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The European Social Charter: the Committee and the protection of social rights in times of economic crisis

REPORT BY

Mr. Luis Jimena Quesada
President of the European Committee of Social Rights

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I. Introduction. The application of the Charter in the context of the global economic crisis: general approach

First of all, it is worthwhile to recall that, like the European Convention on Human Rights, the European Social Charter derives from the Universal Declaration of Human Rights. Both the Convention and the Charter were adopted within the Council of Europe (currently composed of 47 member States) in order to effectively guarantee both civil and political as well as social rights. Both the Convention and the Charter are international treaties and, obviously, they are legally binding. Both established specific monitoring bodies (the European Court of Human Rights and the European Committee of Social Rights) to ensure such a compulsory character and effectiveness.

The Social Charter of 1961 recognized a first list of social rights related to work and non-discrimination, social protection and vulnerable people, as well as the so-called reporting system as a mandatory monitoring mechanism. In its evolution, the Charter has been improved: in 1988, a first Protocol extended the range of protected social rights; in 1995, another Protocol provided for a judicial procedure of collective complaints; then, in 1996 the revised Charter, on the one hand added other important rights (in some cases under the positive influence of International NGOs - e.g. in the new version of Article 15 concerning persons with disabilities or in the elaboration of Articles 30 and 31 on the protection against poverty and social exclusion as well as the right to housing) and, on the other hand, established a consolidated version of the Charter including the whole catalogue of rights and the clauses incorporating the two mechanisms (national reports and collective complaints)[1].

In particular, the collective complaints system has profoundly changed the image of the Committee, since it is more effective and pro-active than the reporting system. The independence and impartiality of the Committee and of its members, its methods of interpretation, the format of its decisions, the external impact of its case law and the examples of implementation of its decisions confirm its increasingly judicial image. The collective complaints procedure is adversarial in nature and guarantees due process of law. It also provides for the possibility of holding public hearings. By the end of 2013, 103 complaints have

[1] At present, among the 47 Member States of the Council of Europe, 43 (with the exception of Liechtenstein, Monaco, San Marino and Switzerland) have ratified the Social Charter, 13 are bound by the 1961 original Charter and 30 by the 1996 revised Charter. And 15 have accepted the collective complaints procedure.

been registered (since the entry into force of the procedure in 1998). The average duration of the admissibility stage was 4-5 months, while the average duration of the phase on the merits was less than 11 months. This represents a very reasonable duration of the procedure. In any case, the feedback between the two systems (reports and complaints) is evident[2].

With these premises, on the occasion of the assessment of national reports in 2009 (dealing health, social security and social protection), the Committee decided to recall several general principles concerning the application of the Charter in the context of the global economic crisis. Indeed, after stating that during the previous years the economic climate in Europe was still generally favourable and many governments were expanding their social safety nets, the Committee noted that "the severe financial and economic crisis that broke in 2008 and 2009 has already had significant implications on social rights, in particular those relating to the thematic group of provisions 'Health, social security and social protection' of the current reporting cycle. Increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline".

In this context, the Committee recalled that "under the Charter the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which *inter alia* the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised". From this point of view, the Committee considered that "the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively".

II. Specific case-law of the Committee concerning "anti-crisis" legislation

The above mentioned general principles have been developed in the framework of the collective complaint procedure in relation to several cases concerning the so-called "anti-crisis" legislation adopted in Greece in 2010, in particular in the field of restrictive measures affecting labour rights and young workers as well as social cuts affecting pension schemes.

In relation to labour rights, the two first decisions on the merits were adopted on 23 May 2012 in relation to two complaints (No. 65/2011 and No. 66/2011) submitted by two trade unions [*General federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*].

In the first one (Complaint No. 65/2011), the Committee declared that the 2010 Greek legislation allowing dismissal without notice or compensation of employees in an open-ended contract during an initial period of twelve months is incompatible with Article 4§4 of the 1961 Charter due to the aim of not excessively destabilizing the situation of those enjoying the rights enshrined in the Charter. The Committee reached its particular conclusion by taking into account the above mentioned general principles:
"17. The Committee considers that what applies to the right to health and social protection should apply equally to labour law and that while it may be reasonable for the crisis to

