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(CDDH)

DRAFTING GROUP ON SOCIAL RIGHTS /
GROUPE DE REDACTION SUR LES DROITS SOCIAUX
(CDDH-SOC)

Compilation of the experts' comments on the Draft Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe /

Compilation des commentaires des experts sur le projet de rapport identifiant des bonnes pratiques et formulant des propositions visant à améliorer la mise en œuvre des droits sociaux en Europe

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Introduction

1. At its 89th meeting (19–22 June 2018), the CDDH adopted the Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (first report) elaborated by the CDDH-SOC. Following this Analysis, the CDDH-SOC 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 to the CDDH, in accordance with the latter’s terms of reference.
2. The participants in the meetings of the CDDH-SOC were invited to send their written comments, preferably in the form of concrete drafting proposals, on the first draft of this second report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe (document CDDH-SOC(2019)01) by 26 March 2019. The present compilation contains their comments.

* * *

Introduction

1. À la 89^{ième} réunion (19–22 juin 2018), le CDDH a adopté l'Analyse du cadre juridique du Conseil de l'Europe de la protection des droits sociaux en Europe (premier rapport) élaborée par le CDDH-SOC. Sur la base de cette Analyse, le CDDH-SOC devait « identifier les bonnes pratiques et formuler, le cas échéant, des propositions visant à améliorer la mise en œuvre des droits sociaux et à faciliter notamment l'articulation des instruments du Conseil de l'Europe avec d'autres instruments de protection des droits sociaux » dans un second rapport à l'attention du CDDH, conformément au mandat de ce dernier.
2. Les participants aux réunions du CDDH-SOC étaient invités à envoyer leurs commentaires écrits, de préférence sous forme de propositions de rédaction concrètes, sur le premier projet de ce second rapport identifiant des bonnes pratiques et formulant des propositions visant à améliorer la mise en œuvre des droits sociaux en Europe (document CDDH-SOC(2019)01) d'ici le 26 mars 2019. La présente compilation contient ces commentaires.

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MEMBER STATES / ÉTATS MEMBRES

BELGIUM / BELGIQUE

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

1. State reporting procedure

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b. CDDH proposals

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115. The second and third proposals concern the reports to be submitted by States that have accepted the collective complaints procedure. As described above, these States currently have to submit an ordinary thematic report every two years. The reporting exercise for these States in this respect could be further simplified in that they could only be obliged to submit a synthetic and global report on the implementation of all the provisions of the Charter as a whole every four years – unlike the other States which must submit specific, analytical reports on one out of four thematic groups of substantive undertakings under the (revised) Charter every year.¹

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117. Member States generally agreed with the idea that acceptance of the collective complaints procedure should entail a lighter reporting regime for the States concerned, for instance the lighter report every four years proposed.² It was stressed that this could also serve to facilitate the acceptance of the collective complaints procedure by further States.³

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Comment [VV(W-SE1): At this moment the thematic reporting for MS having accepted the collective complaints procedure is once every 8 years per thematic group. So it would double the frequency of reporting on all thematic groups. Moreover, it would lead to very heavy workload once every 4 years for MS having ratified many articles. When would the selected cases of non-conformity be discussed in the Gouvernamental Committee for those MS: all in once or together with the other cases of non-conformity on the same thematic group spread out over the years?

Comment [VV(W-SE2): See same remark §115

¹ See the ECSR President's introductory speech of 17/01/2019 at his exchange of views with the Rapporteur Group on Social and Health Questions (GR-SOC), document DD(2019)76, point 5 (see the link in document DD(2019)135); the ECSR President's speech of 21/3/2018 before the Committee of Ministers; and also the latter's intervention before the CDDH-SOC at its 3rd meeting (5–7 September 2018), see CDDH-SOC(2018)R3, Appendix V.

² See for the view expressed by the Member States in this respect, in particular, the summary of the GR-SOC's exchange of views with the President of the ECSR on 17 January 2019, document DD(2019)135).

³ See the ECSR President's introductory speech of 17/01/2019 at his exchange of views with the Rapporteur Group on Social and Health Questions (GR-SOC), document DD(2019)76, point 6 (see the link in document DD(2019)135).

