



ARTICLES

THE EUROPEAN SOCIAL CHARTER TURNS 60: ADVANCING ECONOMIC AND SOCIAL RIGHTS ACROSS JURISDICTIONS

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THE EUROPEAN SOCIAL CHARTER TURNS 60: INTRODUCTION TO THE *SPECIAL SECTION*

Six decades ago, on 18 October 1961, the European Social Charter (ESC) was opened to signature by the member States of the Council of Europe (CoE), in Turin, Italy.¹ This treaty was conceived by the Council of Europe as complementary to the European Convention of Human Rights (ECHR), on the side of economic and social rights, for the protection of human rights in the pursuit of the Organization's objective. The 1961 Charter's catalogue of corresponding rights and obligations was first expanded by a 1988 Additional Protocol, and subsequently the 1996 European Social Charter (revised) reinforced some of the rights of the 1961 Charter and recognized additional rights. Overall, this treaty system mostly focuses on labor rights, employment, training and equal opportunities, health, social security and social protection, housing, and protection against poverty, with particular attention paid to children, the elderly, the family and migrants as specific categories of beneficiaries. Indeed, the European Social Charter system provides the broadest and most advanced standard of protection of economic and social rights in Europe, envisioning itself as the "social constitution for Europe".² The ESC is al-

¹ This *Special Session* is the output of research activity carried out within the project "The European Social Charter Turns 60: Advancing Economic and Social Rights across Jurisdictions", co-financed by the Council of Europe and the Law Department of the University of Turin. On the European Social Charter, see, among others, D Harris, *The European Social Charter* (University Press of Virginia 1984); D Gomien, D Harris and L Zwaak, *Law and Practice of the European Convention on Human Rights and the European Social Charter* (Council of Europe Publishing 1996); JF Akandji-Kombé and S Leclerc (eds), *La Charte sociale européenne* (Bruylant 2001); J Darcy and D Harris, *The European Social Charter* (Transnational publisher 2001 second edition); AM Swiatkowski, *Charter of Social Rights of the Council of Europe* (Kluwer Law International 2007); O De Schutter (ed.), *The European Social Charter: A Social Constitution for Europe* (Bruylant 2010); M Mikkola, *Social Human Rights of Europe* (Legislation 2010); O Dörr, 'The European Social Charter' in S Schmahl and M Breuer (eds), *The Council of Europe: Its Laws and Policies* (Oxford University Press 2017 first edition) 507; K Lucas, 'The European Social Charter' in C Binder, JA Hofbauer, F Piovesan and A Úbeda de Torres (eds), *Research Handbook on International Law and Social Rights* (Edward Elgar Publishing 2020) 127; G Palmisano, *L'Europa dei diritti sociali. Significato, valore e prospettive della Carta sociale europea* (il Mulino 2022).

² O De Schutter, *International Human Rights Law* (Cambridge University Press 2010) 22.



so the main “source of inspiration” for the economic and social rights in the Charter of Fundamental Rights of the European Union, which, however, includes only some of the rights that find recognition under the ESC.³

At the same time, while some CoE members are bound by the 1996 Charter, others are bound by the 1961 Charter, and, contrary to the subjective scope of the ECHR, some CoE members have not ratified either Charter (notably, Switzerland). The EU is not a contracting party nor is its accession to the (revised) ESC explicitly provided for in the TEU. The original Charter aimed at harmonizing State parties’ legislation and practice. To this end, each can select, within quantitative and qualitative limits, the provisions on obligations it accepts to be bound to (the “accepted provisions”). Consequently, different commitments are binding upon the parties, even within the *core* provisions of the ESC, although each contracting party also generally undertakes to pursue “by all appropriate means [...] the attainment of conditions in which [all the Charter rights] can be effectively realized”. The Charter further specifies that the resulting guarantee of social human rights is owed by a contracting State to its own nationals and to nationals of the other contracting States meeting certain conditions of work and residence, as well as refugees and stateless persons, rather than all persons under its jurisdiction.

