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The Role of the Parliamentary Assembly of the Council of Europe in Relation to the Supervision of the European Social Charter:

Part IV, Art C, Art 29 (revised charter) - Parliamentary Assembly

THE TEXT OF THE ARTICLE

Article 29 – Parliamentary Assembly

The Secretary General of the Council of Europe shall transmit to the Parliamentary Assembly, with a view to the holding of periodical plenary debates, the reports of the Committee of Independent Experts¹ and of the Governmental Committee, as well as the resolutions of the Committee of Ministers.

I. INTRODUCTION

The following is a commentary of article 29 of the revised European Social Charter (“the Charter”). The main purpose of article 29 of the Charter is to specify the role of the Parliamentary Assembly of the Council of Europe (PACE) in relation to the documents issued by the various actors in the process of the Charter’s supervision.

The original European Social Charter of 1961 contained a predecessor of article 29. Yet, as explained below, the role of the PACE was significantly modified in the Charter reform process in the 1990ies. Today, the PACE today no longer formally takes place in the supervision of the Charter, but plays an important role in promoting the Charter, debating social rights and taking action in favour of social rights protection in Europe.

Art. 29 of the Charter is an important provision. The provision is a key piece of the mosaic of the system of the promotion, supervision and implementation of the Social Charter. As Jimena Quesada, the former president of the ECSR, emphasized, it is important not to forget “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 (...) in order to

¹ Since 1998, the Committee has been called the ‘European Committee of Social Rights’.

effectively guarantee [civil, economic, political and social] rights.”² These common origins in the scourge of WWII serve as a reminder of the need to ensure that Europe is (re)built on the foundations of the rule of law and human rights and effective mechanisms to monitor and protect the rights of individuals. Article 29 specifically recognises the role of the first parliamentary assembly created in a regional organisation and serves to institutionalise the crucial role of elected parliamentarians in the realisation of social protection as a fundamental pillar of the European peace project.

Before commenting on the substance of the provision, a note on terminology is required.

A. A NOTE ON TERMINOLOGY AND ON THE NUMBERING OF THE ARTICLE

When this commentary refers to “the Charter”, reference is made to the revised Charter of 1995. If an aspect of the original Charter is discussed, reference will be made to “the Charter of 1961”.

Art. 29 of the Charter refers to “the Committee of Independent Experts” which became the European Committee of Social Rights (ECSR or “the Committee”). After the adoption of the revised Charter, the Committee changed its name in 1998. The name was changed in order to designate more clearly the purpose of the Committee by referring to social rights,³ as references to human rights also figure in the names of the European Court of Human Rights (ECtHR) or UN supervisory bodies. Art. 28 in the Charter of 1961 refers to the “consultative assembly” which in the meantime is called the parliamentary assembly (PACE).

Art. 29 refers to the “reports” of the Committee. These reports include reports on the reporting procedure as well as the reports on collective complaints, i.e. the outcomes of the collective complaints procedure.⁴

To avoid confusion, a note must also be made about the numbering of the provision. The predecessor of article 29 of the Charter is not article 29 of the Charter of 1961, as one might think, but article 28 of the Charter of 1961 before its amendment in 1991. The order of the provisions on the roles of the various actors in the Charter’s supervision was reversed in the 1991 Amending Protocol reforming the supervisory system (the “Turin Protocol”)⁵ to reflect the fact that the PACE today no longer formally participates in the supervision process. This inversion of the numbers was intended “to bring out more clearly” the new role of the PACE in the implementation of the Charter by putting it only after the provisions regulating the formal supervision process.⁶

Although the Turin Protocol never entered into force, most changes brought by the Turin Protocol could be applied “provisionally” and are therefore also relevant for states that have only ratified the original Charter. The fact that the PACE plays no formal role in the supervision system is one of them.⁷ Hence, the change brought by the Turin Protocol is equally important for states that have ratified the Charter of 1961 and those that ratified the revised Charter. As Harris and Darcy explain, the system of supervision is

² Luis JIMENA QUESADA, “Interdependence of the Reporting System and the Collective Complaint Procedure: Indivisibility of Human Rights and Indivisibility of Guarantees,” in *European Social Charter and the Challenges of the XXI Century / La Charte sociale européenne et les défis du XXIe siècle*, ed. Giovanni GUIGLIA and Marilisa D’AMICO (Napoli: Edizioni scientifiche Italiane, 2014), pp. 143-58: p. 143.

³ David J. HARRIS and John DARCY, *The European Social Charter*, 2nd edn, The Procedural Aspects of International Law Monograph Series (Ardsey: Transnational Publishers, 2001), p. 293.

⁴ Even though the collective complaints procedure did not yet exist at the time of adoption of the Charter of 1961 but the term ‘reports’ undoubtedly encompasses all documents produced by the Committee and is not limited to the reports at the end of the reporting procedure. A different interpretation would run counter to the ordinary meaning of the term.

⁵ Protocol Amending the European Social Charter, Ets 142, 21 October 1991 (Not entered into force), art. 6.

⁶ Explanatory Report to the Protocol Amending the European Social Charter, 1991 COETSER 1, 21 October 1991, §§ 47 and 48.

⁷ The most significant change that could not be implemented provisionally is the election of members of the Committee by the PACE rather than by the Committee of Ministers. This change did so far not get the agreement of the Committee of Ministers / of states.

the same for states that have ratified the Charter of 1961, the 1988 Additional Protocol or the Revised Charter.⁸

B. THE STRUCTURE OF THIS COMMENTARY

This commentary will be structured as follows. Section III briefly presents the role and organization of the PACE. Section IV outlines the change and the reasons of these changes in the role of the PACE in the Charter's supervision between the Charter of 1961 and the revised one. Section V addresses the current significance of art. 29 of the Charter and shows that the PACE has taken a number of key initiatives on the Social Charter. The commentary concludes with section VI in which I will assess the potential of art. 29 and in which I make four proposals, three to the PACE and one to

II. THE PARLIAMENTARY ASSEMBLY – ROLE, COMPOSITION AND ORGANIZATION

The Parliamentary Assembly is the parliamentary body of the Council of Europe and is dedicated to human rights, democracy and the rule of law. The Assembly is composed of 324 individuals of all 47 Council of Europe member states and exists since the beginning of the Council of Europe. In the 1949 Treaty of London, the Statute of the Council of Europe, the Assembly was conceived as the deliberative organ of the organization with a mandate to “debate matters within its competence under this Statute and present its conclusions, in the form of recommendations, to the Committee of Ministers”.⁹ The Statute of the Council of Europe speaks of the “consultative assembly”.¹⁰ However, since 1974, the Assembly itself uses the term “Parliamentary Assembly”.¹¹ In 1994, the Committee of Ministers officially recognised the change of name, but the Statute has not been changed accordingly.¹² This quarrel is not a mere technical dispute over vocabulary but is an illustration of the fact that since the creation of the Council of Europe, there is a recurring debate between those who support strong European “federal” structures with an institutionally strong parliament and states worried about their prerogatives – which they can exercise more easily in the Committee of Ministers.¹³ Not surprisingly, this political controversy is also visible in the field of social rights.

