
The Fundamental Instruments of Social Rights Protection: the European Dimension

Lyudmyla Falalieieva*

Summary: It is highlighted in the research the fundamental instruments ensuring and protecting of social rights in Europe. Emphasized that the European Social Charter (revised) 1996 (ESC(r)) is an essential (pivotal) element of European standards, instrument ensuring and protecting social rights, the main source of modern standards of the Council of Europe in the sphere of social and economic rights, updated version, which should gradually replace the European Social Charter 1961 (ESC), as a regional multilateral international treaty, where on the basis of international standards, which are contained in the convention norms of the United Nations and the International Labor Organization, as well as best examples of national legislation of socially oriented states, the European social model was defined, a directory of social rights was determined and obligations of states to implement them were provided. Underlined the importance of the Turin process (Turin 1 and Turin 2) for enhancement of the effectiveness of the ESC/ESC(r), for the improvement of the implementation of European standards in the field of social and economic rights for the development of cooperation in this sphere between the Council of Europe and the European Union.

Keywords: Council of Europe – European Union – European Social Charter – social standards of the Council of Europe – social rights – social state

1. Introduction

The European Social Charter (ETS No 35, hereinafter – ESC) and European Social Charter (revised) (ETS No 163, hereinafter – ESC(r)) are the most significant international legal acts of the Council of Europe after the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which, along with the European Cultural Convention of 1954, constitute an comprehensive legal mechanism for collectively ensuring respect for human rights, determine

* Lyudmyla Falalieieva, Associate Professor, International and Comparative Law Department, V. M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, Kyiv, Ukraine. Contact: lyudmilafal@ukr.net

the relevant European human rights standards, creating a single legal sphere of interdependent civil, political, economic, social and cultural human rights, the interaction of which is recognized by the Council of Europe as a dominate of European democracy functioning¹.

The actualization of the need to protect social and economic rights (hereinafter – social rights) and improve social security of population led to the adoption of relevant international legal norms, their implementation into the internal legal order of states, thus contributing to the establishment and development of European standards for ensuring social rights, their implementation in law and law-enforcement states' practice. The complexity and ramification of these standards, their dynamism and the ability to absorb more and more new facets emphasizes the importance of their careful study and understanding. The ESC(r), adopted on May 3, 1996 and entered into force on July 1, 1999, is an essential (pivotal) element of European standards, instrument for ensuring and protection of social rights, the main source of modern standards of the Council of Europe in the sphere of social rights, updated version, which should gradually replace the ESC, adopted on October 18, 1961 and entered into force on February 26, 1965, as a regional multilateral international treaty, where on the basis of international standards, which are contained in the convention norms of the United Nations and the International Labor Organization, as well as best examples of national legislation of socially oriented states, the European social model was defined, a catalog of social rights was determined and obligations of states to implement them were provided. As of September 1, 2018, 45 out of 47 Council of Europe member States signed the ESC/ESC(r), except for Liechtenstein and Switzerland, which have now signed it, but have not expressed their consent to be bound by the ESC by any of the methods envisaged in it: by ratification or approval.

Considering that all European Union member States are at the same time members of the Council of Europe, the ESC(r) has significantly influenced on reaffirming of the provisions fixed in it in the Charter of Fundamental Rights of the European Union as version of 2007 (hereinafter – EU Charter). In particular, principles specified in Title IV “Solidarity” mainly correspond to social rights enshrined in the ESC(r), which played an important role in filling their with relevant content. At the same time, the rights that are traditionally attributed to the second generation are contained in other sections of the EU Charter, for example, Title I “Dignity” prohibits of forced labour (Article 5). Title II “Freedom” guarantees freedom of assembly and of association (Article 12), the right

¹ DENYSOV, V. N. Pro osoblyvosti implementatsii socialno-ekonomichnykh ta kulturnykh prav u systemi mizhnarodnoho prava prav liudyny. *Pravova derzhava*. Collection of essays, vol. 12. Kyiv: V. M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, 2001, p. 513.

to education (Article 14), freedom to choose an occupation and right to engage in work (Article 15), freedom to conduct a business (Article 16), right to property (Article 17) and so on. The adoption of the EU Charter as a legal instrument for European integration has the potential to be interpreted, in the words of Czech scientist Ondrej Hamulák, as a revolution in the level of protection of social rights and shift in their material understanding².

It is noteworthy that three categories of fundamental rights set out in the EU Charter: rights, freedoms and principles. Distinction into rights and freedoms is conditional, does not have significant legal consequences, therefore significant differences between the principles and rest of categories are important³. The purpose of such a distinction is a separation, on the one hand, the rights and freedoms which are subject to full judicial protection, and, on the other hand, principles which can be protected in court only in certain cases⁴. Since the principles require implementation, the reference in the specific Article of the EU Charter to the implementation measures to be taken by the EU or the member States shows that this Article belongs to the principles. Nowadays, almost all provisions of Title IV “Solidarity” of the EU Charter are considered as principles⁵. При цьому варто враховувати, що “the social charters (at least their “hard core” rights) should operate as a minimum standard, which may not be reduced by the application and interpretation of the EU Charter)”⁶.

2. The peculiarities of content and implementation of the European Social Charter

The preparation of the ESC was stipulated by the desire of European states that were supporters of a social state to determine guidelines for the development of social rights and the Council of Europe’s activities in this area, as well as to fill

² HAMULÁK, O. Is Charter of the Fundamental Rights of the EU Taking Social Rights Seriously? *European Studies – The Review of European Law, Economics and Politics*, 2015, vol. 2, p. 28.

³ DE SCHUTTER, O. The European Social Charter as the Social Constitution of Europe. *The European Social Charter and the Employment Relation*. Ed. by Niklas Bruun, Klaus Lorcher, Isabelle Schomann, Stefan Clauwaert. Oxford and Portland: Bloomsbury Publishing, 2017, p. 15.

⁴ See: ŠIŠKOVÁ, N. Chartija osnovnyh prav Evropejskogo Sojuza i problemy ee primenenija. In: Šišková, N. *Pamjati profesora Pavla Petrovycha Zavorotka. Aktualni problemy pravovoi nauky*. Kyiv: Precedent, 2014, p. 188; ŠIŠKOVÁ, N. New Challenges for the EU in the Field of Human Rights (Focusing on the Mechanism of the Charter). *European Studies – The Review of European Law, Economics and Politics*, 2014, vol. 1, p. 15.

⁵ DE SCHUTTER, O. *The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights*. Brussels: 2016, p. 18.

⁶ HAMULÁK, O. Op. cit, p. 19.

the gap of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, by establishment of civil and political rights. Structurally, the ESC consists of a preamble, five parts and an annex. The preamble of the ESC defines its main objective, which is to guarantee, without any discrimination, a rise in the standard of living and an improvement in the social care of population of the Council of Europe member states. Part I contains 19 paragraphs, establishing the basic principles of the ESC. The peculiarity is that it is an act combining a declaration (Part I) and an international treaty (Part II), which guarantees 19 fundamental social and economic rights, establishes a monitoring mechanism for its implementation.

By accession to the ESC, the state undertakes basic obligations set out in Article 20, in accordance with paragraph 1 (a) of which it “undertakes to consider Part I of this Charter as a declaration of goals, the achievement of which it will seek by all necessary means”. It is about creating conditions under which the effective realization of the 19 rights listed in Part I would become possible. This obligation is enshrined in the treaty, however, it has a political, programmatic nature, corresponding to the provisions of the 1948 Universal Declaration of Human Rights in this area. At the same time, another obligation, enshrined in paragraph 1 (c) of the Article 20, is legally binding – to consider at least 10 out of 19 articles of Part II or 45 out of the designated articles of this Part to be legally binding. Each of these 19 articles relates to one of the rights listed in Part I. The impossibility of the state accepting all the obligations set forth in Part II is due to many international lawyers, including Virginia Mantuvalo and Voyatis Panayotis, significant differences in the economic and social development of the Council of Europe member states, tangible financial consequences of taking such obligation⁷, the dependence of their implementation from the capabilities of the national economy.

