

Social Rights in Europe



*ETUC,
The voice of 60 million
workers in Europe*



Social Rights in Europe

Report carried out by Gérard Fonteneau (ETUC)
and the Human Rights at Work Foundation

February 2002

Social Rights in Europe



This report, laid out in chapters gives a brief description of the legal instruments (contents, control and eventual appeal) of

- The International Labour Organisation
- The Council of Europe
- The European Union
- This document can be used for informing or training union officers and activists.

Indeed little is known of these systems and they are not used very often. (e.g.) The Collective Complaints procedure in the case of the European Social Charter or in the National Courts.

The ETUC has done everything in its power to improve and secure the content of rights (Revised European Social Charter, System of Collective Bargaining of the Council of Europe,

the Charter of Fundamental Rights of the Council of Europe) which make up a platform for globalisation in which social and solidarity dimensions are assured.

These actions continue, mainly within the framework of the convention charged with preparing the next revision of the Treaty in order to give a legal and political dimension to the EU's Charter of Fundamental Rights.

The ETUC and its organisations intend to promote these three instruments which complement each other, in order to secure a guaranteed basis of civil, political, economic, social and cultural rights for every European – male or female – without discrimination.

Emilio Gabaglio
General Secretary

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International labour Standards

Social Rights in Europe



- *Document no. 1* : Sources of Law
- *Document no. 2* : International Sources of Human Rights
- *Document no. 3* : Universal Instruments
- *Document no. 3.1* : International Labour Organisation
- *Document no. 3.2* : Fundamental Human Rights
- *Document no. 3.3* : Adoption of Conventions and Recommendations
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- *Document no. 4* : Pan-European instruments
- *Document no. 5* : The Charter and its Protocols
- *Document no. 6* : Revised Charter
- *Document no. 6.1* : Rights guaranteed
- *Document no. 6.2* : Control Procedure
- *Document no. 6.3* : Collective Complaints Procedure
- *Document no. 6.4* : What is meant by right to housing?

Sources of Law

National	International
<ul style="list-style-type: none">• Constitutions• Legislations• Cross-sectoral and sectoral collective agreements (including enterprise and regional agreements)	<ul style="list-style-type: none">• Universal instruments: United Nations / ILO• Pan-European instruments: Council of Europe• European instruments (E.U.)<ul style="list-style-type: none">- Directives- European Agreements

- Human rights may be divided into civil, political, social, economic and cultural rights.

- In principle, all these rights are inalienable and inter-related and everyone regardless of gender, status or origins should have access to them without discrimination.

- In practice, economic, monetary and commercial instruments (IMF, World Bank, WTO, EU) carry more weight than social instruments (ILO).

Access to rights is very unequal.

States are responsible for this imbalance.

The working-class struggles of the nineteenth and twentieth centuries led to the establishment of national and international instruments (ILO, UN).

The European social heritage (labour law, social security, equal treatment, non-discrimination) exists thanks to these struggles.

It was supplemented by national, cross-sectoral and sectoral agreements (ILO

Convention no. 98) which the ETUC has tried to extend to cross-border level.

International Sources of Human Rights

Civil, political and social rights

<i>Universal instruments</i>	<i>Pan-European instruments</i>	<i>European instruments</i>
<ul style="list-style-type: none"> • United Nations -1944 <ul style="list-style-type: none"> - Universal Declaration of Human Rights (1948) - UN Pacts – civil and political rights and economic and social rights - Various Conventions (Women, Children) • International Labour Organisation (ILO) – 1919 <ul style="list-style-type: none"> - 175 Member States - Tripartite structure - Instruments : 174 Conventions (Human rights at work) of which 70 are operational and 8 compulsory since 1998 ; Fundamental social rights (trade union rights; abolition of forced labour; equal pay and non-discrimination; elimination of child labour) 	<ul style="list-style-type: none"> • Council of Europe – 1951 (44 Member States) European Convention on Human Rights binding in every Member State. Individual recourse possible before the Court of Justice in Strasbourg. • Social Charters (1961 revised in 1996) <ul style="list-style-type: none"> - Human rights at work + social rights (housing, migrants, protection against poverty and social exclusion) - 40 States have signed the Charter - 28 States have ratified it - Compliance is monitored with trade union participation. Collective appeals possible (since 1998) if not applied 	<p>(15 + Norway and Iceland)</p> <ul style="list-style-type: none"> • Treaty <ul style="list-style-type: none"> - Possibility for employers’ and workers’ organisations to conclude cross-border European collective agreements. - The EU “may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religious belief, disability, age or sexual orientation.” (Article 13 of the Treaty) • Social directives (the most important) <ul style="list-style-type: none"> - Equal treatment - Health and safety at work - European Works Councils • European collective agreements <ul style="list-style-type: none"> - Parental leave - Part-time workers - Fixed term contracts • EU Charter of Fundamental Rights (Nice – December 2000)

