

Trade union rights in the European Social Charter

- Article 5 – the right to organise
- Article 6 – the right to bargain collectively
- Other treaty provisions expressly referring to the social partners:
Articles 3, 10, 19§4, 21, 22, 26, 28, 29...and also Article I

the right to organise

Article 5:

*With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the **police** shall be determined by national laws or regulations. The principle governing the application to the **members of the armed forces** of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.*

the right to bargain collectively

Article 6:

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

- 1 to promote joint consultation between workers and employers;*
 - 2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;*
 - 3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;*
- and recognise:*
- 4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.*

Right to organise in the *public sector* (Article 5)

- All workers, including **civil servants and other public sector workers**, have the right to organise (form and join unions, carry out union activities)
- Permissible restrictions in respect of the **police**:
 - The most senior police officers may be excluded from the right to organise
 - Police trade unions may be required to be composed exclusively of members of the police force
- Permissible restrictions in respect of the **military**:
 - States have wide margin of appreciation to restrict the right to organise, but a complete ban for military personnel to form or join “associations of a trade union nature” is not regarded as necessary or proportionate in a democratic society (Article G)

Right to collective bargaining in the *public sector* (Article 6)

Collective bargaining (Article 6§2)

- The extent to which collective bargaining applies to public sector workers, including members of the police and armed forces, may be determined by national law. Public sector workers must have the right to be consulted in any processes that are directly relevant for the determination of their terms and conditions of employment. In order to satisfy this requirement, the mechanism of consultation or bargaining must be such as to genuinely provide for a possibility of a negotiated outcome in favour of the workers' side.
- It is imperative to regularly consult all parties throughout the process of setting terms and conditions of employment for public sector workers and thereby provide for a possibility to influence the outcome.

Collective action (Article 6§4)

- Prohibiting strikes in sectors which are essential to the community can serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health (Article G). However, a blanket ban on strikes even in essential sectors is not deemed to be proportionate.
- The right to strike of certain categories of public servants may be restricted, including members of the police and the armed forces, judges and senior civil servants. However, a denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter.
- **The police:** an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it (Article G). On the other hand, the imposition of restrictions as to the mode and form of such strike action may be in conformity to the Charter.
- **The military:** the need to be able to maintain the command operational in the most extreme situations of military exposure may not justify the absolute prohibition of the right to strike, because it is not proportionate to the legitimate aim pursued and, therefore, is not necessary in a democratic society (Article G).

Charter monitoring: the procedures

- **Reporting procedure:**

Based on written state reports with regular intervals, mandatory procedure for all **42** States Parties

- **Collective complaints procedure:**

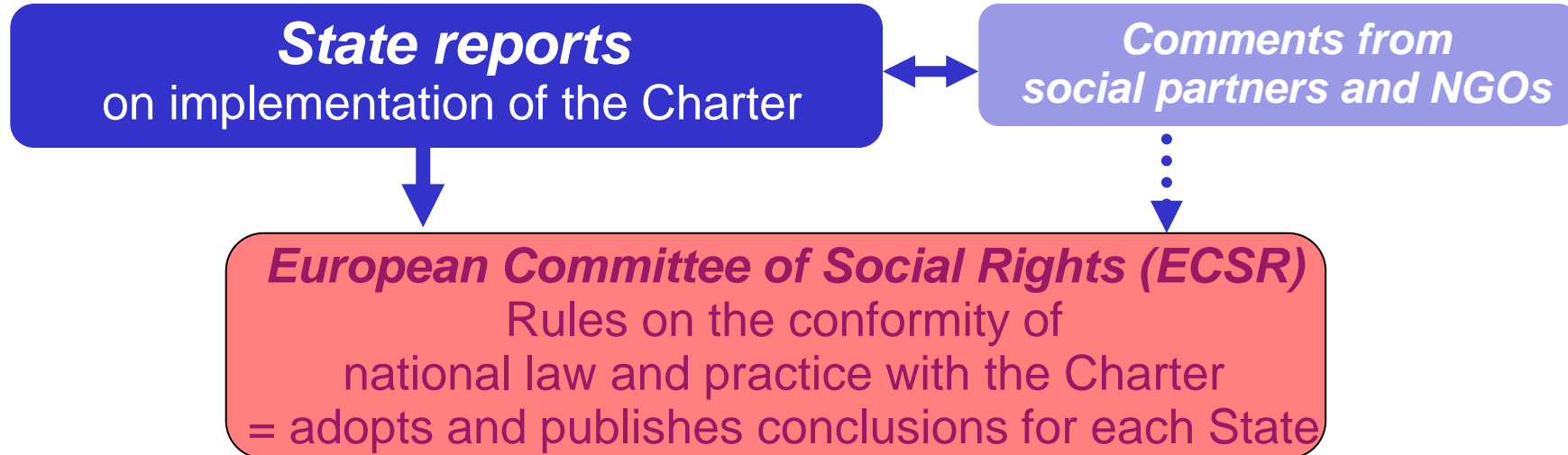
Quasi-judicial procedure allowing trade unions, employers' organisations and certain NGOs to lodge complaints, optional procedure, currently **16** States Parties

