

The European Social Charter As an Instrument to Eradicate Poverty: Failure or Success

I. INTRODUCTION¹

In Europe, as in the rest of the world, the protection of economic and social rights began later than that of civil and political rights. In addition, economic and social rights have never been protected at the same level or with the same guarantees, nor have they been given the same priority as civil and political rights.

In the Council of Europe, the recognition of collective rights has come primarily through the European Social Charter (hereinafter, ESC), also known as the Charter of Turin of October 18th 1961, in force since 1965. Before the ESC, only few economic and social rights were protected in the Council of Europe through the European Convention on Human Rights of 1950 (hereinafter, ECHR). Despite the fact that the ECHR basically contains fundamental civil and political rights, this covenant and some of its additional protocols also include some collective rights. Among them are trade union rights, property rights and the right to education.

Today, the ESC has three additional protocols: the Additional Protocol of May 5, 1988, the Protocol of Amendment of October 21, 1991 and the Additional Protocol on a system of collective complaints of November 9, 1995.

To complete the framework, a mention has to be made to the Revised European Social Charter of May 3, 1996 (hereinafter, RESC). The RESC improves, expands and deepens in the protection of collective rights provided by the ESC in its original wording. The RESC came into force in 1999 and is intended to gradually replace the 1961 Charter and its Additional Protocol of 1998. For that to happen, all states parties to the first Charter have to ratify the Revised Charter.

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However, the mechanism of enforcement is unique. It applies both to the provisions of the Charter of 1961 as well as to those of the RESC.

The purpose of this paper is to ascertain to what extent the Council of Europe actually works against poverty through the ESC system. With this purpose in mind, we will analyze first the contents of the ESC and the RESC. Secondly, we will study to what extent these two covenants are committed to the eradication of poverty. Finally, we will examine the jurisprudence of the ESC's organs on the fight against poverty. After having studied all these elements, we will be able to conclude whether the ESC (and the Council of Europe itself) is an effective «poverty eradication» oriented tool.

2. THE DRAFTING OF THE EUROPEAN SOCIAL CHARTER

The fact that when the ECHR was adopted in 1950 a similar agreement on socio-economic rights could not be reached, depended on priorities and strategy. First, emerging tensions with the Communist world led Western states to reaffirm themselves in the defense of the traditional freedoms of the individual, that is, civil and political rights. Secondly, the Council of Europe considered that civil and political rights were more judiciable than socio-economic rights. Thirdly, it was considered that a treaty on economic and social rights would duplicate the work already conducted by the International Labor Organization. Finally, consensus was needed in Europe on a strong text, and with socio-economic rights, consensus was certainly not to be achieved.

Thus, in 1950 a treaty on civil and political rights was adopted; the European Convention on Human Rights. However, the idea of complementing this treaty with another one containing socio-economic rights remained intact within the Council of Europe. In 1953 the Consultative Assembly of the Council of Europe first, and its Committee of Ministers, afterwards, unanimously approved the proposal to draft a treaty on social rights to contribute to European unification. That treaty is the European Social Charter.

Nevertheless, the prevalence of civil and political rights over socio-economic ones in Europe is clear even today. To verify that the European Social Charter is the ECHR's «poor relative» is an easy task: one only has to check how many years it took the Charter to be approved by the negotiating states. Moreover, any state wanting to become a member of the Council of Europe necessarily has to ratify the ECHR. However, the organization is not requiring prospective candidates to ratify either the European Social Charter or the Revised European Social Charter to become a member state.

This preference for civil and political rights is also crystal clear if we compare the mechanism of control of both the ECHR and the ESC. The monitoring mechanism of the ECHR has a judicial character and is much stronger than that of the ESC. While the monitoring mechanism of the latter has been

quasi-judicialized through the mechanism of collective complaints, but still it is a rather weak system.

And still another point could be added from outside the realm of the Council of Europe: in the Charter of Fundamental Rights of the EU, which has a binding character since the Treaty of Lisbon 2007, the ECHR and the ESC do not receive the same treatment at all. The latter is only mentioned in the Preamble whereas the ECHR is mentioned several times in the articulate, binding text. In addition, the Charter of Fundamental Rights of the EU cites the jurisprudence of the ECHR, but it does not do so with respect to the jurisprudence of the supervisory bodies of the ESC.

