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REPORT
"THE LEGAL STATUS OF THE EUROPEAN SOCIAL CHARTER - TAKING INTERDEPENDENCE AND INDIVISIBILITY OF HUMAN RIGHTS SERIOUSLY"

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1. Introduction.

The European Social Charter was intended at the outset to complement the European Convention on Human Rights (ECHR). Indeed, the two instruments share some common provisions such as freedom of association. In a sense the Charter provides for the 'political economy' of freedom. It serves to underpin the ECHR with a social guarantee of equal citizenship. As such, it comprises a 'productive factor' in our market economies and helps to advance social cohesion. Just as important, it constitutes a 'civilising factor' in our democratic cultures by avoiding severe social dislocation that can afford breathing space for political extremes.

What sets this particular treaty apart is the fact that it deals with economic, social and cultural human rights. Such rights are, by definition, positive in nature and therefore relatively more demanding of States. This distinction should not be overstated since many of thematic human rights of the Council of Europe (e.g., Framework Convention for the Protection of National Minorities) place similarly robust positive obligations on the part of the States Parties. And indeed the European Convention of Human Rights itself has been famously interpreted by the Court to give rise to some positive obligations in order ensure that the core rights are realised[1]. Indeed, the Court seems to require States Parties to proactively intervene on occasion to forestall violations[2]. And of course several social benefits are protected (at least indirectly) through ECHR caselaw[3].

Viewed from a purely formal perspective, the first and most important thing that can be said about the European Social Charter is that it is – despite its title – a legally binding human rights treaty.[4] This may seem like a surprising beginning except for the fact that some might be tempted to question its legal status since – unlike the European Convention on Human Rights – it is styled a 'Charter' and not a 'Convention'. However, such analysis, through rare nowadays, may be motivated less by an objective legal appraisal of the status of the Charter and coloured more by ideological ambivalence toward the very legitimacy of distributive justice – and more especially towards legal instruments that seek to advance its goals.

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1 See generally Alistair Mowbray, **The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights,** (Hart, 2004). See, e.g., *McGlinchey v UK*, No 50390/99 ECHR (2003-V), 29.04.03.

2 See, e.g., *Z and others v UK*, No 2939295 ECHR (2002-V), 10.05.01.

3 See, e.g., *Kjartan Asmudsson v Iceland*, No 60669/00, 12.10.04.

4 There are two recent general works on the Social Charter; David Harris & John Darcy, **The European Social Charter**, (2d Ed., Transnational, USA, 2001) and Lenia Samuel, **Fundamental Social Rights - Case Law of the European Social Charter**, (2d Ed., Council of Europe, 2002). See also, Jaspers & Betten, **European Social Charter**, (Kluwer, 1987).

Among other things, the legally binding nature of the Charter as a human rights treaty means that its interpretation is governed by the Vienna Convention on the Law of Treaties. Adopting a broad teleological approach appropriate to the interpretation of human rights treaties the relevant supervisory committee (European Committee of Social Rights) has determined that:

the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically but also in fact[5].

Clearly the Committee conceptualises the treaty as a human rights treaty and approaches it using the same canons of construction applicable to all human rights treaties.

Arguments have been heard from time to time and especially in the Parliamentary Assembly that at least some of the rights of the Charter are now so well grounded both at the regional European level and in most of the Member States that they should be added to the body of the European Convention on Human Rights[6]. They would thus be subject to the jurisdiction of the European Court of Human Rights. This seems unlikely in the medium term.

State practice, however, is increasingly to the effect that the Charter is taken into account at the domestic level (see below). And it is looking increasingly likely that the European Union will begin at some stage to 'enforce' social rights if only because that is where the logic of Article 13 anti-discrimination Directives that, for example, reach into to the core of such social rights as housing[7]. This overarching ethic of non-discrimination is likely to provide a fruitful bridge between economic, social and cultural rights (European Social Charter), civil and political rights (under existing ECHR jurisprudence) and EU law (especially the Article 13 Directives). Again this intrinsic tie between the different normative streams should only intensify according as the European Court of Human Rights comes to terms with Protocol 12 to the ECHR which has already entered into force.

