

## A Brief Overview of the European Social Charter System

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### An Overview of the System

The [European Social Charter 1961](#) (ESC/the Charter) was established as the sister instrument to the European Convention of Human Rights. **Ratified by 43 out of 47 Council of Europe member states**, it has historically been marginalised within the Council of Europe human rights system. Indeed, the European Social Charter has only really begun to come into its own after a process in the early 1990s aimed at its revitalisation. This resulted in the adoption and coming into force of the [Revised European Social Charter 1996](#) (RESC/the Revised Charter) – an instrument that 'updates' and expands significantly upon the rights set out in the original Charter. While the 1961 Charter was predominantly a labour rights instrument, the Revised Charter contains a much wider range of social rights. However, like its 1961 counterpart, the Revised Charter (ratified by **34** Council of Europe member states) establishes an '**à la carte system**' of ratification (Article 20 ESC; Article A RESC); in order to be bound by that instrument, the State must accept a minimum number and range of provisions in Part II of the respective Charters but is then free to decide what other provisions of the ESC/RESC it wishes to be bound by. Where a State accepts a RESC provision that corresponds to a provision under the ESC then the State ceases to be bound by the relevant provision of that latter instrument (Article B RESC). (Information on which states have accepted which provisions is available [here](#)).

The European Social Charter 1961 sets out the following rights:

- (1) Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
- (2) All workers have the right to just conditions of work.
- (3) All workers have the right to safe and healthy working conditions.
- (4) All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
- (5) All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
- (6) All workers and employers have the right to bargain collectively.
- (7) Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
- (8) Employed women, in case of maternity, and other employed women as appropriate, have the right to a special protection in their work.
- (9) Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
- (10) Everyone has the right to appropriate facilities for vocational training.
- (11) Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
- (12) All workers and their dependents have the right to social security.
- (13) Anyone without adequate resources has the right to social and medical assistance.
- (14) Everyone has the right to benefit from social welfare services.

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- (15) Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.
- (16) The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
- (17) Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.
- (18) The nationals of any one of the Contracting Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
- (19) Migrant workers who are nationals of a Contracting Party and their families have the right to protection and assistance in the territory of any other Contracting Party.

All of these rights provisions contain sub-paragraphs setting out detailed 'undertakings' on the part of states with regard to the 'top-line' rights set out above.

**Building on the labour rights foundation of the ESC 1961, the 1996 RESC introduced a wider range of social rights.** These included the right of elderly persons to social protection (Art. 23 RESC); a general right to education (Article 17); the right to protection against poverty and social exclusion (Art. 30 RESC); the right to housing (Art. 31 RESC); a more developed right of disabled persons to independence, social integration and participation in the life of the community than that found under the ESC (Art. 15 RESC); and a non-discrimination clause (Article E RESC) that is closely based on Article 14 ECHR.

The scope and content of the different rights has been discussed in detail by the European Committee of Social Rights in its **Statements of Interpretation**. These are available on the [HUDOC-ESC](#) system, which also hosts the Committee's conclusions and decisions on collective complaints (see below).

The existence of two instruments – the ESC and the RESC – creates **a risk of parallel systems of protection**. However, the European Committee of Social Rights (ECSR/the Committee) has **minimised this risk by identifying key areas of overlap between, and developing consistent interpretations of, provisions of the ESC/RESC** in its work (for instance in its interpretation of Article 16 ESC so as to protect aspects of the right to adequate housing, which is expressly set out as a free-standing right in Article 31 RESC). While this approach has sometimes been challenged by states in the context of the collective complaints process (discussed below), this has been relatively rare.

It will be clear from the list of rights above that the 1961 Charter **goes beyond the [International Covenant on Economic, Social and Cultural Rights](#) in relation to some areas of economic and social rights protection**, at least in terms of the express text of the relevant rights provisions.<sup>2</sup> This is particularly so with regard the level of specificity of labour rights and social security/social and economic protection rights. This is perhaps unsurprising, given that ICESCR is an international instrument which was drafted by negotiators from a range of global regions and which is open to ratification by all members of the United Nations. In contrast, **the ESC is a regional instrument, directed towards a relatively narrow number of states with relatively well-developed economies and welfare state systems**. While both treaties appear to contemplate a developed welfare state as the ideal in terms of delivering economic and social rights, this commitment to a welfare state model is particularly clear from the contents of the 1961 Charter and reflective of socio-political attitudes in Europe at the time of drafting. Nor is the full achievement of the rights under the 1961 Charter expressly subject to **progressive realisation and maximum available resources** in the way that ICESCR

