

UDC 349.2

DOI: 10.56215/naia-herald/1.2025.60

Mechanisms for monitoring the implementation of the European Social Charter and their significance for the Member States

Nataliia Cherevko*

PhD in Public Administration

Kherson State Agrarian and Economic University

73006, 23 Strytenska Str., Kherson, Ukraine

<https://orcid.org/0000-0002-5456-8887>

■ **Abstract.** The foundation of the European system of ensuring social human rights is the European Social Charter, which is implemented under the auspices of the Council of Europe. However, formally, its provisions are not subject to strict implementation, which necessitates an increase in the effectiveness of the Charter's implementation. The purpose of the present study was to investigate the shortcomings of the mechanisms for monitoring compliance with the European Social Charter, to assess their significance for the member states, and to develop recommendations for improving their effectiveness. The methodological framework of the study included a comprehensive analysis of the mechanisms for monitoring the implementation of the European Social Charter. The study analysed the decisions of the European Committee of Social Rights on violations of the European Social Charter by various states and their effects on the development of legislation and improvement of social policy in these countries. Attention was focused on the collective complaints mechanism set out in the Additional Protocol. The study found that expanding the influence of national NGOs and strengthening public control would substantially contribute to improving the implementation of the Charter. At the same time, the immediate publication of the Committee's conclusions would positively influence the reputation component, as well as ensure transparency and promptness of the implementation of social rights. The study systematised the effects of the Charter's provisions on the legal systems of individual countries, focused on the role of civil society and the significance of empowering non-governmental organisations in this process, and substantiated the need to strengthen control over its implementation. The findings obtained are of practical value for improving law enforcement and ensuring social rights of citizens

■ **Keywords:** social security; social protection; social rights; European standards; collective complaints

■ Introduction

The European Social Charter (the Charter), adopted by the Council of Europe in 1961¹ has become a defining document for the establishment of uniform standards of human rights in Europe. The Charter defines standards for social security, labour protection, equal opportunities for women and men, and other aspects of human life that are fundamental to democratic states. As of 2024, 43 Council of Europe

member states have ratified some of its provisions. Upon joining the Council of Europe, Ukraine committed to promoting pluralistic democracy, the rule of law, and the effective protection of human rights and fundamental freedoms of all persons under its jurisdiction (Cherniavskiy, 2024). The state also agreed to conduct its national policy following the principles proclaimed by the European Convention

¹ European Social Charter. (1961, October). Retrieved from <https://rm.coe.int/168006b642>.

■ Suggested Citation:

Cherevko, N. (2025). Mechanisms for monitoring the implementation of the European Social Charter and their significance for the Member States. *Scientific Journal of the National Academy of Internal Affairs*, 30(1), 60-70. doi: 10.56215/naia-herald/1.2025.60.

■ *Corresponding author

■ Received: 20.11.2024; Revised: 18.02.2025; Accepted: 25.03.2025



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

for the Protection of Human Rights and Fundamental Freedoms¹ and the European Social Charter, as stated in Opinion of the Parliamentary Assembly of the Council of Europe No. 190².

Due to the considerable differences in the levels of social and economic development of European countries, the structure of the Charter has certain features that are not typical for most international legal documents. Social rights are divided into more concrete rights, which are stipulated in separate paragraphs. In this way, and through such concretisation, the list of key rights was significantly expanded (Bodnaruk *et al.*, 2021). States are permitted to accede not to the entire treaty, but only to selected provisions. The total number of selected articles and paragraphs must be at least 10 out of 19 articles or 45 out of 72 paragraphs.

Ukraine ratified the Charter (Revised) in 2006³, accepting 76 out of 96 articles, rejecting the collective complaint procedure. According to the Charter, Ukraine is obliged to submit national reports on the implementation of the requirements of one of the four thematic groups of articles, in which it must report on how it is performing its obligations. The report must contain not only information on the legal compliance of national legislation with the provisions of the Charter, but also on its practical implementation, providing statistical data on relevant issues. However, the effectiveness of such a mechanism continues to be a matter of debate, which makes the topic of the present study relevant.

Investigating the functioning of the mechanisms for monitoring the implementation of the Charter⁴ through the institutional lens of the Council of Europe's structural units and the relationship between them, I.I. Klymchuk & S.Yu. Orlov (2023) emphasised the significance of the Council of Europe's supervisory bodies, specifically the European Committee of Social Rights (Committee), in monitoring the compliance of member states with their obligations. Therewith, A. Spagnolo (2022) noted the value of the Charter's provisions, despite the absence of an obligation to enforce them. Ye. Batura & S. Tatari-nova (2024) concluded that a comprehensive approach to the integration of European approaches into Ukraine's social policy is needed, including improving legislation, increasing the targeting of social support and the fight against corruption, as well as the need to introduce digital technologies. M. Manfredi (2021) explored such an aspect of the topic as

the role of the Charter in promoting economic and social rights in the internal market by analysing its application in horizontal disputes. The researcher concluded that the European Pillar of Social Rights could lead to a certain strengthening of the EU's social dimension, but this largely depends on the goodwill of governments. Z. Ivantsova (2024) pointed out the advantages of the two-year reporting cycle of states in terms of the monitoring activities of the European Committee of Social Rights. These results, according to the researcher, indicate one of the key roles of the Committee's case law in the harmonisation of social standards in Ukraine. O. Balynska *et al.* (2024) argued that global processes are fundamentally transforming all generations of human rights, as their legal nature goes beyond the jurisdiction of one state and acquires international status. In this context, as the Committee has repeatedly noted, Ukraine's national legislation must be improved to bring it in line with European standards, which is a necessary step for Ukraine's integration into the legal space of a united Europe.