More informally, and at a high political level, the decision taken at the recent Council of Europe Summit in Warsaw to step up its work in the social policy field "on the basis of the European Social Charter" as well as other relevant instruments is greatly welcome given the pressures that our European social model are under as a result of globalisation, demographic and technological change as well as a general cultural drift away from the ethic of solidarity and towards possessive individualism[8]. A tangible step in this direction will be the establishment of a High Level Task Force which will build on the important contribution of the Social Charter.

In this paper which deals with the legal status of the Social Charter, I first explore the amalgam of treaties that collectively comprise the European Social Charter. I do so because some of the legal issues that arise have to do with the complex interaction of these treaties. Then, I look at the issue of the domestic legal status of the Charter which touches on the vexed issue of the

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5 *ICJ v Portugal*, Collective Complaint 1 (2000).

6 See, e.g., Recommendation 1415 (1999) of the Parliamentary Assembly, '*additional protocol to the European Convention on Human Rights concerning fundamental social rights*'.

7 Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of race or ethnic origin. One eminent scholar, Olivier DeSchutter, argues that the EU should ratify the European Social Charter: DeSchutter, '*L'adhesion de l'Union europeene a la Chartre Sociale europeene revisee'*, EUI Working Paper LAW no 2004/11.

8 Declaration and Action Plan: available at http://www.coe.int/t/dcr/summit/20050517_plan_action_en.asp

enforceability of socio-economic rights. Next I look at the territorial application of the Charter and treaty succession. The issue of treaty succession has not arisen frequently under the Charter in part because the newer Revised European Social Charter of 1996 was drafted specifically attract (and did in fact attract) entirely fresh ratifications from the newer democracies of Eastern Europe in circumstances where the previous political entity was not a State Party. Then I will look at some issues in connection with declarations and reservations as they arise under the Charter. Lastly, I will reflect on the future of this instrument and the bridges that can and should be built between it and the other human rights treaties of the Council of Europe in order to ensure that all human rights are genuinely 'indivisible and interdependent[9]'.

2. The European Social Charter – a Complex Web of Human Rights Treaties.

The European Social Charter is actually an amalgam of five separate treaties stretching back to the original Charter signed in Turin in 1961[10]. The interaction and overlapping of these treaties is quite complex.

The original Charter contained – for a human rights treaty – an unusual structure. The First Part contains 19 Principles that the States Parties accept as the aim of their respective social policies. These 19 Principles are reflected, in turn, in Part II which sets out corresponding rights and obligations in detail. The States Parties were not obliged to accept all 19 Articles. Instead a distinction was made between 'core' economic, social and cultural rights to which all States Parties were obliged and others which they were free to accept. It is quite remarkable to reflect on how most of these 'core' rights have to do with labour market participation and the financial consequences of loss of income from such participation[11]. Evidently, it was thought that the best form of welfare was (and is) employment.

On top of the non-negotiable 'core' of social rights, the States Parties were additionally required to select among the remaining rights a total of not less than ten full Articles or 45 numbered sub-paragraphs by which they would agree to be bound (Part III of the Charter – 'undertakings'). This '*a la carte*' approach to human rights and obligations stands in stark contrast to the equivalent global instrument - the International Covenant on Economic, Social and Cultural Rights (ICESCR – adopted only five years later in 1966) - under which no such choice for States Parties is made available and to the European Convention on Human Rights (ECHR) (apart from reservations and derogations).

Despite the *a la carte* nature of the Charter, there is at least an implicit understanding that States Parties should gradually move towards acceptance of all Articles in the Social Charter. Indeed, an unusual feature of the Charter is Article 22 whereby States Parties are requested to report on

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[9] An extremely useful comparison of the treatment of the non-discrimination principle by the European Court of Human Rights and the European Committee of Social Rights has been carried out under the auspices of the EU Social Again Programme against Discrimination; O DeSchutter, '**The Prohibition of Discrimination under European Human Rights Law – Relevance for EU Racial and Employment Equality Directives**', (European Commission, Brussels, 2005).

[10] The texts are usefully drawn together in the **European Social Charter Collected Texts** (4th Ed., Council of Europe, 2004).

[11] The core rights are Article 1 (right to work), Article 5 (right to organise), Article 6 (right to bargain collectively), Article 12 (right to social security), Article 13, right to social and medical assistance), Article 16 (right of the family to social, legal and economic protection) and Article 19 (right of migrant workers and their families to protection and assistance).

non-accepted provisions and their readiness (in terms of the evolution of domestic law and policy) to move toward acceptance.