Universal Instruments

It is very important to promote and make use of these instruments, if globalised capitalism is to come under democratic control and regulation.

1 United Nations

- Declaration of Fundamental Human Rights (1948), background text
- International pact on civil and political rights
- International pact on economic and social rights
- Conventions
 - Convention on the Elimination of All Forms of Discrimination against Women (1979)
 - Convention on the Rights of the Child (1989)
 - Convention relating to the Status of Refugees (1951) and its protocol (1967)

Monitoring ...► regular reports must be submitted to the United Nations Economic and Social Council.

Most serious cases are examined by the United Nations Commission on Human Rights

...► Selective decisions. No sanctions ! Use vis-à-vis public opinion.

Document No. 3.1

2 International Labour Organisation

(International Labour Office)

- Tripartite Organisation (Employers-Workers-Governments)
Since 1919 – Draws up international standards to ensure social progress in the face of unbridled competition

- **Objectives** : To promote social justice, peace and workers' interests

- **Means** : The drawing up of international instruments (Conventions and Recommendations) to establish objectives and criteria in every aspect of working and social life.

- To assist countries and the social players in implementing social policies (child labour, the development of health care funds, decent work, equal treatment, migrant workers, trade union law etc.)

International instruments

- 174 Conventions of which +/- 70 are operational.

- 8 Conventions (trade union rights, equal treatment, forced labour and elimination of child labour) regarded as binding on all Member States since 1998.

- Conventions drawn up and negotiated on a tripartite basis with national and international phases (Duration: 2 years)

Adopted by the International Labour Conference (2000 tripartite participants)
– 2/3 majority

Ratified by each country – (Ratification = international treaty)

Monitored by independent expert groups, then by the ad-hoc tripartite commission (+/- 300 members), followed by a report to the International Labour Conference.

Complaints possible, especially regarding violations of trade union rights (2000 complaints).

Document No. 3.2

Fundamental Human Rights (ILO Declaration - 1998)	
No.29	Forced Labour – 1930 Suppression of forced labour and compulsory labour in all forms in the shortest possible time.
No.87	Freedom of Association and protection of the right to organise - 1948. The right, freely exercised, of workers and employers, without distinction, to organise for furthering and defending their interests.
No.98	Right to organise and collective bargaining – 1949 Protection of workers, who are exercising the right to organise, no interference between workers' and employers' organisations; promotion of voluntary collective bargaining
No.100	Equal remuneration – 1951. Equal remuneration for men and women for work of equal value.
No.105	Abolition of Forced Labour – 1957. Prohibition of the recourse to forced or compulsory labour in any form for certain purposes.
No.111	Discrimination Employment and Occupation – 1958. To promote equality of opportunity and treatment in respect of employment and occupation. Discrimination is defined as any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, extraction or social origin.
No.188	Minimum age - 1973. The abolition of child labour. The minimum age for admission to employment or work shall be not less than the age of completion of compulsory schooling (normally not less than 15 years).
No.182	Worst forms of child labour Convention - 1999.