FRANCE

I. L'ENGAGEMENT DES ÉTATS MEMBRES EN VERTU DES INSTRUMENTS PERTINENTS

...

2. Propositions du CDDH

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94. En ce qui concerne le champ d'application personnel de la Charte (révisée), l'observation qui est revenue le plus souvent a été que le fait d'aller jusqu'à en exclure des ressortissants de Parties non contractantes à la Charte résidant légalement et travaillant régulièrement sur le territoire d'un État (c'est-à-dire, des migrants en situation régulière) était anomal pour un instrument de défense des droits de l'homme – une anomalie que l'on ne retrouvait pas dans d'autres instruments juridiques internationaux et européens visant à protéger les droits de l'homme⁴ et qui était contraire à l'esprit d'égalité sociale, de solidarité et de non-discrimination de la Charte sociale (révisée).⁵ Il est ressorti des discussions entre les représentants des États membres dans différents organes et groupes du Conseil de l'Europe qu'un certain nombre d'États membres n'envisageaient, à ce stade, aucune extension du champ d'application de la Charte.⁶ Cependant, d'autres ont fait remarquer que chaque État devrait se déterminer sur la question de savoir s'il est prêt à élargir le champ d'application personnel de la Charte pour, à tout le moins, les ressortissants de Parties non contractantes à la Charte qui résident légalement et travaillent régulièrement sur le territoire de l'État concerné.⁷ Une telle extension ne nécessite pas de modification formelle de l'Annexe, et comme le confirme la deuxième phrase du paragraphe 1 de cette dernière, pourrait être obtenue par le biais d'une déclaration unilatérale des États concernés.⁸

Comment [LE3]: La France soutient cette proposition.

...

98. De plus, s'il faut certes souligner qu'il appartient au CEDS de décider de la recevabilité d'une réclamation (voir article 7 du Protocole additionnel de 1995), d'interpréter les dispositions de la Charte (révisée) et de décider si la Partie contractante concernée a respecté les dispositions de cette dernière (voir article 8 du Protocole additionnel de 1995), il est important également de renforcer la sécurité juridique des États en ce qui concerne la portée de leurs obligations au regard de la Charte, obligations qu'un certain nombre d'entre eux avaient interprétées de façon moins extensive, notamment sous l'angle du champ d'application personnel. La solution pourrait ici consister à intensifier l'échange d'arguments sur la recevabilité des réclamations et l'interprétation des dispositions de la Charte durant la procédure

⁴ En vertu de l'article 1 de la Convention, les Parties Contractantes reconnaissent à « toute personne relevant de leur juridiction » les droits définis au titre de la Convention ; la Charte des droits fondamentaux de l'Union européenne reconnaît expressément certains droits sociaux aux personnes résidant ou travaillant légalement sur le territoire de l'UE, par exemple ses articles 15 § 3 et 34 § 2.

⁵ *Ibid.*

⁶ Voir [CDDH-SOC\(2018\)R3](#), § 11.

⁷ Voir [CDDH-SOC\(2018\)R3](#), § 11 ; et les opinions exprimées par les États membres lors de leur échange de vues avec le Président du CEDS lors de la réunion du GR-SOC le 17 janvier 2019, document [DD\(2019\)135](#).

⁸ Voir le discours du Président du CEDS devant le CDDH-SOC, [CDDH-SOC\(2018\)R3](#), Annexe V.

de réclamations collectives et dans les motifs invoqués pour justifier les décisions du CEDS. Les experts des États membres ont également approuvé la suggestion du Président du CEDS invitant le CEDS à revoir ses pratiques actuelles concernant la recevabilité des réclamations collectives – qui ont pu être relativement clémentes au cours des premières années du fonctionnement de la procédure – et éventuellement exercer un examen plus approfondi en ce qui concerne la recevabilité des réclamations.⁹ Ils ont en outre proposé que le Comité gouvernemental puisse également examiner de plus près le choix des OING inscrites sur la liste des organisations ayant le droit de soumettre des réclamations collectives.¹⁰

Comment [LE4]: La France souscrit pleinement à cette suggestion.