Unlike the ECHR which applies to 'everyone' in the jurisdiction of a State Party, an Appendix to the 1961 Charter (considered to be an integral part of it) makes it plain (with certain exceptions) that its provisions apply to a Party's own nationals and to foreigners only in as much as they are nationals of other Contracting Parties and are lawfully resident or working regularly within the territory of the Contracting Party concerned. States Parties can make a declaration upon ratification that widens the personal scope of their treaty obligations.

The supervisory mechanism set up under Part IV of the Charter envisaged periodic reporting by States and their assessment by an Independent Committee of Experts (now styled the European Committee of Social Rights). The assessment of these periodic Reports by the Committee leads to 'Conclusions' which are published in successive volumes corresponding to the reporting cycle. The normative understandings of the rights that are contained in these **Conclusions** constitute the 'caselaw' of the Committee.

These 'Conclusions' make their way to the Committee of Ministers *via* an intermediate body called the Governmental Social Committee (now Governmental Committee). The latter body prepares decisions by the Committee of Ministers and in particular drafts Resolutions that the Committee of Ministers might adopt. By way of contrast, no similar intermediate body refracts or filters the judgments of the European Court of Human Rights before they reach the Committee of Ministers.

An Additional Protocol of 1988 provided four enhanced or extra rights dealing with the right of workers to equal opportunities without discrimination on the ground of sex, the right to be informed and consulted and the right to take part in decisions affecting the improvement of working conditions. These rights were all logical (if weak) developments of rights already embedded in the 1961 Charter. Only one wholly new right was added by the 1988 Protocol dealing with the important right of the elderly to social protection. Again, and disappointingly, States Parties to this Protocol did not have to accept more than one of the four substantive rights.

In the late 1980s a decision was taken to revitalise the Social Charter and an expert body (the *Charte Rel*) was set up to begin first with the operation of the supervisory mechanism. An Amending Protocol was adopted in 1991 to make it plain that the Committee of Independent Experts makes its assessment of periodic reports from a 'legal standpoint' thus finally ending any doubt as to the standing of its Conclusions in relation to the Governmental Committee (which had been in dispute).

Most crucially, an Amending Protocol was adopted in 1995 providing for a system of Collective Complaints. Essentially, the 1995 Protocol enables certain international organisations of employers and trade unions to lodge such complaints with the European Committee of Social Rights. It further enables other international non-governmental organisations which have consultative status with the Council of Europe under certain conditions to also mount such complaints. States Parties have to option to widen the net of NGOs entitled to lodge complaints to include purely domestic NGOs. Finland, for example, allows for this possibility. The current list of organisations so entitled now numbers 63 and ranges from groups such as Amnesty International, Eurolink Age and the European Roma Rights Centre.

One interesting feature of the Collective Complaints system – unlike the ECHR –is that there is no explicit requirement that domestic remedies should be exhausted. This is presumably because there does not tend to be any domestic remedies available to ventilate grievances relating to social rights. The mechanism is collective rather than individual so as to enable representative cases to come forward highlighting structural deficiencies that affect a large number or a unique category of people. Among other things, this means that the system is designed to respond to structural deficiencies and therefore less prone to the phenomenon whereby individual test cases end up (arguably) distorting social policy.

The caselaw under this complaints procedure is developing particularly in substantive fields going beyond the traditional concern of 'hard core' social rights dealing with labour law and labour relations. Some 32 complaints have been – or are being – dealt with by the Committee[12]. Indeed, the collective complaint system is inspiring some at the United Nations Ad Hoc Committee drafting a new thematic treaty on the human rights of persons with disabilities to look to it as a workable model for the new treaty.

Updating the European social model appears to be a periodic concern. It was felt by the *Charte Rel* that extra social rights had to be added to the original 1961 Charter (and old rights developed) in order to ensure its continued relevance in a changing Europe. Rather than amend the 1961 Charter a decision was taken to draft and adopt a wholly new Revised Social Charter. It was finally adopted in 1996 containing all the 'old' rights as well as new ones.

Strikingly, many of the 'new' rights actually relate to employment. However, whole new social rights were added including Article 30 (right to protection against poverty and social exclusions) and Article 31 (right to housing). However, the Revised European Social Charter continues with the *a la carte* approach of the original 1961 Charter with the effect that States parties are not obligated to accept Articles 30 and 31. Extremely important additions were made to the 'old' Articles including, for example, Article 15 on disability. The amendments gave Article 15 a more modern spin in terms of integration and inclusion. Indeed, the caselaw of the Social Charter on disability is probably the most advanced in the world at the moment of any human rights treaty body[13].

