



Belgian Chairmanship of the Council of Europe

# Conference on the future of the protection of social rights in Europe

## BACKGROUND PAPER

Brussels, 12 and 13 February 2015





## Conference of the Presidency on the future of the protection of social rights in Europe

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In the year of the **50th anniversary of the entry into force of the European Social Charter**, the conference convened in Brussels on 12 and 13 February 2015 is a contribution of the Belgian presidency to Turin process launched at the High-Level Conference on the European Social Charter (Turin, 17-18 October 2014)<sup>2</sup>. The Turin process aims at facing a number of major challenges which require political decisions to be taken by the States Parties, the Council of Europe's political bodies and, to some extent, the European Union with a view to ensuring that all citizens fully benefit from the Charter's potential in their everyday lives.

Social rights are human rights. They are an integral part of the European societal model. These rights belong to all human beings in the same way as civil and political rights and to an even greater degree since they are, in many respects, a prerequisite for effective enjoyment of civil and political rights

A particular emphasis will be placed on the signing and ratification of the "revised European Social Charter", the accession of Council of Europe member States to the Protocol on collective complaints and the possibilities and challenges relating to European Union accession to those instruments.

This note lists the major objectives of the conference, relating those objectives to the programme of the conference and to the expected outcomes. Beyond general policy issues, social security and social labour law will be on the agenda. The conference has four major objectives.

#### 1. Assessing the future of social rights in Europe

First, the conference will seek to assess the future of social rights in a fast changing context. In all rich countries, though at different speeds, the Welfare State has been going through an important reform process since the mid 1990s. We have witnessed a gradual merger between social assistance and unemployment assistance, as the former was made increasingly conditional upon the beneficiary actively seeking work and as the levels and the duration of unemployment benefits were drastically lowered; a contractualisation of the relationship between job-seekers and public employment agencies, with a view to "responsibilizing" both; and the imposition of a duty to accept "suitable" employment, with a generally broadened definition of what is suitable employment, based on the idea that the job-seeker should be "flexible" and encouraged to adapt to the exigencies of the employment market. Many social protection systems have been reformed and modernised

with a view to guarantee their sustainability in response to several challenges, among which demographic change. In some ways, adequacy has consequently been reduced. Moreover, the financial and economic crisis since 2009, has led to increased pressures on the right to health, the level of pension rights, the right to work, the right to housing, or the right to

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<sup>1</sup> The present paper is a document that contextualizes the context of the Conference. It does not necessarily reflect the positions of the Council of Europe or of the Belgian Presidency of the Committee of Ministers of the Council of Europe.

<sup>2</sup> <http://www.coe.int/en/web/portal/high-level-conference-esc-2014>



protection from poverty and social exclusion. We also see a shift for some social rights from universal social security benefits to targeted means tested rights. **The first session of the conference will aim to take stock of the situation of fundamental social rights today.** Which redefinitions are taking place? What are the threats now facing social rights as defined in instruments such as the European Social Charter or the International Covenant on Economic, Social and Cultural Rights? To which extent are the current transformations of the Welfare State and of labour law in Europe compatible with the form of welfare and protection of workers' rights that was built in the 1950s and 1960s, reaching its apex in the mid 1970s?

## 2. Social rights in the context of the financial and economic crisis

The second objective of the conference is to **assess the response of human rights bodies to the economic and financial crisis**, as well as to the policies that have been put in place in order to answer to the threats on the continued viability of social protection systems by reducing the public deficits. In various instances, the European Court of Human Rights and the European Committee of Social Rights have been requested to examine whether changes to labor legislation, including restrictions to collective bargaining or to the role of collective action, or the reduction of pensions or of wages, were compatible with the European Convention on Human Rights or with the European Social Charter. The most frequently cited examples are the *Koufaki and ADEDY v. Greece* cases before the European Court of Human Rights, and a series of Complaints presented before the European Committee of Social Rights, also concerning Greece<sup>3</sup> (including most recently Complaint No. 111/2014, *Greek General Confederation of Labour v. Greece*).

The second session will discuss these responses and whether they are satisfactory. Is the jurisprudence of human rights bodies adequate to deal with such issues? Are these bodies equipped to address issues that concern, fundamentally, the soundness of macro-economic policies put in place to deal with the crisis? What does an approach based on human rights bring to the debate as to which response is most appropriate? Which specific implementation problems arise in cases such as those referred to above? Should international cooperation be improved in order to fulfil the requirements of social rights?

## 3. Social rights beyond the Council of Europe

The third objective of the conference is **to map developments related to social rights that go beyond the Council of Europe**. The monitoring bodies of the Council of Europe do not operate in a vacuum.

Within the scope of application of EU law, the Court of Justice of the European Union endeavours to protect social rights, at least to the extent that such rights are listed in the EU Charter of Fundamental Rights, but even beyond that instrument, insofar as fundamental rights are part of the general principles of law that the Court ensures respect for. It has in fact become routine for the CJEU to decide cases that raise the delicate question of how to balance fundamental economic freedoms -- including, in particular, the freedom of establishment and the freedom to provide services -- against the requirements of social rights.

