level. This should include measures targeted at legal practitioners, academics and social partners, as well as informing the public at large of their rights. Doing so will increase the effectiveness and relevance of the Charter at national level, and enable individuals to understand and defend their social rights, including judicially. It is clear that the movement for reinforcing social rights must unite organisations, governments and people at all levels, and can benefit greatly from increased input at the national level.

76. László Andor, European Commissioner for Employment, Social affairs and Inclusion, naturally shed light on the position of the European Commission, while emphasising that the Council of Europe and the European Union are based on shared

values and stand for the same principles. He referred to the presence of the Charter in the Treaties of the European Union, and mentioned the continuous dialogue held between the two organisations in the area of social and economic rights. He then went on to outline the EU initiatives which were introduced to tackle the economic crisis and ensure that social rights be respected. For instance, he detailed that the number of people in the EU at risk of poverty or social exclusion rose by close to 7.8 million between 2009 and 2014. He highlighted that the effects of the crisis have been unequally spread and that there is great scope for countries to share their experience and identify effective and successful social policy strategies.

77. Mr Andor also referred to the scoreboard of employment and social indicators adopted by the European Commission, and expressed the Commission's clear desire to incorporate social and economic assurances in the further development of the monetary union. He quite rightly said that no monetary union can be sustainable or legitimate without upward convergence of social standards – which must draw inspiration from the founding texts, among which the Charter has a central place. He finished by declaring the European Commission ready to engage in a continuing dialogue at the international level; a dialogue which will surely prove fruitful from the point of view of ensuring the rights enshrined in the Charter in a concrete way.

78. Antonio Tajani, First Vice-President of the European Parliament, has expressed great concern about the fact that many citizens seem convinced that European institutions are somehow to blame for the economic crisis and its damaging effects. That view takes no account of the safeguards provided and defended by those institutions since the 1950s, within the Council of Europe and European Union, in order to protect and promote fundamental social rights across the continent. Those safeguards are based, according to Mr Tajani, on the principle of the social market economy, whereby the market is regarded as an instrument for achieving the objectives of social policies. In this context, it is essential, as recommended by the European Parliament in its Resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012) (Appendix 4a), for the principles of the Charter to continue to characterise the political action of the Union and its Member States, in parallel with those of the Convention.

79. In that context, the First Vice-President of the European Parliament wished to draw participants' attention to, on the one hand, the need to adapt competition rules to the globalisation of markets, in order to prevent third countries' failure to observe fundamental rights from having negative consequences for the European market and employment, and, on the other hand, the urgent need to couple with austerity policies other measures to boost the economy so as to promote investment and employment. Mr Tajani concluded his speech by saying that law was a fundamental instrument of politics and that the time had therefore come to begin "a major debate on the Charter", and on how this fundamental European treaty could in future better serve the policies that Europe will need to pursue in order to deal with the challenges of a changing world.

80. Algimanta Pabedinskiene, Lithuanian Minister of Social Security and Labour, described the Charter as the most comprehensive international instrument that guarantees fundamental social and economic human rights as those rights concern citizens in their daily lives. She considered that we need to make social security systems more relevant, adequate, stable and efficient; it was specifically recognised that the Charter, with its unique and balanced supervising mechanism, can be a useful tool in seeking this goal.

81. Continuing this theme, Faruk Çelik, Minister of Labour and Social Security for Turkey noted that the austerity measures taken for overcoming the macroeconomic problems led to a step back in the social rights of many people, especially with regard to their social security. For him, social security is among the most important elements of stability for countries. It is an effective and crucial instrument, which protects societies against economic shocks, particularly during the crisis periods. He underlined that the Charter has a constructive role in times of crisis and the crisis exit phase, it cannot be ignored; instead it is needed in order to increase the well-being in every country. To this end, Mr Çelik highlighted the role that good dialogue between the government and the Committee is playing in enabling Turkey to ratify further provisions of the Charter and secure social rights in his country. Finally, Mr Çelik added that the international dimension of social security is more significant than ever due to the accelerated rate of migration following globalisation.

82. Sergey F. Vel'myaikin, First Deputy Minister of Labour and Social Protection of the Russian Federation, stated that the fulfilment of obligations taken under the Charter, in particular those in the sphere of social rights, remains a priority for the Russian Federation and that the conclusions of the Committee help governments to see the weak points of systems and to improve legislation and law enforcement practices.

83. Radoslaw Mleczko, Undersecretary of State, Ministry of Labour and Social Policies for Poland, reminded participants that the Charter was created for such situations as the current crisis. He stated that the dialogue between states and the Charter's monitoring authorities must be based on the idea of how to reconcile the protection of the rights and guaranties with social and economic realities. Some of these realities he highlighted with reference to Commissioner Andor's earlier speech, for example, compared with 2008, there are around 9 million more people unemployed across the European Union, and joblessness among young people and the long-term unemployed is a cause of great concern. He pointed out that all of the numbers referred to are people, are individuals, human beings with human rights. He referred to the need to create better conditions for economic activity, but considered the need to provide sustainable budgets. Closing the ministerial session, he stated: "It is our duty to protect and enhance the positive role of the European Social Charter as a source of guarantees, the implementation of which may contribute to the reduction of economic and social tensions, and to build a broad consensus around social policy."

b. Panel Session - Austerity measures in a period of crisis

84. The first panel session, moderated by Francesco Manacorda, Deputy-Director of the newspaper "La Stampa", brought experts together to consider the impact of austerity measures on social rights, the participation of citizens and the contribution of the European Social Charter to the crisis exit phase.

85. In this framework, Cleopatra Doumbia-Henry provided insight on the synergies between the Charter and the treaties of the ILO. She stressed the importance of policy coherence at the international and national levels. At the international level, it is important to coordinate and harmonise the standards established by the Council of Europe, the EU and the ILO in order to avoid confusion or conflict between the intermingling obligations to which states have submitted themselves. In turn, this harmony of standards will simplify the process of states' compliance. At the national level, states should ensure that governmental departments work together to find the right balance in terms of solutions and strategies. The Ministry of Labour and the Ministry of Finance must coordinate their policies to have the best outcome for social rights and the economy. This coordination should involve the translation of international commitments into domestic law and practice. The protection provided by the international standards are important, because whether it is the right to a decent salary, leave with pay, social security protection or occupational health and safety, we all need social protection at various moments of our lives. Ms Doumbia-Henry emphasised the importance of Europe setting an example for other countries to follow.

86. Turning to the issue of austerity, it is clear that the crisis has impacted on the international obligations of countries, vis-à-vis the Charter and the ILO in terms of ratifying conventions. Furthermore, the ILO supervisory bodies have observed a failure to give social dialogue the chance to find appropriate solutions to make relevant compromises. The ILO promotes the 'tripartite' approach to social dialogue with a view to promoting social justice. It is important to ensure that such dialogue occurs in order to give input to workers, employers and governments, to find the right balance so that rights are not sacrificed, with sometimes irreversible effect. Whatever the decisions or compromises to be made in the wake of the crisis, Ms Doumbia-Henry outlined that they should strictly ensure that the fundamental principles and rights at work are not undermined. In order to guarantee this outcome, the spirit of the Charter and the rights it protects must surely be implemented through both legal and practical policies.

87. Ioannis Dragasakis, Chairperson of the Sub-Committee on the European Social Charter of the Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly highlighted the need for a coherent position to be taken. It is not enough to say that we are in favour of social rights; the dilemma is what position to take when the rights of the poor are at odds with the interests of the advantaged few. He criticised international austerity policies which ignored social rights, and said that policies must be designed within the framework of the Charter, otherwise the whole spectrum of

human rights could be destroyed.The importance of balancing fiscal consolidation with social rights protection is further elaborated and explained in the Contribution of the Sub-Committee, (Appendix 3a).

88. Sylvie Goulard, Member of the European Parliament, considered that the priority has to be given to the fight against the growth of poverty and inequalities. A multitude of measures could conceivably achieve this, both at European and national level. She stressed that the rhetoric toward the poor has to be changed. Not only should we, the politicians and the media, cease to stigmatise them, but also the value of this section of society must be recognised. Irrespective of the moral aspects of exclusion of the poor, it is a matter of economic waste. In particular, new investments in the education system should be part of the approach to inclusion. She stated that criticism of the austerity measures implemented by European governments cannot bring about an adequate solution to the crisis. What must be considered is how to invest so as to avoid creating debt for the future generations who will, unacceptably, have to pay for current operating expenditures.The reduction of salary costs of the most disadvantaged cannot be the basis for seeking to achieve budgetary balance objectives. Tax system harmonisation was identified as a field where efforts need to be reinforced, in order to secure the continuing function of the common EU market.

89. The contribution of Renata Hornung Draus, Vice-President for Europe of the International Organisation of Employers, focussed on the institutional problems which have been revealed by the crisis. The financial crisis has turned into a jobs crisis. Therefore the issue must be addressed: how do we produce jobs again? We must look at how to make it possible for small businesses to hire. We must be prepared to question the current systems of social contribution. However, fiscal consolidation must mean not only austerity policies – which can also be based on reasons of "inter-generational" justice so as to avoid passing on social costs to future generations - but also policy must be formulated in terms of social justice. There are structural issues at the heart of unemployment. The question must be asked whether current social systems are promoting job creation. There is at times too much bureaucracy; parliaments must be able to act and to take decisions. Social partners are also willing able to engage in the process to reform the system.

90. Jean-Marie Heydt, President of the Conference of INGOs of the Council of Europe, stressed that the Charter must continue to evolve with its context, and that States Parties must ratify the collective complaint procedure. This will enable the Charter to stay relevant and act as a proactive, transparent safeguard of fundamental rights. We should consider the Charter in a democratic approach focussed on the individual, the human being. The collective complaints procedure gets closer to the reality of ensuring individuals' rights are directly protected. Furthermore, Jean-Marie Heydt highlighted the need to bolster the monitoring mechanism within the Council of Europe, saying that when a violation is confirmed, there should be an effective questioning. This would provide the impetus for states to make meaningful positive changes to the laws and act quickly to safeguard rights.

91. Bernadette Ségol, Secretary General of the European Trade Union Confederation, emphasised that economic conditions, or the austerity measures themselves taken in response, must not be a pretext to disapply social rights. The Charter is useful, and if the current austerity measures continue to be applied, will be more and more so. The notion that austerity measures were necessary was challenged; they have not brought about solutions. For example, it has not been proven that reduction of wages increases employment. With this in mind, she spoke about two proposals. Firstly, it is crucial that we ensure that the accession process of the European Union to the Charter, which is currently blocked, continues. This would cement the position of the Charter in the European framework of rights and ensure that EU member states set the example, as desired by Ms Doumbia-Henry, through greater consideration of social rights in the formulation of EU legislation, and the raised profile of the Charter. Secondly, there is a need to improve the control system of implementation of the Charter with the participation of social partners not only on a national level but also on a European level. The question is one of participation of the citizens. But how can this become a reality? Social partners are an important asset in the field of economic and social rights. The European Trade Union Confederation will continue to use the channels available to participate with the Council of Europe in the implementation of the Charter, and others should do the same.

c. Panel Session - The contribution of the collective complaints procedure

92. The second panel session, moderated by Giuseppe Zaffuto, Spokesperson, Directorate of Communication of the Council of Europe, discussed the monitoring mechanisms of the Social Charter and assessed the current contribution of the Collective Complaints mechanism, and its potential for the future assertion of social rights.

93. Jean-François Akandji-Kombé, General Coordinator of the Academic Network on the European Social Charter and Social Rights (ANESC), Professor at the Sorbonne Law School, Paris, highlighted two important proposals made by ANESC with a view to securing better implementation of the Social Charter. Firstly, the four month delay between the transmission of collective complaints decisions to the Committee of Ministers and their publication should be eliminated. Secondly, the control mechanism of the Committee of Ministers should be reinforced on the model of the execution of judgments of the Court. These ideas are further elaborated and explained in the Contribution of ANESC (Appendix 3e).

94. Colm O'Cinneide, General Rapporteur of the Committee, noted that the collective complaints procedure allows the committee to develop a more concrete and specific analysis of the situation than is possible through the reporting mechanism. Representatives of national governments, judges and ombudsman have also mentioned its usefulness, they point out that collective complaints add a more tangible dimension to the Charter. Certainly, the procedure could benefit from more active engagement of

governments and social partners. These as well as other ideas are further elaborated and explained in the Contribution of the Committee (Appendix 3c).