A. ROLE AND COMPOSITION

The members of the PACE are representatives of each member state, elected by the domestic parliaments of member states, “or appointed from among the members of that parliament”.¹⁴ Each member state obtains a certain number of seats according to the size of its population (ranging between two and 18 members).¹⁵ The Assembly meets four times a year for week-long plenary sessions in Strasbourg. As Benelhocine explains, the PACE was “the first international parliamentary assembly made up of democratically elected representatives reflecting the full range of political opinions”.¹⁶ The idea in 1949

⁸ David J. HARRIS and John DARCY, *op. cit. (n. 3)*, p. 293. Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, Ets 158, 9 November 1995 (entered into force 1 July 1998), art. 11. European Social Charter of the Council of Europe, as Revised on 3 May 1996 (entered into force 1 July 1999), arts. C and D. Additional Protocol to the European Social Charter (Extending the Social and Economic Rights), Ets 128, 5 May 1988 (entered into force 4 September 1992), arts. 6, 8(2).

⁹ Statute of the Council of Europe, Ets 1, London 5 May 1949 (Entry into Force 3 August 1949), art. 22.

¹⁰ *Ibid.*, art. 10.

¹¹ Secretariat Memorandum on the Name of the Assembly of the Council of Europe, Strasbourg, 26 February 1975, Restricted as/Parl (26) 18, Published on 5 September 2012.

¹² Statute of the Council of Europe, Ets 1, London 5 May 1949 (Entry into Force 3 August 1949), art. 10, fn. 1.

¹³ Secretariat Memorandum on the Name of the Assembly of the Council of Europe, Strasbourg, 26 February 1975, Restricted as/Parl (26) 18, Published on 5 September 2012, §4, citing Mr Collins of the Bureau saying: ‘No doubt this is a decision which goes beyond a mere linguistic improvement’

¹⁴ Statute of the Council of Europe, Ets 1, London 5 May 1949 (Entry into Force 3 August 1949), art. 25.

¹⁵ *Ibid.*, art. 26.

¹⁶ For a general overview, see Carole BENELHOCINE, *The European Social Charter* (Strasbourg: Council of Europe, 2012), p. 9. Unfortunately, this author still refers to ‘generations’ of human rights (p. 30, 89, 90, 91) – a term that should in my view be avoided. The author herself states on p. 90 that ‘[t]he two generations of rights are in fact inseparable’. For a critique of the

was to create a deliberative body of members representing the people of all countries of the Council of Europe as a forum for debate, standard-setting and scrutiny of the human rights records of member states and beyond. As I will argue in the closing section, this foundational idea remains as important today as it was in the aftermath of WWII.

B. ORGANIZATION

The PACE is organized both in plenary sessions as well as in Committees and Sub-Committees. Between plenary sessions, a standing committee assumes continuity. This standing committee is composed of a smaller sub-set of members tasked to act between plenary sessions and is made up of the President and the Vice-Presidents, the chairpersons of each of the five political groups, the chairpersons of national delegations and the committee chairpersons.

The PACE currently has nine committees. The Committee on Social Affairs, Health and Sustainable Development is particularly relevant for the Social Charter. It has 85 seats and is tasked “to consider issues relating to social rights and policies, public health, sustainable development, economic co-operation and development, local and regional democracy and good governance in these fields, having special regard to the situation of the more vulnerable groups in society”.¹⁷

One of the four sub-committees of the Committee on Social Affairs, Health and Sustainable Development is specifically working on the Charter: the Sub-Committee on the European Social Charter, while the others (the Sub-Committee on Children, the Sub-Committee on Public Health and Sustainable Development, the Sub-Committee on the Europe Prize) and any other committee of the Council of Europe can of course also refer to the Charter in their work.

III. FROM THE OLD TO THE “NEW” SYSTEM

Originally, the PACE formally took part in the supervision of the Charter. Art. 28 of the Charter of 1961 tasked the Assembly to “communicate its views on [the conclusions of the Committee of Independent Experts, i.e. the Committee of Social Rights] to the Committee of Ministers”, i.e. to make legal findings on the implementation of the Charter in the member states, alongside the legal findings of the ECSR. The PACE thus played a “direct part in the enforcement system”.¹⁸ When the Assembly received conclusions from the Committee, it drafted “views” containing legal interpretations of the Charter. According to Harris and Darcy, the Assembly originally lobbied for such a role during the drafting of the Charter of 1961.¹⁹ However, as we shall see, the Assembly later changed its mind and renounced to its role in the system of supervision – for good reason. A first problem with the original system was that the “views” of the PACE had “little noticeable impact”²⁰. A second problem concerned the fact that “the participation of the Assembly lengthened by several months the time taken to complete a very cumbersome system of

terminology of generations, see Morgane VENTURA, "Les Droits Sociaux en Suisse – Les « Générations » en (R)Évolution ?," *Jusletter*, no. 29 novembre 2019 (2019) pp. 1-19.

¹⁷ Rules of Procedure of the Parliamentary Assembly of the Council of Europe, (Resolution 1202 (1999) Adopted on 4 November 1999) with Subsequent Modifications, Terms of reference of Assembly committees.

¹⁸ David J. HARRIS and John DARCY, *op. cit* (n. 3), p. 348.

¹⁹ David J. HARRIS and John DARCY, *op. cit* (n. 3), p. 293.

²⁰ David J. HARRIS and John DARCY, *op. cit* (n. 3), p. 293.

supervision”,²¹ notably given that the Assembly only meets four times a year.²² Most important, however, was the need “to bolster the Committee’s credibility and its quasi-judicial role.”²³

In turn, the role of PACE was diminished in the formal supervision process, but with the opportunity to bolster its role in the general promotion of social rights: In the process of elaboration of the 1991 Amending Protocol reforming the supervisory system (the “Turin Protocol”), the Assembly thus suggested *proprio motu* to modify the original art. 28 and to exclude itself from the supervision process. Instead, since 1992, its new role is to conduct “periodical plenary debates” on social policy that take into account the reports of the Committee, the Governmental Committee, as well as the resolutions of the Committee of Ministers. As the explanatory report of the Turin Protocol explains, the change was proposed “according to [PACE’s] own representatives” and the proposal was greeted with consensus in the so-called Charte-Rel Committee, the ad-hoc Committee tasked to reform the system of supervision of the Charter of 1961, summarising that the PACE “should cease to be a supervisory organ in the strict sense of the term and become a political body for stimulation and discussion”.²⁴

In the context of the same reforms,²⁵ the Turin Protocol was only one of several components. The other main outcome of the reform at the beginning of the 1990ies was the adoption of the additional protocol laying down a system of collective complaints,²⁶ modelled on the ILO system for failures to apply the ILO Conventions on Freedom of Association,²⁷ and the change in the reporting procedure, which the Committee of Ministers decided in September 1992 to introduce.²⁸ Before these reforms, the only mechanism to monitor the implementation of the Charter was a state reporting procedure which was moreover complicated because of the involvement of a high number of different actors, namely the states, the European Committee on Social Rights, the Governmental Committee, the PACE and the Committee of Ministers. The Governmental Committee is a body of national senior civil servants, which implies that its members will tend to defend state interests. Since the 1991 Amending Protocol, the role of the Governmental Committee is to prepare the decisions of the Committee of Ministers based on its knowledge of “social, economic and other policy considerations”, but no longer to make legal interpretations of the provisions of the Charter.²⁹

Today, even if the Committee is now the only one entitled to make legal findings, the reform process was only moderately successful. The remaining particularity (or rather anomaly)³⁰ in the distribution of roles are the prerogatives of the Committee of Ministers because it is still only the Committee of Ministers, at a two-thirds majority, that can make recommendations to State Parties. The Committee of Ministers was criticized because it “did not use its powers as foreseen in Art 29 of the Charter of 1961, whereby at the end of each supervisory cycle the CM could make, by a majority of two-thirds of the members sitting on

²¹ David J. HARRIS and John DARCY, *op. cit.* (n. 3), p. 293.