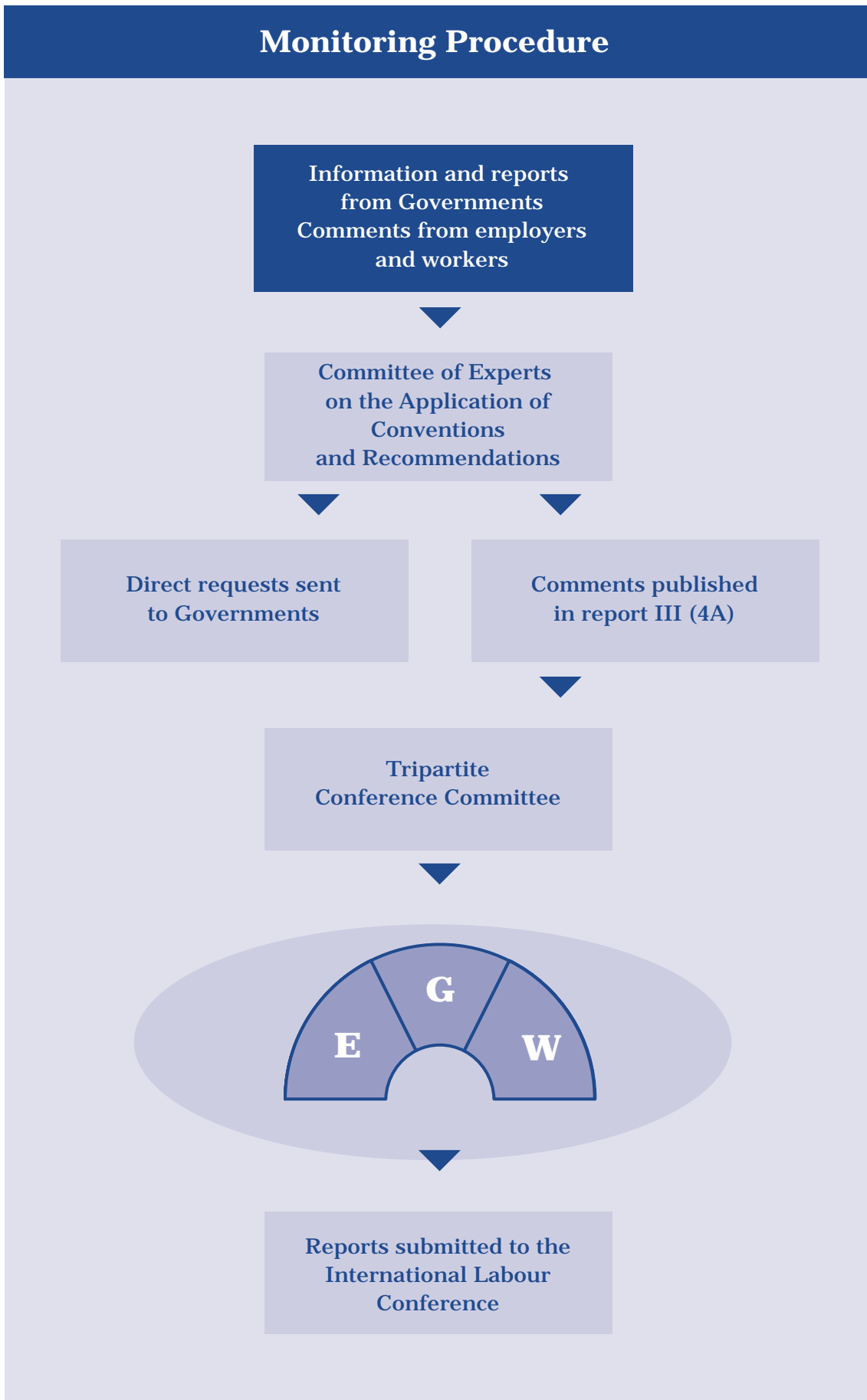
Compliance with the Declaration is subject to regular checks.
In principle, these 8 Conventions should be ratified and applied by all 175 members of the ILO.