[2] According to the original reporting system, States Parties were supposed to submit a national report every two years on the implementation of the accepted provisions. After the accession of Central and Eastern European countries to the Council of Europe as well as the adoption of the 1996 revised Charter, the workload for both States to report and the Committee to assess national situations increased significantly. That led the Committee of Ministers to modify the system of reporting, so that States Parties had (from 31 October 2007) to present a report annually only on one of the four parts ("thematic groups") into which they the provisions of the Charter were divided: "employment, training and equal opportunities" (group 1), "health, social security and social protection" (group 2), "labour rights" (group 3) and "children, families, migrants" (group 4). In this way, each provision of the Charter is reported on once every four years which means that, while alleviating the workload somewhat, it is clear that sometimes the conclusions of the Committee risk becoming quite slow and ineffective if, e.g., changes in domestic legislation and practices have intervened between each supervision cycle.

prompt changes in current legislation and practices in one or other of these areas to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter.

18. The Committee considers that a greater employment flexibility in order to combat unemployment and encourage employers to take on staff, should not result in depriving broad categories of employees, particularly those who have not had a stable job for long, of their fundamental rights in the field of labour law, protecting them from arbitrary decisions by their employers or from economic fluctuations. The establishment and maintenance of such rights in the two fields cited above is indeed one of the aims the Charter. In addition, doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance, unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection".

In the second one (Complaint No. 66/2011), the Committee also found several violations of the European Social Charter (Articles 4§1, 7§7, 10§2, 12§3) on the basis of the same legal reasoning: on the one hand, the provisions on entitlement to annual holiday with pay, systematic arrangements for apprenticeships and training, as well as on social security coverage were violated by means of domestic legislation introducing "special apprenticeship contracts" for employees aged between 15 to 18 years; on the other hand, the provisions on fair remuneration and to non-discrimination based on age were also breached by means of domestic legislation allowing employers to pay new entrants to labour market, aged less than 25 years, a smaller percentage of the national minimum wage.

What is interesting in this second decision is that, together with the idea of proportionality (disproportionate consequences for employees when facing the economic crisis), the Committee developed likewise the idea of progressiveness and non-regression in relation to changes to the social security system[3].
It is precisely in the field of the social security system that the Committee adopted five new decisions on the merits against Greece (Complaints No. 76, 77, 78, 79 and 80/2012)[4]. In its

[3] See §§ 47-49 of the Decision on the Merits (Complaint No. 66/2011): "47. Article 12§3 requires state parties to 'endeavour to raise progressively the system of social security to a higher level'. In this respect, the Committee recognises that it may be necessary to introduce measures to consolidate public finances in times of economic crisis, in order to ensure the maintenance and sustainability of the existing social security system. However, any such measures should not undermine the core framework of a national social security system or deny individuals the opportunity to enjoy the protection it offers against serious social and economic risk. Therefore, any changes to a social security system must maintain in place a sufficiently extensive system of compulsory social security and refrain from excluding entire categories of worker from the social protection offered by this system) (Conclusions XVI-1, Interpretative statement of Article 12, p. 11). The Committee considers that financial consolidation measures which fail to respect these limits constitute retrogressive steps which cannot be deemed to be in conformity with Article 12§3. 48. In the instant case, the Committee considers that the highly limited protection against social and economic risks afforded to minors engaged in 'special apprenticeship contracts' under Section 74§9 of Act No. 3863/2010 has the practical effect of establishing a distinct category of workers who are effectively excluded from the general range of protection offered by the social security system at large and that this represents a deterioration of the social security scheme which does not fulfil the criteria to be compatible with Article 12§3 of the 1961 Charter. 49. Therefore, the Committee holds that there is a violation of Article 12§3 of the 1961 Charter".

[4] Federation of Employed Pensioners of Greece (IKA–ETAM) v. Greece (Complaint No. 76/2012), Panhellenic Federation of Public Service Pensioners (POPS) v. Greece (Complaint No. 77/2012), Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece (Complaint No. 78/2012), Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI) v. Greece (Complaint No. 79/2012) and Pensioner's Union of the Agricultural Bank of Greece (ATE) v. Greece (Complaint No. 80/2012).

decisions, adopted on 7 December 2012), the Committee considered that even though restrictions to the benefits available in a national social security system do not under certain conditions breach the Charter, the cumulative effect of restrictions introduced as "austerity measures", together with the procedures applied to put them into place, may amount to a violation of the right to social security. With this in mind, the Committee held that due to the cumulative effect of the restrictive measures and the procedures adopted to put them into place, certain regulations introduced by the Government of Greece from May 2010 onwards, modifying both public and private pension schemes, constituted a violation of Article 12§3 (right to social security) of the Charter.