²² PACE, Renewal of the Council of Europe’s Social Charter, Resolution 967, 28 June 1991, § 6. ‘In order to free resources for the preparation of this debate and in order not to remain a factor of - nor alibi for - delay in completion of each cycle of supervision under current procedures, the committee proposes henceforth to communicate its views on operations under the Social Charter periodically in the light of a major social policy debate and - because of inevitable uncertainties in the programming of the Assembly’s reports - no longer necessarily within the framework of particular cycles of supervision.’

²³ Carole BENELHOCINE, *op. cit.* (n 16), p. 39.

²⁴ Explanatory Report to the Protocol Amending the European Social Charter, 1991 COETSER 1, 21 October 1991, § 8.

²⁵ For an overview: Robin CHURCHILL and Urfan KHALIQ, “The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?,” *European Journal of International Law* 15, no. 3 (2004) pp. 417-56: p. 418.

²⁶ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, Ets 158, 9 November 1995 (entered into force 1 July 1998).

²⁷ ———, “The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?,” *European Journal of International Law* 15, no. 3 (2004) pp. 417-56: p. 422.

²⁸ Explanatory Report to the Protocol Amending the European Social Charter, 1991 COETSER 1, 21 October 1991, § 4.

²⁹ Clauwaert reports that a problem is the high fluctuation of members and the fact that the Committee only meets twice a year. Stefan CLAUWAERT, “The Charter’s Supervisory Procedures,” in *The European Social Charter and the Employment Relation*, ed. Niklas BRUUN, et al. (Oxford: Hart Publishing, 2017), pp. 99–144: p. 106 and fn. 21.

³⁰ See n **Error! Bookmark not defined.**.

the CM, any necessary recommendations to each Contracting Party. In practice, however, the [Committee of Ministers], over a period of more than 20 years, made no individual recommendations and “limited” its resolutions to “drawing the attention” of states to the ECSR’s conclusions, and recommended that the governments concerned should take account in an appropriate manner of the various observations made in the reports”.³¹ The reform process achieved fairer voting rules (only those states that have ratified the Charter may now vote) but the requirement of the two-thirds majority was not changed and, as of October 2019, the Committee of Ministers has still only adopted a single individual recommendation despite the fact that the Committee has now rendered 119 decisions on the merit.³² This failure to introduce a requirement of a single-majority is, in Clauwaert’s words, “deplorable” because the supervision of the implementation of judgments of the European Court of Human Rights requires single-majorities (except for infringement procedures) and the difference between the two mechanisms undermines the status of the Committee and the political weight of its legal findings.³³

IV. THE CURRENT SIGNIFICANCE OF ART. 29

In its capacity as a deliberative organ associated with the implementation of the Social Charter, the Assembly has taken important initiatives on the Charter and the monitoring and implementation of social rights in Europe. The PACE has issued recommendations to the Committee of Ministers as well as to member states and, as foreseen by art. 29 of the Charter, the Assembly has taken the documents of the supervisory system into account. The Sub-Committee of the European Social Charter of the Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly has facilitated the preparation of such initiatives. The purpose of the present section is to outline the most important initiatives of the PACE, which can be presented as five groups of topics that the PACE addressed repeatedly.

A. BOLSTERING THE STATUS AND AWARENESS OF THE CHARTER

First, the Assembly took various initiatives to bolster the status and awareness of the Social Charter within the Council of Europe and within member states’ national legal systems. As already mentioned, the PACE played a positive role during the reform process at the beginning of the 1990ies. In Resolution 967 of 1991, the PACE strongly called for an enhancement of the status of the Social Charter within the Council of Europe and urged for “a system of petitions and complaints” and wished for “an authority similar to that of the European Court of Human Rights” (on this issue see further below).³⁴ In the same recommendation, the PACE decided that the Social, Health and Family Affairs Committee should “invite the Chairman of the Independent Experts” Committee and the Chairman of the Governmental Committee to a joint annual hearing in order to determine the subject of a major annual social policy debate”.³⁵

Moreover, in the same year, the Assembly adopted recommendation 1168 in which it emphasised its will to “play a positive role” in the revitalisation of the supervisory system of the Charter:³⁶ The Assembly stated its intention to “enhance the political value of the Charter”, with the aim to allow for the development of the judicial character of proceedings. It described its move during the reform process as a withdrawal “(as a political body) from its formal role in the penultimate phase of each cycle” but not as a

³¹ Stefan CLAUWAERT, *loc. cit.* (n 29), p. 107, n. 33.

³² Committee of Ministers, Recommendation No. R Chs (2001) 1: Collective Complaint No. 6/1999, Syndicat National Des Professions du Tourisme against France (31 January 2001).

³³ Stefan CLAUWAERT, *loc. cit.* (n 29), p. 107, n. 33.

³⁴ PACE, Renewal of the Council of Europe’s Social Charter, Resolution 967, 28 June 1991, § 5. Note the subtle choice of wording – the PACE did not necessarily suggest that the ECtHR should have competence over the Social Charter, but that the Social Charter should be monitored with a system that enjoys similar authority as the ECtHR.

³⁵ *Ibid.*, § 6.

³⁶ ———, Future of the Social Charter of the Council of Europe, Recommendation 1168 (1991), 24 September 1991, § 7.

renunciation to “the opportunity of expressing its opinion on measures proposed or taken in the social field by the governments of member states, whether or not they are Contracting Parties to the Charter.”³⁷ In the same year, PACE adopted Order 463(1991), in which it instructed “its Social, Health and Family Affairs Committee to pursue its work on the basis of the proposals contained in resolution 967 on renewal of the Council of Europe’s Social Charter”.³⁸

Given that the Turin Protocol of 1991 did not enter into force, the PACE President, in 1992, wrote a letter to the Chairman of the Minister’s Deputies, informing him that in light of the unanimous adoption of resolutions 967 and 1168 of PACE, the Assembly “has taken the view, that reports of the Governmental Committee and the Committee of Independent Experts should henceforth be made available to it as a basis *inter alia* for preparing periodical social policy debates, not for communication of its views on a particular set of conclusions of the Independent Expert’s Committee as currently provided for under Article 28 of the Charter”.³⁹ This view reflects the position expressed in article 6 of the amending protocol (the Turin Protocol).

A few years later, in 1998, the PACE adopted the important recommendation nr. 1354. In this recommendation, the PACE condemned an unsatisfactory state of affairs and, *inter alia*, recommended that all core provisions should be accepted on a compulsory basis.⁴⁰ Although its calls were only modestly successful, the recommendation at least illustrates that the PACE has played a supportive role for a stronger position of the Social Charter. It is also interesting to note that the three previously cited recommendations shared the same title (“The Future of the Social Charter”), which indicates a preoccupation of the PACE for the future status and practical role of the instrument in Europe.

