

ETUC Resolution on the 60th Anniversary of the Council of Europe European Social Charter and the 25th Anniversary of the Revised European Social Charter

Adopted at the Executive Committee of 22-23 March 2021

‘Make fundamental trade union, workers’ and social rights more effective by strengthening the European Social Charter’

In 2021, the Council of Europe European Social Charter (ESC) and the Revised European Social Charter (RESC) celebrate respectively their 60th and 25th anniversary. Also in 2021 the Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence will celebrate its 10th anniversary. On this occasion and using the momentum of these anniversaries, 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 (ECSR) and to ensure that the Charter’s rights are fully respected and effectively implemented;
- calls on all Member States to fully adhere to all the instruments developed in the framework of the Charter, in particular the RESC and the Collective Complaint Procedure Protocol, as well as to the European Code of Social Security;
- calls on the EU and its institutions to underline the importance of the EU respecting all the social rights enshrined in the European Social Charter by adhering to both the European Convention of Human Rights (ECHR) and the RESC (and collective complaints procedure) and to ensure that in the design, interpretation and implementation of EU legislation, the European Social Charter is duly taken into account;
- 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 (R)ESC, along the lines adopted at the so-called 2014 Turin Process as well as the recently adopted reports of the Council of Europe Steering Committee for Human Rights (CDDH) on ‘Improving the protection of social rights in Europe’;
- calls on all Member States to enhance their financial support to the Council of Europe to ensure an effective and continuous functioning of the Council of Europe and its bodies through sufficient human and material means to conduct their missions; in particular the European Committee of Social Rights and the European Court of Human Rights should be safeguarded from withdrawals or reductions in funding;
- calls on the EU to ratify the Istanbul Convention as it may pave the way for further support to the ratification by the EU of the European Social Charter and the European Convention of Human Rights.

The initial Council of Europe European Social Charter (ESC) of 18 October 1961 and the revised European Social Charter (RESC) adopted on 3 May 1996, also known as the ‘Social Constitution of Europe’, have been landmark human rights instruments for the protection and enforcement of fundamental trade union, workers’ and social rights and the improvement of working and living conditions of people in Europe.

Both Charters also constitute, in particular in times of social, economic or like now pandemic crisis¹, one of the last safeguards to protect fundamental rights of trade unions, workers and citizens, in particular the most vulnerable such as elderly people, children, people with disabilities and migrants.

They have been and still are in many ways “living human and social rights standards” as the initial ESC was for instance the first international standard recognising explicitly the right to strike. But also the RESC proved pivotal as it provides for new rights such as in the employment area the right to protection in cases of (individual) termination of employment, the right to protection against sexual and other forms of harassment in the workplace, the rights of workers with family responsibilities to equal opportunities and equal treatment and rights of workers’ representatives in undertakings and more generally the right to protection against poverty and social exclusion, the right to housing.

In 1995, an Additional Protocol was adopted which provides for a system of collective complaints which entitles social partners as well as specifically accepted (international) non-governmental organisations to lodge complaints for violations of the Charter in States which have ratified this Additional Protocol. This constituted an important (quasi-judicial) avenue, next to the traditional national reporting system, to improve the effective enforcement of the social rights guaranteed by the Charters and which the ETUC and its national affiliates have successfully made use of over time.

Today, 43 of the 47 Member States of the Council of Europe have either ratified the original Charter or the revised one. Despite many important high-level processes to increase the ratifications rate of the Charter², still four Member States have only signed but not ratified the (revised) ESC and only 15 Member States are so far bound by the Collective Complaint Procedure Protocol.

Within the EU framework, the ESC and RESC 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 (Article 151 TFEU). Most of the fundamental social rights enshrined in the Charter of Fundamental Rights of the European Union (CFREU)³ and the European Pillar of Social Rights⁴ are based on the relevant articles of the Charter.

¹ See amongst others: the [intervention of G. Palmisano](#) (President of the Council of Europe European Committee of Social Rights (ECSR) at Hearing on “Overcoming the socio-economic crisis sparked by the Covid-19 pandemic” of the Parliamentary Assembly (PACE) Committee on Social Affairs, Health and Sustainable Development Sub-Committee on the European Social Charter (7 October 2020); [ECSR Statement of Interpretation on the right to protection of health](#) (Article 11 ESC), 22 April 2020; General introduction to the ECSR Conclusions 2009 on protection of social rights in economic crisis.