The added value of these new decisions consist of having introduced, together with the above mentioned substantial parameters base on proportionality and progressiveness, other specific substantial criteria in the field of the social security system as well as several important procedural criteria when assessing the possibility to limit social rights in times of crisis.

From this point of view, on the one hand, the Committee recalled its previous case-law (Conclusions adopted in 1998) according to which it has indicated that with a view to pronouncing upon the compatibility with the Charter of any restrictions on the rights relating to social security as a result of economic and demographic factors, account must be taken of the following criteria:

- *the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, lengths, etc.);*
- *the reasons given for the changes and the framework of social and economic policy in which they arise; the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration);*
- *the necessity of the reform, and its adequacy in the situation which gave rise to these changes (the aims pursued);*
- *the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made; and*
- *the results obtained by such changes.*

Furthermore, the Committee said that, despite the particular context in Greece created by the economic crisis and the fact that the Government was required to take urgent decisions, the Government:

- *had not conducted the minimum level of research and analysis into the effects of such far-reaching measures that is necessary to assess in a meaningful manner their full impact on vulnerable groups in society;*
- *neither had it discussed the available studies with the organisations concerned, despite the fact that they represented the interests of many of the groups most affected by the measures at issue;*
- *and it had not been discovered whether other measures could have been put in place, which might have limited the cumulative effects of the contested restrictions upon pensioners.*

Three final conclusions can be drawn from the analysis of these five decisions delivered in December 2012 (which can also be extended to the other two decisions adopted in May 2012), that is to say non-acceptance of less favourable international standards (a), positive feedback from other national and international organisations (b) and complementarity with national and international jurisdictions (c):

a) firstly, the Committee did not accept the observation made by the Government to the effect that the rights safeguarded under the Charter had been restricted pursuant to the Government's other international obligations, namely those it had under the loan

arrangement with the EU institutions (European Commission and European Central Bank) and the International Monetary Fund (the "Troika")[5];

b) secondly, the Government had not established, as is required by Article 12§3, that efforts had been made to maintain a sufficient level of protection for the benefit of the most vulnerable members of society, even though the effects of the adopted measures risk bringing about a large scale pauperisation of a significant segment of the population, as had been observed by various international and national organisations (e.g. reference is made to recommendations, resolutions, reports and other documents produced by the Parliamentary Assembly of the Council of Europe, the ILO or the Greek National Commission for Human Rights); and

c) thirdly, apart from amending the contested domestic legislation ("erga omnes" impact) when implementing the Committee's decisions, the Committee also underlines that other mechanisms are more suited to address complaints relating to the effects of the contested legislation on individual pensioners' right to property ("inter partes" effect): in this regard, the Committee explicitly highlights that domestic courts are in a significant role and, of course, the European Court of Human Rights after exhaustion of domestic remedies (the Committee refers in its decision to several judgments delivered by the European Court against Greece concerning the situation of Greek applicants complaining about the privatisation or the reduction of pensions, to which they have previously been entitled)[6].

III. The follow-up of the decisions adopted by the Committee and the importance of judicial dialogue at national and international level

As well known, the Committee of Ministers of the Council of Europe has the role to supervise the execution of the decisions adopted by the European Committee of Social Rights. Of course, the level of political when executing each case may diverge significantly. With respect to the two decisions adopted in May 2012 the reaction of the Greek Government has been ambiguous[7], whereas the other five decisions delivered in December 2012 are still waiting for a

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[5] The Committee held the fact that the contested provisions of domestic law seek to fulfil the requirements of other legal obligations does not remove them from the ambit of the Charter. This has previously been concluded in relation to national provisions enacted by states parties to the Charter which were intended to implement European Union directives or other legal norms emanating from the European Union. In the same context, it has been held that when states parties agree on binding measures, which relate to matters within the remit of the Charter, they should – both when preparing the text in question and when implementing it into national law – take full account of the commitments they have taken upon ratifying the Charter. It is ultimately for the Committee to assess compliance of a national situation with the Charter, including when the implementation of the parallel international obligations into domestic law may interfere with the proper implementation of those emanating from the Charter. Despite the later international obligations of Greece, there is nothing to absolve the state party from fulfilling its obligations under the Charter.