95. Urfan Khaliq, Professor of Public International and European Laws at Cardiff University, stated that to realise the full potential of the collective complaints procedure more members states must ratify the protocol. It is disappointing that only 15 states have ratified the collective complaints protocol. The collective complaints procedure is not a threat to the states, but is an opportunity for them to engage with the citizens and to improve their standard of living. This reminds us of the view, as affirmed by Mr Poletti in his opening speech, that the collective complaints procedure brings the Charter closer to its intended beneficiaries, the citizens. It is not hard to see situations where individuals might bring complaints before the Court, where a remedy could actually be dealt with under the collective complaints mechanism. These could be dealt with more quickly, and might avoid the repetitive bringing of complaints before the Court.

96. Mr Khaliq recalled that the collective complaints procedure has been carried out by the Committee in a fair way, including the recognition of a margin of appreciation which acknowledges the subsidiarity nature of the Charter and emphasises that the primary responsibility lies with states. Proportionality tests also demonstrate a nuanced approach to the application of social rights. The Charter must be a living instrument to allow diverse social and economic realities to be considered. Indeed, in the decisions of the Committee against Greece it was the manner in which the changes were made, rather than the changes themselves, which was found to be in violation. The added value of the Charter was adroitly explained by Mr Khaliq. When you are dealing with a situation, and the member state addresses the situation, you are not providing alleviation of the wrongs of a right to an individual, but to everyone who is affected.

97. Guido Raimondi, Vice-President of the European Court of Human Rights, emphasised at the beginning of his address that the Committee was a strong, authoritative and respected body, despite the fact that it dealt with rights which, notwithstanding declarations of principle, were not effectively considered to rank as a highly as those dealt with by the Court. Mr Raimondi recognised the great quality of the Committee's case-law, whether it arises from the work done during the reporting procedure or in the context of collective complaints, stating that the Court takes full account of that case-law – if necessary basing itself explicitly thereon – whenever there are aspects relating to the social dimension of fundamental rights. In this context, he quoted a number of examples showing the extent to which the Charter and the Committee's case-law have influenced decisions of the Court.

98. After illustrating the complementarity and synergy of relations between the Court and Committee, Mr Raimondi highlighted the added value of the collective complaints procedure as compared to the procedure for applications to the Court. In this context, he drew attention to three significant advantages of that procedure: firstly *immediacy*, in the sense that complaints may be submitted without domestic remedies having been

exhausted; secondly *efficiency*, in the sense that decisions on the merits of the issues under consideration are taken speedily (in a maximum of twenty-four months); and finally *general applicability*, in the sense that – as in the specific case of a "pilot judgment" by the Court – the complaints procedure enables situations concerning more than one person to be systematically dealt with.

iii. Theme II – The implementation of social rights in Europe

99. On 18 October, before the Ministerial Session on the abovementioned theme, Anne Brasseur, President of the Parliamentary Assembly of the Council of Europe, took the floor. At the beginning of her speech, President Brasseur underlined that social rights must be considered as fundamental human rights, indivisible from civil and political rights, and not as "second class" rights. President Brasseur affirmed that the implementation and realisation of social rights is essential in periods of economic recession and crisis, during which they risk being undermined by the pressure of austerity measures. Making reference to the positions and activities of the Parliamentary Assembly concerning social rights, she rightly stressed that austerity measures cannot be taken to the cost of the most vulnerable groups such as young families, single mothers, children, young people, the elderly, people with disabilities, migrants and minorities.

100. In light of this, Ms Brasseur recalled that the Assembly consistently calls on the member states of the Council of Europe who have not already done so to ratify the Revised Charter, the Additional Protocol providing for a system of collective complaints, and the so-called 'Turin Protocol', which provides for the election of members of the Committee by the Parliamentary Assembly. In this context, President Brasseur made a point of encouraging her own country, Luxembourg, to advance in the process of ratifying these instruments. Concerning the parliamentary dimension, Ms Brasseur recalled that the Parliamentary Assembly encourages national assemblies to use both the Charter and the jurisprudence of the Committee when drafting national and regional legislation.

a. Ministerial Session

101. The second Ministerial Session allowed Ministers, Deputy Ministers and Secretaries of State to take the floor within the context of Theme II.

102. Michael Farrugia, Minister for the Family and Social Solidarity for Malta, recognised that it is important to turn the post crisis period into an opportunity for enhancing social cohesion and social justice through the creation of more inclusive labour markets, and through investment in people's skills and employability. He stated that Europe's social vision needs to be complemented by innovative answers to social challenges, by the promotion and development of measures that ail to reduce and prevent poverty, whilst ensuring greater equality of opportunity, social justice and social mobility, as well as through measures which ail to mainstream social inclusion issues across different policy

areas. He reiterated the validity of the Council of Europe's legal instruments for social rights as promoters of social cohesion and well-being.

103. Nevertheless, Minister Farrugia identified a need for new measurements of social well-being in the European framework; for example, Eurostat methodology currently does not allow for the inclusion of social benefits in kind, such as free child care, provision of free health services, social housing, etc. Malta has introduced a broad range of policies which deal with numerous aspects of social and economic issues. At the same time, unemployment has reduced and GDP increased. In finishing, he declared: "Politicians can easily say 'we saved the banks, we saved the Euro', so let us follow the Social Charter and save the people."

104. Michaela Marksová, Minister of Labour and Social Affairs, Czech Republic, underlined the importance of the collective complaints procedure as a tool for the more effective safeguarding of social and economic rights. It was noted that sometimes the scope of complaints go beyond the competence of one ministry, and therefore more departments are required to cooperate and coordinate. This however also shows the breadth and importance of social rights and the potential of the collective complaints procedure to investigate fully the complaints received.

105. The Deputy Minister of Labour and Social Policy for Bulgaria, Petya Evtimova, highlighted her country's ratification of the collective complaints procedure. She stated that Bulgaria pays special attention to the Decisions of the Committee in respect of collective complaints. It is clear that the adoption of the Charter as an integral part of national legislation has brought about significant developments in ensuring the basic social rights of citizens. These include the right to decent work, the right of association and participation, the right of protection of children and young people, and the right of social security. Using the Charter as a reference for standards of rights protection has also led to better legislation protecting equal treatment, non-discrimination and equal opportunities, as well as the integration of disabled people in all areas of social life.

106. Nicolas Schmit, Minister of Labour, Employment and Social Economy for Luxembourg, said that economic progress and social progress are not opposite, rather they are complementary. He highlighted some important issues in the application of social and economic policy. Firstly, that youth must be engaged and their rights must also be protected. In order to create a stable future, the youth must be allowed to play their part in creating their own future; we must work for intergenerational justice, and take advantage of the capabilities of the younger generations, who have never before been better trained. Secondly, the hopeful migrants who come to Europe are its responsibility - they must be allowed to express their rights. The ostracised, discriminated, poor and unappreciated have lost faith in national and international institutions, but yet they still want to vindicate their human rights, and the values of social justice inscribed in the Charter. The current economic crisis undermines social cohesion, and it raises the demons of the past, nationalism, populism and racism. The divisions created by the current crisis, the

inequality and injustice, cannot form the basis for a durable, well-performing economy. Just as bloodletting has never been a remedy for illness, nor can austerity policies lead to growth. Europe must relaunch, and it can and should do so on the basis of the same fundamental rights recognised in the Charter since 1961. Finally, referencing the encouragement of President Brasseur in respect of ratifying the Revised Charter, Mr Schmit indicated that Luxembourg will work towards making up its delay.

107. Tatjana Dalić, Assistant Minister in the Ministry of Labour and Pension System, Croatia, stated that the right to work is one of the most important guaranteed by the Charter. Finding solutions for the problem of unemployment, which has grown considerably during the economic crisis, is a key challenge. The loss of jobs directly affects the income side of the State budget and the future sustainability of social rights and entitlements, such as pensions, health protection and social care. However, she identified investments in active labour market policy measures as having a multiplying positive effect on society, through increased state revenue and higher expenditure on goods and services, which affect general economic growth, while at the same time decreasing expenditure on social care benefits. These measures should be targeted at specific groups of unemployed persons who are in unfavourable positions on the labour market, as well as employed persons at risk. Croatia dedicates special attention to youth unemployment, to contribute to positive future developments and progress.

108. Mr Nenad Ivanišević, Serbian Secretary of State of the Ministry of Labour, Employment, Veterans and Social Affairs, made reference to the amendments to national legislation which are ongoing, and take account of the Charter, aiming to facilitate more consistent application of its standards. This demonstrates the positive effect which the Charter and the jurisprudence of the Committee can have in securing social rights where national legislative bodies engage with its provisions. Furthermore, the commitment of state authorities, the parliament and relevant NGOs is necessary to continue the promotion of labour and social rights.

109. Dejan Levanic, Secretary of State, Ministry of Labour, Family, Social Affairs and Equal opportunities for Slovenia, concluded the Ministerial session, reiterating the idea that the sustainable development of European society is possible only if we place all three dimensions: social, environmental and economic, on equal footing. He further said that States would find it easier to fully meet their obligations in the implementation of social rights were areas of convergence between the Council of Europe and European Union law were increased. Therefore an intense dialogue between the Council of Europe and the European Commission is needed.

b. Panel Session - Synergies between the law of the European Union and the European Social Charter

110. The final Panel Session, moderated by Giovanni Guiglia, Coordinator of the Italian Section of the Academic Network on the European Social Charter and Social Rights,

Professor of Public Law, University of Verona, brought together representatives of the Council of Europe, the European Union, the Fundamental Rights Agency and ANESC to discuss the relationship, convergence and divergences between EU law and the Charter.

111. Giuseppe Palmisano, member of the European Committee of Social Rights, considered that the question of synergy between EU law and the Charter constituted one of the conference's main objectives: ensuring that social rights, as enshrined in the Charter, were made a key focus of attention for the EU institutions and member States with a view to their reinforcement and their evaluation from a policy and law-making standpoint. Achievement of this objective was all the more necessary at a time when, above all in light of the economic crisis, the adoption of austerity measures and of labour market reforms has caused friction between the EU system and that of the Charter. In this context, he mentioned a number of recent decisions taken by the Committee under the collective complaints procedure, concerning violations of the Charter by Greece and Sweden (see the footnote on page 1 of the Committee's working document on "The relationship between European Union law and the European Social Charter", appendix 3g).

112. To explain this friction, he referred to the diversity of the standard-setting systems under consideration: on one hand, that of the Charter, with its substance which is undeniably specialist but concerns fundamental values of a constitutional nature; on the other hand, that of the EU, which is far more wide-ranging and complex and pursued not just the above values but also other objectives relating to economic freedoms, competition, budgetary equilibrium, and so on. For MrPalmisano these differences of approach could lead to, and indeed have brought about, an imbalance detrimental to the adequate protection of fundamental social rights at European level. In the long term, imbalances of this kind could cause a regression of the European model centred on respect for social rights and advanced welfare systems.

113. Based on the conviction that social justice must be one of the pillars of the European construction process, and citing a number of tangible examples, Mr Palmisano argued that the time had come to exploit the existing convergence between EU law and the Charter. The aim was to ensure, firstly, that measures taken by the EU and its member States fully upheld fundamental social rights and, secondly, that Europe as a whole, beyond the borders of the EU, could benefit from the EU's major achievements in the field of social rights, in the hope thatthis could also be realised through the Charter and the work of the Committee, which is ready to be supplemented and enriched by those achievements. As proposed by the Committee (see Appendix 3c), this was in other words an attempt to systematise the existing synergies along the lines of the dialogue already under way with the relevant EU institutions, particularly the Commission, the European Economic and Social Committee, the Agency for Fundamental Rights and, on a more political level, the EU Parliament. The EU institutions could also contribute to the protection of social rights by encouraging member States that had not yet done so to ratify

the revised Social Charter (nine states) and the Protocol on Collective Complaints (14 states).

114. Olivier De Schutter, Member of the Committee on Economic, Social and Cultural Rights of the United Nations (2015 – 2018), Professor at the University of Leuven and the College of Europe, elaborated four proposals in view of achieving greater synergy between the EU and the Council of Europe in the field of social rights. These are further detailed and explained in the Contribution of the Academic Network on the European Social Charter and Social Rights (Appendix 3d). Firstly, while interpreting the EU Charter of Fundamental Rights, which contains a series of provisions inspired by the Charter, systematic reference should be made to the interpretation of the Charter provided by the Committee – exactly the way the European institutions, including the CJEU, take into account the case-law of the Court. This would put these two influential treaties on an equal footing.