II. LES PROCÉDURES DE SUIVI EN VERTU DU SYSTÈME DE TRAITÉS DE LA CHARTE SOCIALE EUROPÉENNE

1. Procédure de rapports étatiques

...

b. Propositions du CDDH

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114. Une première proposition concerne les rapports que les États doivent transmettre chaque année, au titre de l'article 21 de la Charte, sur l'un des quatre groupes thématiques reflétant des engagements de fond en vertu de la Charte (révisée). Lorsque le CEDS estime, dans ses conclusions annuelles, que la situation d'un État est en pleine conformité avec une disposition de la Charte, cet État pourrait, au cours du prochain cycle de contrôle, être exempté de faire un rapport sur la même disposition. Au cours des cycles ultérieurs, il pourrait se contenter d'informer le CEDS des éventuelles modifications intervenues dans la législation ou la pratique nationales en la matière. Lorsque le CEDS estime que, dans l'attente d'un certain nombre d'informations, la situation d'un État donné semble conforme à la Charte (révisée), l'État en question pourrait se contenter, lors du cycle de contrôle suivant, de fournir les seules informations demandées, sans avoir à soumettre un rapport complet sur la disposition concernée.¹¹

Comment [LE5]: Réserve de la France sur cette première proposition. En effet, dans la mesure où le droit du travail et les politiques en la matière peuvent évoluer rapidement au sein d'un Etat partie, nous ne sommes pas certain qu'il soit bienvenu de permettre à un Etat partie d'être exempté de produire un rapport sur une stipulation lors du cycle suivant, c'est-à-dire quatre en plus tard. Il nous semble qu'il conviendrait plutôt que l'Etat continue de transmettre des informations actualisées avec les éventuelles modifications législatives intervenues (comme cela devra être lors des « cycles ultérieurs »).

115. Les deuxième et troisième propositions concernent les rapports qui doivent être soumis par les États ayant accepté la procédure de réclamations collectives. Comme décrit ci-dessus, ces États doivent actuellement transmettre, tous les deux ans, un rapport thématique ordinaire. L'exercice de rapports, pour ces États, pourrait être davantage simplifié en ce sens qu'ils pourraient n'être tenus qu'à la soumission, tous les quatre ans, d'un rapport synthétique et complet sur la mise en œuvre de toutes les dispositions de la Charte dans son ensemble, contrairement aux autres États qui doivent transmettre, chaque année, des rapports analytiques spécifiques

Comment [LE6]: Soutien de la France

⁹ Voir [le discours introductif du Président du CEDS prononcé le 17 janvier 2019](#) lors de son échange de vues avec le Groupe de rapporteurs sur les questions sociales et de santé (GR-SOC), point 4, ainsi que les opinions exprimées par les États membres à ce sujet, document [DD\(2019\)135](#), et [CDDH-SOC\(2018\)R3](#), § 15.

¹⁰ Voir le document [CDDH-SOC\(2018\)R3](#), § 15.

¹¹ Voir [l'allocation du Président du CEDS](#) lors de l'échange de vues avec les Délégués des Ministres du 21 mars 2018 et l'intervention du Président du CEDS devant le CDDH-SOC lors de sa 3^e réunion (5–7 septembre 2018), voir [CDDH-SOC\(2018\)R3](#), Annexe V.

sur l'un des quatre grands groupes thématiques reflétant des engagements de fond en vertu de la Charte (révisée).¹²

116. De plus, les États parties à la procédure de réclamations collectives, comme décrit ci-dessus, doivent présenter des rapports relatifs au suivi des réclamations collectives tous les deux ans tant que la situation n'a pas été mise en conformité avec la Charte (révisée). Il est proposé que cette obligation soit limitée à deux cycles. Si le CEDS estime toujours que la situation n'est pas conforme à la Charte après cette période, le dossier pourrait être transmis au Comité des Ministres pour adoption d'une résolution ou d'une recommandation finale adressée à l'État concerné, ce qui mettrait fin, une fois pour toutes, à la procédure.¹³

