IMPROVING THE PROTECTION OF SOCIAL RIGHTS IN EUROPE

VOLUME II

Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

IMPROVING THE PROTECTION OF SOCIAL RIGHTS IN EUROPE

VOLUME II

REPORT IDENTIFYING GOOD PRACTICES AND MAKING PROPOSALS WITH A VIEW TO IMPROVING THE IMPLEMENTATION OF SOCIAL RIGHTS IN EUROPE

adopted by the CDDH at its 91st meeting (18–21 June 2019)

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Preface

Since the adoption of the Council of Europe's Statute in 1949, social rights have been at the core of our Organisation's aims. 70 **years later, at its 129th Session (Helsinki, May 2019), the** Committee of Ministers of the Council of Europe "reaffirmed the importance of social rights across the continent", acknowledging **that social justice is an indicator of a healthy democracy. Where social rights are disregarded, the link between people and elected representatives erodes. That is why the increased inequality we face today is a major challenge for Europe.**

The publication of the present Steering Committee for Human Rights (CDDH) report on social rights is therefore particularly opportune.

The CDDH has drawn up a sound analysis of the Council of Europe legal framework for the protection of social rights. It has also identified good practices and proposals with a view to improving the implementation of social rights in Europe. This includes ideas to facilitate the relationship between the treaty system of the European Social Charter with other European or global instruments for the protection of social rights.

At the initiative of the Committee of Ministers' Fr**ench Presidency, governments have already started their reflection on possible measures to improve the protection of social rights in Europe and for the better functioning of the treaty system of the Charter. I welcome this.**

The protection and promotion of social rights constitute a continuing challenge for our societies, and I hope that the Council of Europe and each of its member states will continue to co-operate more closely in this area so that the improvements proposed in this report become a reality.

Thorbjørn Jagland
Secretary General of the Council of Europe
Strasbourg, 5 September 2019

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EXECUTIVE SUMMARY

1. The present "**Report identifying good practices and making proposals with a view to improving the implementation of** social rights in Europe" **is the second of two reports which have been drawn up in accordance with the terms of reference given by the Committee of Ministers to the Steering Committee for Human Rights (CDDH) in the field of social rights. It has been elaborated on the basis of a previous first report adopted by the CDDH in June 2018, the** "Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe".

2. In the light notably of the conclusions which were drawn in the said Analysis, the present Report, following an Introduction, addresses the main topics which were considered as being relevant for an improved implementation of social rights in Europe and makes proposals. These comprise the Member States' commitment under the relevant instruments **(Chapter I); the monitoring procedures under the treaty system of the European Social Charter (Chapter II); the effective national implementation of social rights (Chapter III); the awareness and visibility of the Charter system (Chapter IV); and the relationship of Council of Europe instruments with other instruments for the protection of social rights (Chapter V). Finally, concluding remarks and proposals for further action are made. Good practices for improving the implementation of social rights have been identified both as regards the effective national implementation of social rights and as regards the awareness and visibility of the Charter system and are set out separately in Chapters III and IV.**

Introduction

3. The Report first sets out the terms of reference which the CDDH received in the field of social rights and the methodology followed – it focuses on ways to strengthen the current treaty system of the European Social Charter and to make it more efficient. It then reviews the background to the protection of social rights within the Council of Europe by the treaty system of the Charter and to the need for proposals for improving the implementation of social rights in Europe. It is noted that despite the importance of that treaty system in order to promote inclusion and social cohesion and thus strengthen democratic security, few Member States have recently taken further commitments under that system in order to reinforce it. It further recalls the main results of the Analysis (first report) on the basis of which the present Report was prepared and then determines the main challenges examined in the five chapters of the Report.

I. The Member States' commitment under the relevant instruments

4. The scope of application of the social rights protected by the treaty system of the Charter diverges in the 47 Member States of the Council of Europe. In recent years, few Member States have taken further commitments under that system by ratifying the 1996 Revised Charter, by which currently 34 Member States are bound, or by accepting further substantive provisions thereof. The substantive outreach of the provisions of the (revised) Charter themselves is restricted by the (revised) Charter's limited personal scope of application; in this context, **several States took issue with the interpretation of the personal scope of application by the ECSR. The 1995 Additional Protocol Providing for a System of Collective Complaints has only been ratified by fifteen Member States.**

5. Member States gave two main reasons for not having taken further commitments under the treaty system of the Charter. There are, first, objections of principle against accepting, at least at the present stage, further commitments in the field of international social rights. Such objections may result from the Member States not being ready to amend their domestic law or their social policy choices or from the financial implications of a higher level of protection of social rights. Second, there are reasons relating to the functioning of the treaty system of the Charter. Member States notably argued that the interpretation of the (revised) Charter was too extensive or that improvements should be made to the collective complaints procedure (as regards the admissibility of collective complaints, the conduct of the procedure before the ECSR, the establishment of the facts and the interpretation of the (revised) Charter by the latter as well as the follow-up after a finding of non-conformity with the (revised) Charter).

6. While the CDDH notes that there is currently no consensus among all the Member States concerned to take further commitments under the relevant instruments, it considers that advantage should be drawn from the possibility offered by the treaty system of the Charter which permits Member States to advance at different speed. Member States are encouraged to consider taking as many further commitments under the treaty system of the Charter as possible in the current situation.

7. As for the objections of principle against accepting further commitments in the field of international social rights and in particular under the treaty system of the Charter, the CDDH recalls that it has notably been stressed that European States should be proud of their traditional and consolidated high standards in the protection of social rights and that strengthening the system of the Charter, which reflects the most complete and up-to-date expression of the European perception of social rights, strengthens the European model.

Regarding the personal scope of application of the (revised) Charter, each State should consider and make its own choice whether it was ready to extend the personal scope of application of the Charter at least to nationals from non-Contracting Parties to the Charter who are lawfully resident and work regularly within the territory of the State concerned (that is, not irregular migrants) by way of a unilateral declaration not necessitating a treaty amendment. As for the collective complaints procedure, its advantage of putting the normative prescriptions of the Charter to the test of specific situations, which improves the effective enforcement of the social rights guaranteed by the (revised) Charter, were stressed.

8. As regards the objections relating specifically to the functioning of the treaty system of the Charter, the CDDH notes that the States expressed the need for more legal certainty as regards both the conduct of the collective complaints procedure and the interpretation of the provisions of the (revised) Charter in the decisions taken on collective complaints. The ECSR, which decides on the admissibility and merits of collective complaints (see Articles 7 and 8 of the 1995 Additional Protocol) and adopts its own Rules of procedure, is therefore encouraged to consider a more adversarial conduct of the collective complaints procedure. It is further encouraged to increase the exchange of arguments with the parties on the admissibility of complaints, in respect of which a closer scrutiny could be exercised, and on the interpretation of the provisions of the Charter and expand the reasoning in its decisions.

9. As regards the procedure for promoting further commitments by the Member States under the treaty system of the Charter, the CDDH considers it desirable, in particular, that the Council of Europe organs and institutions and the Member States agree on a concrete work programme, or process, aimed at obtaining such commitments.

II. The monitoring procedures under the treaty system of the European Social Charter

10. There are two different monitoring procedures under the treaty system of the Charter, the State reporting procedure and the collective complaints procedure.

11. As regards the State reporting procedure, there is broad agreement between many Member States and the President of the ECSR that this procedure in its current set-up, comprising four different types of reports, entails a too heavy workload for both the Member States and the ECSR and is not sufficiently effective. It does not permit to timely identify the real and most serious problems concerning the implementation of the (revised) Charter in each State.

12. The CDDH considers that this procedure should be further simplified and should become more targeted so as to focus on topics of strategic importance for the implementation and protection of social rights. Concrete amendments in order to attain this aim which may be made within the framework of the current treaty system of the Charter should be elaborated for the adoption by the Committee of Ministers by the ECSR in close cooperation with the Department of the European Social Charter and with the Governmental Committee notably on the basis of the specific reform proposals made by the President of the ECSR. Moreover, the ECSR in cooperation with the Department of the European Social Charter should be encouraged to examine further steps to streamline its working methods in order to render the State reporting procedure more focused and efficient, while keeping States Parties informed of the major steps envisaged. The CDDH further considers it necessary to ensure that the monitoring mechanism of the (revised) Charter in its new form is allocated the necessary resources in order to function efficiently.

13. As regards the collective complaints procedure, the CDDH notes that the stakeholders in that procedure consider that its effective functioning in practice could be improved by different, concrete measures. These cover the conduct of the procedure before the ECSR, the establishment of the facts, the examination of the admissibility of collective complaints and the interpretation of the (revised) Charter by the latter, various specific aspects of the procedure (such as the duty of confidentiality) as well as the follow-up after a finding of non-conformity with the (revised) Charter.

14. In addition to the proposals made by the CDDH above, aimed at achieving more legal certainty in the collective complaints procedure and thus promoting further commitments by Member States in this respect, the CDDH notes several proposals aimed at making the follow-up to the ECSR's decisions in the collective complaints procedure more efficient. Some Member States further expressed support for reconsidering the obligation of confidentiality under Article 8 § 2 of the 1995 Additional Protocol, taking into account its purpose.

15. The CDDH considers that a set of concrete proposals to increase both the legal certainty in, and the efficiency of the collective complaints procedure should be elaborated, on the basis of the specific measures suggested by the different stakeholders which obtained broad or at least some support and by concentrating on changes which may be made in the context of the current treaty system. The ECSR could be entrusted with drawing up such proposals with the assistance of the Department of the European Social Charter in consultation and dialogue with the other stakeholders in the procedure. The results of the process could be submitted to the Committee of Ministers which could take them into account in the context of the concrete work programme, or process (proposed above) to

improve the implementation of social rights. Finally, it is essential for ensuring an efficient functioning of the collective complaints procedure that the necessary resources are allocated to it.

III. The effective national implementation of social rights

16. The effective national implementation of social rights comprises two different aspects: the implementation of the conclusions and decisions of the ECSR following a finding of non-conformity of a situation with the (revised) Charter, and the application of the (revised) Charter by the national authorities.

17. There are different grounds for which the Member States' authorities do not always fully implement the standards set by the (revised) Charter, as interpreted by the ECSR. As regards the implementation of concrete conclusions and decisions of the ECSR in respect of the Member State concerned, reasons comprise the lack of funds as well as the lack of political consensus, but on many occasions, the ongoing implementation process proves to be quite complex owing to the necessity to involve and coordinate between a number of different actors. As regards the general application of the (revised) Charter by the national executive, the legislator and the judiciary, the extent to which the domestic legal orders are open to the direct application of international law, and in particular the social rights laid down in the (revised) Charter, and the extent of knowledge and awareness of the standards set by (revised) Charter appear to be determinative of its implementation.

18. The CDDH considers that the Member States should be encouraged to seek inspiration in the good practices developed in other Member States for the implementation of the ECSR's conclusions and decisions. A broad notification and dissemination of the ECSR's conclusions and decisions to the relevant stakeholders, their translation from English/French into the national language of the Member State concerned and a

good coordination and structured cooperation notably between the different levels of administration can contribute to a more efficient implementation of the social rights standards laid down in these conclusions and decisions.

19. The CDDH would further find it helpful if the implementation of ECSR conclusions and decisions could be facilitated by providing the Member States concerned with detailed information on the legislative and other measures already taken by other Member States in order to bring their situation in conformity with the (revised) Charter and from which the Member States seeking to implement conclusions or a decision could draw inspiration. This could be realised, for instance, by a direct exchange of good practices between Member States in a suitable forum and/or by the inclusion, in the "Digest of the case law of the European Committee of Social Rights" (ECSR Digest) **also of such information on national implementation. Moreover, concrete assistance in the implementation of particular conclusions or decisions via technical cooperation activities by the Council of Europe or an adaptation of the HUDOC-ESC database so as to facilitate the search for implementation measures taken by different Member States could be envisaged.**

20. As regards the general application of the (revised) Charter by the national authorities, the CDDH equally finds that the Member States should be encouraged to seek inspiration in the good practices developed in other Member States in this respect. Measures such as the creation of a coordinator of international cooperation and human rights informing of the decision practice of international bodies and the exchange of experiences between domestic courts regarding the application of the (revised) Charter during conferences can indeed encourage the national courts to take the (revised) Charter more into account in their decision practice.

21. Furthermore, a number of different measures developed in the Member States which may ensure that social impact assessments for new national legislation and policies are conducted in full knowledge of the international standards of social rights set by the (revised) Charter (such as Drafting Directives and Guiding Principles on economic and social rights helping to ensure that the draft law is compatible with international standards; institutionalised consultations between the Government and the social partners; and involvement of experts from international organisations to assess the compatibility of draft legislation with international standards of social rights) merit consideration.

22. Moreover, more frequent exchanges of good practices between the Member States on specific topics related to the implementation of the (revised) Charter, for instance thematic debates on the implementation of specific provisions of the (revised) Charter, are desirable.

23. Finally, a better national implementation can notably be promoted via a better knowledge by the relevant stakeholders of the standards of the (revised) Charter as interpreted by the ECSR (examined in more detail in Chapter IV.). To this end, Member States could envisage translating into their national languages not only the conclusions and decisions regarding themselves, but also decisions of the ECSR adopted against other Member States of relevance to the State in question. The ECSR Digest on the interpretation of the different Articles of the (revised) Charter, mentioned above, could equally facilitate and further the national implementation of the (revised) Charter.

IV. The awareness and visibility of the Charter system

24. The promotion of knowledge on the treaty system of the Charter by easily accessible information on the standards set by it is an important factor for improving the implementation of the Charter by the States Parties.

25. There appears to be a broad consensus among the Council of Europe Member States that the awareness-raising and visibility activities concerning the treaty system of the Charter should be developed. Existing and new activities in this field should be enriched by exchanges of good practices.

26. The lack of sufficient easily accessible information on the standards set by the (revised) Charter could be addressed by different measures. Translations into the Member States' respective national languages of ECSR conclusions and decisions, or summaries thereof, as well as of the ECSR Digest should be prepared by the Member States. These could be included in the HUDOC-ESC database. It could further be explored whether the said Digest could interoperate with national judicial databases. Easily accessible information could further be distributed more actively in press work or online campaigns.

27. Moreover, the ECSR and the Department of the European Social Charter could be encouraged to regularly update the ECSR Digest.

28. As for training activities, the CDDH encourages the States and the ECSR and the Department of the European Social Charter to pursue these activities, notably training specifically designed for the authorities and institutions called upon to implement specific provisions of the (revised) Charter. Moreover, the possibility to develop further courses on social rights in the context of the above mentioned European Programme for Human Rights Education for Legal Professionals (HELP) programme should be examined. Training activities and

events on the Charter should also be offered to the judges and the Registry staff of the European Court of Human Rights in order to increase the synergies between the two systems.

29. Finally, the different organs and institutions of the Council of Europe should pursue their activities aimed at increasing the awareness and visibility of the treaty system of the Charter.

V. The relationship of Council of Europe instruments with other instruments for the protection of social rights

30. In accordance with its terms of reference, the CDDH further makes some proposals aimed at facilitating the relationship between the treaty system of the Charter and other instruments for the protection of social rights in order to foster an improved implementation of social rights.

31. There have been some instances of conflicts of interpretation of social rights under the different international instruments. In a number of cases, the requirements under the (revised) Charter as interpreted by the ECSR in the field of social rights were more demanding than the requirements under EU law and/or the relevant ILO Conventions.

32. The risk of diverging interpretations can notably be reduced and legal certainty and coherence between European standard-setting systems protecting fundamental social rights enhanced by measures harmonising the interpretation of the standards in the different legal orders. This requires that the supervisory bodies concerned take into account the standards developed under other legal instruments and/or in other legal systems, thereby improving the synergies between them.

33. As regards the relationship between the (revised) Charter and the EU legal order, in particular, it would be desirable that the ECSR, in its decision practice, continues considering the relevant standards developed in the EU legal order, but equally

that the EU authorities, including the courts, take into consideration the standards of the (revised) Charter in its legislative and executive acts and its court decisions. The CDDH notes that the EU Pillar of Social Rights, whose principles shall ensure that social objectives counter-balance economic objectives, could help to increase the synergies between the two systems. It has been suggested that this could be achieved notably by systematic references to the (revised) Charter as interpreted by the ECSR in the commentary to the Pillar which is being elaborated. Moreover, it was suggested that the impact assessments which accompany the legislative proposals filed by the EU Commission should take into account the principles laid down in the Pillar and at the same time refer to the (revised) Charter. It has been argued in that context that it would make it easier for the EU authorities, including the courts, to take into account the (revised) Charter if the same standards, notably those set by the (revised) Charter were applicable in all EU Member States.

34. The CDDH considers that the Council of Europe actors as well as its Member States should thoroughly consider the above-mentioned proposals to attain more coherence in the interpretation of the standards of social rights in the different legal orders in the context of the above-mentioned work programme aimed at improving the implementation of social rights in Europe.

35. 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.**

Concluding remarks

36. The CDDH notes that for a number of the proposals made, there appears to be some or even broad support notably among the Member States. It is clear that the States' views on **how to improve the protection of social rights in Europe diverge. However, the treaty system of the Charter permits States to take different levels of commitments and to advance at differing speed in this respect.**

37. In the CDDH's view, a **common work programme, or process, should be set up by the Council of Europe organs and institutions and the Member States in the context of which concrete proposals on the basis of those suggestions aimed at improving the implementation of the social rights which have received broad or at least some support should be elaborated for examination and adoption by the relevant stakeholders. This process should be conducted in a constructive manner in order to arrive at an improvement of the implementation of social rights in Europe by a strengthened treaty system of the Charter.**

INTRODUCTION

38. The present "Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe" is the second of two reports which have been drawn up in accordance with the terms of reference given by the Committee of Ministers to the Steering Committee for Human Rights (CDDH) in the field of social rights. The following introduction shall first set out the terms of reference which the CDDH received in the field of social rights and the methodology followed. It shall then review the background to the protection of social rights within the Council of Europe by the treaty system of the Charter and to the need for proposals for improving the implementation of social rights in Europe. It further recalls the main results of the "Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe" (first report) on the basis of which the present second report was prepared and then sets out the main challenges examined in the Report.

1. Terms of reference and methodology

39. The Committee of Ministers, at its 1300th meeting of 21–23 November 2017, adopted the CDDH's **terms of reference for the biennium 2018–2019 in which it charged the CDDH with the following task in the field of social rights:**

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

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

40. It is recalled that the CDDH, at its 89th meeting (19–22 June 2018), adopted the "Analysis of the legal framework of the **Council of Europe** for the protection of social rights in Europe" **(first report) elaborated by its Drafting Group on Social Rights (CDDH-SOC).**[2] The Ministers' Deputies, at their 1323rd **meeting (12 September 2018), took note of that Analysis.**[3] **According to its terms of reference, the CDDH furthermore was to elaborate** the present second "Report identifying good practices and **making proposals with a view to improving the implementation of** social rights in Europe". This task was equally entrusted to the **CDDH-SOC chaired by Mr Vít A. SCHORM (Czech Republic).**[4]

41. The present Report has been drawn up, in accordance with the CDDH's terms of reference, essentially on the basis of **the said Analysis (first report) and in particular the conclusions which could be drawn from it. It focuses on ways to strengthen the current treaty system of the European Social Charter and to make it more efficient. Additional relevant sources which have been taken into account notably in order to identify good practices in the field of the protection of social rights comprise** the Member States' replies to a CDDH-**SOC questionnaire related to the good practices on the implementation of social rights at national level**[5] **and the short analysis of these replies**[6]**. Furthermore, in order to identify fields in which an improved implementation of social rights was necessary and possible means to arrive at that end, regard was being had to concrete decisions of the ECSR in the collective complaints procedure. Moreover, the interventions of the President of the ECSR before**

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[2] **See document CDDH(2018)R89add1.**

[3] **See document CM/Del/Dec(2018)1323/4.5.**

[4] **See for the orientations given by the CDDH to the CDDH-SOC notably CDDH(2018)R89, § 25.**

[5] **See for the questionnaire document CDDH-SOC(2018)02, for a compilation** of the Member States' replies to that questionnaire document **CDDH-SOC(2017)04rev and for a summary of these replies document CDDH-SOC(2018)07Rev.**

[6] **See document CDDH-SOC(2018)06.**

the Committee of Ministers and its Rapporteur Groups and in the CDDH-SOC were taken into consideration.[7] The CDDH further had the benefit of several exchanges of views with the President of the ECSR and the representatives of the Department of the ESC who participated in the meetings of the CDDH-SOC.

2. Review of the background

42. As set out already in the "Analysis of the legal framework **of the Council of Europe for the protection of social rights in** Europe" (first report), **it was against the background of a growing political awareness of the need to uphold, promote and better implement social rights in a global environment affected by the economic crisis that the Secretary General** launched the "Turin Process" in 2014.[8] **That process is aimed at strengthening the treaty system of the European Social Charter within the Council of Europe and in its relationship with the law of the European Union.[9] The treaty system of the Charter was seen as an important component in the European architecture of fundamental rights whose implementation at national level had the potential to reduce economic and social tensions.[10]**

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[7] **Reference is being made to the following presentations of the President of the ECSR, Professor G. Palmisano: his addresses to the Committee of Ministers, see the** ECSR President's speech of 22/3/2017 **and the ECSR** President's speech **of 21/3/2018; his presentation to the Rapporteur Group on Social and Health Questions (GR-SOC), see the** ECSR President's introductory **speech of 17/01/2019 at his exchange of views with the GR-SOC; and his speeches before the CDDH-SOC, CDDH-SOC(2018)R2, Appendix V and CDDH-SOC(2018)R3, Appendix V.**

[8] **See document CDDH(2018)R89add1, §§ 229–239 and 291.**

[9] **See on this issue also the 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, p. 2.**

[10] **See the** Secretary General's Opinion on the EU initiative to establish a **European Pillar of Social Rights of 2 December 2016; and the speech by the President of the ECSR, Professor G. Palmisano, before the CDDH-SOC, CDDH-SOC(2018)R2, Appendix V.**

Promoting inclusion and social cohesion was seen as the best way to combat fundamentalism and radicalisation.[11] It serves to strengthen democratic security and reinforce the public's trust in their institutions at both national and European level.[12]

43. It was further stressed in that context that inclusive democracies were not only based on civil and political rights, but equally on social rights and that these rights were interdependent.[13] It is recalled that, despite the fact that fundamental rights are protected within the Council of Europe notably by two separate treaties, the European Convention on Human Rights (1950) and the (revised) Charter (1961 and 1996), the principles of indivisibility and interdependence of human rights have been highlighted regularly within the Council of Europe and have been expressly referred to, in particular, in the 4th Recital of the Preamble to the Revised Charter.[14]

44. As the "Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe" equally showed, since the start of the "Turin Process", a number of Council of Europe organs and institutions as well as civil society actors have kept encouraging Member States, in particular, to take further commitments under the treaty system of the Charter in order to reinforce that system, albeit until now with limited success.[15]

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[11] Ibid.