115. Secondly, given that a number of Charter provisions have not been integrated into the EU Charter of Fundamental Rights, it is suggested to integrate fundamental rights set out in the Charter into the general principles of the EU Law. This would provide guidance to national jurisdictions and further harmonise compliance with both sets of norms. The Committee's case-law should therefore inspire the development of the case-law of the Court in the field of social rights, in compliance with the general principles ofEU law. Thirdly, while preparing impact assessments prior to submitting legislative proposals to the EU bodies, the European Commission should systematically take into account Charter provisions, not only as regards the social rights, but in all fields related to the functioning of internal markets, without limiting itself to the fields covered by DG Employment, Social Affairs and Inclusion. This would prevent member States from being confronted one day witha choice between ensuring follow-up ofthe conclusions ofthe Committee, on the one hand, and respecting the obligations imposed by EU Law, on the other. Finally, the European Union and the Council of Europe should elaborate a common document identifying the legal and technical obstacles to the accession of the EU to the Charter. If we are aiming at this accession to take place by 2030-2040, we have to start working on this document now. This proposed accession and concrete work towards its achievement would also be an important message to EU citizens as regards its social dimension.

116. Luca Jahier, President of Group III of the European Economic and Social Committee of the European Union (EESC), expressed the need to reinforce the collaboration between the EU and Charter bodies, for example through greater coordination and dialogue between the EESC and the Committee. Furthermore, he suggested concrete measures such as new forms of class actions which would enable wider protection of social rights; the reinforcement of the collective complaints procedure; and wider use of the initiatives of citizens provided for by the Treaty of Lisbon. Further, he suggested the EU adopt the indicators of social impact with automatic stabilising mechanisms. Together these strengthened mechanisms could enforce a collaborative approach to the implementation of fundamental social rights.

117. Paolo Mengozzi, Advocate General of the Court of Justice of the European Union indicated that his contribution to the Panel was made easier by the working document on the relationship between EU law and the Charter drafted by the Committee, which represents a valuable basis for the discussion. He stressed the commitment and concrete results achieved by the European Union in its activities aimed at protecting fundamental rights, including social and economic rights. After underlining the importance of the dialogue between the EU and the Council of Europe with respect to human rights, he considered that in order to take full account of the challenges of globalisation, this dialogue should be extended to the World Trade Organization. Prof Mengozzi also encouraged the dialogue between the CJEU and the Committee and, in this respect, made a reference to the regular exchanges of views between the two bodies. In this framework, he considered that the Committee, like the Court, should begin to apply a "presumption of compatibility" of the norms of EU law with the Charter. Other considerations and proposals on the relationship between EU law and the Charter will be included in his written observations to the abovementioned working document.

118. Armindo Silva, Director for Employment and Social Legislation, Social Dialogue, DG for Employment, Social Affairs and Inclusion of the European Commission, underlined that the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. These values it shares with the Council of Europe. He discussed the development of a rights based approach in the EU, which occurred as it became apparent that the building of an economic space could not be sustainable without being grounded on the bedrock of social rights and values. The Charter is one of the inspiring sources for the treaties of the EU, for example it is cited in Article 151 of the treaty, which forms the fundamental legal basis of EU social policy legislation. The Charter is also being increasingly recognised by the CJEU when determining new fundamental rights and principles. There is thus a wide convergence between the EU and Charter systems of protection of fundamental rights.

119. Gabriel Toggenburg, Senior Legal Advisor of the Director of the Fundamental Rights Agency of the European Union (FRA), asked how the EU legislation could be brought into harmony with the obligations in the Charter. He proposed a mapping of the 'community core', where the EU has the legislative competence to become active in areas which affect or overlap the Charter's scope. Furthermore, this could be done on a wider scale, to cover all Council of Europe conventions. He highlighted the EU's strength in its implementation mechanisms, for example the direct effect of some of its legislation, and the supremacy of its jurisprudence over national law. Furthermore, he pointed to the consensus achieved with the adoption of the Action Plan on 17 May 2005, which states: "The European Union shall strive to transpose those aspects of Council of Europe Conventions within its competence into European Union Law". Therefore it is important that the EU and Council of Europe work in harmony, utilising the freedom and strength of the Council of Europe as a standard setter and monitoring body.

120. Following the Panel on the relationship between EU law and the Charter, and prior to the Closing Session, the President of the Italian Chamber of Deputies, Laura Boldrini, took the floor. During her speech, President Boldrini observed the failures of the States and the European Union concerning the provision of adequate protection for citizens against the effects of the current economic recession. In this regard, she reiterated that reductions in social welfare spending are having dramatic effects, above all in the areas of education and health. She drew the attention of the Conference to the fact that according to figures published by the European Commission, the number of people at risk of poverty could yet be close to 100 million in the year 2020; a situation which would have a disproportionate effect on women and youth.

121. In mentioning the current debate among economists over the response to the crisis, Ms Boldrini noted that authoritative figures are now clear that austerity measures alone are not adequate to resolve the problems. In particular, referring to the work of Professor Piketty, she recalled that if austerity measures continue to be pursued as they are today, that is, without corrective economic action, we are destined to go back to a wealth distribution pattern similar to that of the 19th century.

122. In this context, and underlining the binding nature of the Charter, President Boldrini considered that in order to maintain the effectiveness of fundamental social safeguards, the culture and politics of human rights must "go on the attack". In other terms, it is not sufficient according to Ms Boldrini to "defend the status quo", instead we must look ahead, and anticipate new rights and protections that will be required for the new needs emerging in the present era. Parliaments can make a decisive push for a new culture of rights which is equal to the challenges of the present day. In this environment, she suggested it could be very useful firstly to put in place an "early warning" procedure in the parliamentary context, to monitor the compatibility of European and national legislation with the principles of the Social Charter, and secondly to organise regular meetings at the continental level between the competent committees of the different European parliamentary assemblies.

iv. Closing Session

123. Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe, recalled that the starting point for the Conference was the realisation that the Charter currently finds itself confronted with a number of challenges which jeopardise its effective implementation, and now require the adoption of political decisions by the contracting States and the political organs of the Council of Europe, and to a certain extent by the European Union. She underlined that it is necessary to tackle the crisis through measures that reconcile the demands of growth with the need for social justice. In other words, the social dimension cannot be politically divorced from the macroeconomic context or considered as a mere adjunct to it. In this respect, it was recognised by many, and reiterated by the Deputy Secretary General, that implementation of the Charter is an essential prerequisite for the success of the economic policies pursued by the relevant national and European authorities.

124. With regard to those States which are also members of the European Union, she also highlighted that wider acceptance of the revised Charter would offer the advantage of fostering greater legislative integration between the European Union and the Council of Europe. The solutions envisaged for the harmonisation of the implementation of social rights also include the possibility, at the appropriate time, of EU accession not only to the Convention but also to the Revised Charter, as recommended by the European Parliament. The Deputy Secretary General will personally monitor the work on the initiatives identified to address the priority of the Secretary General to reinforce the Charter as a pillar of the Council of Europe alongside the Convention. She said that we must and shall do all that we can to ensure that the Charter always occupies a place within the Council of Europe convention system consistent with the fundamental nature of the rights it safeguards, and its status as the social Constitution of Europe.

125. Giuliano Poletti, Italy's Minister of Labour and Social Policies, voiced the idea that, during this phase of historic significance – because of changes which have altered on a global scale, and so in Europe as well, the relationship between the economy, labour and society – the realisation of the social and economic rights guaranteed by the Charter can unfortunately not be taken for granted. The Conference was an important opportunity to consider how it will be possible to ensure that those rights continue to be fully realised in a constantly changing geopolitical situation. The Minister declared his willingness to ensure that the high-level discussions started in Turin can continue. With that in mind, he urged all the participants to "Restart in Turin", so that fundamental rights become a subject of pan-European dialogue and co-operation. He expressly invited all Council of Europe Member States to take practical action for the benefit of the Charter, for example by accepting the revised Charter, additional provisions or one of its Protocols. Emphasising the importance of this step the Minister said that, for all the states concerned, it was a "categorical imperative".

126. Piero Fassino, Mayor of Turin, expressed agreement with the Minister's view that realisation of the rights protected by the Charter was no longer a foregone conclusion. The economic crisis had made this quite clear. The main issue was therefore that of ensuring a new beginning for both growth and rights, bearing in mind that Europe did not exist within a "bubble" of its own, and that the dynamics of competitiveness, now global, and worldwide social dumping had a severe effect on realisation of the Charter rights on our continent. The European institutions, by means other than synergies between sources of law, thus needed to fight for the universality of social rights, so that their affirmation in Europe did not ultimately penalise our continent in terms of development, with counter-productive effects on the realisation of those same rights.

127. In other words, in the Turin Mayor's view, it is necessary on the one hand to continue to assert the centrality and dignity of both work and the associated fundamental rights, and, on the other hand, to combine growth and social protection with due flexibility. These challenges need to be achieved in a way which enables Europe to realise its own

social model without being subjected to decisions made, worldwide, in different economic situations. In this context, the Conference, according to Piero Fassino, set in train a political process capable of contributing to these challenges, getting to grips with the new scenarios and new variables of globalisation. In the context of that process, the Charter must be defended and promoted as one of the pillars around which to redefine the European, and not just the European, model of development.

2. Conclusions of the General Rapporteur

128. Thanks to the exchanges of opinions, presentations and statements, it has forcefully emerged that the rights secured by the Charter form part of the indivisible corpus of human rights, so that one can fittingly speak of "fundamental social rights"[7] or rights belonging to all human beings, like civil and political rights, which are fundamental to individual and community living in that their enjoyment underpins the possibilities for fulfilment of human existence. In that sense, they are inalienable rights, not the kind of optional rights that could be withdrawn for want of resources during periods of austerity and which are devoid of usefulness in periods of economic prosperity.

129. For years we have regarded social and economic rights as secondary and, so to speak, supplementary rights, disregarding the fact that the substance of these rights, that is access to the vital common goods (food, clothing, shelter, health, education, etc), represents – both theoretically and historically – the premise for claiming and availing oneself of fundamental civil and political rights. As was remarked by Norberto Bobbio from Turin, recognition of a few fundamental social rights is the premise or the precondition for effective exercise of the rights of freedom. An educated individual is freer than an ignoramus; an individual with a job is freer than someone unemployed; a healthy man is freer than a sick one.[8]

130. The fact that access to the vital commons is a necessary precondition for exercising other rights is altogether patent in anthropological terms: without life, there is no possibility of expressing oneself freely. Thus in moral terms, situations where severe poverty, illness or inability to provide for oneself imperil the very existence of some individuals create binding obligations for the individuals around them. Hans Jonas expressed this concept forcefully by citing the example of the nursling which by its very existence and its very inability to survive independently imposes a binding obligation on anyone near it to provide for its existence.[9] The same could be said about the "injured person in the street"

[7] In the EU Charter of Fundamental Rights and Freedoms, the typically 'social' rights are counted among fundamental rights, such as in the case of free education, the protection of children, the elderly, disabled people and the rights of the worker, etc.

[8]] N. Bobbio, « Sui diritti sociali » (1996), available in *Teoria generale della politica*, ed. M. Bovero, Einaudi, Turin 1999, p. 465.

[9] H. Jonas, *Das Prinzip Verantwortung. Versuch einer Ethik für die technologische Zivilisation*, Insel Verlag, Frankfurt, 1979.

situation, which compels us to stop and render assistance: here too, the situation of absolute necessity makes indifference and inaction culpable, not only morally but also legally, as demonstrated by the definition of the offence of non-assistance embodied in legislation across Europe.

131. In history also, the idea is attested that enjoyment of social rights is a prerequisite for enjoyment of political rights.[10] Under the aristocratic or bourgeois regimes of the early nineteenth century, only someone who was economically independent and educated could vote and be elected to parliament. When this proved unacceptable to democratic regimes – as it is to us – it appeared quite clear that, to guarantee everyone equal freedom of expression and political action, some social measures were necessary. That prompted the measures regarding state education, employment policies, medical assistance and all the rest. To deny this relationship today would result in our being plunged back into a scenario founded on social exclusion, which would be rapidly transformed into political exclusion and carry serious risks for democratic structures.

