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## THE 1961 EUROPEAN SOCIAL CHARTER

### Introduction

As an introduction, it should be noted that the European Social Charter was adopted and opened for signature and ratification by the Member States of the Council of Europe in Turin on 18 October 1961.

It entered into force on 26 February 1965 and currently has 27 States Parties.

It has been amended through the 1991 Protocol of Amendment and the so-called Revised Social Charter of 1996 and completed through two Additional Protocols: the Additional Protocol of 1988 which includes New Rights, and the Additional Protocol of 1995 which establishes the System of Collective Complaints.

The Charter guarantees fundamental social and economic rights as a counterpart to the



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European Convention on Human Rights and consists of five parts and a preamble, with little systematics.

No other legal instrument at pan-European level can provide such a broad and comprehensive protection of social rights.

### **Nature of the Charter**

The Charter has a hybrid or mixed nature. It is composed of a declaratory part (social objectives to be achieved by Member States in the long term) and a part containing immediate international commitments and obligations (which States undertake to achieve at that time).

Its Part I has, as we pointed out, a merely declarative and programmatic content, indicating objectives that the Member States will pursue using all possible relevant means, while Parts II to V and the Annex are devoted to the instrument's obligatory content,

Thus, the content of the commitments that will effectively bind the signatory states is found in Part II, the scope of such commitments in Part III, how their implementation and other rules of application are carried out in Part V, the system for their control

in Part IV and the rules of interpretation in the Annex.

## **Rights recognised in the Charter**

Many are the rights recognised by the European Social Charter, as we have already mentioned that it has a very comprehensive scope.

Alongside the right to work, fair working conditions, trade union rights and collective bargaining rights, the European Social Charter refers to the rights of children and adolescents to special protection, alongside female workers, the right of physically or mentally handicapped persons to training and to have their jobs adapted, and the right of the family to social, legal, or economic protection.

Other rights recognised through the 1988 enlargement include the right to equal opportunities and equal treatment in employment and occupation, without discrimination based on sex, the right to information and consultation, the right to take part in determining and improving working conditions and the working environment, and the right to social protection for the elderly.

All these rights are not absolute, as there is provision for the possibility of derogation in the event of war or public danger, and also for the possibility of restrictions on some of the rights, provided they are in the form of a law and are deemed necessary.

The Charter applies to nationals and foreign nationals who are subjects of other states parties, who are lawfully resident or regularly employed in the territory.

## **Charter obligations**

And which are the obligations of States that are party to the Charter? It is on this point that the Charter shows its most peculiarity.

Article 20 defines these obligations:

The first one consists in that each state is obliged to consider from Part One, two objectives which it will try to achieve by all appropriate means, with a declaratory value.

The second obligation is to consider itself bound by at least five of the following seven articles of Part II: articles 1, 5, 6, 12, 13, 16 and 19.

The third obligation of a State Party shall be, in addition, to be bound by any additional number of

articles or numbered paragraphs of Part II that it chooses, provided that the total number of articles and numbered paragraphs to which it will be bound shall not be less than 10 articles or 45 numbered paragraphs.

And finally, to establish a system of labour inspection.

Thus, each State party adapts it to its own circumstances.

### **Mechanisms for monitoring its application**

The Charter has several monitoring mechanisms which are non-judicial:

Each State must submit a biennial report on the status of accepted provisions and another on non-accepted provisions, in this case at appropriate intervals or at the request of the Committee of Ministers.

The 1995 Additional Protocol added International organisations and consultative and listed NGOs of the Governmental Committee and national organisations to the list of subjects authorised to submit collective complaints for unsatisfactory application of accepted provisions.

In these cases, if the Governmental Committee draws up a report considering that there has been such unsatisfactory application, the Committee of Ministers will issue a resolution containing recommendations on the measures to be taken.

In 2022, the Council of Europe approved the reform of the biennial and ad hoc reporting system, which will enter into force in 2023.

There are two monitoring bodies:

- ◆ The formerly known as the Committee of Experts (now the European Committee of Social Rights) consisting of 7 members appointed by the Committee of Ministers from a list of independent experts proposed by the States parties.

And the formerly known as the Governmental Social Sub-Committee of the Council of Europe (now the Governmental Committee) on which the States parties are represented (each with one representative), together with two representatives of the international employers' organisations and two representatives of the workers' International Organisations (they may be joined by other observers in an advisory capacity).



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