The reason for this difference of treatment is evident: the formulation of socio-economic rights has implications for states, corporations and citizens. Socio-economic rights are translated into higher costs, both in the form of taxes that help to sustain social and welfare states and in the form of an increase in the final price of the products that pay for the extra cost involved in a production process which respects labor rights.²

3. EUROPEAN SOCIAL CHARTER RIGHTS

The ESC protects 19 rights, each right involving one or more obligations for the states parties. But the wording of the articles that set those rights is not as strong as that of the ECHR. The ECHR is worded in a way that establishes directly enforceable rights. In contrast, the ESC sets goals to be achieved. The wording of the ESC goes like this: «the parties agree to...» (set conditions, recognize as one of its main objectives, effectively protect, grant, provide, supply, promote...). But the ESC never says «everyone is entitled to the following rights» or «the workers have the right to...».

The rights protected by the ESC are:

- The right to work (art. 1).
- The right to just working conditions (art. 2).
- The right to safe and healthy working conditions (art. 3).
- The right to a fair remuneration (article 4).
- The right to organize (art. 5).
- The right to bargain collectively (art. 6).
- The right of children and young persons to protection (art. 7).
- The right of employed women to protection (art. 8).
- The right to vocational guidance (art. 9).
- The right to vocational training (art. 10).
- The right to protection of health (art. 11).

² Luis Jimena Quesada: *Sistema Europeo de Derechos Fundamentales*, Colex, Madrid, 2006, p. 125.

- The right to social security (art.12).
- The right to social and medical assistance (art. 13).
- The right to benefit from social services (art. 14).
- The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement (art. 15).
- The right of the family to social, legal and economic protection (art. 16).
- The right of mothers and children to social and economic protection (art. 17).
- The right to engage in a gainful occupation in the states parties (art. 18).
- The the right of migrant workers and their families to protection and assistance (art. 19).

These rights can be grouped into four categories: the rights related to work itself (art. 1, 2, 3, 4, 18); trade union rights (art. 5, 6); rights to protection and social assistance (art. 7, 8, 11, 12, 13, 14, 16,17 and 19); and rights related to vocational training (art. 9, 10, 15).

There is certainly no general or specific reference in the ESC to poverty eradication. However, the promotion of the enjoyment of most of the Charter rights implies an improvement in living conditions, which, in itself, serves the purpose of combating poverty and social exclusion. This is the case of the access to social security and health, to fair labor conditions, or to the protection of children and the elderly.

According to the ESC, states parties are bound by at least 5 of the 7 following rights: 1, 5, 6, 12, 13, 16 and 19.3. States are also bound by an additional number of articles as they may select, provided that the total number of articles by which they are bound is not less than 10 articles.

In conclusion, the ESC establishes a system in which each State is free to declare, with a minimum of 10 articles and a maximum of 19, what rights they do feel prepared to guarantee in their territory. The originality of the ESC is the possibility of this partial acceptance.

Since its adoption on October 18, 1961, there has been criticism about the content of this Charter. It has been blamed for not being ambitious enough, for the few obligations it puts upon the states, for its conservative character and for the little progress it has produced. Perhaps this is the price to be paid for it to be accepted by the Member States of the Council of Europe. While not a perfect document, the ESC reflects the most the Council of Europe could achieve in 1961.

4. THE REVISED EUROPEAN SOCIAL CHARTER

The most important result of the *ad hoc* Committee that from 1990 had been trying to revitalize the ESC –the so-called «Charte Rel Committee»– was the presentation of a draft for a Revised European Social Charter which was opened for signature on May 3, 1996.

The Revised European Social Charter (hereinafter, RESC) was meant to be a new protocol to the ESC. However, the enthusiasm that this project attracted was so overwhelming that it finally turned into a new charter for the ratification of which it would not be necessary to be already a state party to the ESC.

The RESC was conceived because some ESC rights had become obsolete (for example, the right to two weeks of annual paid holiday, or maternity leave of 12 weeks) and some others were lacking (e.g. the right to housing, the right to protection against unfair dismissal, the right to the protection of workers against the employer's insolvency, or to protection against social exclusion).