The peculiarity of the implementation of the ESC into the domestic law of the member states is that the latter, under paragraph 1 (b) of the Article 20, have pledged from the 19 articles of Part II of the ESC, which define social and economic rights, to select at least 5 of the recognized in them 7 main articles, which include articles 1, 5, 6, 12, 13, 16, 19. These articles were chosen not because they protect the seven most important rights, but to achieve a balance between the various groups of rights defined in the ESC. These rights are: the right to work (Article 1), the right to organise (Article 5), the right to bargain collectively (Article 6), the right to social security (Article 12), the right to

⁷ MANTOUVALOU, V., VOYATZIS, P. The Council of Europe and the Protection of Human Rights: A System in Need of Reform. *Research Handbook on International Human Rights Law*. Ed. by S. Joseph, A. McBeth. Cheltenham: UK, Northampton: MA, USA, Edward Elgar Publishing, 2010, p. 337.

social and medical assistance (Article 13), the right of the family to social, legal and economic protection (Article 16), the right of migrant workers and their families to protection and assistance (Article 19). The total number of articles or numbered paragraphs that the contracting party deems mandatory for it self must be at least 10 articles or 45 numbered paragraphs. In addition, the member States are obliged to comply with European standards, defined in the articles they have chosen, regardless of the resources at their disposal, although some of the provisions of the ESC, in particular paragraph 3 of the Article 12, provide for the possibility of states expanding the scope of guaranteed rights and principles in the process of improvement of economic and other conditions, therefore, have an evolutionary character.

Part II of the ESC discloses and details the following rights: the right to work; the right to just, safe and healthy working conditions; the right to a fair remuneration; the right to organise and bargain collectively; the right of children, young persons and employed women to protection; the right to vocational guidance and training; the right to protection of health; the right to social security, social and medical assistance; the right to benefit from social welfare services; the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement; the right of the family to social, legal and economic protection; the right of mothers and children to social and economic protection; the right to engage in a gainful occupation in the territory of other Contracting Parties; the right of migrant workers and their families to protection and assistance.

Part III of the ESC consists of only one Article 20 “Undertakings”, which contains formalized obligations of the Contracting Parties. Each of them must select and consider themselves bound by at least five of seven articles that provide for fundamental social rights, which make up a “hard core” of social human rights. Part IV establishes a monitoring mechanism for the application of the ESC. With the adoption of the Protocol Amending the ESC 1991, the monitoring procedure was reformed and, in an updated form, ensures control over the fulfillment of obligations by the States Parties of both the ESC and the ESC(r). Part V of the ESC regulates the grounds for derogation and the mechanism for their implementation, the possibility of imposing restrictions on these rights, the procedure for signing, ratification, entry into force and denunciation of the ESC as a whole and its individual provisions. The annex to the ESC fixes the interpretation of its individual articles, as well as the scope of the ESC on the content of the phrase “persons under its protection”.

It is noteworthy that the Constitutions of the majority of the ESC States Parties provide for the method of incorporation for the implementation of the norms of international law in their domestic legal order, implying that international treaties ratified by parliament automatically become part of the legislation

of the respective state. At the same time, the practice of some the ESC States Parties knows the cases of its direct application, in particular, by decisions on labor disputes of 1984. The Federal Court of Germany recognized that the courts of the state are bound by the ESC every time when they had to interpret a gap in labor dispute legislation, and in 1995 the Belgian State Council relied on the Article 6 of the ESC when repealing one of its internal administrative acts, thus reaffirming that the ESC is a source of national law.

The ESC does not contain provisions that would allow individuals to directly use its norms to protect their rights at the national and international levels, but the final decision on the ability of a citizen to refer to certain provisions of the ESC in the national court should remain with the relevant national court that implements the law-enforcement function. For example, the Supreme Court of the Netherlands in its decision No. 1986/668 of May 30, 1986 recognized the direct effect in the legislation of paragraph 4 of the Article 6 of the ESC on the right to strike⁸.

3. The mechanisms of improving the European Social Charter

In the late 80s on the initiative of the Committee of Ministers of the Council of Europe, the process of supplementing and updating the ESC was launched in order to strengthen the protection of social rights: *Additional Protocol to the European Social Charter* of May 5, 1988 was adopted (entered into force on September 4, 1992), increasing the number of rights protected by it; *Protocol Amending the European Social Charter* of October 21, 1991 (has not yet entered into force, but is applied by decision of the Committee of Ministers), which improved the ESC monitoring mechanism based on reports and more clearly defined functions of the control bodies; *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints* of November 9, 1995 (entered into force on July 1, 1998), providing a procedure for the consideration of collective complaints. The ESC(r) combined new provisions with the provisions of the ESC and its amendments, as well as the provisions of the Additional Protocol to the ESC of 1988, therefore it is supplemented and updated in terms of content, therefore more advanced than the ESC.

The Additional Protocol to the ESC of 1988 extended to the States Parties legal obligations to take new measures to enhance the protection of social

⁸ GOMIEN D., HARRIS D., ZVAAK L. *European Convention on Human Rights and European Social Charter: Law and Practice*. Moscow: 1998, p. 567.

rights guaranteed by the ESC, adding four more human rights to the 19 rights established by the ESC: the right to equal opportunities and equal treatment in resolving issues on employment and occupation without discrimination on the basis of sex (Article 1); the right to information and advice (Article 2); the right to participate in the determination and improvement of working conditions and working environment (Article 3); elders' right to social protection (Article 4). The process of updating the ESC, above all, was aimed at improving its monitoring and supervisory system with a gradual revision of the basic guarantees envisaged by the ESC, subsequently enshrined in the ESC(r). Thus, the Council of Europe began the process of revising the concept of ensuring social rights in order to widen them and, accordingly, fill gaps among European standards of social rights. However, the increase in the number of articles aimed at ensuring social rights did not solve the problem of proper implementation of the provisions of the ESC and did not contribute to the implementation of domestic policy by the States Parties in accordance with the principles included in the mentioned treaty.

According to the decision of the Committee of Ministers in 1990, the Committee on the ESC (Charte-Rel) was established, which prepared an act aimed at reforming the monitoring procedure, which envisaged the passage of 4 control bodies. The European Committee of Social Rights, as a committee of independent experts, analyzed the reports and prepared conclusions, and the Subcommittee of the Council of Europe's Government Committee prepared a report on the same issues. The Parliamentary Assembly analyzed the conclusions of the European Committee on Social Rights, prepared a report to the Subcommittee of the Governmental Committee of the Council of Europe and reported its position on these issues to the Committee of Ministers, which, after reviewing all the reports and conclusions, made the decision.

The Protocol Amending the ESC 1991 improved its monitoring mechanism and more clearly defined the functions of the control bodies. It has not yet entered into force, but since 1991 most of the provisions have been implemented by the control bodies by decision of the Committee of Ministers, inasmuch the guarantee of protection of human rights is reliable, provided that the system for monitoring their implementation is effective. The monitoring mechanism of the ESC requires the States Parties to report annually to the Secretary General of the Council of Europe on the application of the provisions adopted by them, enshrined in its Part II. It is noteworthy that the mechanism of monitoring over the execution of the ESC and ESC(r) is the same.

