



CDDH-SOC(2018)R3
07/09/2018

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

MEETING REPORT

3rd meeting
5–7 September 2018

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

1. The CDDH Drafting Group on Social Rights (CDDH-SOC) held its third meeting in Strasbourg from 5 to 7 September 2018. The list of participants is contained in Appendix I.
2. The Chair, Mr Vít A. SCHORM (Czech Republic) opened the meeting. He welcomed the fact that both the President of the European Committee of Social Rights (ECSR) and several members of the Department of the European Social Charter (ESC) including the Head and Deputy Head of Department were again participating in the meeting and contributing to the work of the CDDH-SOC.
3. The Group adopted the agenda (see Appendix II) and the order of business (CDDH-SOC(2018)OT2).

Item 2: Working methods and planning

4. The Chair recalled that in its last meeting, the Group had adopted its first report, the Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH-SOC(2018)R2 Addendum). He further informed the Group that the CDDH had adopted this report at its 89th meeting in June 2018 with some amendments (document CDDH(2018)R89add1).
5. In accordance with the planning of the Group's work as adopted at its 2nd meeting (document CDDH-SOC(2018)03Rev), the present 3rd meeting was aimed at discussing and agreeing on the structure and the essential content of the second report to be submitted by the Group to the CDDH. That report is to 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.
6. The Group adopted the updated planning of its work during the biennium 2018–2019 (see Appendix III).

Item 3: Discussion on the structure and essential contents of the second report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe

7. The Group held a first exchange of views on the **structure** of the future second report on the basis of a preliminary draft table of contents (document CDDH-SOC(2018)11). It adopted the draft table of contents of its future report as set out in Appendix IV.
8. The Group then discussed the **essential contents** of the second report on the basis of working document CDDH-SOC(2018)12 and also a compilation of selected background material contained in document CDDH-SOC(2018)13.
9. As for the **Introduction** of the future second report, it was agreed with regard to methodology that the sources on which the report was based should be recalled. These sources will comprise in particular the Analysis (document CDDH(2018)R89add1) and the replies to the questionnaire (document CDDH-SOC(2017)04); furthermore, challenges in the interpretation of social rights should be illustrated notably by concrete decisions of the ECSR in the collective complaints procedure as well as by the conclusions of non-conformity of the ECSR as reviewed by the Governmental Committee and the Committee of Ministers.

10. As regards the **Member States' commitment under the relevant instruments**, it was stressed that the States' readiness to ratify the (revised) Charter and the 1995 Additional Protocol could amongst others be affected by the complexity of the monitoring procedures under the treaty system of the (revised) Charter, the scope of interpretation of the (revised) Charter by the ECSR and the cooperation between the ECSR and the Governmental Committee. The section of the future report covering the Member States' commitment under the relevant instruments and the section covering the monitoring procedures were thus closely intertwined. The reasons why there have not been more ratifications of the relevant instruments, as set out in particular by the Member States in their replies to the questionnaire related to the good practices on the implementation of social rights at national level (see documents CDDH-SOC(2017)04, CDDH-SOC(2018)06 and CDDH-SOC(2018)07), and the extent to which the procedures under the treaty system of the Charter were effective in practice to ensure a better implementation of social rights should be analysed. In addition to existing activities carried out under the procedure of non-accepted provisions, the Department of the ESC could be encouraged to attempt to address the problem of non-ratified provisions in bilateral meetings with the States concerned. It was also stressed that sufficient funding was essential to pursue such activities and to the effective functioning of the Charter system as a whole.

11. As regards the personal scope of application of the (revised) Charter, it was stressed that two different questions arose in this respect. On the one hand, there have been calls to extend the personal scope of application of the (revised) Charter, which, under paragraph 1 of the Appendix to the Charter, covered foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned. A distinction could be drawn between foreigners lawfully resident or working regularly within the territory of the Contracting Party but who were not nationals of other Contracting Parties to the Charter, and other foreigners in a regular situation. A number of experts were not in favour of proposing any extensions of the personal scope of application of the (revised) Charter while others stressed that each State could make its own choice in this respect and consider extending the personal scope of application by way of a unilateral declaration to all lawful residents.

12. On the other hand, it was noted that the interpretation of the personal scope of application of the (revised) Charter by the ECSR so as to cover unlawfully present non-nationals in exceptional cases has met with objections by many Member States. These were reiterated in the meeting and identified as a potential obstacle to further commitments of the Member States under the treaty system of the Charter.