The RESC is therefore an updated instrument, which is far more protective than its predecessor. Among the rights it contains, there are many improvements and amendments to some of the rights already included in the ESC, such as the guarantee of paid leave –increased from 2 to 4 weeks by art. 2.3–, or maternity leave –increased from 12 to 14 weeks by art. 8.1–. In other cases, we face new rights such as the right of workers' to protection against dismissal (art. 24), or the right of workers to protection in the event of insolvency of the employer (art. 25), or the right of workers to dignity at work (art. 26).

The monitoring system of the ESC was extended to the RESC, which will progressively substitute the 1961 Charter. Therefore, from 1996, there are two coexisting treaties containing social and economic rights operating within the Council of Europe. The idea is that parties to the ESC ratify the RESC as well, and when this moment comes, the 1961 ESC will eventually disappear. However, this moment has not arrived yet, so both treaties are still in force.

The RESC has been the most important reform of the ESC system so far. Its purpose is to bring up to date and adapt the content of the Charter, as stated in the Preamble. Some of the new rights included in the RESC have much to do with the fight against poverty.

The RESC introduces new rights directly or indirectly related to the idea of ending poverty. Among them: all workers have the right to protection in cases of termination of employment (art. 24); all workers have the right to protection of their claims in the event of the insolvency of their employer (art. 25); all workers have the right to dignity at work (art. 26); all persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities (art. 27); all workers have the right to be informed and consulted in collective redundancy procedures (art. 29); and, last but not least, everyone has the right to protection against poverty and social exclusion (art. 30) and everyone has the right to housing (art. 31).

But it is article 30 that clearly recognizes the right to protection against poverty and social exclusion. The article says:

«With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social

exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance; to review these measures with a view to their adaptation if necessary».

From the content of the article it can be deduced that protecting from poverty requires the provision of access to employment, housing, training, education, culture and social and medical assistance. In this sense, article 30 settles a right, which includes several rights itself, since article 30 specifically recognizes the right to protection against poverty, but there is a bunch of other rights that are included in article 30 which have also been developed in other parts of the text.

One might ask himself whether it was necessary to include an article such as 30, since the measures it proposes have already been stated somewhere else in the RESC. However, this is an important step. The drafting of art. 30 ESC implies that the Council of Europe recognizes there is a serious problem with poverty. Moreover, it means states are ready to do something about it. Besides this, it obviously enables state governments to develop whichever measure is considered convenient to fight against poverty.

In its fight against poverty, article 30 includes the protection of disabled people. It is reasonable to think that protecting the disabled by ensuring them an honorable life is a way to prevent poverty (poverty in a concrete group of society, but poverty after all). This mention evidences that vulnerable groups are more often at risk when talking about poverty.³

The fact that the RESC includes a provision like this to fight against social exclusion is a reflection of Europe's concerns to eradicate poverty.

5. THE SYSTEM OF CONTROL

Neither the ESC of 1961 nor the 1996 RESC provide for a judicial complaints' system to control the application and interpretation of their provisions. The Charter opts for the classic technique of the political control through periodic reporting by states parties on articles accepted by each state, and the formulation of findings, conclusions and recommendations on the compatibility of the national measures with the ESC or the RESC. For its part, the Protocol of 1995 has significantly improved the control mechanism to include the possibility of collective complaints (but not individual complaints).

As already mentioned, the control system is common to all conventional texts of the Charter system. The organs involved in the Charter monitoring system can be classified in two types: principal organs of the Council of Europe (as the Committee of Ministers, the Parliamentary Assembly and the Secretary General), and extra-statutory organs created through the Charter system, as the

³ Susana Sanz Caballero (ed.): *Colectivos vulnerables y Derechos Humanos. Perspectiva Internacional*, Tirant lo Blanch, Valencia (forthcoming in) 2010.

European Committee of Social Rights (hereinafter, ECSR) and the Governmental Committee.

In accordance with art. 21 ESC, the contracting states shall transmit to the Secretary General of the Council of Europe a report on those provisions of the Charter or the Revised Charter that they have accepted. The report has an annual basis, but rights have been divided into four groups (employment and training and equal opportunities; health, social security and social protection; labor rights and children; families and immigrants) so that states only have to send each year information relating to one of these four groups of rights and not of all four groups at once. Thus, at the end of a period of four years, the Council of Europe will have been able to review the performance of the state concerning all the rights it has assumed.