The reports are analyzed by a committee of independent experts – the European Committee of Social Rights, authorized to interpret and enforce the provisions of the ESC in its application. The European Committee of Social Rights is the main element of the contractual mechanism of international monitoring

over the compliance of the States Parties with their commitments under the ESC/ESC(r). It consists of 15 independent experts elected by the Committee of Ministers by a majority of votes from the list of independent experts proposed by the ESC/ESC(r) States Parties for 6 years with the possibility of re-election for one repeated term.

The European Committee of Social Rights operates on a sessional basis. The monitoring mechanism does not provide for the right to an individual complaint, as defined by the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. Supervision system, including monitoring over collective complaints, concerns only Part II of the ESC; there is no direct mechanism for monitoring compliance with the general programmatic obligations of Part I. Although the conclusions of the European Committee of Social Rights in each case relate to the laws and law-enforcement practices of a particular state, they are a common guideline for all the ESC States Parties. According to Gerard Quinn, a law professor and ex-vice-president of the European Committee of Social Rights, ESC, as such, “comprises a “productive factor” in our market economies and helps to advance social cohesion. Just as important, it constitutes a “civilising factor” in our democratic cultures by avoiding severe social dislocation that can afford breathing space for political extremes”⁹. Analyzing the compliance of national legislation with the rights and principles enshrined in the ESC/ESC(r), it is necessary to focus not only directly on the text of the norms, but also on the conclusions of the European Committee of Social Rights, which, as a rule, the recommendations of the Committee of Ministers are based.

4. The peculiarities of the Revised Charter

The above changes and additions to the ESC did not fundamentally solve the problems of the new social policy of the Council of Europe, which necessitated the revision and updating of the ESC, in May 1992 the Committee on the ESC (Charte-Rel) began work on improving its provisions. At the 98th meeting of the Committee of Ministers on May 3, 1996, a new edition of the ESC called ESC(r) was opened for signature and entered into force on July 1, 1999. For each Council of Europe member State expressing its consent to be bound it ESC(r) after its entry into force, the ESC(r) comes into force on the first day of the month following the expiration of one month from the date of the deposit of the instrument

⁹ QUINN, G. The Legal Status of the European Social Charter – Taking Interdependence and Indivisibility of Human Rights Seriously. *Report, UNIDEM Seminar: The status of international treaties on human rights*. Venice Commission, Coimbra, 7–8 October 2005, p. 3 [online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UD\(2005\)021rep-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UD(2005)021rep-e)

of ratification, acceptance or approval. During the ratification process, the state must make declarations on what provisions the ESC(r) it assumes.

ESC(r) consists of a preamble, six parts and an annex. Part I of the ESC(r) is a declaration of objectives (paragraph 1 (a) of the Article A), which proclaims social and economic rights and principles that the States Parties will aspire to implement. Each of the 31 names of rights in the socio-economic sphere corresponds to the article of the same name of Part II of the ESC(r), which unites 31 articles distributed by items and is the main part of the ESC(r) structure, securing specific social and economic rights guaranteed to all or certain categories of persons: workers, migrant workers, women, children, young persons, etc. The States Parties may selectively accepted the articles and paragraphs of Part II of the ESC(r) subject to the minimum quotas provided for in Part III of the ESC(r). Of the 9 “main articles” contained in Part II ESC(r) (Articles 1, 5, 6, 7, 12, 13, 16, 19, 20) the States Parties undertake, in accordance with paragraph 1 (b) of Article A, to accepted at least to 6, recognizing them legally binding.

So, there have been changes in the volume of the obligations that the contracting party on the ESC(r) should undertake. The list of “main articles” envisaged by the ESC added articles 7 “The right of children and young persons to protection)” and 20 “The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex”. Regarding the rights enshrined in the remaining articles (2–4, 8–11, 14, 15, 17, 18, 21–31) of Part II of the ESC(r), the number of “additional articles and clauses” to which each Contracting Party accepted, must be at least 16 articles or 63 numbered paragraphs (paragraph 1 (c) of Part III, Article A).

Ukraine¹⁰ has ratified 27 articles, including 6 of 9 main articles and 74 paragraphs of Part II of the ESC(r): paragraphs 1, 2, 3, 4 of the Article 1; paragraphs 1, 2, 4, 5, 6, 7 of the Article 2; paragraphs 1, 2, 3, 4 of the Article 3; paragraphs 2, 3, 4, 5 of the Article 4; Article 5; paragraphs 1, 2, 3, 4 of the Article 6; paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 of the Article 7; paragraphs 1, 2, 3, 4, 5 of the Article 8; Article 9; paragraphs 1, 2, 3, 4, 5 of the Article 10; paragraphs 1, 2, 3 of the Article 11; paragraphs 1, 2 of the Article 14; paragraphs 1, 2, 3 of the Article 15; Article 16; paragraphs 1, 2 of the Article 17; paragraphs 1, 2, 3, 4 of the

¹⁰ Ukraine on May 7, 1999 to accession to the ESC(r), having ratified it with statements by the Law of Ukraine No. 137-V of September 14, 2006. The first of the statements indicates that “Ukraine undertakes to consider Part I of the Charter as a declaration of goals for which it will strive with all necessary means, as defined in the introductory paragraph of Part I of the Charter” and in the second statement Ukraine made commitments under relevant articles and paragraphs of Part II ESC(r). On February 1, 2007, the ESC(r) entered into force for Ukraine, which pledged to introduce social and economic standards in full as envisaged by mentioned treaty, taking into account the above statements.

Article 18; Article 20; Article 21; Article 22; Article 23; Article 24; paragraphs 1, 2 of the Article 26; paragraphs 1, 2, 3 of the Article 27; Article 28; Article 29; Article 30; paragraphs 1, 2 of the Article 31¹¹. At the same time, Ukraine at their discretion, chose social and economic rights for which it assumed obligations, without including in this list, in particular, the Article 12 “The right to social security” and the Article 13 “The right to social and medical assistance”, without implementation of the provisions of which it can hardly be argued about the existence in the state of an effective social security system.

Consequently, under the ESC(r), each member State of the Council of Europe has the right to ratify all its articles after signing or to choose and consider itself bound by at least 6 out of 9 “main articles” as well as “additional articles and clauses” of Part II of the ESC(r) in such a way that their total number is not less than 16 articles or 63 numbered paragraphs. Analysis of the rights and principles enshrined in the provisions of the ESC(r) shows that they contribute to the harmonization of the norms of the national legislation of its States Parties in the sphere of social rights protection and can be regulated by the norms of labor law, social security law, housing law, legislation health and education. According to the sectoral criterion, 6 out of 9 “main articles” of the ESC(r) are provided for by labor law norms, these include: Article 1 “The right to work”; Article 5 “The right to organise”, Article 6 “The right to bargain collectively”; Article 7 “The right of children and young persons to protection”; Article 20 “The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex”. At the same time, Article 19 “The right of migrant workers and their families to protection and assistance” should be attributed to those that are regulated by the legislation of several branches of law, including labor law.