13. Regarding the **monitoring procedures under the treaty system of the European Social Charter**, the Group discussed proposals related to the State reporting procedure and the collective complaints procedure.

14. In respect of the States' reporting obligations, the Group took note in particular of the four proposals that had been made by the President of the ECSR to the Committee of Ministers on 21 March 2018¹ and reiterated at the meeting (see Appendix V). These

¹ See the following link to the [ECSR President's speech of 21/3/2018](#). First, when the ECSR in its annual conclusions found that the situation in a given State was in full conformity with a provision of the Charter, in the next cycle of supervision this State could be exempted to report on the same provision. Second, the new reporting procedure, established by the Committee of Ministers in 2014, concerning the cases where the ECSR adopted conclusions of non-conformity for lack of information could be abolished. Third, for those States Parties to the Charter that have accepted the collective complaints procedure, the reporting exercise should be further simplified and they should only submit every four years a synthetic and global report on the implementation of all the provisions of the Charter as a whole. Fourth, the obligation of such States 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. If the ECSR considered in the collective complaints procedure that the situation had not been brought in

amendments appeared to be possible without changes to the current treaty system of the Charter. There was broad agreement with the thrust of these proposals, in the sense that the Group should explore ways for further simplification of the reporting procedure, both for the States and the ECSR and the ESC Department.

15. In respect of the collective complaints procedure, the Group agreed with the suggestion by the President of the ECSR that the ECSR could look into its current practice concerning the admissibility of collective complaints. It was further suggested that the Governmental Committee could exercise closer scrutiny concerning the inclusion of INGOs on the list of organisations having the right to submit collective complaints.

16. As for the question of a possible reimbursement of costs and expenses incurred for lodging a collective complaint by the complainant organisation, a number of experts indicated that this was not foreseen in the 1995 Additional Protocol and therefore no reimbursement should be ordered. In contrast, according to some experts, the rule setting out the time lapse after which the ECSR's decision can only be published (see Article 8 § 2 of the 1995 Protocol) could be reconsidered, taking into account its purpose. Furthermore, the importance of a good communication of the ECSR and of meetings with all actors in the procedure was highlighted.

17. As regards the role of the Committee of Ministers, some experts considered that it might be encouraged to make more frequent use of its powers to make recommendations to Member States, which would enhance the impact and visibility notably of the collective complaints procedure.

18. Regarding the **awareness, visibility and respect of the Charter system**, it was agreed that conferences, technical assistance, training sessions for national institutions (including judges and prosecutors) which implement the decisions and conclusions of the ECSR, as reviewed by the Governmental Committee and the Committee of Ministers, as well as possible support by the Council of Europe Development Bank, but also awareness-raising measures by national authorities, academics and (I)NGOs, could be proposed in the second report. It was highlighted that there has been a steady decline of support for the work on social rights and social cohesion within the Council of Europe, thus weakening the role of the Council of Europe as the centre of the political debate on social rights. In this context, the lack of resources for the Charter system was again emphasised. Furthermore, it was considered that translations of ECSR decisions, of summaries thereof, as well as of the Digest of Decisions and Conclusions of the ECSR into the Member States' national languages, prepared at the national level, could be included in the HUDOC-ESC database similarly to the practice with regard to the Court's judgments. It could further be explored whether that Digest could interoperate with national judicial databases.

19. Moreover, the possibility to develop further courses on social rights in the context of the HELP programme should be examined. The CDDH should be consulted on the question whether training on social rights should be considered in the context of the current update of Recommendation Rec(2004)4 of the Committee of Ministers to Member States on the European Convention on Human Rights in university education and professional training.

20. On the topic of **effective national implementation of social rights**, it was stressed that this topic comprised both the implementation of ECSR conclusions and decisions as reviewed by the Governmental Committee and the Committee of Ministers and the application of the (revised) Charter by national courts. It should be examined to what extent the States had responded to findings of non-conformity with the Charter. It was further highlighted that the question of compliance with social rights should be included in national

conformity with the Charter, the case should be referred to the Committee of Ministers, which should close the procedure by adopting a final resolution or recommendation addressed to the State.

impact-assessments when drafting new legislation and in policy-making. It was also suggested that Member States should be encouraged to again have an adequate standard of public service, infrastructure and social services, which have been limited in many States as a result of the economic crisis. Regarding good practices, it was agreed that such practices would be shared in each of the chapters II–IV, but mainly in chapter IV. Moreover, it was stressed that States are invited to update any information concerning good practices in case they consider the information they provided in response to the questionnaire (doc. CDDH-SOC(2017)04) outdated.