[12] See in this respect, in particular, the Secretary General's Opinion on the EU initiative to establish a European Pillar of Social Rights of 2 December 2016; and the Secretary General's speech at the Gothenburg Social Summit for fair jobs and growth of 17 November 2017.

[13] See the Secretary General's Opinion on the EU initiative to establish a European Pillar of Social Rights of 2 December 2016.

[14] See in detail already document CDDH(2018)R89add1, §§ 29–33.

[15] See document CDDH(2018)R89add1, §§ 229–239, 242–-243, 249, 257, 267 and 291.

3. Main results of the Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe

45. The present Report was to be prepared, according to the terms of reference given to the CDDH, essentially on the basis of the "Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe" (first report). The main **results of that Analysis, which allows identifying both the potential of the existing legal framework for the protection of social rights and its limits and potential shortcomings,[16] can be summarised as follows.**

46. As for the development and potential of the protection of social rights in Europe, the Analysis came to the conclusion that the protection of social rights within the legal framework of the Council of Europe had constantly evolved since the entry into force of the European Convention on Human Rights in 1953 and of the European Social Charter in 1965 which was subsequently revised in 1996:[17]

> *"286. On the one hand, the European Committee of Social Rights, in the State reporting and collective complaints procedures, has contributed to the development of the protection of social rights in a number of Council of Europe Member States. The rights covered by the (revised) Charter notably relate to employment and health, education and social protection and welfare. The (revised) Charter further provides for specific protection for a number of groups including young persons, employed women, families, persons with disabilities or migrants.*

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[16] See also the presentation by G. Palmisano, President of the ECSR, at the 3rd meeting of the CDDH-SOC, CDDH-SOC(2018)R3, Appendix V.

[17] See document CDDH(2018)R89add1, § 285.

287. On the other hand, the European Court of Human Rights has provided for an evolving protection of the – few – aspects of social rights directly guaranteed by the Convention, namely the prohibition of slavery and forced labour (Article 4), the right to freedom of assembly and association, including the right to form and join trade unions (Article 11), and the right to education (Article 2 of Protocol No. 1). Moreover, the Court, which has interpreted the rights *laid down in the Convention "in the light of present*-**day** *conditions",(…)* **today grants an indirect protection of a number of particular aspects of different social rights by its case-law on Convention rights which are not social rights in the first place.**

288. *Both the implementation of the ECSR's* **conclusions and decisions and the implementation of** *the Court's judgments in the field of social rights have* **entailed a number of amendments in national law and practice which led to an enhanced social rights** *protection in the Council of Europe Member States."*[18]

47. As for the limits of the existing legal framework for the protection of social rights identified in the Analysis, these essentially concerned the treaty system of the European Social Charter. The Convention as interpreted by the Court in its binding judgments, executed by the 47 Contracting Parties under the supervision of the Committee of Ministers is essentially designed to protect civil and political rights and thus covers only some aspects of social rights.[19]

48. First, it was noted with regard to the Member States' commitment under the relevant instruments that the impact of the treaty system of the Charter was curtailed by the fact that the

[18] See document CDDH(2018)R89add1.
[19] See document CDDH(2018)R89add1, § 290.

(revised) Charter was not in force in all of the 47 Member States of the Council of Europe: four Member States have only signed the Charter or the Revised Charter but have not ratified either of them, nine Member States are bound only by the original 1961 Charter and 34 Member States are bound by the 1996 Revised Charter. As regards the supervisory procedures under the (revised) Charter, only 15 States are currently bound by the 1995 Additional Protocol Providing for a System of Collective Complaints.[20] Moreover, the impact of the treaty system of the European Social Charter, which contains a comprehensive catalogue of social rights, is limited by the "à la carte" system of acceptance of its provisions, which allows States to choose to a certain extent the provisions they are willing to accept as obligations under international law.[21]

49. Since the start of the "Turin Process" a number of Council of Europe organs and institutions as well as civil society actors have repeatedly invited Member States to ratify, in particular, the Revised Charter and accept further provisions and the collective complaints procedure, albeit with limited success.[22]

50. Furthermore, it was noted in the Analysis that it had been advanced that the impact of the Charter system for the protection of social rights was restricted by the limited scope of application of the Charter in terms of the persons protected by it (see paragraph 1 of the Appendix to the Charter). It was further noted that it had not, however, been analysed if and to what extent this restricted the effective protection of social rights in view of the protection under other instruments.[23]

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[20] See document CDDH(2018)R89add1, § 289.

[21] Ibid.

[22] Since the beginning of the "Turin Process", only Greece ratified the Revised Charter (in March 2016). Belgium and Ukraine have accepted further provisions thereof; see document CDDH(2018)R89add1, § 291.

[23] See document CDDH(2018)R89add1, § 289.

51. Second, as regards the monitoring procedures under the treaty system of the European Social Charter, it was noted in the Analysis that there have been recent changes to the State reporting procedure notably in 2007 and 2014 aimed at improving the reporting system. States are now to submit a report on one of four thematic groups of substantive undertakings every year. Consequently, each provision of the (revised) Charter is reported upon every four years. A simplified procedure applies to the States which have accepted the collective complaints procedure: they only need to submit a simplified national report every two years in which they explain the follow-up action taken in response to decisions of the ECSR on collective complaints brought against them instead of the ordinary thematic report. Moreover, all States must submit additional reports on conclusions of non-conformity for repeated lack of information one year after adoption of such conclusions by the ECSR. However, despite these changes, the procedure remains relatively complex.[24] Moreover, as regards the follow-up to the ECSR's conclusions, it was noted that so far, in practice, **the supervision cycles are usually brought to a close by a resolution whereas recommendations addressed to individual** States by the Committee of Ministers following the ECSR's **finding of non-conformity of a situation with the Charter remained rare.[25]**

52. As for the functioning of the collective complaints procedure, the objective of which is to improve the effective enforcement of the social rights guaranteed by the Charter, it was observed that the number of complaints lodged per year had recently increased and that the ECSR had found one or more violation(s) of the (revised) Charter in the vast majority of its decisions. Two specific features of the procedure were particularly noted: The decisions of the ECSR are not made

[24] **Compare document CDDH(2018)R89add1, §§ 83-93.**
[25] **Compare document CDDH(2018)R89add1, § 87.**

public until the Committee of Ministers has adopted a resolution, or at the latest four months after the ECSR's decision has been forwarded to the latter (Article 8 § 2 of the 1995 Protocol). Moreover, as for the follow-up to decisions of the ECSR in the collective complaints procedure, it was noted that in practice, the procedure before the Committee of Ministers was usually terminated by a resolution whereas recommendations addressed to individual States under Article 9 § 1 of the 1995 Additional Protocol were rare. However, follow-up reporting in the collective complaints procedure, by which the State provides information, in a simplified report, on the steps it has taken in response to the decisions taken in respect of that State, could go on indefinitely, even in spite of the closure of the case by the Committee of Ministers.[26]

53. Third, as for the effective national implementation of social rights, it was concluded in the Analysis regarding the Member States' compliance with the social rights laid down in the (revised) Charter that the ECSR, in its conclusions, found a majority of situations in the Member States in conformity with the Charter, but also numerous cases of non-conformity. It was further observed that the application of the (revised) Charter and of the decisions and conclusions of the ECSR by national courts differed in the Member States; some States have undertaken significant reforms following ECSR decisions or conclusions.[27]

54. Fourth, regarding the awareness and visibility of the Charter system it was observed in the Analysis that at present, every year, a number of seminars and training events on the Charter and ECSR decisions and conclusions were held in various countries, with the participation of former or current members of the ECSR and organised by different stakeholders including the Conference of INGOs, in association with by the Department of the European Social Charter. Moreover, some

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[26] Compare document CDDH(2018)R89add1, §§ 94-110, 289 and 292.
[27] Compare document CDDH(2018)R89add1, §§ 142-158 and 292.

courses related to social rights, in particular a course on labour rights, have been developed for the European Programme for Human Rights Education for Legal Professionals in the 28 EU Member States ("HELP in the 28"), with the objective of assisting them in the national implementation of the European Social Charter, the Convention and the EU Charter of Fundamental Rights. Finally, a number of books and articles on the Charter have recently been published.[28]

55. Fifth, as for the relationship of Council of Europe instruments with other instruments for the protection of social rights, the Analysis showed, on the one hand, that there were numerous connections and cross-references between the Council of Europe's instruments on the protection of social rights (notably the (revised) Charter and to some extent the European Convention on Human Rights) and the European Union's instruments (including the Community Charter of Fundamental Social Rights of Workers, the EU Charter of Fundamental Rights and the Treaty on the Functioning of the EU which contains a chapter on social policy). The Revised Charter of 1996, for instance, contains amendments which take account of the developments in EU law, and which influence the way in which States implement the Charter. Moreover, the European Pillar of Social Rights, which was proclaimed and signed by the Council of the EU, the European Parliament and the Commission in November 2017, aims at contributing to social progress by supporting fair and well-functioning labour markets and welfare systems and refers, inter alia, to the European Social Charter. Accordingly, the Secretary General of the Council of Europe, Mr Thorbjørn JAGLAND, had stressed in his strategic vision for his second term (2014–2019) and in his Opinion on the European Union initiative to establish a European Pillar of Social Rights[29] that it was of crucial importance to ensure coherence

[28] See document CDDH(2018)R89add1, §§ 159-161.

[29] See Priority No. 5 of the Secretary General of the Council of Europe for the 2014–2019 term, document SG/Inf(2014)34 of 16 September 2014; and the

between the social rights standards in the (revised) Charter and those of the European Union and to increase synergies between the two protection systems.[30]

56. On the other hand, the (revised) Charter is also interpreted in the light of other international treaties relating to the field of the rights guaranteed by the (revised) Charter, in particular the United Nations International Covenant on Economic, Social and Cultural Rights, the United Nations International Covenant on Civil and Political Rights, the United Nations Convention on the Rights of the Child, the United Nations Convention on the rights of persons with disabilities, the International Convention on the Elimination of All Forms of Racial Discrimination, the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the instruments of the International Labour Organisation (ILO).[31]

57. It was therefore of crucial importance that the social rights protection within the Council of Europe took into account the international context in which it operated.[32]

4. Main challenges examined in the Report

58. It emerges from the "Analysis of the legal framework of **the Council of Europe for the protection of social rights in** Europe" that the main limits of the existing legal framework for **the protection of social rights identified in the Analysis as well as the main potential for improving the implementation of social rights in Europe stem from the treaty system of the European Social Charter. The Convention, for its part, was not designed as a social rights instrument; moreover, the Court, by its**

Secretary General's Opinion on the EU initiative to establish a European Pillar **of Social Rights of 2 December 2016.**

[30] **See document CDDH(2018)R89add1, §§ 44-45, 121 and 269-272.**

[31] **See document CDDH(2018)R89add1, §§ 275-278.**

[32] **See document CDDH(2018)R89add1, § 45.**

interpretation of several different Convention rights, already uses the potential of the Convention to afford protection of a number of particular aspects of social rights via its binding judgments.[33] The present second Report shall therefore concentrate on ways to make the treaty system of the European Social Charter more efficient.

59. In the light of the conclusions which were drawn in the "Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe" (first report), and with the **help notably of the additional sources of information cited above[34], the present Report shall address in more detail the main challenges arising in relation to the following topics: 1) the** Member States' commitment under the relevant instruments; **2) the monitoring procedures under the treaty system of the European Social Charter; 3) the effective national implementation of social rights; 4) the awareness and visibility of the Charter system; and 5) the relationship of Council of Europe instruments with other instruments for the protection of social rights.**

[33] See in more detail document CDDH(2018)R89add1, §§ 177-228 and 290.
[34] See § 4.

I. THE MEMBER STATES' COMMITMENT UNDER THE RELEVANT INSTRUMENTS

1. Current challenges

a. Background

60. The scope of application of the social rights protected by the treaty system of the European Social Charter diverges in the 47 Member States of the Council of Europe. This is a result of the fact that the original 1961 Charter required only ratifications by five Member States and the 1988 Additional Protocol to the Charter and the 1996 Revised Charter only ratifications by three Member States for their entry into force.[35] Currently, 34 Member States are bound by the 1996 Revised Charter, nine Member States are bound only by the original 1961 Charter and four Member States have signed one, but have ratified neither the Charter nor the Revised Charter. Furthermore, while the treaty system of the European Social Charter contains a comprehensive catalogue of social rights, it allows States to choose to a certain extent the provisions they are willing to accept as obligations under international law. This "à la carte" system of acceptance of the (revised) Charter's provisions and **consequential monitoring limits the impact of the respective** treaties and further extends the differences in the Charter's **scope of application in the Member States.[36]**

61. A number of Council of Europe organs and institutions as well as civil society actors have repeatedly called upon Member States, notably, to ratify the Revised Charter or to accept further substantive provisions thereof, in recent years, and in particular since the start of the "Turin Process", which was **launched by the Secretary General in 2014 in order to strengthen the treaty system of the European Social Charter. However, it**

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[35] See the website of the Council of Europe Treaty Office for Details of Treaty No. 35, Treaty No. 128 and Treaty No. 163.

[36] See in more detail document CDDH(2018)R89add1, § 289.

cannot but be noted that these calls to date have had only limited success. Since the beginning of the process only one country, Greece ratified the Revised Charter (in March 2016). Only two countries, Belgium (in June 2015) and Ukraine (in July 2017), have accepted further provisions thereof.[37]

62. Furthermore, the substantive outreach of the provisions of the (revised) Charter themselves is restricted by the (revised) Charter's limited personal scope of application. Under the first paragraph of the Appendix to the Charter, the (revised) Charter applies to nationals, but to "foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned". As a consequence, States Parties are not obliged to ensure the social rights laid down in the (revised) Charter notably to nationals of non-Contracting Parties even if these persons are lawfully resident or working regularly within the territory of the State concerned.[38]

63. It must be noted in this respect that Member States had been invited notably by a letter of the President of the ECSR of 13 July 2011 to abolish the limitation on the personal scope of the Charter as specified in paragraph 1 of the Appendix and to extend the application of the (revised) Charter to everyone within the jurisdiction of the States Parties, arguing that the said limitation was not consistent with the nature of the Charter. However, the Member States to the (revised) Charter did not accept the argument and, thereafter, did not make declarations extending the personal scope of the rights enshrined in the Charter.[39]

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[37] See the website of the Council of Europe Treaty Office on Declarations for Treaty No.163.

[38] See in this respect also the speech by the President of the ECSR, Professor G. Palmisano, before the CDDH-SOC, CDDH-SOC(2018)R2, Appendix V.

[39] See already document CDDH(2018)R89add1, § 73 and CDDH-SOC(2018)R2, Appendix V; and, for instance, CEC v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014, § 64 concerning the negative answer by the Government of the Netherlands.

64. It is further true that in its decision practice, the ECSR extended the personal scope of application of the (revised) Charter also to unlawfully present foreign migrants in exceptional circumstances, namely if excluding unlawfully present foreigners from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental, or most basic rights (such as the right to life, to the preservation of human dignity, to psychological and physical integrity and to health).[40] According to the ECSR, this category of foreigners was not covered by all the provisions of the Charter, but solely by those provisions whose fundamental purpose was 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.[41] The ECSR argued that this interpretation was in line with the object and purpose of the Charter as a human rights treaty, with the peremptory norms of general international law (jus cogens) such as the rules requiring each State to respect and safeguard each individual's right to life and physical integrity and, where minors were concerned, with the United Nations Convention on the Rights of the Child, which all Member States of the Council of Europe have ratified.[42]

65. However, several States took issue with this interpretation of the personal scope of the (revised) Charter. It was argued that in the Appendix to the Charter, the States had aimed to exclude from the scope of the Charter foreigners not lawfully residing on the territory of a State, which was coherent with the sovereign right of States to decide on the entry of

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[40] See DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 28–39; Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009 § 19; and International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004 §§ 30 and 31.

[41] See DCI v. Belgium, cited above, § 36.

[42] See DCI v. Belgium, cited above, §§ 29–34.

foreigners on their territory. It was considered that the ECSR's **interpretation was contra legem and amounted to unilaterally imposing new obligations upon Member States. It was further advanced by those States that such interpretation risks jeopardising the trust that States place in what they have agreed upon in treaty law; it also raises serious concerns how such practice will affect the authority of the ECSR in the long run and how this will affect the effectiveness of the Social Charter itself.**[43] **It was noted that such interpretation was inconsistent with the ruling of the ECtHR on a similar matter.**[44] **The Committee of Ministers, for its part, recalled the limitation of the scope of the (revised) Charter laid down in paragraph 1 of the Appendix to the Charter, that the powers entrusted to the ECSR were firmly rooted in the Charter itself and that the said decision of the ECSR regarding the personal scope of the Charter raised complex issues in this regard.**[45]

66. As for the supervisory procedures under the (revised) Charter, the 1995 Additional Protocol Providing for a System of Collective Complaints has only been ratified by fifteen Member States; the last ratification (by the Czech Republic) dating back to 2012.[46] **Finland has notified in accordance with Article 2 of the**

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[43] **See the 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, appended to Resolution CM/ResChS(2015)4, adopted by the Committee of Ministers on 15 April 2015 at the 1225th meeting of the** Ministers' Deputies. Such concerns were reiterated by some members of the **CDDH-SOC, see CDDH-SOC(2018)R3, § 12.**

[44] **Hunde v. the Netherlands (no. 17931/16).**

[45] **See Resolution CM/ResChS(2015)4 concerning FEANTSA v. the Netherlands, adopted by the Committee of Ministers on 15 April 2015 at the 1225th** meeting of the Ministers' Deputies, §§ 2 and 3; and **CM/ResChS(2015)5 concerning CEC v. the Netherlands, adopted by the Committee of Ministers on 15 April 2015 at the 1225th** meeting of the Ministers' **Deputies, §§ 2–3.**

[46] **Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and**

Additional Protocol that it also recognises the right of any representative national non-governmental organisation within its jurisdiction which has particular competence, to lodge complaints against it. Moreover, the 1991 Turin Protocol amending the European Social Charter, which aims at improving the functioning of the Charter's reporting procedure and requires ratification by all parties to the 1961 European Social Charter, did not yet enter into force, with four States not having ratified it yet.[47]

67. Despite the fact that several Council of Europe and civil society actors invited the other 32 Member States on a number of occasions since then to accept the collective complaints procedure, to date none of them did. As regards the 1991 Protocol amending the Charter, no further State ratified that Protocol either. However, it must be noted that most of its provisions are already applied on the basis of a decision of the Committee of Ministers.[48] As regards the election of the members of the ECSR by the PACE which is equally foreseen by that Protocol, the Committee of Ministers, in its Reply to the PACE Recommendation on monitoring of commitments concerning social rights in 2011,[49] did not consider it appropriate at that stage to accede to the PACE's request to adopt a decision enabling the PACE to do so pending the entry into force of the 1991 Protocol.

Sweden. See the Treaty Office's homepage for the Chart of signatures and ratifications of the 1995 Additional Protocol.

[47] Denmark, Germany, Luxembourg and the United Kingdom. See the Treaty Office's homepage for the Chart of signatures and ratifications of the 1991 Amending Protocol.

[48] On 11 December 1991 the Committee of Ministers adopted a decision requesting "the States party to the Charter and the supervisory bodies to envisage the application of certain of the measures provided for in this Protocol before its entry into force, in so far as the text of the Charter will allow".

[49] CM/AS(2011) Rec1958 – Reply to the PACE Recommendation on monitoring of commitments concerning social rights.

b. Reasons given by the relevant stakeholders

68. In order to be able, in accordance with the CDDH's terms of reference, to make proposals with a view to improving the implementation of social rights in the Member States of the Council of Europe, the CDDH-SOC prepared a "Questionnaire related to the good practices on the implementation of social rights at national level", which it sent to the Member States.[50] Member States were asked a total of fourteen questions concerning the national implementation of social rights, the consideration of international standards of social rights in national law and policies, the instruments relating to the European Social Charter and ratifications as well as the training and awareness-raising actions on social rights. Thirty-one Member States submitted a reply to the questionnaire.[51]

69. With regard to the Member States' commitment under the relevant instruments of the treaty system of the (revised) Charter, Member States were asked, in particular, to describe the main obstacles (political, legal, administrative ...), if any, which their country faced to ratify the 1996 Revised Charter and to accept new provisions of the (revised) Charter. Furthermore, they were invited to specify the obstacles to ratify the 1991 Protocol amending the Charter and to ratify the 1995 Additional Protocol to the Charter Providing for a System of Collective Complaints. They were further asked to submit which improvements could, according to their country, be made to the system of collective complaints, in particular in order to encourage more ratifications of the 1995 Additional Protocol.[52]

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[50] See document CDDH-SOC(2018)02; the questionnaire was sent to the national representatives in the Governmental Committee of the European Social Charter.

[51] Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Switzerland, North Macedonia, Turkey and Ukraine.

[52] See questions C.1 and C.2 of the questionnaire, ibid.

(i) Reasons regarding the substantive commitments under the treaty system of the Charter

70. The Member States' replies to the questionnaire disclosed a variety of reasons for them not having taken further substantive commitments under the treaty system of the Charter.[53] Some States referred to procedural problems related to the ratification procedure and either pointed to the heavy workload of the relevant domestic institution(s) habilitated to examine the possibility of accepting new provisions/instruments on social rights[54] or the complexity of the ratification proceedings[55].

