

# **The role of the executive and the legislature**

*The European Social Charter, the next ten years.  
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## **Ladies and Gentlemen,**

It is an honour and a great pleasure for me to participate in this anniversary event, speaking of the role of the executive and the legislature in the implementation of the Revised European Social Charter (RESC).

Ten years since the opening for signature of the RESC seems a rather short period of time, if we consider the success it had in terms of rate of ratifications.

Over the past 10 years the Revised European Social Charter (RESC) has ceased to be the minor or unknown document that it was. It has become one of the Council of Europe's major Human Rights treaties alongside the European Convention on Human Rights (ECHR).

The indivisibility and interdependence of Human Rights are now, at least officially, generally accepted. Both the ECHR and the RESC guarantee rights to individuals. Like the ECHR, the RESC has increasingly become a reference for activities of the Council of Europe, concerning all individuals in their daily lives. It promotes the right to social protection, education, employment, non-discrimination, housing, health, and other basic rights at the workplace or in society.

The RESC is a major component of the system of European values which, despite the diversity of national traditions and views, contribute greatly to the strengthening and dissemination of the European social model.

In 1996, the elaboration of a RESC, rather than a series of amendments to the original Charter, was thought necessary to relaunch the original Charter and re-affirm its importance. The RESC incorporates important modifications including the recognition of a number of new social and economic rights. At the same time, the RESC made various important additions to the core of fundamental rights enshrined in the original Charter.

The Charter has struggled to keep pace with social changes, such as the increasing importance of the role of women in the workplace, the changing mentalities of the role of the elderly and the disabled in society, and the revolutions in the notion of the family.

To address the changing face of the family in modern society, the RESC expands the list of core obligations of States parties to include the recognition of social, legal, and economic rights for children and young persons. These rights include protection against negligence, violence or exploitation, the right of access to free primary and secondary education, and the

right to state aid when children "are temporarily or definitely deprived of their family's support" (**Art. 17**).

Social protection for the elderly was also added (**Art. 23**). This protection includes the rights of the elderly to housing and health care so that the elderly "may remain full members of society for as long as possible".

Programmes to increase the access of the poor to employment, housing, training, education, and medical assistance are also specified, as are programmes to provide adequate compensation to workers in case of termination of employment "without a valid reason" (Art. 24 and 30).

The RESC also encourages awareness and prevention of sexual harassment in the workplace and advocates policies of parental leave that benefit both mothers and fathers (Art. 26 and 27).

The RESC being an international treaty which as such is binding on States parties, the undertakings accepted must be implemented by States. Primary responsibility for implementing the RESC rests with national authorities, whether legislative, regulatory or judicial.

Means of implementation of the RESC are set out in Article I of the treaty, which reads as follows:

“Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:

- a. laws or regulations;
- b. agreements between employers or employers’ organisations and workers’ organisations;
- c. a combination of those two methods;
- d. other appropriate means.”

Accordingly States parties may choose the means of implementation of the RESC.

#### Implementation by laws or regulations

The implementation of the RESC by laws or regulations goes without saying when the obligation on the State consists precisely in adopting laws or regulation, i.e. issue health and safety regulations (Article 3§2) or regulation of night work of pregnant women, women who have recently given birth and women nursing their infants (Article 8§4).

Also it is commonly accepted that the implementation of precise rights, such as the right of women and men to equal treatment (Article 20), the right of women and men to equal wage for a work of equal value (Article 4§3), the right of protection against dismissal (Article 24) requires the adoption of laws or regulations.

By the same token, prohibitions required by the RESC such as the prohibition of forced labour (Article 1§2) and the prohibition of child labour (Article 7§1), must result from laws or regulations.

In reality, when bringing their situation into conformity with the RESC states most often opt for modifying existing legislation or adopting new legislation. Under the reporting system, the Romanian situation is illustrative of this general trend.

The control organ of the RESC had found, on the basis of Romania's report, a number of cases of non-conformity, for which the executive and legislative undertook the responsibility of bringing the needed corrections. The process was also facilitated by the trend for reform and modernization of the old legislation and social protection systems, for which the provisions set in the RESC were valuable milestones to refer to.

I may mention here improvements such as the adoption in 2003 of the new Labour Code which brought improvements in areas such as health at the workplace, as well as in the field of employment, as regards special types of employment contracts and the exemption of disabled people from tax on their wages. As concerns the right to organise, the right of employees (including civil servants) to set up and join trade unions was extended without any restriction. Police members now also have the right to join a professional association. Moreover, discrimination in employment or in access to social benefits, were removed from the legislation.

Of course, other issues remain to be brought in line with the provisions of the RESC, and the relevant ministries and governmental agencies are carefully considering possible remedies to these.