21. As for the **relationship of Council of Europe instruments with other instruments for the protection of social rights**, it was agreed that the main focus should be on the synergy between the (revised) Charter and the European Union's, United Nations', and the International Labour Organisation's systems and instruments of protection of social rights. The importance of ensuring, in particular, synergy between the Charter mechanism and the EU European Pillar of Social Rights and the need to avoid conflicting obligations of Member States under different instruments was highlighted.

Item 4: Invitee

22. The Group heard a presentation by Professor Giuseppe PALMISANO (Italy), President of the ECSR. Professor Palmisano stressed, in particular, that it would be a major improvement if the 9 Member States, 8 of which were EU Member States, which were still bound only by the 1961 Charter, ratified the 1996 Revised Charter. Furthermore, the "à la carte" system of the Charter should be updated so as to oblige Member States to accept all nine core provisions of the Revised Charter. The personal scope of application of the (revised) Charter should be extended, by way of unilateral declarations of the State Parties, so as to cover non-nationals lawfully resident or working regularly within the territory of the Contracting Party concerned even when they were not nationals of other Contracting Parties.

23. Professor Palmisano further reiterated the four concrete proposals he had submitted to the Committee of Ministers in March 2018 aimed at simplifying the reporting obligations on the States.² He further proposed amendments to the collective complaints procedure and reflected on conditions of admissibility of complaints. He stressed the importance of encouraging Member States to accept the 1995 Additional Protocol providing for a system of collective complaints and of encouraging the Committee of Ministers to use its power under Article 9 of that Protocol to adopt recommendations. The efficiency of the Charter system in general, and envisaging further activities including awareness-raising activities in particular, warranted sufficient financial and human resources of the ECSR and the Department of the ESC (see for the full text of the presentation [Appendix V](#)). The presentation was followed by an exchange of views between Professor Palmisano and the Group.

24. The Group expressed its gratitude to Professor Palmisano for having again attended the Group's meeting and having enriched the Group's discussions. It further thanked the Department of the ESC for their participation and confirmed that it would be very grateful to continue receiving technical assistance in the preparation of the second report.

25. The Group also thanked the representative of the European Social Cohesion Platform (PECS), Mr Arman SARGSYAN, for his presence and the overview he had given over the work of the PECS and expressed its interest in being informed of the results of those works.

² See Item 3 above.

Item 5: Organisation of upcoming work

26. As regards the organisation of its work, the Group updated the provisional planning of its work in the biennium 2018–2019 (see [Appendix III](#)). According to that planning, the first draft of the second report shall be discussed at the next meeting of the CDDH-SOC (3–5 April 2019). Participants who wish to submit contributions to the work on the second report were asked to do so until 31 October 2018. In accordance with that planning, the Secretariat will circulate the first draft of the second report to the experts for written comments on 25 February 2019 and the deadline for written comments on the first draft of the second report is 18 March 2019.

Item 6: Adoption of the meeting report

27. At the end of its meeting, the Group adopted the present meeting report and thanked the Secretariat.

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APPENDIX I

List of participants

AUSTRIA / AUTRICHE

Dr. Eva FEHRINGER, Stv. Leiterin der Abt. Internationale und europäische Sozialpolitik und Arbeitsrecht, Deputy Head International and European Social Policy and Labour Law

BELGIUM / BELGIQUE

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

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

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

FINLAND / FINLANDE

Ms Katja KUUPPELOMÄKI, Legal Officer, Unit for Human Rights Courts and Conventions Legal Service, Ministry for Foreign Affairs

FRANCE

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

GREECE / GRECE

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

ITALY / ITALIE

Ms Elena FALCOMATA, Ministère de la famille

LATVIA / LETTONIE

Ms Agnese ZARĪTE, Jurisconsult of the Government Agent Office before International Human Rights Organisations, Ministry of Foreign Affairs

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

Mr Denis STICI, Consultant în Direcția Agent Guvernamental, Ministerul Justiției

NETHERLANDS / PAYS-BAS

Ms Selma DE GROOT, Ministry of Justice and Security, Legislation Department, Legal Advice