Document No. 3.3

Adoption of Conventions and Recommendations

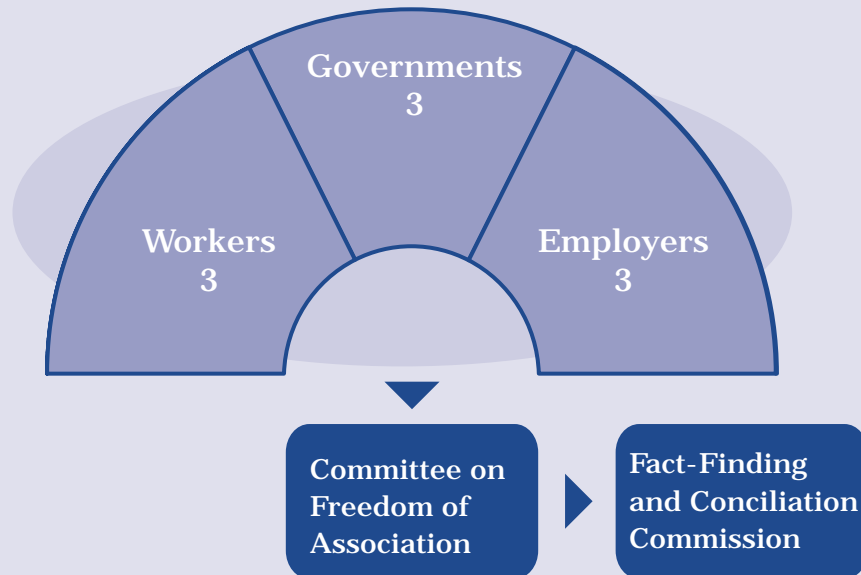


Document No. 3.4

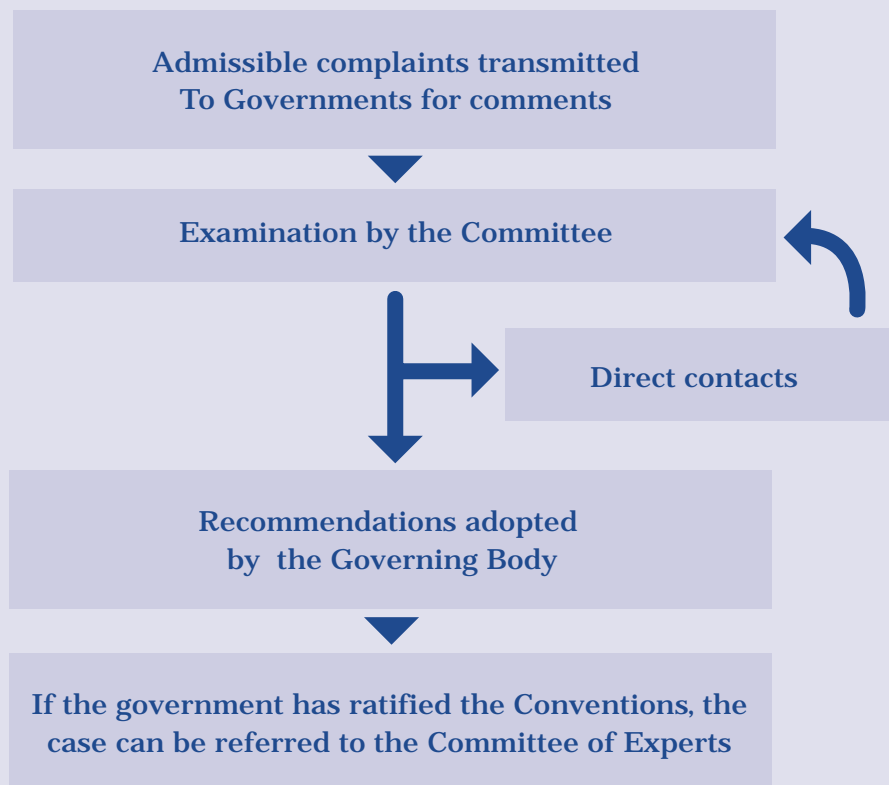


Document No. 3.5

Special Procedure for freedom of association



GOVERNING BODY



Pan-European instruments

Council of Europe - 44 States - Strasbourg - founded 1949

The European Convention on Human Rights

- Binding in every Member State.
- Sets out civil and political rights, fundamental rights and freedoms – including freedom of expression and association – ban on torture.
- Basic text + 12 additional protocols; No. 6 – ban on the death penalty; No. 12 – non-discrimination.
Freedom of association is guaranteed.
- Court of Justice – receives individual complaints and delivers judgement on the accused country.