[6] E.g. *Ichtigiaroglou v. Greece*, application no.12045/06, judgment of 19 June 2008; *Tsoukalas v. Greece*, application no. 12286/08, judgment of 22 July 2010; *Kokkinis v. Greece*, application no. 45769/06, judgment of 6 November 2008, or *Reveliotis v. Greece*, application no. 48775/06, judgment of 4 December 2008.

[7] See Resolution CM/ResChS(2013)2 *(*adopted by the Committee of Ministers on 5 February 2013 at the 1161st meeting of the Ministers' Deputies), in particular the appendix containing the reply by Greece to both decisions of the European Committee of Social Rights: "12. The Greek delegation (…) stated that the Greek authorities did not contest the conclusions of the ECSR and accepted that the specific labour laws of 2010 in question were not in conformity with the Charter. The delegation pointed out that this situation had come about because of the financial vortex threatening the survival of its country's economy. (...). 13. Against this background, the Greek delegation reiterated the fact that its government accepted the conclusions of the ECSR concerning the issues of non-conformity with the European Social Charter. Secondly, it pointed out that the measures were of a provisional nature. Thirdly, it stated that the Greek Government had the firm intention to revoke these measures as soon as the economic situation of his country would allow. However, in this respect, and with regard to the political and economic constraints, it was not possible to envisage a set timeframe, although it was unlikely that tangible results in Greece would be apparent before 2015. (…)".

concrete reaction from the Committee of Ministers.

Nevertheless, beyond this modality of follow-up, the implementation of the decisions adopted by the European Committee of Social Rights may and must be supported or reinforced through judicial dialogue at national and international level, and this not only in relation to the country directly involved in a specific case, but also in relation to other countries having put into force similar contested measures. Let me illustrate this kind of synergies by referring to the above mentioned areas (labour rights and pension schemes) covered by the Greek decisions of the Committee.

A positive example concerning the first area is provided by one judgment adopted in November 2013 by a Labour Court in Spain (*Juzgado de lo Social* no. 2 of Barcelona, judgment no. 412 of 19 November 2013) in which the control of conventionality is exercised in order to give priority to the Social Charter over the contested national legislation (Decree-Law No. 3/2012 introducing the possibility of dismissal without notice and compensation during a probation period of one year in the framework of a new "contract to support entrepreneurs"): in particular, the national judge sets asides the national provisions by explicitly and broadly basing its *ratio decidendi* in the Decision of the Committee on Complaint No. 65/2011, after considering that the assessed situation and modality of contract (also introduced in Spain following the measures promoted by the Troika) were analogous to the Greek case[8].

This judgment had an important media impact in Spain. In this respect, it is worthwhile to recall that Spain has not accepted the collective complaint procedure. By contrast, Portugal is one of the 15 State Parties having accepted this procedure, but the social cuts introduced in the labour market in the context of the economic crisis have not been submitted to the Committee. One of the reasons of this situation perhaps resides in the procedural strategy of national trade unions, which have decided to rely on the Portuguese Constitutional Court (see, for example, Decision Nº 187 of 5 April 2013 repealing domestic provisions reducing wages and pensions of public employees). This complementarity is positive, even if the constitutional jurisdiction has not cited the case-law of the Committee in this field[9]. Indeed, the role of the Venice Commission of the

[8] *Sentencia nº 412/2013, de 19 de noviembre de 2013,* Juzgado de lo Social no. 2 de Barcelona (procedimiento nº 426/2013 en materia de despido): "Cuarto.- (…) entiende esta Juzgadora que debe analizarse si el art. 4.3 del RD Ley 3/12 contraviene la Carta Social Europea de 1961, ratificada por España por Instrumento de 29.04.1980. (…) La Carta Social Europea es una norma internacional que forma parte del derecho interno (art. 10.2 y 96 CE) y que tiene el mismo valor vinculante que los tratados de la Unión Europea, por lo que en orden al principio de jerarquía normativa se sitúa por encima de la Ley nacional. Corresponde al Comité Europeo de Derechos Sociales velar por la correcta aplicación de la Carta, por lo que sus decisiones son vinculantes para los órganos jurisdiccionales nacionales. En el caso de autos debe traerse a colación la Decisión de 23 de mayo de 2012 (reclamación 65), que resuelve la reclamación planteada por la Federación General de trabajadores de la Empresa nacional de energía eléctrica (GENOP-DEI) y la Confederación de Sindicatos de Funcionarios Griegos (ADEDY) en relación al art. 17.5 de la Ley 3899 de 17.12.2010 de Grecia, que establece la ampliación del periodo de prueba en el trabajo de dos a doce meses para todos los trabajadores, sin disposiciones especiales según su especialización y la especificación del trabajo para el que son contratados, durante el que la empresa tiene derecho a rescindir la relación laboral sin aviso previo, no teniendo el trabajador derecho a percibir indemnización alguna, salvo que se haya pactado en contra por las partes contratantes. Quinto.- El caso objeto de autos es idéntico al analizado por el Comité de Derechos Sociales (…)".