POLAND / POLOGNE

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

PORTUGAL

Mr Paulo MARRECAS FERREIRA, Juriste/Lawyer, Bureau de Documentation et de Droit Comparé de l'Office de Mme la Procureure Générale de la République / Office of Documentation and Comparative Law of the Attorney General's Office

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Sergey CHUMAREV, Head of European Division, Department for Humanitarian, Cooperation and Human Rights, Ministry of Foreign Affairs

Ms Olga OPANASENKO, Counsellor, Ministry of Foreign Affairs

SLOVENIA / SLOVENIE (*Apologised*)

SPAIN / ESPAGNE

Ms Sara IZQUIERDO PÉREZ, Senior State Attorney within the Office of the General State Attorney

TURKEY / TURQUIE

Ms Günseli GÜVEN, Adjointe au Représentant Permanent, Représentation permanente de la Turquie auprès du Conseil de l'Europe

INVITEES/INVITES

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

Mr Jan MALINOWSKI, Head of the Department of the European Social Charter

Mr Henrik KRISTENSEN, Deputy Head of the Department of the European Social Charter

Ms Margarita GALSTYAN, Project Manager, Department of the European Social Charter

Mr Pio CAROTENUTO, Programme Officer, Reporting procedure Division

OBSERVERS/OBSERVATEURS

HOLY SEE / SAINT-SIEGE

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

European Union Agency for Fundamental Rights (FRA) (Apologised)

Conference of INGOs of the Council of Europe / Conférence des OING du Conseil de l'Europe

Mr Jean-Bernard MARIE

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

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

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

European Network of Human Rights Institutions (ENNHRI) / Réseau européen des institutions nationales des droits de l'Homme (Apologised)

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

Ms Mélanie SCHMITT, Université de Strasbourg

European Social Cohesion Platform / Plateforme européenne de cohésion sociale (PECS)

Mr Arman SARGSYAN, Director of National Institute of Labour and Social Research

SECRETARIAT

**DG I – Human Rights and Rule of Law / Droits de l'Homme et Etat de droit
Council of Europe / Conseil de l'Europe**

Mr Christophe POIREL, Director / Directeur, Human Rights Directorate / Direction des droits de l'Homme

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

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

Ms Elisa SAARI, Assistant Lawyer / Juriste Assistant, Human Rights Intergovernmental Co-operation Division / Division de la coopération intergouvernementale en matière de droits de l'homme

Ms Corinne GAVRILOVIC, Assistant/Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Ms Juliette DESCAMPEAUX, Trainee/Stagiaire

INTERPRETERS / INTERPRÈTES

Ms Lucie DE BURLET
Ms Sylvie BOUX
Ms Chloé CHENETIER

APPENDIX II

Agenda

	ITEM 1: OPENING OF THE MEETING, ADOPTION OF THE AGENDA AND OF THE ORDER OF BUSINESS
CDDH-SOC(2018)OJ2	Draft agenda
CDDH-SOC(2018)OT2	Draft order of business
	Reference documents concerning all items on the agenda
CDDH-SOC(2018)01	Extract of the terms of reference given by the Committee of Ministers to the CDDH regarding the work of the CDDH-SOC during the 2018–2019 biennium
CDDH(2018)R89	Report of the 89 th CDDH meeting (19–22 June 2018)
CDDH-SOC(2018)R2	Report of the 2 nd CDDH-SOC meeting (2–4 May 2018)
CDDH-SOC(2017)R1	Report of the 1 st CDDH-SOC meeting (19–21 April 2017)
	ITEM 2: WORKING METHODS AND PLANNING
CDDH-SOC(2018)03Rev	Provisional planning of the work of the CDDH-SOC in the biennium 2018–2019
CM/Res(2011)24	Committee of Ministers' Resolution on intergovernmental committees and subordinate bodies, their terms of reference and working methods
	ITEM 3: DISCUSSION ON THE STRUCTURE AND ESSENTIAL CONTENTS OF THE SECOND REPORT IDENTIFYING GOOD PRACTICES AND MAKING PROPOSALS WITH A VIEW TO IMPROVING THE IMPLEMENTATION OF SOCIAL RIGHTS IN EUROPE
	Working documents
CDDH-SOC(2018)11	Preliminary draft table of contents of the “second report” identifying good practices and making proposals with a view to improving the implementation of social rights in Europe
CDDH-SOC(2018)12	Working document for the “second report” identifying good practices and making proposals with a view to improving the implementation of social rights in Europe
	Reference documents
CDDH-SOC(2018)13	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