The PACE’s efforts over the last few years were similarly marked by regular calls by the PACE to urge member states to increase the realization of social rights. The PACE made extensive use of reports in which it thematised widespread social rights implementation difficulties and social rights violations. Based on these reports, the Assembly adopted several relatively outspoken resolutions. In resolutions of the last few years, the Assembly, for instance, deplored “significant deficiencies in the provision of health care to children”,⁴¹ structural inequalities in the labour market,⁴² child poverty in Europe,⁴³ social exclusion – notably in the context of austerity measures,⁴⁴ gender equality,⁴⁵ child refugees and minors and their rights under the revised European Social Charter,⁴⁶ and recent threats to the right to bargain collectively and the right to strike.⁴⁷

At the time of the Turin Conference in October 2014, the Sub-Committee on the European Social Charter adopted the Declaration for the High-Level Conference on the European Social Charter on behalf of the PACE.⁴⁸ This Declaration provides a good summary of the key points which the PACE regularly raises to bolster the importance of the Social Charter in domestic legal systems across Europe: consultation with social partners before fiscal and other economic policy measures are taken, assessing the conformity with the European Social Charter and, where applicable, the Charter of Fundamental Rights of the European Union, promote fair income distribution, promote the full ratification and implementation

³⁷ *Ibid.*, § 9.

³⁸ ———, Order 463 (1991).

³⁹ ———, Letter of the President of the Assembly to the Chairman of the Ministers’ Deputies, 3 September 1992.

⁴⁰ ———, Future of the Social Charter of the Council of Europe, Recommendation 1354 (1998), 28 January 1998, §§8-9.

⁴³ PACE, Ending Child Poverty in Europe, Resolution 1995, 11 April 2014.

⁴⁴ ———, Social Exclusion: A Danger for Europe’s Democracies, Resolution 2024, 18 November 2014.

⁴⁵ ———, Towards an Ambitious Council of Europe Agenda for Gender Equality, Resolution 2290, 25 June 2019.

⁴⁶ ———, Social Exclusion: A Danger for Europe’s Democracies, Resolution 2024, 18 November 2014.

⁴⁷ ———, Protection of the Right to Bargain Collectively, Including the Right to Strike, Resolution 2033, 28 January 2015.

⁴⁸ Health and Sustainable Development PACE (COMMITTEE ON SOCIAL AFFAIRS, Sub-Committee on the European Social Charter), Declaration by the Sub-Committee Participating in the High-Level Conference on the European Social Charter on Behalf of the Parliamentary Assembly of the Council of Europe, AS/Soc/ESC (2014) 03rev, 17 October 2014.

of the revised European Social Charter, the Additional Protocol Providing for a System of Collective Complaints and where a state still abides by the they still abide by the 1961 Charter, to ratify the Amending Protocol so that the 15 members of the European Committee of Social Rights could be elected by the Assembly, “in order to strengthen the legitimacy of social rights monitoring processes”.⁴⁹

In June 2017, the Social Affairs Committee of PACE approved an outspoken 2015 report by one of its members.⁵⁰ This report led to recommendation 2112 and resolution 2180, which I discuss further below in the concluding sections on proposals. In recommendation 2112, the PACE “recalls its Recommendation 1976 (2011) on the role of parliaments in the consolidation and development of social rights in Europe and its Resolution 2180 (2017) on the “Turin Process”: reinforcing social rights in Europe” in which the PACE re-emphasised its wish that committee members are to be elected by the PACE and no longer by the Committee of Ministers (as was foreseen in the Turin Protocol).⁵¹ The resolution 2180 also called upon member states, through their governments and parliaments, to strengthen the European Social Charter and to improve compliance at the national level.⁵² The response of the Committee of Ministers was lukewarm at best. The Committee of Ministers responded in relation to the election issue that “there is no consensus to take a decision to that effect”.⁵³ I will return to the role of parliamentarians

The second recurring topic of the initiatives taken by the PACE on the Charter concerns calls for enhanced institutional mechanisms to monitor the implementation of the Charter in individual cases.

B. ASKING FOR INDIVIDUAL PETITIONS

Since 1998, the European Committee of Social Rights has the competence to review *collective* complaints (to the extent that the state has ratified the revised Charter or the amending protocol on collective complaints). Yet, contrary to what the European Court of Human Rights is mandated to do, there is no institutional system concerning individual applications from persons who claim that a right of the Social Charter has been violated. The Assembly has made various proposals to change this, but so far these attempts remained unsuccessful. A first group of proposals concerned the suggestion, in 1999, of an additional protocol to the European Convention on Human Rights for a protocol on social rights in order to mandate the ECtHR to review “explicit” social rights cases.⁵⁴ Brillat supported the idea of such an additional protocol on condition that all the rights of the revised social Charter were included,⁵⁵ but such a protocol never came to see the light of the day.⁵⁶

A few years later, the PACE again showed its willingness to push for individual access to a supervisory mechanism on the implementation of the Charter. In 2007, the Assembly suggested a second option and proposed the establishment of a working group to consider the introduction of an additional protocol to

⁴⁹ Ibid.

⁵⁰ The “Turin Process”: Reinforcing Social Rights in Europe: Report to the Committee on Social Affairs, Health and Sustainable Development (Ms Sílvia Eloisa Bonet), Doc. 14343, (asserting that there was an overall trend towards downgrading social rights).

⁵¹ PACE, Future of the Social Charter of the Council of Europe, Recommendation 2112, 30 June 2017, § 1. ———, The “Turin Process”: Reinforcing Social Rights in Europe, Resolution 2180, 30 June 2017.

⁵² ———, The “Turin Process”: Reinforcing Social Rights in Europe, Resolution 2180, 30 June 2017, § 7.

⁵³ Committee of Ministers, Reply to Recommendation: The “Turin Process”: Reinforcing Social Rights in Europe, Doc. 14457, 13 December 2017, § 4.

⁵⁴ ———, Additional Protocol to the European Convention on Human Rights Concerning Fundamental Social Rights, Recommendation 1415 (1999), 23 June 1999, § 11-12. The resolution leaves open the question whether the ECtHR would have applied the Social Charter or if such a protocol would have formulated a different set of social rights under the jurisdiction of the ECtHR.

⁵⁵ Régis BRILLAT, “La Charte Sociale et Le Système De Protection Des Droits Sociaux Dans Les Sources Européennes,” in *European Social Charter and the Challenges of the XXI Century / La Charte sociale européenne et les défis du XXIe siècle*, ed. Giovanni GUIGLIA and Marilisa D’AMICO (Napoli: Edizioni scientifiche Italiane, 2014), pp. 1-21: p. 8.