The Social Charters

- 1961 : Social human rights (19 articles including labour rights, trade union rights, social security, migrant workers etc.)
- 1996 : Revised Charter – the 19 rights from 1961 plus 12 new rights (information/consultation in companies, protection of elderly persons, right to housing, right to protection against poverty and social exclusion etc.)
- Monitoring → file
- System of Collective Complaints → document

The European Social Security Code

- Intended to promote high levels of social protection (9 sectors)
- Improve the convergence of social security systems

The Charter and its Protocols

- **Two Charters, Three protocols**
- **European Social Charter - 1961**
- **Additional protocol - 1998**
- **Amending Protocol - Turin, 1991**
- **Revised European Social Charter - 1999**
- **Collective Complaints protocol - 1998**

■ **European Social Charter**

- **Opened for signature 1961**
- **Entered into force 1965**
- **19 States are currently bound by the Charter**
- **5 States have transferred to the Revised Charter**

■ **1998 Additional Protocol**

- **4 new rights**

- **Art. 1:** a more comprehensive right to gender equality in employment (Art. 20, Revised Charter)
- **Art. 2:** right to information and consultation (Art. 21, Revised Charter)
- **Art. 3:** right to take part in determination and improvement of working conditions and working environment (Art. 22, Revised Charter)
- **Art. 4:** right of elderly persons to social protection (Art. 23, Revised Charter)

- **10 States have ratified the Additional Protocol**

■ Amending Protocol

Turin, 1991

- **Clarifies the role of the European Committee of Social Rights**
(Judicial Conformity)
- **Clarifies the role of the Governmental Committee**
(Socio-Political Dimension)
- **Increases transparency of reporting system**

Revised Charter

- **Opened for signature 1995**
- **New Treaty including the original Charter and the Additional Protocol (and their amendments) as well as new rights**
- **Same control mechanisms as European Social Charter**
- **Intended to replace European Social Charter as states progressively ratify the new text**
- **9 States have ratified the Revised Charter**

Document No. 6.1

■ **Guaranteed Rights**

- *Non-discrimination*
- *Employment rights*
- *Rights linked to working Conditions*
- *Trade union Rights*
- *Solidarity*
- *Health*
- *Rights of Children*

■ *Non-discrimination*

- **Art. E** comprehensive guarantee
- **Appendix** equal treatment for the contracting parties
- **Art. 1.2** non-discrimination in access to employment
- **Art. 4.3** equal pay
- **Art. 19.4** equal treatment for migrant workers
- **Art. 20** gender equality in employment
- **Art. 27** equal treatment for workers with family responsibilities

■ *Employment rights – right to work*

- **Art. 1** right to work
- **Art. 9** right to vocational guidance
- **Art. 10** right to vocational training
- **Art. 15** guidance and training for the disabled
- **Art. 24** Protection in cases of termination of employment

■ *Rights linked to Working Conditions*

- **Art. 2** Fair Working Conditions
- **Art. 3** Safety and hygiene at work
- **Art. 4** Fair pay
- **Art. 7** Protection of children and adolescents
- **Art. 8** Maternity protection
- **Art. 25** Protection of worker credibility
- **Art. 26** Dignity at work
- **Art. 27** Equal treatment of workers having family responsibilities

■ *Collective Labour Rights*

- **Art. 5** right to join a Trade union
- **Art. 6** right to collective bargaining
- **Art. 21** information and consultation
- **Art. 22** determination and improvement of working conditions and working environment
- **Art. 28** Protection of worker representatives
- **Art. 29** information and consultation in cases of redundancy

■ *Solidarity*

- **Art. 12** right to social security
- **Art. 13** right to social and medical assistance
- **Art. 14** right to social service benefits
- **Art. 15** right of disabled persons to independence, social integration and community participation
- **Art. 16** social, legal and economic protection of the family
- **Art. 19** right of migrant workers and their families to social protection
- **Art. 23** right of elderly persons to social protection
- **Art. 30** right to protection against poverty and social exclusion
- **Art. 31** right to housing