A State that was Party to the 1961 Charter and which ratifies the 1995 Protocol on Collective Complains and which later proceeds to ratify the 1996 Revised Social Charter is considered bound by the 1995 Protocol with respect to the obligations in undertakes under the 1995 Revised Charter. A Party that had not previously ratified the 1995 Collective Complaint Protocol may make a declaration upon the ratification of the 1996 Revised Social Charter that it will be also bound by the 1995 Protocol with respect to the Revised Charter.

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[12] See: http://www.coe.int/T/E/Human_Rights/Esc/4_Collective_complaints/List_of_collective_complaints/01List_%20of_complaints.asp#TopOfPage

[13] See Quinn, forthcoming, '*The European Social Charter and EU Anti-Discrimination Law – two Gravitatioal Fields with one Common Purpose*', in De Burce & De Witte (Eds), **Social Rights in Europe,** (Oxford, 2006).

The most logical outcome would be to enable the Revised Charter to eclipse the 1961 Charter. But as Oliver Wendell Holmes said, "the life of the law is not logic but experience". A single consolidated instrument was not possible since States Parties to the 1961 Charter might not want to ratify a more modern version. All States could have collectively denounced the 1961 Charter but this was unlikely. The end result is the continued legal co-existence of two Social Charters and the monitoring of two separate – but related instruments by the Committee. This is confusing. It is hoped that most if not all States will migrate toward the Revised Social Charter soon. The figures look promising. To date, there are 17 States Parties to the 1961 Social Charter and 21 States Parties to the 1996 Revised Social Charter. The trend is therefore in the right direction.

3. A Mix of Obligations of Conduct and Obligations of Result.

Interestingly, and by way of contrast with the ICESCR the Charter contains no overall limiting principle on State obligations. Article 2(2) of the ICESCR only commits States Parties to:

- to take steps…to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.[14]

In other words, the principle of 'progressive achievement' is not evident on the face of the Charter. The obligations are cast – and generally understood – as providing obligations of result rather than obligations of conduct. Lack of financial resources is therefore not, in principle, a good defence. This factor impacted most directly on the Federal Republic of Germany upon reunification. Given that Germany was now answerable for the former GDR (see next section below) the issue that faced the Committee was whether to make any express allowance for the relatively low level of social attainment in the old East Germany. In the result, The Committee expected Germany to meet the standards of the Charter vis a vis the whole of its territory straight way and regardless of cost[15].

Sometimes, however, the Committee will characterise an obligation as 'dynamic' in the sense that it contains perhaps a mix of obligations of conduct with those of result. It will therefore genuflect before the exigencies of the States Parties with respect to the relevant obligations provided tangible progress can be reported. Dynamic obligations also oblige the States Parties to steadily ratchet upwards the level of enjoyment of a right. Additionally, in Collective Complaint 13 the Committee acknowledged that the inherently progressive nature of some of the obligations. It stated:

- When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as

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[14] See, e.g., Alston & Quinn, *'The Nature and Scope of States Parties Obligations under the International Covenant on Economic, Social and Cultural Right's*, 9 Hum. Rts. Q. 256 (1987).

[15] Harris, loc cit, 27.

well as for other persons affected including, especially, their families on whom halls the heaviest burden in the event of institutional shortcomings[16].

Realpolitik also suggests that in times of financial retrenchment cutbacks will be necessary. The United Nations Committee on Economic Social and Cultural Rights has developed limiting principles that allow for such cutbacks but which also constrain how they may be implemented (General Comment 3, ICESCR, 1994). Similar principles have been adopted by the Committee at least with respect to Article 12 (3) (obligation to raise progressively the system of social security).

4. The Domestic Status of the Charter.

As a matter of fact, and unlike the European Convention on Human Rights, the rights set forth under the Charter were not (and are still not) generally given any explicit status in the constitutional orders of the States Parties[17]. This is significant since it is more normal for international law to reflect and crystallise norms that already have some toehold in the domestic legal order. To be sure, our common European social model was (is?) to the effect that these rights were accepted as forming part of the goal of the modern democratic State. And to be equally sure, they were underpinned by a web of legislation. Yet it is true to say that such rights were not robustly reflected in domestic constitutional orders and that hard judicial remedies were few and far between.