Comment [LE7]: Soutien de la France aux deuxième et troisième propositions

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118. Une quatrième proposition concerne la nouvelle procédure de rapports instaurée par le Comité des Ministres en 2014. En vertu de celle-ci, les États doivent transmettre des rapports supplémentaires sur les conclusions de non-conformité en raison de l'absence répétée d'informations l'année suivant l'adoption de telles conclusions par le CEDS. Cette procédure, que le CEDS n'a pas pu mettre en œuvre en 2018 faute de temps et de ressources, pourrait être abolie, ce qui signifierait que le CEDS ne devrait plus adopter de conclusions de « non-conformité » motivées par le fait qu'il n'est pas établi que la situation soit conforme à la Charte et que les États ne devraient plus présenter de rapports complémentaires au titre du suivi des conclusions de ce type.¹⁴

Comment [LE8]: Soutien de la France à la quatrième proposition

2. Procédure de réclamations collectives

...

b. Propositions du CDDH

...

134. En ce qui concerne les inquiétudes des États membres quant au déroulement de la procédure devant le CEDS, l'établissement des faits, l'examen de la recevabilité des réclamations collectives et l'interprétation de la Charte (révisée) par le CEDS, le CDDH renvoie à ses propositions susmentionnées visant à renforcer la sécurité juridique dans la procédure de réclamations collectives. Il réaffirme que le principe du contradictoire sur lequel repose la procédure doit être pleinement respecté en toutes circonstances et qu'il serait souhaitable d'intensifier le dialogue entre les parties et le CEDS dans la procédure écrite ainsi que, si nécessaire, dans la procédure orale, sur les questions de fait comme de droit, y compris en ce qui concerne les motifs invoqués par le CEDS pour justifier ses décisions.¹⁵

Comment [LE9]: La France est d'avis que le recours aux auditions devant le Comité doit être limité car cela demande une préparation très lourde à l'Etat concerné. Il nous semble donc important de veiller à la présence d'une formule comme "si nécessaire".

...

¹² Voir [le discours introductif du Président du CEDS du 17 janvier 2019](#) lors de son échange de vues avec le Groupe de rapporteurs sur les questions sociales et de santé (GR-SOC), point 5 ; [l'allocation du Président du CEDS](#) lors de l'échange de vues avec les Délégués des Ministres du 21 mars 2018 ; l'intervention du Président du CEDS devant le CDDH-SOC lors de sa 3^e réunion (5–7 septembre 2018), voir [CDDH-SOC\(2018\)R3](#), Annexe V.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Voir §§ 56–59 ci-dessus.

136. En ce qui concerne le suivi des décisions rendues par le CEDS dans la procédure de réclamations collectives, il a été proposé, comme indiqué plus haut, que l'obligation de soumettre des rapports relatifs au suivi des réclamations collectives ne devrait pas s'étendre au-delà de deux cycles ; passé ce délai, si le CEDS estime que la situation n'a toujours pas été rendue conforme à la Charte, le Comité des Ministres devrait clôturer la procédure par l'adoption d'une résolution ou d'une recommandation finale adressée à l'État concerné.¹⁶ Les experts des États membres ont largement souscrit à l'esprit de cette proposition, qui invite à rechercher les moyens d'alléger davantage l'obligation d'établissement de rapports à cet égard.¹⁷

Comment [LE10]: Soutien de la France

138. Quelques États membres ont également approuvé la proposition de réexaminer l'obligation de confidentialité prévue à l'article 8, § 2, du Protocole additionnel de 1995, compte tenu de son objectif.¹⁸ À l'inverse, la proposition tendant à autoriser le remboursement aux organisations réclamantes des frais raisonnablement engagés dans le cadre des procédures n'a pas obtenu, pour l'heure, l'appui des États membres, qui ont souligné que c'est le Protocole additionnel de 1995 ne le prévoyait pas.¹⁹

Comment [LE11]: La France est attachée à la règle de confidentialité prévue à l'article 8 § 2 du Protocole de 1995

Comment [LE12]: La France ne souscrit pas à la proposition tendant à autoriser le remboursement aux organisations réclamantes des frais raisonnablement engagés dans le cadre des procédures dès lors qu'aucun fondement textuel ne prévoit une telle possibilité de remboursement des frais de procédure et que la procédure devant la Comité ne peut être assimilée à une procédure juridictionnelle.

