

Recharting the Judicial Enforcement of the European Social Charter at the National Level

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Summary of the thesis

The protection of economic and social rights, as human rights guaranteed by constitutions and international/regional instruments, has received a big blow in the recent years of crisis in Europe. The enjoyment and realization of such rights has also been under immense pressure lately from contemporary economic and social challenges, such as novel practices in the workplace in the age of digitalization, (in-work) poverty and unemployment, social exclusion of vulnerable groups and distributive inequities. In addition, although the enforceability of economic and social rights before domestic courts and their consistency with civil and political rights has been strengthened in the last 30 years or so, the perpetual crisis era that Europe is struggling to recover from, has questioned the manner in which economic and social rights are to be enforced and ensured in practice, particularly at the national level.

Against this background, the European Social Charter (ESC), the sister treaty to the European Convention on Human Rights within the Council of Europe, has recently started to emerge at the pan-European legal and political level as the point of reference to address many of the challenges of the ‘social question’ of our times. In particular, through the increasing recognition of its renewed potential for the domestic enforcement of economic and social rights among various jurisdictions, the ESC, as interpreted by its monitoring body, the European Committee of Social Rights (ECSR), has provided a new impetus to revisit the Treaty’s main weakness, its non-justiciability and non-enforceability by domestic courts. This could have important effects not only for the effectiveness of the ESC, but also for the effective protection of economic and social rights, the evolution of European social systems and the further development of a social Europe.

In light of the above developments, this thesis addressed the question to what extent does the ESC, as interpreted by the ECSR, contribute to the judicial enforcement and the protection of economic and social rights at the national level? To answer this question, the thesis provided a systematic, analytical and – to some extent – comparative analysis of the status and impact of the ESC and of the ECSR pronouncements at the national level of selected contracting parties (France, Greece, Italy, the Netherlands, Spain), with a particular focus on the Treaty’s judicial enforcement by both higher and lower domestic courts. Thus, the study has drawn several pertinent conclusions regarding the Charter system’s dynamics for the effective protection of economic and social rights at the domestic level, in light of the process of its revitalization in the late 1990s and the renewed interest in its invocation and enforcement in the judicial arena.

As the findings have shown, the ESC has provided a significant impetus in the examined jurisdictions for an effective treaty-based review of domestic legal acts and provisions to be undertaken on the basis of the Treaty by domestic courts, for important labour and social issues to be considered in public debates held by individual and collective actors within these jurisdictions, and for changes in the law and policy to occur. As a result, the ESC, as interpreted by the ECSR and as enforced by domestic courts, has an important added value for the protection of economic and social rights at the national level of its contracting parties, where

most economic and social rights are not considered directly enforceable by law or they ultimately depend on the legislature to be given effect.

Through the practice of domestic courts directly or indirectly applying and enforcing the ESC, the Treaty's structural deficits *vis-à-vis* its enforcement at the international level are surpassed. Therefore, the ESC's enforcement at the domestic level opens up new horizons to assess the dynamics of the Treaty for the protection of economic and social rights as justiciable and effective human rights norms. Furthermore, when given due attention by national authorities, either directly or indirectly, the ESC has served as the necessary socio-economic rights protection counterweight to the liberalization schemes inherent in European Union law and national law.

Despite the weaknesses and particularities of the ESC system, the recent examples of the Treaty's mobilization, enforcement and influence at the domestic level have laid the groundwork for the ESC to come out of the shadows of the past and become a reliable and effective human rights living instrument for the realization of economic and social rights. Therefore, the findings with respect to the examined jurisdictions provide an original example of the ESC's current role and potential in rectifying the common misconceptions about the nature and enforcement of economic and social rights and in affirming in effect the indivisibility of human rights.