As a matter of formal treaty law, the Appendix to the 1961 Charter emphasises that the obligations are of an international character "the application of which is submitted solely to the supervision provided for in Part IV". In other words, the Charter is not to be deemed self-executing in the domestic law of the States Parties. There is no equivalent limitation contained in the ECHR which leaves the matter for resolution by the domestic courts.

Nor indeed, is there any equivalent to General Comment 9 of the ICESCR on 'the domestic application of the covenant' in the Committee's caselaw[18]. General Comment 9 presumes the provision of domestic judicial remedies with respect to the rights protected under the ICESCR while leaving space for administrative enforcement provided the remedies are 'accessible, affordable, timely and effective'.

Notwithstanding the Appendix the Dutch and Belgian courts have in fact courts have in fact used the Charter in their decisions. Indeed, the Dutch Supreme Court has acknowledged the direct applicability of Article 6(4) on the right to strike[19]. In 1996 the Belgian *Conseil d'Etat* also used Article 6 of the Charter to fortify its reasoning in annulling an internal administrative act – thereby acknowledging it as a source of law[20]. At least four 'monist' states have incorporated the Charter at some level[21].

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16 Collective Complaint 13,November, 2993, para 53.

17 There is a growing body of literature tracking the judicial enforceability of socio-economic rights: see, e.g., Nordic Council of Ministers, **The Welfare State and Constitutionalism in the Nordic Countries**, (2001), COHRE, **Litigating Economic, Social and Cultural Rights – achievements, challenges and strategies**, (2003),

18 Indeed, the Committee has never adopted the practice of issuing General Comments which do serve a useful function in crystallising normative understandings.

19 Supreme Court (*Hoge Raad*), 30 May 1986, NJ 1986/668.

20 Conseil d'Etat, (Vi ch.), 22 March, 1995, *Henry*.

21 Hungary, Germany, Finland and Italy.

The Italian Constitutional Court has referred to the Charter as an aid in interpreting domestic legislation[22]. Indeed, the Romanian Constitutional Court has referred to the Charter when reviewing the constitutionality of domestic legislation[23] And the German Federal Labour Court in a 1984 decision affirmed that national courts were bound by the obligations contained in the Charter whenever they had to interpret the lacunae in the law on industrial disputes[24].

In fact the Committee has interpreted several rights as giving rise to the need for domestic remedies without dictating the ultimate shape of these remedies. This would be especially so in the context of the interaction of Article E (non-discrimination) with the various substantive rights. A prohibition on non-discrimination would appear to be immediately realisable and forms an obligation of result rather than conduct. Domestic remedies before independent bodies have required by the Committee under specific Articles: right to equal pay (Article 4 (3)), right to social and medical assistance (Article 13), and the right of a migrant worker not to be deported (Article 19 (8)) and, more recently, Article 1 (1) (protection against discrimination in employment) and Article 15 (1) & (2) (protection against non -discrimination in education and employment for persons with disabilities).

Article 32 of the 1961 Charter is to the effect that its terms would not prejudice the application of higher standards if such standards flow from treaties or conventions already in force.

5. Territorial Application and State Succession under the Social Charter.

Article 34 of the 1961 Charter contains detailed rules on territorial application. Its default setting is the automatic application of the Charter to the whole of the metropolitan territory of States Parties[25].

Normally the composition of the metropolitan territory is not open to debate. However, upon signature or ratification the States Parties may lodge a declaration stating or clarifying which territory it considers to be metropolitan. States Parties may also indicate by declaration made under Article 34 (3) to which non-metropolitan territories ("for whose international relations it is responsible or for which it assumes international responsibility") its Charter obligations will apply[26].

Germany considered that it had added to its metropolitan territory in October 1990. No declaration was made under Article 34 (2) to the effect that it considered the former GDR to now form part of its metropolitan territory. The Committee apparently expected Germany to report on the situation in the former GDR *as if* it were part of its metropolitan territory and without the need for a declaration[27] - which in fact it did. Commenting on this, Professor David Harris wrote:

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22 Judgment no 86/1994.
23 Decisions Nos 24/2003, 25/2003, 108/2003, 351/2003.
24 BAGE 46, 350.
25 Article 34 (1).
26 Article 34 (2).
27 Conclusions XII Vol 2, 11; Conclusions XIII Vol 2, 23.