⁵⁶ For the response by the Committee of Ministers: *Avenir De La Charte Sociale Européenne et Protocole Additionnel À La Convention Européenne Des Droits De L’homme Relatif Aux Droits Sociaux Fondamentaux*, Réponse du Comité Des Ministres Aux Recommandations 1354 (1998) et 1415 (1999) De L’assemblée Parlementaire, (CM/Del/Dec(98)645/4.4 et (99)677b/3.1, 23 April 2001.

the Charter providing for a system of individual petitions.⁵⁷ However, the Committee of Ministers refused to follow-up on Recommendation 1795 with the arguments that member states already decided against the adoption of an additional protocol to the European Convention on Human Rights (ECHR) on social rights.⁵⁸ As Moreau regrets, “[t]he existence of such a possibility of individual complaint would, however, be consistent with the logic of the attempt, since 1996, to increase the impact of the European Social Charter.”⁵⁹

In addition to a protocol to the ECHR or an individual petition system at the ECSR, a third type of request from the PACE concerned the idea to create a separate European Court of Social Rights but the idea also never took off.⁶⁰

Be this as it may, it would be erroneous to conclude that the fact that the complaints procedure is collective in nature makes it the “succédané imparfait d’un mécanisme de plaints individuelles n’ayant pu voir le jour faute de volonté politique”.⁶¹ Rather, as Chatton points out, the reporting procedure, the collective complaints procedure and the individual complaints procedure of the European Court of Human Rights are three distinct mechanisms that can reinforce each other. Chatton believes that a system with collective complaints is well-placed the more a violation of human rights affects the institutional dimension of a right and/or requires progressive measures with financial implications or multidisciplinary planning. At the same time, the Committee of ESR places emphasis on the idea that states must implement social rights in light of the case-law of the ECtHR, and states must thus have concrete and individual domestic controls.⁶² Touzé affirms that the institutional setup is at the same time the reflection of “la nature sociale des droits garantis (au regard du mode de saisine institué) et de l’originalité d’un système dont le développement reste encore à confirmer”.⁶³

The third notable and recurring topic that the PACE has been pushing in its work concerns the attention to social rights in times of austerity over the last decade.

C. SUPPORTING SOCIAL RIGHTS IN TIMES OF AUSTERITY

Since the financial crisis, the Assembly worked intensively on issues related to austerity. As Ioannis Dragasakis, Chairperson of the Sub-Committee on the European Social Charter of the Committee on Social Affairs, Health and Sustainable Development emphasised, “[i]t is not enough to say that we are in favour of social rights; the dilemma is what position to take when the rights of the poor are at odds with the interests of the advantaged few”.⁶⁴ In a rare occasion of consensus, in 2012, the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Conference of international non-governmental organisations adopted a joint declaration on the eradication of extreme poverty in Europe in which they observed that “the people belonging to the most disadvantaged social groups [are] the hardest hit by the economic crisis and often also by fiscal austerity measures”.⁶⁵

⁵⁷ PACE, Monitoring of Commitments Concerning Social Rights, Recommendation 1795, 24 May 2007, § 7 and 11.5.

⁵⁸ Committee of Ministers, Reply to Recommendation: Monitoring of Commitments Concerning Social Rights, Doc. 11635, 17 June 2008.

⁵⁹ Marie-Ange MOREAU, “European Fundamental Social Rights in the Context of Economic Globalization,” in *Social Rights in Europe* (Oxford: Oxford University Press, 2005), pp.: p. 381.

⁶⁰ PACE, Future of the Social Charter of the Council of Europe, Recommendation 1354 (1998), 28 January 1998, §18.

⁶¹ Gregor CHATTON, “La Charte Sociale Européenne,” *Introduction aux droits de l’homme* (2014) pp. 440-61: p. 461, disagreeing with such views.

⁶² *Ibid.*, p. 461.

⁶³ Sébastien TOUZÉ, “Le Conseil de l’Europe,” in *Droit international social: droits économiques, sociaux et culturels*, ed. Jean-Marc THOUVENIN and Anne TREBILCOCK (Bruxelles: Bruylant, 2013), pp. 804-09: p. 804.

⁶⁴ Cited in Michele NICOLETTI, High-Level Conference on the European Social Charter: General Report, 17-18 October 2014, § 87.

⁶⁵ the Parliamentary Assembly THE PRESIDENTS OF THE COMMITTEE OF MINISTERS, the Congress of Local and Regional Authorities and the Conference of INGOs of the Council of Europe,, Acting Together to Eradicate Extreme Poverty in Europe Strasbourg: Declaration on the Occasion of the International Day for the Eradication of Poverty, 17 October 2012.

Given that many austerity policies were driven by EU actors, the PACE increased its efforts to insist on the relevance of the Social Charter. In diplomatic language, the PACE expressed its intention to provide for “synergies rather than duplication”⁶⁶ but the attentive observer understands without much difficulty that the real problem for social rights protection during austerity was or is not a problem of the duplication of standards by the European Union, some of its organs and member states but rather a problem of the neglect of social rights standards or an intention to weaken them.

D. INITIATIVES RELATED TO THE PERSONAL SCOPE OF THE CHARTER

The Assembly has also tried to push for a revision of the restrictive personal scope of the Social Charter that currently excludes certain foreigners from the scope of protection. The first paragraph of the appendix attached to the Social Charter stipulates that “the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19”. Already during the drafting of the revised Social Charter, the Assembly was of the view that the scope “should not in addition be limited only to nationals of the Contracting Parties since the scope of the Charter should be as similar as possible to that of the European Convention on Human Rights.”⁶⁷ This further testifies to the role of the Assembly as an actor pushing for the human rights character of the Social Charter, although states could ultimately not be convinced to drop the restriction to the personal scope, which has led to intense academic debate and some attempts to “bypass the Appendix restrictions”.⁶⁸

E. KEY INITIATIVES IN RELATION TO THE EU

The history of the Council of Europe is intertwined with the development of the European Union. The Parliamentary Assembly has played an important role in putting social rights a (little bit) higher on the agenda of the European Union. As already mentioned above in the section on austerity, the Assembly has notably tried to safeguard better coherence between the two organizations’ approaches to overlapping or similar questions. In the already mentioned resolution 2180, the PACE was “concerned about a lack of coherence between the legal systems and case law related to different European organisations, in particular the Council of Europe and the European Union, which has the capacity to undermine the effectiveness of the respective instruments. Thus, decisions by the Court of Justice of the European Union do not always fully take into consideration Council of Europe standards.”⁶⁹

At the end of the Cold War and with the optimistic of that “particularly favourable context”⁷⁰, the Assembly proposed in May 1989 that the European Union should accede to the Social Charter.⁷¹ At that time, it was also thought that the European Community might incorporate the Charter as such in its own legal order.⁷² As is well-known, none of these occurred. However, it is certainly fair to note that the PACE

⁶⁶ Michele NICOLETTI, High-Level Conference on the European Social Charter: General Report, 17-18 October 2014, § 64.

⁶⁷ Jean-François AKANDJI-KOMBÉ, “The Material Impact of the Jurisprudence of the European Committee of Social Rights,” in *Social Rights in Europe* (Oxford: Oxford University Press, 2005), pp. 89-108. citing PACE, Opinion 185 on the Draft of the Revised Social Charter, Opinion 185, 15 March 1995, § 5.

⁶⁸ Claudio PANZERA, “The Personal Scope of the European Social Charter : Questioning Equality,” *Revista Europea de Derechos Fundamentales* 24 (2014) pp. 51-73: p. 53.

⁶⁹ PACE, The “Turin Process”: Reinforcing Social Rights in Europe, Resolution 2180, 30 June 2017, § 3.

⁷⁰ Olivier De SCHUTTER, “Anchoring the European Union to the European Social Charter: The Case for Accession,” in *Social Rights in Europe* (Oxford: Oxford University Press, 2005), pp. 111-52: p. 117.