CDDH(2018)R89add1	CDDH analysis of the legal framework of the Council of Europe for the protection of social rights in Europe, as adopted by the CDDH at its 89 th meeting (19–22 June 2018)
CDDH-SOC(2018)02	Questionnaire related to the good practices on the implementation of social rights at national level
CDDH-SOC(2017)04	Replies to the questionnaire related to the good practices on the implementation of social rights at national level
CDDH-SOC(2018)07Rev	Summary of the replies to the questionnaire
CDDH-SOC(2018)06	Short analysis of the replies to the questionnaire
CDDH-SOC(2018)08	Draft overview over the possible contents of the second report
CDDH-SOC(2017)001	(Initial) Draft report of the CDDH on the legal framework of the Council of Europe for the protection of social rights <i>(prepared by Ms C. Gallant for the 1st CDDH-SOC meeting)</i>
	Legal Instruments
Link Link Link Link Link	European Social Charter of 1961 Revised European Social Charter of 1996 Additional Protocol to the European Social Charter of 1988 Protocol amending the European Social Charter of 1991 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints of 1995
	ITEM 4: INVITEES
	ITEM 5: ORGANISATION OF UPCOMING WORK
(see item 2 above)	Provisional planning of the work of the CDDH-SOC in the biennium 2018–2019
	ITEM 6: ADOPTION OF THE MEETING REPORT

APPENDIX III

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

2nd meeting: 2–4 May 2018

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

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

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

3rd meeting: 5–7 September 2018

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

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

The Secretariat circulates the first draft of the second report to the experts for written comments: 25 February 2019.

Deadline for written comments on the first draft of the second report: 18 March 2019.

4th meeting: 3–5 April 2019

- Discussion of the first draft of the second report

The CDDH is expected to take note of the on-going work of, and give possible orientation to the CDDH-SOC at its 91th meeting (18–21 June 2019).

5th meeting: 25–27 September 2019

- Discussion and adoption of the draft second report

Transmission of the draft second report to the CDDH-BU and the CDDH for adoption at its 92th meeting (26–29 November 2019).

APPENDIX IV

Draft table of contents

of the “second report” to be submitted to the CDDH identifying good practices and making proposals with a view to improving the implementation of social rights

EXECUTIVE SUMMARY

INTRODUCTION

1. Terms of reference and methodology
2. Review of the background
3. Main results of the Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe
4. Main challenges examined in the Report

I. THE MEMBER STATES’ COMMITMENT UNDER THE RELEVANT INSTRUMENTS³

1. Current challenges⁴
2. CDDH proposals

II. THE MONITORING PROCEDURES UNDER THE TREATY SYSTEM OF THE EUROPEAN SOCIAL CHARTER

1. Common features to the monitoring procedures
 - (a) Current challenges
 - (b) CDDH proposals
2. State reporting procedure
 - (a) Current challenges
 - (b) CDDH proposals
3. Collective complaints procedure
 - (a) Current challenges
 - (b) CDDH proposals

³ The report shall address under this heading, in particular, the question of the ratification of the (revised) Charter and of the 1995 Additional Protocol and the acceptance of additional provisions of the (revised) Charter.

⁴ For each challenge, the document could present (a) the background; (b) the reasons given by the relevant stakeholders (Council of Europe Member States / representatives of the monitoring bodies / Secretariat); (c) the analysis thereof.

III. EFFECTIVE NATIONAL IMPLEMENTATION OF SOCIAL RIGHTS

1. Current challenges
2. CDDH proposals

IV. THE AWARENESS, VISIBILITY AND RESPECT OF THE CHARTER SYSTEM

1. Current challenges
2. CDDH proposals

V. RELATIONSHIP OF COUNCIL OF EUROPE INSTRUMENTS WITH OTHER INSTRUMENTS FOR THE PROTECTION OF SOCIAL RIGHTS

1. Current challenges
2. CDDH proposals

CONCLUSIVE REMARKS

APPENDIX V**Presentation by Professor Giuseppe PALMISANO,
President of the European Committee of Social Rights**

(English only)

First of all, I would like to thank you for inviting me once again to participate in your meeting and give a humble contribution to your work on the protection of social rights in Europe.