Moreover, the ESC system also presents unique features in the landscape of international human rights treaties with regard to procedural guarantees: alongside the traditional, general procedure of State reporting, the 1995 Protocol established an optional collective complaints procedure, allowing international and national trade unions and international NGOs to raise allegations of violations by a State party of its international obligations under the ESC, with respect to a general, non-individual-victim-specific situation (and thus, without need of prior exhaustion of local remedies). Both State reports and collective complaints are examined by the ESC’s body of independent experts – the European Committee of Social Rights (ECSR). The other bodies involved in the two procedures are the Governmental committee, a treaty body consisting of governmental representatives, a CoE statutory body, the Committee of Ministers, and the Secretary General with the Secretariat. The Conclusions and Decisions on the merits, which are adopted by the ECSR at the end of its examination of State reports and collective complaints declared admissible, respectively, are transmitted to the CoE Committee of Ministers, which in turn adopts resolutions and addresses recommendations to individual States found in non-compliance with one or more of its obligations.

For several decades, the Charter remained “dormant”⁴ and ineffective. It underwent a process of reform from the late 1980s to the mid-1990s. Partly as a result of such reforms, and primarily because of the multiple crises that have affected Europe over the past decade, the Charter has witnessed a renewed interest in its effective implementa-

³ Explanations relating to the Charter of Fundamental Rights [2007].

⁴ O De Schutter, *International Human Rights Law* cit. 25.

tion. Critical junctures in the last ten years have strengthened the need for effective protection of economic and social rights in Europe and emphasized the relevance of the ESC to this end. During the 2007 financial and economic crisis, the ESC was considered as a reference source of international protection, especially by NGOs, against the negative impact of the crisis and of the austerity measures adopted as a reaction to it. The Charter has also emerged as a source of labor rights protection in the context of domestic labor market reforms and in the midst of the Covid-19 pandemic.⁵

The breadth and level of the Charter's standard of protection of social and economic rights has been increasingly considered in procedural safeguards. The European Court of Human Rights routinely refers to the ESC and the ECSR's practice⁶ when it deals with social rights or socio-economic aspects of rights under the ECHR.⁷ In juxtaposition with the ECHR and EU law, the ESC has been used before municipal courts as a yardstick of review for domestic adjudication of national legislations throughout Europe, promoting the legal systematization of the Charter-sourced obligations within the domestic legal order of several contracting States (notably, in Italy, by the Constitutional Court). This increased interest in and knowledge of the ESC by its stakeholders can be seen as a result and, at the same time, as a trigger for increased recourse to the collective complaints procedure, against those ESC contracting States that have accepted it – but with wider resonance across all “constituencies” of the Charter. It is also motivated by the need to legally frame new phenomena such as work in the gig economy. Overall, awareness and participation of organized civil society has grown. Practitioners have started training themselves and providing consultancy on this instrument at the domestic level. This makes even clearer that international human rights protection should increasingly be viewed through an “experimentalist lens” as a bottom-up grassroots phenomenon, in which human rights movements play a role at least as significant as that played by international organizations.⁸

In parallel, the issue of further strengthening the ESC system as the main instrument of social human rights protection in Europe has attracted the attention of CoE

⁵ E.g., ECSR Conclusions 2009, General Introduction on the implementation of the Charter in times of economic crises, and ECSR Statement of interpretation on the right to protection of health in times of pandemic of April 2020.

⁶ Notably, ECtHR *Demir and Baykara v Turkey* App n. 34503/97 [12 November 2008] paras 50, 77, 84, 149.