⁷¹ Charter Rel. (84)23 of 14 October 1994, Art. L discussed in *ibid.*, p. 118.

⁷² PACE, Future of the Social Charter of the Council of Europe, Recommendation 915, 9 May 1989, § 5 and 7. As De Schutter explains, this was also considered an option by representatives of the EU itself. Olivier De SCHUTTER, *loc. cit.* (n 70), p. 118, citing an Opinion of 22 February 1989 of the European Economic and Social Committee of the EU: ECOSOC, ‘Opinion on Community fundamental social rights’, Doc. ECOSOC 270/89 of 22 February 1989.

played a role in the promotion of the Social Charter within the European Union and at least achieved a higher profile of the debate.

The concluding section provides an assessment of the role of PACE over time and makes proposals on how the PACE could continue to support the Social Charter.

V. ASSESSMENT, PROPOSALS AND CONCLUDING REMARKS

To assess the potential of PACE in the exercise of its mandate contained in Art. 29, two particularly positive points deserve to be mentioned: First, the fact that PACE renounced to its formal role in the supervision process provides the PACE with credibility. Second, the role of PACE as a parliamentary assembly and a forum for deliberation holds promise. Yet, there are weaknesses in the functioning of the PACE itself and in its interaction with other players within the Council of Europe. Hence, several recommendations will be made.

A. PACE'S COURAGE TO RENOUNCE TO ITS INSTITUTIONAL ROLE IN THE SUPERVISION AND WHAT IS NOW NEEDED FROM OTHER ACTORS

The fact that PACE itself took the initiative to renounce to its formal role in the supervision process supports the credibility of the Assembly in the pursuit of the protection of social rights across Europe. It is notable to see an international body renounce to an institutional role that it was given by states at least when this role was not particularly unattractive. This is what the PACE did when it renounced to its formal power in the supervisory process of the Social Charter. The motivation to step back from the supervision process was a preoccupation for the effectiveness of the system rather than institutional self-interest. The PACE therefore deserves praise for its "institutional citizenship" in making the Social Charter system more effective and more credible as a human rights mechanism.

My *first recommendation* (or pious hope) is that we would now need the same courage and modesty from the Committee of Ministers, respectively from the member states of the Council of Europe. It is an "institutional anomaly"⁷³ that the Committee of Ministers as a political organ (i.e. a body composed of States or Government representatives) continues to act as an instance of control for the Social Charter whereas this function was abolished in relation to the ECHR with the entry into force of the additional protocol 11 of the ECHR.⁷⁴ It would be a breakthrough if the Committee of Ministers would no longer enjoy its very privileged role in the supervision of the Charter.

The Charte-Rel Committee considered in 1991 that the Committee of Ministers ought to adopt individual recommendations on the basis of article 29 of the Charter and that "a political will should be clearly expressed in the supervisory process".⁷⁵ The absence of such recommendations was seen as the "main weakness of the present functioning of the system of supervision".⁷⁶ Yet, years later, Churchill and Khaliq observe in 2004 that "without a major change in the practice hitherto of the Committee of Ministers, the

⁷³ Frédéric SUDRE, "Le protocole additionnel à la charte sociale européenne prévoyant un système de réclamations collectives," *Revue générale de droit international public* 1001996 (1996) pp. 71: 733. See also Robin CHURCHILL and Urfan KHALIQ, "The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?," *European Journal of International Law* 15, no. 3 (2004) pp. 417-56: p. 229, observing that 'the collective complaints system is now the only international human rights mechanism where a governmental body has a decisive say in the outcome of the proceedings'.

⁷⁴ Frédéric SUDRE, "Le protocole additionnel à la charte sociale européenne prévoyant un système de réclamations collectives," *Revue générale de droit international public* 1001996 (1996) pp. 71: p. 733.

⁷⁵ Explanatory Report to the Protocol Amending the European Social Charter, 1991 COETSER 1, 21 October 1991, § 7.

⁷⁶ *Ibid.*

system is unlikely to achieve its objectives”⁷⁷ because the Committee of Ministers continues to be “reluctant to endorse findings of non-compliance by the ECSR”.⁷⁸ As mentioned before, even fifteen years later, in 2019, the Committee of Ministers has still only adopted a single individual recommendation.⁷⁹

Yet, as Peter Leuprecht (former Secretary of the Committee of Ministers and former Director of Human Rights: the Committee of Ministers) explains, it is too easy to blame the Committee of Ministers as “the villain”.⁸⁰ Rather, the member states of the Council of Europe are “trying to keep maximum of control of [the international systems for the protection of human rights] through political bodies in which they are represented. As long as legal findings are made by individuals under the authority of States, state interests will have a major impact on the outcomes: “States are at the same time judges and parties”, as Leuprecht summarizes.⁸¹ The ideal way out of this situation would thus be if the Committee of Ministers adopted a stance similar to the one that the PACE adopted during the reform process in the 1990ies and if member states would agree to downgrade the role of the Committee of Ministers (and hence their own influence over the assessment).

Two further steps would seem long overdue: First, the PACE should be the body *electing the members* of the Committee. The Turin protocol foresaw this change; however, this is the sole article of the Protocol that has not yet been put into practice. If Denmark, Germany, Luxembourg and the United Kingdom would ratify the Turin Protocol, art. 25(1) of the Social Charter would be amended and Committee members would be elected by the PACE.⁸² As the report of the “Turin process” affirms, “[t]here is not a shadow of doubt that such election would consolidate the democratic basis and independence of the body responsible for monitoring states” compliance with their obligations under the Charter.⁸³

Second, as mentioned, the Committee of Ministers still needs a *two-thirds majority* (of those entitled to vote) to adopt a resolution containing recommendations to a state not in conformity with the Social Charter.⁸⁴ This threshold explains in part why the Committee of Ministers has such difficulties to adopt recommendations in the collective complaints procedure.⁸⁵ The threshold is (too) high and there is no substantial reason, except state interests, that the threshold is higher than for the supervision of the ECHR.

B. THE ROLE OF PACE AS A DELIBERATIVE BODY AND THE POTENTIAL OF INVOLVING PARLIAMENTARIANS

In addition to the institutional courage of PACE during the reform process in the 1990ies, the PACE’s other significant strength is the fact that it is a deliberative body composed of national parliamentarians. Its set-up as “a pan-European forum aimed at debating challenges of common concern between Council

⁷⁷ Robin CHURCHILL and Urfan KHALIQ, “The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?,” *European Journal of International Law* 15, no. 3 (2004) pp. 417-56: p. 417.

⁷⁸ *Ibid.*, p. 446.

⁷⁹ Committee of Ministers, Recommendation No. R Chs (2001) 1: Collective Complaint No. 6/1999, Syndicat National Des Professions du Tourisme against France (31 January 2001).

⁸⁰ Peter LEUPRECHT, “The Protection of Human Rights by Political Bodies: The Example of the Committee of Ministers of the Council of Europe,” in *Progress in the Spirit of Human Rights: Festschrift Für Felix Ermacora*, ed. Manfred NOWAK, Dorothea STEURER, and Hannes TREITNER (Kehl: Engel, 1988), pp. 95-108: p. 95.

