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Third regional meeting of the project:  
Trade union rights and implementation of  
the Transparent and Predictable Working Conditions Directive in public services  
A joint project of EPSU, EUROMIL and EuroCOP

Defending and strengthening trade union rights in public services  
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## **LEGAL STRATEGIES TO DEFEND TRADE UNION RIGHTS**



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# AVENUES EXPLORED/USED BY ETUC WITH A FOCUS ON ILO AND COUNCIL OF EUROPE

## ❖ ILO

- Regular supervisory system
- Special procedures

## ❖ Council of Europe

- European Court of Human Rights – Third party interventions
- European Social Charter:
  - Regular national reporting system
  - Collective Complaints

# ILO

## ❖ Regular supervisory system

- Regular reporting on implementation and application of (fundamental) ILO Conventions via national reports but to which (national) trade unions can make observations
- Based on the deliberations of the **Committee of Experts on the Application of Conventions and Recommendations (CEACR)**, a selection of cases might be referred to the ILO annual **International Labour Conference** and in particular the **Committee of Application of Standards (CAS)** for further deliberation and decisions on further action needed (technical assistance, inquiry procedures, complaints, representations, etc. )

## ❖ Special procedures: next to the ones mentioned above, the most relevant one is for violations of TU rights is the **Committee on Freedom of Association (CFA)** on **Conventions n° 87 and 98** where (national) trade unions can file complaints

# ILO

## ❖ ETUC role in ILO matters/procedures:

- The lead organisation towards ILO is the International Trade Union Confederation (ITUC), however and in particular in the framework of the ITUC-PERC (Pan European Regional Council) the ETUC is able to assist its national/European affiliates in matters/complaints they would like to bring forward at the ILO level by helping them in the drafting of observations and complaints and/or coordinating TU interventions in the CAS when a particular case is selected for deliberation

# COUNCIL OF EUROPE

## ❖ European Convention of Human Rights

- **Main avenue is the European Court of Human Rights in particular third-party interventions**
  - To note is that this involves individual cases with a very particular focus
  - It is a very formalistic procedure (e.g. exhaustion of national procedures, very formalistic requirements to submit cases,...) and very long-term procedure
  - Despite all this, ETUC has been very active including in cases on protection of TU rights (FoA, right to collective bargaining, right to strike, ...) although with differing outcomes
  - The main route used is so-called third-party interventions
  - **ETUC assistance/intervention is possible:**
    - If Registry of ECtHR grants us the leave to intervene (so far not a real problem)
    - If requested by the TU (national/European) representing/assisting the individual claimant (although not a *conditio sine qua non*, ETUC has intervened in cases if considered relevant to influence the ECtHR case law)
    - ETUC intervention focuses on international, European and comparative material in support of claim
    - Some examples: *Holship v. Norway* (N° 45487/17, right to CB/strike dockers), *Humpert e.a. v. Germany* (N° 59433/18, general ban right to strike public servants) but there are other examples where no TU/ETUC affiliate was involved but ETUC intervened in order to “guide” the ECtHR case law

# COUNCIL OF EUROPE

## ❖ European Social Charter (ESC) - Regular national reporting system

- For the moment member states have to report on a 4-year interval on different articles of the ESC grouped in 4 thematic groups, States have obligation to send report to national social partners who have possibility to make observations
- Thematic Group « Labour rights » : Article 4 (incl. Fair remuneration) - Article 5 (freedom of association) - Article 6 (incl. Collective bargaining/right to strike) - Article 21 - Article 22 ('information/consultation rights') - these are also the articles most used in collective complaints for public servants/armed forces/police (see later)
- Does not deal with individual cases but rather violations in law and practice because of legislation which is lacking, insufficient and/or too strict compared to obligations under ESC
- Next reporting on these articles by MS is 31/12/2021 on all MS (except NL, SE, HR, NO, SI, CY and CZ), observations by TUs normally expected by April 2022, European Committee of Social Rights to deliver Conclusions by December 2022, deliberation of cases (if selected) by Governmental Committee in course of 2023