[9] Acórdão 187/2013 of 5 April 2013, Tribunal Constitucional, Plenário, Processo n.º 2/2013, 5/2013, 8/2013 e 11/2013 (http://www.tribunalconstitucional.pt/tc/acordaos/20130187.html). This judgment only includes (in paragraph 61) a generic reference to Art. 1 of Protocol No. 1 to the ECHR in order to hold that the European Court of Human Rights has analysed under this provision situations in which pensions are at stake ("Também a nível do direito internacional convencional, é comum o estabelecimento dessa conexão. Desde logo, o Tribunal Europeu dos Direitos do Homem tem repetidamente afirmado que os princípios relativos ao direito de propriedade, consagrado no artigo 1.º do Protocolo 1 da CEDH, se aplicam, em termos gerais, às situações em que estejam em causa pensões. Aquela disposição não garante, porém, o direito a adquirir propriedade ou a exigir uma quantia concreta a título de pensão. Todavia, quando um Estado tenha legislação que institua e regule o pagamento de pensões – independentemente de a sua natureza ser ou não contributiva – essa legislação gera um "interesse proprietário" que está abrangido pelo âmbito do mencionado Protocolo 1. Assim, a redução ou cancelamento de uma pensão pode ser considerada como uma interferência no gozo da propriedade que carece de fundamentação adequada. Nestes

Council of Europe is very relevant in promoting these synergies between Constitutional case-law and European case-law (in this case, the one elaborated by both the European Court of Human Rights and the European Committee of Social Rights).

A more difficult example of synergy arises when considering the second area (pension schemes). In effect, in a Decision of 7 may 2013, the European Court of Human Rights declared inadmissible the cases of *Ioanna Koufaki and ADEDY* (applications no. 57665/12 and 57657/12) *v. Greece*: basically, relying on Article 1 of Protocol No. 1, the applicants complained of the cuts in wages and pensions resulting from Laws nos. 3833/2010, 3845/2010 and 3847/2010 (the second applicant also alleged violations of Articles 6 § 1, 8, 13, 14 and 17 of the European Convention). In spite of the substantial similarities with Complaints No. 76 to 80/2012, the European Court reached its decision without referring to the decisions on the merits of the Committee of 7 December 2012, after considering that "the complaint concerning Article 1 of Protocol No. 1 is manifestly ill-founded" (§ 49) and that the complaint concerning the other alleged provisions of the Convention the Court finds nothing in the case file which might disclose "any appearance of a violation of these provisions" (§ 50).

Having noted this, it is interesting to add that these five decisions of the European Committee of Social Rights have been explicitly applauded by the European Parliament in its recent *Resolution of 13 March 2014 on Employment and social aspects of the role and operations of the Troika (ECB, Commission and IMF) with regard to euro area programme countries (2014/2007(INI))*, in which it strongly criticizes the "Troika method" and calls for compliance with these European social legal standards[10].

IV. The economic crisis and the challenge of indivisibility

In his recent *Report following his visit to Spain from 3 to 7 June 2013*[11], the Commissioner for Human Rights of the Council of Europe (Nils Muižnieks) has highlighted the challenge of indivisibility of all human rights by denouncing the degradation of both civil and social rights in times of crisis. On the one hand, has criticised that "*the adoption by states, including Spain, of fiscal austerity measures has given rise to social unrest and public protests that have presented*

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termos, é necessária uma intervenção por via legislativa, justificada pela necessidade de prossecução de um interesse público, e observando o princípio da proporcionalidade nas suas várias dimensões (cfr., por todos, o acórdão do TEDH Grudic c. Serbia, de 17 de abril de 2012)".