The ECSR will appreciate, from a legal standpoint, if the laws, regulations or practices of the state are in violation of the Charter. Although discussions are confidential, the ECSR's findings –which are called conclusions– are made public (articles 23 and 24 of the Charter). These conclusions of the European Committee of Social Rights are taken up by the Governmental Committee, which prepares the decisions of the Committee of Ministers. As a result of this procedure, the Committee of Ministers may make recommendations to individual states. However, it cannot convict or condemn a state for an alleged violation, as conclusions are not judgments, and the ECSR is not a court.

The problem of this procedure is, as Teresa Freixes affirms, that the value of these reports is more political than legal, unlike the judgments of the ECHR.⁴ However, it has to be acknowledged that the ECSR has been able to identify situations that indicate structural instability or practices that provoke poverty in a state, e.g. in 2007 in Spain, where the reporting system showed how low the minimum wage established by the government was, as compared to the average wage in the country. The ECSR has affirmed that this situation leads to an impoverishment of the population and, therefore, that the Spanish legislation on fair pay was not in conformity with the ESC.⁵

⁴ Teresa Freixes Sanjuán: «La justiciabilidad de la Carta Social Europea», in Luis Jimena (ed.): *Escritos sobre Derecho Europeo de los derechos sociales*, Universitat de València, Valencia, 2004, pp. 113-136, at p. 120.

⁵ «While acknowledging the efforts taken by the Government with a view to increasing the minimum wage, the Committee believes that it is still very low and therefore it cannot alter its previous conclusion. The Committee concludes that the situation in Spain is not in conformity with Article 4§1 of the Charter on the grounds that the minimum wage falls far below the threshold of 60 % of the average wage» (ECSR, June, 30 2007, Conclusions XVIII-2 vol. 2).

6. COLLECTIVE COMPLAINTS

The Protocol on collective complaints was opened for signature on November 9, 1995 and entered into force on July 1, 1998. Its purpose is to improve the efficiency of the supervisory machinery of the European Social Charter system, by enabling collective complaints alleging violations of the Charter to be dealt with, in addition to the current procedure for examining governments' periodical reports.

International organizations of employers and trade unions which participate in the work of the Governmental Committee; international non-governmental organizations with consultative status within the Council of Europe, and national organizations of employers and trade unions from the contracting party concerned are entitled to submit collective complaints. In addition, each state may, in a declaration to the Secretary General, authorize national non-governmental organizations to lodge complaints against it.

Collective complaints are examined by the ECSR, which must first decide on their admissibility. In practice, the Committee, after having collected information from the complainants, from the state concerned, from the other parties to the Charter and from NGOs, draws up for the Committee of Ministers a report containing its conclusions (decision on the merit) as to whether the contracting party has, in a satisfactory manner, ensured that the provision of the Charter which is the subject of the complaint is applied.

It is then the Committee of Ministers' task to address a recommendation to the Contracting Party concerned, in the event that the Charter has not been satisfactorily applied, or, should this not be the case, to adopt a resolution.

7. JURISPRUDENCE OF THE EUROPEAN SOCIAL CHARTER RELATED TO POVERTY ERADICATION

The term «jurisprudence» is taken into consideration and explained in this article in a wide sense, since it does not refer to a group of court judgments. The ESC does not include as a control mechanism any court strictly considered.⁶

The expression «ESC jurisprudence» is used here to refer to the collection of conclusions reached by the ECSR through the national reports mechanism established through the ESC and the decisions on the merits reached through the collective complaints monitoring mechanism established by the 1995 Protocol to the ESC, respectively.

The ECSR ascertains through these two mechanisms («national reports» and «decisions on the merits») whether the states parties have fulfilled their

⁶ Luis Jimena Quesada: *La jurisprudencia del Comité Europeo de Derechos Sociales*, Tirant lo Blanch, Valencia, 2007, *passim*.

obligations. This is why it is convenient to clarify that the jurisprudence of the ESC includes both. The ECSR is the maximum interpretative organ of the ESC, its protocols and the RESC.

As said before, the RESC of 1996 clearly emphasizes in article 30 the right to protection against poverty and social exclusion. Thus, the ECSR has had the opportunity to define what poverty is. The ECSR, in its complaint No. 51/2008 *European Roma Rights Centre v. France* established a definition of poverty.⁷ In its Conclusions, the Committee clarified that poverty meant «deprivation due to the lack of resources». This is a short but clear definition. The definition of poverty spans risk of poverty to severe, generational poverty.