² See in particular the so-called ‘[Turin Process](#)’ (2014) and the follow-up process to the reports adopted by the Council of Europe Steering Committee on Human Rights (CDDH) on ‘Improving the protection of social rights in Europe’ ([Volume I](#) and [Volume II](#)), including amongst others the establishment in 2020 of a [High Level Group of Experts on Social Rights](#) whose task is to propose concrete actions to strengthen the Council of Europe’s impact in terms of protection and promotion of social rights in Europe.

³ See Niklas Bruun, Klaus Lörcher, Isabelle Schömann, Stefan Clauwaert (eds.) (2017) [The European Social Charter and the Employment Relation](#), Oxford: Hart Publishing, p. 552 and Filip Dorssemont, Klaus Lörcher, Stefan Clauwaert, Mélanie Schmitt (eds.) (2019) [The Charter of Fundamental Rights of the European Union and the Employment Relation](#), Oxford: Hart Publishing, p. 712.

⁴ See in this sense amongst others the [contribution of the Council of Europe Directorate General Human Rights and Rule of Law \(DGI\)](#) to the European Commission consultation on the Action Plan to implement the European

Furthermore, both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) recognise the importance of the Charters when interpreting EU legislation or the European Convention on Human Rights.

Promoting and defending human rights, which include trade union and labour rights, has always been at the core of the ETUC's priorities and actions. Hence, over time the ETUC has very actively contributed to the development of both Charters and its case law established by the European Committee of Social Rights (ECSR), amongst others by taking part actively in the supervision procedures, be it the reporting procedure (as privileged observer in the Governmental Committee to the European Social Charter and European Code for Social Security) or the collective complaints procedure.⁵ But also in the framework of the Steering Committee of Human Rights (CDDH), in which the ETUC has a permanent observer status since 2014, the ETUC has contributed actively in different domains to ensure that the protection of social rights gets more prominent attention.⁶

In its ETUC Action Programme 2019-2023, adopted at its 14th Statutory Congress in Vienna in May 2019, the ETUC reaffirmed its longstanding commitment to promoting and defending fundamental human, labour and trade union rights, in particular by committing itself to:

- To enhance the work done within and by the ETUC Fundamental Rights and Litigation Advisory Group, in particular by ensuring increased use of, or when necessary, work to improve, all existing (quasi or extra-) judicial monitoring and enforcement mechanisms within the Council of Europe as well as EU levels and by gaining publicity for best practices;⁷
- To intensify actions (including campaigns) to press both the EU and Member States amongst others to accede to and ratify the European Convention of Human Rights, (all articles of) the Revised European Social Charter (and the related 1995 Additional Protocol providing for a system of collective complaints) and the European Code of Social Security;⁸
- 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, the European Social Charter (as well as the European Convention of Human Rights) are duly taken into account to avoid EU (case-)law and policies contradicting, restricting or adversely affecting the rights enshrined in the European Social Charter.

In 2021, the ESC and RESC celebrate respectively their 60th and 25th anniversary! On this occasion of and using the momentum of these anniversaries, the ETUC therefore:

Pillar of Social Rights and the report on '[The European Pillar of Social Rights and the role of the European Social Charter in the EU legal order](#)' (2019).

⁵ Since 1999, the ETUC has filed two collective complaints (together with the relevant national ETUC affiliates of Belgium and Bulgaria and submitted written third-party interventions (called "Observations") in relation to around 47 collective complaints (out of 197 complaints submitted/admitted so far).

⁶ Testimony of this are amongst others the ETUC active input in relation to the Committee of Ministers Recommendation CM/Rec(2014)2 on the promotion of human rights of older persons, the Committee of Ministers Recommendation CM/Rec(2016)3 on Human Rights and Businesses, the CDDH feasibility study of 2015 on '[The impact of the economic crisis and austerity measures on human rights in Europe](#)', and the CDDH-SOC drafting group on the improvement of the protection of social rights. The latter led amongst others to two CDDH reports (Council of Europe CDDH (2019), Improving the protection of social rights in Europe, [Volume I](#) and [Volume II](#)) and the appointment within the CDDH of a Special Rapporteur on Social Rights. For 2021-2022, the ETUC also envisages to actively contribute to the work of the CDDH drafting groups on "Environment and Human Rights" ([CDDH-ENV](#)) and the future CDDH work on "Artificial Intelligence and Human Rights".

⁷ See in this regard also the ETUC Resolution on '[ETUC human rights legal and strategic litigation – ETUCLEX](#)', adopted by the ETUC Executive Committee on 28 October 2020.