Based on the analysis of the content of rights and principles enshrined in Part II of the ESC(r), the subject (sectoral) criteria are: rights in the sphere of labor relations (Articles 1–6, 18, 20–22, 24–29); integrated rights relating to several areas of public relations (Articles 7–10, 13, 15–17, 19); social security rights (Articles 12, 14, 23, 30); health rights (Article 11); housing rights (Article 31). According to the subject composition, rights in the sphere of labor relations can be classified as follows: the rights of employees, aimed at protecting of individual labor rights (Articles 1-3, 5, 8–10, 20–22, 24–26, 29) and the rights of special subjects under the category of “employees” aimed at protecting collective labor rights: rights of migrant workers (Articles 18, 19), the rights of family members of migrant workers (Article 19), the rights of workers with family responsibilities

¹¹ *Pro ratyfikatsiiu Yevropeiskoi Socialnoi Chartoi (perehlianutoi): Zakon Ukrainy* from 14.09.2006 r. № 137-V [online]. Available at: <http://zakon1.rada.gov.ua/laws/show/137-16>

(Articles 4, 27); the rights of persons with disabilities (Article 15), the rights of children and adolescents (Article 7); rights of workers' representatives (Article 28); rights of associations of workers (Articles 5, 6); women's rights (Articles 4, 8, 20); rights of employers (Articles 5, 6); rights of employers' associations (Articles 5, 6)¹².

The peculiarity of the ESC(r) is that the obligations under its individual articles are closely interrelated, for example, paragraph 4 of the Article 1 imposes on the States Parties the obligation to ensure proper "vocational guidance, training and rehabilitation". The provisions of this paragraph are specified in the articles that do not belong to the category of the main ones: Article 9 "The right to vocational guidance"; Article 10, "The right to vocational training"; Article 15 "The right of persons with disabilities to independence, social integration and participation in the life of the community".

The need to fully ensure the European standards established in the ESC(r) has led to the consolidation of a flexible system of commitment with the gradual expansion of the catalog of such obligations. According to paragraph 3 of the Article A, the States Parties are entitled at any time to expand the scope of their obligations under the ESC(r), i.e. to accepted other articles and paragraphs fixed in its Part II, including paragraphs of those "main articles" to which she did not express the desire to accepted to in full. As the experience of selective acceptance of commitments shows, the States Parties resolve this issue in stages, expanding from time to time the range of mandatory articles or paragraphs. Now only France and Portugal have assumed obligations in all articles of the ESC(r)¹³. One of the main problems of selective acceptance of individual obligations is the determination of the criteria by which it occurs. According to Olivier de Schutter, "economic factors, primarily the financial capabilities of the state, are usually a priority, but ultimately, the desire to create an organic human rights protection system is the most crucial"¹⁴.

Parts III-VI of the ESC(r) are self-numbered, denoted by letters of Latin alphabet and contain general provisions on the fulfillment of commitments made, amendments, as well as signing, ratification and entry into force of the ESC(r), its territorial application, possibility of denunciation, rules of accepted of states to the articles and paragraphs contained in Part II of the ESC(r), etc. Part V was supplemented by a new Article E "Non-discrimination", similar in meaning to the

¹² FESKOV, M. M. *Trudove zakonodavstvo Ukrainy i Yevropeiska Socialna Chartia (perehliannya): pytannia adaptatsii*. Kyiv: Znannia, 2005, p. 32–33.

¹³ *European Social Charter and European Union law* [online]. Available at: <https://www.coe.int/en/web/european-social-charter/european-social-charter-and-european-union-law>

¹⁴ *The European Social Charter – A Social Constitution for Europe*. Ed. by Olivier De Schutter. Bruxelles: Bruylant, 2010, p. 174.

Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which extends non-discrimination principles to the sphere of protection of social and economic rights. The appendix is an integral part of the ESC(r), it gives explanations about the scope of its application to a circle of persons. The monitoring over the fulfillment by States Parties of legal obligations under the ESC(r) is carried out in the same manner as determined by the ESC, as amended by the Protocol Amending the ESC of 1991 and the Additional Protocol to the ESC Providing for a System of Collective Complaints of 1995.

The approach that underlies the ESC(r) differs fundamentally from the approach adopted by the drafters of the Additional Protocol to the ESC of 1988, included in it a small number of additional rights not covered by the ESC. ESC(r) completely replaced for the States Parties main guarantees provided for by the ESC, as amended, and the Additional Protocol to the ESC 1988, textually combed them into a single document, and also, taking into account modern social changes, expanded the scope of guaranteed social rights, having secured new rights. The ESC(r) contains texts of Articles 1–19 of the ESC and the Articles 1–4 of the Additional Protocol to the ESC of 1988 with amendments due to the requirements of the time, as well as new provisions that guarantee the following rights: the right to protection in case of dismissal (Article 24); the right of workers to protection of rights in the event of the bankruptcy of their employer (Article 25); the right to be treated with dignity at work (Article 26); the right of workers with family responsibilities to equal opportunities and equal treatment of them (Article 27); the right of workers' representatives to protection at the enterprise and the conditions that must be created for them (Article 28); the right to information and advice during collective layoffs (Article 29); the right to protection from poverty and social marginalization (Article 30); the right to housing (Article 31).

5. Implementation of Revised Charter: topical theoretical and practical issues

The legal obligations that the States Parties undertake under the ESC(r) are formulated with varying degrees of details. Since most of the ESC(r) norms contain evaluative concepts, in particular “decent standard of living”, “just, safe and healthy working conditions”, “adequate conditions for vocational training”, “adequate social, legal and economic protection”, “decent attitude at work”, the boundaries of their content are determined by the European Committee of Social Rights, taking into account the peculiarities of social rights, including the

possibility of the state to implement its obligations depending on the economic situation.

The ESC(r) ratio “with national legislation is similar to the ratio of standards of the International Labor Organisation, i.e. it has primacy over national norms that contradict it in states where the monistic concept of ratio of national and international law, and in states where the dualistic concept is fixed, it should be implemented into national legislation”¹⁵ emphasizes Arturo Bronstein. In implementation activity to bring national legislation into compliance with provisions of the ESC(r), the following stages can be distinguished: *firstly*, study and analysis of the ESC(r) norms in order to establish their essence, content, regulatory features – features of sectoral legal mediation; *secondly*, the identification of the degree of compliance of legal norms national legislation with the provisions of the ESC(r), i.e. comparative assessment, determination of the stages of elimination of the revealed nonconformity. In this case, a comparative assessment should include: a) an assessment of the compliance of the Constitution of Ukraine with the requirements of the ESC(r); b) an assessment of the compliance of international treaties of Ukraine, in respect of which she has expressed consent to the binding nature of their provisions, in particular, by ratification, to the ESC(r) legal norms; c) assessment of the compliance of sectoral legislation with the requirements of the ESC(r); *thirdly*, legislative activities to harmonize legal norms of national legislation in this sphere; *fourthly*, the incorporation of results of legislative activity into law-enforcement practice¹⁶.

During the preparatory stage for ratification of the ESC(r), the Council of Europe member states carry out a full analysis of the current legislation and law-enforcement practices related to the rights guaranteed by the ESC(r). The Constitution of Ukraine provide for the method of incorporation¹⁷ for implementation of norms of international law. When developing a mechanism for implementing the ESC(r) norms in national legislation, one should take into account numerous social and economic, organizational factors that significantly influence the practical implementation of this mechanism. The peculiarity of the ESC(r) is that its regulatory function is aimed at guaranteeing social and economic rights that require adequate material and financial support, which should create the actual conditions for the realization of social and economic rights in accordance with European standards in this sphere. In addition, when implementing the ESC(r) norms into national legislation, it is necessary to take into account the

¹⁵ BRONSTEIN, A. *International and Comparative Labour Law: Current Challenges*. Basingstoke: UK, New York: Palgrave Macmillan, 2009, p. 196.

¹⁶ FESKOV, M. M. Tam camo, p. 39.

