

Avenues for NGOs to Advance Social Rights
in Europe:
The Role of the European Social
Charter

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The European Social Charter System: An Brief History

- ‘Completes the picture’ of human rights protection Europe
- A creature of the Council of Europe
- ‘Sister instrument’ to the European Convention on Human Rights but of lower status in practice
- Monitored by a part-time Committee of Experts: the [European Committee of Social Rights](#) (ECSR)
 - [State reporting system](#) (right to housing last looked at in ECSR’s 2019 Conclusions – will be looked at again in 2023)
 - Decides on [collective complaints](#)

Evolution from 'Workers' Charter' to Broad Social Rights Instrument

- 1961 [European Social Charter](#) (ESC): largely concerned with rights of workers/employers (version currently binding on 9 states parties)
- 1996 [Revised ESC](#) (RESC): introduced a wider range of social rights (version currently binding on 34 states parties)
 - the right of **elderly persons** to social protection (Art. 23)
 - the right to **protection against poverty and social exclusion** (Art. 30)
 - **The right to housing** (Art. 31)
 - the right of **disabled persons** to independence, social integration and participation in the life of the community (Art. 15)
 - *Article E – Non-discrimination*

The Right to Housing under the ESC

- Key provisions:
 - Article 16 ESC/RESC – outlines the right **of the family to social, legal and economic protection**, including the **provision of family housing**
 - [Binding](#) on all ESC/RESC parties bar Albania, Andorra, Armenia, Cyprus and Georgia
 - **Article 31 RESC**

‘With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

 1. to promote access to housing of an adequate standard;
 2. to prevent and reduce homelessness with a view to its gradual elimination;
 3. to make the price of housing accessible to those without adequate resources.’
 - [Only 14 states](#) have accepted Article 31 in full or in part (FIN, FR, EL, IT, LV, LT, MK, NL, NO, PT, SE, SI, TUR, UKR)

The Right to Housing under the ESC

- **Loads of jurisprudence**

- Key information source: [Digest](#) of Decisions and Conclusions of the ECSR

- Key themes:

- Adequate housing
- Forced evictions & legal protection of housing rights
- Roma/Traveller/gens de voyage rights (e.g., living conditions, social segregation)
- Measures taken to address homelessness
- Children in an irregular migration situation
- Affordable housing

Multiple **areas of overlap** between Articles 16 and 31, including notions of adequate housing and forced eviction...

The Collective Complaints mechanism

- **'Collective'** NOT 'individual' or 'state' complaints mechanism
- **Who** can bring complaints?
 - The European Trade Union Confederation, the Union of Industrial and Employers' Confederations of Europe and the International Organisation of Employers
 - Non-governmental organisations that have consultative status with the Council of Europe, that are on a list drawn up for this purpose by the Governmental Committee and that have recognised competence in the matters relating to the subject of the complaint
 - Representative employers' organisations and trade unions in the country concerned
 - National non-governmental organisations selected expressly by Contracting Parties
- **What** can be complained be about?
 - It must allege or show a violation of a Charter right that has been **expressly selected** by the relevant State Party

So far only 15 states have ratified the Additional Protocol on Collective Complaints...

Strategic litigation thoughts...

- Positives
 - Strong, direct protection of the right to housing
 - A systemic approach to systemic issues
 - Historically quick turnaround on complaints
 - Deliberate efforts to prioritise urgent issues
 - Admissibility: no requirement of exhaustion of domestic remedies or time limit!!
 - Growing profile of system
 - Growing attention and status given to ESC and work of ECSR by national courts (e.g, recent Italian Constitutional Court ruling)
- Negatives
 - Not a binding judgment: more like a UN treaty body communication system output than an ECtHR one
 - No individual remedy
 - Ongoing failure of all states parties to ratify Revised Charter and Collective Complaints Protocol Additional Protocol
 - Non-implementation: ERRC v Greece, Interights v Greece...

Resources

- More information on advocacy/strategic litigation related to the European Social Charter:
 - The excellent FEANTSA guide '[Instruments for Advocacy and Strategic Litigation on Housing Rights in Europe](#)' (pages 6, 12-14, 20)
 - A. Nolan, 'The European Social Charter System' (circulated on Zoom chat)
 - [How can \(I\)NGOs engage with the European Committee of Social Rights?](#)
 - [European Committee of Social Rights](#) webpage