⁸ [ETUC Action Programme 2019-2023](#), § 230.

- 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 and to ensure that the Charter's rights are fully respected and effectively implemented;
- calls on all Member States to fully adhere to all the instruments developed in the framework of the Charter, in particular the RESC and the Collective Complaint Procedure Protocol, as well as to the European Code of Social Security;
- calls on the EU and its institutions to underline the importance of the EU respecting all the social rights enshrined in the European Social Charter by adhering to both the ECHR and the RESC (and collective complaints procedure) and to ensure that in the design, interpretation and implementation of EU legislation, the European Social Charter is duly taken into account;
- 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, along the lines adopted at the so-called [2014 Turin Process](#) as well as the recently adopted reports of the Council of Europe Steering Committee for Human Rights (CDDH) on 'Improving the protection of social rights in Europe'⁹;
- calls on all Member States to enhance their financial support to the Council of Europe to ensure an effective and continuous functioning of the Council of Europe and its bodies through sufficient human and material means to conduct their missions; in particular the European Committee of Social Rights and the European Court of Human Rights should be safeguarded from withdrawals or reductions in funding.

2021 is also the year that the Council of Europe [Istanbul Convention on preventing and combating violence against women and domestic violence](#) will celebrate its 10th anniversary; it is also a year marked by the broader call for ratification of the ILO Convention No. 190 to end violence and harassment at work. The ETUC calls on the EU to ratify the Istanbul Convention as it may pave the way for further support to the ratification by the EU of the European Social Charter and the European Convention of Human Rights.¹⁰

In the annex attached the ETUC also provides some more particular demands and suggestions to improve the efficiency of the European Social Charter and its supervision mechanisms in order to ensure a better protection of trade union, workers and social rights in Europe.

⁹ Council of Europe CDDH (2019), Improving the protection of social rights in Europe, [Volume I](#) and [Volume II](#).

¹⁰ See on the ratification of the Istanbul Convention also the ETUC Action Programme 2019-2023, § 259. To note also is that Article 26 ESC provides that all workers have the right to dignity at work (including protection against sexual and moral harassment). Furthermore, the ETUC Executive Committee adopted at its meeting of 22-23 March 2021 [a statement on the occasion of the decision of the Turkish Government to withdraw from the Istanbul Convention](#) whereby the ETUC calls on both the EU as well as the member states that have not done so to ratify the Convention.

ANNEX:

ETUC specific demands and suggestions to improve the efficiency of the European Social Charter and its supervision mechanisms in order to ensure a better protection of trade union, workers and social rights in Europe

I. Introduction:

The Council of Europe European Social Charters are cornerstones of the fundamental social rights protection in Europe. The 60th anniversary of the European Social Charter (ESC) and the 25th anniversary of the Revised European Social Charter (RESC) offers the opportunity to take stock of the fundamental social rights protection in Europe and to develop proposals to reinforce this protection and to contribute to social progress all over Europe.

Several achievements have been reached. Firstly, the procedures for the enforcement of the Charter have been further improved mainly by the Turin Amending Protocol (1991) and the Collective Complaint Procedure Protocol (1996) as well as by adding several substantive rights by the Revised European Social Charter (1996 - RESC). Secondly, 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.¹¹ 43 of the 47 Member States of the Council of Europe have either ratified the original Charter or the revised one. On the other hand only 15 Member States are so far bound by the Collective Complaint Procedure Protocol.¹²

Also the impact of the Charters has increased, which can be demonstrated by the fact that the Charter formed the basis for several of the fundamental social rights enshrined in the 'Charter of Fundamental Rights of the European Union' (CFREU); that there is a growing number of references to the Charters in European and national Court decisions and that positive consequences and developments can be seen in many States in respect of improved legislation and better working and living conditions.

However, fundamental social rights are in Europe still often considered as '2nd class' human rights. Fundamental trade union, workers and social rights are still being undermined in particular in times of economic, financial and now pandemic crises. 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 freedom of association, collective bargaining and collective action. Furthermore, problems which sometimes have been criticised for decades are still not solved by the respective Contracting Parties due to a mere lack of political will.

Also 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 recent years and even decades. Inequalities between States that have or have not ratified the Collective Complaints Procedure Protocol have grown; attempts to 'simplify' and rationalize both the reporting and collective complaints procedures have brought to light even more problems and have certainly not achieved their aim to increase the effectiveness of the procedures.

¹¹ Andorra, Monaco, San Marino and Switzerland.

