

ETUC Resolution on ETUC human rights, legal and strategic litigation network: ETUCLEX

Adopted at the Executive Committee of 28-29 October 2020

Promoting and defending human rights, including labour and trade union rights, has always been at the core of the priorities and actions of the ETUC. Freedom of association, the right to organise, to bargain collectively and to take collective action, the right to information and consultation, the right to freedom of expression, elimination of discrimination, equal remuneration and decent work all lie at the heart of the work and values of the ETUC. These fundamental rights of workers are all guaranteed by international (UN/ILO) and European (Council of Europe/European Union) human rights instruments as well as by most EU Member States and their national constitutional traditions.

In its [Action Programme 2019-2023](#) adopted in May 2019 at the 14th Statutory Congress in Vienna, the ETUC, as a Human Rights Defender, reaffirmed its longstanding commitment to promoting and defending fundamental human, labour and trade union rights and social rights, including inter alia the right to health and social care, water and sanitation, energy and education. It committed itself amongst others (§§ 229-230):

- to developing a bold common strategy against structural, political and legal restrictions of human and trade unions rights, especially the freedom of association, the right to organise, the right to collective bargaining and the right to strike;
- to enhancing the work done within and by the ETUC Fundamental Rights and Litigation Advisory Group, in particular by ensuring, where appropriate in cooperation with the International Trade Union Confederation (ITUC), increased use of, or when necessary, work to improve, all existing (quasi or extra)-judicial monitoring and enforcement mechanisms available at UN, ILO and Council of Europe as well as EU levels and by making publicity for best practices; and
- to continue to call on the EU institutions, and in particular the European Commission, to ensure that in the design, interpretation and implementation of EU legislation and policy in particular when launched under the European Pillar of Social Rights – those international UN, ILO and Council of Europe instruments are duly taken into account to avoid EU (case-) law and policies contradicting, restricting or adversely affecting the rights and principles recognised by those instruments to which the EU and/or Member States have signed up.

In addition, the ETUC reaffirmed the need and commitment:

- ‘to support affiliates in their work to assist workers who have been victims of transnational frauds and abuses, facilitating exchange of information, access to courts, and other forms of transnational cooperation’ (§ 177),
- ‘to develop a litigation strategy with regard to the lack of enforcement on OHS’ (§216),
- ‘to take legal action through the International Labour Organization (ILO) or the Council of Europe and its European Committee of social rights on the grounds of violation of the fundamental rights of EU workers on non-standard work’ (§ 403),
- (...) ‘to strengthen and coordinate trade union networks providing information and assistance to mobile workers and citizens including through legal action on fair mobility, free movement and posting of workers (...)’ (§ 464),
- ‘to strongly promote the establishment of a chamber for labour and social law in the European Court of Justice and European Court. The creation of such dedicated chamber is already foreseen in the Court’s rules of law. European trade unions shall be able to send

representatives as lay judges to such chambers in order to add expert knowledge of everyday working life' (§178).

The ETUC capacity to provide legal and human rights expertise and support to its affiliates has developed over the years and gained in recognition and added value for the trade union movement in Europe. The ETUC also has a long-standing track record of intervening jointly with or in support of its affiliates in (quasi- or extra-) judicial procedures and processes in different fora (ILO, Council of Europe and EU) in a wide range of areas such as trade union rights, austerity measures, dismissal protection, occupational safety and health, privacy and data protection – and often so with a successful outcome¹.

To consolidate, reaffirm and renew this fruitful collaboration with affiliates, the ETUC aims to strengthen the NETLEX and FRLIT AG as an enhanced network for human rights, legal and strategic litigation support, under the acronym 'ETUCLEX'. The ETUC will ensure the political coordination of the network on the basis of existing resources, such as:

- the ETUC legal team;
- the coordination of activities of relevant ETUC committees and networks, such as the ETUC permanent Committee on Labour and Internal Market Legislation ('LIML'), the ETUC Trade Union Legal Experts network 'NETLEX' and the ETUC Fundamental Rights and Litigation Advisory Group ('FRLIT AG');
- the cooperation with the ETUI and other existing trade union related or relevant (legal) networks and organisations.

The main objectives of the ETUCLEX are amongst others:

- to enhance and to give more visibility to the ETUC work in the field of legal and human rights expertise, including through **exchange of information and access** to existing legal expertise (including a dedicated ETUCLEX website – see below);
- to **provide legal advice and expertise input** to the ETUC affiliates, where possible, relevant and requested;
- to consolidate the **legal and human rights expertise, competence and capacity** of the ETUC and its affiliates as regards their legal and litigation activities, to help making the case for workers and trade unions as key actors in (social) law making and the defence of social justice; to allow for a more strategic use of European and international law and jurisprudence to promote and defend trade union and workers' rights;
- to foster a **coordinated strategic litigation approach** amongst the ETUC and its affiliates, to improve access to justice and litigation strategies, with the view to influencing European and international case law as well as to improve access to collective redress for workers and trade unions in relevant fora;
- to provide where possible **support for litigation strategies** at international, European and national levels to affiliates engaged in litigation with the aim to defend and advance trade union and labour rights standards;

¹ E.g. in the period 1999-2020 the ETUC has submitted written third-party interventions (called "Observations") in relation to around 47 collective complaints (out of the overall 196 complaints submitted/admitted so far) several of which were submitted by ETUC affiliates (or their affiliates). The ETUC also submitted two own collective complaints jointly with the concerned affiliates in Belgium and Bulgaria. As for third-party interventions before the European Court of Human Rights, the ETUC submitted 13 interventions in the period 2012-2020.

- to enhance, where relevant and necessary, the **ETUC presence and intervention** in different fields and fora, including courts and legal bodies, primarily at European level (EU and Council of Europe) but also at international level if needed (UN, ILO);
- to support and stimulate **capacity building and training opportunities** for legal experts of the ETUC affiliates.

The objectives and functions of the ETUCLEX will be further elaborated in a concept note/roadmap to be regularly reviewed in consultation with the LIML committee and FRLIT AG.

The ETUCLEX website will serve as an interactive forum with restricted access to facilitate information exchange, access to documents and discussions on relevant legal developments, as well as to improve coordination of input and strategies regarding pending cases. A database will show-case relevant European and international case law, in which the ETUC and/or affiliates played an active role. The thematic sections of the website will provide relevant materials on trade-union-related legal topics and issues, together with links to useful external resources, aiming to offer a better overview of existing resources, human rights standards and available legal fora. The website will be managed by the ETUC and will grow over time with the interactive contributions from affiliates.

The ETUCLEX aims to gather the collective legal and human rights expertise already present within the European trade union movement. In this sense, ETUC affiliates and their legal experts may play an active role within the ETUCLEX both as contributors and beneficiaries when it comes to dissemination of information, sharing of good practices, lessons learnt and legal advice. Affiliates may engage with the ETUCLEX e.g. through the early identification of and communication on important pending cases, analysis and follow-up of cases and important legal developments, outreach to relevant legal experts in the networks and/or participation in ad hoc taskforces or thematic discussions.

The collective legal know-how of the European trade union movement has already proven an asset in the past, and its joint efforts at European level should step by step be consolidated in the form of a shared long-term vision. Besides the commitment to ETUC policy work, the ETUCLEX will bring about a renewed effort to improve the political coordination, guidance, cooperation and support to affiliates, with a view to stimulate strengthened ownership, interactions, synergies and mobilisation of legal and litigation activities among affiliates. The ETUC is also well aware that the ETUCLEX will need some time to develop. The ETUC will therefore elaborate a realistic timeline with the permanent committee on LIML and the FRLIT AG.