¹⁷ See article 9 of the Constitution of Ukraine [online]. Available at: <http://zakon4.rada.gov.ua/laws/show/254к/96-вп> (in Ukrainian)

peculiarities of its provisions, as well as the legal assessment activities of the Council of Europe's control bodies regarding the reports of States Parties on the status of compliance with the ESC(r) obligations. The ESC(r) not only takes into account the provisions of the ESC and its amendments, the provisions of the Additional Protocol to the ESC 1988, but also significantly expanded the catalog of social and economic rights, the range of individual rights, changed the amount of state obligations under certain articles, shifted the emphasis protection of certain categories of persons.

The practice of applying the provisions of the ESC testifies to its trial nature, and the international guarantees of the ESC(r) are more advanced, it has proved that it has sufficient material content to be an effective tool for protection of social rights, although the functioning of this mechanism suffers from structural weaknesses and lack of political will. At the same time, the ESC/ESC(r) noticeably influences on the law-making and law-enforcement processes in the States Parties that share common social values. The significance of their provisions for the development of labor and social law of the European Union is evidenced by the participation of all its member States in them, as well as references to them in the Treaty on the Functioning of the European Union of 2007 (Article 151) and in the EU Charter (preamble), indicating the similarity of the Council of Europe and the European Union standards for protection social rights. For persons who are under the jurisdiction of the ESC/ESC(r) States Parties that are not members of the European Union, these acts can actually be considered as the only pan-European guarantee of legal ensuring of social rights, a guideline for their protection.

6. Functioning of the reporting system: evolution of approaches

The reports of the States Parties on the application of the adopted provisions of Part II, provided in accordance with the Article 21 of the ESC, are first analyzed by the European Committee of Social Rights, which, based on them, prepares an conclusion, expressing its position regarding compliance by each of the participants for the reporting period of the provisions in respect of which it filed the report, from a legal point of view, assesses the state of compliance of the legislation and law-enforcement practice of specific States Parties their obligations under the ESC. Reports on not accepted provisions provided for in accordance with the Article 22 of the ESC are analyzed by the European Committee of Social Rights, which found that its role in this category of reports is

to interpret the meaning of a particular provision and examine the reasons for prompting states not to accept it¹⁸. He gives a conclusion in which he calls on states to adopt such provisions.

The reports of the States Parties and the conclusions of the European Committee of Social Rights are submitted, in accordance with paragraph 1 of the Article 27 of the ESC, for consideration to the Governmental Committee, which includes one representative from the government of each State Partie as well as observers with the right of deliberative vote from no more than two international organizations of employers and no more than from two international trade union associations can participate in meetings of the Governmental Committee. Similar practices have the European Trade Union Confederation (ETUC), the International Organisation of Employers (IOE) and the Business Europe (ex Union of Industrial and Employers' Confederations of Europe, UNICE).

In the light of the reports of the States Parties on the application of the ESC and conclusions of the European Committee of Social Rights regarding these reports, the Governmental Committee (the second, after the European Committee of Social Rights), the element of the monitoring mechanism of the ESC indicates to the Committee of Ministers (the third element of the monitoring mechanism of the ESC) on situations which, in his opinion, should become, according to the Article 28 of the ESC, the subject of individual recommendations for each of the State Partie. To this end, the Governmental Committee selects situations that deserve to be the subject of individual warnings / recommendations for the State Partie. The Governmental Committee prepares a report on the application of the ESC to be made public, and submits it, together with the conclusion of the European Committee of Social Rights, to the Committee of Ministers during each monitoring cycle. The report of the Government Committee also contains an analytical background on the dynamics of changes in the fulfillment of obligations by the States Parties that occurred after the previous control cycle. At meetings of the Committee of Ministers, the report of the Governmental Committee and the conclusion of the European Committee of Social Rights are discussed with suggestions and analytical assessments of the situation. Following the discussion, guided by the report of the Governmental Committee, the Committee of Ministers, by voting, in which only the States Parties have the right to vote, adopts a two-thirds majority vote of the resolution covering the entire control cycle and containing individual recommendations to the respective States Parties.

The resolution of the Committee of Ministers can also be directed to a warning of the State Partie, i.e. impose requirements on the need to take appropriate

¹⁸ *European Committee of Social Rights* [online]. Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/ecsr/ecsrdefault_EN.asp

measures to eliminate the identified inconsistencies, which, in essence, is a signal that the situation with the fulfillment of obligations does not fully meet the requirements of the ESC/ESC(r). If the Committee of Ministers adopts a resolution containing a warning / recommendation, the State Partie is invited to report on the measures taken in response to the warning / recommendation received in the next national report. Although the recommendations are not legally binding, their implementation is ensured by the political authority of the Council of Europe. According to Gráinne de Búrca and Bruno de Witte, “the acts of the ESC control bodies are not endowed with legally binding force, but they have political and legal significance”¹⁹. The Secretary General of the Organisation submits to the Parliamentary Assembly of the Council of Europe for discussion at periodic plenary meetings the conclusions of the European Committee of Social Rights, reports of the Governmental Committee and resolutions of the Committee of Ministers. At the same time, “how effective the conclusion of the European Committee of Social Rights about non-compliance will be and when the violation of rights should be resolved at the time of adoption of the conclusion is not known. That is why, in order to make the Charter a social constitution of Europe, the time-consuming mechanisms of monitoring over its implementation should be replaced by a more sophisticated surveillance system”²⁰ says Zaka Mirzayev. In this context, it should be emphasized that it is in the process of the functioning of the monitoring mechanism, above all the activities of the European Committee of Social Rights, that the practice of the same and dynamic interpretation and application of the ESC/ESC(r) is formed and that essential for the full implementation of their provisions, increasing the impact of the ESC/ESC(r) on the legislation and law-enforcement practice of the States Parties.

By the decision of the Committee of Ministers of May 3, 2006, a new reporting system was introduced providing for the division of the provisions of the ESC/ESC(r) into four thematic groups so that each State Partie reported once every four years. According to the approved division the provisions of the ESC/ESC(r) have been divided into four thematic groups: “Employment, training and equal opportunities” (Articles 1, 9, 10, 15, 18, 20, 24, 25), to the second thematic group “Health, social security and social protection” (Articles 3, 11, 12, 13, 14, 23, 30), to the third “Labour rights” (Articles 2, 4, 5, 6, 21, 22, 26, 28, 29) – and the fourth – “Children, families, migrants” (Articles 7, 8, 16, 17, 19, 27, 31) – to thematic groups. States Parties present a report on the provisions relating to one

¹⁹ DE BÚRCA, G. *Social Rights in Europe*. Ed. by Gráinne de Búrca, Bruno de Witte. Oxford/ New York, 2005, p. 316.

²⁰ MIRZAYEV, Z. The European Social Charter and its implementation in the Republic of Azerbaijan, November 2012 [online]. Available at: http://works.bepress.com/zaka_mirzayev/2

of the four thematic groups on an annual basis. Consequently each provision of the ESC/ESC(r) is reported once every four years. The first national report on the implementation of undertakings under the ESC(r), submitted to the Council of Europe on 4 December 2007, Azerbaijan was the first of the national reports submitted under the new reporting system. According to the approved division into thematic groups, the reports of Ukraine²¹ concerned the adopted provisions of the ESC(r) articles belonging to all four thematic groups.