¹⁶ Voir le § 77 ci-dessus.

¹⁷ Voir le document [CDDH-SOC\(2018\)R3](#), § 14.

¹⁸ Voir le document [CDDH-SOC\(2018\)R3](#), § 16.

¹⁹ Voir le document [CDDH-SOC\(2018\)R3](#), § 16.

PORTUGAL

Portugal – Contribution to the draft Second Report of the CDDH-Soc, in view of the Meeting of 3-5 April 2019.

The draft II report of the group which was distributed to us in view of the Meeting of 3-5 April 2019 is, as usual, when these documents come from the Secretariat of the group, a very well balanced document, fitting in its structure to what was agreed last September, while tackling the different issues under the commitment of the States; the monitoring procedures, the effective national implementation, the awareness and visibility of the Charter system and the relationship of the CoE's instruments with other instruments for the protection of social rights.

Although I took notes in the course of reading the report, which I will perhaps refer in the debate, one aspect called my attention when looking at what is stated on the relationship of the CoE's instruments with other instruments for the protection of social rights.

I already had the opportunity to say that I think that the European Pillar of Social rights, which was adopted in 2017 in *Gotenburg* by the EU falls very short of a necessary relaunch of social rights in Europe. In my advice, which I will not repeat, the major shortcomings are that it focuses too much in workers rights and disregards many other rights, letting them to a last very poor section; that workers rights are not seen so much for the labourers themselves as for the well functioning of the economy regarded under the perspective of the growth of the GDP. Consequently, in my opinion the EU fell short of a social rights relaunch initiative as it might have been better for the EU – as a social rights policy choice – to adhere to the European Social Charter Revised, choosing the widest possible set of rights to protect. We may understand, as the ECJ refused EU the accession to the ECHR, that EU will never, at least in a *tempo* useful to our working lifetime, acceede the CoE's social rights acquis. My opinion is that this is a shortcoming, however I understand that I may be alone in this opinion, and I wish to express my respect for all the other positions that may come to the table.

Still, having said this, I must also state that my point is more limited here than such a very personal assumption of a position (which I maintain as I can ground it, but which I understand that it may be refused as non realistic). My point is that the legal world is wider than simply the very narrow and limited European legal world. In the last part of our draft report (of which I appropriate although it comes from the Secretariat), we only focuse on EU social pillar and, considering that this is the sole relevant UN work, in ILO's work. I think this is also a shortcoming and as a group which positions will be reviewed by our responsible directors at the CDDH level, we should vindicate a wider freedom of speech, in the sense that, if we take some inconvenient step, it will be certainly corrected by our superiors at the CDDH level, knowing that we are only CDDH-Soc.

For me, the UN acquis is very much wider than the ILO's acquis, and although, as I am myself a labourer of the State, I very much cherish labour rights, social rights should not be limited to labour and the workforce. We may fall again into the trap of the growth of the GDP, whether we understand it is a good thing, or not.

Looking at the UN Conventional acquis, as social rights are also the rights which are enshrined for the protection of the vulnerable, we can look at the fight against discrimination *acquis* of the UN, which is very well developped, at least in its drafting

dimension (whether the countries do apply sufficiently these rights is another problem and this why the ECtHR always states that, Her task is to protect rights in such a way that they become concrete, accessible and effective, which also is a concern expressed by the SRC in the Social Charter system), and, then we may look at the general social rights covenant of the UN.

In the European side, the UNCRDP should not pose problems as it is the sole UN Convention which has been totally entered upon through accession, by the EU. Although the CoE social rights Europe – rightly - does not recognise a presumption of conformity of EU law with the CoE's social rights *acquis*, we can assume that this is a positive element in the affirmation of social rights.