132. To proclaim the inseparability of social rights from civil and political rights, and the fact that their enjoyment presupposes satisfaction of some fundamental social needs, is not at all tantamount to disregarding the different dynamic that operates between the various rights and official intervention. In the case of the fundamental rights of freedom, it is primarily a matter of setting limits to the action of the public authorities and thus of "negatively" demarcating state intervention in order to allow full enjoyment of freedoms such as freedom of expression or religion. However, in the case of the fundamental social rights, an active intervention is instead requested of the state which, through legislative and administrative measures, delivers specific services to citizens according to their means. So, while the former rights possess immediate validity and enforceability, the latter must necessarily be commensurate with the existing capabilities. And at all events, it cannot escape a deeper insight that this distinction is not such as to mark an insurmountable divide between the two categories. On the one hand, even enjoyment of the fundamental rights of freedom calls for active intervention and significant public resources, as demonstrated by the security policies for the protection of citizens' personal freedom which have become so important in the life of our societies (to say nothing of the active policies and the financial resources deployed by states to safeguard freedom of political or religious expression, with funding or tax relief to press organs, political associations and religious communities). On the other hand, when a citizen's enjoyment of a social right is denied or disproportionately curtailed (housing, employment, assistance, etc), the possibility of an immediate complaint and of public safeguards is extensively recognised by our legal systems, meaning that the state is not at all indifferent to the possibility or otherwise for citizens to enjoy a full life.

[10] Cf. E.W. Böckenförde, "Soziale Grundrechte im Verfassungsgefüge", in Soziale Grundrechte.Von der bürgerlichen zur sozialen Rechtsordnung, eds. E.W. Böckenförde, J. Jekewitz, Th. Ramm, Heidelberg 1981, pp. 7-16.

133. Recognising that enjoyment of social rights is the precondition for full enjoyment of civil and political liberties thus means recognising that the state cannot be indifferent to these rights and that on the contrary their realisation represents a clear "constitutional task"[11] of a mature democracy which cannot be delegated to the discretion of governments or technical agencies. In democracy it is the citizens' vote that assigns to parliamentary majorities and to governments the task of carrying out specific social and economic policies of one stamp or another, and this is part of free democratic interplay. But although there may be different means which are all equally legitimate, there are common objectives not to be disregarded, and these certainly include support for every citizen's effort to lead his life to the full with dignity. Every state is therefore obliged to pursue coherent policies thanks to which citizens may have a reasonable possibility of fulfilling their needs through their labour and their initiative, and such policies must be made understandable to all in a transparent manner. Furthermore, their outcomes must be verifiable and if they do not achieve the objectives hoped for, they must allow of amendment so as to perform effectively the "constitutional task" of safeguarding social rights.

134. To regard realisation of social rights as a "constitutional task" entails thorough analyses and informed decisions on allocation of the available public resources. In a mature democracy, one cannot overlook the problem of access for all to resources in a manner complying with the principles of freedom and justice. This concerns both the distribution of public resources and the regulation of social relations. Constant attention must moreover be paid to assessing the effects of this or that policy on the conditions for citizens' genuine equality. Indeed, it is commonly believed that excessive disparity of economic and social conditions among citizens may represent not only an impediment to full democracy, but also a factor of economic instability. It should therefore be remembered that the fight against inequality is conducive to economic development and that – as the Secretary General cogently said – there is a "productiveness of social justice". It is altogether true – and the topic came out strongly in the discussion – that austerity policies too may be prompted by reasons of "intergenerational" justice so as not to pass on the social costs of given policies to the future generations, as has been done too often. But it is also true that there are living standards which must not be ignored if we wish to ensure a decent minimum subsistence level for all.

135. As recalled by Mr Poletti at the close of the Conference, it is not straightforward to assert these standards in the world of today. Taking into account the challenges of globalisation, the time has come to open a political debate on how to ensure that the rights secured by the Charter continue to be applied in a rapidly changing European and international scenario. In other words, it is necessary to "Restart in Turin" with a view to choices allowing for the changed relationship between the economy, labour and society in Europe resulting from the changed world. As the Mayor of Turin observed, the central issue is therefore that of a new beginning for growth and rights, bearing in mind that

[11] The Italian and German constitutions represent an example in this regard.

Europe does not exist within its own "bubble". The Conference was unanimous in the opinion that, over and above the essential synergy of the sources of European law, the Council and Union should fight for the universality of fundamental rights, making sure that the measures adopted for their affirmation in Europe are accompanied by ineluctable progress as regards their observance at world level.

136. When we say that the fight against poverty and exclusion is a constitutional task of democracies, we mean that we must make this not the duty of a political or social faction, but the duty of all. Protection of social and economic rights should be a cross-cutting concern in parliaments and not only the prerogative of a majority or minority. As Habermas invoked a "constitutional patriotism" for democracies, saying that the realisation of social rights was a "constitutional task", so we look forward to the birth of a "social patriotism" finally dissociating social rights from the idea that they are "rights of the poor" or "poor rights": rather, they are universal rights pertaining to the fullness or "richness" of human life. We therefore need a "new European social contract" modelled on the best practices of local governments.

137. Our reflection on social rights compels us to rediscover again and again the "social" nature of rights, in a word the "sociality" of a right in itself. The rights of individuals have to do with their relationships and always remind us that no man is an island, and nobody can attain self-fulfilment except in their respect for and acknowledgment of others. We must fight for observance of social and economic rights because without these rights individuals are stripped of their sociality, of their relationship with others and finally of being themselves. As Joel Feinberg explained, "Having rights enables us to 'stand up like men and women', to look others in the eye, and to feel in some fundamental way the equal of anyone. To think of oneself as the holder of rights is not to be unduly but properly proud, to have that minimal self-respect that is necessary to be worthy of the love and esteem of others. Indeed, respect for persons (this is an intriguing idea) may simply be respect for their rights, so that there cannot be the one without the other; and what is called 'human dignity' may simply be the recognisable capacity to assert claims".

The **"Turin Process"** is under way.

IV. An Action Plan for the "Turin process"

PRIORITY MEASURES BASED ON THE IDEAS AND PROPOSALS PUT FORWARD AT THE CONFERENCE

Key:

Immediate action
Medium term
Long term

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
Reinforcement of the Charter				
	Open a political debate on the Turin Process (CM[12], PACE[13])	Open a political debate on the Turin Process (Council[14], EC[15], EP[16])	Open a political debate on the Turin Process	Open a political debate on the Turin Process
	Promote the ratification of the Revised Charter and/or all provisions (CM, PACE, Congress[17], Conference of INGOs[18], HR Commissioner[19])	Promote the ratification of the Revised Charter and/or all provisions by EU member states (EC, PE, CESE[20], FRA[21])	Ratify the Revised Charter and/or all provisions	Promote the ratification of the Revised Charter and/or all provisions
	Reinforce the position/ visibility of the Charter within the Organisation (CM, SG[22])		Reinforce the position/ visibility of the Charter in framework of sources of international law	
	Allow the election of members of the ECSR[23] by the PACE (CM, PACE)		Allow the election of members of the ECSR by the PACE	

[12] Committee of Ministers, Council of Europe
[13] Parliamentary Assemby of the Council of Europe
[14] Council of the European Union
[15] European Commission
[16] European Parliament
[17] Congress of Local and Regional Authorities
[18] Conference of International Non-Governmental Organisations, Council of europe
[19] Commissioner for Human Rights, Council of Europe
[20] European Economic and Social Committee
[21] European Union Agency for Fundamental Rights
[22] Secretary General of the Council of Europe
[23] European Committee of Social Rights

THEME	LEVEL			
	Council of Europe	European Union	National	NGOs/ Partners
	The jurisprudence of the ECSR must take account of new situations and challenges (ECSR)			
	Increase the number of members of the ECSR (CM) Reinforce the position and structure of the Social Charter Department within the General Secretariat of the Council of Europe and increase the number of lawyers working in the department. (CM, SG)			
	Reinforce the monitoring procedures of the PACE on the Charter (PACE)			
	Organise and facilitate interparliamentary debates on the Charter (PACE)	Organise and facilitate interparliamentary debates on the Charter (EP)	Organise and facilitate interparliamentary debates on the Charter	
Better implementation of the Charter				
		Adapt and design macroeconomic policies which support sustainable growth, taking into account social rights (EC)		
			Reinforce the framework for ensuring the implementation of the Charter, as well	

THEME	LEVEL			
	Council of Europe	European Union	National	NGOs/ Partners
			as the decisions and conclusions of the Committee	
		Promote sustainable and inclusive growth through fiscal policy and investment in skills and access to work (Council, EC, EP)	Promote sustainable and inclusive growth through fiscal policy and investment in skills and access to work	
		Integrate social rights in economic recovery plans, adapt social impact indicators and new reference values to measure social well-being (Council, EC, EP, Eurostat)	Integrate social rights in economic recovery plans, adapt social impact indicators and new reference values to measure social well-being	
		Integrate the fundamental rights established in the Charter into the general principles of EU law (Council, EP, EC, CJEU[24])		
	Reinforce the follow up of Committee conclusions and decisions, along the lines of the enforcement of ECtHR[25] judgments (CM)			
	Where necessary, use the ability to make Recommendations to the Member States (CM)			
	Respect the '*contradictoire*' principle of the			

[24] Court of Justice of the European Union
[25] European Court of Human Rights

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
	collective complaints procedure and prevent states from challenging ECSR decisions (CM)			
	Promote a procedure of advisory opinions of the ECSR for courts and legislators at national / EU level (CM)	Seek advisory opinions from the ECSR where potential violations are identified in the EU legislative/ implementation process (Council, EC, EP, CJEU)	Seek advisory opinions from the ECSR where potential violations are identified in the national legislative/ implementation process	
			Ad hoc advisory bodies should be set up by governments concerning the implementation of the Charter and ECSR decisions/conclusions	
	The CoE Development Bank can assist in ensuring the efficacy of social rights initiatives (CEB[26])			
			Central and local governments need to work together more closely to ensure the implementation of ECSR decisions/ conclusions	
Collective complaints procedure				
	Promote the ratification of the Collective Complaints Protocol (CM, PACE, Congress, Conference of INGOs, HR Commissioner)	Promote the ratification of the Collective Complaints Protocol by EU member states (Council, EC, EP, EESC, FRA)	Ratify the Collective Complaints Protocol	Encourage the states to ratify of the Collective Complaints Protocol

[26] Council of Europe Development Bank

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
	Inform social partners and NGOs about the CC[27] procedure (CM, PACE, Conference of INGOs, HR Commissioner, ECSR)	Inform social partners and NGOs about the CC procedure (EC, EP, FRA, EESC)	Inform social partners and NGOs about the CC procedure	Inform social partners and NGOs about the CC procedure and encourage them to participate
	Encourage use of third party mechanism by EU bodies and NGOs (CM, ECSR)	Encourage use of third party mechanism by EU bodies (EC, EP, FRA, EESC)	Encourage use of third party mechanism by NGOs	Use the third party mechanism
	Encourage authorisation of national NGOs to bring complaints (CM)		Authorise national NGOs to bring complaints	
	Immediate publication of the ECSR Decisions (CM)			
	Promote systematic notification by states of the steps taken to implement decisions of the ECSR (CM)		Systematically notify the steps taken to implement decisions of the ECSR	
Synergy between EU law and the Charter				
	Encourage the emergence of an integrated, common normative system of protection of fundamental rights (CM, PACE, ECSR)	Encourage the emergence of an integrated, common normative system of protection of fundamental rights (Council, EC, EP, EESC, FRA, CJEU)		
		Define the "Community Core" in order to prevent incongruities between the law of the EU and the law of the Charter (EC, FRA, EESC)		
	Reinforce the relationship with the EC, EP, CJEU and	Take the Charter into account in the legislative process	Take the Charter into consideration when interpreting and	

[27] Collective complaints procedure

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
	other bodies through dialogue and consultation (ECSR) Identify and use EU legislation and jurisprudence in conclusions and decisions of the Committee (ECSR)	(Council, EP, EC) Consult the ECSR during the legislative process (Council, EP, EC) Prepare impact evaluations prior to submitting legislative proposals (EC) Take account of the Charter and the jurisprudence of the ECSR in the interpretation and application of EU law (CJEU)	implementing EU law Consult the ECSR during the legislative process	
		Reinforce the relationship and dialogue between the ECSR and CJEU. Create a system of reciprocal recognition similar to the ECtHR and work towards a greater convergence of jurisprudence (CJEU)		
	Promote the accession of the EU to the Charter (CM, PACE)	Work towards the proposed accession of the EU to the Charter (Council, EC, EP, EESC, FRA)	Promote the accession of the EU to the Charter	Promote the accession of the EU to the Charter
		Implement "early warning" procedures with respect to the compliance of EU law with the Charter (EP, EC, CoR[28])	Implement "early warning" procedures with respect to the compliance of national legislation with the Charter (National Parliaments)	
		Ensure that EMU reform systematically takes account of social rights (EC)		