■ *Health*

- **Art. 3** right to safety and health at work
- **Art. 7.2** higher minimum age for dangerous work
- **Art. 8.5** right to maternity protection
- **Art. 11** right to health care
- **Art. 13** right to medical assistance
- **Art. 23** right to healthcare of the elderly

■ *Rights of children*

- **Art. 7.1** prohibition of child labour
- **Art. 7.3** protection of education benefits
- **Art. 7.10** protection against physical and moral dangers
- **Art. 17.1** rights of children to social, legal and economic protection
- **Art. 17.2** right to free primary and secondary education

■ *Acceptance of Rights*

- Contracting Parties select the Articles to which they are bound by (à la carte)
- Minimum acceptance requirements – 10 Articles or 45 numbered paragraphs (Art. 20.1)
- Hard core of the Charter comprises Articles 1, 5, 6, 12, 13, 16 and 19. At least 5 out of 7 must be accepted
- Revised Charter requires 16 Articles or 63 numbered paragraphs (Art. A.1)
- Revised Charter hardcore comprises in addition Articles 7 and 20. At least 6 must be accepted

Document No. 6.2

■ Control Procedure



Document No. 6.3

■ **Collective Complaints Protocol**

- **Opened for signature 1995**
- **Entered into force 1998**
- **Permits collective complaints to be examined directly by European Committee of Social Rights**
- **11 states make up the Protocol**

■ Collective Complaints Procedure



Document No. 6.4

An example

What is meant by right to housing ? (Revised European Social Charter)

⇒ **Creates obligations for the State and public authorities**
(obligations regarding results and means)

Respect obligation	Protection obligation
Protection against i.e. eviction	Protection of person i.e. prevention of eviction, and indebtedness. Rehousing if eviction for health/safety reasons or the public interest

Obligations to introduce gradually:

- Access without discrimination to decent housing – Provide the means
- Policies and Programmes for the construction and maintenance of social housing + appropriate services (public transport, administrative services, maintenance, access for the disabled, communal services)
- Context: social and environmental planning
- Individual housing aid
- Renovation of old housing stock/sanctions against speculators and landlords
- Public reserve funds
- Social clauses in the award of public procurement

European Union standards



- *Document No. 7* : Treaty
- *Document No. 8* : European agreements
- *Document No. 9* : Charter of Fundamental Rights
- *Document No. 10* : What is the value of this Charter ?

European Union standards

(15 + Norway and Iceland)

1 Treaty

Article 7 : It gives the Council of Ministers the option of suspending certain of a Member State's rights where that Member State has violated the basic principles of the EU as set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms. It amounts to a sort of litmus test for membership of the EU.

Article 13: Prohibition of all discrimination of persons or groups on the grounds of racial, ethnic origin, religious, criminal record disability, age or sexual orientation (Rule applied for the workers of third countries - February 2002).

2. Directives : must be compulsory that European laws be transcribed into national law.

- **Living and working conditions**
 - establishing an identical written contract of employment.
- **Equal treatment**
 - 5 various directives
 - Maternity protection
- **Social security**
 - Regulation ensuring the social protection of Community nationals in all Member States.
- **Information/consultation of employees**
 - transfer of companies
 - mass redundancies
 - employers' insolvencies
 - European works councils
 - European company Statute and workers' participation/monitoring
 - Information/consultation of workers in all areas affecting them in businesses with more than 20 persons (2002)
- **Health and safety protection at work**
 - 3 general directives
 - 17 specific directives (asbestos, carcinogenic substances, eye-screen protector's)
- **Subject not covered**
 - The principle of a guaranteed minimum income

Document No. 8

2. *European agreements* (*European collective agreements*)

Recommendations of the European Social Dialogue

- > Single European Act (1987) opening the way to contractual relations
- > Agreement of 31.10.1991 – Employers (UNICE and CEEP) and Workers (ETUC) willing to enter into European contractual agreements
- > Agreement transposed into the Social Chapter of the Maastricht Treaty and then incorporated into the Treaty of Amsterdam

