

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

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## Impact Paragraph

### *Scientific and societal relevance of the research findings*

The research findings aspire to have a significant scientific and societal impact. As regards the former, the focus on the judicial enforcement of the European Social Charter (ESC), as interpreted by the European Committee of Social Rights (ECSR), to address the social challenges of our times and contribute to the effective protection of economic and social rights at the national level across Europe shifts the insight of human rights legal research that has traditionally put emphasis on other instruments and parts of the world. The data collected and presented in this project could form the basis for further legal doctrinal or empirical research on the status, mobilization and impact of the ESC and other human rights treaties, as well as of the pronouncements of (non- or quasi-judicial) treaty bodies, at the national level, particularly in European jurisdictions where economic and social rights have an ambivalent status under the constitution. In addition, the findings could inspire the development of new legal rules, case law, policies, practices and discussions, having the ESC and economic and social rights as their main axis.

As far as the societal impact of the thesis is concerned, given that the research is on economic and social rights, as well as on their promotion at the national level through the ESC and its monitoring mechanisms, the findings address a number of crucial social challenges of our times and contribute to the development of several social sectors that are inextricably linked to such rights. For instance, the thesis further investigates the issue of the compatibility of austerity measures and other liberalization schemes in the labour market with economic and social rights. In addition, it examines how a human rights-compliant reception of unlawfully residing migrants and other vulnerable groups can be implemented, and it provides insights on how to address the declining role of civil society and other individual or collective actors in the deliberation and implementation of (social) policies in modern European societies. As a result, the findings could contribute to the development of better public administration and industry practices that comply with economic and social rights and to the improvement of the work and life environment in times of economic struggle.

### *Target audience of the thesis*

The thesis addresses several target groups. Firstly, it directly concerns lawyers, judges and legal academics researching not only the ESC and economic and social rights but also various legal disciplines, such as international and European (human rights) law, constitutional law and labour and social security law. Legal practitioners working in any field within their domestic jurisdictions could rely on the findings of the thesis and afford greater attention to the ESC and its enforcement potential in their lawsuits, which could have significant effects for the outcome of their cases. Furthermore, given that the thesis is concerned, to a great extent, with analyzing and comparing domestic case law on the ESC, evidently, it could be of great value for judges

that are called to apply the ESC and the pronouncements of the ECSR in their decisions. As shown, the enforcement of the ESC and of the ECSR pronouncements at the domestic level has an important added value for the protection of economic and social rights at the national level of its contracting parties, and therefore judges have an essential role to play in that regard.

Secondly, the thesis is of interest to policymakers, public administration and Council of Europe officials, civil society actors, NGOs, trade unions and employer organizations. As the findings have shown, the ESC is an underappreciated instrument, not only as a human rights regime but also as a governance tool, to promote economic and social rights in Europe. The ESC is inextricably intertwined with the social state principle and, given the necessary political attention, it has the potential to serve as the pillar on which the European social model can be grounded and further developed. As a result, policymakers and public administration and Council of Europe officials are directly concerned with the findings of this thesis and could benefit substantially from them. Civil society actors, NGOs, trade unions and employer organizations are also equally concerned with the thesis. According to the conclusions drawn, the ESC monitoring procedures, particularly the Collective Complaints Procedure, provide new and underappreciated opportunities for employer and worker organizations and NGOs to reclaim their role – which has been in decline in recent years – as strong mobilizing forces participating in the elaboration and implementation of social policy.

#### *Innovative aspects of the research*

There is no coherent and analytical – but at the same time country-specific – study focusing on the ESC's judicial enforcement and on whether and how the latter could translate into having a tangible impact on the law and policy or influence state and other actors' behaviour at the domestic level. Furthermore, there is no indication of whether and how national courts have applied the jurisprudence of the ECSR in their decisions. Therefore, unlike other international human rights treaties, there has been no analysis of the ESC, as interpreted by the ECSR, *vis-à-vis* its judicial enforcement at the domestic level and its overall effects in actually inducing changes in the behaviour of contracting parties, in view of the objectives set out in its revitalization process and the developments of the recent 'crisis-jurisprudence'.

The originality of the thesis lies not only in the choice of the ESC as the reference point to inquire into the judicial enforcement and effective protection of economic and social rights in recent years, or in its objective to address the above knowledge gap; it also lies in the fact that the thesis provides an in-depth and up-to-date analysis of the ongoing debate concerning the Treaty's applicability by the domestic courts of contracting parties, as well as of the topical issue of the legal effects of the ECSR's pronouncements (particularly its collective complaints decisions). These issues remain an important yet unresolved matter within the discipline, which has recently caused extensive legal and even political debate within domestic jurisdictions, but it has not been researched adequately and inclusively.

However, the innovation of the thesis also arises from several methodological aspects of the research. In particular, the study is the first to undertake a horizontal comparison of the influence of the ESC, *qua* international human rights treaty, in the domestic law of selected

contracting parties, especially domestic case law, that takes the complementary overlap between national and international human rights law into account. Additionally, the focus of the thesis is not only on the decisions of higher courts, as is usually the case in relevant literature, but also on cases brought by litigants before lower courts of the selected jurisdictions at the national level, thus illustrating the lower judges' perspective in applying socio-economic rights under the ESC system. Finally, the research was based on academic literature in six different languages (English, French, German, Greek, Spanish, Italian) and collected and analyzed court decisions relating to the ESC and other international treaties from five jurisdictions (France, Greece, Italy, the Netherlands, Spain) with diverse constitutional arrangements.

#### *Implementation and dissemination of the research findings*

The wider audience can be informed and involved in the research results in several ways. Firstly, the findings of the research have already been disseminated through various means. They have been published in several international legal journals (e.g. Human Rights Law Review; European Public Law; European Labour Law Journal; Comparative Labor Law & Policy Journal) and edited volumes (e.g. Boost, C. et al, Myth or Lived Reality: On the (In)Effectiveness of Human Rights, TMC Asser Press, 2021) and they have also been used in a study for the Greek Ministry of Labour and Social Affairs. In addition, I presented parts of my research at international conferences and seminars (e.g. Netherlands Network for Human Rights Research Annual Research Day 2019; Association of Human Rights Institutes Annual Conference 2021; Centre of International & European Economic Law Jean Monnet Seminar 2021 on 'Discourses on the constitutional identity of the European Union: the EU Charter of Fundamental Rights/EU Rights').

Secondly, the thesis will be published as a commercial edition and its core findings will be further disseminated through new academic publications that are forthcoming in international journals (e.g. Netherlands Quarterly of Human Rights; European Papers - A Journal on Law and Integration), edited volumes (e.g. Academic Network on the European Social Charter and Social Rights, The European Social Charter: A Commentary, Brill/Nijhoff Academic Publishers, 2023), blog and social media posts, and presentations in academic and policy conferences, seminars and lectures. Furthermore, the conclusions drawn in this project will be distributed to the target groups indicated above through my role as an International Consultant to the Council of Europe Department of the European Social Charter and as the national co-coordinator of the Greek section of the Academic Network on the European Social Charter and Social Rights.