- **European Committee of Social Rights (ECSR):**

15 independent members elected by the Council of Europe's Committee of Ministers for a period of six years, renewable once, makes legal assessments of state compliance with the Charter and issues "conclusions" and "decisions"

Reporting Procedure

Legal assessment



Follow-up



Collective Complaints Procedure

Legal assessment

Complaints lodged by trade unions, employers' organisations and NGOs alleging violations of the Charter

European Committee of Social Rights (ECSR)
decides whether the complaints are admissible and well-founded (merits)

Follow-up

Committee of Ministers
ensures that States bring situations into conformity with the Charter.

Organisations eligible to lodge complaints

1) *International organisations of trade unions and employers referred to in Article 27§2 of the Charter (ETUC, BusinessEurope, IOE)*

- may lodge complaints against any state which has accepted the complaints procedure, and on any matter falling within the Charter's scope

2) *INGOs included on the list of organisations entitled to submit complaints*

- may lodge complaint against any state which has accepted the complaints procedure concerning matters in which they have **particular competence**

3) *Representative national trade unions and employers' organisations*

- may only lodge complaints against States to whose jurisdiction they belong, and on any matter falling within the Charter's scope
- **representativeness** is an autonomous concept

4) *Representative national NGOs*

- only where State has made declaration (only *Finland* has done so)
- may lodge complaints concerning matters in which they have **particular competence**
- **representativeness** is autonomous concept

Key ECSR decisions on trade union rights in the *public sector*

- [No. 32/2005 European Trade Union Confederation \(ETUC\), Confederation of Independent Trade Unions in Bulgaria \(CITUB\), Confederation of Labour “Podkrepa” \(CL “Podkrepa”\) v. Bulgaria](#)
- [No. 83/2012 European Confederation of Police \(EUROCCOP\) v. Ireland](#)
- [No. 101/2013 European Council of Police Trade Unions \(CESP\) v. France](#)
- [No. 112/2014 European Organisation of Military Associations \(EUROMIL\) v. Ireland](#)
- [No. 116/2015 *Matica hrvatskih sindikata* v. Croatia](#)
- [No. 164/2018 European Organisation of Military Associations \(EUROMIL\) v. Ireland](#)

Pending complaints on trade union rights in the *public sector*

- [No. 155/2017 *Confédération générale du travail \(CGT\) v. France*](#)
- [No. 161/2018 *Confederazione Generale Sindacale \(CGS\) and Federazione dei Lavoratori Pubblici e Funzioni pubbliche \(FLP\) v. Italy*](#)
- [No. 169/2018 *Nursing Up v. Italy*](#)
- [No. 179/2019 *Associação Sindical dos Profissionais da Polícia \(ASPP/PSP\) v. Portugal*](#)
- [No. 180/2019 *Association of Secondary Teachers Ireland \(ASTI\) v. Ireland*](#)
- [No. 199/2021 *European Organisation of Military Associations and Trade Unions \(EUROMIL\) v. Portugal*](#)
- [No. 208/2022 *Unione sindacale di base \(USB\) v. Italy*](#)
- [No. 211/2022 *Syndicat des Agrégés de l'Enseignement Supérieur \(SAGES\) v. France*](#)

More information

Charter website

<https://www.coe.int/en/web/european-social-charter/home>

Digest of ECSR Case Law (new updated edition forthcoming in autumn 2022)

HUDOC database

<http://hudoc.esc.coe.int/eng/#>

Collective complaints

Reporting procedure