Therefore → major legal breakthrough

Achievements

- Three cross-sectoral agreements negotiated (parental leave, part-time work, fixed term contracts)
- 1 under negotiation (temporary work)
- 1 in preparation (lifelong educational leave)
- Several sectoral agreements (agriculture, cleaning, transport) and codes of conduct (textiles, leather)

Towards a European system of industrial relations

- Increase in cross-sectoral and sectoral agreements
- Right to collective action and strike
- Revision of the Directive on Works Councils
- Trade union cooperation. Register of claims and negotiations

Document No. 9

Charter of Fundamental Rights in the European Union (EU)

- In 1999 the Cologne Summit decided to launch a procedure to endow the EU with a Charter of Fundamental Rights, without giving the EU any new powers.
- A Convention of 63 persons (21 representing the Governments of the 15; 21 representatives of the European Parliament ; 21 representatives of national parliaments) submitted its text to the Biarritz Summit in October 2000. This had been drafted with considerable difficulty, with much tension and opposition particularly with reference to social rights.

At the Nice Summit in December 2000 Heads of State, the Commission and the European Parliament adopted this text.

- The ETUC and the Platform of European Social NGOs (representing 30 organisations) worked together for a year to put forward their proposals. There was a campaign in the 15 Member States and a European Conference was held to assess the text on 1 September.

- **The Charter as approved by Biarritz**

54 articles arranged in 7 chapters

1. Dignity
2. Freedoms
3. Equality
4. Solidarity
5. Citizens' rights
6. Justice
7. General provisions

Charter of Fundamental Rights of the European Union

Adopted at Nice on 7.12.2001

by the European Summit (Heads of State and Government of the 15, President of the Commission and the President of the European Parliament)

Preamble

« The European Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice. »

The European Union Charter is based on the European Convention on Human Rights (Council of Europe) and the Social Charters (1961 and revised charter).

The Charter contains 54 articles divided into 7 chapters.

Chapter one: dignity

- art. 1 : Human dignity
- art. 2 : Right to life
- art. 3 : Right to the integrity of the person
- art. 4: Prohibition of torture and inhuman or degrading treatment or punishment
- art.5 : Prohibition of slavery and forced labour

Chapter two: Freedoms

- art. 6 : Right to liberty and security
- art. 7 : Respect for private life
- art. 8 : Protection of personal data
- art. 9 : Right to marry and right to create a family
- art. 10 : Freedom of thought, conscience and religion
- art. 11 : Freedom of expression and information
- art. 12 : Freedom of assembly and association
- art. 13 : Freedom of the arts and sciences
- art. 14 : Right to education
- art. 15 : Freedom to choose an occupation and right to engage in work
- art. 16 : Freedom to set up a business
- art. 17 : Right to property
- art. 18 : Right to asylum
- art. 19 : Protection in the event of removal, expulsion or extradition

Chapter Three: Equality

- art. 20 : Equality Rights
- art. 21 : Non-discrimination
- art. 22 : Cultural, religious and linguistic diversity
- art. 23 : Equality between men and women
- art. 24 : The rights of the child
- art. 25 : The rights of the elderly
- art. 26 : Integration of disabled persons

Chapter Four: Solidarity

- art. 27 : Workers' right to information and consultation within the company
- art. 28 : Right of collective bargaining and action
- art. 29 : Right of access to placement services
- art. 30 : Protection in the event of unjustified dismissal
- art. 31 : Fair and just working conditions
- art. 32 : Prohibition of child labour and protection of young people at work
- art. 33 : Family and professional life
- art. 34 : Social security and social assistance
- art. 35 : Health care
- art. 36 : Access to services of general economic interest
- art. 37 : Environmental protection
- art. 38 : Consumer protection