71. A number of States, however, indicated content-related reservations regarding, in particular, the ratification of the 1996 Revised Charter or the acceptance of further provisions thereof. Some of them explained that there was a lack of political consensus or will to do so,[56] for instance resulting from a fear of having to further extend the welfare State or of interference with the State's immigration policy[57]. Several further States indicated that they were not in a position to accept a broader or higher level of international commitments on social rights prior to ensuring full compliance with the already existing commitments under the (revised) Charter,[58] and/or on account of the economic and financial implications for the States[59]. Some States which

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[53] See for the Member States' answers in this respect document CDDH-SOC(2017)04rev, point C, pp. 117–129, for a summary thereof document CDDH-SOC(2018)07Rev, §§ 43–47 and for a short analysis of the replies document CDDH-SOC(2018)06, §§ 13–15.

[54] Bulgaria and Iceland.

[55] Belgium and Poland.

[56] Latvia and Switzerland.

[57] Switzerland.

[58] The Czech Republic, Lithuania and Poland.

[59] Bulgaria, Georgia, Lithuania, Republic of Moldova, Slovak Republic and Ukraine.

have not ratified the 1996 Revised Charter[60] or did not wish to accept further provisions thereof[61] stated that the conflict between certain provisions of the Revised Charter and various provisions of the existing national (labour, tax) legislation was an obstacle to the ratification/acceptance. Furthermore, the monitoring procedures under the treaty system of the Charter were considered as complex.[62]

72. Moreover, some States reported reservations concerning the interpretation and application of the (revised) Charter. It was argued that the ECSR's interpretation of the Charter and its **Appendix had extended considerably the content of the obligations deriving from the Charter, thus creating legal uncertainty for the ratifying States.[63] It was further submitted that the scope of the provision on non-discrimination of the Revised Charter, Article E, was broad and not sufficiently clear[64] or considered that some of the conclusions adopted in the reporting procedure were unfounded[65].**

73. Finally, it is worth noting that several States submitted that the acceptance of further provisions of the (revised) Charter[66] or the ratification of the Revised Charter[67] was being examined or worked on.

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60 Denmark, Poland and Switzerland.
61 The Slovak Republic.
62 See in this respect CDDH-SOC(2018)R3, § 10 and chapter II below.
63 Spain; see also CDDH-SOC(2018)R3, §§ 10 and 11.
64 Denmark.
65 Poland.
66 Armenia, Azerbaijan, Georgia, Ireland, Norway, Poland and Turkey.
67 Croatia and Switzerland.

(ii) Reasons regarding the supervisory mechanism under the treaty system of the Charter

74. As regards the supervisory mechanism under the treaty system of the Charter, 18 Member States[68] out of the 31 States which had responded to the questionnaire are not bound by the collective complaints procedure.[69] These States gave a variety of grounds for not having agreed to be bound by the procedure of collective complaints which often resemble the reasons given for not having taken further substantive commitments under the treaty system of the Charter. These reasons where frequently echoed by Member States which have accepted the collective complaints procedure when asked for suggestions for improvement of that procedure in order to encourage new ratifications of the 1995 Additional Protocol.

75. Several States declared in a general manner that this topic was not on the agenda.[70] One State submitted that there was little interest for the procedure by the social partners[71] as the potential complainant organisations in the collective complaints procedure. Other States preferred concentrating first on a full implementation of the existing obligations in the field of social rights and addressing the problems which had arisen during the

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[68] Albania, Armenia, Austria, Azerbaijan, Denmark, Estonia, Georgia, Iceland, Latvia, Lithuania, Republic of Moldova, Poland, Slovak Republic, Spain, Switzerland, North Macedonia, Turkey and Ukraine.

[69] States are bound by the collective complaints procedure if they either ratified the 1995 Additional Protocol to the European Social Charter providing for a System of Collective Complaints or are bound by the Revised Charter and have accepted the procedure of collective complaints provided for in the said Protocol. The responding Member States having ratified the 1995 Additional Protocol comprise Belgium, Croatia, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway and Portugal. The responding Member States which have accepted the collective complaints procedure in the latter manner are Bulgaria and Slovenia.

[70] See, in particular, Azerbaijan, Slovak Republic, Spain and Turkey.

[71] Estonia.

economic crisis.[72] The collective complaints procedure was also declared by a few States to be incompatible with the national legislation[73] or the national legal system which favoured individual complaints[74].

76. A number of States further expressed reservations regarding the current functioning of the collective complaints procedure. Some States generally pointed to the heavy workload of the States which have ratified the 1995 Additional Protocol in terms of their reporting obligations and the complexity of the procedures before the ECSR.[75] Others expressed concerns relating to particular aspects of the collective complaints procedure. These aspects comprised the examination of the admissibility of collective complaints, the conduct of the procedure before the ECSR, the establishment of the facts and the interpretation of the (revised) Charter by the latter as well as the follow-up after a finding of non-conformity with the (revised) Charter.

77. As regards the admissibility of collective complaints, States considered that the percentage of admissible complaints, compared also to that of applications before the European Court of Human Rights and UN institutions, was very high.[76] It was suggested that the ECSR could establish and apply stricter criteria for the admissibility of complaints (notably in its Rules),[77] in particular as regards the interpretation of the criteria permitting

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[72] Lithuania, the Republic of Moldova and Ukraine.
[73] Slovak Republic.
[74] Austria.
[75] Estonia and Iceland; these concerns were reiterated by members of the CDDH-SOC, see CDDH-SOC(2018)R3, § 10. See on this issue also Stefan Clauwaert, *The Charter's Supervisory Procedures*, in: Niklas Bruun / Klaus Lörcher / Isabelle Schömann / Stefan Clauwaert, *The European Social Charter and the Employment Relation*, 2017, p. 140.
[76] Poland and the Slovak Republic.
[77] See France and Slovenia.

an organisation to lodge a collective complaint.[78] Furthermore, the number of INGOs on the list of organisations having the right to submit a collective complaint established by the Governmental Committee (see Article 1 of the 1995 Additional Protocol) could be limited.[79]

78. As for the conduct of the procedure before the ECSR, several States suggested that the procedure before the ECSR should be more adversarial. The ECSR should systematically obtain the States' observations on all aspects relevant to its decision, including on questions of admissibility and third-party interventions.[80] Moreover, the equality of treatment of both parties to the proceedings should be strictly respected and, for instance, information on the state of the procedure or training on how to write submissions not be provided only to the complainant organisation.[81] Furthermore, a more frequent recourse to an oral phase of the proceedings, in which both parties could exchange directly with the ECSR on questions of the interpretation of the (revised) Charter as well as on the national situation and the factors determining the relevant national policies in the domain at issue and which would foster a necessary dialogue, was considered necessary.[82]

79. As regards the establishment of the facts in the proceedings before the ECSR, the importance of a critical examination of the complainant organisations' allegations, information and data submitted was stressed. Manifestly vague or incomplete information should be assessed appropriately; moreover, a strictly individual assessment of the situation in the particular State concerned was necessary especially where collective complaints on the same question were lodged against

[78] The Czech Republic and Estonia.
[79] Bulgaria.
[80] See the Czech Republic, France and Poland.
[81] The Czech Republic.
[82] Poland.

several Member States.[83] It was further important not to look at an issue raised in a collective complaint – such as, for instance, the amount of a specific benefit – in isolation, but in the context of the whole national system or political, economic and social context.[84]

80. As to the interpretation of the (revised) Charter by the ECSR, some States expressed the view that the (revised) Charter and the Appendix to it should be interpreted less extensively and more in line with the text thereof.[85] The decisions in the cases of FEANTSA v. the Netherlands[86] and CEC v. the Netherlands[87] – concerning the personal scope of application of the (revised) Charter – were cited as examples.[88] Moreover, the fact that the decisions of the ECSR sometimes diverged from decisions of the European Court of Human Rights and those of the Court of Justice of the European Union in similar cases could pose problems to the States even if account was taken of the differences in the underlying legal orders and in the status of the supervisory bodies.[89]

81. As regards the follow-up after a finding of non-conformity with the (revised) Charter by the ECSR in the collective complaints procedure, it was noted in general that the decision of the ECSR may limit the States' freedom to make political choices

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83 Poland.

84 Poland. See in this vein also the comments by the Government of Finland to the GR-SOC on 23 March 2017 concerning Finnish Society of Social Rights v. Finland, Complaint No. 108/2014. The Government argued that the ECSR's **decision did not fully reflect the Finnish social security system as looking at the amount of some monetary benefits in isolation of the system as a whole was not indicative of the final level of social security granted to elder unemployed persons.**

85 France and Poland; this view was reiterated by members of the CDDH-SOC, see CDDH-SOC(2018)R3, § 10.

86 Complaint No. 86/2012, decision on the merits of 2 July 2014.

87 Complaint No. 90/2013, cited above.

88 France.

89 Poland.

on which expenses in the field of social rights to focus on. Even if the ECSR's decisions were not legally binding, accepting the collective complaints procedure implied the States' good faith in **complying with its decisions.[90] It was further stressed that the follow-**up procedure after the ECSR's decision finding of a **breach of the (revised) Charter had to be rendered more effective and that, in particular, the fact that follow-up reporting could continue infinitely had to be reconsidered.[91]**

82. It shall be noted that several of the responding States declared being open to the possibility of accepting/ratifying the 1995 Additional Protocol although this process required additional political evaluation[92], adequate financial resources[93] or a closer examination of the existing experiences of the practical functioning of the collective complaints procedure, including an analysis of the reasons why only a limited number of States had accepted the procedure[94].

83. As regards the 1991 "Turin" Protocol amending the European Social Charter, the Member States' replies to the **questionnaire do not provide any new information as the four States whose ratification is still necessary for it to enter into force[95] have either not answered the questionnaire or not given reasons in this regard.**

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[90] **Poland.**
[91] **The Netherlands.**
[92] **Albania and North Macedonia.**
[93] **Georgia and North Macedonia.**
[94] **Armenia.**
[95] **Denmark, Germany, Luxembourg and the United Kingdom, see above.**

c. Analysis of the reasons given by the relevant stakeholders

84. Having regard to the foregoing, the reasons given by the Member States for not having taken further substantive commitments under the treaty system of the Charter and for not having agreed to be bound by the procedure of collective complaints can broadly be classified in three categories.

85. There are, first, objections of principle against accepting, at least at the present stage, further commitments in the field of international social rights. Such objections may result from the Member States not being ready to amend their domestic law or their social policy choices or from the financial implications of a higher level of protection of social rights. Second, there are reasons relating to the functioning of the treaty system of the Charter. Member States notably argued that the interpretation of the (revised) Charter was too extensive or that improvements should be made to the collective complaints procedure (as regards the admissibility of collective complaints, the conduct of the procedure before the ECSR, the establishment of the facts and the interpretation of the (revised) Charter by the latter as well as the follow-up after a finding of non-conformity with the (revised) Charter). Third, there are reasons relating to the complexity of, or workload involved in the procedure for the ratification of an international treaty or further provisions thereof.

86. As shall be set out below, these different categories of reasons call for different answers and proposals in order to arrive at an improvement of the implementation of the social rights protected by the treaty system of the Charter.

2. CDDH proposals

87. In the light of the foregoing, it is clear that any proposals which the CDDH may make, in accordance with its terms of reference, for the improvement of the implementation of social rights in Europe with the help of the legal framework provided by the Council of Europe to that effect must concentrate on ways to strengthen the current treaty system of the European Social Charter and to make it more efficient. While social rights are protected in Europe also by other instruments at national, European and international level, it is further clear that in order to strengthen both the substantive outreach and the practical impact of the current treaty system of the Charter itself, key measures would be to secure the ratification by all thirteen Council of Europe Member States which have not yet done so, including eight EU Member States, of the Revised Charter as well as the ratification by the four (EU) Member States, which have not done so, of the 1991 Turin Protocol amending the European Social Charter.[96] Furthermore, the acceptance of further provisions of the (revised) Charter and in particular of its core provisions by the Contracting Parties, the extension of the personal scope of application of the Charter (at least so as to include all persons lawfully resident or working regularly within the territory of the State concerned, irrespective of whether or not they are nationals of another Contracting Party to the (revised)

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[96] This was notably stressed by the President of the ECSR, Professor G. Palmisano, on several occasions, in his addresses to the Committee of Ministers (see the ECSR President's speech of 22/3/2017 and the ECSR President's speech of 21/3/2018 before the Committee of Ministers) and to the Rapporteur Group on Social and Health Questions (GR-SOC) (see the ECSR President's introductory speech of 17/01/2019 at his exchange of views with the GR-SOC, point 1, and in his speeches before the CDDH-SOC (see CDDH-SOC(2018)R2, Appendix V and CDDH-SOC(2018)R3, § 22 and Appendix V); see also Stefan Clauwaert, *The Charter's Supervisory Procedures*, in: Niklas Bruun / Klaus Lörcher / Isabelle Schömann / Stefan Clauwaert, *The European Social Charter and the Employment Relation*, 2017, pp. 133–134 with further references.

Charter) and the acceptance by all Council of Europe Member States of the collective complaints procedure, and Member States already parties to the collective complaints procedure recognising also the right of any representative national non-governmental organisation within its jurisdiction which has particular competence, to lodge complaints against it, would considerably enhance the impact of the treaty system of the Charter.[97] Given that the Governmental Committee and the Committee of Ministers are now also responsible to monitor the implementation the European Code of Social Security, Member States, which have not done so, should be encouraged to ratify (the revised version of) this Code.[98]

88. However, the analysis of the Member States' reasons for **not having taken further substantive commitments under the treaty system of the Charter and for not having agreed to be bound by the procedure of collective complaints, as well as recent discussions among the Member States of the Council of Europe in different organs and groups, have shown that there has not hitherto been a consensus among all the Member States concerned to take such further commitments. Nevertheless, the impact of the treaty system of the Charter is, as has been shown, on the one hand limited by the fact that the commitments taken by the different Council of Europe Member States may differ. On the other hand, through the possibility of ratifying different treaties of the system and of making a certain choice as to the provisions accepted, it allows Member States to advance at**

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97 Ibid.

98 The European Code of Social Security (1964) has been ratified by Belgium, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland, Turkey and United Kingdom; it was signed but not yet ratified by Austria, Latvia, Lithuania, Republic of Moldova, Slovak Republic and Ukraine. The Revised European Code of Social Security (1990; but not yet in force) has only been ratified so far by the Netherlands; Austria, Belgium, Cyprus, Finland, France, Germany, Greece, Italy, Latvia, Norway, Portugal, Sweden and Turkey have signed but not yet ratified it.

different speeds. Advantage should be drawn from this legal setting in order to achieve as much further commitment to the treaty system of the Charter as possible in the respective Member States in the current situation.

89. The CDDH will therefore first make proposals with a view to addressing the objections of principle against accepting, at least at the present stage, further commitments in the field of international social rights for which (revised) Charter is an essential system of protection. The reasons for accepting such commitments shall be set out. Furthermore, the CDDH will make proposals with a view to addressing the objections relating specifically to the functioning of the treaty system of the Charter. If these objections can be overcome and there is a political will to accept further commitments under the treaty system of the Charter, the complexity of the ratification procedure and the workload related to it should be manageable. Finally, possible ways and settings of promoting further commitments shall be set out.

90. When faced with objections of principle against accepting, at least at the present stage, further commitments in the field of international social rights and in particular under the treaty system of the Charter, it is important not to forget the reasons militating in favour of taking such commitments. Generally, the protection of human rights serves to promote social cohesion. In recent years, the economic crisis which entailed an increase in unemployment and job insecurity as well as cuts in the social security and benefits systems in a number of Member States can be seen as having demonstrated the importance of an effective protection of social rights to prevent the most vulnerable persons from being left behind.[99]

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[99] **Compare the** Secretary General's speech at the "Turin I" Conference 2014; **the** ECSR President's speech of 22/3/2017 **before the Committee of Ministers; the** ECSR President's speech of 21/3/2018 **before the Committee of Ministers; the** 2018 Report of the Secretary General on the "State of democracy, human

91. The system of the European Social Charter in general has been called a "**guiding example for justice and equality in** Europe".[100] **It has further been** described as "**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 as "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".[101] **It has been stressed that European States should be proud of their traditional and consolidated high standards in the protection of social rights.**[102] **Strengthening the system of the Charter strengthened the European model.**[103]

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rights and the rule of law", **Chapter V – Inclusive societies – Social rights, p. 98; and** Colm O'Cinneide, **Social rights and the European Social Charter – new challenges and fresh opportunities, in: Jean-Yves Carlier / Olivier De Schutter / Marc Verdussen, The European Social Charter: a Social Constitution for Europe, 2010, pp. 182–183.**

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

[101] **See the** ECSR President's speech of 21/3/2018 **before the Committee of Ministers.**

[102] **See the** ECSR President's speech of 21/3/2018 **before the Committee of Ministers.**

[103] **See the intervention of the President of the ECSR, Professor G. Palmisano, before the CDDH-SOC, CDDH-SOC(2018)R2, § 16. See on this issue also** Colm O'Cinneide, **Social rights and the European Social Charter – new challenges and fresh opportunities, in: Jean-Yves Carlier / Olivier De Schutter / Marc Verdussen, The European Social Charter: a Social Constitution for Europe, 2010, p. 174**; and on the notion of 'European social model' O. Dörr, **The European Social Charter, in: S. Schmahl/M. Breuer, The Council of Europe – Its Laws and Policies, paragraph 23.77 with further references.**

92. As for the reasons for taking further substantive commitments under the system of the Charter, it has been argued that the Revised Charter 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".[104] **It was stressed that most of these rights were in any event already recognised and applied in the domestic legal order and practice in the Member States which have not ratified the Revised Charter yet, as well as in the EU Treaties and legislation.[105] In order to guarantee a broader and more uniform protection of social rights in Europe, States should be encouraged to accept further provisions of the (revised) Charter, in particular all core provisions thereof.[106]**

93. As far as the personal scope of application of the (revised) Charter is concerned, it has essentially been argued that the exclusion from the personal scope of application even of nationals from non-Contracting Parties to the Charter, who are lawfully resident and work regularly within the territory of the State (that is, not irregular migrants) was a notion which could not be found in other international and European legal instruments aimed at protecting human rights,[107] and not in line with the spirit of social equality, solidarity and non-discrimination

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[104] See the speech of the President of the ECSR, Professor G. Palmisano, before the CDDH-SOC CDDH-SOC(2018)R3, Appendix V.

[105] Ibid.

[106] See the ECSR President's speech of 22/3/2017 before the Committee of Ministers as well as his speeches before the CDDH-SOC, CDDH-SOC(2018)R2, Appendix V, and CDDH-SOC(2018)R3, Appendix V.

[107] Under Article 1 of the Convention, the Contracting Parties shall secure the Convention rights "to everyone within their jurisdiction"; the EU Charter of Fundamental Rights expressly recognises some social rights also to persons residing or working legally within the EU, for example Articles 15 § 3 and 34 § 2 of the Charter.

of the (revised) Charter.[108] It emerged from the discussions between the Member States' representatives in different Council of Europe organs and Groups that a number of Member States did not, at the present stage, envisage any extension of the scope of application of the Charter.[109] However, others stressed that each State should consider and make its own choice whether it was ready to extend the personal scope of application of the Charter at least to nationals from non-Contracting Parties to the Charter, who are lawfully resident and work regularly within the territory of the State concerned.[110] This did not necessitate a formal amendment to the Appendix, but, as confirmed by the second sentence of paragraph 1 of the Appendix to the Charter, could be effected by way of a unilateral declaration by the relevant States.[111]

94. Regarding the acceptance of the collective complaints procedure, its advantages compared to the reporting procedure were stressed. It put the normative prescriptions of the Charter to the test of more specific situations. It further identified what a State had to do in order to guarantee, in specific situations, the social rights laid down in the Charter.[112] It thereby improves the effective enforcement of the social rights guaranteed by the (revised) Charter.[113] It also opened the European system for the

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[108] See footnote 104.

[109] See CDDH-SOC(2018)R3, § 11.

[110] See CDDH-SOC(2018)R3, § 11; and the Member States' views expressed at their exchange of views with the ECSR's President in the meeting of the GR-SOC on 17 January 2019, document DD(2019)135.

[111] See the speech of the President of the ECSR, Professor G. Palmisano, before the CDDH-SOC, CDDH-SOC(2018)R3, Appendix V.

[112] See the ECSR President's speech of 22/3/2017 and the ECSR President's speech of 21/3/2018 before the Committee of Ministers; and also Colm O'Cinneide, Social rights and the European Social Charter – new challenges and fresh opportunities, in: Jean-Yves Carlier/ Olivier De Schutter/ Marc Verdussen, The European Social Charter: a Social Constitution for Europe, 2010, pp. 170–171.

[113] See, for instance, Armenia's reply to the questionnaire, document CDDH-SOC(2017)04rev, C.1; and the intervention of the President of the ECSR before

protection of social rights, at least indirectly, to its beneficiaries and had increased the awareness regarding the Charter in the Member States as a result, inter alia, of media coverage.[114] It was further argued that a general ratification of the 1995 Additional Protocol would be important in order to ensure equality of treatment between the States.[115] Moreover, it was argued that the collective complaints procedure had contributed to increasing the impact of the rights laid down in the Charter in the Member States as central and local authorities as well as domestic courts had referred to decisions taken by the ECSR in that procedure much more frequently in recent years.[116]

95. As regards the objections relating specifically to the functioning of the treaty system of the Charter, the CDDH notes that it has become evident that there is notably a desire on the part of the States for more legal certainty as regards both the conduct of the collective complaints procedure and the interpretation of the provisions of the (revised) Charter in the decisions taken on collective complaints.

96. Without losing sight of the fact that it is for the ECSR to adopt its Rules of procedure and to apply them in practice, the CDDH considers that the States could be reassured of the fair and efficient functioning of the collective complaints procedure if, in particular, proceedings were more adversarial (as regards notably the possibility for States to comment on questions of admissibility and third-party interventions) and if the dialogue in

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the CDDH-SOC at its 3rd meeting (5–7 September 2018), document CDDH-SOC(2018)R3, Appendix V.