Let me express my sincere appreciation of your First Report, I mean the Analysis of the legal framework of the Council of Europe for the protection of social rights: it is not only an exhaustive and objective picture of the situation as it is today, but it also allows to identify both the potential and the limits or shortcomings of the existing legal framework of European instruments on social rights, including – of course – the system of the European Social Charter. In a sense, my impression is that your First Report already includes, or at least implies, many suggestions and possible courses of action in the direction of improving the implementation of social rights throughout Europe and fostering the synergies between the Council of Europe instruments and other, European or non-European, instruments for the protection of social rights, which is – if I understand correctly – the specific subject of your Second Report.

Considering this, and the fact that much has already been said in the First Report, I apologise in advance if I will bother you, in the next few minutes, by repeating or referring also to some ideas and proposals that I already had the opportunity to outline in the May meeting, as well as in my intervention before the Committee of Ministers, last March.

Of course, basing myself on my experience in the last eight years as a member of the European Committee of Social Rights, my reflections will focus specifically on the Social Charter system, on possible ways to improve the implementation by States of the rights and obligations enshrined in the Charter, the functioning of the Charter monitoring mechanisms, as well as the consideration of the Charter by other European institutions, like for example the EU institutions.

Starting by the Council of Europe member States' commitment to recognise and apply the rights laid down in the Charter, the first – major – improvement would consist, in my view, in the ratification of the Revised Social Charter by the 9 States that are still bound by the 1961 Charter. All these 9 States, and 8 of them are EU member States, have indeed signed, but not yet ratified, the Revised Charter. As we all know, it is precisely the Revised Charter that represents today the most complete and up-to-date expression of the European perception of social rights, including – for example – the right to housing, the right to protection against poverty and social exclusion, the right of workers with family responsibilities to equal opportunities and equal treatment, the right of workers to protection against sexual and moral harassment. All these rights are not enshrined in the 1961 Charter. But, at the same time, most of these rights are indeed recognised and applied within the domestic legal order and practice of the 9 States in question, as well as in the EU Treaties and legislation. Therefore, I am really convinced that the time has come for the States concerned to speed up the ratification process of the Revised Social Charter.

Any initiatives aimed at achieving this goal would be really welcome. I am thinking, for example, of specific recommendations by the Committee of Ministers or the Parliamentary Assembly of the Council of Europe, but also of initiatives to be taken by the EU Commission or the European Parliament, within the framework of the new European Pillar of Social Rights, which seems indeed to devote some attention to the Social Charter system.

With a view to a more complete and uniform implementation by European States of the obligations to protect and promote social rights, another improvement and step forward relates to the so-called “à la Carte” system, which characterises the European Social Charter. Such system enables States – as you know – to choose, with certain limitations and under certain conditions, the Charter provisions that States are willing to accept. Only two States – France and Portugal – have accepted all the provisions of the Charter, and a few other States have accepted almost all the provisions. But too many States have not accepted a high number of articles or paragraphs, including articles and paragraphs that are among the core provisions of the Charter, according to Art. A, para. 1.b, of the Charter. As I said in May, I think that an update of the “à la carte” system could and should be envisaged as soon as possible, namely an update aimed at making mandatory for the States Parties to accept all the 9 core provisions, and possibly also further, crucial, provisions, such as Art. 4 on the right to a fair remuneration, Art. 15 on the right of persons with disabilities to independence and social integration, or Art. 23 on the right of elderly persons to social protection.

My third suggestion about possible improvements in the Member States commitment to protect and implement social rights concerns the extension of the personal scope of application of the Charter. As my Committee pointed out in 2011, and as I tried to explain in the May meeting, the fact that the Appendix to the Charter excludes from the protection of the Charter nationals from States non-parties to the Charter, that means nationals from non-European countries, who are lawfully resident and work regularly within the territory of the State – and I stress “lawfully resident and working regularly” within the territory, and not irregular migrants – this very fact is not only an anomaly for a human rights instrument, but is also in itself a serious discrimination, and it is not in line with the spirit of the European Social Charter, which is one of social equality, solidarity and non-discrimination.

Therefore, I cannot but insist in suggesting as an important step forward in the implementation of the rights enshrined in the Charter, the extension by States Parties of the personal scope of application of the Charter, as to include any person who is legally resident or work regularly within the territory of State. As my Committee pointed out in 2011, such an extension could indeed be achieved without a formal amendment to the Appendix, but just by way of unilateral declarations made by willing States Parties, aimed at affirming their intention to extensively apply the provisions of the Charter. Furthermore, this would be fully in line with para. 2 of the Appendix, according to which the interpretation of the scope of the Charter set out in para. 1 – I quote – “would not prejudice the extension of similar facilities (*droits analogues*, in French) to other persons by any of the Parties”.