But there are other UN Conventions in the field of the fight against discrimination, tending to equal vulnerable people with the majority, in order that the material difference between all be somehow mitigated. It is the case with the ICERD, the CEDAW, the CRC and its two Protocols (armed conflict and child prostitution and pornography), the UNCREP and their complaints mechanisms.

I have to mention the UN Convention on the rights of migrant workers and their families, although it is labour (but under a migrant rights perspective), and although I am afraid the EU does not wish to talk very much about it. Still, we are in our CDDH-Soc group, operating under the CoE's human rights commitments.

Finally the general convention which should have deserved our attention – but perhaps are we still in time – is the UNCESCR and its Protocol. As the CoE's Europe already possesses its complaints mechanism, their equivalent at UN level should not pose problems as we already have our rights protection systems. However the substantive rights might of useful consideration *to enlarge the map of social rights* and make them evade the very limited sphere of labour regarded in the sake of the growth of the GDP (so under the risk of labour not for workers themselves, as humans, but as one more economic resource).

One first disposition which deserves my attention in the UNCESCR is article 4 (see also the § 2 of art. 5) as it states that the States Party to the Convention recognize that the enjoyment of ESCR may be subjected by the State only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society. UNCESCR is very far from the *à la carte* system of the CoE social rights *acquis*, and although the *à la carte* system may be seen as good, while being a tool to accommodate each state's difficulties in entering into the protection of social rights, it should be borne in mind that social rights should not be totally under the disponibility of politicians and economic policy measures. To some extent, there is a necessity, but also an ethic obligation not to allow that too much people is left behind. In our very mild II report, I think it would be convenient for our CDDH-Soc to make a statement in this direction.

Then, although our work as drafting group is not very much technical and we certainly do not possess the skills and abilities which are needed to evoke each right in detail, nor is this in our mandate as working group in the CoE, we might look at the *catalogue* of rights which is contained in the UNCESCR. Work, working conditions, pay trade unions rights (arts. 6 – 8), the right to social security (art. 9). Such a basic set of rights as the family rights (art. 10), the right to an adequate standard of living (art. 11), including adequate food, clothing and housing (in nowadays precarious housing rent contracts, under the pressure of the speculation in real estate, many States in Europe may be confronted with a violation of housing rights, as they did not take the necessary measures to accommodate the protection of vulnerable people, namely old or disabled people, under a renting contract, which were forcefully evicted, or under pressure by owners to quit the flats; eventually the adequate

measures came late, although useful in the future, and did not impede social tragedies – *generating an issue with an human rights international mechanism*), the right to national health systems (art. 12, which may be endangered by austerity measures which under finance them), the right to education (art. 13, facing the same problem, namely in primary and secondary education, and this may be a transversal problem in Europe), the right to participate in the cultural life (art. 15, allow me to say how I feel well, every time I travel in Europe and I can visit a museum or see an exhibition, or go to the Theater or hear music – this is what a reunited Europe is about for its citizens). We naturally made mention to all these rights in our II draft report but in very scarce way. Somehow we limited to state that social rights are in need of some protection and we congratulated EU Commission President and the CoE Secretary general for having said that, without really assuming consequences of this choice. I know not how the group will abord this proposal to look a little more in detail to the catalogue of rights (maybe in a simplifified way, by looking at the UNCESCR catalogue, rather than trying to catch them in the complexity – which I do not criticize – of the Social Charters, and stating, group of right by group of right – labour, social security, family rights, adequate standard of living, namely adequate food, clothing and housing, national health systems, education, cultural life – that we observe the necessity of their better implementation [it will opposed to me that this has already done in the first report of the group related to the situation of social rights in CoE's Europe, but as we are doing some work on social rights, we should not ignore them in this II report and might, if the group agrees to do so, mention them a little more in detail, for which the SRC assistance might be concretely demanded – to draft something to show that we are aware of the social needs in Europe and as this is our mandate, that we do not surrender to a too impressive economic rationality, maybe we might, very modestly, dream? Of a brighter future? Even if not immediately for us, for the Europeans who are to come?]).