In its decision on the merits in the case 33/2006, *International Fourth World Movement v. France*, the ECSR develops on the obligations for the contracting states with regard to the eradication of poverty:

«The fact of living in a situation of poverty and social exclusion violates the dignity of human beings. Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. There should also exist monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. This approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach. The measures taken for such a purpose must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance. These measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions. Adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy. Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned.»

Curiously, there is not a single mention to poverty in the 1961 ESC. This is something peculiar, since the Council of Europe stands out significantly in its fight against poverty. Probably this is due to the post-war political and economic situation that was living Europe in the fifties, when the negotiations for the ESC started. It is predictable and understandable that European states were not very enthusiastic to bind themselves to eradicate poverty in a period when most Europeans were living in very difficult conditions and Western states were receiving an important part of their income through the external aid of the Marshall Plan. But not having a legal norm as the one introduced in the 1996 RESC has not prevented the Council of Europe to fight against poverty through the ESC. And the main instrument that has been used is the wide interpretation of other

⁷ Para. 60 of the Decision on the merits, collective complaint 51/2008, *European Roma Rights Centre v. France*, October 19, 2009.

articles of the ESC. Many of the rights recognized in the ESC's articles are in some way a path to avoid situations of poverty.

7.1 Poverty in the European Committee of Social Rights' conclusions to national reports

The success of this wide interpretation of the articles of the ESC in order to include the fight against poverty is due to the professional job of the ECSR. This organ has interpreted the ESC in a teleological way that has turned some of the ESC rights into very dynamic tools in the fight against poverty.⁸

We can start by article 1: the right to work. It does not have to be misunderstood, for it does not mean the state has to guarantee a job for everyone who wants one. This is obviously related to the demand and supply theory. In fact, the Committee has developed a different interpretation: those states parties who have undertaken this ESC obligation have to demonstrate they have a coherent and adequate economic policy mainly addressed to the achievement of an almost full employed society (or as close as possible). This interpretation helps to fight against poverty, since the ECSR tries to guarantee that all the different countries develop effective economic policies so their population is not unemployed and this way they earn money, avoiding poverty.

Article 2 is not so explicit, but has also got to do with fair working conditions and therefore, with the way citizens earn their money. It says the parties undertake «to provide for reasonable daily and weekly working hours». But, what is reasonable? It is a vague concept that should be restricted, delimited. The ECSR has established that reasonable, when referring to this situation, is a variable concept for it may change from place to place and from time to time. Factors may change, and the working conditions may be different. De facto, article 2 has been defined by the ECSR itself as «dynamic» because its mission is to reduce the working week progressively.

Article 2 includes paid annual holidays. The ECSR's most protective side has been in the case of holidays when the worker has been ill or injured. The third paragraph of the article states that those workers who are disabled for work during all or part of their annual holiday, are entitled to take the days thereby lost.

The right to a fair remuneration (article 4) is, as stated by the ECSR «the essential corollary of the first three fundamental rights of the Social Charter»,

⁸ On the dynamic interpretation by the ECSR of the ESC, see: Régis Brillant: «La actividad preconvenional y paraconvenional del Consejo de Europa en el ámbito de los derechos sociales», in Luis Jimena (ed.): *Escritos sobre Derecho Europeo de los derechos sociales*, cit. , pp. 19-38, at p. 25 and Luis Jimena Quesada: «La protección de los grupos vulnerables por el Consejo de Europa», in Susana Sanz Caballero (ed.): *Colectivos vulnerables y Derechos Humanos...*, cit. See also: David Harris and John Darcy: *The European Social Charter*, Transnational Publishers, New York, 2001 and Jean-François Flauss (coord.): *Droits sociaux et Droit Européen. Bilan et prospective de la protection normative*, Bruylant, Brussels, 2003.

which are the right to work, the right to fair conditions of work and the right to safe and healthy working conditions. The ECSR continues saying that the right to a fair remuneration constitutes one of the basic economic objectives of human activity.⁹ Thus is directly a way to directly avoid poverty among the population. And the ECSR has insisted on it.

Article 4.3 declares the right to equal pay for men and women. Equality has been included in many international treaties as well as constitutions. In this case, the ECSR requires the respect of this right by countries through the matching of wages for a work of comparable value. It should be kept in mind that women are more touched by poverty than men, not only in Europe but all around the world.