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<sup>3</sup> Federation of Employed Pensioners of Greece (IKA –ETAM) v. Greece, Complaint No. 76/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Public Service Pensioners v. Greece, Complaint No. 77/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012, Decision on the merits of 7 December 2012; Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI.) v. Greece, Complaint No. 79/2012, Decision on the merits of 7 December 2012; Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012, Decision on the merits of 7 December 2012)



Similarly, as regards the fundamental social rights of workers, but also some rights linked to social security, the instruments of the **International Labour Organisation** cannot be ignored: in particular, many provisions of the European Social Charter have their source in ILO instruments, and Article 26 of the European Social Charter (which also applies in the context of the Revised European Social Charter) provides that a representative of the ILO shall take part in the deliberations of the European Committee of Social Rights, which clearly expresses the link between the protection of social rights in Europe and the protection of social rights at universal level. Finally, a range of social rights -- including but not limited to the rights at work -- are listed in the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**: the case-law of the UN Committee on Economic, Social and Cultural Rights shall gain in importance in the next few years, following the entry into force, in 2013, of the Optional Protocol to the ICESCR allowing for the filing of individual communications.

The third session will take stock of these developments and ask fundamental questions about this plurality of sources. Human rights increasingly develop through a transnational dialogue across jurisdictions, in which courts influence each other's interpretation, and in which a division of labour develops, de facto, between different monitoring bodies. Social rights are no exception to this. But what does it mean for the future development of social rights? Should the European Court of Human Rights read the European Convention on Human Rights, insofar as it has ramifications in the area of economic and social rights, base itself on such standards developed at universal level? Should we expect a convergence on the interpretation of social rights by the different bodies? Is a convergence suitable or not?



#### 4. The relationship between the EU and the Council of Europe in the area of social rights

Finally, the Brussels conference will **seek to stage a discussion on the relationship between the EU and the Council of Europe in the area of social rights**<sup>4</sup>. This will be the focus of the fourth session of the conference. In recent years, certain judgments of the Court of Justice have been perceived by some commentators as imposing on the EU Member States requirements that make it more difficult for them to protect social rights at certain levels, particularly as regards the right for unions to resort to collective action and the right to collective bargaining<sup>5</sup>. Moreover, macroeconomic reforms prescribed by the troika established in the context of the public debt crisis in the eurozone led to the adoption of measures, aimed at reducing public deficits, that have had impacts on labour legislation, on the levels of wages and pensions, and on the affordability of public services.

These developments raise the question of whether more should be done to ensure that the standards developed by the Council of Europe in the area of economic and social rights are taken into account by the EU institutions. Should the impact assessments of the European Commission, which accompany its legislative proposals, pay more attention to these standards? To which extent should the Court of Justice of the European Union defer to the interpretation of the monitoring bodies of the Council of Europe, when the Court protects social rights as listed in the EU Charter of Fundamental Rights or as part of the general principles of EU law? Taking heed of the lessons of Opinion 2/13 of the Court of Justice of the European Union, delivered on 18 December 2014, on the envisaged accession of the European Union to the European Convention on Human Rights, what are the prospects as to the accession of the EU to the European Social Charter?

Another question that arises is whether the EU institutions acting under the European Stability Mechanism (ESM), which succeeded to the European Financial Stability Facility (EFSF) on 1 January 2013, should be held accountable to the social rights that could be impacted by the measures they adopt. In the well-known *Pringle* case (C-370/12), the Court of Justice of the EU found that in amending Article 136 of the Treaty on the Functioning of the EU to introduce the ESM, the member States were not "implementing EU law", and therefore were not bound by the EU Charter of Fundamental Rights; nor are the European Commission and the European Central Bank, which under the ESM are tasked (wherever possible jointly with the IMF) with negotiating the conditions under which an EU Member State may be granted financial assistance, considered to be bound by the Charter. Does this create an accountability gap? Should the ESM take into account the obligations of the Member State concerned in the area of social rights?

#### 5. The roundtables of the conference

In addition to the panels that, for each of these sessions, shall discuss the issues listed above, two roundtables will be organized.

A first roundtable, at the end of day 1, will bring together representatives of the European social partners, of the Council of Europe, of the European Commission, and of non-governmental organisations, to discuss the role of social rights in the financial and economic crisis. This roundtable will assess whether social rights have been relied upon in order to define the responses to the crisis; and what kind of legal evolution should we expect, and what this would imply.

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<sup>4</sup> See the Working Document of the Council of Europe of the 15th of July on the relationships between the European Union Law and the European Social Charter: <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/TurinConference/Working%20document%20Relationship%20EU%20law%20%20Charter%20Final.pdf>

<sup>5</sup> See on this subject: European Committee of Social Rights, *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, Complaint No. 85/2012, Decision on admissibility and merits of 3 July 2013.



The final roundtable will be focused on the relationship between the EU and the Council of Europe in the area of social rights. It will address the implementation of social rights in the law- and policy-making of the EU; the role of the EU Charter of Fundamental Rights in promoting a "fundamental rights culture" across the institutions of the EU, and how it relates to the standards developed within the framework of the Council of Europe ; and more generally, how the complementarity between the EU and the Council of Europe could be further strengthened.

## 6. The outcome document of the conference

Following the conference, a group of academics will prepare a document summarizing the outcomes, mapping in particular areas of consensus. This document -- the "**Brussels document on the future of social rights in Europe**" -- will represent a substantial contribution to the Turin process and will allow the conference to have a lasting impact on the debates concerning the protection of social rights in Europe.



For more information, please contact

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