⁷ C Warbrick, ‘Economic and Social Interests and the European Convention on Human Rights’ in M Baderin and R McCorquodale (eds), *Economic, Social, and Cultural Rights in Action* (Oxford University Press 2007) 241; G Malinverni, ‘The European Court of Human Rights, the Protection of Social Rights, its Relationship with the European Committee of Social Rights’ in M D’Amico and G Guiglia (eds), *European Social Charter and the Challenges of the XXI Century* (Edizioni scientifiche italiane 2014) 98; I Leijten, *Core Socio-Economic Rights and the European Court of Human Rights* (Cambridge University Press 2018).

⁸ G De Búrca, *Reframing Human Rights in a Turbulent Era* (Oxford University Press 2021).

members and bodies in the last years – from the 2014-2016 “Turin Process”⁹ to the European Social Cohesion Platform to the most recent CoE initiatives. Focusing on the latter, worth mentioning are the Secretary General’s proposals on *Improving the implementation of social rights – reinforcing the European Social Charter system*,¹⁰ several decisions by the Committee of Ministers, culminating so far in the adoption of Operational proposals for the reform the European Social Charter¹¹ and the Parliamentary Assembly’s recommendation on an additional protocol to the European Social Charter on the Right to a Safe, Clean, Healthy and Sustainable Environment.¹² Meanwhile, the relationship between the Charter’s system and EU law has gained increased attention. The “Turin Process” specifically focused on it, and this fed into the process leading to the adoption by the EU of the so-called Social Pillar.¹³

Alongside these political and legal developments, there is a growing academic interest and need for wider knowledge and better understanding of this regional treaty and the legal dynamics involving it at multiple levels. Literature has flourished on the ESC itself, its rights and procedural guarantees, and compliance by contracting States, including measures implementing EU law and measures that have been generated by the above crises.¹⁴ The Charter is directly or indirectly the object of critical and empirical research on the effectiveness of economic and social human rights treaty law and on

⁹ M Nicoletti, *General Report of the High-Level Conference on the European Social Charter (Turin, 17-18 October 2014)* (Council of Europe Publishing 2015). On the challenges faced by the ESC system at the launch of the “Turin Process”, see J Luther and L Mola, *Europe’s Social Rights Under the “Turin Process”* (Editoriale scientifica 2016).

¹⁰ European Council Information Documents SG/Inf(2021)13 of 22 April 2021 Improving the implementation of social rights – Reinforcing the European Social Charter System: Secretary General’s proposals rm.coe.int.

¹¹ Committee of Ministers, The Committee of Ministers Adopts Changes to the European Social Charter System (27 September 2022) www.coe.int. Committee of Ministers, GT-Charte: Improving the European Social Charter System (7 October 2021) www.coe.int.

¹² Resolution 2396 (2021) of the European Parliament of 29 September 2021 on anchoring the right to a healthy environment: need for enhanced action by the Council of Europe.

¹³ Proposal COM(2017) 0251 final of the European Parliament, the Council and European Commission of 13 December 2017 Interinstitutional Proclamation on the European Pillar of Social Rights.

¹⁴ Recently, G Palmisano, *Collective Complaints as a Means for Protecting Social Rights in Europe* (Anthem Press 2022); G Palmisano, ‘La procédure des réclamations collectives en tant qu’instrument de protection internationale des droits sociaux’ (2020) RGDIP 513; K Lukas, *The Revised European Social Charter: An Article by Article Commentary* (Edward Elgar Publishing 2021); S Quinlivan, ‘Emerging Jurisprudence on Inclusive Education Under the European Social Charter (Revisited)’ in G de Beco, S Quinlivan and J Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019). On the role of the ESC in EU law see, among others, K Lucas, ‘The EU Charter of Fundamental Rights and the European Social Charter: An Alliance for Social Rights?’ in W Benedek and others (eds), *European Yearbook of Human Rights* (Intersentia 2015) 153; O De Schutter, ‘L’adhésion de l’Union européenne à la Charte sociale européenne’ (2015) RTDH 259; also, D Falcomatà, ‘The Strange Case of the European Social Charter in the EU-UK Trade and Cooperation Agreement’ (30 November 2022) federalismi.it.

the impact of quasi-judicial review bodies.¹⁵ One notable feature concerns the plurality of scholarship engaging with studies on the ESC (labor law, social law, health law; constitutional law, EU law, international law). However, there is still much room for further academic work to comprehensively address the role and impact of this treaty system in the multi-sourced and multi-level framework of human rights protection in Europe.