Finally, I think the group did not assume the consequences of the indivisibility and interdependence of the rights. First, the group forgot the universality of the rights. It is because they are universal that they are interdependent and not divisible. If I see somebody bleeding strongly, I will bring this person to the hospital or call an ambulance. If I see somebody starving, in particular a child, through the same mental process, I should buy and give him some food. The mental process is universality, it stems from conscience. It is known since very long ago, very far more than the Second after war. But this only as a point. The material consequence of universality, indivisibility and interdependence is that programmatic rights do not exist. **Such rights are a fiction, although conventional or constitutional programmes do exist and possess full legitimacy.** We can say the the ECHR and the Social CoE's rights acquis are a programme of a better life in Europe, but we know that the rights they contain are not programmatic. **They are directly and immediately enforceable as the rulings of the ECtHR and the decisions of the ESC show abundantly.** And **we can narrow our understanding of the problem by explaining the progressiveness of rights as a tool.** Rights are directly and immediately enforceable, *at least to some material extent*, and to this extent they have to be immediately and directly implemented. Some other part of the right cannot eventually be implemented (these rights were, for these reasons, called programmatic, because they contained the programme of their attainment and fulfillment). This part of the right is the part of the right which is under a progressive implementation programme (*which does not make it programmatic, as there always some extent of the right which is immediately and already enforceable*).

Progressiveness is a tool in social rights, as it allows to comfort the expectations of the rulers which are under budgetary pressure, and the wishes of the social partners to whom something more has to be given, provided that, for budgetary reasons, this is not immediately given. What rulers give to social partners (rulers in democracy, Governments designed by Parliaments which majorities result from elections) has to be under scrutiny, so the bargains shall be conducted with honesty in order that what is given is really useful. Then, **how is the resulting gift implemented, progressively implemented, and to what**

extent is the resulting norm directly and immediately enforceable, as time goes by, shall come under the scrutiny of the courts. It shall not remain indefinitely, for years, in the *limbo* of progressiveness or maintaining some abstract unimplemented programmatic nature. Although this aspect also may become technic, and, for that, the group might once again demand the expertise of the SRC, I think ***this is one very material consequence of universality, indivisibility and interdependence of rights***, and that *this consequence should be stressed in our second report* (while acknowledging progressiveness as a tool and not letting social rights be set aside because they would be – which they are not – simply programmatic).

With kind regards to all and wishing us all the best possible meeting!

Paulo Marrecas Ferreira. Portugal. 22-03-2019.

OTHER COMMENTS / AUTRES COMMENTAIRES

ENNHRI

III. THE EFFECTIVE NATIONAL IMPLEMENTATION OF SOCIAL RIGHTS

...

3. CDDH proposals

a. The implementation of the ECSR's conclusions and decisions

...

186. This could be realised in different and possibly complementary ways. A direct exchange of good practices between Member States in a suitable forum could be considered in this regard.²⁰ Furthermore, again in line with comments made by some Member States, it would be helpful if the ECSR published and regularly updated a commentary of the interpretation of the different Articles of the (revised) Charter containing also such information on national implementation.²¹ Concrete assistance in the implementation of particular conclusions or decisions via technical cooperation activities by the Council of Europe could equally be furthered.²² Moreover, it could be examined whether the HUDOC-ESC database, in which relevant information on the national implementation of conclusions and decisions is notably contained in a number of different reports regarding individual States and potentially in reports of several control cycles, can be adapted so as to facilitate the search for such elements by the Member States themselves.²³

...

IV. THE AWARENESS AND VISIBILITY OF THE CHARTER SYSTEM

...

3. CDDH proposals

213. As for training activities, the CDDH first refers to the above-mentioned numerous training activities in many Member States and encourages the States to pursue these activities, notably by offering training to civil servants on specific social rights issues, thematic conferences, workshops and learning courses on social rights, as well as legal research projects. It equally encourages the ECSR and the Department of the European Social Charter to pursue and widen its training activities disseminating knowledge on the Charter to relevant stakeholders in the Member States, including exchanges of views with domestic courts, and possibly with the help of the CoE-FRA-ENNHRI-EQUINET Collaborative Platform on social and economic rights.

...