Granting fair wages or allowances for young workers and apprentices (art. 7.5) is a way to avoid young workers from not being paid. This article has helped the ECSR distinguish situations in which adults and apprentices had the same salary. The ECSR stated the need of having two minimum rates: for young workers and for adult workers. However, this statement should not be misunderstood. The difference between the minimum wages takes place when the young workers are apprentices, and it is due to the value of the training given to the young worker. This distinction cannot be appreciated if there is no training or learning.

The right of employed women to protection (art. 8) is directly related to art. 4.3. And despite having a paternalistic approach to women's employment, nowadays the Committee understands it as a manifestation of the principle of equal treatment between men and women.

Any kind of protection afforded to those groups of society who are vulnerable or are not as inserted as others in the labor market are ways to avoid poverty. If women, disabled people or other groups who are under represented in the market were not especially protected, they would find it very difficult much harder to find a job. Hence, there would be more poverty amongst these groups.

The right of physically or mentally disabled persons to social resettlement is included in art. 15. The parties agree to take adequate measures for the placing of disabled persons in employment. The ECSR insists that art. 15.2 (placement of disabled persons) applies to both, physically and mentally handicapped.

The last article of the ESC whose interpretation by the ECSR is to ward off poverty is 16: the right of the family to social, legal and economic protection. The start off point of this article is taking the family as the «fundamental unit of society», and therefore the parties undertake to promote its economic, legal and social protection. The ECSR's interpretation relies on the idea that parties undertake to create the living conditions necessary to give the family its full scope. The ECSR maintains that family policy encompasses different branches: arrangements for assistance and social security, housing... But article 16 does not include a definition of family and the ECSR has not offered one either.¹⁰

⁹ ECSR, Decision on the merits of December 3rd. 2007, Collective complaint 37/2006 *European Council of Police for Trade Unions v. Portugal*.

¹⁰ Susana Sanz Caballero: *La familia en perspectiva internacional y europea*, Tirant lo Blanch, Valencia, 2006, p. 231.

As it was said, the ECSR's interpretation of these articles is just a way to cooperate in ending poverty. And it actually does help to end poverty. The Council of Europe, through the ECSR's interpretation of the ESC, has been able to introduce its fight against poverty in places and contexts where perhaps it was not thought initially.

7.2 Poverty in European Committee of Social Rights' decisions on the merits of collective complaints

Concerning the ECSR's jurisprudence related to poverty eradication as a result of collective complaints, there is an important decision on the merits in the collective complaint 15/2003 lodged by the European Roma Rights Centre (ERRC) against Greece. The ECSR published its decision on the merits on December 8, 2004. In this case, the fight against poverty can be sustained by the protection of two rights: non discrimination and housing. This case concerns a group of around 100,000 gypsies who live in substandard housing conditions. This situation means, according to the ECSR, the non-fulfillment by Greece of one of the main objectives of the Charter which is «achieving social inclusion» (paragraph 43 of the Decision). To fight against poverty, the right to housing must be effective. The applicant considers gypsies are deprived of this right since Greek legislation establishes discrimination towards their race in the area of housing. De facto, gypsy discrimination constitutes an extended phenomenon that ends with their expulsion, as we are currently witnessing in France or Italy.¹¹

In the legal analysis of the decision, specifically in paragraph number 24, the ECSR says that the right to housing favors the exercise of numerous other rights. It continues saying states should make an effort proposing an offer of accommodations that is sufficient for families. States must also monitor so the existing houses are decent and equipped with the essential conditions (heating and electricity, especially). The Committee has declared that the concept of a decent house does not only imply a healthy accommodation but it also means a house with enough space with due consideration to the family who occupies it (Conclusions XIII-2). The obligation to promote housing and to provide it involves the guarantee against illegal eviction, as well.

In fact, the ECSR alleges in the resolution that Greece discriminates gypsies «in the field of housing with the result that the Roma population is segregated in housing affairs». This, together with the fact that most of the times they live in «substandard conditions», have been interpreted as a way of discrimination. Therefore, this is a complaint where the state has failed to fight against poverty in relation with these groups.

Concretely, article 16 of the ESC states:

¹¹ Periodistas.es: «Gitanos perseguidos sin adecuada protección de la UE», september 7, 2010.