⁸¹ *Ibid.*, p. 96.

⁸² Protocol Amending the European Social Charter, Ets 142, 21 October 1991 (Not entered into force), Art. 3.

⁸³ Michele NICOLETTI, High-Level Conference on the European Social Charter: General Report, 17-18 October 2014, § 18.

⁸⁴ Protocol Amending the European Social Charter, Ets 142, 21 October 1991 (Not entered into force), amendment to art. 28.

⁸⁵ Riccardo PRIORE, “Les systèmes de contrôle de l’application de la Charte sociale européenne : la procédure de réclamations collectives,” in *European Social Charter and the Challenges of the XXI Century / La Charte sociale européenne et les défis du XXIe siècle*, ed. Giovanni GUIGLIA and Marilisa D’AMICO (Napoli: Edizioni scientifiche Italiane, 2014), pp. 159-70: p. 169.

of Europe member States”⁸⁶ provides for significant potential to influence domestic legal systems. The Assembly’s main function is to keep high on the agenda the socio-economic challenges in Europe. The Assembly can do so notably with plenary debates, reports, outreach activities within the Council of Europe and with external partners or by means of parliamentary seminars on the conclusions of the ESRC.⁸⁷ According to Leach, “the Assembly has also been praised for its critique of weak standards emanating from the [Committee of Ministers], and for continually advocating the revision of standards in particular areas, such as social rights.”⁸⁸ As we have seen in the previous section, the PACE has continuously reminded member states, the EU and other actors to implement their obligations and commitments in the realm of social rights. Yet, as Bengt Lidal, former member of the Charte-Rel Committee recognised in 1997, “taking photographs and saying that ‘social rights are important’ are not enough”.⁸⁹

Jimena Quesada called for an intensification of the PACE’s “consideration of the Charter and the case law of the European Committee of Social Rights when adopting recommendations or organizing promotional activities of the Charter”.⁹⁰ Increased awareness of the Social Charter by the members of PACE would certainly be helpful, but is not easily achieved given the fluctuation and diversity of members and their busy schedules. As a concrete suggestion, individual members of the PACE could make greater use of the instrument of parliamentary questions and ask specific questions about the implementation of the Social Charter. Well-chosen questions would kill two birds at the same stroke: they could increase the members’ awareness of specific issues in relation to the Social Charter and they could serve as a monitoring and implementation mechanism by insisting on the importance and visibility of social rights in practice. As O’Cinneide explains:

“As the single most important pan-European forum for democratically-elected policymakers to meet and exchange perspectives, the Parliamentary Assembly could be a forum for encouraging Contracting States to comply with the Charter and contemplate additional ratifications, in particular of the revised Social Charter and the collective complaints protocol. The Assembly could also provide a route whereby members could follow-up decisions of the ECSR through the Assembly’s monitoring procedures and parliamentary questions. Greater awareness amongst elected representatives of the Charter would also help enhance its visibility. Of course, however, the Assembly can only play a more active role in the Charter process if members of national delegations are interested and willing enough to take advantage of the opportunities opened up by the Assembly’s role within the Council of Europe structure.”⁹¹

Measures could be taken to support individual members who wish to ask questions to the Committee of Ministers, e.g. what action the Committee of Ministers considers taking in the implementation of a decision of the Committee in regards to a state found in violation of the Social Charter.⁹² The instrument

⁸⁶ The "Turin Process": Reinforcing Social Rights in Europe: Report to the Committee on Social Affairs, Health and Sustainable Development (Ms Silvia Eloisa Bonet), Doc. 14343, § 32 of explanatory memorandum.

⁸⁷ Mentioned in *ibid.*, § 33 of explanatory memorandum.

⁸⁸ Philip LEACH, "Impact of the Council of Europe on National Legal Systems," in *The Council of Europe: Its Law and Policies*, ed. Stefanie SCHMAHL and Marten BREUER (Oxford: Oxford University Press, 2017), pp. 166-211: p. 195. Citing notably the work of Birte WASSENBERG, *History of the Council of Europe* (Strasbourg: Council of Europe, 2013), p. 43-46.

⁸⁹ Bengt LIDAL, "Proposals for Further Improvement," in *The Social Charter of the 21st Century*, ed. Conseil de l'Europe (Strasbourg: Council of Europe Pub., 1997), pp. 70-96: p. 96.

⁹⁰ Luis JIMENA QUESADA, "The European Committee of Social Rights and the Collective Complaints Procedure: Present and Future," in *Reform of the European Social Charter: Seminar Presentations Delivered 8 and 9 February 2011 at the House of the Estates and the University of Helsinki*, ed. Niko JOHANSON and Matti MIKKOLA (Porvoo: Bookwell, 2011), pp. 9-14: p. 13.

⁹¹ Colm O’CINNEIDE, "New Challenges and Fresh Opportunities," in *The European social charter : une constitution sociale pour l'Europe*, ed. Olivier DE SCHUTTER (Bruxelles: Bruylant, 2010), pp. 167-83: p. 177.

⁹² Written Question No 494 to the Committee of Ministers (Doc. 10953), with the Response in Doc. 11045 of 2 October 2006.

of parliamentary questions is straightforward to use, questions are circulated as PACE documents and the same applies to the later replies by the Committee of Ministers.⁹³

The PACE could also invite the office of the Commissioner for Human Rights to increase its work on the Social Charter. The Commissioner for Human Rights reports to the Assembly and is therefore part of the PACE's sphere of influence on human rights in Europe.

The PACE should furthermore lobby for its own role. Sometimes, the PACE is completely overlooked as an actor: In a number of publications on the Council of Europe, the PACE and the Social Charter are not even mentioned when the institutions and instruments of the Council of Europe are presented.⁹⁴ In other examples, the role of the PACE in relation to the ECtHR is explained but there is no comparable analysis on the Assembly's relations with the Committee on social rights.⁹⁵ This is an indication of a reality but also a priority and an oversight. Some have also criticized in the past that the Assembly is not given more time to give its opinions on draft treaties. The Assembly does not adopt treaties – the Committee of Ministers does while consulting the Assembly. If the Assembly is to play the role of a parliament “akin to a ‘co-legislator’”,⁹⁶ its consultations must be taken more seriously. At the same time, the PACE must also itself insist on its own role and importance. Indeed, “[t]he Parliamentary Assembly is an often-overlooked component part of the Council structures”.⁹⁷ To some extent, the PACE is itself to blame for this state of affairs and the PACE could do more to promote the awareness of the Social Charter both internally and externally. On its website, the PACE mentions that it sees itself as “a guardian of the European Convention on Human Rights, which originated in the Assembly”.⁹⁸ It is unclear why the PACE does not say the same about the European Social Charter given that it equally participated in the drafting of the Social Charter and the related instruments.⁹⁹ As others have pointed out, the degree of knowledge of the Social Charter and its supervisory system is not encouraging.¹⁰⁰ The PACE could take measures within the Assembly to further promote knowledge of the Charter both among the members of national delegations but also through parliamentary dialogue at various levels, as the “Turin Process” foresees,¹⁰¹ which brings me to a final remark – the relations between the PACE and parliamentarians.