On 2 April 2014, the Committee of Ministers adopted new changes to the reporting and monitoring system with respect to the ESC/ESC(r). The most important aim of the changes is to simplify the reporting system for State Parties having accepted the collective complaints procedure. Following these modifications, States having accepted the Collective Complaints procedure have to submit a simplified report every two years. In order to prevent excessive fluctuations in the workload of the European Committee of Social Rights, the States which have accepted the collective complaints procedure so far have been divided into two groups. The groups are composed by distributing the States according to the number of complaints registered against them (from the highest to the lowest), as follows: *Group A*, made up of eight States: France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland and Finland; *Group B*, made up of seven States: Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, and Czech Republic. In compliance with the Committee of Ministers' decisions from 2006 and 2014, States Parties are currently required to draw up their report on the basis preliminary agreed calendar. For instance, reference period: 1. 1. 2015–31. 12. 2018; thematic groups: *Group 1* "Employment, training and equal opportunities" (Articles 1, 9, 10, 15, 18, 20, 24, 25); deadline for submission of reports: 31. 10. 2019; normal report: all states except the ones from group A; simplified report: states from *Group A*; adoption of conclusions: December 2020²². It is important that States shall indicate what follow-up action has been taken in response to the decisions of the European Committee of Social Rights on collective complaints). At

²¹ As for Ukraine, the assessment of some situations was not completed due to the lack of information provided by it on the implementation of the articles in question. Since the information provided was not detailed enough for a satisfactory assessment from a legal point of view, the European Committee on Social Rights stressed that it needs additional information regarding the relevant situations, and therefore requested the Government of Ukraine to provide such information in the next report on the articles under consideration. In: the conclusion of the European Committee of Social Rights, incomplete and inappropriate information contained in the national reports provided by Ukraine led to a number of deferred conclusions, while the European Committee of Social Rights considers the information incomplete when there is no information on how legislation is applied in practice and how its implementation is monitored.

²² *Reporting system of the European Social Charter* [online]. Available at: <https://www.coe.int/en/web/european-social-charter/reporting-system>

the level of the Governmental Committee only cases of non-conformity selected by the European Committee of Social Rights will be discussed.

7. Collective complaints procedure

The modern monitoring mechanism is based on an analysis of the reports of the States Parties in the above method, but the complaint procedure also plays an important role. The Additional Protocol to the ESC Providing for a System of Collective Complaints of 1995 provides for the possibility of filing of collective complaints about the unsatisfactory application use of the ESC/ESC(r), the subject of which should not be a violation of the rights of a specific person, but its legislation and/or practices that, according to the applicant, do not comply with the ESC/ESC(r), which is evidence of its unsatisfactory application. It is important to bear in mind that, according to Cullen Holly, a reasonable opinion, “the complaints mechanism is intended only for collective complaints and, therefore, there is no requirement for the existence of a specific victim or the exhaustion of national remedies”²³. Collective complaints can be lodged by the social partners, the national non-governmental organisations and the international non-governmental organisations²⁴ in participatory status with the Council of Europe (Collective Complaints procedure).

Following the consideration of a collective complaint by the European Committee of Social Rights, the report is made in the form of a “decision on the substantiation” of the complaint, in which the fact of a violation of the ESC/ESC(r) by the State Partie or the absence of a violation is stated. “Considering complaints, the European Committee of Social Rights interprets the Charter in full compliance with its human rights character and thus creates a solid basis for its future work. It is positive that the practice of considering complaints by the European Committee of Social Rights demonstrates the possibility of adequately protecting economic and social rights by appealing to an international treaty monitoring body”²⁵ emphasizes David Harris. The report of the European

²³ CULLEN, H. The Collective Complaints System of the European Social Charter: Interpretive Methods of the European Committee of Social Rights. *Human Rights Law Review*, Oxford: Oxford University Press, 2009, vol. 9, issue 1, p. 62–63.

²⁴ See *Participatory status for international non-governmental organisations with the Council of Europe: Resolution CM/Res(2016)3* [online]. Available at: https://search.coe.int/cm/P/result_details.aspx?ObjectId=090000168068824

²⁵ HARRIS D. J. Collective Complaints under the European Social Charter: Encouraging Progress? *International Law and Power: Perspectives on Legal Order and Justice: Essays in Honour of Colin Warbrick*. Ed. by Kaikobad, K. H., Bohlander, M. (eds.). Leiden: The Netherlands, Martinus Nijhoff Publishers, 2009, p. 24.

Committee of Social Rights is sent to the Committee of Ministers and published. Guided by him, the Committee of Ministers, by a majority of votes cast, adopts a resolution at the end of each control cycle and, after considering collective complaints, if it makes a conclusion about the unsatisfactory application of the ESC/ESC(r), by two thirds of the votes, it adopts individual recommendations to states, which do not fully comply with the ESC/ESC(r). Only the States Parties of each of them, respectively, have the right to vote.

Only 15 of the ESC/ESC(r) States Parties ratified the Additional Protocol to the ESC Providing for a System of Collective Complaints 1995, and of these, only Finland recognized the right of national non-governmental organisations to file collective complaints against the government²⁶. Ukraine's accession to the Additional Protocol to the ESC Providing for a System of Collective Complaints 1995 would certainly give impetus to the process of reforming the domestic social security system, and non-governmental organisations working to protect the rights of workers would not be deprived of the right to file directly to the European Committee of Social Rights complaints concerning violations of Ukraine obligations under the ESC(r).

8. Comparative analysis of the European Social Charter and Revised Charter

Many of provisions of the ESC in the ESC(r) are set out in the updated edition, namely: it is planned to increase the guaranteed duration of annual paid leave from 2 to 4 weeks (paragraph 3 of the Article 2); Article 2 "The right to just conditions of work" includes a new paragraph 6, designed to ensure that workers are informed about the essential aspects of an employment contract or employment relationship, the Article 3 "The right to safe and healthy working conditions" establishes the obligation to develop, implement and periodically review national policy in the sphere of labor protection, to promote the development of industrial hygiene services; the Article 7 "The right of children and young persons to protection" defines the minimum age of 18 years for employment with dangerous working conditions. The age below which the working time should be limited, increased from 16 to 18 years. Annual paid leave for persons under 18 years old, increased from 3 weeks to 4 weeks; paragraph 1 of the Article 8 "The right of employed women to protection of maternity" has been increased from 12 to

²⁶ *Council of Europe, Member States of the Council of Europe and the European Social Charter* [online]. Available at: p://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview_en.asp

14 weeks, the length of leave for women during pregnancy and after childbirth; employers' responsibilities for night work for pregnant women, women who have recently given birth and women nursing their infants are clarified (paragraph 4 of the Article 8).

A characteristic feature of the ESC(r) approach to ensuring equality of rights for men and women are the changes reflected in paragraph 5 of the Article 8. If paragraph 4 of the Article 8 of the ESC prohibits the employment of women in work contraindicated for them in connection with dangerous, harmful or difficult working conditions, then paragraph 5 of the Article 8 of the ESC(r) extends such a ban only to pregnant women, women who have recently given birth to a child, and women nursing their infants; Article 10 "The right to vocational training" provides for the obligation to introduce special retraining and reintegration programs for long-term unemployed persons; replaces the reference defined in paragraph 2 of the Article 12 "The right to social security" to the International Labor Organization Convention No. 102 of 1952 by reference to the European Code of Social Security revised of 1990, setting higher standards for minimum standards of social security; Article 15 "The right of persons with disabilities to independence, social integration and participation in the life of the community" establishes the additional right of disabled persons to social integration and participation in society through the adoption of measures that provide access to transport, housing, cultural activities and recreation; it provides for the replacement of guarantees of "the rights of mothers and children" with guarantees of the "rights of children and young persons" contained in the Article 17 "The right of children and young persons to social, legal and economic protection", with a corresponding change in the emphasis and elements of these guarantees, in particular with regard to education. This article, set out in the new edition, is aimed at comprehensive protection of children and adolescents, taking into account their specific needs in matters of care, assistance, education, protection from neglect, violence, exploitation, etc.; strengthened the principle of non-discrimination (Article E), etc.