[28] Comittee of Regions

	LEVEL			
THEME	Council of Europe	European Union	National	NGOs/ Partners
	Reinforce the links between the ECSR and FRA, share knowledge and data, to exploit the advtanages of both monitoring systems (ECSR)	Reinforce the links between the ECSR and FRA, share knowledge and data, to exploit the advantages of both monitoring systems (EESC, FRA)		
Information and Communication				
	Adapt communication within the Council of Europe to improve the visibility of the Charter and place it at the level of the ECHR (SG)	Adapt communication to improve the visibility of the Charter and place it at the level of the ECHR in the EU framework (EC, EP, EESC, FRA)	Adapt communication to improve the visibility of the Charter and place it at the level of the ECHR	Adapt communication to improve the visibility of the Charter and place it at the level of the ECHR
	Promote training on the Charter for judges and lawyers at national and international level	Promote training on the Charter for EU judges, national judges and experts (EC, EP, EESC, FRA)	Promote training on the Charter for judges and experts	Promote expert awareness and inform NGOs about the Charter and the CC[29] procedure
	Promote knowledge on the Charter and CC procedure among NGOs and citizens	Promote knowledge on the Charter and CC procedure among NGOs and citizens	Promote knowledge on the Charter and CC procedure among NGOs and citizens	Promote knowledge on the Charter and CC procedure among NGOs and citizens

[29] Collective Complaints Procedure

V. Appendices

1. Conference Documents

a. Introductory note
b. Programme
c. List of participants
d. Final press release

2. Conference Speeches and Statements

a. Giuliano Poletti, Minister of Labour and Social Policies of Italy
b. Thorbjørn Jagland, Secretary General of the Council of Europe
c. Piero Fassino, Mayor of Turin
d. Salim Muslumov, Minister of Labour and Social Protection of the Population of Azerbaijan, on behalf of the Chairmanship of the Committee of Ministers of the Council of Europe
e. László Andor, European Commissioner responsible for Employment, Social affairs and Inclusion
f. Antonio Tajani, First Vice-President of the European Parliament
g. Algimanta Pabedinskiene, Minister of Social Security and Labour, Lithuania
h. Faruk Çelik, Minister of Labour and Social Security, Turkey
i. Sergey F. Vel'myaikin, First Deputy Minister of Labour and Social Protection, Russian Federation
j. Radoslaw Mleczko, Undersecretary of State, Ministry of Labour and Social Policies, Poland
k. Anne Brasseur, President of the Parliamentary Assembly of the Council of Europe
l. Michaela Marskova, Minister of Labour and Social Affairs, Czech Republic
m. Nicolas Schmit, Minister of Labour, Employment and Social Economy, Luxembourg
n. Michael Farrugia, Minister for the Family and Social Solidarity, Malta
o. Petya Evtimova, Deputy Minister of Labour and Social Policy, Bulgaria
p. Tatjana Dalić, Assistant Minister, Ministry of Labour and Pension System, Croatia
q. Nenad Ivanišević, State Secretary, Ministry of Labour, Employment, Veterans and Social Affairs, Serbia
r. Dejan Levanic, State Secretary, Ministry of Labour, Family, Social Affairs and Equal opportunities, Slovenia
s. Laura Boldrini, Speaker of Chamber of Deputies, Italian Parliament
t. Michele Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe, General Rapporteur of the Conference
u. Giuliano Poletti, Minister of Labour and Social Policies of Italy
v. Gabriella Battaini Dragoni, Deputy Secretary General of the Council of Europe
w. Piero Fassino, Mayor of Turin

3. Documents adopted/issued by various bodies for/on the occasion of the Conference

a. Statement by the Sub-Committee on the European Social Charter of the Parliamentary Assembly of the Council of Europe (17 October 2014).
b. Declaration by the Council of Europe's Conference of INGOs (17 October 2014).
c. Document of the European Committee of Social Rights (16 October 2014).

d. Contribution of the Academic Network on the European Social Charter and Social Rights (ANESC) (16 October 2014).
e. Positions and Proposals of ANESC (16 October 2014).
f. The Council of Europe Commissioner's human rights Comment: Preserving Europe's social model (13 October 2014).
g. Working document of the European Committee of Social Rights on the "Relationship between European Union law and the European Social Charter" – (Without appendices) (15 July 2014).
h. Statement of the Secretary General of the Council of Europe on austerity (28 January 2014).

4. Recent documents issued by Council of Europe and European Union bodies referring to the European Social Charter and/or to social rights

a. European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012).
b. Recommendation 2027 (2013) of the Parliamentary Assembly of the Council of Europe on European Union and Council of Europe human rights agendas: synergies not duplication.
c. Joint Declaration by the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Conference of INGOs of the Council of Europe, of 17 October 2012, "Acting together to eradicate extreme poverty in Europe".
d. Declaration of the Committee of Ministers of the Council of Europe on the 50th Anniversary of the European Social Charter (2011).
e. Resolution 1792 (2011) of the Parliamentary Assembly of the Council of Europe on the monitoring of commitments concerning social rights.
f. Recommendation 1958 (2011) of the Parliamentary Assembly of the Council of Europe on the Monitoring of commitments concerning social rights.

D. Working Document of the ECSR on "The relationship between European Union law and the European Social Charter" of 15 July 2014 (*without appendices*)

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

15 July 2014

The relationship between European Union law and the European Social Charter

Working Document

Introduction

1. This document is a follow-up to the meeting between representatives of the European Committee of Social Rights ("the Committee") and of the European Commission's Directorate General for Justice at the latter's headquarters in Brussels on 14 March 2013 on the subject of the relationship between European Union (EU) law and the European Social Charter ("the Charter"), particularly in the context of the implementation of the EU Charter of Fundamental Rights.[1]

2. The need for clarification about the relations between the two European standard setting systems on social rights, namely, on the one hand, EU law, including primary law, secondary law and, as a source of supplementary law, the case-law of the EU Court of Justice and, on the other, the Charter, was referred to for the first time at the aforementioned meeting. At the meeting emphasis was placed on the divergences between the two systems, which were noted by the Committee in the process of monitoring the application of the Charter on the basis of collective complaints in the period 2010-2013.[2]

3. The Committee noted that these divergences, relating to the national law of some States Parties to the Charter that are also members of the EU and which falls within the scope of the Charter, constituted a violation of these states' obligations under the Charter. At the same time, other divergences between the two systems, linked to the application of the Charter in national law, have been brought to light for a number of years now in the conclusions adopted by the Committee in the course of its supervision work based on national reports.

4. The aim of this document is to clarify the relations between the two European standard-setting systems for the protection of social rights (at the Council of Europe and the European Union), whether divergent or convergent, as highlighted by the case-law of the Committee. On this basis, the document is designed to contribute to improved co-

[1] Participants: European Committee of Social Rights: Mr Petros Stangos, Vice-President, Mr Régis Brillat, Executive Secretary, accompanied by Ambassador Torbjørn Frøysnes, Special Representative of the Secretary General of the Council of Europe, Head of the Council of Europe Liaison Office with the European Union, Brussels; DG Justice – Directorate C Fundamental Rights and Union Citizenship: Mr Paul Nemitz, Director, accompanied by Messrs Charalambos Fragkoulis, Dimitrios Dimitriou, Michael Morass and Vincent Depaigne.

[2] Confédération Générale du Travail (CGT) v. France, Complaint No. 55/2009, Decision on the merits of 23 June 2010; Confédération Française de l'Encadrement «CFE-CGC» v. France, Complaint No. 56/2009, Decision on the merits of 23 June 2010; Federation of Employed Pensioners of Greece (IKA – ETAM) v. Greece, Complaint No. 76/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Public Service Pensioners v. Greece, Complaint No. 77/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI.) v. Greece, Complaint No. 79/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012, Decision on the merits of 7 December 2012; Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and on the merits of 3 July 2013.

ordination of the two systems, both in the interests of states and citizens and in that of the two European organisations concerned. At any event, the conditions for renewed co-operation can only be established and implemented by means of high-level political decisions by the competent institutional bodies.

5. In this light, the first part of the document provides general information on the Charter and the tasks assigned to the Committee by virtue of the Charter and its additional protocols. In this context, Appendix I illustrates the various levels of commitment of EU member states with regard to the provisions of the Charter.
The second part, which is subdivided into various sections and sub-sections, describes the existing links between EU law and the Charter, with reference to the provisions of the Charter and relevant EU texts. The Charter provisions and the corresponding sources of EU primary law, secondary law (identified on the basis of the Committee's case-law) and the relevant case-law of the EU Court of Justice are presented respectively in Appendix II (columns 1, 2 and 3) and Appendix III of this document.
The third part of the document describes the links between the provisions of the Charter, secondary EU law and the case-law of the Court of Justice as reflected in the Committee's case-law. The bases for these links are illustrated in Appendix II (column 4); in this context, the comments are an indication of the convergence or divergence in the levels of protection provided by the two systems.

6. Bearing in mind the foregoing, the final part of the document contains considerations and proposals relating to the establishment of more coherent and harmonious relations between the two standard-setting systems with a view to the possible future accession of the EU to the Charter. These proposals will serve as a basis for discussion at the High-Level Conference on the European Social Charter, to be held by the Council of Europe in Turin (Italy) on 17 and 18 October 2014, in co-operation with the Italian Government and the Turin city authorities and in the context of the Italian Presidency of the European Union.

Part I

1. The European Social Charter and the European Committee of Social Rights: background information

7. The Charter is a Council of Europe treaty, which was adopted in 1961 and revised in 1996 and which safeguards social and economic rights, that is human rights affecting people's everyday lives. These rights are additional to the civil and political rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 ("the Convention"). Like the Convention rights, those recognised under the Charter have their origin in the Universal Declaration of Human Rights.

8. The 1961 Charter sets out to establish binding international legal guarantees in the same way as the Convention but without going so far as to set up a dedicated court. The Revised Charter updates and adds to the rights enshrined in the 1961 instrument. One of its sources of inspiration was EU law.

9. The Charter guarantees a wide range of fundamental rights, mainly relating to working conditions, freedom to organise, health, housing and social protection. Specific emphasis is laid on the protection of vulnerable persons such as elderly people, children, people with disabilities and migrants. The Charter requires that enjoyment of the rights it lays down should be guaranteed without discrimination.

10. In view of this diversity, the Charter is based on what is termed an *à la carte* ratification system, enabling states, under certain circumstances (see table below), to choose the provisions they are willing to accept as binding international legal obligations. This means that while signatory states are encouraged to make progress in accepting the Charter's provisions, they are also allowed to adapt the commitments they enter into at the time of ratification to the level of legal protection of social rights attained by their own system.

Under the so-called à la carte *arrangement, each Contracting Party undertakes:*

- *to consider Part I of the Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;*
- *to consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20 (in the corresponding provision of the 1961 Charter the Articles referred to were Articles 1, 5, 6, 12, 13, 16 and 19);*
- *to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs (in the corresponding provision of the 1961 Charter, the total number of articles or numbered paragraphs was supposed not to be less than 10 articles or 45 numbered paragraphs).*

11. According to the Charter, states' compliance with their commitments under the Charter is subject to the international supervision of the Committee. Its fifteen members, who are independent and impartial, are elected by the Committee of Ministers of the Council of Europe for a six-year term of office, which is renewable once. The Committee verifies compliance with the Charter under two separate procedures: the reporting procedure, whereby member states submit regular national reports, and the collective complaints procedure, based on the filing of complaints by employer and employee organisations and non-governmental organisations.

12. For more information on the Charter, it is possible to consult the Council of Europe website, at www.coe.int/socialcharter. In addition to information on the various treaties and the Committee's work, these pages contain all of the Committee's conclusions and decisions and country factsheets. They also include a database and a compendium of the Committee's case-law.

13. The interpretation made by the European Committee of Social Rights of the Charter illustrates the nature and the scope of this treaty: the Social Charter is a human rights treaty. Its purpose is to apply the Universal Declaration of Human Rights within Europe, as a supplement to the European Convention on Human Rights.

14. In this perspective, while respecting the diversity of national traditions of the Council of Europe's member states, which constitute common European social values and which should not be undermined by the Charter nor by its application; it is important to:

- consolidate adhesion to the shared values of solidarity, non-discrimination and participation;
- identify the principles that ensure that the rights embodied in the Charter are applied equally effectively in all the Council of Europe member states.

15. On the occasion of the examination of several complaints, the Committee explained the nature of the States' obligations in order to implement the Charter: the Committee recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact. In this respect it considers that the implementation of the Charter cannot be achieved solely by the adoption of legislation if its application of it is not accompanied by an effective and rigorous control. The implementation of the Charter requires thus the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter.