From the latter perspective, the following observations and theoretical principles can stimulate legal research on the ESC. It is observed that European States are bound to protect economic and social human rights by domestic constitutions, EU primary and secondary law, the ESC, the ECHR, other CoE treaties, and universal treaties such as the UN Covenants and the ILO Conventions. In such a plural, multilevel and diversified landscape, the role of each instrument develops also in relation with the others. On the one hand, human rights standards may find definition in the comparison, harmonization or integration between and among concurrent legal sources. On the other hand, multi-sourced rights may also be defined through the concomitant activation and interaction of the enforcement mechanisms which pertain to each source or legal order (the domestic judicial system, the integrated system of judicial protection in EU law, the ECtHR, and the various compliance mechanisms set under the ESC, the ICESCR, and the ILO Constitution and Conventions). On the contrary, each of these instruments may be applied “in isolation” from the others, in frameworks of fragmentation, competition, and autonomy. Different approaches and techniques on the part of courts and monitoring bodies can contribute to advancing, or undermining, the effectiveness of legal protection instruments and, ultimately, the effective protection of economic and social rights in Europe.

To apprehend and advance theoretical framing of the impact of the European Social Charter on the protection of economic and social rights in Europe, this *Special Section* brings together legal expertise in different fields of law (from international law to EU law, from constitutional law to labor law). In this context, the authors have engaged in cutting-edge research in their respective fields through an interdisciplinary perspective. Moreover, the *Special Section* engages in a plurality of tasks.

Some contributions mainly address the procedural paths through which ESC rights interplay with rights from other sources, analyzing the legal value of ECSR's pronouncements,¹⁶ while others propose an interpretative methodology aimed at enhancing effective protection of socio-economic rights ensuing from the Charter throughout

¹⁵ Among others, C Binder, JA Hofbauer, F Piovesan and A Úbeda de Torres (eds), *Research Handbook on International Law and Social Rights* cit.; J Dugard, B Porter, D Ikawa and L Chenwi (eds), *Research Handbook on Economic, Social and Cultural Rights as Human Rights* (Edward Elgar Publishing 2020).

¹⁶ A Spagnolo, 'They Are not Enforceable, but States Must Respect Them: An Attempt to Explain the Legal Value of the Decisions of the European Committee of Social Rights' (2022) European Papers www.europeanpapers.eu 1495.

different European legal orders.¹⁷ Approaching multi-sourced protection of social rights in Europe from the side of procedural guarantees, dynamics of concurrent or complementary activation in the vertical or horizontal dimension may be clarified. Other contributions focus instead on the contents of those rights which have most recently provided fertile grounds for cross-sectional investigations and comparative analyses, such as equal pay¹⁸ and protection of workers from unlawful dismissals.¹⁹ Focusing on substantive protection, rights-specific studies help identify which contents emerge from the interaction of multi-sourced norms of protection or from the isolation of certain sources from others.

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¹⁷ P Hardy, 'From the Principle of Systemic Integration to the Integrated Approach: The Pathway to the Integration of the European Social Charter for the Interpretation of the European Union Charter of Fundamental Rights' (2022) European Papers www.europeanpapers.eu 1517.

¹⁸ K Arabadjieva and M Kotsoni, 'Mind the Gap: Emerging Standards of Protection of the Right to Equal Pay Under the European Social Charter and EU Law' (2022) European Papers www.europeanpapers.eu 1537.

¹⁹ NA Papadopoulos, 'Assessing the Effectiveness of the European Social Charter: A Case Study on Dismissal Reforms' (2022) European Papers www.europeanpapers.eu 1569.

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