The ESC provides a wide range of rights belonging to the category of social and economic rights, but it does not provide for all of them, let say, there is no mention of the right to education, which is "a necessary condition for full realization of the right to employment"²⁷. This gap was filled by the ESC(r), in accordance with paragraph 2 of the Article 17 of which the States Parties undertake to "provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools". The ESC does

²⁷ SWIATKOWSKI, A. M. *Charter of Social Rights of the Council of Europe*. Zuidpoolzingel: The Netherlands, Kluwer Law International, 2007, p. 298.

not contain a general guarantee of the right to housing, limited to the provisions on “family housing” (Article 16, as well as paragraphs 1, 2 of the Article 4 of the Additional Protocol to the ESC 1988) and “accommodation for migrant workers” (paragraph 4 (c) of the Article 19), at the same time, the Article 31 ESC(r) enshrines the right to housing. The ESC did not provide for general protection from poverty, a general guarantee of an “adequate standard of living” for all persons (paragraph 1 of the Article 11 of the International Covenant on Economic, Social and Cultural Rights 1966), providing some protection for the right to fair remuneration that could provide “decent standard of living” of workers and their families (paragraph 1 of the Article 4, of the ESC, paragraph 1 (a) of the Article 4 of the Additional Protocol to the ESC 1988), and the right to social and medical assistance (Article 13 of the ESC). The Article 30 of the ESC(r) filled this gap, provided for the right to protection against poverty and social exclusion.

9. Priorities of the Turin process: new opportunities

The Turin process was launched by the Secretary General of the Council of Europe at the High-level Conference on the European Social Charter (Turin, 17 and 18 October 2014) soon after the Secretary General’s decision to put the “system” of the European Social Charter treaties (*the ESC/ESC(r); the Additional Protocol to the ESC of 1988; the Additional Protocol to the ESC Providing for a System of Collective Complaints of 1995*) at the top of its priorities, and this, with a view to increasing the relevance and impact of the work of the Council of Europe. The Conference, organised by the Council of Europe in co-operation with the Italian authorities (in the framework of the Italian Presidency of the EU Council), gathered policy-makers from 37 European countries to reaffirm the relevance of social rights in times of crisis²⁸. In addition, the achievement of the objectives of the Turin process was discussed at the Conference on the Future of the Protection of Social Rights in Europe, held in Brussels on 12–13 February by the Belgian Chairmanship of the Council of Europe.

Two other high-level meetings marked the Turin process in 2016: the Inter-parliamentary Conference on the European Social Charter and Turin Forum on Social Rights in Europe. These events, held in Turin on 17 and 18 March, were organised by the Council of Europe in co-operation with the Italian Chamber of Deputies and the City of Turin. At the Forum, the European Commission

²⁸ *Report on Turin process presented at Committee of Ministers by Parliamentary Assembly’s Vice-President Nicoletti* [online]. Available at: <https://www.coe.int/en/web/european-social-charter/-/report-on-turin-process-presented-at-committee-of-ministers>

presented its draft European Pillar on Social Rights. It is noteworthy that during the speech on the state of affairs in the EU on 9 September 2015, the President of the European Commission Jean-Claude Juncker stressed on the necessity for revitalization of the work for a fair and truly pan-European labour market²⁹. European Pillar of Social Rights takes into account changing realities in the labour area, the basic principles and values that are shared at the EU level, actualizing the present EU social “acquis”. In general, it is about encouraging reforms at the national level, adopting new trends in labour models, capable to contribute to the social effectiveness of the ESC/ESC(r) member states.

The Turin process aims at consolidation and enhancement of the European Social Charter’s system of normative standards in social rights, mechanisms for ensuring compliance with the commitments made in this area. Within the framework of the Turin process, several important documents have been developed, among which: The ‘*General Report of the High-level Conference on the European Social Charter*’ (**Turin 1**, 17 and 18 October 2014), established by Mr Michele Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe; The ‘*Brussels’ Document on the future of the protection of Social Rights in Europe*’, elaborated by a group of academic experts chaired by the General Coordinator of the Academic network of the European Social Charter and Social Rights, following the Brussels’ Conference (2015); *The official Speeches and Interventions relating to the Interparliamentary Conference on the European Social Charter*, and *Turin Forum on Social Rights in Europe* (**Turin 2**, 17 and 18 March 2016)); The ‘*Opinion of the Secretary General of the Council of Europe on the European Union initiative to establish a European Pillar of Social Rights*’.

“Respect for fundamental social rights constitutes the best way forward to increase citizens’ participation in democratic processes, reinforce their trust in European construction and combat fundamentalism and radicalisation by promoting inclusion and social cohesion”³⁰, highlighted Michele Nicoletti, Vice-President of the Parliamentary Assembly of the Council of Europe and General Rapporteur of the High-Level Conference on the European Social Charter, while presenting the report to the Committee of Ministers. Measures within the framework of the Turin process, according to Michele Nicoletti, “represent a genuine opportunity to turn declarations of principle, at national and European level, into targeted political actions, in order to fill the gap between civil and political rights on the

²⁹ *Commission launches a public consultation on the European Pillar of Social Rights* [online]. Available at: http://europa.eu/rapid/press-release_IP-16-544_en.htm

³⁰ *Report on Turin process presented at Committee of Ministers by Parliamentary Assembly’s Vice-President Nicoletti* [online]. Available at: <https://www.coe.int/en/web/european-social-charter/-/report-on-turin-process-presented-at-committee-of-ministers>

one hand, and social and economic rights on the other”³¹. At the same time it is noteworthy that “The conclusion in Turin was that social rights are therefore doubly undermined: firstly, because of institutional disequilibrium between the monitoring systems of fundamental rights in Europe and secondly, because of the impact of the crisis, which is leading to restrictions of rights or the dismantling of the policies designed for their concrete implementation”³², was emphasised by the President of the Italian delegation to Parliamentary Assembly of the Council of Europe.

Certainly, the Turin process aims at strengthening the “system” of the European Social Charter treaties within the Council of Europe and in its relationship with the law of the European Union and also it is oriented to eliminate the lack of a unifying effect between ESC/ESC(r). Based on the principles of indivisibility, interdependence and interrelation of fundamental rights, formally established by the United Nations, purpose of ESC/ESC(r) is to improve the implementation of social and economic rights at the continental level, along with civil and political rights granted by the Convention on Human Rights and Fundamental Freedoms of 1950. Undoubtedly, the Turin process promotes the consolidation of social rights in Europe that is an essential contribution to the principles of the Rule of Law, Democracy and Human Rights³³ as civilization values supported by the Council of Europe, the European Union, etc., and the future of Europe depends on the adherence to these principles. In view of the above, one of its objectives is the ratification of the ESC(r) and adoption of the Additional Protocol providing for a system of collective complaints by all the member States of the Council of Europe.

The important component of the Turin process is that it represents a vital step towards fresh restart for the process of uniting of Europe, which received a new vision, based on the fundamental values of the unification of States and their citizens, and especially on the values of the European Social Charter, which is recognized, being a part of this process, as a social constitution of Europe, which focuses on targeted practical actions aimed at increasing the effectiveness of its implementation, as well as at strengthening of the level of protection of social rights in Europe.

³¹ Ibid.

³² Ibid.

³³ *The Turin process for the European Social Charter* [online]. Available at: <https://www.coe.int/en/web/turin-european-social-charter/turin-process>

10. Conclusion

The Council of Europe and the European Union play an important role in provision and protection of social rights. The guarantees of the ESC(r) correspond and specify the guarantees of universal international legal acts in the sphere of social and economic rights. The guarantees of the ESC(r) contain constructive approaches to flexible implementation of European social standards into national legislation and law-enforcement practice, to their gradual and consistent harmonization. The ESC/ESC(r) norms on social rights are generally consistent with the guarantees provided by the International Covenant on Economic, Social and Cultural Rights of 1966 and guarantees for economic rights are closely related to the standards of the International Labor Organization, which have universal application.