16. Certain rights guaranteed by the Charter require immediate implementation as from the entry into force of the Charter in the State concerned. Other rights may be implemented progressively by States parties. This is the case for rights the implementation of which is particularly complex and may involve significant budgetary costs. The Committee has, however stated with precision what methods of progressive implementation may be in conformity with the Charter: when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings. In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights specified in the Charter are likely to remain ineffective (…) In connection with timetabling (…), it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely.

17. Moreover, the Charter is interpreted in the light of the European Convention on Human Rights and the case-law of the European Court of Human Rights as well as in

the light of other international treaties which are relevant in the field of rights guaranteed by the Charter as well as in the light of the interpretation given to these treaties by their respective monitoring bodies, in particular the United Nations International Covenant on Economic Social and Cultural Rights, the United Nations Convention on the Rights of the Child, the International Convention on the Elimination of all forms of Racial Discrimination of 21 December 1965.

18. The Committee takes also into account the law of the European Union when interpreting the Charter.

Part II

Existing links between EU law and the Charter – *see the tables in Appendices I, II (columns 1, 2 and 3) and III*

1. General information

19. In general, the rights established by the Charter are guaranteed in a more or less explicit and detailed manner by EU law. As can be seen from the summary table in Appendix II (see, in particular, columns 2 and 3), the 98 paragraphs of the Revised Charter can be matched to binding provisions of primary or secondary EU law, albeit with some differences of both form and substance.

20. From this table, it can be seen in particular that, in addition to the relevant provisions of the Treaty on European Union (Article 6) and the Treaty on the Functioning of the European Union (particularly, in Article 18, the section concerning individuals' freedom of movement and, above all, that on social policy), most of the rights guaranteed by the Revised Charter are matched by corresponding safeguards in the EU Charter of Fundamental Rights (see column 2), but with significant exceptions relating to certain articles and paragraphs.

21. Without being exhaustive, the table in question also shows that, in the case of secondary legislation (directives and regulations), the EU lays down requirements in a significant number of fields of specific relevance to social rights (see column 3). In this context or the context of other initiatives taken in the field of intergovernmental co-operation, the EU has addressed, to varying extents and in varying detail, a large number of social rights-related issues. It has also looked into issues including work organisation and working conditions, occupational health and safety, co-ordination in social security matters, social dialogue, free movement of workers, social inclusion and the fight against poverty, non-discrimination and the needs of vulnerable people such as people with disabilities and elderly people.

2. Links between EU law and the Charter considered from the standpoint of the Charter

2.1 The diverse nature of commitments entered into by EU member states under the Charter treaties

22. At present the 28 EU member states are part of the "system" of the Charter treaties (the 1961 Charter, the Additional Protocol of 1988, the Additional Protocol of 1995 and the Revised Charter), albeit with differences regarding the commitments they have entered into: nine states are bound by the 1961 Charter (five of which are also bound by the Protocol of 1988) and nineteen by the Revised Charter. With the exception of two states, France and Portugal – which have accepted all the paragraphs of the Revised Charter - the others have ratified a greater or lesser number of provisions of either version of the Charter. Only fourteen EU member states have accepted the 1995 Protocol establishing a system of collective complaints. This results in a variety of situations and contracted obligations. The table in Appendix I provides detailed information on the undertakings made by each EU member state with regard to the provisions of the Charter.

23. There is a clear lack of uniformity in the acceptance of Charter provisions by the EU member states. This is the result of the choices made by each State Party when expressing its sovereign will on the basis of the Charter acceptance system described above (see Part I above). While not amounting to an anomaly in itself, this lack of uniformity sometimes reveals a lack of consistency. Where the protection of some fundamental social rights is concerned, some states have chosen not to enter any undertaking under the Charter; yet, pursuant to EU law, they have adopted legal instruments or measures providing equal or greater protection than that guaranteed in the Charter provision(s) they have not accepted. In other words, while applying the EU's binding standards in an area covered by the Charter, some states have not accepted the Charter provisions establishing legally equivalent guarantees.

24. Given this situation, it would be expedient to identify the Charter provisions which EU member states should accept because they belong to the EU. Greater consistency as regards EU member states' social rights commitments under the two standard-setting systems may contribute in future to the realisation of the European Parliament's proposal that the EU should accede to the Charter (on this point, see Chapter 3.3 below).

2.2 Community Directives: a source of inspiration for the Revised Charter

25. The Community Charter on the Fundamental Social Rights of Workers is a declaration adopted in 1989 by eleven Heads of State and Government of the European Economic Community and draws its inspiration from the 1961 Charter. On the basis of this declaration, the Community institutions have gradually adopted a series of directives relating to labour law.

26. As can be seen from the Explanatory Report to the Revised Charter ("the report"), some of its provisions draw on, or make express reference to, these directives. For example, this concerns:

- Article 2§6 on the right to just conditions of work – and especially to information about the employment contract – concerning which the report refers to Council Directive 91/533 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship;

- Article 7§2 on the right of children and young persons to protection, especially the ban on employment of those under the age of 18 in dangerous or unhealthy occupations, where the report states that this provision was inspired by Council Directive 94/33 on the protection of young people at work;

- Article 8§4 on the right of employed women to protection of maternity, especially the regulation of night work, with regard to which the report states that the basic idea behind this paragraph was taken, inter alia, from Community Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. Concerning this same article, the report stipulates that the definition of the women workers covered by this provision (pregnant women, women who have recently given birth and women who are nursing their infants) draws on the directive in question;

- Article 25 on workers' right to the protection of their claims in the event of the insolvency of their employer, where the report states that this provision was inspired, inter alia, by Community Directive 80/987 on the approximation of the laws of the member states relating to the protection of employees in the event of the insolvency of their employer, laying down the general principle of the right of workers to protection of their claims in such circumstances;

- Article 29 on the right to information and consultation in collective redundancy procedures, where the report states that when drafting the article account was taken of Community Directive 92/56 of 1992 amending Directive 75/129 on the approximation of the laws of the member states relating to collective redundancies.

3. Links between EU law and the Charter considered from the standpoint of EU law

3.1 Introduction

27. This section concerns primary and secondary EU law and other non-binding texts adopted by the EU (or the European Community or the European Economic Community) referring expressly to the Charter (see Appendix II – columns 2 and 3). In this context, a list of documents of the Court of Justice referring directly to the Charter is also presented (see Appendix III), and the references to the Charter or the Committee in these have been underlined to make it easier to identify them. Where certain primary law provisions are concerned, commentaries have been included, particularly guidelines and explanations drawn up by EU institutions or bodies with regard to the implementation of the Charter of Fundamental Rights. This section also includes EU

documents which do not refer explicitly to the Charter but implicitly take it into account as supplementary law, that is as an international human rights treaty.

3.2 The Charter in primary law sources (including explanations and guidelines on the implementation of the EU Charter of Fundamental Rights)

28. *The Single European Act (Luxembourg, 17 February, and the Hague, 28 February 1986)*

Preamble, §3

"…DETERMINED to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice,".

29. *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (2 October 1997)*

Article 1

"The Treaty on European Union shall be amended in accordance with the provisions of this Article.

1. After the third recital the following recital shall be inserted:

'… CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,'

22. Articles 117 to 120 shall be replaced by the following Articles:

Article 117

The Community and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion."

30. *Treaty on European Union*

Preamble, §5

'… CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,'

31. *Treaty on the Functioning of the European Union*

Article 151

"The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action."

32. *The EU Charter of Fundamental Rights and related acts*

The European Parliament, the Council and the Commission formally adopted the Charter of Fundamental Rights in Nice in December 2000. With the entry into force of the Treaty of Lisbon, in December 2009, this document was given the same binding legal force as the treaties. To this end, the Charter of Fundamental Rights was amended and proclaimed for the second time in December 2007. It includes an introductory preamble and 54 articles divided among 7 chapters. Chapter IV on "Solidarity" relates in particular to workers' right to information and consultation within the undertaking, the right to bargain collectively and to collective action, the right of access to placement services, protection against unjustified dismissal, fair and just working conditions, the prohibition of child labour and protection of young people at work, family life and professional life, social security and social assistance and health care.

The Charter of Fundamental Rights is applicable to the European institutions with due regard for the subsidiarity principle and under no circumstances can it broaden the powers or tasks conferred on them by the treaties. It is also applicable to EU member states when they implement EU legislation. The meaning and scope of any right corresponding to the rights guaranteed by the European Convention on Human Rights

must be the same as laid down therein. It should be noted that EU legislation can provide for more extensive protection. Any right resulting from the joint constitutional traditions of the EU member states must be interpreted in keeping with those traditions.[3]

Preamble, §5

"This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention".

Article 53 – *Level of protection*

"Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions."

33. It is on account of this obligation that the European Union Agency for Fundamental Rights ("the Agency") considers that the "fundamental rights community" established by EU law should be "seen in the wider context of a multilevel governance perspective with … the Council of Europe and the EU Member States all providing their respective shares in a joined up system of fundamental rights protection".[4]

34. On that basis, with more specific relevance to the Council of Europe, the Agency considers that:

- "To become more effective on the ground … the Council of Europe and the EU [should] increase their inter-operationality. When EU Member States apply EU law, they remain responsible for implementing human rights under Council of Europe treaties".

[3] NB – Protocol No. 30 to the treaties on application of the Charter of Fundamental Rights to Poland and the United Kingdom restricts the interpretation of the Charter by the Court of Justice and the national courts of these two countries, particularly regarding rights relating to solidarity (Chapter IV – see above).
[4] 2012 Annual Report of the European Union Agency for Fundamental Rights – section on "Observing fundamental rights obligations in Article 6 of the TEU".

- "Against this background, it is important to make positive use of the EU layer of governance to ensure that all branches of EU government – judiciary, legislature and administration – can contribute to the flowering of the Council of Europe standards …"[5]

35. The considerations on what it terms the European "fundamental rights landscape" lead the Agency to conclude that one of the key challenges is to "guarantee that all levels of the system are efficient and use a variety of mechanisms to protect and promote rights and inform each other (horizontal dimension)." With this aim in mind, it considers that another challenge is "how to foster interaction among all the different levels of the fundamental rights landscape (vertical dimension)" and that "fundamental rights can only be efficiently protected if the levels are well connected …".[6]

36. *Explanations relating to the Charter of Fundamental Rights*

In the introduction to the "Explanations",[7] it is stated that they "were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter".

On the subject of the "Explanations", Article 6 of the Treaty on European Union states as follows: "…The rights, freedoms and principles in the [EU Charter of Fundamental Rights] shall be interpreted in accordance with the general provisions in Title VII of the [aforementioned] Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions".

37. The Charter is mentioned in the following "Explanations":

- Explanation on Article 14- The right to education: Article 10 of the Charter ;
- Explanation on Article 15- Freedom to choose an occupation and right to engage in work: Article 1§2 of the Charter ;
- Explanation on Article 23- Equality between men and women: Article 20 of the Charter ;
- Explanation on Article 25- The rights of the elderly: Article 23 of the Charter ;
- Explanation on Article 26- Integration of persons with disabilities: Article 15 of the Charter ;
- Explanation on Article 27- Workers' right to information and consultation within the undertaking: Article 21 of the Charter ;

[5] 2011 Annual Report of the European Union Agency for Fundamental Rights – Focus section on Bringing rights to life: the fundamental rights landscape of the European Union".
[6] *Ibid.*
[7] See EU Official Journal of 14 December 2007 – 2007/C 303/02.

- Explanation on Article 28- Right of collective bargaining and action: Article 6 of the Charter ;
- Explanation on Article 29- Right of access to placement services: Article 1§3 of the Charter ;
- Explanation on Article 30- Protection in the event of unjustified dismissal: Article 24 of the Charter ;
- Explanation on Article 31- Fair and just working conditions: Article 3 of the Charter concerning §1 of Article 31 and Article 2 of the Charter concerning §2 of this provision ;
- Explanation on Article 32- Prohibition of child labour and protection of young people at work: Article 7 of the Charter ;
- Explanation on Article 33- Family and professional life: Article 8 of the Charter and Article 27 of the Charter ;
- Explanation on Article 34- Social security and social assistance: Article 12 of the Charter concerning §1 of Article 34, Articles 12§4 and 13§4 of the Charter concerning §2 of this provision and Article 13 of the Charter concerning §3 of this provision;
- Explanation on Article 35- Health care: Articles 11 and 13 of the Charter.