114 Compare the speech of the President of the ECSR before the CDDH-SOC, document CDDH-SOC(2018)R2, Appendix V.

115 See ibid.; and also the speech of the President of the ECSR, Professor G. Palmisano, before the CDDH-SOC, CDDH-SOC(2018)R2, Appendix V.

116 See the interventions of the President of the ECSR before the CDDH-SOC at its 2nd meeting (2–4 May 2018), document CDDH-SOC(2018)R2, Appendix V; and at its 3rd meeting (5–7 September 2018), document CDDH-SOC(2018)R3, Appendix V.

both written and, if necessary, oral proceedings on both questions of fact and of law were increased, possibly on the basis of specific questions put by the ECSR to the parties.[117]

97. Moreover, while it must be stressed that it is for the ECSR to decide whether a complaint is admissible (see Article 7 of the 1995 Additional Protocol), to interpret the provisions of the (revised) Charter and to decide whether the Contracting Party concerned has complied with its provisions (see Article 8 of the 1995 Additional Protocol), there is a need on the part of the States for more legal certainty as to the scope of their obligations under the Charter, which a number of States had read as being less extensive notably as regards the personal scope of its application. That need could possibly be addressed both by an increased exchange of arguments also on the admissibility of complaints and the interpretation of the provisions of the Charter during the collective complaints procedure as well as in the reasons given by the ECSR for its decisions. Member States' **experts further agreed with the suggestion made by the President of the ECSR that the latter could look into its current practice concerning the admissibility of collective complaints, which may have been relatively lenient in the first years of operation of the procedure, and possibly exercise closer scrutiny in respect of the admissibility of complaints.[118] They further suggested that the Governmental Committee could equally exercise closer scrutiny concerning the inclusion of INGOs on the list of organisations having the right to submit collective complaints.[119]**

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[117] See on the latter issue also Colm O'Cinneide, **Social rights and the European Social Charter – new challenges and fresh opportunities, in: Jean-Yves Carlier / Olivier De Schutter / Marc Verdussen, The European Social Charter: a Social Constitution for Europe, 2010, pp. 175–176.**

[118] 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), point 4, as well as the view expressed by the Member States in this respect, document DD(2019)135); and CDDH-SOC(2018)R3, § 15.**

[119] See CDDH-SOC(2018)R3, § 15.

98. As for possible ways and settings for promoting further commitments by the Member States under the treaty system of the Charter, the CDDH considers that, in order to evaluate whether there is a political will in the Member States to take further commitments or whether such a will can develop notably by addressing particular queries regarding, and objections to the functioning of the current system, the Council of Europe organs and institutions and the Member States could agree on a concrete work programme, or process, aimed at obtaining such commitments.

99. Subject to their own priorities, it would be desirable that there be more systematic, and if possible, coordinated activities on the Charter by the Member States, in particular, as the case may be, under the forthcoming Presidencies of the Committee of Ministers. Thematic debates on a series of questions related to the Member States' queries and objections, as identified above, **could be organised in cooperation with the ECSR and the Department of the European Social Charter, as well as in cooperation with States which have declared their willingness to share their experiences regarding the treaty system of the Charter and the collective complaints procedure[120]. A high-level conference to take note of concrete decisions and decide on further steps to be taken could equally be an option.**

100. Moreover, the organs and institutions of the Council of Europe should pursue their engagement to strengthen social rights and should take concrete measures, in the course of their activities, encouraging Member States to accept further commitments with regard to the Charter. This might be done notably by the Secretary General in his bilateral meetings with State representatives, by the Committee of Ministers and the

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[120] See for the proposal to encourage more ratifications by experience exchange and knowledge transfer in a peer-to-peer dialogue also Armenia's and Finland's replies to the questionnaire, document **CDDH-SOC(2017)04rev, C.1 and C.2.**

Parliamentary Assembly via specific recommendations, by the Commissioner for Human Rights in her or his country visits and reports, Human Rights Comments and Issue Papers and by the Conference of INGOs in their awareness-raising, training and communication activities. Furthermore, given that 14 out of the 15 States which have accepted the collective complaints procedure are Member States of the European Union (EU), the EU institutions (notably the Commission, the European Parliament or the European Economic and Social Committee) could equally be encouraged to recommend to the other EU Member States to follow that example, thus also creating synergies between the Council of Europe and the EU in the field of social rights.[121]

101. In this context, given that the treaty system of the Charter permits States to take different levels of commitments and to advance at differing speeds and given the diversity both of the political, social and economic background of different Member States and of their perception of the Charter system, it may further be an option to examine with States in bilateral meetings whether, and in which respect, they are willing to reinforce their commitments regarding the treaty system of the Charter.[122]

[121] See for the proposal of the President of the ECSR in this respect CDDH-SOC(2018)R3, Appendix V.
[122] See in this respect also CDDH-SOC(2018)R3, § 10.

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

102. As described in more detail in the "Analysis of the legal **framework of the Council of Europe for the protection of social** rights in Europe" (first report),[123] **there are two different monitoring procedures under the treaty system of the Charter, the State reporting procedure and the collective complaints procedure.**

103. Both procedures are complementary, but have distinct features and raise partially similar and partially different issues regarding the aim of improving the implementation of social rights in Europe. As will be shown in more detail below, the State reporting procedure applies to all States Parties to the (revised) Charter and mainly raises issues regarding its complexity and the consequences thereof on its efficient functioning. In contrast, the collective complaints procedure currently only applies to fifteen States and mainly raises issues linked to concrete aspects of the functioning of this specific procedure. Due to the interrelationship between the two procedures, the simplification processes in the reporting system gave rise to some further challenges. The CDDH also notes below concerns expressed by some States about the interpretation of certain provisions of the (revised) Charter adopted by the ECSR, as well as the level of dialogue during the procedures. However, the challenges which may arise in these procedures to an effective implementation of social rights as well as the CDDH's proposals with a view to **improving that implementation shall therefore be presented for both procedures separately.**

[123] **See document CDDH(2018)R89add1, §§ 75-110.**

1. State reporting procedure

a. Current challenges

(i) Background

104. It is recalled that currently, the State reporting procedure is set out in Part IV (Articles 21 to 29) of the 1961 Charter. It equally applies in respect of the undertakings under the Revised Charter (see Part IV, Article C thereof) and has been further elaborated in several decisions of the Committee of Ministers. It currently comprises four different types of reports.

105. First, pursuant to Article 21 of the Charter, States have to submit reports concerning the application of the provisions of the (revised) Charter which they have accepted. Since 2007, following a decision of the Committee of Ministers, States have to submit a report on one out of four thematic groups of substantive undertakings under the (revised) Charter every year.[124] Second, following further changes to the reporting procedure adopted by the Committee of Ministers in 2014, the (currently 15) States which have accepted the collective complaints procedure shall submit, every two years, a simplified national report instead of the said ordinary thematic report. In that simplified report, they shall explain the follow-up action taken in response to decisions of the ECSR on collective complaints brought against them.[125] Third, it was also decided in 2014 that States shall submit additional reports on conclusions of non-conformity for repeated lack of information one year after adoption of such conclusions by the ECSR.[126] Fourth, under

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[124] See document CDDH(2018)R89add1, § 89 with further references. See for a detailed description of the reporting procedure also Stefan Clauwaert, The *Charter's Supervisory Procedures*, in: Niklas Bruun / Klaus Lörcher / Isabelle Schömann / Stefan Clauwaert, The European Social Charter and the Employment Relation, 2017, pp. 108–120.

[125] Ibid., § 90 with further references.

[126] Ibid., § 91 with further references.

Article 22 of the Charter, States are under a duty to submit reports at regular intervals also concerning the provisions of the (revised) Charter which they have not accepted.[127]

106. Furthermore, there are three stages in the reporting procedure. At the first stage, the ECSR examines the States' **reports and assesses in its annual Conclusions whether or not, from a legal point of view, the national situations they describe comply with the (revised) Charter. At the second stage, the Governmental Committee of the European Social Charter and** the European Code of Social Security ("Governmental Committee") elab**orates a report to the Committee of Ministers in which it decides on situations which, in its opinion, should be the subject of recommendations to States in the light of the selected** conclusions of the ECSR and the States Parties' explanations **and having notably regard to national circumstances and social and economic policy considerations. At the third stage, the Committee of Ministers, on the basis of the Governmental** Committee's report, adopts a resolution which brings each **supervision cycle to a close and may contain individual recommendations addressed to the States concerned, directing them to remedy the situations of non-conformity. Until now, such recommendations remained rare in practice.**[128]

107. It results from the above description of the State reporting procedure that the latter has become very complex and that it may raise an issue regarding its contribution to the effective implementation of the social rights guaranteed in the (revised) Charter.

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[127] **Ibid., § 88.**

[128] **See on this procedure in more detail document CDDH(2018)R89add1, §§ 84-87 with further references; and also Olivier De Schutter and Matthias** Sant'Ana, **The European Committee of Social Rights (the ECSR), in: Gauthier de Beco (ed.), Human Rights Monitoring Mechanisms of the Council of Europe, 2012, pp. 81–82.**

(ii) Reasons given by the relevant stakeholders

108. There appears indeed to be agreement among all the actors in the reporting procedure, and notably among the States parties and the ECSR, that despite the recent reforms of the reporting procedure by the Committee of Ministers that procedure remained too complicated.[129] It was pointed out in particular that notably the changes in the reporting system which had been adopted by the Committee of Ministers in 2014 with the objective to simplify the procedure for States which accepted the collective complaints procedure, and which had introduced two new types of reports,[130] have not proven to attain that goal but have rather rendered the reporting procedure even more complex.[131] In particular, the obligation of the States having accepted the collective complaints procedure to submit simplified reports on the measures they had taken in response to a decision on a collective complaint in which a non-conformity with the (revised) Charter had been found[132] prevailed indefinitely as long as the situation has not been brought in conformity with the (revised) Charter, even if the Committee of Ministers has closed the case.[133]

109. It has been advanced that the way in which the reporting procedure is currently organised and implemented has led to an excessive workload not only for the State authorities which had to present detailed reports covering large and diverse areas such as, for example, work and employment, social security, social assistance, health care, housing and family protection. It equally entrusted the ECSR with the impossible task of examining

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[129] See for the view expressed by the Member States on the reporting system, 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).

[130] See paragraph 105 above.

[131] This view was notably taken by the President of the ECSR, see the ECSR President's speech of 21/3/2018 before the Committee of Ministers.

[132] See Rule 40 of the Rules of the ECSR.

[133] See in more detail document CDDH(2018)R89add1, § 110.

carefully these reports and to thoroughly assess the conformity of the situation in the Member States with the provisions of the (revised) Charter in these areas.[134] The reporting procedure therefore did not only risk becoming a bureaucratic and routine exercise; the Conclusions adopted by the ECSR at the end of the reporting cycle risked coming too late and thus being ineffective notably if changes in domestic legislation and practice have intervened in the meantime.[135] Also the fact that some Member States submit their reports with a serious delay (or even not at all) risks further rendering the system less effective as it does not allow the ECSR to make a thorough and timely evaluation of the reports. On a number of occasions, owing to a lack of reliable data and statistics regarding the situation which was found not to be in conformity with the Charter, the ECSR did not have sufficient information at their disposal in order to assess whether the situation had been brought in conformity with the (revised) Charter by the measures taken by the Member State concerned.[136]

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[134] See the ECSR President's speech of 21/3/2018 before the Committee of Ministers; the latter's intervention before the CDDH-SOC at its 3rd meeting (5–7 September 2018), see CDDH-SOC(2018)R3, Appendix V; as well as 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), point 5.

[135] See the ECSR President's speech of 22/3/2017 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.

[136] See, for instance, the ECSR's findings 2018 on the Follow-up to decisions on the merits of collective complaints in International Federation for Human Rights (FIDH) v. Belgium, Complaint No. 75/2011, decision on the merits of 18 March 2013, §§ 75–77, where no reliable data and statistics on highly dependent persons with disabilities in a particular region were available; in European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §§ 97 and 100, where up-to-date figures on the availability of social housing for Roma were missing; and in European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 500, where no up-to-date figures on the supply and demand of social housing for Roma and Sinti were available.

110. As a consequence, according to many Member States and the President of the ECSR, the reporting procedure is not sufficiently effective.[137] It does not permit to timely identifying the real and most serious problems concerning the implementation of the (revised) Charter in each State. It is therefore not sufficiently useful for helping European States to actually improve the implementation of social rights.[138]

(iii) Analysis of the reasons given by the relevant stakeholders

111. In the light of the foregoing, many Member States and the President of the ECSR agree that the current set-up of the State reporting procedure is unsatisfactory. It should be substantially reformed in order to allow it to achieve its goal of contributing to the improvement of the implementation of social rights in Europe.[139]

b. CDDH proposals

112. As regards the concrete ways to reform the State reporting procedure, the CDDH observes that four very concrete proposals have recently been made by the President of the ECSR in this respect, which have generally met with a positive reaction by the Member States.

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[137] See for the view expressed by the Member States on the reporting system, 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).

[138] See the ECSR President's speech of 21/3/2018 before the Committee of Ministers; and 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), ibid.

[139] See the ECSR President's speech of 22/3/2017 and the ECSR President's speech of 21/3/2018 before the Committee of Ministers; as well as the views expressed by the Member States on the reporting system at the GR-SOC's exchange of views with the President of the ECSR on 17 January 2019, document DD(2019)135).

113. A first proposal concerns the reports under Article 21 of the Charter on one out of four thematic groups of substantive commitments under the (revised) Charter which the States have to submit every year. When the ECSR finds in its annual Conclusions that the situation in a given State is in full conformity with a provision of the Charter, this State could be exempted from reporting on the same provision in the next supervision cycle in detail and inform the ECSR only about changes in its legislation or practice. Where the ECSR finds that, pending receipt of information, the situation seems to be in conformity with the (revised) Charter, the State could provide only the information requested in the next cycle of supervision, without submitting a complete report concerning the Charter provision in question.[140]

114. 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 alternating with reports on the follow-up to collective complaints.[141] 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

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[140] Compare 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.

[141] In order to ensure that the States which have accepted the collective complaints procedure report on all of the four thematic groups of substantive provisions of the (revised) Charter over an eight-year cycle, States are not always alternating directly between ordinary thematic reports and simplified follow-up reports to collective complaints, but may be invited to submit two ordinary reports consecutively or two simplified follow-up reports consecutively; see for a detailed description of the sequence of the different reports the updated "Digest of the case law of the European Committee of Social Rights" of December 2018, pp. 7–8.

specific, analytical reports on one out of four thematic groups of substantive commitments under the (revised) Charter every year.[142]

115. Moreover, the States Parties to the collective complaints procedure, as equally described above, have to submit reports on the follow-up to collective complaints every two years as long as the situation has not been brought in conformity with the (revised) Charter. It is proposed that this reporting obligation should be limited to two cycles. If the ECSR still finds that the situation has not been brought in conformity with the Charter after this period, the case should be referred to the Committee of Ministers, which should adopt a final resolution or recommendation addressed to the State, thereby closing once and for all the procedure.[143]

116. 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.[144] It was stressed that this could also serve to facilitate the acceptance of the collective complaints procedure by further States.[145]

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[142] 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), point 5; 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.

[143] Ibid.

[144] 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).

[145] 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), point 6.

117. A fourth proposal concerns the new reporting procedure introduced by the Committee of Ministers in 2014 under which States must submit additional reports on conclusions of non-conformity for repeated lack of information one year after adoption of such conclusions by the ECSR. This procedure, which the ECSR was unable to implement in 2018 due to lack of time and resources, could be abolished, that is, the ECSR 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 States should no longer submit additional reports as a follow-up to this type of conclusions.[146]**

118. The CDDH further observes that Member States also expressed agreement with the proposal of the President of the ECSR that the reporting procedure should become more targeted and be focused on topics of strategic importance for the implementation and protection of social rights.[147]

119. It may be noted that one step into that direction has already been taken in that the ECSR, in cooperation with its Secretariat, decided to change the method for drafting its Conclusions as of 2018. Instead of discussing all data and information provided for in each State report, it focuses only on the most problematic issues concerning the implementation by the State concerned of the Charter provisions under examination. This shall permit, in considerably shorter texts, to highlight the problems which deserve priority and careful attention, as well as the measures required to bring the national situation in conformity with the Charter.[148]

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[146] **Ibid.**

[147] **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), point 5; and the view expressed by the Member States on this occasion (document DD(2019)135).**

[148] **See the** ECSR President's speech of 21/3/2018 **before the Committee of Ministers.**

120. Moreover, the CDDH takes note of the submission by the President of the ECSR that in order to increase the impact of the treaty system of the Charter and in the light of the increasing workload the monitoring mechanism of the Charter is faced with, it would be advisable to increase the number of members of the ECSR. This would also ensure a better overall balance within the ECSR of the different legal traditions and social models in Europe.[149] The CDDH also takes note of the fact that the Member States did not support that proposal. Furthermore, it would be crucial to strengthen the staff of the Department of the European Social Charter.[150]

121. In the light of these elements, the CDDH considers that there is a broad agreement among the actors in the reporting procedure that this procedure should be further reformed in order to become lighter, less cumbersome and more targeted so as to focus on topics of strategic importance for the implementation and protection of social rights. It therefore takes the view that concrete proposals in order to attain this aim should be elaborated for the adoption by the Committee of Ministers (being the organ responsible under Articles 21 and 22 of the Charter for determining the form of reports to be provided in the reporting procedure). It further finds that the proposals made by the President of the ECSR, set out above, regarding the reform of the reporting procedure, many of which have met with approval by the States Parties to the (revised) Charter, constitute a sound basis for the elaboration of these concrete proposals.

122. The CDDH further finds that the elaboration of the proposals should concentrate on changes which may be made within the framework of the current treaty system of the Charter, and in particular Articles 21 and 22 thereof. It should

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[149] For the current situation see document CDDH(2018)R89add1, § 76.

[150] See the ECSR President's speech of 22/3/2017 before the Committee of Ministers.

further be borne in mind in this context that it was important for the proposals to be able to reach their goal of leading to a both simpler and more targeted procedure that the reporting obligations were clear and predictable for the States,[151] including as regards the determination and definition of the strategic issues the procedure was to focus on. Moreover, the States' **suggestion that the reporting procedure should involve more dialogue with all stakeholders and that synergies should be developed between the reporting system of the (revised) Charter and that of other human rights instruments should be taken into account.[152] A close cooperation of the Department of the European Social Charter with the ECSR as well as with the Governmental Committee in drawing up the proposals would be desirable.**

123. Moreover, the CDDH finds that the recent steps taken by the ECSR in cooperation with the Department of the European Social Charter to adapt its working methods in order to render the State reporting procedure more efficient, notably by drafting shorter conclusions focusing only on the most problematic issues in the implementation of the Charter provisions by the State concerned, are to be welcomed. Both should be encouraged to examine further steps to streamline their internal procedures while keeping States Parties and all other stakeholders informed of the major steps envisaged.

124. The CDDH further considers it necessary to ensure that the monitoring mechanism of the (revised) Charter in its new form is allocated the necessary resources in order to function efficiently and thus to attain the aim of contributing to the improvement of the implementation of social rights in the States Parties to the (revised) Charter. It should therefore be examined

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[151] **This view was expressed by the Member States, in particular, during the GR-SOC's exchange of views with the President of the ECSR on 17 January 2019, see document DD(2019)135.**

[152] **Ibid.**

whether, in the light of the proposals made regarding the reform of the monitoring mechanism of the (revised) Charter, it is nevertheless necessary to increase the number of staff members in the Department of the European Social Charter.

2. Collective complaints procedure

a. Current challenges

(i) Background

125. The collective complaints procedure is a monitoring mechanism complementing the reporting system. As mentioned above, the 1995 Additional Protocol Providing for a System of Collective Complaints has only been accepted by fifteen out of the forty-seven Member States of the Council of Europe; the last ratification (by the Czech Republic) dating back to 2012.[153] Finland has notified in accordance with Article 2 of the Additional Protocol that it also recognises the right of any representative national non-governmental organisation within its jurisdiction which has particular competence, to lodge complaints against it. As equally outlined above, a number of issues regarding the functioning in practice and effectiveness of the collective complaints procedure has recently been the subject of discussion.

(ii) Reasons given by the relevant stakeholders

126. A number of reasons which the Member States have provided (particularly in the "Questionnaire related to the good **practices on the implementation of social rights** at national level") **for not accepting further commitments under the treaty system of**

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[153] **See for more details on the functioning of the collective complaints procedure document CDDH(2018)R89add1, §§ 94–110; and Stefan Clauwaert,** *The Charter's Supervisory Procedures*, **in: Niklas Bruun / Klaus Lörcher / Isabelle Schömann / Stefan Clauwaert,** *The European Social Charter and the Employment Relation*, **2017, pp. 120–131.**

the Charter and notably not accepting to be bound by the collective complaints procedure, which have been examined in Chapter I. above, were related to the current functioning of the collective complaints procedure. As set out in detail above, other than the workload generally generated by the procedures before the ECSR, States expressed reservations, in particular, in respect of the examination of the admissibility of collective complaints (which they considered as being not sufficiently strict), the conduct of the procedure before the ECSR (which should be more adversarial and comprise an oral phase more often), the establishment of the facts (which should be more thorough) and the interpretation of the (revised) Charter by the latter (which was seen as partly too extensive) as well as the follow-up after a finding of non-conformity with the (revised) Charter (where follow-up reporting could continue infinitely).[154]

127. It was further argued by some experts that the obligation of confidentiality under Article 8 § 2 of the 1995 Additional Protocol could be reconsidered. Under that provision, the report containing the ECSR's decision on a collective complaint may **only be made public at the same time as the resolution adopted by the Committee of Ministers under Article 9 of the 1995 Additional Protocol or four months after it has been transmitted to the Committee of Ministers. Even if Member States consented to the publication of the report, that publication was thus prohibited under the said provision.[155]**

128. Other stakeholders raised further issues regarding the effective functioning of the collective complaints procedure. The President of the ECSR notably found it essential for ensuring a good functioning of the procedure and to improve respect for social rights in Europe that the Committee of Ministers played a more active role in the follow-up to decisions of the ECSR. It should be encouraged to make more use, in practice, of its

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[154] See in detail paragraphs 76–81 above.
[155] See CDDH-SOC(2018)R3, § 16.

power to address a recommendation to the State Party concerned by a finding of non-conformity with the Charter in a decision adopted by the ECSR, in accordance with Article 9 § 1 of the 1995 Additional Protocol Providing for a System of Collective Complaints.[156] That provision reads:

> *"On the basis of the report of the Committee of Independent Experts, the Committee of Ministers shall adopt a resolution by a majority of those voting. If the Committee of Independent Experts finds that the Charter has not been applied in a satisfactory manner, the Committee of Ministers shall adopt, by a majority of two-thirds of those voting, a recommendation addressed to the Contracting Party concerned. In both cases, entitlement to voting shall be limited to the Contracting Parties to the Charter."*

129. The President of the ECSR stressed that the text of Article 9 § 1 of the 1995 Additional Protocol expressly provided for the adoption of a recommendation where the ECSR had found a violation of the Charter, but the practice of the Committee of Ministers (with one exception from 2001)[157] was to adopt resolutions.[158] In cases in which, after partly repeated findings of a violation by the ECSR no remedial action was taken by the State concerned for several years, creating peer pressure

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[156] See the ECSR President's speech of 22/3/2017 before the Committee of Ministers; the latter's intervention before the CDDH-SOC at its 3rd meeting (5–7 September 2018), see CDDH-SOC(2018)R3, § 23 and Appendix V; and 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), point 5.