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<sup>2</sup> The work of the United Nations Committee on Economic, Social and Cultural Rights in developing authoritative interpretations of ICESCR rights through its General Comments means that elements of economic and social rights that are expressly mentioned in the ESC are understood to be covered by ICESCR even though they are not referred to on the face of that instrument.

is (see [Article 2\(1\) ICESCR](#)). That said, these **qualifications have effectively been read into the Charter** by the European Committee of Social Rights in its collective complaints case-law: in [Autism-Europe v France](#) (Complaint no 13/2002; 4 November 2003) the Committee stated that,

[53] ... 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 allows 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 well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings

Notably, while the Charter is specifically focused on economic and social rights, it has also been interpreted by the European Committee of Social Rights **to accord protection in areas traditionally associated with civil and political rights**, including physical punishment of children, the right to vote and juvenile justice<sup>3</sup>.

In terms of regional human rights law, the Charter also provides much more extensive economic and social rights protection than the **European Convention on Human Rights**, while the ESC/RESC go beyond the **European Union Charter of Fundamental Rights** in a number of ways (and, indeed, [EU law more broadly](#)). (Indeed, the ECSR has previously refused to operate on the basis of a presumption that compliance of domestic law with EU law means that it complies with the Charter).<sup>4</sup> Furthermore, **neither of these instruments has a system that corresponds to the ESC reporting process**.

## The Monitoring System

### *The Reporting System*

The **European Committee of Social Rights plays the lead role in supervising the compliance of states parties to both Charters**. (Note that the process of supervision has evolved significantly since 1961, and the role of different bodies in relation to it have also – on that basis, reading the texts of the ESC/RESC gives only a partial overview of how the supervision system operates in practice). The ECSR is a body of independent experts who are elected to the Committee for terms of six years each. They consider state reports in relation to different provisions of the Charter, adopting conclusions that are published every year (generally in January). They differ from those of UN treaty-monitoring bodies in that they are explicit **findings of conformity/non-conformity**.

Since the mid-2000s, the provisions of the Charter have been divided into four thematic groups. States parties present a report on the provisions relating to one of the four thematic groups on an annual basis. Therefore, each provision of the Charter is reported on **every four years**.

The four groups of provisions are as follows:

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<sup>3</sup> See, e.g., General observation to Conclusions XV-2 (2001) regarding Articles 7(10) and 17; *ERRC v France*, Complaint No. 51/2008, decision on the merits of 19 October 2009; [Conclusions XIX-4 - United Kingdom - Article 17](#) (09/12/2011).

<sup>4</sup> See, e.g., *Confédération Générale du Travail (CGT) v France*, Collective Complaint No. 55/2009 (23/06/2010) where the Committee stated that: '[35] The Committee considers that neither the situation of social rights in the European Union legal order nor the process of elaboration of secondary legislation would justify a similar presumption [to the 'Bosphorus Presumption' of the European Court of Human Rights] – even rebuttable – of conformity of legal texts of the European Union with the European Social Charter. [36] Furthermore, the lack of political will of the European Union and its member states to consider at this stage acceding to the European Social Charter at the same time as to the European Convention on Human Rights reinforces the Committee's assessment'.

**Group 1: Employment, training and equal opportunities:** Article 1 - Article 9 - Article 10 - Article 15 - Article 18 - Article 20 - Article 24 - Article 25. (**Note:** Articles 20, 24 and 25 do not form part of the 1961 Charter so the countries that have not ratified the 1996 Charter do not report on them).

**Group 2: Health, social security and social protection:** Article 3 - Article 11 - Article 12 - Article 13 - Article 14 - Article 23 - Article 30. (**Note:** Articles 23 and 30 do not form part of the 1961 Charter so the countries that have not ratified the 1996 Charter do not report on them).

**Group 3: Labour rights:** Article 2 - Article 4 - Article 5 - Article 6 - Article 21 - Article 22 - Article 26 - Article 28 - Article 29. (**Note:** Articles 21-29 do not form part of the 1961 Charter so the countries that have not ratified the 1996 Charter do not report on them).

**Group 4: Children, families, migrants:** Article 7 - Article 8 - Article 16 - Article 17 - Article 19 - Article 27 - Article 31. (**Note:** Article 31 does not form part of the 1961 Charter so the countries that have not ratified the 1996 Charter do not report on it).