38. *Council conclusions on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union*[8]

"…Member States' administrations are the first level where compliance with obligations deriving from the Charter, as well as the constitutional traditions and international obligations common to all Member States, should be guaranteed …"

39. *Council conclusions on fundamental rights and the rule of law and on the Commission's 2012 Report on the Application of the Charter of Fundamental Rights of the European Union*[9]

"… [M]ake full use of existing mechanisms and cooperate with other relevant EU and international bodies, particularly with the Council of Europe, in view of its key role in relation to promotion and protection of human rights, democracy and the rule of law, in order to avoid overlaps".

40. *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments*[10]

"… [T]o understand the meaning and scope of the rights enshrined in the Charter [of Fundamental Rights] in a given policy context, it is also important to look more closely at international human rights conventions to which either the Union … or all Member

[8] Document of the Justice and Home Affairs Council, meeting in Brussels on 24 and 25 February 2011.
[9] Document of the Justice and Home Affairs Council, meeting in Luxembourg on 6 and 7 June 2013.
[10] Document SEC(2011) 567 final (6 May 2011).

States are contracting parties…". To that end, it considers that "Depending on your policy context, it may therefore be necessary to take such international human rights conventions into account when interpreting the rights set out in the Charter".

41. *Communication from the Commission on the Strategy for effective implementation of the Charter of Fundamental Rights by the European Union*[11]

"…[T]he [EU] Charter [of Fundamental Rights] is an innovative instrument because it brings together in one text all the fundamental rights protected in the Union, spelling them out in detail and making them visible and predictable. In a footnote the reference to "all the fundamental rights protected in the Union" is clarified in the following terms "The rights and principles enshrined in the Charter stem from the constitutional traditions and international conventions common to the Member States, the European Convention on Human Rights, the Social Charters adopted by the Community and the Council of Europe and the case law of the Court of Justice of the Union and the European Court of Human Rights."

3.3 The Charter in secondary law sources

42. *Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers*

"(44) This Directive should apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961 and, where relevant, the European Convention on the Legal Status of Migrant Workers of 24 November 1977".

43. *Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection - Text with EEA relevance*

Article 1

"Directive 2003/109/EC is amended as follows: …

(2) Article 3 is amended as follows: … in paragraph 3, point (c) is replaced by the following: (c) the European Convention on Establishment of 13 December 1955, the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987, the European Convention on the Legal Status of Migrant Workers of 24 November 1977, paragraph 11 of the Schedule to the Convention Relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967, and the European Agreement on Transfer of Responsibility for Refugees of 16 October 1980".

[11] COM(2010) 573 final.

44. *Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents*

"3. This Directive shall apply without prejudice to more favourable provisions of:

...

(c) the European Convention on Establishment of 13 December 1955, the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

45. *Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification*

Article 3

"4. This Directive is without prejudice to more favourable provisions of:
(a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;
(b) the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the legal status of migrant workers of 24 November 1977".

46. *Decision No 50/2002/EC of the European Parliament and of the Council of 7 December 2001 establishing a programme of Community action to encourage cooperation between Member States to combat social exclusion*

"Whereas: …

(2) Pursuant to Article 136 of the Treaty, the Community and the Member States, taking note of fundamental political principles, such as those set out in the European Social Charter signed at Turin on 18 October 1961, the revised Social Charter of the Council of Europe (1996), in particular in Article 30 thereof on the right to protection against poverty and social exclusion, and in the 1989 Community Charter of the Fundamental Social Rights of Workers, and bearing in mind also the rights and principles recognised by the Charter of Fundamental Rights of the European Union proclaimed jointly by the European Parliament, the Council and the Commission on 7 December 2000, shall have as an objective the combating of exclusion".

47. *Resolution of the Council and the representatives of the governments of the Member States, meeting within the Council of 23 July 1996 concerning the European Year against Racism (1997)*

"(1) Whereas, in the preamble to the Single European Act, the Member States stressed the need to 'work together to promote democracy on the basis of fundamental rights

recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice'".

48. *Resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council of 5 October 1995 on the fight against racism and xenophobia in the fields of employment and social affairs*

"Whereas, in the Single European Act, the Member States stressed the need 'to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice'".

49. *Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 29 May 1990 on the fight against racism and xenophobia*

"Whereas, in the Single European Act, the Member States stressed the need 'to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice'".

50. *Commission Recommendation of 18 July 1966 to the Member States on the promotion of vocational guidance*

"3. Co-operation between the member states in the field of vocational guidance is especially important given that it is generally felt, albeit to varying degrees, that the organisation and functioning of guidance services should be improved. Furthermore, as there are many similarities between the problems faced by the different countries as regards optimising and extending guidance activities, it will be of benefit to the six member states to compare their experience at national level to draw general conclusions. Convergent concerns have already been expressed in various international organisations and in their member states. The importance attached to these has been reflected at international level by contacts and the adoption of certain measures. In addition to Recommendation No. 87 of the International Labour Organisation, Geneva, of July 1949, reference should be made in particular to: the European Social Charter, Turin, October 1961; Recommendation No. 56 of the International Conference on Public Education, Geneva, July 1963; the Recommendation of the Council of the Organisation for Economic Co-operation and Development on Manpower as a Means for the Promotion of Economic Growth, Paris, May 1964; Recommendation No. 122 of the International Labour Organisation on employment policy, Geneva, 1964".

51. *Commission Recommendation of 7 July 1965 to the Member States on the housing of workers and their families moving within the Community*

"9. At international level, the issue of the housing of migrant workers has already been the subject of various instruments such as: (a) ILO Convention No. 97 (Geneva, 1 July 1949) on migration for employment;

…

(c) the European Social Charter (Council of Europe, Turin, 18 October 1961): in Article 19 on the right of migrant workers and their families to protection and assistance, the Contracting Parties undertake, *inter alia*, to secure for such workers: "…c. accommodation". The Commission has invited the member states to ratify this Charter, which came into force on 26 February 1965".

52. *Commission Recommendation to the Member States on the activities of the social services in respect of workers moving within the Community (23 July 1962)*

"… The Commission has also taken due account of the ILO conventions and recommendations on migrant workers, particularly Convention No. 97 and Recommendation No. 86, which are the main reference documents. Without prejudice to the provisions of these documents relating to the subject at issue, the Commission has drawn up the following recommendation. For this purpose, it also drew on the European Social Charter, particularly with regard to the recognition of the right for everyone to benefit from social welfare services and, for migrants and their families, from the right to protection and assistance".

3.4 The Charter in other EU instruments (non-legal documents)

53. *Strategic Framework on Human Rights and Democracy*[12]

In this document, the EU expressly calls on all member States "… to ratify and implement the key international human rights treaties, including core labour rights conventions, as well as regional human rights instruments." In the same document it commits itself to "working with partners, multilateral forums and international organisations in the field of human rights and democracy" and to "continue its engagement with the invaluable human rights work of the Council of Europe and the OSCE."

54. *EU Action Plan on Human Rights and Democracy*[13] So as to act on the commitments contained in the aforementioned Strategic Framework, this document sets the following objectives:

- "Intensify the promotion of ratification and effective implementation of key international human rights treaties, including regional human rights instruments".

[12] Council Document 11855/12 – Appendix II (25 June 2012).
[13] *Ibid.*, Annex III. Based on available information the objectives laid down in the plan are implemented by the European Commission, the EU External Action Service and/or the member States.

- "Ensure that EU policy documents contain appropriate references to relevant UN and Council of Europe human rights instruments, as well as the EU Charter of Fundamental Rights".
- "Continue to engage with the Council of Europe and the OSCE; intensify dialogue with other regional organisations and support and engage with emerging regional organisations and mechanisms for the promotion of universal human rights standards".

55. In the same Plan, it is also recommended to "insert human rights in Impact Assessment, as and when it is carried out for legislative and non-legislative proposals, implementing measures and trade agreements that have significant economic, social and environmental impacts, or define future policies".

56. *European Parliament resolution of 13 March 2014 on Employment and social aspects of the role and operations of the Troika (ECB, Commission and IMF) with regard to euro area programme countries*[14]

"The European Parliament,

… - having regard to the revised European Social Charter, in particular its Article 30 on the right to protection against poverty and social exclusion,

… D. whereas Article 151 TFEU provides that action taken by the EU and its Member States must be consistent with the fundamental social rights laid down in the 1961 European Social Charter, and in the 1989 Community Charter of the Fundamental Social Rights of Workers, in order to improve, inter alia, the social dialogue; whereas Article 152 TFEU states: 'The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy;

… 26. Recalls that the Council of Europe has already condemned the cuts in the Greek public pension system, considering them to be a violation of Article 12 of the 1961 European Social Charter and of Article 4 of the Protocol thereto, stating that 'the fact that the contested provisions of domestic law seek to fulfil the requirements of other legal obligations does not remove them from the ambit of the Charter'; notes that this doctrine of maintaining the pension system at a satisfactory level to allow pensioners a decent life is generally applicable in all four countries and should have been taken into consideration;

… 37. Invites the Commission to ask the ILO and the Council of Europe to draft reports on possible corrective measures and incentives needed to improve the social situation in these countries, their funding and the sustainability of public finances, and to ensure full compliance with the European Social Charter, with the Protocol thereto and with the ILO's Core Conventions and its Convention 94, since the obligations deriving from these

[14] European Parliament document (2014/2007(INI)).

instruments have been affected by the economic and financial crisis and by the budgetary adjustment measures and the structural reforms requested by the Troika;

… 40. Calls on the Troika and the Member States concerned to end the programmes as soon as possible and to put in place crisis management mechanisms enabling all EU institutions, including Parliament, to achieve the social goals and policies – also those relating to the individual and collective rights of those at greatest risk of social exclusion – set out in the Treaties, in European social partner agreements and in other international obligations (ILO Conventions, the European Social Charter and the European Convention of Human Rights); calls for increased transparency and political ownership in the design and implementation of the adjustment programmes; …".

In this context, it should be noted that the Committee was invited by the European Parliament to participate in the hearing on "Employment and social aspects of the Troika operations with regard to euro area programme countries" held in Brussels on 9 January 2014.

57. *European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012)*

"The European Parliament,

… – having regard to the European Social Charter, as revised in 1996, and the case law of the European Committee of Social Rights,

… R. whereas the preamble of the Treaty on European Union, Articles 8, 9, 10, 19 and 21 of the EU Charter of Fundamental Rights and the case law established by the EU Court of Justice acknowledge the importance of fundamental social rights through their embodiment in cross-cutting principles of Community law, thus making it clear that the EU must guarantee fundamental rights and freedoms, such as trade union rights, the right to strike, and the right of association, assembly, etc., as defined in the European Social Charter, and whereas Article 151 of the Treaty on the Functioning of the European Union contains an explicit reference to fundamental social rights such as those set out in the European Social Charter;

… 8. Believes that in order to make full use of the potential of the treaties, there is a need to:

(a) complete the process of acceding to the European Convention on Human Rights and immediately put in place the necessary instruments to fully accomplish this obligation, which is enshrined in the treaties, as it will provide an additional mechanism for enforcing the human rights of its citizens, inter alia with a view to ensuring the application by the Member States of the judgments given by the European Court of Human Rights, particularly 'pilot judgments; accede, as called for by the Council of Europe, to the European Social Charter, signed in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996; and for Member States to

accede to and ratify the human rights conventions of the Council of Europe, to implement the already existing instruments of the acquis communautaire and to reconsider the opt-outs, which might risk affecting the rights of their citizens;

… 78. Underlines the fact that social rights are fundamental rights, as recognised by international treaties, the ECHR, the EU Charter of Fundamental Rights and the European Social Charter; highlights that these rights must be protected both in law and in practice to ensure social justice, notably in periods of economic crisis and austerity measures; underlines the importance of the right to dignity, occupational freedom and the right to work, the right to non-discrimination, including on the basis of nationality, protection in the event of unjustified dismissal, the right to health and safety at work, social security and social assistance, the right to health care, freedom of movement and of residence, the right to protection against poverty and social exclusion, through the provision of effective access to employment, adequate housing, training, education, culture and social and medical assistance, and in relation to remuneration and social benefits, guaranteeing a decent standard of living for workers and the members of their families, as well as of other conditions of employment and working conditions, autonomy of social partners, and freedom to join national and international associations for the protection of workers' economic and social interests and to bargain collectively;

… 81. Recommends that all Member States lift their remaining reservations on the European Social Charter as soon as possible; considers that Parliament should stimulate a permanent dialogue on progress made in this respect; believes that the reference to the ESC in Article 151 TFEU should be used more effectively, for example by including a social rights test in the impact assessments of the Commission and Parliament;

… 88. Calls on the Commission and the Member States to recognise that the right of workers to safe and healthy working conditions, as set out in Article 3 of the European Social Charter, is essential for workers to have the opportunity to live a decent life and to ensure that their fundamental rights are respected; …".