It makes much sense that the PACE wishes to increase its interactions with domestic parliamentarians and members of the European Parliament on thematic issues related to the Social Charter. Such increased interaction promises to raise the awareness of the Social Charter internally at the PACE and within domestic and regional parliaments, and it can also enhance the profile of PACE. The involvement of domestic parliaments is crucial for the implementation of the Social Charter in any domestic legal system of Council of Europe member states. As I show in the Commentary to Art. I, many provisions of the European Social Charter can only be properly implemented if domestic legislation is adopted (or

⁹³ Rules of Procedure of the Parliamentary Assembly of the Council of Europe, (Resolution 1202 (1999) Adopted on 4 November 1999) with Subsequent Modifications, rule 61.

⁹⁴ In this book, the Assembly is not even mentioned a single time: Matti MIKKOLA, *Social Human Rights of Europe* (Porvoo: Karelactio, 2010). In a book on the history of the Council of Europe, there is a chapter title on ‘a convention and a court’ when the human rights set-up is discussed. Martyn BOND, *The Council of Europe : Structure, History and Issues in European Politics*, Routledge Global Institutions Series (London: Routledge, 2013), p. 21. In a widely cited chapter on the Social Charter, there is no section on the role of the PACE: David HARRIS, “Lessons from the Reporting System of the European Social Charter,” in *The Future of UN Human Rights Treaty Monitoring*, ed. James CRAWFORD and Philip ALSTON (Cambridge: Cambridge University Press, 2000), pp. 347-60.

⁹⁵ Philip LEACH, *loc. cit.* (n 88), p. 197.

⁹⁶ Philip LEACH, *loc. cit.* (n 88), p. 196. Advisory Council on International Affairs, pp 12 and 20 : the parliamentary assembly of the CoE, February 2005.

⁹⁷ Colm O’CINNEIDE, *loc. cit.* (n 91), p. 177.

⁹⁸ “Parliamentary Assembly - in Brief.” <http://website-pace.net/web/apce/in-brief> (last accessed 17 July 2019).

⁹⁹ David J. HARRIS and John DARCY, *op. cit.* (n. 3), p. 348.

¹⁰⁰ Robin CHURCHILL and Urfan KHALIQ, “The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?,” *European Journal of International Law* 15, no. 3 (2004) pp. 417-56; p. 446.

¹⁰¹ The “Turin Process”: Reinforcing Social Rights in Europe: Report to the Committee on Social Affairs, Health and Sustainable Development (Ms Sílvia Eloisa Bonet), Doc. 14343, § 16-17 of explanatory memorandum.

amended).¹⁰² For this to happen, a first pre-condition is that domestic parliamentarians are aware of the Social Charter or at least its objectives. During the Turin Process, Anne Brasseur “recalled that the Parliamentary Assembly encourages national assemblies to use both the Charter and the jurisprudence of the Committee when drafting national and regional legislation”.¹⁰³ In my view, encouragements can be very useful for domestic actors but are hardly sufficient – concrete networks and physical interactions between members of the PACE, the Committee and domestic parliamentarians are more likely to have an impact of norm diffusion and socialisation.¹⁰⁴

Efforts must be continued to spread the knowledge of the Social Charter. Jimena Quesada argues that “the Social Charter and the case law of the European Committee of Social Rights are resources to be exploited”.¹⁰⁵ The problem is often that “there is a tendency towards exclusively focusing on the ‘social case law of the European Court of Human Rights’ and sometimes on the ‘social case law of the [ECJ]’, by forgetting the specific ‘case law of the European Committee of Social Rights’.”¹⁰⁶ If awareness is a problem at university level (Jimena Quesada speaks about organizing colloquies or research on social rights in Europe), how can we expect domestic legislators to be aware of the Social Charter if academics have insufficient knowledge of the Social Charter and the case-law of the Committee? To remedy this challenge, as PACE member Sílvia Eloisa Bonet reports, the PACE and the Committee “have organised, since 2013, yearly capacity-building seminars for national parliaments aimed at identifying means of closing gaps of compliance with the European Social Charter treaties, overcoming remaining obstacles to full ratification and implementation of these texts and possible ways forward to improve national social rights situations in different areas.”¹⁰⁷ However, the rapporteur regrets that “the institutional response to these challenges has not always been sufficient in recent years”.¹⁰⁸ She noted that “there seem to be certain obstacles to overcome in this respect”, such as the irregularity and selectiveness of contacts, different priorities or a lack of time”.¹⁰⁹ Similar constraints apply in the relationship between domestic parliaments and the PACE, in addition to the geographic distance and the multitude of domestic parliaments (and sometimes sub-national parliaments depending on the constitutional division of competence in federal or devolved member states).¹¹⁰ To alleviate the burden of individual members of PACE to try to set up contacts with a high number of domestic parliamentarians in various jurisdictions, one option for the PACE, as suggested by Bonet, would be for the PACE “to organise its own high-level event on social rights for Greater Europe involving representatives of Council of Europe and EU bodies, national parliaments and governments, social partners and civil society”.¹¹¹ The members of the Academic Network on the European Social Charter and Social Rights and the publication of this commentary will hopefully facilitate the exchanges with academia in all the member states and contribute to the liaison with national legislators.

To conclude, the Assembly is a credible and promising actor when it comes to support the implementation of the European Social Charter. At the same time, this commentary has shown that the supervision of the Charter contains to be plagued by important weaknesses which the Assembly cannot

¹⁰² Evelyne SCHMID, "Partie V, Art. I (Implementation of the Undertakings Given)," in *Commentary on the European Social Charter*, ed. RÉSEAU ACADEMIQUE SUR LA CHARTE SOCIALE EUROPÉENNE et LES DROITS SOCIAUX (Leiden: Brill, [forthcoming]), pp.

¹⁰³ Michele NICOLETTI, High-Level Conference on the European Social Charter: General Report, 17-18 October 2014, § 100.

¹⁰⁴ On the impact of interparliamentary work, see e.g. Stelios STAVRIDIS and Davor JANCIC, "Parliamentary Diplomacy in European and Global Governance," (2017) pp.

¹⁰⁵ Luis JIMENA QUESADA, *loc. cit.* (n 2), p. 144.

¹⁰⁶ Luis JIMENA QUESADA, *loc. cit.* (n 2), p. 144.

¹⁰⁷ The "Turin Process": Reinforcing Social Rights in Europe: Report to the Committee on Social Affairs, Health and Sustainable Development (Ms Sílvia Eloisa Bonet), Doc. 14343, § 8 of explanatory memorandum.

¹⁰⁸ *Ibid.*, § 9 of explanatory memorandum.

¹⁰⁹ *Ibid.*, § 35 of explanatory memorandum.

¹¹⁰ On the challenges to implement international legal obligations at the level of sub-national legislators, see www.unil.ch/ilsp.

¹¹¹ The "Turin Process": Reinforcing Social Rights in Europe: Report to the Committee on Social Affairs, Health and Sustainable Development (Ms Sílvia Eloisa Bonet), Doc. 14343, § 37 of explanatory memorandum.

solve on its own. That said, article 29 of the revised Social Charter still foresees an instrumental role for the PACE despite its retreat from the formal supervisory process. The Assembly notably has the potential to remind member states and other actors of the reasons why, since the foundation of the Council of Europe and the project of European integration more broadly, the fight against social exclusion, poverty and other social rights issues remain and should remain a priority.

Biographical note

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