¹² Currently Germany and Spain, after having ratified already the ESC, are in a final stage for ratifying the Revised European Social Charter; Spain has signed in February 2021, the Additional Protocol for a collective complaints procedure.

So enhancing the effectiveness of both the Charters' fundamental social rights and the Charters' supervisory mechanisms requires a new coherent approach by all actors involved (Council of Europe (and EU) institutions, governments, social partners and (international) non-governmental organisations. The actions/initiatives mentioned below are of course non-exhaustive and when implemented these actions/initiatives should mutually reinforce one another. **But what is needed first and foremost is a strong political will to act without any further delay!**

II. Actions/ 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 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;

1.1.5. the many countries not yet having ratified the (revised) European Code of Social Security.

1.2. Ensuring an effective follow-up of all conclusions of non-conformity 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. Regular 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. Translating and ensuring a wider dissemination of the ECSR's annual conclusions at the national level;

1.4.2. Organising seminars etc. in the judiciary, the public administration, or encouraging the organisation of such seminars with universities and social partners;

1.4.3. Using all possible means to introduce the Charters' requirements in legal proceedings.

1.5. Improving the reporting to the European Social Charter Department/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).

1.6. Enhancing their financial support to the Council of Europe to ensure an effective and continuous functioning of the Council of Europe and its bodies through sufficient human and material means to conduct their missions.

2. the Secretary General and Committee of Ministers should continue and even enhance their commitment to fundamental social rights by

2.1. Raising the political profile of the ESC in all the activities of the Council of Europe;

2.2. Enhancing ratification of the relevant instruments, in particular by

2.2.1. Continuing a ratification campaign in respect of the relevant instruments (Revised European Social Charter, Collective Complaints Procedure Protocol, the 1991 Turin Protocol and the (Revised) European Code for Social Security) and ensure a 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;

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. Continue and support the ongoing work in the CDDH on the accession of the EU to the European Convention of Human Rights (CDDH '47+1' subgroup);

2.5 Relaunch the work on the accession of the EU to the Revised European Social Charter (and collective complaints procedure protocol) by giving the CDDH the mandate (terms of reference) to set up a Working Group with the European social partners as observers;

2.6. Enhancing the dialogue on social rights protection with the Parliamentary Assembly, the ECSR, the Governmental Committee;

2.7. Strengthening consultation and dialogue with European Social Partners at all levels;

2.8. Increasing budgetary funds for more personnel and promotional activities, in particular the (secretariats of the) European Committee of Social Rights and the Governmental Committee as well as the European Court of Human Rights should be safeguarded from withdrawals or reductions in funding.

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;

3.3. Enhancing the dialogue with the European Committee of Social Rights, the Governmental Committee and the European and national social partners.

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. Continuing its work on the follow-up of the recommendations in the CDDH reports on the protection of social rights in Europe both in relation to the reporting and collective complaints procedure, thereby ensuring however that any revision/adaption of the monitoring procedures will in no way weaken or undermine the effectiveness of those procedures but should rather strengthen them;

4.3. Organising hearings/dedicated consultations with i.a. European Social partners;

4.4. Organising dedicated meetings (e.g. on a bi-annual basis) with the agents of the Social Partners and INGO's active in the collective complaints procedures (see similar meetings organised by ESCR with government agents).

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 of 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. Continuing its work on the follow-up of the recommendations in the CDDH reports on the protection of social rights in Europe both in relation to the reporting and collective complaints procedure, thereby ensuring however that any revision/adaptation of the monitoring procedures will in no way weaken or undermine the effectiveness of those procedures but should rather strengthen them;

5.2.4. Strengthening the follow-up to all Conclusions of non-conformity based on an enhanced dialogue with member States and European and national social partners.

5.3. Enhance/promote the dialogue with the GR-SOC, Parliamentary Assembly, ECSR and European and national social partners.

6. the **Department/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 seminars with national authorities and other relevant institutions (always (including social partners);

6.1.2 producing dedicated brochures on how respective organisations (like trade unions and NHRI's) can play an active role in the supervisory procedures¹³;

6.2. Translating the ECSR Conclusions into all the languages of the Contracting Parties;

¹³ And this according the lines and format of the brochure '[How can \(I\)NGOs engage with the European Committee of Social Rights under the monitoring procedures of the European Social Charter](#)'.

- 6.3. Enhancing the dialogue with and consultation of European and national social partners;
- 6.4. Intensifying cooperation with the International Labour Office.