[157] See Recommendation RecChs(2001)1 adopted by the Committee of Ministers on 31 January 2001 at the 738th meeting of the Ministers Deputies in respect of Syndicat national des Professions du tourisme v. France, Complaint No. 6/1999.

[158] See the summary of the GR-SOC's exchange of views with the President of the ECSR on 17 January 2019, document DD(2019)135).

among States Parties was crucial in order to make the Charter system of protection of social rights more effective.[159]

130. Furthermore, the ECSR considered that the collective complaints procedure would better attain its objectives if the reimbursement of the costs of the proceedings of the complainant organisations could be ordered under certain circumstances. It was stressed that the preparation of a complaint and subsequent submissions were often time-consuming and costly for the complainant organisations. A reimbursement of reasonably incurred costs would recognise and encourage the organisations' contribution to ensuring the **proper application of the (revised) Charter by lodging collective complaints.[160]**

(iii) Analysis of the reasons given by the relevant stakeholders

131. It emerges from the foregoing that the stakeholders in the collective complaints procedure consider that the effective functioning in practice of that procedure could be improved by different, concrete measures. These cover the conduct of the procedure before the ECSR, the establishment of the facts, the examination of the admissibility of collective complaints and the interpretation of the (revised) Charter by the latter, various specific aspects of the procedure (such as the reimbursement of costs and the duty of confidentiality) as well as the follow-up after a finding of non-conformity with the (revised) Charter.

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[159] See the ECSR President's speech of 22/3/2017 before the Committee of Ministers.

[160] See the ECSR President's speech of 22/3/2017 before the Committee of Ministers.

b. CDDH proposals

132. The CDDH observes that a number of concrete measures have been proposed which aim at attaining more legal certainty in the collective complaints procedure and/or at increasing the efficiency of the procedure.

133. As regards the Member States' concerns regarding the **conduct of the procedure before the ECSR, the establishment of the facts, the examination of the admissibility of collective complaints and the interpretation of the (revised) Charter by the latter, the CDDH refers to its above proposals aimed at achieving more legal certainty in the collective complaints procedure. It reiterates that the adversarial principle on which the procedure is based should be fully respected in all circumstances and it would be desirable to strengthen the dialogue between all the parties and the ECSR in written and, if necessary, oral proceedings on questions of fact and of law, including as regards the reasons given by the ECSR for its decisions.[161]**

134. The CDDH also encourages the ECSR to continue and even enhance the regular exchange of views with the governmental agents on developments in, and envisaged/required reforms of, the collective complaints procedure and invites the ECSR to consider to associate or hold similar meetings with the agents of the international trade union and employers' organisations and INGOs active in the collective **complaints procedure.**

135. In order to provide the ECSR with a sound basis for reaching its decision, the importance of providing it with sufficient data and accurate information in the proceedings was also stressed.[162] Furthermore, in order for it to have a broader basis

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[161] See paragraphs 95–97 above.

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

for reaching its decision, it was suggested that, amongst others, both the Commissioner for Human Rights[163] and the Conference of INGOs[164] could be encouraged to submit, where appropriate, written observations in connection with collective complaints in accordance with Rule 32A of the ECSR's Rules.

136. As for the follow-up to the ECSR's decisions in the collective complaints procedure, as shown above, it was proposed that the obligation to submit reports on the follow-up to collective complaints should be limited to two cycles; the Committee of Ministers should then close the procedure by a final resolution or recommendation addressed to the State if the ECSR still considered that the situation has not been brought in conformity with Charter.[165] Member States' experts expressed broad agreement with the thrust of this proposal in that ways for further alleviating the reporting obligation in this respect should be explored.[166]

137. Moreover, the proposal to encourage the Committee of Ministers to make more frequent use of its powers to make recommendations to Member States in accordance with Article 9 § 1 of the 1995 Additional Protocol was equally supported by some experts.[167] The process of involvement of the Committee of Ministers in the follow-up procedure to the ECSR's decisions on collective complaints could be reconsidered in this context.[168]

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[163] See in respect of the Human Rights Commissioner Colm O'Cinneide, Social rights and the European Social Charter – new challenges and fresh opportunities, in: Jean-Yves Carlier / Olivier De Schutter / Marc Verdussen, The European Social Charter: a Social Constitution for Europe, 2010, pp. 177–178.

[164] See Stefan Clauwaert, *The Charter's Supervisory Procedures*, in: Niklas Bruun / Klaus Lörcher / Isabelle Schömann / Stefan Clauwaert, The European Social Charter and the Employment Relation, 2017, p. 128 (footnote 100).

[165] See paragraph 115 above.

[166] See CDDH-SOC(2018)R3, § 14.

[167] See CDDH-SOC(2018)R3, § 17.

[168] Compare the views expressed by the Member States, in particular, during the GR-SOC's exchange of views with the President of the ECSR on 17 January 2019, document DD(2019)135; the ECSR President's speech of

138. Some experts further expressed support for reconsidering the obligation of confidentiality under Article 8 § 2 of the 1995 Additional Protocol, taking into account its purpose.[169] It has been advanced that confidentiality is aimed at allowing the State concerned to prepare its response to the findings of the ECSR and could therefore be lifted by the State itself if it finds it appropriate. The CDDH observes, however, that this could only be achieved through an amendment to the current unequivocal wording of the treaty provision, and does not retain the proposal.

139. Furthermore, the proposal to authorise the reimbursement of reasonably incurred costs of the proceedings to the complainant organisations was not currently supported by the Member States, which stressed that this was not provided for in the 1995 Additional Protocol.[170]

140. The examination of further measures to streamline the procedure and facilitate the treatment of the collective complaints lodged, such as the introduction of a standard form on which such complaints had to be set out, or regulating the process of exchange of arguments by putting specific questions to the parties, equally received a certain support.[171]

141. In the light of the foregoing, the CDDH considers that a set of concrete proposals to increase both the legal certainty and the efficiency of the collective complaints

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22/3/2017 before the Committee of Ministers; and also Colm O'Cinneide, **Social rights and the European Social Charter – new challenges and fresh opportunities, in: Jean-Yves Carlier / Olivier De Schutter / Marc Verdussen, The European Social Charter: a Social Constitution for Europe, 2010, p. 178; and Stefan Clauwaert,** *The Charter's Supervisory Procedures*, **in: Niklas Bruun / Klaus Lörcher / Isabelle Schömann / Stefan Clauwaert, The European Social Charter and the Employment Relation, 2017, pp. 138–139.**

[169] See CDDH-SOC(2018)R3, § 16.

[170] See CDDH-SOC(2018)R3, § 16.

[171] 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).

procedure should be elaborated. As with the reporting procedure, the elaboration of the proposals should concentrate on changes which may be made in the context of the current treaty system; there does not appear to be support for substantial changes to the system necessitating an amendment of the treaties themselves.[172] The above-mentioned specific measures suggested by the different stakeholders which obtained broad or at least some support should further be taken as a basis for the elaboration of the set of proposals.

142. The CDDH further considers that the ECSR, which may have to adapt its Rules in order to implement certain measures regarding the collective complaints procedure, could be entrusted with drawing up such proposals with the assistance of the Department of the European Social Charter. This process should be conducted in consultation and dialogue with the other stakeholders in the procedure.[173] The results of the process could be submitted to the Committee of Ministers. The latter could take them into account in the context of the concrete work programme, or process as well as systematic and coordinated activities on the Charter, proposed above,[174] aimed at obtaining notably further acceptance by Member States to be bound by the collective complaints procedure.

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[172] This holds true, in particular, for the proposal of a major reform in the procedure, assigning a judicial role to the European Court of Human Rights for deciding on complaints relating to social rights and assigning to the ECSR a function similar to that of the former European Commission of Human Rights under the Convention system prior to the entry into force of Protocol no. 11 to the Convention, see in this respect the intervention of the President of the ECSR before the CDDH-SOC at its 3rd meeting (5–7 September 2018), CDDH-SOC(2018)R3, Appendix V; and 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), point 4.

[173] See also CDDH-SOC(2018)R3, § 16.

[174] See paragraphs 98–99.

143. Finally, as with the reporting procedure, the CDDH finds it essential for ensuring an efficient functioning of the collective complaints procedure that the necessary resources are allocated to it. It should therefore be examined whether, having regard also to the possible changes in the procedure, it is necessary to increase the number of staff members in the Department of the European Social Charter.[175] In that context, it might further be examined whether it should be possible for a State against which a collective complaint has been lodged to have an ad hoc member in the ECSR appointed if no national of that Member State is a member of the ECSR at that moment.[176]

III. THE EFFECTIVE NATIONAL IMPLEMENTATION OF SOCIAL RIGHTS

144. The effective national implementation of social rights comprises the recognition of social rights and the implementation of certain of them, together with the progressive realisation of others. The (revised) Charter is designed to contribute to the realisation of this objective, through monitoring and subsequent implementation of the conclusions and decisions of the ECSR following a finding of non-conformity of a situation with the (revised) Charter, on the one hand, and the application of the (revised) Charter by the national authorities, in particular the national courts, on the other hand.

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[175] See for the proposals in this respect the ECSR President's speech of 22/3/2017 before the Committee of Ministers and his speeches before the CDDH-SOC, CDDH-SOC(2018)R2, Appendix V and CDDH-SOC(2018)R3, § 23 and Appendix V.

[176] See for a proposal by the President of the ECSR in this respect the ECSR President's introductory speech of 17/01/2019 at his exchange of views with the GR-SOC, point 4.

1. Current challenges

a. Background

(i) The implementation of the ECSR's conclusions and decisions

145. It was shown by the "Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe" (first report) that there are **disparities as regards the implementation of the ECSR's conclusions and decisions in the Member States.**

146. On the one hand, it has been noted that a number of States undertook significant internal reforms following ECSR conclusions in the reporting procedure, either by adopting new legislation or by changes in the practice of the application of the domestic law.[177] A couple of examples may illustrate this. Concerning the right to health, for instance, the ECSR specifically noted several regulations on waiting lists introduced in Slovenia in order to reduce waiting times for care and treatment.[178] Concerning the rights of elderly persons, the ECSR took particular note of the adoption of legislation in the Czech Republic prohibiting age discrimination in fields such as social security, access to health care, education and goods and services.[179]

147. Furthermore, concerning the rights of persons with disabilities, the ECSR specifically noted in its Conclusions the passing by Estonia of an Equal Treatment Act prohibiting all forms of discrimination on the ground of disability in access to

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[177] See document CDDH(2018)R89add1, §§ 149–158. This was equally stressed by the Director General of the Directorate General Human Rights and Rule of Law, Mr Christos Giakoumopoulos, in his speech at the 2nd meeting of the CDDH-SOC, CDDH-SOC(2018)R2, Appendix IV.

[178] See Conclusions 2013 of 06/12/2013 – Slovenia – Article 11-1.

[179] See Conclusions XX-2 of 06/12/2013 – Czech Republic – Article 4 of the 1988 Additional Protocol.

vocational guidance and training, and the passing by Poland of an Equal Treatment Act, introducing into the law on vocational and social rehabilitation and employment of persons with disabilities an expressly worded duty of "reasonable accommodation" for persons with disabilities unless such measures would impose a disproportionate burden on an employer.[180] As for the right to work, the ECSR took note, inter alia, of the adoption by Austria of labour market measures including measures relating to education and training for both employees and jobseekers (including a substantial increase in the budget for active labour market policy).[181]

148. Likewise, a number of substantive reforms have been enacted by Member States following a finding of non-conformity in ECSR decisions in the collective complaints procedure.[182] The ECSR notably found that following its finding in ERRC v. France[183] of a violation of Article E taken in conjunction with Article 31 of the Revised Charter by a discrimination against Travellers regarding their right to housing, France had brought its situation in conformity with the Charter. The specific measures taken in the Travellers' interests in the field of housing comprised the introduction of an assisted rental loan for integration purposes, a reduction in the costs of setting up stopping places, a new inter-ministerial strategy on the situation of Travellers and a long-term plan to combat poverty

[180] See Conclusions 2012 of 07/12/2012 – Estonia – Article 15-1; and Conclusions XX-1 of 07/12/2012 – Poland – Article 15-2.

[181] See Conclusions XX-1 of 07/12/2012 – Austria – Article 1-1. See for a number of further examples of reforms following ECSR conclusions, in particular, in Armenia, Belgium, France, Italy, Malta, the Republic of Moldova, the Netherlands, Romania, Sweden and Turkey document CDDH(2018)R89add1, §§ 153–158.

[182] See already document CDDH(2018)R89add1, §§ 150–152.

[183] See ERRC v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009.

and promote social inclusion containing provisions relating specifically to their accommodation.[184]

149. Furthermore, following its finding of a violation of Article 13 § 1 of the Charter in ERRC v. Bulgaria[185] by the suspension of the minimum income for persons in need after a certain time, the ECSR found in its assessment of the follow-up to this decision that Bulgaria had brought its situation in conformity with the Charter by an amendment of the law concerned that now ensured social assistance to these persons without a time-limit.[186]

150. Moreover, Belgium had been found in breach of Articles 17 § 1 and 7 § 10 of the Revised Charter for not having taken the necessary measures to guarantee illegally resident accompanied foreign minors and unaccompanied foreign minors who were not requesting asylum the care and assistance they needed and special protection against physical and moral hazards in DCI v. Belgium.[187] In the assessment of the follow-up to its decision, the ECSR found that Belgium had brought its situation into conformity with the Charter after having taken measures to provide these two categories of foreign minors with shelter in a reception centre.[188]

151. On the other hand, it cannot be overlooked that the Conclusions of the ECSR – including Conclusions regarding situations which had been found not to be in conformity with the Charter in previous reporting cycles – disclose that numerous

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[184] See the Social Charter's HUDOC database (**http://hudoc.esc.coe.int/eng#**) **on the assessment of the follow-up to Complaint No. 51/2008.**

[185] **ERRC v. Bulgaria, Complaint No. 48/2008, decision on the merits of 18 February 2009.**

[186] See the Social Charter's HUDOC **database (http://hudoc.esc.coe.int/eng#) on the assessment of the follow-up to Complaint No. 48/2008.**

[187] **DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012.**

[188] **See http://hudoc.esc.coe.int/eng#.**

situations in the Member States are not in conformity with the (revised) Charter. In 2018, the ECSR adopted 580 conclusions in respect of 35 States on issues including the right to reasonable working hours, fair remuneration and protection against harassment: 206 conclusions of non-conformity with the Charter (35.5%), 276 conclusions of conformity (47.6%) and 98 "deferrals"[189] **(16.9%). The ECSR noted, in particular, several problems affecting numerous cases, namely the right of all workers to a reasonable period of notice for termination of employment, the right of workers and employers to collective bargaining and collective action, including the right to strike, and rules limiting the scope for deductions from wages.**[190]

152. Moreover, in the recent 2018 findings of the ECSR on the follow-up given by eight States (Belgium, Bulgaria, Finland, France, Greece, Ireland, Italy and Portugal) to decisions in the collective complaints procedure, the ECSR found that out of 49 cases examined, only 5 (10%) had been brought into conformity with the Charter. Remaining issues concerned, inter alia, the rights of the elderly in Finland, the right to housing of Roma and Travellers in several countries, the right to inclusive education of autistic children as well as the difficulties of access for young adults with autism to vocational training in France and austerity measures affecting various labour rights such as minimum wages for young workers under 25 and paid annual leave for apprentices in Greece. A number of the decisions by the ECSR in the collective complaints procedure which had not yet been implemented dated back more than ten years.[191]

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[189] "Deferrals" cover cases in which, in the absence of sufficient information, the ECSR was unable to assess the situation.

[190] See the website of the European Social Charter for the 2018 Conclusions of the ECSR.

[191] See the website of the European Social Charter for the ECSR's 2018 follow-up to decisions on the merits of collective complaints and a summary thereof.

(ii) The application of the (revised) Charter by the national authorities

153. It is apparent both from the "Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe" and from the Member States' replies to the "Questionnaire related to the good practices on the implementation of social rights at national level" that there are **large discrepancies regarding the extent to which the national courts in the Member States apply the (revised) Charter and regarding the legal position it has in the respective domestic legal orders.**

154. In a few States, the domestic courts were found not to rely on provisions of the (revised) Charter at all.[192] In a number of States, such references were rare and often limited to a specific theme, such as reasonable working hours (Article 2 § 1 of the (revised) Charter) or the right to strike (Article 6 § 4 of the (revised) Charter).[193] In contrast, in some other States, domestic courts, including Constitutional Courts, had made more extensive references to the (revised) Charter.[194] It generally appears that national courts have increasingly referred to the (revised) Charter in recent years.[195]

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[192] See the replies of Austria, Croatia, the Republic of Moldova and North Macedonia to the questionnaire, document CDDH-SOC(2017)04rev, A.5.

[193] See the replies of Belgium, Bulgaria, the Czech Republic, Estonia, Finland, France, Iceland, Italy, the Netherlands, Norway and Spain to the questionnaire, document CDDH-SOC(2017)04rev, A.5; as well as the decisions of the Belgian Constitutional Court, see document CDDH(2018)R89add1, § 145 with a number of references.

[194] See the replies of Georgia, Lithuania, Poland, Portugal, Slovenia and Turkey to the questionnaire, document CDDH-SOC(2017)04rev, A.5.

[195] See the speech by the President of the ECSR, Professor G. Palmisano, before the CDDH-SOC, CDDH-SOC(2018)R2, Appendix V; and the speech by the Director General of the Directorate General Human Rights and Rule of Law, Mr Christos Giakoumopoulos, at that meeting, CDDH-SOC(2018)R2, Appendix IV.

155. In Lithuania, for instance, the Constitutional Court, the Supreme Court, the Supreme Administrative Court, but also the Klaipėda and Vilnius Regional Court referred to the (revised) **Charter in cases concerning maternity protection, social housing, various rights of persons with disabilities, unlawful dismissals, the right of children and young persons to protection and the right to strike.[196] In Poland, the Constitutional Tribunal, the Supreme Court and the civil and administrative courts have all referred to the 1961 Charter on a number of occasions in cases concerning the right to strike, the right to protection of health, the right to save and healthy working conditions, the right to social security or the right to bargain collectively.[197] In Turkey, the Constitutional Court referred to the Revised Charter in individual applications alleging violations of human rights, including social rights, notably in cases concerning the right to freedom of association and organisation.[198]**

156. As for the legal position of the (revised) Charter in the domestic legal orders, a number of States confirmed that the (revised) Charter applied in disputes concerning social rights.[199] In several instances, domestic courts have considered at least specific provisions of the (revised) Charter to be directly applicable[200]; in contrast, in other States the (revised) Charter is not directly applicable, but only if implemented by domestic

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[196] See Lithuania's reply to the questionnaire, document **CDDH-SOC(2017)04rev, A.5.**

[197] See Poland's reply to the questionnaire, document **CDDH-SOC(2017)04rev, A.5.**

[198] See Turkey's reply to the questionnaire, document **CDDH-SOC(2017)04rev, A.5.**

[199] **See the replies of Azerbaijan, Belgium, Bulgaria, Denmark, Finland, Georgia, Greece, Lithuania, the Netherlands, Norway, Portugal, Poland, Slovenia and Turkey to the questionnaire, document CDDH-SOC(2017)04rev, A.5.**

[200] See, for instance, France's *Conseil d'État*, **which recognised that Article 24 of the Revised Charter was directly applicable (see its decision No 358992 of 10 February 2014); and the replies of France, Georgia and the Netherlands to the questionnaire, document CDDH-SOC(2017)04rev, A.5.**

law.[201] Some States stressed that the national courts could refer to the (revised) Charter as a ratified international treaty which had prevalence over the national legislation.[202] In some cases, domestic courts have also set aside decisions of domestic authorities or national legislation for being incompatible with the (revised) Charter.

157. The Council of State of Belgium, for instance, set aside the effective date of a decision ordering the compulsory retirement of a civil servant which followed automatically from two negative assessments and took effect 10 days later. Relying directly on Article 4 § 4 of the Revised Charter, it found that this date did not respect the right to a reasonable period of notice guaranteed by the Revised Charter.[203] In Spain a labour court overruled national legislation allowing workers to be dismissed during their probationary period without notice or compensation. It based its reasoning on the decision of the ECSR in Complaint No. 65/2011 (GENOP-DEI and ADEDY v. Greece), holding that the measures imposed on Greece by the Troika were similar to those taken in Spain.[204] In a decision of 11 April 2018, the Italian Constitutional Court, for its part, has used Article 5 of the Revised Charter as a criterion for assessing the constitutionality of a provision of domestic law prohibiting military staff to form trade unions.[205]

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[201] See in this latter respect Austria's reply to the questionnaire, document CDDH-SOC(2017)04rev, A.5.

[202] See the replies of Albania, Armenia, Bulgaria, Croatia, Greece, Lithuania, the Republic of Moldova, the Slovak Republic and Slovenia to the questionnaire, document CDDH-SOC(2017)04rev, A.5.