58. *European Parliament resolution of 19 May 2010 on the institutional aspects of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms*[15]

"The European Parliament,

… 30. Notes that accession by the Union to the ECHR signifies the recognition by the EU of the entire system of protection of human rights, as developed and codified in numerous documents and bodies of the Council of Europe; in this sense, accession by the Union to the ECHR constitutes an essential first step which should subsequently be complemented by accession by the Union to, inter alia, the European Social Charter, signed in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996, which

[15] European Parliament document (2009/2241(INI)).

would be consistent with the progress already enshrined in the Charter of Fundamental Rights and in the social legislation of the Union;

… 31. Calls, further, for the Union to accede to Council of Europe bodies such as the Committee on the Prevention of Torture (CPT), the European Commission against Racism and Intolerance (ECRI) and the European Commission on the Efficiency of Justice (CEPEJ); stresses also the need for the Union to be involved in the work of the Commissioner for Human Rights, the European Committee of Social Rights (ECSR), the Governmental Social Committee and the European Committee on Migration, and asks to be duly informed of the conclusions and decisions of these bodies; …".

59. *Community Charter of the Fundamental Social Rights of Workers*

"… Whereas inspiration should be drawn from the Conventions of the International Labour Organization and from the European Social Charter of the Council of Europe; …"

60. Appendix III presents a series of decisions of the Court of Justice of the European Union making express reference to the Charter. In this connection, specific mention can be made of the recent judgments of the Court of Justice, both that handed down in 2014 in case C-176/12 – containing an interpretation of Article 52 of the EU Charter of Fundamental Rights – and that pronounced in 2013 in case C-617/10, which gives an interpretation of Articles 50 and 51 of the EU Charter.

3.5 A first step in the direction of an integrated EU-Council of Europe approach to social rights.

61. Before concluding this section of the document, it seems important to mention the Memorandum of Understanding concluded between the EU and the Council of Europe in 2007 with a view to co-ordinating their work in areas including fundamental rights. This document states in particular that "the European Union regards the Council of Europe as the Europe-wide reference source for human rights" and will cite the relevant Council of Europe norms "as a reference" in its own documents. In this context, the EU institutions will have to take account of the decisions and conclusions resulting from the Council of Europe monitoring mechanisms when they are relevant.

62. The Memorandum also states that "while preparing new initiatives in this field, the Council of Europe and the European Union institutions will draw on their respective expertise as appropriate through consultations" and that "in the field of human rights and fundamental freedoms, coherence of Community and European Union law with the relevant conventions of the Council of Europe will be ensured. This does not prevent Community and European Union law from providing more extensive protection". In this context, the Council of Europe and the EU also agreed to base their co-operation "on the principles of indivisibility and universality of human rights, respect for the standards set out in this field by the fundamental texts of the United Nations and the Council of Europe, in particular the Convention for the Protection of Human Rights and

Fundamental Freedoms, and the preservation of the cohesion of the human rights protection system in Europe".

Part III

Links between EU law and the Charter, as resulting from the Committee's case law – see table in Appendix II, column 4

63. The Committee takes account of EU law when it interprets the Charter. Furthermore, as highlighted in Part II (Section 2.2), the Revised Charter contains amendments to the original instrument of 1961 which allow for developments in Community law since that date and influence the manner in which the parties implement the Charter.

64. Examples are:

- the changes in women's rights so as to ensure full equality between women and men (with the sole exception of maternity protection measures), which draw directly on EU law;

- the minimum age for employment in certain occupations regarded as dangerous or unhealthy, which was not specified in the 1961 Charter, but was set at 18 years of age in the Revised Charter. This provision stems from Council Directive 94/33 of 22 June 1994 on the protection of young people at work (Article 7§2 of the Charter);

- Article 29 providing that the states must impose on employers an obligation of information and consultation of employee representatives in collective redundancy procedures, which is inspired inter alia by Directive 92/56/EEC of 24 June 1992 amending Directive 75/129/EEC on the approximation of the laws of the member States relating to collective redundancies.

65. The Committee has clarified the links between the rights enshrined in the Charter and those recognised in EU law. European Union law can play a positive role in the Charter's implementation; nonetheless, there is no presumption of conformity with the Charter when a state is in compliance with the directives, even if their subject matter comes within the scope of the Charter.

66. The fact that provisions of national law draw on an EU directive does not exempt them from conforming to the requirements of the Charter. It is true that the Committee is not competent for assessing the conformity of national situations with a European Union directive, nor the conformity of such a directive with the Charter. However, when the EU member states agree on binding measures that they apply to themselves by means of a directive, affecting the way in which they implement Charter rights, they should take account of the commitments they made when they ratified the European Social Charter both in drawing up that directive and in transposing it into their national law. It is ultimately for the Committee to assess compliance of a national situation with the

Charter, including in the event of transposition of a European Union directive into national law.

67. The Committee considers that neither the situation of social rights in the EU's legal order nor the procedures for establishing secondary legislation in these matters would justify a similar presumption, even rebuttable, as to the conformity of legal texts of the EU with the European Social Charter.

68. Whenever it has to assess situations where the states take into account or are bound by EU legal instruments, the Committee examines on a case-by-case basis whether the States Parties implement the rights guaranteed by the Charter in their national law.

69. Concerning health and safety at work, national law on prevention of and protection from risks must be in conformity with the international reference standards. A state is considered to fulfil this general obligation if it has transposed most of the Community *acquis* in the relevant field.

70. For example, concerning asbestos the international reference standards are Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work, as amended by Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003, and the ILO Convention on asbestos, No. 162 of 1986.

71. Concerning ionising radiation, national law must take account of the recommendations made by the International Commission on Radiological Protection (ICRP, the 1990 Recommendations, Publication 60), particularly as regards dose limits for occupational exposure and for persons who, without being assigned directly to jobs involving radiation exposure, may be exposed from time to time. The transposition of Council Directive 96/29/Euratom of 13 May 1996, laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation, is sufficient as this directive incorporates the norms of ICRP Publication 103.

72. Regarding working time, the Committee examined Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. Although the recitals in the preamble to the directive make absolutely no reference to the European Social Charter, despite the fact that it has been ratified by all EU member states and the Treaty on European Union explicitly refers to it on several occasions, the Committee considered that the concerns underlying this directive undoubtedly demonstrated the authors' intention to comply with the rights enshrined in the Charter. It took the view that the practical arrangements agreed between the EU member states, if properly applied, would permit the concrete and effective exercise of the rights contained, in particular, in Articles 2§1 and 4§2 of the Revised Charter.

73. The Committee nonetheless noted that the directive provided for many exceptions and exemptions which might adversely affect respect for the Charter by states in practice. It accordingly considered that, depending on how EU member states translated those exceptions and exemptions into national law or combined them, the situation could be compatible or incompatible with the Charter.

74. Regarding the right to health, the Committee stated that it had taken account of a number of judgments of the European Court of Justice in its interpretation of the right to a healthy environment.

75. Concerning the right to family reunification, the Committee concluded that Directive 2003/86/EC on the right to family reunification contains provisions allowing the member states concerned to adopt and apply rules that infringe Article 19§6 of the Charter.

76. These concerned in particular:

- the length of residence requirement for migrant workers wishing to be joined by members of their family. In this connection, the Committee has always considered, taking account of the provisions of the European Convention on the Legal Status of Migrant Workers (ETS No. 93), that a length of more than one year is excessive and, consequently, in breach of the Charter.

- the exclusion of social assistance from the calculation of the income of a migrant worker who has applied for family reunification (in connection with the criteria relating to available means). The Committee noted that the Court of Justice of the European Union (CJEU) had already limited the possibility provided by the above-mentioned directive to restrict family reunification on the ground of available income (see the CJEU judgment of 4 March 2010 in the case of Chakroun, C-578/08, paragraph 48). In this respect the Committee pointed out that migrant workers who have sufficient income to provide for the members of their families should not be automatically denied the right to family reunification because of the origin of such income, in so far as they are legally entitled to the benefits they may receive. In view of the above and of the relevant case law of the European Court of Human Rights (see the judgment of 19 February 1996 in Gül v. Switzerland, No. 23218/94), the Committee considered that the above-mentioned extension was such as to prevent family reunification rather than facilitate it. It accordingly constituted a restriction likely to empty the obligation laid down in Article 19§6 of its substance and was consequently not in conformity with the Charter.

- the requirement that members of the migrant worker's family sit language and/or integration tests to be allowed to enter the country or pass these tests once in the country, with leave to remain depending on their success. On this subject, the Committee considered that, in so far as this requirement, because of its particularly stringent nature, discouraged applications for family reunification, it constituted a condition likely to prevent family reunification rather than facilitate it. It accordingly

represented a restriction likely to empty the obligation laid down in Article 19§6 of its substance and was consequently not in conformity with the Charter.

77. For posted agency workers, the Committee considered that Swedish law, as amended following a decision by the CJEU (judgment of 18 December 2007, *Laval un Partneri Ltd. v. Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet* – Case No. C-341/0), did not promote the development of suitable machinery for voluntary negotiations between employers' organisations and trade unions, with a view to the regulation of terms and conditions of employment by means of collective agreements. In addition, the law imposed a disproportionate restriction on the free enjoyment of trade unions' right to engage in collective action, in so far as it prevented them from taking action to seek an improvement in the employment conditions of posted workers.

78. In addition, it did not secure for posted workers, for the period of their stay and work in the host state, a treatment not less favourable than that of the national workers of the host state in respect, inter alia, of remuneration and other employment and working conditions.

79. The table presented in Appendix II, column 4, focuses on the existing links between EU law and various Charter provisions, as reflected in the Committee's conclusions and decisions. As highlighted, in most cases these links are characterised by convergence between the two standard-setting systems. However, in a small yet significant number of cases, there is evidence of conflict.

Final summary

80. Several proposals have been made for establishing more effective links between EU law and the law of the Charter. The time seems to have come to consider their implementation. The Committee sets out below some proposals for discussion and action, which it hopes will help to launch a process of dialogue with the Commission with a view to increasing areas of convergence and reducing areas of divergence.

81. Firstly, possible accession by the EU to the Charter along the lines of what is taking shape for the European Convention on Human Rights would enable greater account to be taken of the Charter in the development and implementation of EU law. The reasons put forward regarding the European Convention on Human Rights apply mutatis mutandis to possible accession to the Charter. Proposed by the European Parliament, this solution has been the subject of at least one detailed study[16], but should be looked at closely to assess the practical effects depending on any arrangements adopted. However, there does not yet seem to be political consensus concerning the proposal and the solution can therefore only be considered for the medium term.

[16] Olivier De Schutter, L'adhésion de l'Union européenne à la Charte sociale européenne, EUI Working Paper LAW No. 2004/11, version révisée en juin 2014, Université catholique de Louvain.

82. In the meantime, other practical arrangements which could lead to greater convergence between the two legal orders do seem feasible.

83. For instance, the EU could encourage its member states to harmonise their commitments, in particular by all ratifying the revised Charter and all accepting all the provisions in the Charter which are most directly related in terms of substance to the provisions of EU law and the competences of the EU. For example, these include Articles 4§3 (equal pay for women and men) and 2§1 (reasonable working hours).

84. It would be useful for a definition of a kind of 'Community core' within the Charter to be drawn up so as to give EU member states clear indications in this respect.

85. A commitment of all EU member states concerning the collective complaints procedure would also help to ensure greater balance between EU members in terms of taking the Charter on board, as the current difference between those which have accepted the procedure and those which have not would disappear.

86. In addition, if the Charter was taken into account by EU lawmakers (Commission, Council and Parliament), this would ensure that any new EU legislation increased the convergence between the two legal orders.

87. Lastly, the links between the Committee and the Fundamental Rights Agency could be extended with a view to enabling the Committee to make still greater use than at present of the Agency's research in finding out more about and better understanding the actual situation of social rights in states.

Appendices

I Acceptance of the provisions of the Charter treaties by the EU member states

II Charter provisions and corresponding sources of primary and secondary EU law (identified on the basis of the Committee's case-law) and links between these provisions, secondary law and the case-law of the Court of Justice, as reflected in the case-law of the Committee.

III List of judgments of the EU Court of Justice making express reference to the Charter