The priority of the ESC(r), which is based on coordination and flexibility, is to create by the States Parties of conditions under which the practical realization of the rights and principles established therein is possible, using national and international instruments, which however emphasizes the special importance of developing European standards for ensuring social rights and also increase their effectiveness, which will open new opportunities on the labor market.

The European standards of social and economic rights contained in the ESC(r) reaffirmed in the EU Charter, promote the convergence of human rights protection systems operating in the Council of Europe and the European Union. Consequently the ESC(r) played a critical role in meaningfulness of social rights, reaffirmed in the EU Charter, which belongs to the primary sources of EU law.

The process of updating and improving of the “system” of the European Social Charter treaties is continuing, therefore it is a “living instrument” of ensuring of social rights in Europe, capable of raising the level of its protection. Under the conditions of existing crisis, globalization, european integration etc., the value of the Turin process for the ESC/ESC(r) (Turin 1 and Turin 2) is increasing. As part of this process, the fundamental instruments of social rights protection – ESC/ESC(r) are recognized as Social Constitution of Europe. The mentioned outlines actual targeted actions aimed at: increasing the effectiveness of the practical application of ESC/ESC(r); strengthening the effectiveness of mechanisms for social rights protection; the establishment of a social state whose priority is to achieve the same level of opportunity and equal use of potential; the formation of social Europe to be based on the fundamental values of respect for human rights, in particular for social rights that exist not for the sake of rights, but for the sake of human.

References

- BRONSTEIN, A. *International and Comparative Labour Law: Current Challenges*. Basingstoke, UK; New York: Palgrave Macmillan, 2009, 285 p.
- Commission launches a public consultation on the European Pillar of Social Rights. [online]. Available at: <http://europa.eu/rapid/press-release_IP-16-544_en.htm>
- Council of Europe, Member States of the Council of Europe and the European Social Charter. [online]. Available at: <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview_en.asp>
- CULLEN, H. The Collective Complaints System of the European Social Charter: Interpretive Methods of the European Committee of Social Rights. *Human Rights Law Review*. Oxford: Oxford University Press, 2009, vol. 9, issue 1, pp. 61–93.
- DE BÚRCA, G. *Social Rights in Europe*. Ed. by Gráinne de Búrca, Bruno de Witte. Oxford/New York: 2005, 421 p.
- DE SCHUTTER, O. The European Social Charter as the Social Constitution of Europe. *The European Social Charter and the Employment Relation*. Ed. by Niklas Bruun, Klaus Lorcher, Isabelle Schomann, Stefan Clauwaert. Oxford and Portland: Bloomsbury Publishing, 2017, 552 p.
- DE SCHUTTER, O. *The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights*. Brussels, 2016, 71 p.
- European Committee of Social Rights. [online]. Available at: <http://www.coe.int/t/dghl/monitoring/socialcharter/ecsr/ecsrdefault_EN.asp>
- European Social Charter and European Union law*. [online]. Available at: <<https://www.coe.int/en/web/european-social-charter/european-social-charter-and-european-union-law>>
- HAMULÁK, O. Is Charter of the Fundamental Rights of the EU Taking Social Rights Seriously? *European Studies – The Review of European Law, Economics and Politics*, 2015, vol. 2, pp. 14–28.
- HARRIS D. J. Collective Complaints under the European Social Charter: Encouraging Progress? *International Law and Power: Perspectives on Legal Order and Justice: Essays in Honour of Colin Warbrick*. Ed. by K. H. Kaikobad, M. Bohlander (eds.). Leiden: The Netherlands, Martinus Nijhoff Publishers, 2009, pp. 3–24.
- MANTOUVALOU, V., VOYATZIS, P. The Council of Europe and the Protection of Human Rights: A System in Need of Reform. *Research Handbook on International Human Rights Law*. Ed. by S. Joseph, A. McBeth. Cheltenham: UK; Northampton: MA, USA, Edward Elgar Publishing, 2010, pp. 326–352.
- MIRZAYEV, Z. The European Social Charter and its implementation in the Republic of Azerbaijan, November 2012. [online]. Available at: <http://works.bepress.com/zaka_mirzayev/2>
- Participatory status for international non-governmental organisations with the Council of Europe: Resolution CM/Res(2016)3*. [online]. Available at: <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168068824c>
- QUINN, G. The Legal Status of the European Social Charter – Taking Interdependence and Indivisibility of Human Rights Seriously. *Report, UNIDEM Seminar: The status of international treaties on human rights*. Venice Commission, Coimbra, 7–8 October

- 2005, 12 p. [online]. Available at: <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UD\(2005\)021rep-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UD(2005)021rep-e)>
- Report on Turin process presented at Committee of Ministers by Parliamentary Assembly's Vice-President Nicoletti.* [online]. Available at: <<https://www.coe.int/en/web/european-social-charter/-/report-on-turin-process-presented-at-committee-of-ministers>>
- Reporting system of the European Social Charter.* [online]. Available at: <<https://www.coe.int/en/web/european-social-charter/reporting-system>>
- ŠIŠKOVÁ, N. Chartija osnovnyh prav Evropejskogo Sojuza i problemy ee primenenija. In: Šišková, N. *Pamjati profesora Pavla Petrovycha Zavorotka. Aktualni problemy pravovoi nauky*, Kyiv: Precedent, 2014, p. 188.
- ŠIŠKOVÁ, N. New Challenges for the EU in the Field of Human Rights (Focusing on the Mechanism of the Charter). *European Studies – The Review of European Law, Economics and Politics*, 2014, vol. 1, pp. 12–21.
- SWIATKOWSKI, A. M. *Charter of Social Rights of the Council of Europe*. Zuidpoolsingel: The Netherlands, Kluwer Law International, 2007, 440 p.
- The European Social Charter – A Social Constitution for Europe*. Ed. by Olivier De Schutter. Bruxelles: Bruylant, 2010, 192 p.
- The Turin process for the European Social Charter.* [online]. Available at: <<https://www.coe.int/en/web/turin-european-social-charter/turin-process>>
- GOMEN D., ZVAAK L., HARRIS D. *Evropejskaja konvencija o zashhite prav cheloveka i osnovnyh svobod i Evropejskaja social'naja hartija: pravo i praktika*. M.: MNIMP, 1998, 600 P. (in Russian).
- DENYSOV, V. N. Pro osoblyvosti implementatsii sotsialno-ekonomichnykh ta kulturnykh prav u systemi mizhnarodnoho prava prav liudyny. *Pravova derzhava*. Shchorichnyk naukovykh prats. Vyp. 12. Kyiv: Instytut derzhavy i prava im. V. M. Koretskoho NAN Ukrainy, 2001, pp. 504–515. (in Ukrainian).
- Konstytutsiia Ukrainy.* [online]. Available at: <<http://zakon4.rada.gov.ua/laws/show/254κ/96-бп>> (in Ukrainian).
- Pro ratyfikatsiiu Yevropeiskoi sotsialnoi khartii (perehlianutoi): Zakon Ukrainy vid 14. 9. 2006 r. № 137-V.* [online]. Available at: <<http://zakon1.rada.gov.ua/laws/show/137-16>> (in Ukrainian).
- FESKOV, M. M. *Trudove zakonodavstvo Ukrainy i Yevropeiska sotsialna khartiia (perehlianuta): pytannia adaptatsii*. Kyiv: Znannia, 2005, 276 p. (in Ukrainian).