# COUNCIL OF EUROPE

## ❖ European Social Charter (ESC) - Regular national reporting system

- Possibilities for EPSU/EUROMIL/EuroCOP affiliates as well as ETUC (or with assistance of ETUC) to intervene are:
  - To consider an overall comparative submission to ECSR with a focus on TU, IC and working conditions rights by 31/12/2021
  - And/or specific contributions by EPSU/EUROMIL/EuroCOP to national reports depending on when national reports are delivered by April 2022
  - After delivery of the ECSR conclusions (end 2022/begin 2023) ETUC can intervene based on further input of affiliates during deliberations in the Governmental Committee in course of 2023

However to note is that reporting system is currently under review although it is expected that any changes will not be effective before end 2022/2023

# COUNCIL OF EUROPE

## ❖ European Social Charter (ESC) – Collective Complaints Procedure

- Only possible against 16 MS: BE, BG, HR, CY, CZ, FI, FR, EL, IE, IT, NL, NO, PT, SI, ES (since May 2021), SE and only on articles ratified by those states (for non-accepted provisions there is a special procedure (missions by ECSR) where ETUC or affiliated TUs can be associated to)
- ETUC and national TUs have possibility to file complaint; very wide notion of representativity applied by ECSR
- EUROMIL, EuroCOP are on list of INGOs that can file complaints, EPSU not yet (but in principle not necessary as all affiliate to ETUC) but to consider (cfr. CESI which is on list pro forma)?
- Very informal, mainly written and relatively speedy procedure
- Not individual but focus again on violations in law and practice because of legislation which is lacking, insufficient and/or too far strict compared to obligations under ESC



# COUNCIL OF EUROPE

## ❖ European Social Charter (ESC) – Collective Complaints Procedure

- This procedure has proven already to be widely used/successful in relation to individual and collective rights of public servants/armed forces/police, see amongst others complaints by
  - EUROMIL: CC 164/18 v. IE and 112/2014 v. IE
  - EuroCOP: CC 83/2012 v. IE
  - EUROFEDOP: CC 2-5/1999 v. FR/EL/IT/PT (armed forces)
  - European Council of Police Trade Unions (CESP) CC 37-38/2006, 40/2007, 57/2009, 60/2010, 68/2011 and 101/2013 mainly against FR and PT

# COUNCIL OF EUROPE

## ❖ European Social Charter (ESC) – Collective Complaints Procedure

- How can EPSU/EUROMIL/EuroCOP intervene? How can ETUC help/assist? Mainly 3 avenues:
  1. Observations by ETUC (in cooperation with EPSU/EUROMIL/EuroCOP) in complaints launched by EPSU/EUROMIL/EuroCOP or by other INGOs like CESP, EUROFEDOP,... – focus again on international, European and comparative material
  2. Joint complaints national/European affiliates + ETUC (e.g. BG on right to strike public servants, BE on judicial intervention in right to strike and idem for NL in 2021)
  3. Follow up to the ECSR decisions on the merits which are discussed in the ESC Governmental Committee where ETUC has privileged observer status but input from EPSU/EUROMIL/EuroCOP will be necessary

# PRELIMINARY CONCLUSIONS

- ❖ **ETUC** has a longstanding track-record in assisting **ETUC** affiliates (including **ETUFs** and their affiliates) in defending fundamental social rights, in particular **TU** rights
- ❖ Whereas for the moment less developed at international level (**ILO**), **ETUC** leads in assisting affiliates in **Council of Europe** procedures in particular vis-à-vis the **European Convention on Human Rights** and the **European Social Charter**
- ❖ To be at an even better assistance the **ETUC** recently renewed its human rights, legal and strategic litigation support structures via the **ETUCLEX** (<https://etuclex.etuc.org/> )

## SOME USEFUL REFERENCES

- ❖ **ILO monitoring systems:** <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang--en/index.htm>
- ❖ **Council of Europe European Court of Human Rights:** <https://www.echr.coe.int/Pages/home.aspx?p=applicants&c=>
- ❖ **Council of Europe European Social Charter:**
  - **Reporting system:** <https://www.coe.int/en/web/european-social-charter/national-reports>
  - **Collective Complaints Procedure:** <https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure>

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**THANK YOU!**

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