[10] The Resolution reads as follows: "having regard to the five decisions of the Council of Europe's European Committee on Social Rights (…) concerning pension schemes in Greece; (…) 26. Recalls that the Council of Europe has already condemned the cuts in the Greek public pension system, considering them to be a violation of Article 12 of the 1961 European Social Charter and of Article 4 of the Protocol thereto, stating that 'the fact that the contested provisions of domestic law seek to fulfil the requirements of other legal obligations does not remove them from the ambit of the Charter' ; notes that this doctrine of maintaining the pension system at a satisfactory level to allow pensioners a decent life is generally applicable in all four countries (Greece, Portugal, Ireland and Cyprus) and should have been taken into consideration; 39. Calls for compliance with aforementioned legal obligations laid down in the Treaties, and in the Charter of Fundamental Rights, as failure to comply constitutes an infringement of EU primary law; calls on the European Union Agency for Fundamental Rights to assess thoroughly the impact of the measures on human rights and to issue recommendations in case of breaches of the Charter; 40. Calls on the Troika and the Member States concerned to end the programmes as soon as possible and to put in place crisis management mechanisms enabling all EU institutions, including Parliament, to achieve the social goals and policies – also those relating to the individual and collective rights of those at greatest risk of social exclusion – set out in the Treaties, in European social partner agreements and in other international obligations (ILO Conventions, the European Social Charter and the European Convention of Human Rights); calls for increased transparency and political ownership in the design and implementation of the adjustment programmes".

[11] CommDH(2013)18, Strasbourg, 9 October 2013.

states with unprecedented challenges concerning the protection of a number of civil rights, such as the right to freedom of peaceful assembly, and freedom from ill-treatment in the context of the action of law enforcement authorities". On the other hand, the Commission is concerned "*by the impact on the enjoyment of human rights of the current global financial crisis and subsequent fiscal austerity programmes adopted by various European governments. He shares the serious concern expressed by the Parliamentary Assembly of the Council of Europe*[12] *that the impact of the financial crisis on the living conditions of citizens in Europe undermines fundamental social rights standards, especially those concerning protection against poverty and social exclusion (Article 30 of the revised European Social Charter)*".

From this second point of view, the Commissioner expresses that "*in this context, Spain is called on to accede to the revised European Social Charter and to its mechanism of collective complaints. He also underlines the need for a systematic impact assessment of austerity measures on children and other vulnerable social groups, in close co-operation with civil society and National Human Rights Structures such as the national and regional ombudsmen. He is particularly concerned about the detrimental impact of forced evictions on children and their families*".

In this last respect, let me also share with you two important decisions adopted by the European Committee of Social Rights concerning discriminatory legal and practical measures put into force in the context of the crisis. On 25 June 2010, the Committee adopted a decision on the merits in Complaint No. 58/2009 (*Centre on Housing Rights and Evictions v. Italy*) concluding serious violations of the Social charter. It dealt with forced evictions and collective expulsions of particularly vulnerable persons on account of their ethnicity (Roma people) in the 2008 legal framework of the so-called the "*emergenza nomada*" ("nomad emergency") and the "*emergenza Rom*" ("Roma emergency"). In this case, the indivisibility was shown by the fact that the social exclusion led not only to penury but also to denial of citizenship[13]. Furthermore, the Committee underlined the principle of progressiveness and non-regression in so far as the Italian authorities' policy of dismantling Roma camps was also one of the main issues at stake in a previous collective complaint (*European Roma Rights Centre vs Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005)[14].

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[12] See Resolution 1651(2009) of the Parliamentary Assembly of the Council of Europe (PACE) on consequences of the global financial crisis. See also PACE Committee on Social Affairs, Health and Sustainable Development, Austerity measures – a danger for democracy and social rights, revised draft report, 22 May 2012.

[13] The Committee observed "that the segregation and poverty situation affecting most of the Roma and Sinti population in Italy (especially those living in the nomad camps) is linked to a civil marginalisation due to the failure of the authorities to address the Roma and Sinti's lack of identification documents. In fact, substandard living conditions in segregated camps imply likewise a lack of means to obtain residency and citizenship in order to exercise civil and political participation" (§ 103). It also considered "that the contested 'security measures' represent a discriminatory legal framework which targets Roma and Sinti, especially by putting them in a difficult situation of non-access to identification documents in order to legalise their residence status and, therefore, allowing even the expulsion of Italian and other EU citizens (for example, Roma from Romania, Czech Republic, Bulgaria or Slovakia)" (§158).

