



Resolution

ETUC Declaration on the 50th anniversary of the European Social charter

Adopted at the Executive Committee on 19-20 October 2011

The European Social Charter (ESC) has, since its adoption on 18 October 1961 by the Council of Europe, contributed to the improvement of working and living conditions of people in Europe. It is one of the last safeguards to protect workers and citizens, in particular the most vulnerable. The Charter was the first international social standard to explicitly recognise the right to strike. It was also innovative in respect of the right to work, fair working conditions and fair remuneration to mention some of the 19 social rights guaranteed in the Charter. They must all be fully respected and effectively implemented.

These rights were extended and now form part of the 31 social rights enshrined in the 'Revised European Social Charter' (RESC) adopted in 1996. 43 of the 47 Member States of the Council of Europe have either ratified the original Charter or the revised one. However, only 14 Member States are bound by the Collective Complaint Procedure Protocol which allows trade unions to raise issues concerning violations of the Charter.

At European level, the Charter has served as a point of reference in EU primary law, for example in the recitals of the Treaty on the European Union and in the 'Social policy' Title of the Treaty. Most of the fundamental social rights in the Charter of Fundamental Rights of the European Union are based on the relevant articles of the Charter. Furthermore, the European Courts recognise its importance when interpreting EU legislation or the European Convention on Human Rights.

In times of crisis when social rights are being challenged, and even undermined, it is all the more important that social standards set a minimum of protection. Member States trying to reduce fundamental social rights such as Greece, Hungary, Romania, the Czech Republic, Spain and Portugal would have to justify these measures in view of their obligations deriving from the Charter.

The ETUC has actively contributed to the development of the Charter, taken active part in the supervision procedure and remains strongly committed to the whole system of the Charter.

On the occasion of the 50th anniversary of the Charter, the ETUC therefore:

- recalls the importance of the Charter and its further developments in order to achieve a more social Europe;
- urges Member States to fully abide by their obligations deriving from these social standards and the respective case-law of the European Committee of Social Rights;
- calls on all Members States to use the momentum of the 50th anniversary to adhere

fully to all the instruments developed in the framework of the Charter, in particular the RESC and the Collective Complaint Procedure Protocol;

- underlines the importance of the EU respecting these rights and taking concrete steps to adhere to the pertinent instruments; and
- calls on the Council of Europe and its institutions as well as the Member States to improve the effective implementation of the social rights enshrined in the Charter.

Attachment

ETUC analysis of the European Social Charter and demands to improve its efficiency.

Appendix

Making European fundamental social rights work effectively in practice

I. Introduction: The European Social Charter as cornerstone of the fundamental social rights protection in Europe

The 50th anniversary of the European Social Charter (ESC) offers the opportunity to take stock of the fundamental rights protection in Europe and to develop proposals to reinforce this protection and to contribute to social progress all over Europe especially in times of financial and economic crisis.

1. Aim of the European Social Charter

- 1.1. Promotion of fundamental social rights based on a human rights approach.
- 1.2. Increasing the Charter's impact in international organisations, the judiciary, national administration, social partners, civil society and citizens.

2. Achievements

- 2.1. The Charter has been further developed mainly by the Turin Amending Protocol (1991), the Collective Complaint Procedure Protocol (1996) and the Revised European Social Charter (1996 - RESC).
- 2.2. The ratification process by the Member States of the Council of Europe has led to the fact that only 4 Member states have neither ratified the ESC nor the RESC.
- 2.3. A new dimension has been achieved by the quasi-judicial collective complaints procedure which offers the opportunity for the European Committee of Social Rights to give fundamental social rights a concrete meaning and a coherent legal background.
- 2.4. The impact of the Charter has increased
 - 2.4.1. Particularly in respect of the development of fundamental social rights in the framework of the 'Charter of Fundamental Rights of the European Union';
 - 2.4.2. In respect of the references in European and national Court decisions.
- 2.5. Positive consequences can be seen in many States in respect of improved legislation and better working and living conditions.

3. Problems

- 3.1. Fundamental social rights are still often considered as '2nd class' human rights. The indivisibility of human rights is not applied sufficiently in practice.
- 3.2. The economic and financial crisis has led to fundamental rights being undermined.
- 3.3. The effectiveness of the fundamental social rights is not sufficient. The number of cases of non-conformity is still high, in particular in sensitive areas such as the right to collective action. Furthermore, problems which sometime have been criticised for decades are not solved by the respective Contracting Parties.
- 3.4. The supervisory system of the Charter is not functioning as it should. In particular, the number of individual recommendations (which are the most severe consequences in cases of non-conformity) has nearly gone down to zero in the last years.
- 3.5. Being applied as much as possible the non-application of certain provisions of the Turin Amending Protocol still causes severe problems.

3.6. Inequalities between the States having /or not having ratified the Complaints Procedure Protocol are growing.

4. Enhancing effectiveness by a new coherent approach for all involved:

4.1. All following proposed initiatives are to be seen as a set of measures aimed at a coherent approach for all addressees.