Chapter Five: Citizens' rights

- art. 39 : Right to vote and to stand as a candidate at elections to the European Parliament
- art. 40 : Right to vote and to stand as a candidate at municipal elections
- art. 41 : Right to good administration
- art. 42 : Right of access to documents
- art. 43 : Ombudsman
- art. 44 : Right to petition
- art. 45 : Freedom of movement and of residence
- art. 46 : Diplomatic and consular protection

Chapter Six: Justice

- art. 47 : Right to an effective remedy and to a fair trial
- art. 48 : Presumption of innocence and right to defence
- art. 49 : Principles of legality and proportionality of criminal offences and penalties
- art. 50 : Right not to be tried or punished twice in criminal proceedings for the same criminal offence

Chapter Seven: General provisions

- art. 51 : Field of application
- art. 52 : Scope of guaranteed rights
- art. 53 : Level of protection
- art. 54: Prohibition of abuse of rights

Document No.10

What is the value of this Charter ?

This Charter represents progress within the European Union, and for the Union's policies, since there was previously no reference to such values (except very partially in the most recent Treaties).

There are few innovations, except Article 3 on the right to integrity of the person.

The other articles are guaranteed in the various Member States under international law. The Charter, however, fills a legal void (in the EU).

- **To be fully satisfactory, and to be incorporated into the Treaty**, the text should be improved and clarified. Its legal and political effectiveness will be determined by the European Treaty in 2004.
- **The most satisfactory solution would have been EU adhesion to the European Convention on Human Rights and the Revised Social Charter** which would give the whole of Europe an identical basis for civil, political and social rights.

Notes

- *There is significant opposition to social rights (in European business and legal circles)*

- *The criteria for Economic and Monetary Union were rigid and binding, but on the other hand, fundamental rights do not have the same status.*

- *This text sets out the minimum basic rights. It guarantees that more extensive legal or contractual rights, together with the rights deriving from international systems (UN, ILO, Council of Europe) where ratified cannot be downwards revised (Article 53 of the Charter).*

Order Form

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Fax : 00 32 2 224 04 54
E-mail : amoreira@etuc.org

ETUC Member Organisations

National Trade Union Confederations

Austria	OGB	Luxemburg	CGT
Belgium	CSC		LCCGB
	FGTB	Macedonia (Fyrom)	*CCM
Bulgaria	CITUB	Malta	CMTU
	PODKREPA		GWU
Croatia	*SSSH	Netherlands	CNV
Cyprus	SEK		FNV
	TURK-SEN		UNIE-MHP
Czech Republic	CMKOS	Norway	LO
Denmark	AC	Poland	NSZZSolidarnosc
	FTF	Portugal	CGTP-IN
	LO		UGT
Estonia	*EAKL	Romania	BNS
	*TALO		CARTEL ALFA
Finland	AKAVA		CNSLR-FRATIA
	SAK		CSDR
	STTK	San Marino	CDLS
France	CFDT		CSdL
	CFTC	Slovakia	KOZ-SR
	CGT-FO	Slovenia	ZSSS
	CGT	Spain	CC.OO
	UNSA		ELA-STV
Germany	DGB		UGT
Greece	ADEDY	Sweden	LO
	GSEE		SACO
Hungary	ASZSZ		TCO
	ESZT	Switzerland	CNG/CSC
	LIGA		SGB/USS
	MOSz		*VSA
	MSzOSz	Turkey	DISK
	SZEF		HAK-IS
Iceland	ASI		KESK
	BSRB	United Kingdom	Türk-IS
Ireland	ICTU		TUC
Italy	CGIL		
	CISL		
	UIL		
Latvia	*LBAS		
Lithuania	*LDS		
	*LPSS		

*Observer Confederations

European Industry Federations

EMF	European Metalworkers' Federation
EFFAT	European Federation of Food Agricultural and Tourism
ETUF-TCL	European Federation of Textile, Clothing and Leather
EFBWW	European Federation of Building and Wood Workers
EMCEF	European Mining, Chemical and Energy Federation
EPSU	European Federation of Public Service Unions
ETF	European Transport Federation
ETUCE	European Trade Union Committee of Education
UNI-EUROPA	European Federation of Services and Communication
EEA	European Alliance of Media and Entertainment
EFJ	European Federation of Journalists



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