[203] See Belgian Council of State, judgment of 28 April 2008, No. 182.454; and judgment of 6 November 2012, No. 221.273 (concerning Article 6 § 4 of the Revised Charter). See also document CDDH(2018)R89add1, § 145.

[204] Juzgado de lo Social No. 2 of Barcelona, Judgment No. 412 of 19 November 2013. See for further examples document CDDH(2018)R89add1, § 146.

[205] See the Italian Constitutional Court's website for the Constitutional Court's Press release; and document CDDH(2018)R89add1, § 147.

158. The (revised) Charter is not only applied by the national courts; the legislature and the executive equally play an important role in its implementation in practice. In fact, the ECSR's decisions in the collective complaints procedure, in particular, show that Member States' non-**compliance with the (revised) Charter is often the result of a failure to take the (revised) Charter sufficiently into account in the national legislation and policies.**

159. In FIDH v. Belgium, for instance, the ECSR concluded that Article E taken in conjunction with Article 16 of the Revised Charter had been violated, inter alia, on account of the failure of planning legislation to take account of Traveller families' specific **circumstances.[206] Moreover, Article E read in conjunction with Article 30 of the Revised Charter had been violated for lack of a co-ordinated overall policy with regard to Travellers, particularly on housing.[207] In OMCT v. Greece, the ECSR concluded that there was a violation of Article 17 of the 1961 Charter on the ground that the Greek legislation did not prohibit all forms of corporal punishment of children.[208] In The Central Association of Carers in Finland v. Finland, the ECSR found that there was a violation of Article 23 of the Revised Charter on account of the fact that the legislation allowed practices which led to a part of the elderly population being denied access to informal care allowances or other alternative support.[209] Furthermore, in ERRC v. Ireland, the ECSR concluded that Article 16 of the Revised Charter was violated as two specific Acts provided for inadequate safeguards for Travellers threatened with eviction**

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[206] **International Federation for Human Rights (FIDH) v. Belgium, Complaint No. 62/2010, decision on the merits of 21 March 2012, §§ 133–141.**

[207] **Ibid., §§ 200–205.**

[208] World Organisation against Torture ("OMCT") v. Greece, **Complaint No. 17/2003, decision on the merits of 7 December 2004, §§ 30–46.**

[209] **The Central Association of Carers in Finland v. Finland, Complaint No. 70/2011, decision on the merits of 4 December 2012, §§ 47–60.**

and as evictions were carried out in practice without the necessary safeguards.[210]

160. As regards the general situation of application of the (revised) Charter by the national authorities, reference may be made to the above-mentioned recent 2018 Conclusions of the ECSR which disclosed that while a majority of situations in the Member States was in conformity with the (revised) Charter, there were also numerous cases of non-conformity.[211]

b. Reasons given by the relevant stakeholders

(i) The implementation of the ECSR's conclusions and decisions

161. It emerges both from the Member States' replies to the **above-**mentioned "Questionnaire" and from the ECSR's **assessment of the follow-up notably to decisions on the merits of collective complaints on the basis of the information provided by the Governments that there is a variety, and at times a combination of different reasons why Member States have not yet implemented the ECSR's conclusions and decisions.**

162. In a number of cases, it appears that there are no sufficient funds available in order to bring a situation into conformity with the (revised) Charter.[212] On other occasions, it

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[210] European Roma Rights Centre (ERRC) v. Ireland, Complaint No. 100/2013, decision on the merits of 1 December 2015, §§ 135–141, 145–147 and 164–167.

[211] See § 111 above; and the website of the European Social Charter for the 2018 Conclusions of the ECSR.

[212] See, for instance, the ECSR's findings 2018 on **the Follow-up to decisions on the merits of collective complaints in European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006,** § 98, where reference was made to the Committee of Minister's finding that the **Action Plans developed under the National Roma Integration Strategy were not sufficiently funded; and in European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 497, where there was no dedicated funding for the implementation of the National Strategy for**

transpired that there was no political consensus in the Member State concerned to implement the ECSR's decision[213], **or to do so as a priority.**[214]

163. Furthermore, in many instances, it appears that the implementation of ECSR decisions is ongoing and progressing, but takes time as a number of measures has to be or is being taken by different actors at the legislative and executive levels, and at times by several entities (such as regions etc.) at the same level or several entities at different levels.[215]

164. Replies to the questionnaire as well as the observations presented in the discussions in the Governmental Committee reveal that one of the reasons for the non-implementation of certain ECSR Conclusions or Decisions, could be found in the interpretations of certain provisions by the ECSR which the States concerned consider unfounded or too extensive, because

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the Inclusion of Roma communities. See also the presentation by G. Palmisano, President of the ECSR, at the 3rd meeting of the CDDH-SOC, CDDH-SOC(2018)R3, Appendix V.

213 See, for instance, the ECSR's findings 2018 on the Follow-**up to decisions on the merits of collective complaints in Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, decision on the merits of 8 September 2016, §§ 179–180, where the Government stated that Finland could not be expected to enact legislation on reinstatement in cases of unlawful dismissal which, on the basis of earlier experience from many decades, would not work in practice and the ECSR found that there was no indication of any measures taken to give follow-up to its decision on the merits.**

214 See in this respect the presentation made by the President of the ECSR at the 3rd meeting of the CDDH-SOC, CDDH-SOC(2018)R3, Appendix V.

215 See in this respect, for instance, the ECSR's findings 2018 on the Follow-**up to decisions on the merits of collective complaints in International Federation for Human Rights (FIDH) v. Belgium, Complaint No. 75/2011, decision on the merits of 18 March 2013, §§ 65–80, in which action had to be taken in three different regions and a royal decree was necessary to implement a change which had been made in the Law regarding family carers in practice; and European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013; §§ 435–439, where the implementation process involves coordination between the Government, a Commission, the Labour Court as well as legislative measures.**

the ECSR does not offer sufficient justification for those interpretations or because of an inaccurate understanding by the ECSR of domestic policies and measures adopted by State parties towards the implementation of the (revised) Charter provision in question.

165. Reference can finally be made to the above findings regarding the follow-up procedure to the ECSR's conclusions and decisions before the Committee of Ministers, which rarely makes concrete recommendations to Member States for the implementation of the social rights concerned.[216]

(ii) The application of the (revised) Charter by the national authorities

166. There are two possible main grounds for the large discrepancies regarding the extent to which the national courts in the Member States apply the (revised) Charter. One appears to be the differences in the legal status of the (revised) Charter as an international treaty laying down social rights in the respective domestic legal orders.[217] It is clear that in those Member States in which the national courts may refer to, and directly apply provisions of the (revised) Charter as a ratified international treaty which has prevalence over the national legislation and may even set aside decisions of domestic authorities or national legislation for being incompatible with the (revised) Charter, the (revised) Charter may have a considerably broader impact than in Member States in whose legal orders the (revised) Charter is considered as not being directly applicable.[218]

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[216] See Chapter II.1.a. (i), paragraph 106 and Chapter II.2.b., paragraph 137 above.

[217] See Chapter III.1.a. (ii), paragraph 156 above.

[218] See in this respect also the President of the ECSR, who stressed that the extent to which the (revised) Charter was implemented in the Member States depended, inter alia, on the structure and content of each domestic legal order

167. A second ground appears to be the extent of knowledge and awareness the judges of the domestic courts, as well as the parties appearing before them, have of the standards laid down in the (revised) Charter, as well as of their interpretation by the ECSR.[219]

168. As for the reasons why the (revised) Charter is not always fully taken into account in the national legislation and policies, the Member States' replies to the Questionnaire clearly **show that in a large majority of the responding States, social impact assessments are in fact carried out when new laws are drafted. The latter cover not only the economic, financial or environmental consequences of the draft laws, but also specific assessments of their impact on social rights or on certain social groups,[220] and should therefore permit that the rights laid down in the (revised) Charter are taken into account. Moreover, in almost all States there is an obligation to verify the compatibility of draft laws with international standards – and thus with the (revised) Charter –, which is carried out either by the drafting ministry alone or in cooperation with other ministries and/or by the national parliaments.[221] The findings of non-compliance of national laws with the (revised) Charter by the ECSR show, however, that despite these social impact assessments, new laws do not always comply with the (revised) Charter.**

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and on the extent to which it was open, or permeable, to international law and international human rights obligations, see CDDH-SOC(2018)R3, Appendix V.

[219] See in this respect equally the President of the ECSR, CDDH-SOC(2018)R3, Appendix V.

[220] See the Member States' replies to the questionnaire, **document CDDH-SOC(2017)04rev, B.1; and for a short analysis of the replies document CDDH-SOC(2018)06, § 7.**

[221] See the Member States' replies to the questionnaire, **document CDDH-SOC(2017)04rev, B.2; and for a short analysis of the replies document CDDH-SOC(2018)06, § 7.**

169. Against that background, the failure of new laws to comply with the (revised) Charter could be caused either by the fact that the standards set by the (revised) Charter are not sufficiently known by those responsible for examining the new laws' compatibility with them or that, as set out above, these **standards are not considered as directly applicable in the domestic legal order in question.**

c. Analysis of the reasons given by the relevant stakeholders

170. It follows from the foregoing that there are different grounds for which the Member States' authorities do not always **fully implement the standards set by the (revised) Charter. As regards the implementation of concrete conclusions and decisions of the ECSR in respect of the Member State concerned, reasons comprise the lack of funds as well as the lack of political consensus, but on many occasions, the ongoing implementation process proves to be quite complex owing to the necessity to involve and coordinate between a number of different actors. As regards the general application of the (revised) Charter by the national executive, the legislator and the judiciary, the extent to which the domestic legal orders are open to the direct application of international law, and in particular the social rights laid down in the (revised) Charter, and the extent of knowledge and awareness of the standards set by (revised) Charter appear to be determinative of its implementation.**

2. Good practices

171. In accordance with its terms of reference, the CDDH shall present a set of good practices which notably result from the Member States' replies to the Questionnaire and which may **serve to address the difficulties identified above in implementing the standards set by the (revised) Charter.**

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

172. Some good practices can be identified, on the one hand, in order to tackle the complex aspects of the procedure for implementing the ECSR's conclusions and decisions.

173. It is necessary in the first place that all stakeholders in the implementation procedure are fully and timely informed of the ECSR's findings. In a number of States, the conclusions and **decisions of the ECSR are not only notified to the relevant authorities, but equally disseminated to social partners and partly also human rights institutions, who can then cooperate in their implementation.[222] Both the national reports on the implementation of the relevant Articles of the (revised) Charter** and the ECSR's conclusions, as well as the latter's decisions are often published on the competent Ministry's website.[223] **Finland also publishes press releases on ECSR decisions in the collective complaints procedure.[224]**

174. Several States further reported that the conclusions and decisions were translated from English/French into their national language.[225]

175. As regards the implementation of ECSR conclusions and decisions concerning complex and transversal situations, good practices appear to depend very much on the administrative structure, and attribution of competences to different authorities,

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[222] **See the replies of Albania, Estonia, Iceland and Slovenia to the questionnaire, document CDDH-SOC(2017)04rev, D.1.**

[223] **See, for instance, the replies of Estonia, Finland and Ukraine to the questionnaire, document CDDH-SOC(2017)04rev**, D.1; Poland's reply, **ibid., A.2; and Lithuania**'s reply, **ibid., A.3.**

[224] See Finland's reply to the questionnaire, document **CDDH-SOC(2017)04rev, D.1.**

[225] **See the replies of Armenia, Azerbaijan, Bulgaria, the Czech Republic, Estonia, Greece, the Republic of Moldova and North Macedonia to the questionnaire, document CDDH-SOC(2017)04rev, D.1.**

in the State concerned and cannot, therefore, be easily applied in the context of another State.

176. The example of the follow-up given by France to the ECSR's decision in Association internationale Autisme-**Europe v. France (Complaint No. 13/2002), however, demonstrates the importance of a coordination (usually) at national level of the different implementation measures (including national action plans, studies, working groups within the Council of Europe and dialogue with the associations and professionals).[226] Furthermore, in Greece a coordinated and structured cooperation has been established between the central administration and the decentralised administrations and local self-government entities of the country notably for collecting the necessary data and information for the implementation of FIDH v. Greece (Complaint No. 72/2011), ERRC v. Greece (Complaint No. 15/2003) and INTERIGHTS v. Greece (Complaint No. 49/2008).[227] Furthermore, in Georgia, the Government organised a discussion on the implementation in practice of the provisions of the Revised Charter as well as of the main ILO Conventions in a trilateral format, that is, together with the social partners and the legislature, and in the presence of international experts, in order to promote the implementation of the conclusions and decisions of the ECSR at all levels.[228]**

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[226] See France's reply to the questionnaire, document **CDDH-SOC(2017)04rev, A.3; and, similarly, the reply of North Macedonia, ibid., A.3.**

[227] See Greece's reply to the questionnaire, document **CDDH-SOC(2017)04rev, A.3; and, similarly, the replies by Italy, Lithuania, Portugal, the Slovak Republic and Slovenia, ibid., A.3.**

[228] **See Georgia's** reply to the questionnaire, document **CDDH-SOC(2017)04rev, A.5.**

b. The application of the (revised) Charter by the national authorities

177. On the other hand, a number of good practices emerge from the Member States' reply to the Questionnaire as regards **the general application of the (revised) Charter at the national level, which prevents findings of non-conformity with the (revised) Charter.**

178. As regards the application of the (revised) Charter by the national courts, a good practice which serves to encourage these courts to take international human rights standards into account in their decision practice is the creation in Poland in 2017 of a coordinator of international cooperation and human rights in every judicial district. That coordinator shall inform the judges, in particular, of the decision practice of international bodies as well as of the rules and the procedure for obtaining information on the law and practice in other States.[229]

179. Moreover, the exchange of experiences between domestic courts regarding the application of the (revised) Charter during conferences can serve to promote the national courts' key **role in the implementation of social rights, including those laid down in the (revised) Charter. Such a conference was notably organised by the Supreme Court of Cyprus together with the Council of Europe in February 2017 in the framework of the** Cypriot Chairmanship of the Committee of Ministers on "Social rights in today's Europe: the role of domestic and European courts".[230]

180. As regards the compliance with the (revised) Charter of national legislation and policies a good practice – which is already being followed in a large majority of States – is to carry

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[229] See Poland's reply to the questionnaire, document **CDDH-SOC(2017)04rev, A.5.**

[230] **See the website of the European Social Charter for the speeches held at that this 2017 Nicosia conference as well as further information.**

out social impact assessments when new laws are drafted.[231] Further good practices in this field should essentially aim at ensuring that these social impact assessments are conducted in full knowledge of the international standards of social rights set by the (revised) Charter. Several practices in different States can serve this purpose.

181. In the Netherlands, for instance, the responsible Ministry, when drafting a law, has at its disposal the Netherlands Drafting Directives, a comprehensive legislative techniques handbook which helps to ensure, inter alia, that the draft law is compatible with international standards. In addition, the Ministry for the Interior has drawn up Guiding Principles on economic and social rights to ensure compliance with the latter in policy and legislation. These Guiding Principles provide lawyers and policy makers with an overview of the contents and scope of these rights and thus with reference points enabling them to ascertain whether these fundamental rights should be taken into account in the context of the draft law or policy in question. In Finland there is also a Handbook for Legislative Drafters including comprehensive information on how to take human rights as well as Finland's international obligations into account in the drafting **process.[232]**

182. In Greece, an Economic and Social Committee has been set up, which is a national tripartite institution for social dialogue. It holds institutionalised consultations between the Government and the social partners at the stage of the drafting of laws or before major policy decisions are taken. Its opinion is mandatory before the final adoption of a measure or decision by the Government in the fields of labour relations, social security issues and general social and economic policy.

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[231] **See in this respect also the members of the CDDH-SOC, CDDH-SOC(2018)R3, § 20.**

[232] See the Netherland's and Finland's replies to the questionnaire, document **CDDH-SOC(2017)04rev, B.2.**

183. Some countries, such as Armenia and Lithuania, reported that when drafting legislation, the drafters sometimes invited experts from related international organisations (such as the Council of Europe, the UN or the ILO) to assess the compatibility of draft legislation with international standards of social rights and to give advice on how to implement them in the best manner.[233]

184. Finally, it is clear that improving the implementation of international social rights requires that the relevant stakeholders, including specific, either governmental and/or independent mechanisms and institutions which help monitoring the implementation of social rights,[234] have a better knowledge of the standards set by the (revised) Charter and their interpretation by the ECSR. A number of good practices can be identified which aim at enhancing the awareness and visibility of the Charter system, ranging from training to be provided to these stakeholders to an easier access to information regarding the interpretation of the (revised) Charter by the ECSR. These issues will be covered in more detail in Chapter IV below.

3. CDDH proposals

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

185. The CDDH considers first of all that the Member States should be encouraged to seek inspiration in the good practices set out above, developed in other Member States for the implementation of the ECSR's conclusions and decisions. A broad notification and dissemination of the ECSR's **conclusions and decisions to the relevant stakeholders, their translation from English/French into the national language of the**

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[233] See Armenia's and Lithuania's reply to the questionnaire, document **CDDH-SOC(2017)04rev, B.2.**

[234] See the Member States' replies to the questionnaire, document **CDDH-SOC(2017)04rev, A.1.**

Member State concerned and a good coordination and structured cooperation notably between the different levels of administration can contribute to a more efficient implementation of the social rights standards laid down in these conclusions and decisions.

186. The CDDH notes that as one of the reasons for non-implementation of ECSR decisions or conclusions may lie in the disagreement by some Member States with the ECSR interpretation (and/or the lack of justification of it), it would be desirable to consider ways to enhance the dialogue between the bureaux of the ECSR and the Governmental Committee when such problems arise and which could include the organisation of meetings with/visits to the concerned countries if necessary and appropriate.

187. The CDDH further observes that there are similar situations of non-conformity with the (revised) Charter existing in several Member States. Taking note of the suggestions made by some States in this respect,[235] it would find it helpful if the implementation of ECSR conclusions and decisions could be facilitated by providing the Member States concerned with detailed information on the legislative and other measures already taken by other Member States in order to bring their situation in conformity with the (revised) Charter and from which the Member States seeking to implement conclusions or a decision could draw inspiration.

188. 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.[236] Furthermore, again in line with comments made

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[235] See the replies of Latvia and Poland to the questionnaire, document CDDH-SOC(2017)04rev, A.5, and Bulgaria's reply, **ibid., A.5/suggestions.**

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

by some Member States, it would be helpful if the ECSR regularly updated its ECSR Digest containing also such information on national implementation, and that States distributed it to the authorities concerned and envisaged translation into their national languages.[237] Concrete assistance in the implementation of particular conclusions or decisions via technical cooperation activities by the Council of Europe could equally be furthered.[238] 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.[239]

189. It also transpires from certain replies given by the Member States[240] that it is advisable to assure a certain continuity in the staff involved in the implementation of the ECSR's conclusions and decisions in the relevant **administrations as a high fluctuation of staff may lead to a loss of knowledge and efficiency. Some experts also considered that to ensure a good implementation of social rights and policies in practice at national level, Member States should also be encouraged to restore or have sufficiently equipped public (social) services and infrastructures.**

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

[238] 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.

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

[240] See, in particular, the Republic of Moldova's reply to the questionnaire, document CDDH-SOC(2017)04rev, A.3.

b. The application of the (revised) Charter by the national authorities

190. As regards the general application of the (revised) Charter by the national authorities, the CDDH equally finds that the Member States should be encouraged to seek inspiration in the good practices developed in other Member States in this respect, as set out above. Measures aimed at increasing awareness of the decision practice of international bodies[241] as well as the exchange of experiences between domestic courts regarding the application of the (revised) Charter during conferences can indeed encourage the national courts to take the (revised) Charter more into account in their decision practice.

191. Moreover, a number of different measures developed in the Member States which may ensure that social impact assessments for new national legislation and policies are conducted in full knowledge of the international standards of social rights set by the (revised) Charter (such as Drafting Directives and Guiding Principles on economic and social rights helping to ensure that the draft law is compatible with international standards; institutionalised consultations between the Government and the social partners; and involvement of experts from international organisations to assess the compatibility of draft legislation with international standards of social rights) merit consideration.

192. Furthermore, in line with the suggestions made by a number of Member States, the CDDH generally considers that more frequent exchanges of good practices between the Member States on specific topics related to the implementation of the (revised) Charter, for instance thematic debates on the

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[241] See, for instance, the creation of a coordinator of international cooperation and human rights informing of the decision practice of international bodies in Poland, see paragraph 177 above.

implementation of specific provisions of the (revised) Charter, are desirable and could be facilitated by the Council of Europe.[242]

193. Apart from that, a better national implementation can notably be promoted via a better knowledge by the relevant stakeholders of the standards of the (revised) Charter as interpreted by the ECSR. To this end, Member States could envisage translating into their national languages not only the conclusions and decisions regarding themselves, but also decisions of the ECSR adopted against other Member States if that decision appears being of relevance to the State in question. This would permit a more substantive involvement of all authorities as well as social partners and civil society in the process of implementation of the (revised) Charter and help preventing findings of non-conformity with the Charter against those States.[243] A regularly updated ECSR Digest, suggested above,[244] would equally facilitate and further the national implementation of the (revised) Charter. More general additional measures in order to raise awareness of the treaty system of the Charter and increase its visibility shall be discussed in the following Chapter.

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[242] **See the replies of Lithuania, Poland, the Slovak Republic, Slovenia, Spain and Ukraine to the questionnaire, document CDDH-SOC(2017)04rev, A.5.**

[243] Compare Slovenia's reply to the questionnaire, document **CDDH-SOC(2017)04rev, A.5.**

[244] **See Chapter III. 3. a., § 188 above.**

IV. THE AWARENESS AND VISIBILITY OF THE CHARTER SYSTEM

1. Current challenges

a. Background

194. The visibility of the Charter system and the general awareness of national authorities and institutions – notably the judiciary and legislative and executive bodies, but also independent bodies with monitoring competences in the field of social rights as well as non-governmental actors – of the standards set by the (revised) Charter is currently ensured in different ways.

