



*INGO Conference Standing Committee,
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*Position of the Conference of INGOs on the reform of the system of
the European Social Charter Treaties
on the occasion of the 60th anniversary of the Charter and the 25th
anniversary of the revised Charter*

1. Context

As all human rights are recognized as universal, indivisible and interdependent by the international community, states and all actors in society (Vienna Declaration adopted by the World Conference on Human Rights, 1993), it follows that social rights are *full rights* that must be implemented in practice and effectively guaranteed like all other rights. However, it is observed that these rights are still underdeveloped and insufficiently guaranteed, being often considered as *second-class* rights or reduced to social policy objectives and not protected as **real enforceable and justiciable rights**.

Yet social rights are not only important in themselves, but their exercise conditions the respect of all other human rights. Likewise, their implementation and guarantee are an essential condition for the practice of a *true democracy* that recognizes the essential space and central role of civil society.

The consideration and commitment to the advancement of social rights has always been a priority of the Conference of INGOs and over the last decade in its latest strategic plan. Working groups (Coordination Committee of the Turin Process for the Social Charter, Transversal Group on Poverty: Inequalities and Enjoyment of Rights) have produced publications, organized meetings, drafted recommendations adopted by the whole Conference, organized training on the Social Charter, collaborated with the Charter Service, etc.). The contribution to the Turin Process following the High Level Conference on the Social Charter organized in 2014, has been a highlight for the Conference and the member INGOs. Thus, expertise and experience have been developed in addition to the work done by INGOs that have filed collective complaints.

Most recently, in the framework of its new Rules of Procedure, the Conference established in April 2021, an "Action for Social Rights" Committee. This Committee brings together the INGOs directly active in the protection and promotion of social rights, in particular within the framework of the Council of Europe and its Member States.

Thus, the Conference of INGOs, which has regularly participated in the work and contributed to the reports prepared by the CDDH on social rights (2019), pays a particular attention to the process

of reform of the monitoring of the Social Charter which is underway. It is in this continuity and with constant interest that the Conference wishes to express its position and make its contribution on the occasion of the 60th anniversary of the Charter, following:

- the Secretary General's Proposals of 22 April 2021 « *Improving the implementation of social rights – reinforcing the European Social Charter system* »,
- the *strategic framework* adopted by the Ministers of Foreign Affairs of the Council of Europe member states on 21 May 2021.

2. The fundamentals

The European Social Charter as revised constitutes a corpus of fundamental standards for the protection of social rights in Europe. This instrument, ratified by 36 Member States (including most recently Spain, on 17 May 2021), is considered to be the *Social Constitution* of Europe.

The Conference shares the position of the Secretary General affirming "a clear refusal to lower standards and a rejection of social dumping" and will work to ensure that this minimum threshold of rights contained in the Charter is neither called into question nor lowered in terms of both the standards defined and the guarantees provided.

Member States which have not yet ratified the revised Charter should do so as soon as possible.

States parties which have not yet done so should ratify all additional provisions of the Charter to fully guarantee all social rights.

The *Additional Protocol providing for a system of collective complaints*, which is an essential mechanism for the effective guarantee of social rights and has so far been ratified by only 16 states, should be the subject of a new *promotional campaign* to encourage broad state support for this procedure in which civil society and INGOs are directly involved.

The accession of the EU to the European Social Charter should be encouraged, as has been proposed by various actors, including the European Parliament, in order to strengthen the scope of application of social rights and their collective guarantee. This accession would make it possible to anchor to the Charter the *European Pillar of social rights* developed by the EU.

3. The effective guarantee of social rights for all

The Conference considers that, at this stage, efforts should be concentrated, as a priority, on the concrete implementation and effective guarantee of the rights already enshrined in the Charter. The introduction of additional clauses into the scope of protection of these rights could also be considered (in particular, access to water; healthy environment; new forms of employment relationships; and protections when facing digitalisation and artificial intelligence).

3.2. The Conference urges the removal of ***the limitation on the personal scope of application*** according to which the Charter applies to foreigners "only insofar as they are nationals of other Contracting Parties legally resident or working regularly in the territory of the Contracting Party concerned".

This restrictive clause, in the Annex to the Charter, concerning protected persons does not comply with the requirement of universal application of human rights, including social rights, and excludes from this protection particularly vulnerable categories of populations present on the territory of States Parties.

Human rights being universal and indivisible, they must benefit all persons regardless of their status or situation and they cannot be "reserved" for particular categories. This does not exclude

that some benefits or services be adapted according to the public resources available, **but without depriving anyone of the most vital social rights** (such as the right to health protection, the right of children and adolescents to social, legal and economic protection, the right to protection against poverty and social exclusion...).

The Conference therefore considers that this limitative dimensions of the Annex, which can be explained in the historical context of the Charter, is today at odds with the principles of international human rights law and should be adapted and modified accordingly in the near future during the process of reform of the system.

4. Strengthening the effectiveness of the monitoring mechanism

The Conference supports the recommendations made in the CDDH report and the proposals made by the Secretary General on the monitoring mechanism, in particular

- simplification of reports to enhance effectiveness and not to undermine the monitoring mechanism;
- strengthening the adversarial procedure in collective complaints; proposing hearings with the parties;
- facilitating dialogue between the different bodies of the Charter and civil society organizations in a collective manner;
- awareness raising and training on social rights and the Charter system in the university context and for professionals in law and economic and social issues;
- establishment of national monitoring mechanisms on the implementation of the rights guaranteed by the Charter;
- strengthening of the resources of the European Committee of Social Rights in order, in particular, to facilitate the processing of collective complaints.

In addition, the Conference of INGOs proposes to examine the possibility of providing the following measures:

- a *specific rapid/emergency procedure* allowing the ECSR to request concise reports in short timeframes on specific topical situations where social rights are undermined and which cannot wait for the 4-year review;
- an examination by the ECSR not only of the conformity of the State law with the rights guaranteed by the Charter, but of the effective implementation of this law on the basis of actual practice. The opinion of the ECSR would enable the Committee of Ministers to ensure that concrete action is taken on collective complaints both in terms of changes in legislation and in practical implementation;
- to add to the Annex of the Charter a provision for *updating notes* that would allow for evolution according to changes in the societal context; these notes could also relate to Articles 30 and 31 which are not mentioned in the Annex and on which interpretative studies have been carried out;

5. The place and role of civil society and INGOs

Civil society, represented by the INGOs, has a crucial role in the European Social Charter treaty system: first of all in the framework of the periodic reports examined by the ECSR and also before

the Governmental Committee where the Conference of INGOs is represented and can express itself. But it is in the framework of the collective complaints procedure that this role is central since it is the INGOs entitled to file complaints that are the actors/triggers.

The current phase of the reform process of the Treaty system is crucial for the future of the Charter and of social rights in Europe.

The Conference of INGOs, which represents civil society in Europe and is a stakeholder in the Charter system, should therefore **be closely and regularly involved** in the reform work that will continue in the framework of the various Council of Europe bodies. The concrete experience and expertise developed by the Conference and its member INGOs are particularly useful and necessary resources in the ongoing process to improve the collective guarantee of social rights for all.

In conclusion, the Conference of INGOs wishes to participate actively in the events marking the 60th anniversary of the Charter and the 25th anniversary of the Revised Charter and to continue to make its contribution to the different steps of the reform process.