[14] In its decision of 25 June 2010 the Committee held that "the present complaint indeed not only alleges that Italian authorities have not ensured a proper follow-up to the decision on the merits of 7 December 2005 in respect of European Roma Rights Center ("ERRC") v. Italy, Complaint No. 27/2004, and subsequent conclusions on the right to housing. It also, more specifically, raises new issues linked to the adoption by the Italian authorities of allegedly regressive measures that would have worsened the situation assessed by the Committee" (§24), and that «such realisation of the fundamental social rights recognised by the Revised Charter is guided by the principle of progressiveness, which is explicitly established in the Preamble and more specifically in the aims to facilitate the "economic and social progress" of State Parties and to secure to their populations "the social rights specified therein in order to improve their standard of living and their social well-being"» (§27).

In the second decision, the Committee dealt with Complaint No. 63/2010 (*COHRE v. France*), which concerned the eviction and expulsion of Roma from their homes and from France during the summer of 2010. In its decision on the merits of 28 June 2011, the Committee concluded that the conditions in which the forced evictions of Roma camps took place in the summer of 2010 were incompatible with human dignity and also constituted serious violations of the Charter. In this case, the indivisibility was illustrated by the fact that the Committee did not accept renunciation or relinquishment of civil rights when enjoyment of social rights is not ensured[15].

To conclude, it is interesting to note that in both complaints (No. 58/2009 and No. 63/2010) the European Committee used, on the one hand, as a significant element of its legal reasoning the United Nations Committee on Economic, Social and Cultural Rights' General Comments on adequate housing (No. 4) and forced evictions (No. 7). And, on the other hand, apart from the reference to the case-law of the European Court concerning prohibition of collective expulsions (*Conka vs Belgium*, No. 51564/99, judgment of 5 February 2002), the European Committee also used for the first time the notions of "aggravated violation" and "aggravated responsibility" which were borrowed from the Inter-American Court of Human Rights[16]. I think these are two excellent examples of positive judicial dialogue and synergy[17]. Nevertheless, the background of Complaint No. 63/2010 suggested a divergent approach between the Council of Europe (decision on the merits of 28 June 2011) and the EU, insofar as the French government stated that evictions and expulsions of Roma in the summer of 2010 were declared to be compatible with EU law by the European Commission under the pretext that the latter decided not to undertake any procedure of infringement against France.

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[15] Decision on 28 June 2011: "the Government justifies the measures taken against Roma of Romanian and Bulgarian origin in the summer of 2010, by invoking the 'voluntary' nature of their return, under the auspices of the humanitarian repatriation assistance programme provided for in the circular of 7 December 2006. The Committee considers that in practice these so-called 'voluntary' returns are disguised forms of forced collective expulsions, given that: -The returns in question were 'accepted' under the conditions laid down in the circular of 5 August 2010, that is subject to the constraint of forced eviction and the real threat of expulsion from France. -In particular, the willingness to accept financial assistance of € 300 per adult and € 100 per child reveals a 'situation of destitution or extreme uncertainty' (as the Government itself puts it in its submissions on the merits) in which the absence of economic freedom poses a threat to the effective enjoyment of their political freedom to come and go as they choose. The Committee therefore finds it impossible to conclude that given these conditions, the returns were accepted voluntarily" (§§72-74).

[16] COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010: "[…] the Committee considers that, the lack of protection and investigation measures in cases of generalized violence against Roma and Sinti sites, in which the alleged perpetrators are officials, implies for the authorities an aggravated responsibility (see, mutatis mutandis, the Inter-American Court of Human Rights in Myrna Mack Chang v. Guatemala, judgment of 25 November 2003, § 139; Las Masacres de Ituango v. Colombia, judgment of 1 July 2006, § 246; Goiburú and others v. Paraguay, judgment of 22 September 2006, §§ 86-94; or La Cantuca v. Peru, judgment of 29 November 2006, §§ 115-116). The Committee considers that an aggravated violation is constituted when the following criteria are met: on the one hand, measures violating human rights specifically targeting and affecting vulnerable groups are taken; on the other, public authorities not only are passive and do not take appropriate action against the perpetrators of these violations, but they also contribute to such violence" (§§ 75-76). See also COHRE v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011 (§§ 53-54).