A different issue from the three I have just addressed, which were linked with the extent and uniformity throughout Europe of the material and personal scope of the rights protected by the Charter, relates to ways and methods to improve the standards of implementation of the Charter by the States Parties. In this respect, let me say that such standards – however they are considered to be, satisfying or not satisfying – depend on a variety of complex factors: the political will of Governments to address certain social issues as a priority; the level or lack of political consensus on certain social rights within the national civil society or public opinion; the economic or financial situation of the State and public budgetary restrictions; the structure and content of each domestic legal order, and to what extent it is open, permeable, to international law and international human rights obligations. Of course, good knowledge and clear awareness by State authorities and institutions of the rights and obligations laid down in the Charter is also important, and can help improving the standard of implementation of such rights, even if one should not expect them to have a major positive impact in that respect. Anyway, awareness-raising initiatives and training activities or exchanges of good practices, specifically addressed to national institutions and authorities (including the judiciary and governmental or independent bodies with monitoring competences on human rights) could usefully be envisaged and organised by the Council of Europe.

However, it is hardly necessary to point out that this would need to devote financial and human resources to such initiatives and activities. And considering the serious budgetary restrictions that the Council is currently facing, I have some doubts that this will be feasible in the near future. Actually, as I already said to the Committee of Ministers last March, what I am sure of is that if the trend of substantial cuts to the budget of the Charter and social rights system should continue in the years to come, it would be absolutely impossible not only to realise such further activities and initiatives, but even – for the Department of the Social Charter and the European Committee of Social Rights – to continue performing their ordinary, institutional tasks and produce the outcomes they are expected to produce according to the Charter.

In this respect, let me recall you that the ECSR is a small group of 15 experts, with exclusively monitoring competences; meeting no more than 30 days per year in total. It is not a permanent, nor a semi-permanent body, and it is assisted by a small, albeit excellent and very efficient, Secretariat which is already overcharged with the growing workload relating to the institutional, ordinary activities linked with the Social Charter system, the Code of Social Security, and the Social Cohesion Platform.

Therefore, unless the Council of Europe and member States are willing to substantially change this situation – that means, for example, changing the status of the Committee or increasing the number of its members, assigning to the Committee new tasks, further to those laid down in the Charter, and giving more financial and human resources to the Department of the Social Charter – the above mentioned and desired awareness-raising and training activities on social rights, will necessarily be carried out, if ever, in other ways, by other bodies and Departments. In this field, what the ECSR and the Department can realistically commit themselves to do, in the near future, is only to update the Digest of Decisions and Conclusions of the Committee, whose last version dates back to 2008. This is indeed a very complex and important work, in which we are engaged for some years now, and I am confident that it will be finalised quite soon.

I move now to another item which is of relevance for your Second Report, that is how to possibly improve the monitoring procedures under the current system of the Social Charter, with a view to making them more suited to timely identifying the most serious problems concerning the implementation of the Charter in each State and, by consequence, more useful in helping States to improve themselves in their respect for social rights.

As you know, the Charter monitoring system envisages two distinct kinds of procedure: the reporting procedure and the collective complaints mechanism. Both are important and useful, and each of them has its own *raison d'être*, its own merits and efficacy. However, as I already pointed out in May, and in my last intervention before the Committee of Ministers, we are faced here with a twofold problem.

On the one side, the reporting procedure requires each year a heavy workload on the part of State authorities and administration, that have to present detailed reports on policies and practices, national legislative and judicial activities in many different and wide areas, while at the same time entrusting the ECSR and the Secretariat with the hard task to assess the situation in each member State relating to such wide and different areas. As I already pointed out, this way of proceeding cannot always lead to a satisfactory outcome, and risks sometimes reducing the reporting procedure to a mere bureaucratic and routine exercise, with the Conclusions of the Committee being quite slow and ineffective, if – for example – changes in the domestic legislation and practice have intervened between each supervisory cycle.

On the other side, only 15 States, as you know, have up to now accepted the collective complaints mechanism, which is a quasi-jurisdictional procedure and is much more suited, first, to bringing out what are perceived to be, by civil society and the very beneficiaries of

social rights, the major and more crucial shortcomings in State implementation of the European Social Charter, and – second – to allow the Committee making a more precise and informed assessment of the situation, after a fair adversarial exchange between the parties concerned.