195. The ECSR publishes its conclusions and decisions on its website in the HUDOC-ESC database, where they are publicly available in English and French.[245]

196. Every year, a number of seminars and training events on the Charter and ECSR conclusions and decisions are held in various countries with the participation of former or current members of the ECSR;[246] **some of them are organised by the Conference of INGOs in association with the Charter Department. The ECSR is also regularly represented at international conferences and events on human rights.**[247]

197. Moreover, a course on labour rights[248] **has been developed for the European Programme for Human Rights Education for Legal Professionals in the 28 EU Member States** ("HELP in the 28") of the Council of Europe, with the objective of

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[245] See the HUDOC-ESC database at https://hudoc.esc.coe.int.

[246] All the training and awareness-raising events on the Charter that took place in 2016, for instance, are listed in the ECSR's Activity Report 2016, Appendix 3.

[247] A list of these events can equally be found in the annual activity reports, see, for instance, the ECSR's Activity Report 2016.

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

assisting them in the national implementation of the (revised) Charter, the European Convention on Human Rights and the EU Charter of Fundamental Rights in the context of labour rights.[249]

198. In addition, a number of books and articles on the (revised) Charter have been published over the past few years.[250]

199. However, as has been shown in Chapter III above, the (revised) Charter is not yet sufficiently visible and the interpretation by the ECSR of the standards set by it are not sufficiently known to the relevant stakeholders in order to ensure its effective implementation in the domestic legal orders.[251]

b. Reasons given by the relevant stakeholders

200. As for the reasons given by the relevant stakeholders for a too limited awareness and visibility of the treaty system of the Charter, it emerges from the Member States' replies to the **Questionnaire that there is notably a lack of sufficient easily accessible information on the standards set by the (revised) Charter. This may result from different factors, including a lack of translation into the respective national language of all relevant conclusions and decisions of the ECSR, a lack of comprehensive overviews over the interpretation of the different Articles of the (revised) Charter and a lack of training which is specifically designed for the authorities and institutions called upon to implement specific provisions of the (revised) Charter.**[252] **Moreover, the high fluctuation of civil servants in the ministries,**

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[249] **See document CDDH(2018)R89add1.**

[250] **A list of these publications can also be found in the annual activity reports, see** ECSR's Activity Report 2015, **Annex 13 and** ECSR's Activity Report 2016, **Appendix 5.**

[251] **See on this issue also** Colm O'Cinneide, **Social rights and the European Social Charter – new challenges and fresh opportunities, in: Jean-Yves Carlier / Olivier De Schutter / Marc Verdussen, The European Social Charter: a Social Constitution for Europe, 2010, pp. 176–177.**

[252] **See in detail Chapter III above.**

which involved a frequent change in the persons responsible for the implementation of the (revised) Charter, appears to be a further source of a limited awareness of the treaty system of the Charter.[253]

201. The President of the ECSR, for his part, stressed that with the currently scarce resources accorded to the treaty system of the Charter, the ECSR and the Department of the European Social Charter were not in a position to ensure a better awareness and visibility of the (revised) Charter.[254]

c. Analysis of the reasons given by the relevant stakeholders

202. It follows from the foregoing that the promotion of knowledge on the treaty system of the Charter by easily accessible information on the standards set by it is an important factor for improving the implementation of the Charter by the States Parties. A number of good practices have been developed in the Member States in this respect during the past years; these shall be described below.

2. Good practices

203. As has been shown above, a number of Member States do not only disseminate the conclusions and decisions of the ECSR regarding them by notifying them to the authorities called upon to implement them as well as to the social partners and to national human rights institutions and by publishing them on dedicated websites of their ministries. They further have these conclusions and decisions translated into their national languages.[255]

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[253] See, in particular, the Republic of Moldova's reply to the questionnaire, **document CDDH-SOC(2017)04rev, A.3.**

[254] **See the 2018 CM speech by the President of the ECSR during an exchange of** views with the Ministers' Deputies on 21 March 2018; and his interventions before **the CDDH-SOC, CDDH-SOC(2018)R2, § 16 and CDDH-SOC(2018)R3, Appendix V.**

[255] **See in detail Chapter III above.**

204. As for training provided at the national level on the social rights guaranteed by the Council of Europe instruments, various activities have been organised in the past few years.[256] **The training activities often focussed on the protection of specific** social rights (labour rights, family and children's rights, right to **housing, rights of persons with disabilities), including non-discrimination aspects and involved participation of specialist researchers, but also lawyers, judges and prosecutors.**

205. In the framework of the "HELP in the 28" programme, **which aims at assisting EU Member States in the national implementation of the (revised) Charter, events organised comprised, for instance, a course on capacity-building for labour** rights in Greece; a European Seminar on "Labour Rights as **Human Rights: Labour rights require more protection in times of** crisis and austerity", organised by the Council of Europe Human **Rights National Implementation Division in association with the Judicial Training Centre of Slovenia; a course on labour rights for judges and lawyers in Lithuania; and a trainer training session on labour rights in Strasbourg.**[257]

206. Numerous Member States recently organised training events on the treaty system of the Charter.[258] **In Azerbaijan, for** example, a parliamentary workshop on "Promotion of socio-**economic rights in Azerbaijan from the prism of the European** Social Charter" was organised on 2 June 2017 in which the **Minister of Labour, members of Parliament and Government officials participated. In Belgium, for instance, a training was held for NGOs on the collective complaints procedure; in Andorra, a conference was held on Charter implementation; and in Serbia, a**

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[256] **See, in particular, the replies of Armenia , Azerbaijan, Belgium, Croatia, Estonia, Finland, France, Georgia, Iceland, Lithuania, North Macedonia, Portugal , Slovenia , Spain, the Netherlands, Turkey and Ukraine to the questionnaire, document CDDH-SOC(2017)04rev, D.3.**

[257] **See http://www.coe.int/en/web/help/help-courses.**

[258] **See, in** particular, the Member States' replies to the questionnaire, **document CDDH-SOC(2017)04rev, D.3 and A.2 (regarding Azerbaijan).**

seminar was held on the collective complaints procedure for representatives of various Serbian institutions working on social rights.[259]

207. Furthermore, in Armenia, the Armenian National Institute of Labour and Social Research conducted several trainings on "protection of Human rights" for civil servants, including a separate session on the (revised) Charter, and trained more than 200 civil servants between 2015 and 2017. In France, several training courses on social rights, as well as conferences and seminars organised notably by the Academic network on the European Social Charter and Social Rights ("ANESC"), have been held.

208. In Georgia, training sessions were organised in May 2016 in co-operation with the Council of Europe for the senior Public Defender's staff on the "Fight against Intolerance and Protection of Social Rights". Moreover, trainings on human rights issues are regularly provided by the Education Centre of the Georgian Bar Association, the High School of Justice of Georgia and the Labour Inspector of Georgia in cooperation with national specialists and the experts of the International Labour Organization and human rights NGOs.

209. In Portugal, Municipal Councils supported a game created as part of the Enter! Project of the Council of Europe, with the aim of disseminating and raising awareness about social rights among young people. In Spain, an online training course on equal opportunities for women and men has been developed, with a basic level targeted at the general public and an advanced level for the work-related sectors (companies and human resources, social services and the legal sphere), in order to integrate the gender perspective into their labour practice.

[259] All the training and awareness-raising events on the Charter that took place in 2016, for instance, are listed in the ECSR's Activity Report 2016, Appendix 3.

210. There is also a project implemented by the Department of the European Social Charter on "framing cooperation for social rights development in Ukraine". The project involved needs assessment, a stakeholders' conference and produced a report, **and included recommendations for the development of a larger-scale project for future implementation.**[260]

3. CDDH proposals

211. Having regard to the Member States' replies to the **Questionnaire as well as to their recent discussions in different organs and groups, there appears to be a broad consensus among the Council of Europe Member States that the awareness-raising and visibility activities concerning the treaty system of the Charter should be developed.**[261]

212. The CDDH considers at the outset that existing and new activities in this field should be enriched by exchanges of good practices. The Member States should draw inspiration in particular from the good practices mentioned above.[262]

213. The problem of a lack of sufficient easily accessible information on the standards set by the (revised) Charter identified above could be addressed by different measures.

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[260] **https://www.coe.int/en/web/european-social-charter/-/stakeholder-conference-on-framing-cooperation-for-social-rights-development-in-ukraine .**

[261] See the Member States' replies to the questionnaire, document **CDDH-SOC(2017)04rev, D.4; as well as their views expressed in the 3rd CDDH-SOC meeting (CDDH-SOC(2018)R3, §§ 18–19) and during the GR-**SOC's exchange **of views with the President of the ECSR on 17 January 2019, document DD(2019)135).**

[262] **See Chapter IV. 2., §§ 203–210. The importance of a pooling of good practices was equally stressed in the 2015** "Brussels Document" **drawn up at the Conference on the future of the protection of social rights in Europe, p. 7.**

214. First of all, translations, which (as set out above) should be prepared at the national level, of ECSR conclusions and decisions, of summaries thereof, as well as of the ECSR Digest into the Member States' national languages could be included in **the HUDOC-ESC database, similarly to the practice with regard** to the European Court of Human Rights' judgments.[263] **It could further be explored whether that Digest could interoperate with national judicial databases.[264] Easily accessible information could further be distributed more actively in press work or online campaigns, which would also increase the visibility of the Council** of Europe's activities in the field of social rights.

215. Moreover, the ECSR and the Department of the European Social Charter could be encouraged to regularly update the ECSR Digest.

216. 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 and social partners 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-ENNRHI-EQUINET Collaborative Platform on social and economic rights.

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[263] See the Member States' **views expressed in the 3rd CDDH-SOC meeting (CDDH-SOC(2018)R3, § 18. The importance of the systematic translation of the ECSR decisions has also been stressed in the 2015** "Brussels Document" **drawn up at the Conference on the future of the protection of social rights in Europe, p. 7.**

[264] **Ibid.**

217. In this context, the CDDH highlights also the relevance of achieving specific United Nations Sustainable Development Goals (SDG) Targets,[265] thereby connecting the (revised) Charter to a context and language more widely understood by a broader audience that might be less familiar with the (revised) Charter and its monitoring mechanism. It would equally help to explain that the (revised) Charter, its monitoring mechanism and the work done by the various Council of Europe bodies are a valuable step in translating Member States' commitment to **achieve the SDGs into concrete action.**

218. Moreover, the possibility to develop further courses on social rights in the context of the above mentioned European Programme for Human Rights Education for Legal Professionals (HELP) programme should be examined. The HELP programme could review its course on labour rights[266] in the programme of human rights education for legal professionals in the 28 EU Member States ("HELP in the 28") **with the objective that this course assisting in the implementation of the European Convention on Human Rights, the European Social Charter and the EU Charter of Fundamental Rights could benefit to all** Council of Europe Member States under the "HELP in the 47" **programme. More training courses on social rights could also be developed for all States on topics concerning the Charter and its**

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[265] See the UN website for further explanations on the UN Sustainable Development Goals (SDG), in particular Target 1.3. of SDG 1 (implement nationally appropriate social protection systems and measures for all, including [Social Protection] floors, and by 2030 achieve substantial coverage of the poor and the vulnerable), as well as Target 8.5. of SDG 8 (by 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value).

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

complementarity with the Convention, thereby illustrating the principles of indivisibility and interdependence of human rights. Training activities should be specifically designed for the national authorities (including judges) and institutions called upon to implement specific provisions of the (revised) Charter.[267]

219. It was considered desirable to work towards a Committee of Ministers Recommendation on the European Social Charter in university education and professional training along the lines of Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training, and to involve the Governmental Committee in this exercise.

220. Furthermore, training activities and events on the Charter could also be offered to the judges and the Registry staff of the European Court of Human Rights in order to increase the synergies between the two systems. Such activities could be organised by the ECSR and the Department of the European Social Charter in close cooperation with the Court and its Registry, notably in the context of the Court's internal training **programme. It would further be** useful if the Court Registry's **Factsheets or other case-law information, which is available also** externally on the Court's website, provided overviews having **regard to the (revised) Charter. Likewise, the Department of the European Social Charter could be encouraged to provide the** Registry with short information notes on the ECSR's decision **practice of potential relevance in the fields also covered by the** Court's case**-law in order to facilitate references to the (revised)** Charter in the Court's judgments **and decisions.**

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[267] See also the Member States' views expressed in the 3rd **CDDH-SOC meeting (CDDH-SOC(2018)R3, § 19.**

221. Moreover, different organs and institutions of the Council of Europe should pursue their activities aimed at increasing the awareness and visibility of the treaty system of the Charter. The Parliamentary Assembly of the Council of Europe could take steps to strengthen the pan-European dialogue on social rights, inter alia by continuing to organise inter-parliamentary seminars and debates on the Charter, also in the framework of its project "parliaments and social rights".[268] The Congress of Local and Regional Authorities could continue giving concrete guidance on how to implement human rights at the local level among local and regional authorities, inter alia, by the preparation of further volumes of the Handbook on Human Rights, a compendium of good practices for local and regional authorities to respond to human rights challenges in different fields in their municipalities and regions.[269] The Council of Europe Development Bank should continue and even increase the financing of projects related to social rights. The Conference of INGOs could keep raising awareness and informing the Council of Europe INGOs and INGOs working with the European Union of the contribution which they can make to the collective complaints mechanism and which can potentially improve the enforcement of social rights in Europe.

222. Member States have also 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.[270] In this respect, Member States are encouraged to provide support to the European Social Cohesion Platform in its role of developing a strategy for social cohesion, its activities in promoting social cohesion across Europe and in

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[268] See the PACE Resolution 2180 (2017) of 30 June 2017.

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

[270] See the Member States' views expressed in the 3rd CDDH-SOC meeting (CDDH-SOC(2018)R3, § 18.

facilitating cooperation activities. Funding for such activities could also derive from extra-budgetary sources.

223. The CDDH finally considers that the ECSR, the Department of the European Social Charter and the Governmental Committee have to be provided with adequate resources in order to be able to develop substantial visibility and awareness raising activities in the field of the (revised) Charter.

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

224. In accordance with its terms of reference,[271] the CDDH shall further make proposals aimed at facilitating the relationship between the treaty system of the Charter and other instruments for the protection of social rights in order to foster an improved implementation of social rights. As discussed in the "Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe" (first report),[272] a number of non-Council of Europe actors can equally adopt instruments and measures which concern or have an impact on the protection of social rights within the Council of Europe, particularly by the European Social Charter. Such non-Council of Europe actors are notably the European Union (EU) and the International Labour Organisation (ILO).

[271] See Introduction, § 39 above.
[272] See document CDDH(2018)R89add1, §§ 268–284.

1. Current challenges

a. Background

(i) United Nations social rights acquis

225. The (revised) Charter may also be seen in connection with the antidiscrimination UN acquis, such as UN CRPD[273], to which the EU acceded in a whole, the CEDAW[274], the ICERD[275], the CRC[276] and its two protocols (armed conflict and child prostitution and pornography), the UN ICCPR[277] and their complaints mechanisms. The general UN convention on ECOSOC rights[278], the UN ICESCR[279] and its Protocol should be mentioned.

(ii) International Labour Organisation

226. The (revised) Charter is further interpreted, inter alia, in the light of other international treaties elaborated in different international organisations, particularly instruments of the International Labour Organisation (ILO), for example the ILO Social Security (Minimum Standards) Convention No. 102 (1952) or the ILO Convention No. 137 (1973) concerning the Social Repercussions of New Methods of Cargo Handling in Docks of 25 June 1973.[280]

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[273] CRPD: Convention on the Rights of Persons with Disabilities.

[274] CEDAW: Convention on the Elimination of All Forms of Discrimination against Women.

[275] ICERD: International Convention on the Elimination of All Forms of Racial Discrimination.

[276] CRC: Convention on the Rights of the Child; its two protocols are the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

[277] UN ICCPR: International Covenant on Civil and Political Rights.

[278] ECOSOC: Economic and Social Council (of the United Nations).

[279] UN ICESCR: International Covenant on Economic, Social and Cultural Rights.

[280] See, for example, POPS v. Greece, Complaint No. 77/2012, decision on the merits of 7 December 2012, § 30 on the reform of pensions, and

227. In addition to complementarity, there are also tensions occasionally, for example in respect of certain older conventions of the ILO that give rise to practices that today might be considered discriminatory, for example the ILO Underground Work Convention No. 45 (1935).[281]

228. There are also institutional links between the treaty system of the Charter and the ILO, a United Nations agency which brings together Governments, employers and workers of 187 Member States to set labour standards, develop policies and devise programmes promoting decent work for all women and men.[282] The ILO has the right to participate in a consultative capacity in the deliberations of the ECSR in the framework of the reporting procedure (Article 26 of the 1961 Charter). It may further be invited to submit observations on complaints submitted in the collective complaints procedure.[283]

(iii) European Union

229. All EU Member States are bound either by the 1961 Charter or by the Revised Charter. As has been shown in more detail in the above-mentioned Analysis,[284] EU law and the (revised) Charter are interrelated in different respects. EU law has been one of the sources of inspiration for the Revised Charter and the ECSR takes account of EU law in its decisions and conclusions when interpreting the Charter.[285] EU law (in particular the Preamble of the Treaty on European Union (TEU) and Article 151 § 1 of the Treaty on the Functioning of the

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Bedriftsforbundet v. Norway, Complaint No. 103/2013, decision on the merits of 17 May 2016, § 27 on trade union monopolies.

[281] See also the ILO Safety and Health in Mines Convention No. 176 (1995) in which there is no longer an issue of discrimination.

[282] See for more information the ILO's website.

[283] Rule 32A of the ECSR's Rules; **see also document CDDH(2018)R89add1, § 277.**

[284] Ibid., §§ 162–176.

[285] See for references ibid., § 163.

European Union (TFEU)) refers to the 1961 Charter and the Court of Justice of the EU (CJEU) makes references to the (revised) Charter in its case-law.[286]

230. The EU legal order has gradually constitutionalised fundamental rights. With the entry into force of the Treaty of Lisbon on 1 December 2009 the EU Charter of Fundamental Rights became a binding instrument, having the same legal value as the TEU and TFEU.[287] While the EU Charter lays down civil and political alongside economic, social and cultural rights, it does not contain certain rights included in the (revised) Charter (such as the right to a fair remuneration, the right to protection against poverty and social exclusion and the right to housing). Although the EU Charter of Fundamental Rights does not specifically refer to the provisions of the (revised) Charter, the latter is nevertheless cited as a source of inspiration in the explanations to a number of its Articles which set out the sources of these Articles.[288]

231. Pursuant to Article 52 § 3 of the EU Charter of Fundamental Rights, rights laid down in that Charter which correspond to rights guaranteed by the European Convention on Human Rights (the Convention) shall be interpreted as having the same meaning and scope as the rights laid down in the Convention, but no similar status is recognised for any other human rights instrument including the (revised) Charter.

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[286] See for references ibid., §§ 173–175; and, for example, Case C-116/06, Sari Kiiski, judgment of 20 September 2007; Case C-268/06, Impact, judgment of 15 April 2008; and Case C-579/12 RX-II, European Commission v. Strack, judgment of 19 September 2013.

[287] See Article 6 § 1 of the Treaty on European Union.

[288] See document CDDH(2018)R89add1, §§ 167 and 169; and regarding the background to these differences Olivier De Schutter, The European Pillar of Social Rights and the Role of the European Social Charter in the EU Legal Order, 14 November 2018, study prepared at the request of the Secretariat of the European Social Charter and of the CoE-FRA-ENNHRI-Equinet Platform, pp. 8–10.

232. In this context, conflicts of interpretation may arise between the CJEU and the ECSR. A prominent example of such a conflict is the Laval case, which concerned Swedish trade unions' right to collective action and the freedom to provide **services in the EU. In its judgment, the CJEU referred to the 1961 European Social Charter when it acknowledged that the right to take collective action was recognised both by various international instruments which the Member States have signed or cooperated in, as well as by instruments developed at Community level or in the context of the EU.[289] However, in balancing the rights under the provisions of the EC Treaty on the free movement of goods, persons, services and capital against the objectives pursued by social policy, the CJEU came to the conclusion that the collective action by the Swedish unions violated Community law.[290]**

233. Following this judgment, the Swedish national legislation was amended accordingly. The Swedish trade unions then filed a complaint with the ECSR, asserting that the amendments made in Swedish national legislation following the Laval judgment of the CJEU breached the Revised Charter. In its decision, the ECSR notably found that Sweden was in violation of the right to bargain collectively under Article 6 §§ 2 and 4 of the Revised Charter.[291] The ECSR considered, in particular, that "the **facilitation of free cross-border movement of services and the promotion of the freedom of an employer or undertaking 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**

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[289] Case C-341/05, Laval un Partneri Ltd., [2007] ECR I-11767, § 90.
[290] Ibid., §§ 105, 108.
[291] ECSR, Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §§ 107–125.

the Charter, as having a greater a priori value than core labour rights, including the right to make use of collective action to demand further and better protection of the economic and social rights and interests of workers."[292]

234. Furthermore, in a total of seven decisions in collective complaints lodged against Greece, several fiscal consolidation measures taken by that State in the framework of economic adjustment programs (such as the termination of employment contracts without notice and severance pay, the limitation of employment-related rights of young workers and the significant reduction of pensioners' social protection) were found by the **ECSR as being in breach of the 1961 Charter.**[293]

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[292] Ibid., § 122. See on this issue also Karin Lukas, The EU Charter of Fundamental Rights and the European Social Charter – an Alliance for Social Rights?, European Yearbook on Human Rights 15, pp. 162–163.

[293] See ECSR, General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012; General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012; as well as Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, Panhellenic Federation of Public Service Pensioners v. Greece, Complaint No. 77/2012, Pensioners' Union of the Athen-Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012, Panhellenic Federation of pensioners of the public electricity corporation (PAS-DEI) v. Greece, Complaint No. 79/2012 and Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012, all decisions on the merits of 7 December 2012. See for an analysis of these cases also Karin Lukas, The EU Charter of Fundamental Rights and the European Social Charter – an Alliance for Social Rights?, European Yearbook on Human Rights 15, pp. 160-162; and O. De Schutter, The European Pillar of Social Rights and the Role of the European Social Charter in the EU Legal Order, 14 November 2018, pp. 30–32.