> "[S]hould a contracting party add to its metropolitan territory, the new territory will be automatically be subject to the Charter by succession[28]"

What then of territories that were once part of the metropolitan territory of a State Party and which secedes? Harris considers that any declaration made in respect of such territory such be considered automatically terminated. If the territory comprises a wholly new State does it succeed to the Charter responsibilities of its parent State? Bearing in mind that not even Member States of the Council of Europe are obliged to ratify the Social Charter, Harris believes that it does not.

If the break-away territory joins an existing Member State then the new host State will be responsible assuming it has ratified the Charter. In this instance, the new host State will be only responsible for the Article and paragraphs it has accepted for itself – and not the Articles or paragraphs accepted by the territory's former host State.

The Czech and Slovak Federal Republic signed the European Social Charter in 1992. The two new States created (Czech Republic and Slovak Republic) then proceeded to make declarations to the effect that they would continue to respect the obligations of the Charter with respect to their territories.

6. Declarations and Reservations.

Ratification is only open to Member States of the Council of Europe[29]. Even though the Charter is a core human rights instrument, ratification is not a condition for membership of the Council of Europe.

Declarations are compulsory in the sense that States Parties must indicate upon ratification which of the non 'hard core' rights they accept. States Parties can make additional declarations later if they wish to add to the number of Articles or paragraphs they are wiling to accept.

Ireland made an interesting declaration whereby it accepted the obligations contained in Article 27 (right of workers with family responsibilities to equal opportunities). This Article contains three paragraphs. The first numbered paragraph is further subdivided into three parts ((a), (b) & (c)). By its declaration Ireland disavowed any obligations under Article 27 (1)(c). The Committee has never made a ruling on the capacity of States Parties to select within numbered sub-paragraphs which parts they would accept.

Optional declarations may be made with respect to territorial application, the extension of the personal scope (extending potentially to all persons within their jurisdictions), allowing purely domestic NGOs to lodge Collective Complaints, to agree to be bound by the terms of the 1995 Optional Protocol on Collective Complaints when ratifying the Revised Social Charter.

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[28] Harris at 390.

[29] Article 35, European Social Charter.

The Charter does not make any express allowance for reservations. The Vienna Convention on the Law of Treaties permits reservations unless (1) expressly prohibited by the treaty in question treaty (not the case with the Charter), or (2) allowed but only on specified issues (similarly not so under the Charter) and (3) so long as the reservation in question is not incompatible with the object and purpose of the treaty.

It is possible to take the view that since the States Parties already enjoy a high degree of selectivity as to which Articles or paragraphs they will accept that there is no room for reservations. Indeed, this was the initial view of the Committee. The current practice appears to be to accept reservations and to urge States Parties to remove them as circumstances permit.

An interesting issue arose *before* the 1961 Charter was adopted – and in anticipation of its adoption[30]. The Federal Republic of Germany wished to make plain its understanding that Article 6 (4) (right to strike) did not apply to the established German civil service (beamte). It sent a letter containing a 'declaration' to that effect to the Secretary General. The letter was subsequently circulated to the other States Parties – none commented on it. Subsequently, Germany was assessed not to be in compliance with Article 6 (4) precisely because of this restriction. The Committee was of the view that it was not a reservation since it was not made contemporaneous with the ratification of the Charter. Instead it was analogised to an instrument under Article 31 (2) (b) of the Vienna Convention which allows for such provided they are accepted by the other States Parties. Failure to comment on the 'declaration' was taken as acquiescence which means that the 'declaration' goes to the background context for the interpretation of Article 6 (4).

7. Conclusions:

The European Social Charter is one of the most widely ratified of Council of Europe human rights instruments. Its crowning achievement has undoubtedly been the advent of the Collective Complaints mechanism which will be 10 years old next year. Thus, the Social Charter remains a unique regional instrument for vindicating economic, social and cultural rights. It is likely to remain unique in public international law since the debate over the drafting of a new Optional Protocol to the ICESCR seems stalled.

Through the Collective Complaints mechanism the Committee will have to clarify further the general legal principles according to which domestic law and policy should be adjudged. According as these principles are clarified the Charter will play an increasingly prominent role in the construction of social Europe.

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30 See generarly, Harris, 393-4.