This means, *inter alia*, that the 15 States having accepted the collective complaints procedure are subject to a double monitoring of their implementation of the Charter obligations, under the reporting procedure and under the collective complaints mechanism. Furthermore, within the collective complaints procedure, such States are often called to account for facts or situations that have also to be assessed by the Committee under the reporting procedure. And, the same States now have also an additional reporting commitment, since they have to present reports on follow up to collective complaints decisions.

Against this backdrop, I see the need on the one hand to improve and simplify the reporting procedure and, on the other hand, to facilitate the participation of States in the collective complaints procedure, also by means of a substantial change and reduction of the reporting obligations for the States that accept such procedure.

As you probably know, I have already presented to the Committee of Ministers 4 proposals in that respect, on the occasion of my last intervention before the Committee, six months ago. Kindly, let me repeat now the relevant passages of that speech, concerning simplification of State reporting obligations. These passages are also referred to in the Working Document for your Second Report:

- First, when the European Committee of Social Rights in its annual conclusions finds that the situation in a given State is in full conformity with a provision of the Charter (as it was in the previous cycle), in the next cycle of supervision this State should, in my view, be exempted 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. And, 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 Committee of Social Rights adopt conclusions of non-conformity for lack of information should be, in my view, progressively dismissed. This means that the Committee should no longer adopt “non-conformity” conclusions on the sole ground that ‘it has not been established that’ the situation is in conformity with the Charter; and by consequence 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. For example, they could 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 have to do – specific, analytical, reports on each of the thematic group of provisions of the Charter.
- Fourth, the obligation of 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.

In addition, let me inform you that my Committee and the Secretariat, following my intervention before the Committee of Ministers, have already started to change the method for drafting the annual Conclusions under the Reporting procedure. We are no more elaborating long, analytical, texts examining and discussing all the data and information provided in each State report, but we are focusing only on the most problematic issues concerning the implementation by the State of the Charter provision under examination. This is leading 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 measures required to bring the national situation into conformity with the Charter.

To conclude my intervention, let me insist once again on the importance of taking concrete initiatives to achieve the goal of enlarging the acceptance by States of the collective complaints Protocol, as an effective means to improve the implementation of social rights in Europe. As I told you in May, further to all other merits and advantages of the procedure, it is precisely due to the contribution of the jurisprudence produced by the ECSR within the framework of collective complaints that in the last years we are indeed seeing an increasing application of the Charter by central and local authorities, as well as by national judges and courts – including Constitutional Courts – in many States, in areas such as labour relationships, workers' rights, pensions, and the right to housing.

Of course, some aspects and certain stages of the collective complaints procedure can and should be improved, in order to strengthen its quasi-judicial quality or to reinforce its impact on States. I can refer, for example, to the elaboration of a more clear set of conditions and requirements for the admissibility of the complaints; or to put into place a procedure within the Committee of Ministers in order for the Committee to make use, in practice, of its power to address a recommendation to the State Party concerned by a finding of violation of the Charter adopted by the ECSR (in accordance with Art. 9 of the Protocol on collective complaints).

But I am thinking also of envisaging the possibility for the State against which a complaint is lodged to appoint an ad hoc member in the ECSR, in case no national of that State is present in the Committee at a given moment.

Or, in a more imaginative way, one could also think of a major reform in the procedure, assigning for example a judicial role to the European Court of Human Rights (a special Chamber of the Court, made competent to decide on social rights complaints), and giving the ECSR a new function, similar to what was the function of the European Commission of Human Rights, under the old system of the Convention.

But apart from any possible, desirable or even imaginative improvements in the mechanism, I am really convinced that increasing the number of States that accept the collective complaints procedure would be a crucial step forward in the direction of strengthening the Charter system and the protection of social rights throughout Europe. In this respect, any initiatives to facilitate the achievement of such a goal would be very welcome. I refer, first of all, to initiatives taken by the major institutions of the Council of Europe, like a recommendation of the Committee of Ministers or the Parliamentary Assembly, or some diplomatic action carried out by the Secretary General within the framework of the so-called "Turin Process".

But I am thinking also about the EU institutions. Considering that 14 out of the 15 States Parties to the collective complaints procedure are EU member States, the EU Commission or the European Parliament, within the framework of their activities under the new European

Pillar of Social Rights, could perhaps recommend the other EU member States to follow the positive example of the first 14 States.

This would indeed be a concrete way to realise a synergy between the EU and the Council of Europe in the crucial field of social rights.