4.2. The initiatives should reinforce one another.

4.3. A strong political will needs to be developed in a sustainable way.

4.4. In general terms, a strengthening of the ESC and Collective Complaints Procedure is necessary.

II. Initiatives proposed in order to improve the efficiency of fundamental social rights

The ETUC urges

1. the Member States of the Council of Europe and especially their respective Governments to activate the legal framework as well as the practical impact for fundamental social rights by

1.1. Ratifying at the latest until the 20th anniversary of the RESC in 2016 all relevant instruments and accepting the highest rate of acceptance of provisions possible by those countries not yet having done so, in particular

1.1.1. the four countries not yet having any instrument and the countries not yet having ratified the RESC to do their utmost to ratify the RESC while accepting the highest numbers of provisions possible,

1.1.2. the many countries not yet having accepted all provisions of the RESC to accept the highest numbers of provisions possible,

1.1.3. the four countries still not having ratified the Turin Amending Protocol in order to allow its full implementation such as election of ECSR members by the Parliamentary Assembly to guarantee independence and impartiality of the Committee,

1.1.4. the many countries not yet having ratified the Complaints Procedure Protocol;

1.2. Ensuring an effective follow-up of any negative conclusions by the ECSR, in particular by

1.2.1. Initiating at the appropriate (national/regional/local) level the respective changes in law and/or practice;

1.2.2. Monitoring the outcome;

1.3. Reinforcing within the European Union's framework the compliance with and the promotion of the Charter's standards, in particular by applying, in substance, the same approach to the RESC as to the Charter of Fundamental Rights of the European Union in respect of legislative and all policy measures; all institutions and above all the Commission, the Parliament and the Council should follow this equivalence approach and integrate it in their respective procedures;

1.4. Raising of awareness, in particular by

1.4.1. (eventually translating and) ensuring a wider dissemination of the ECSR 's annual conclusions and to at the national level;

1.4.2. Organising seminars etc. in the judiciary, the universities, the public administration, social partners;

- 1.4.3. Using all possible means to introduce the ECS's requirements in legal proceedings;
- 1.5. Improving the reporting to the ESC's Secretariat, in particular by
 - 1.5.1. Sending the reports in time;
 - 1.5.2. Improving the content (i.a. by pointing more precisely to the specific problems in respect of implementation of the Charter's provisions);

2. the Committee of Ministers to open up a new framework for fundamental social rights by

- 2.1. Raising the political profile of the ESC in the activities of the Council of Europe;
- 2.2. Enhancing ratification of the relevant instruments, in particular by
 - 2.2.1. Starting and continuing a general ratification campaign in respect of the relevant instruments – monitoring of the campaign at annual intervals,
 - 2.2.2. Ending ratification of the “Old Charter” (1961 version) and the (1st) Additional Protocol (1988);
- 2.3. Monitoring more effectively, in particular by
 - 2.3.1. Adapting the actual Reporting System by providing for an every two years reporting on most important (‘hard core’) articles (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20),
 - 2.3.2. Revising of the Rules of Procedure of the Collective Complaints Protocol with the aim to guarantee the coherence between the Reporting Procedure and the Collective Complaints Procedure (v.g. Resolution of the Council of Ministers should be addressed to the Governmental Committee in the Cycle after the adoption of the Resolution to give time to Governments to put measures in place),
 - 2.3.3. Ensuring an effective follow-up to the conclusions in the reporting system and decisions in the complaint procedure system of the ECSR, i.a. by adopting recommendations more frequently and including in the recommendations concrete measures and respective timetables,
 - 2.3.4. Speeding up the internal procedure in order to allow for publication of the report of the ECSR before the time-limit of 4 months;
- 2.4. Starting work on the accession of the EU to the Revised European Social Charter by giving the Steering Committee the mandate (terms of reference) to set up a Working Group with the European social partners as observers;
- 2.5. Strengthening consultation with European Social Partners at all levels;
- 2.6. Increasing budgetary funds for more personnel and promotional activities;

3. the Parliamentary Assembly of the Council of Europe to give fundamental social rights a more prominent role by

- 3.1. Conducting hearings on specific rights on regular basis;
- 3.2. Monitoring and further promoting the role of parliaments in the consolidation and development of social rights in Europe according to Resolution 1824 (2011) and Recommendation 1976 (2011) of 23 June 2011;

4. the European Committee of Social Rights to fully use its powers, in particular by

- 4.1. Creating and/or intensifying contacts and dialogue with relevant institutions like the European Courts (European Court of Human Rights and the Court of Justice of the

European Union) and international bodies supervising fundamental social rights (i.a. the International Labour Office in general and the ILO Committee of Experts on the Application of Conventions and Recommendations in particular, UN Committee of Economic, Social and Cultural Rights) in order to contribute to the coherence between case Law of the different supervisory bodies also in respect of the European Code of Social Security;

- 4.2. Trying to compensate the prolongation of the reference periods by additional measures such as giving information prior to the normal cycle;
- 4.3. Organising hearings/consultations with i.a. European Social partners;

5. the Governmental Committee of the ESC to respond effectively to challenges, in particular by

- 5.1. Reviewing the rules of procedure in order to provide for an effective political monitoring, in particular according to the restructuring and merging the Committee of Experts on Social Security with the Governmental Committee;
- 5.2. Reviewing the Working methods by providing, in particular, for
 - 5.2.1. A strong position including proposals for individual recommendations against countries that do not submit the reports and/or do not provide in time the ECSR with relevant information;
 - 5.2.2. An annual letter to delegates each year, with copy to (i) their national administration, (ii) permanent representative within the Council of Europe and (iii) the national (representative) social partners, stressing their contribution to the reinforcement of the ESC and referring the national situations of non-conformity, the information provided and the Conclusions adopted by the GC;
 - 5.2.3. An annual decision on the first time 'Negative Conclusion' being assessed orally according to an objective criteria (i) Serious character of the situation, (ii) Importance of the rights concerned; (iii) Number of persons concerned, (iv) Number of collective complaints, (v) Serious threaten resulting from conjectural conditions, etc).

6. the Secretariat of the ESC to strengthen promotional activities by

- 6.1. Reinforcing awareness raising campaigns within public administrations, social partners and civil society, in particular by
 - 6.1.1. Providing for seminars (including social partners);
- 6.2. Translating the ECSR Conclusions in all languages of the Contracting Parties;
- 6.3. Consulting regularly social partners;
- 6.4. Intensifying cooperation with the International Labour Office.