The follow-up to the conclusions of the European Committee of Social Rights is ensured by the [Committee of Ministers of the Council of Europe](#) (COM) (the same body that monitors implementation of decisions of the European Court of Human Rights).<sup>5</sup> The COM intervenes in the last stage of the Reporting System. Its work is prepared by the Governmental Committee of the European Social Charter and European Code of Social Security. (This latter body is made up of representatives of the States party to the Charter and assisted by observers representing European trade unions and employers' organisations). Having regard to the proposals made by the Governmental Committee, the COM adopts a **Resolution** by a majority of two-thirds of those voting.

The resolution closes each supervision cycle and may contain individual recommendations to the States parties concerned. In practice, these are very generally phrased and do not add to the work of the ECSR. (For [example](#), the COM often merely 'considers' the state reports and the ECSR's Conclusions and '[r]ecommends that governments take account, in an appropriate manner, of all the various observations made in the Conclusions 2015 of the European Committee of Social Rights and in the report of the Governmental Committee'). If a State then takes no action, the Committee of Ministers, again on a proposal from the Governmental Committee, may address a **Recommendation** to that State, asking it to change the situation in law and/or in practice. Such recommendations are very rare. Resolutions and Recommendations can be found [here](#).

**It is however the job of the European Committee of Social Rights to determine whether the situation has been brought into compliance with the Charter following its finding of non-conformity.** This determination is generally carried out in the context of the reporting process, although it would also be possible for it to be done in the context of collective complaints procedure.

#### *The Collective Complaints System*

The **Committee also serves as a quasi-judicial body in considering collective complaints alleging unsatisfactory application of the Charter by States.** The collective complaints system was established through the coming into force of the 1995 [Additional Protocol to the European Social Charter Providing for a System of Collective Complaints](#). In order to bring a collective complaint on a specific issue, the state in question will need to have accepted to be bound by both the relevant ESC/RESC on which the complaint is based, as well as the Additional Protocol on collective complaints. (There are currently **15 states parties to the Additional Protocol**). The European Committee of Social Rights makes decisions about the admissibility and on the merits of a complaint. The Council of Europe Committee of Ministers plays a role monitoring the application of the decisions of the ECSR. This can – and often does – include the adoption of a resolution following an ECSR decision that may include

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<sup>5</sup> Much of the next three paragraphs is taken from the Committee's [website](#).

recommendations that the state in question take specific measures to bring the situation into line with the Charter.

Note that the collective complaints system is **not an individual mechanism** making provision for an individual remedy. Article 1 of the Collective Complaint Additional Protocol recognises the right of the following organisations to submit complaints alleging unsatisfactory application of the Charter:

- a) international organisations of employers and trade unions referred to in paragraph 2 of Article 27 of the Charter;
- b) other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee;
- c) representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.

In practice, **group (b) complainants play an ever-greater role** in bringing social rights (as opposed to primarily labour rights) complaints. According to Article 2(1) of the Additional Protocol, Contracting States may also **declare that they recognise the right of any other representative national non-governmental organisation** within its jurisdiction which has particular competence in the matters governed by the Charter, to lodge complaints against it. Only Finland has made such a declaration.

It is also possible for [third parties](#) to provide input with regard to the collective complaints proceedings brought by others.

As with many other international and regional human rights bodies, the European Committee of Social Rights can, at any stage of the collective complaints proceedings, 'at the request of a party, or on its own initiative, indicate to the parties any immediate measure, the adoption of which is necessary to avoid irreparable injury or harm to the persons concerned' (Rule 36, [Rules of the European Committee of Social Rights](#)). It has done so in a number of cases.

**It is the job of the European Committee of Social Rights to determine whether the situation has been brought into compliance with the Charter following its finding of non-conformity.** This is done through a follow-up process managed by the Committee and the Secretariat.

#### A very small selection of the ECSR's rights-thematic case-law

- Health rights
  - E.g., [Transgender Europe & ILGA-Europe v Czech Republic](#), 117/2015
- Trade union rights and the right to strike
  - E.g., [EUROCOP v Ireland](#), 83/2012
- Social security rights
  - E.g., [IKA-ETAM v Greece](#), 76/2012
- Workers' rights
  - [GSEE v Greece](#), 111/2014
- Environmental rights
  - E.g., [Marangopoulus Foundation Human Rights v Greece](#) 30/2005

- Housing rights
  - E.g., [FIDH v Ireland](#) 110/2014

A very small selection of the ECSR's groups-thematic case-law

- Child rights
  - The child physical punishment [complaints](#) brought by OMCT (2003) and APPROACH (2013)
- Disability rights
  - E.g., [MDAC v Belgium](#), 109/2014
- Migrant/asylum-seeker rights
  - E.g., [FIDH v France](#), 14/2003
- And many, many Roma rights cases...