235. It must further be noted that – in contrast with the approach adopted by the European Court of Human Rights in relation to the Convention[294] – there is no presumption of conformity with the (revised) Charter of measures adopted by the EU Member States by which they seek to comply with an obligation under EU law.[295] The ECSR stated that the law of the (revised) Charter and EU law were two different legal systems, and the principles, rules and obligations constituting EU law did not necessarily coincide with the system of values, principles and rights embodied in the Charter. The ECSR considered that at present, and despite the fact that the provisions of the EU Charter of Fundamental Rights now had legal force, "neither the current status of social rights in the EU legal order nor the substance of EU legislation and the process by which it is generated would justify a general presumption of conformity of legal acts and rules of the EU with the European Social Charter". **It therefore stated that it will examine on a case-by-case basis whether respect for the rights guaranteed by the (revised) Charter is ensured in domestic law in situations where States take into account or are bound by legal rules or acts of the EU.[296]**

236. In order to ensure a better implementation of social rights within the EU, another instrument was recently proclaimed jointly by the Council of the EU, the European Parliament and the Commission on 17 November 2017: the European Pillar of

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[294] See, in particular, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* **[GC], no. 45036/98, §§ 149–157, ECHR 2005-VI.**

[295] See already CFE-CGC v. France, Complaint No. 56/2009, decision on the merits of 23 June 2010, §§ 32 to 36, and Confédération Générale du Travail (CGT) v. France, Complaint No. 55/2009, decision on the merits of 23 June 2010, §§ 34 to 38; and also document CDDH(2018)R89add1, § 163.

[296] ECSR, Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, § 74 with further references.

Social Rights.[297] Its objective is to contribute to social progress by supporting fair and well-functioning labour markets and welfare systems. It sets out 20 key principles in the following three categories: 1) equal opportunities and access to the labour market; 2) fair working conditions; and 3) social protection and inclusion.[298] The Pillar is not a catalogue of directly enforceable rights, but a policy instrument or set of principles which shall ensure that social objectives counter-balance objectives of an essentially macro-economic nature.[299]

237. As for the relationship of the European Pillar of Social Rights with other instruments for the protection of social rights, it is to be noted that the Pillar refers to the 1961 Charter notably in §§ 3 and 16 of its Preamble. The latter further clarifies that the Pillar does not prevent Member States or their social partners from establishing more ambitious standards in the field of social rights. In particular, nothing in the Pillar shall be interpreted as restricting or adversely affecting rights and principles as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the EU or all the Member States are party, including the 1961 Charter.

238. In this connection, the CDDH notes the invitation addressed by the Director of the EU Fundamental Rights Agency to the EU to consider accession to the Charter. This invitation was associated to a call to EU Member States that have not done so to ratify the Revised Charter, accept additional

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[297] See the following link to the text of the "European Pillar of Social Rights", **in particular § 12.**

[298] See ibid., in particular §§ 3 and 16 of the Preamble; and document CDDH(2018)R89add1, § 272.

[299] See O. De Schutter, The European Pillar of Social Rights and the Role of the European Social Charter in the EU Legal Order, 14 November 2018, pp. 32, 46 and 47 with further references.

provisions and the collective complaints system.[300] In a 2016 statement, ENNHRI advanced that provisions of the European Social Charter be integrated into the EU's human rights impact **assessment.[301]**

b. Concerns expressed by the relevant stakeholders

239. All stakeholders expressed concerns regarding conflicts of interpretation of social rights under the different international instruments as well as a risk of diverging standards of, and approaches to the protection of social rights in the different legal orders.

240. Conflicting interpretations by different European and international bodies in the field of social rights may cause problems, first of all, to the Member States parties to the relevant instruments. While in their replies to the CDDH-SOC questionnaire related to the good practices on the implementation of social rights at national level, a number of States indicated that they had not encountered problems of implementation at national level as a result of conflicting decisions of international and/or European bodies,[302] a number of other States pointed to specific issues regarding the relationship of the (revised) Charter with other instruments for the protection of social rights, notably those of the EU and the ILO.

241. The problems encountered by these latter States concerned, in particular the policies imposed in the context of economic adjustment programmes and provisions of the

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[300] **https://fra.europa.eu/en/speech/2018/address-council-europe-committee-ministers; https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-frf-2018-chair-statement_en.pdf (see page 10).**

[301] **http://ennhri.org/IMG/pdf/ennhri_statement_on_turin_process_10_10_16_final.pdf.**

[302] **See document CDDH-SOC(2017)04rev, point B.3.; the States comprise Azerbaijan, Croatia, Czech Republic, Georgia, Ireland, Italy, Republic of Moldova, the Netherlands, Poland, Portugal, Slovak Republic and Ukraine.**

(revised) Charter[303] as well as conflicts between (revised) Charter commitments and EU Country Specific Recommendations.[304] Furthermore, issues relating to specific Articles of the (revised) Charter were raised. These comprised, for example, different interpretations of the standards set by Article 2 § 4 of the 1961 Charter and both EU law and the ILO Maritime Labour Convention in relation to permissible working hours for seamen.[305] Moreover, the diverging interpretation adopted by the ECSR with respect to Article 24 of the (Revised) Charter, on the one hand, and the ILO Convention No. 158 and EU law, on the other hand, on the question whether an employment relationship which had been terminated without justification would be reinstated, was reported.[306] Another State considered that it was impossible to fully apply Article 12 § 4 of the (revised) Charter unless social security treaties were adopted with all countries which have ratified the (revised) Charter.[307]

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[303] See in this respect, in particular, the above-mentioned decisions of the ECSR finding Greece in breach of the 1961 Charter in several collective complaints regarding fiscal consolidation measures taken by that State during the economic crisis, Chapter V.1.a. (iii), § 234; and Greece's reply to the questionnaire, CDDH-SOC(2017)04rev, point B.3.

[304] See in this respect Bulgaria's reply to the questionnaire (ibid.), which referred to conflicts between commitments under the Revised Charter and EU Country Specific Recommendations in respect of the adequacy/growth of the minimum salary or the adequacy/period of payment of some social benefits and considered that the EU Country Specific Recommendations were mostly based on economic/budgetary indicators for stability/discipline and not so much on social rights. Furthermore, Slovenia indicated in its reply to the questionnaire (ibid.) that in its Conclusions 2010 the ECSR had made a finding of non-conformity with Article 4 § 1 of the Revised Charter on the ground that the minimum wage was manifestly unfair; a rise in that minimum wage had still not been found fully in conformity with the Charter in 2012. However, in the context of the European semester 2012 the European Commission, in its Country Specific Recommendations for Slovenia 2012, suggested Slovenia to lower the minimum wage in order to support competitiveness and job creation.

[305] See in more detail Iceland's reply to the questionnaire (ibid.).

[306] See in more detail Finland's reply to the questionnaire (ibid.).

[307] See Estonia's reply to the questionnaire (ibid.).

242. As for the ECSR, it emerges from the above-mentioned decisions in which it considered that neither the current status of social rights in the EU legal order nor the substance of EU legislation and the process by which it is generated would justify a general presumption of conformity of legal acts and rules of the EU with the (revised) Charter[308] that it sees a risk of a diverging, and lower standard of social rights protection within the EU legal order. Moreover, the Laval decision, in particular, in which the ECSR stated that the economic freedoms such as the free cross-border movement of services could not 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,[309] appears to disclose concerns about a different approach to the protection of social rights taken by the CJEU in the EU legal order compared to that taken by itself under the treaty system of the Charter.[310]

243. As regards the creation of the European Pillar of Social Rights, the Secretary General of the Council of Europe, Mr Thorbjørn Jagland, welcomed this initiative of making social rights central to the EU's functioning.[311] **In his Opinion on the European Union initiative to establish a European Pillar of Social Rights he stressed at the same time the crucial importance of legal certainty and coherence between European standard-setting systems protecting fundamental social rights, and in particular the treaty system of the (revised) Charter and the EU Charter for Fundamental Rights, and called for increased synergies between EU law and the (revised) Charter which**

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[308] See Chapter V.1.a. (iii), § 235 above.
[309] See Chapter V.1.a. (iii), § 233 above.
[310] See on this issue also Karin Lukas, The EU Charter of Fundamental Rights and the European Social Charter – an Alliance for Social Rights?, European Yearbook on Human Rights 15, pp. 163–164.
[311] See the Secretary General's Opinion on the EU initiative to establish a European Pillar of Social Rights of 2 December 2016.

the Pillar could help to enhance.[312] **The Committee of Ministers and the Governmental Committee of the European Social Charter expressed the same view.**[313]

244. The President of the ECSR shared the hope expressed by the Secretary General that the European Pillar of Social Rights could give the EU the opportunity to achieve the result of a better consideration of the (revised) Charter in the process of adopting EU legislative acts, policy measures and judicial decisions. He further stressed the importance of synergy between the (revised) Charter and the EU's and the International Labour Organisation's systems and instruments of protection of **social rights.**[314]

245. On the EU side, the European Parliament, in a Resolution on "The European Pillar of Social Rights" adopted on **19 January 2017, called on the Commission, the European External Action Service and the Member States to pursue external action coherent with the European Pillar of Social Rights**

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[312] **See the** Secretary General's Opinion on the EU initiative to establish a **European Pillar of Social Rights of 2 December 2016. In the Secretary** General's view "it is necessary – **with due regard for the competences and applicable law of the European Union** – that: …the provisions of the European **Social Charter (Revised) should be formally incorporated into the European Pillar of Social Rights as a common benchmark for states in guaranteeing these** rights; (…) The collective complaints procedure (…) should be acknowledged by the European Pillar of Social Rights." See also Priority No. 5 of the Secretary **General of the Council of Europe for the 2014–2019 term, document SG/Inf(2014)34 of 16 September 2014; and document CDDH(2018)R89add1, §§ 269-274.**

[313] **See the Reply adopted by the Committee of Ministers on 13 December 2017 on Parliamentary Assembly Recommendation 2112** (2017) on "The 'Turin Process': reinforcing social rights in Europe", document **CM/AS(2017)Rec2112-final, § 5; and the Message from the Governmental Committee of the European Social Charter and the European Code of Social Security to the Committee of Ministers of the Council of Europe, document GC(2018)24, Appendix VII.**

[314] **See the** ECSR President's speech of 22/3/2017 **before the Committee of Ministers.**

by promoting, inter alia, the implementation of the relevant Council of Europe conventions.[315]

c. Analysis of the concerns expressed by the relevant stakeholders

246. It is clear from the foregoing that the concerns expressed by a number of stakeholders about a risk of conflicts of interpretation of social rights under the different international instruments as well as a risk of diverging standards of social rights in the different legal orders has already materialised in some instances. In particular, in a number of cases, the requirements under the (revised) Charter as interpreted by the ECSR in the field of social rights were different from the requirements under EU law and/or the relevant ILO Conventions. It must be borne in mind in this context that the treaty system of the Charter and the EU legal order are separate legal systems and the obligations created by them, as well as the status of their supervisory bodies vary. As a consequence, questions relating to social rights are examined from different angles with potentially different outcomes.[316]

247. Council of Europe actors further considered it desirable to enhance legal certainty and coherence between European standard-setting systems protecting fundamental social rights by a better consideration of the (revised) Charter notably in the process of adopting EU legislative acts, policy measures and

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[315] **See the** European Parliament's Resolution on "The European Pillar of Social Rights" **adopted on 19 January 2017, document 2016/2095(INI), point 46; and also document CDDH(2018)R89add1, § 271. A study drawn up for the European Parliament, Committee on Constitutional Affairs, in January 2016 by** Olivier De Schutter on "**The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights**", **had identified what it considered the main obstacles to defining a common approach to social rights** in the EU, namely the Charter's "à la carte" system and the resulting differences in the EU Member States' commitments under **the (revised) Charter.**

[316] See in this respect also Poland's reply to the questionnaire, **document CDDH-SOC(2017)04rev, points B.3. and C.2.**

judicial decisions and to increase synergies between these systems possibly with the help of the European Pillar of Social Rights.

2. CDDH proposals

248. In the light of the foregoing, it appears to be common ground that more coherence in the interpretation of the standards of social rights in the different legal orders, and in particular in the interpretation of the requirements under the (revised) Charter and those under EU law and/or the relevant ILO Convention is desirable.[317] Despite the fact that the obligations created by the different legal systems and the status of their supervisory bodies vary, it is clear that the national authorities' compliance with social rights in their legislative, **executive and judicial acts and decisions would be facilitated by clear and common standards in that field.**

249. The CDDH considers that the risk of diverging interpretations can notably be reduced by different measures harmonising the interpretation of the standards in the different legal orders. This necessitates that the different supervisory bodies take into account the standards developed under other legal instruments and/or in other legal systems, thereby improving the synergies between them.

250. As regards the relationship between the (revised) Charter and the EU legal order, in particular, it would be desirable that the ECSR, in its decision practice, continues considering the relevant standards developed in the EU legal order, but equally that the EU authorities, including the courts, take into consideration the standards of the (revised) Charter in its legislative and executive acts and its court decisions. The CDDH notes that the EU Pillar of Social Rights, whose principles shall

[317] This was notably stressed by the members of the CDDH-SOC, see CDDH-SOC(2018)R3, § 21.

ensure that social objectives counter-balance economic objectives, could help to increase the synergies between the two systems.[318] It has been suggested that this could be achieved notably by systematic references to the (revised) Charter as interpreted by the ECSR in the commentary to the Pillar which is being elaborated.[319] Moreover, it was suggested that the impact assessments which accompany the legislative proposals filed by the EU Commission should take into account the principles laid down in the Pillar and at the same time refer to the (revised) Charter.[320]

251. It has further been argued that it would make it easier for the EU authorities, including the courts, to take into account the (revised) Charter if the same standards set by the (revised) Charter were applicable in all EU Member States.[321] These Member States have been called upon notably by the European Parliament in a resolution adopted on 19 January 2017 on "The European Pillar of Social Rights" to ratify the Revised Charter; in the same Resolution the Commission has been called upon to examine the steps required for accession of the EU to the Revised Charter.[322] Likewise, the ECSR stressed the importance

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[318] See CDDH-SOC(2018)R3, § 21.

[319] See in this respect the study drawn up for the European Parliament, Committee on Constitutional Affairs, in January 2016 by Olivier De Schutter on "The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights", pp. 4 and 47.

[320] Ibid., pp. 5–6 and 48–49. See on the proposal to take the (revised) Charter as a reference point in carrying out such impact assessments also Colm O'Cinneide, Social rights and the European Social Charter – new challenges and fresh opportunities, in: Jean-Yves Carlier / Olivier De Schutter / Marc Verdussen, The European Social Charter: a Social Constitution for Europe, 2010, p. 180.

[321] Ibid., pp. 4–6 and 49.

[322] European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)), P8_TA(2017)0010, § 32. See further the findings made in the study drawn up for the European Parliament, Committee on Constitutional Affairs, in January 2016 by Olivier De Schutter on "The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights", which identified as the main obstacles to defining a common approach to social rights in the EU the Charter's "à la carte" system and encouraged the EU

of ensuring more consistency among them when it came to accepting provisions of the (revised) Charter already covered by EU law.[323]

252. In order to harmonise the standards of the (revised) Charter with that of other international instruments it was further proposed notably by the Commissioner for Human Rights that the Council of Europe Member States ratify, in particular, the Protocol of 2014 to the 1930 ILO Forced Labour Convention (providing the victims of forced labour with similar rights as those of human trafficking), which was relevant for the interpretation of the social rights in the Charter.[324]

253. It was further stressed that legal research projects to promote the consideration of social rights could allow for a greater consistency of international standards on social rights.[325]

254. The CDDH considers that the Council of Europe actors as well as its Member States should thoroughly consider the above-mentioned proposals to attain more coherence in the interpretation of the standards of social rights in the different legal orders in the context of the above-mentioned work programme aimed at improving the implementation of social rights in Europe.[326]

Member States to harmonise their commitments under the Charter. See also document CDDH(2018)R89add1, § 271.

[323] **See the** ECSR's Working Document on "The relationship between **European Union law and the European Social** Charter" **of 15 July 2014, § 83. See also Karin Lukas, The EU Charter of Fundamental Rights and the European Social Charter – an Alliance for Social Rights?, European Yearbook on Human Rights 15, p. 164.**

[324] **See the following link to the** Commissioner's Comment on "Improving **protection for victims of forced labour and human trafficking" of 12 November 2015.**

[325] See in this respect Finland's reply to the questionnaire, document **CDDH-SOC(2017)04rev, point B.3.**

[326] **See Chapter I. 2., §§ 99–100, and Chapter II. 2. b., § 142.**

255. 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.[327] 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.[328] 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.

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[327] 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.

[328] See the ECSR President's speech of 22 March 2017 before the Committee of Ministers.

CONCLUDING REMARKS

256. In the examination of the main topics which were considered as being relevant for an improved implementation of social rights in Europe – the Member States' commitment under **the relevant instruments, the monitoring procedures under the treaty system of the European Social Charter, the effective national implementation of social rights, the awareness and visibility of the Charter system as well as the relationship of Council of Europe instruments with other instruments for the protection of social rights – a large variety of proposals for improving the protection of social rights can be identified.**

257. The CDDH notes that for a number of the proposals made, there appears to be some or even broad support notably among the Member States. It is clear that the States' views on **how to improve the protection of social rights in Europe diverge. However, the treaty system of the Charter permits States to take different levels of commitments and to advance at differing speed in this respect.**

258. The CDDH strongly encourages that concrete action is taken towards reinforcing the implementation of social rights in line with the proposals made in this report. In the CDDH's view, a **common work programme, or process, should be set up by the Council of Europe organs and institutions and the Member States in the context of which concrete proposals aimed at improving the implementation of the social rights should be elaborated for examination and adoption by the relevant stakeholders. It further appears advisable to draw up a clear roadmap of the different steps to be taken in the course of this work programme.**

259. It falls to the Committee of Ministers to take operational decisions in the light of the proposals made in the present report. Some proposals may be directly actionable by transmitting the report to the Council of Europe bodies concerned, in particular the ECSR and the Governmental Committee, while others may require additional Committee of Ministers' decisions. In respect **of the latter matters, the Committee of Ministers could instruct the Secretariat to prepare in consultation with the ECSR and the Governmental Committee where appropriate, and submit concrete proposals for consideration by the GR-SOC and possible subsequent decision by the Committee of Ministers itself. This process should be conducted in a constructive manner in order to arrive at an improvement of the implementation of social rights in Europe by a strengthened treaty system of the Charter.**

APPENDIX I

Acronyms used in the report

ADEDY	Confederation of Greek Civil Servants' **Trade Unions**
ATE	Pensioners' Union of the **Agricultural Bank of Greece**
CDDH	**Steering Committee for Human Rights**
CDDH-SOC	**Drafting Group on Social Rights (of the Steering Committee for Human Rights)**
CEC	**Conference of European Churches**
CEDAW	**Convention on the Elimination of All Forms of Discrimination against Women**
CFE-CGC	**Confédération française de** *l'Encadrement*
CGT	**Confédération Générale du Travail**
Charter	**European Social Charter as adopted in 1961**
CJEU	**Court of Justice of the European Union**
CM	**Committee of Ministers**
Convention	**Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)**

Court	**European Court of Human Rights**
CRC	**Convention on the Rights of the Child**
CRPD	**Convention on the Rights of Persons with Disabilities**
DCI	**Defence for Children International**
ECOSOC	**Economic and Social Council (of the United Nations)**
ECSR	**European Committee of Social Rights / Committee of Independent Experts**
ECSR Digest	"Digest of the case law of the **European Committee of** Social Rights"
ENNHRI	**European Network of National Human Rights Institutions**
EQUINET	**European Network of Equality Bodies**
ERRC	**European Roma Rights Centre**
EU	**European Union**
EuroCOP	**European Confederation of Police**
FEANTSA	**European Federation of National Organisations working with the Homeless**
FIDH	**Fédération Internationale des Ligues des Droits de l'Homme (International Federation for Human Rights)**
FRA	**European Union Agency for Fundamental Rights**

GENOP-DEI	**General Federation of employees of the national electric power corporation**
Governmental Committee	**Governmental Committee of the European Social Charter and the European Code of Social Security**
GR-SOC	Committee of Ministers' Rapporteur **Group on Social and Health Questions**
HELP	**European Programme for Human Rights Education for Legal Professionals**
ICERD	**International Convention on the Elimination of All Forms of Racial Discrimination**
ICCPR	**International Covenant on Civil and Political Rights**
ICESCR	**International Covenant on Economic, Social and Cultural Rights**
ILO	**International Labour Organisation**
INGOs	**International non-governmental organisations**
I.S.A.P.	Pensioners' Union of the Athens-**Piraeus Electric Railways**
LO	**Swedish Trade Union Confederation**
NGOs	**Non-governmental organisations**
PACE	**Parliamentary Assembly**
POPS	**Panhellenic Federation of Public Service Pensioners**

POS-DEI	**Panhellenic Federation of pensioners of the public electricity corporation**
OMCT	**Organisation mondiale contre la Torture (World Organisation against Torture)**
Revised Charter	**European Social Charter as revised in 1996**
(revised) Charter	**European Social Charter as adopted in 1961 and/or European Social Charter as revised in 1996**
SDG	**United Nations Sustainable Development Goals**
TCO	**Swedish Confederation of Professional Employees**

How can the protection of social rights in Europe be improved?

On the request of the Committee of Ministers of the Council of Europe, the Steering Committee for Human Rights (CDDH) addressed this question in two steps. It first drew up an analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (Volume I). On the basis of that analysis, it then identified good practices and made proposals with a view to improving the implementation of social rights in Europe (Volume II).

In the present Volume II, the CDDH addresses and makes proposals for further action regarding the main topics which were considered as relevant for an improved implementation of social rights in Europe in its previous analysis. These topics comprise the Member States' commitment under the relevant instruments of the treaty system of the (revised) European Social Charter; the monitoring procedures under that treaty system; the effective national implementation of social rights; the awareness and visibility of the Charter system; and the relationship of Council of Europe instruments with other instruments for the protection of social rights. Good practices for improving the effective national implementation of social rights and for furthering the awareness and visibility of the Charter system are equally set out.

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