«The right of the family to social, legal and economic protection: With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provisions of family housing, benefits for the newly married and other appropriate means. Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, color, sex, religion, political opinion, national extraction or social origin.»

In fact, several complaints refer to the living conditions, access to housing, health insurance card or education of the members of the Roma community. In all these cases, the ECSR has found that states' laws, violate the Roma's rights to health (11), medical assistance and social protection (13), the legal and economic status of the family (art. 16), and non-discrimination (art. E of the Revised Charter).¹²

There is also a decision on the merits that deals specifically with social exclusion (art. 30 RESC) and the right to housing (art. 31 RESC). It is the case 33/2006 lodged by the *International Fourth World Movement v. France*,¹³ about living conditions of homeless in this country. In this complex case, the ECSR stated:

«Article 31 on the right to housing cannot be interpreted as imposing on states an obligation of "results". However, implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein. When one of the rights in question is exceptionally complex and particularly expensive to implement, states party must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources [...] Under Article 31§3 Parties must adopt appropriate measures to encourage the construction of social housing [...] There is also a lack of a clear policy mechanism in place to ensure that priority is given to the most deprived members of the community as regards the provision of social housing, nor has an assessment of the needs of the most deprived been built into the programme of providing social housing. The situation constitutes a violation of Article 31§3, as France has not been able to grant the right to an adequate housing to the poorest members of the community.»

The ECSR has always indicated that the interpretation of the Charter must be done in the light of its purpose and object, that is, we must look beyond the letter of the treaty and see what objectives the rule seeks. In *International Commission of Jurists v. Portugal*, case 1/1998 the ECSR¹⁴ noted that the objective of the Charter is not simply to protect rights in theory but in practice. So, it judged incompatible with the Charter Portugal's policy formally banning child labor, but

¹² Collective complaint 46/2007, *European Centre for Roma Rights v. Bulgaria*, 27/2004, Decision on the merits of March 12, 2008; Collective Complaint 15/ 2003, *European Centre for Roma Rights v. Greece*, Decision on the merits of August 12, 2004; Collective complaint 27/2004, *European Centre for Roma Rights v. Italy*, Decision on the merits of July 12, 2005.

¹³ Decision on the merits of December 5, 2007.

¹⁴ Decision on the merits of September 9, 1999.

accepting labor of children under 15 in practice. The labor inspection policy of turning a blind eye in this field, which produced children poverty, amounted to a violation of the ESC.

The ECSR has also found that a small number of provisions of the ESC are dynamic, in the sense that their interpretation can be increasingly demanding as society develops. It is the case of the recognition of the rights for workers to have a decent standard of living (art. 4.1). The ECSR has established the concept of «threshold of decency» of wages.¹⁵

Some other cases where the ECSR has found a violation of the ESC or the RESC have also a relation with poverty, such as cases about the violation of the rights of persons with disabilities (case 13/2002, *International Association Autism-Europe v. France*¹⁶ and the a recent decision on the merits for case n41/2007, case *Mental Disability Advocacy Center v. Bulgaria*,¹⁷ where the ECSR established that Bulgaria had violated the right to education of children with mental illnesses), or about health care to foreigners (case 14/2003, *League International Federation of Human Rights v. France*).¹⁸

8. CONCLUSIONS

The Council of Europe has two powerful tools to fight against poverty, the ESC and the RESC. The former does not contain any specific provision on the subject, but the dynamic interpretation that the ECSC has made of the rest of its articles has allowed the organization to pave the way towards the protection of people against social exclusion provoked by the lack of resources. The latter contains article 30, which explicitly and specifically addresses the problem of poverty.

With these tools in hand, the ESC machinery has been able to develop a very pro-active and promising jurisprudence which tries to help eradicate poverty in Europe. However, one of the main constrains for progress in this field rests on the limited juridical value of the ECSR jurisprudence for two main reasons: first, it does not derive from a court; and second, its resolutions, in the form of conclusions to national reports or of decisions on the merits to collective complaints, are not judgments.

¹⁵ Conclusions XV-2, 1998, p. 52.

¹⁶ Decision on the merits of November 4, 2003.

¹⁷ Decision on the merits of June 6, 2008.

¹⁸ Decision on the merits of September 8, 2004.