Romania has not ratified the 1995 Additional Protocol on Collective Complaints which provides for a procedure of collective complaints.

The Collective complaints Protocol has shown its benefits in strengthening and promoting social rights in States parties. To give you only few examples, I shall mention the case of International Federation of Human Rights Leagues (FIDH) v. **Greece** (7/2000). That case resulted in:

- clarification of the definition of state of emergency and thus of the circumstances when the population can be mobilised (Act No. 2936/2001)
- more restrictive definition of cases where criminal penalties may be imposed on seamen refusing to work, where the safety of persons, the vessel or the cargo is imperilled or where there are threats to the environment, public order and public health (Act No. 2987/2002).
- reduction in the period of duty of career military officers from 25 to about 10 years (Act No. /2003).

Following the case of World Organisation against Torture (OMCT) v. **Greece** (17/2000), an explicit ban on the corporal punishment of secondary school pupils was enacted (Act No. 3328/2005).

Following International Commission of Jurists (ICJ) v. **Portugal** (1/1998) the following was achieved:

- prohibition of employment of children under the age of 16; the definition of light work and the extension to self-employed (Act No 58/99 of 30 June 1999); and also

- reinforcement of sanctions against illegal child labour (Acts Nos 113, 114, 116 and 118/1999).

As a final example, I shall mention the case of the European Council of Police Trade Unions v. **Portugal** (11/2001) which ensured the right to organize and to bargain collectively for members of Public Security Police (Act No. 14/2002 of 19 February 2002).

### Implementation by collective agreements

The presentation, until now focused on the implementation of the RESC by laws or regulations, but as already mentioned, the implementation of the Treaty can be also achieved through agreements between employers or employers' organizations and workers' organizations.

States party may choose to leave the implementation of the RESC by collective agreements. However this is subject to the following conditions resulting from the European Committee of Social Rights (ECSR) case-law:

- the "State" – be it the legislative, regulatory or judicial authority – must ensure *a posteriori* the effectiveness of the rights (that was established following the *Collective complaint Confederation of Swedish Enterprise v. Sweden, decision on the merits of 15 May 2003 (No. 12/2002)*)

States party should ensure that these agreements do not contravene the obligations entered into, either through the rules that such agreements contain or through the procedures for their implementation (§27). The commitment made by the State party that the domestic legislation or other means of implementation under Article I, bearing in mind national traditions, shall not infringe on the rights enshrined in Part II of the RESC, implies that, in the event of contractual provisions likely to lead to such an outcome, and whatever the implementation procedures for these provisions, the relevant national authority, whether legislative, regulatory or judicial, shall intervene, either to bring about their repeal or to rule out their implementation (§28).

The second condition for States party to fulfil in order to implement the RESC through collective agreements is that:

- the implementation by collective agreements must operate within a precise legal framework which clearly circumscribes the discretion left to social partners (that was established following the *Collective complaint Confédération Française de l'Encadrement CFE-CGC v. France, decision on the merits of 16 November 2001 (No. 9/2000), §32*)

The Council of Europe is confronted today with challenges which require a new approach to the means and the long term objectives that would enable it to fulfil the role it has to play in promoting the model of European society in the 21 century.

As a fundamental document for ensuring social and civil rights, the RESC plays an important role, particularly in the context of the new economic and social challenges, such as:

a) Globalization, its effects over domestic economic growth, social inequalities in society and rapid modernization of economy;

- b) Secondly – the new significance of work: we are facing unemployment in many European countries; the alternation of working periods followed by unemployment eliminates the chances that one may spend all life in one job; on the other hand, life long learning gains more importance;
- c) Thirdly – the changes in social relations: the importance of family has changed, and the number of mono-parental families is growing. Therefore, the issue of social cohesion in societies characterized by poverty and unemployment, as well as by a large number of dependents and elderly people, is a central issue.

To conclude, I would say that while respecting the diversity of national traditions of the Council of Europe's member states, which constitute common European social values and which should not be undermined by the Charter nor by its application, it is, however, important to:

- consolidate adherence to the shared values of solidarity, non-discrimination and participation; and to
- identify the principles that ensure that the rights embodied in the Charter are applied equally effectively in all the Council of Europe member states.

The primary responsibility for implementing the RESC, naturally, rests with national authorities. Having regard to their constitutional arrangements and their welfare and industrial relations systems, these authorities may in turn delegate certain powers to local authorities or the social partners. However, these implementation strategies, if not accompanied by appropriate safeguards, may put at risk the actual implementation of the undertakings under the Charter.

I would say that the 10<sup>th</sup> anniversary of the RESC could be an opportunity to intensify the dialogue between the Council of Europe and the countries concerned, meaning parliamentarians, governmental representatives, NGOs and the public at large, with a view to secure broader understanding and recognition of these principles and their scope.

Thank you.