Comment [AI13]: ENNHRI supports idea on exchanging information on good practice, as it may give positive impact on further development. ENNHRI also suggests sharing information on lessons learned during implementation of social rights. This approach can help to avoid similar obstacles. We are happy to provide you with concrete ideas during the upcoming session.

Comment [AI14]: ENNHRI highly appreciates a suggestion of cooperation between CDDH-SOC and CoE-FRA-ENNHRI-Equinet Collaborative Platform on Social and Economic rights. As currently Platform meeting successfully brings together European Union, Council of Europe, academics on social rights and NHRIs, ENNHRI recommends cooperation with state officials which CDDH SOC can facilitate.

²⁰ See the replies of Poland and Spain to the questionnaire, document [CDDH-SOC\(2017\)04rev](#), A.5.

²¹ See the replies of Latvia and Poland to the questionnaire, document [CDDH-SOC\(2017\)04rev](#), A.5.

²² A number of Member States declared being in favour of technical cooperation activities with the Council of Europe for a better implementation of the (revised) Charter and the ECSR's conclusions and decisions, see, in particular, the replies of Azerbaijan, Bulgaria, Lithuania and Ukraine to the questionnaire, document [CDDH-SOC\(2017\)04rev](#), A.5/suggestions.

²³ See the replies of Latvia and Poland to the questionnaire, document [CDDH-SOC\(2017\)04rev](#), A.5.

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

2. CDDH proposals

246. The CDDH further finds that in order to increase the synergies between the (revised) Charter and the EU and the ILO's systems and instruments of protection of social rights, the dialogue and cooperation between the actors in the different legal orders should be continued and reinforced. It observes that this has been stressed by a number of stakeholders in the different legal systems.²⁴ It notes in this context that the ECSR has reinforced its dialogue with the EU institutions recently. It notably had an exchange of views with the President of the CJEU, Judge Koen Lenaerts, in October 2016. Moreover, it had repeated exchanges with the EU Commission about the "European Pillar of Social Rights" since the Turin Forum on social rights in March 2016, notably during the Workshop on "The European Social Charter and European Pillar of Social Rights", which took place December 2016 in Strasbourg.²⁵ The CDDH considers that both the Council of Europe actors and the EU institutions and Member States should be encouraged to enhance that dialogue and cooperation and reflect on whether it is advisable and if so, on possible ways to further structure and institutionalise these exchanges and collaboration.

Comment [AI15]: GENERAL COMMENT No 1 on the whole report in the beginning of 2019 ENNHRI members across Europe shared information on prioritized areas:

- a) poverty;
- b) employment (salaries and accidents at work);
- c) the right to education (segregation for specific groups; general availability of education (quality of education, buildings etc.)
- d) the right to housing (quality; availability);
- e) the right to health.

ENNHRI suggests CDDH to consider these areas as issues for attention when drafting guidelines, training materials or other information materials on social rights, especially when it comes to NHRIs

Comment [AI16]: GENERAL COMMENT No 2: ENNHRI supports the idea of developing training programs, trainings materials and guidelines on social rights. ENNHRI suggests using experience of NHRIs in these trainings' programs and materials. NHRIs have various mandates – judicial or non-judicial, which can help to give wider perspective on issues related to social rights. Considering that social rights is interdisciplinary field (economics and legal field), ENNHRI suggests discussing mandate of courts in social rights. For example, can courts argue that only legislator is responsible for distribution of financial resources and courts shall not be involved? What can happen in cases when a responsible institution has not evaluated financial resources and a breach or equality principle is suspected?

²⁴ See, *inter alia*, the replies of Bulgaria, France and Slovenia to the questionnaire, document [CDDH-SOC\(2017\)04rev](#), point B.3.; the [European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights](#) (2016/2095(INI)), P8_TA(2017)0010, § 46; and also the [Chair's statement following the EU Agency for Fundamental Rights' Fundamental Rights Forum 2016](#), Vienna, 20-23 June 2016, Suggestion No. 49.

²⁵ See the [ECSR President's speech of 22/3/2017](#) before the Committee of Ministers.