[17] These synergies between both the Inter-American and the European systems for the protection of human rights (in particular, social rights), have been recently emphasised by Laurence Burgorgue-Larsen, "Los derechos económicos y sociales en la jurisprudencia de la Corte Interamericana de los Derechos Humanos", in Manuel Terol Becerra and Luis Jimena Quesada (dir.), Tratado sobre protección de derechos sociales (Ed. Tirant lo Blanch, Valencia, 2014), pp. 469-490. See more extensively Renato Zerbini Ribeiro Leão, La construcción jurisprudencial de los sistemas europeo e interamericano de protección de los derechos humanos en materia de derechos económicos, sociales y culturales (Nuria Fabris Editoria, Porto Alegre, 2009, 446 pp.

V. Conclusion. The opportunity to improve the protection of rights in times of economic crisis

In the Preamble of the 1996 Revised European Social Charter the signatories decided "*to update and adapt the substantive contents of the Charter in order to take account in particular of the fundamental social changes which have occurred since the text was adopted*", as well as to progressively replace the 1961 Charter. The economic and financial crisis has actually consolidated the place of the Revised Charter as one essential instrument to face and manage these fundamental social changes.

The configuration of the Revised Social Charter as a kind of "European Pact for Social Democracy" which allows for improving social standards at European level is obvious under both the Council of Europe and the European Union perspectives. In the framework of the first Organization (47 Member States), the Committee of Ministers adopted an important political Declaration on the occasion of the 50th anniversary of the 1961 Charter (in October 2011) in which it invited all State Members to both accept the collective complaint procedure and the Revised Charter, what is consistent with the "social version" of the three pillars of the Council of Europe, that is to say, *Democracy, Human Rights and the Rule of Law* and, therefore, *Social Democracy, Social Rights and Social State*.

As far as the European Union (28 Member States) is concerned, it is clear not only the substantial, but also the formal synergies between the Charter of Fundamental Rights of the European Union (legally binding since December 2009 with the entry into force of the Lisbon Treaty) and the Revised Charter: in particular, the set of social rights (especially under the title of "Solidarity") of the EU Charter was drafted following the model of the Revised Charter, as explicitly stated in the Explanations of the *Praesidium* appended to the EU Charter.
In this sense, it appears a manifest lack of consistency being EU Member State and, at the same time, not having accepted the Revised Charter. In practice, both the EU Charter and the Revised Social Charter aim at improving the social standards at European level. Accordingly, when adopting secondary legislation (Directives and Regulations), EU institutions take into account directly the EU Charter and indirectly the Revised Social Charter. In parallel, when transposing or incorporating this secondary legislation, EU Member States also take into consideration both directly the EU Charter and indirectly the Revised Social Charter. This is the best way, at the stage of drafting, to keep convergence between the EU and the Council of Europe and, by extension, to avoid subsequent interpretative or jurisdictional divergences. With this spirit, a high level Conference will be held in Turin, Italy, from 17-18 October 2014, bringing together political personalities from the Council of Europe and the European Union in order to hold an exchange of views and find political solutions to meet the challenge of enforcing human rights in times of austerity, and with a view to reinforcing the synergies between EU legislation and the Charter.

With the same spirit, it has been illustrated (specific case-law of the concerning "anti-crisis" legislation, section II *supra*) that the collective complaint procedure is the mechanism giving more visibility and effectiveness to the rights recognized in the European Social Charter. It is worthwhile to recall that the main virtue of the 1950 European Convention on Human Rights was not its set or catalogue of human rights, but its monitoring mechanism before the European Court of Human Rights. Indeed, on the one hand, the European Convention aimed at ensuring only some of the rights recognized in the Universal Declaration; on the other hand, the right to formulate individual applications before the European Court was initially conceived as optional, but logically it became of mandatory acceptance to all member states since 1981.

At the universal level, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights providing for a system of individual communication was precisely adopted on 10 December 2008 at the beginning of the crisis. Of course, it also seems a lack

of consistency for some European countries having accepted this Protocol (Bosnia and Herzegovina, Slovakia or Spain) and not having accepted the European collective complaints procedure. Under this angle, accepting both procedures is a good example of international commitment with the idea of *indivisibility of guarantees* and we all know that the key element is not the level of formal recognition of human rights but the establishment of effective remedies. Definitely, both Protocols (the universal and European ones respectively providing for individual and collective remedies) represent the best opportunity to protect social rights in times of economic crisis.