The purpose of the present study was to identify the shortcomings of the existing mechanisms for monitoring the implementation of the Charter, assess their significance for the Member States, and propose recommendations for improving the effectiveness of these mechanisms in the context of current challenges.

■ Materials and Methods

The study was based on the theoretical foundations of international law, specifically, on the concepts of law enforcement in the field of international social obligations. The analysis was based on the theory of the implementation of international treaties into national legal systems, which explains the mechanisms for performing international obligations at the state level. The study applied multi-level governance approaches that describe the interaction between international, regional, and national actors in the context of law enforcement. The study was also based on the concept of the effectiveness of international monitoring mechanisms, which helped to assess the effectiveness of the European Committee of Social Rights (the Committee) in monitoring the implementation of the European Social Charter.

To complete the research objectives, a series of methods was employed to provide an in-depth and comprehensive analysis. The comparative method was used to compare approaches to the implementation

¹ Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

² Opinion of the Parliamentary Assembly of the Council of Europe No. 190 "Application by Ukraine for membership of the Council of Europe". (1995, September). Retrieved from <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13929&lang=en>.

³ Law of Ukraine No. 137-V "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights". (2006, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/137-16#Text>.

⁴ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

and monitoring of the Charter in various Member States (France, Sweden, Spain, and Poland), identifying the specific features of law enforcement. The formal legal method contributed to the analysis of the statutory content of the Charter, the Committee's procedures, and legal mechanisms for implementing its decisions in the national legal systems of the Member States. Content analysis was employed to systematise official reports of states on their compliance with the Charter, as well as to analyse the Committee's conclusions, which helped to assess general trends in the performance of obligations.

The sequence of the study included the following stages: review of international legal provisions governing the implementation of the Charter; analysis of mechanisms for monitoring compliance with the Charter; study of concrete cases of implementation of the Committee's decisions; comparative analysis of the implementation of the Charter in the legal systems of individual states. The study reviewed the regulations and decisions of the European Committee of Social Rights, the Committee's reports on the observance of the Charter by the State Parties, official communiqués, and recommendations of the Council of Europe on the implementation of the Committee's decisions. The evaluation of the Committee's decisions helped to establish their influence on national legal systems, and the analysis of statistical indicators helped to identify general trends in the implementation of state obligations. The

combination of quantitative and qualitative methods contributed to a comprehensive coverage of the topic, helping to assess the effectiveness of the mechanisms for monitoring the implementation of the European Social Charter and their significance for the Member States.

■ Results and Discussion

Under the Charter's reporting system¹, governments submit annual written reports on their implementation of the Charter in law and practice. The European Committee of Social Rights cyclically reviews the progress of States Parties in relation to the four categories of rights, as presented in Table 1. Thus, each of the articles of the Charter is reviewed every 4 years, except for equal pay for women and men, which is reviewed every 2 years, as it is covered by Articles 4 and 20. However, since October 2014, member States that have adopted a collective complaint procedure are subject to a "simplified" reporting procedure and only have to submit a full national report every 2 years². Member States submitting a simplified report will have to explain what follow-up action was taken in response to the decision of the Committee on Collective Complaints and answer any questions raised in case of non-compliance due to lack of information for the relevant provisions. The new system entered into force for all Member States that have already adopted the procedure in October 2014, and for other States Parties in 2016.

Table 1. Schedule of submission of reports on the implementation of the Charter³ by the Member States

Group		Articles of the Charter
Group I	Employment, education, and equal opportunities	1, 5, 6, 7, 19, 20, 24, 25
Group II	Healthcare, social security, and social protection	3, 11, 12, 13, 14, 23, 30
Group III	Labour rights	2, 4, 9, 10, 15, 18
Group IV	Children, families, displaced people	7, 8, 16, 17, 19, 27, 31

Source: compiled by the author of this study

The Charter also stipulates that Member States must submit reports not only to the Committee, but also to representative national trade unions and employers' organisations. They thus can comment on their government's report through alternative reports, which are also considered by the Committee. The Committee's conclusions are then made public and sent to the Committee of Ministers of the Council of Europe. The latter may send a recommendation to the state concerned to change its law or practice if it fails to take measures to remedy situations that the Committee found to be incompatible with the Charter.

According to E. Bakirtzi (2022), the Committee, the Charter's supervisory body, has developed the most advanced judicial practice on social and economic rights, while the decisions it has made have brought concrete improvements in living and working conditions. The conclusions drawn by the researcher are quite pertinent, as the Committee forms a consistent and predictable practice of interpreting the provisions of the Charter, ensuring uniformity of approaches to the protection of social rights in different countries, thus contributing to the harmonisation of social legislation in Europe. In making its decisions,

¹ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

² Documents Meetings Government Committee of the European Social Charter and the European Social Security Code Meeting No. 1195 "Ways of Streamlining and Improving the Reporting and Monitoring System of the European Social Charter". (2014, March) Retrieved from <https://rm.coe.int/16805c6489>.

³ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

the Committee factors in the economic situation and capacities of countries but emphasises the need to follow the minimum standards of social security.

Thus, in 2005, the Committee found that Ireland did not follow Article 17¹ (the right of children to social, legal, and economic protection), as migrant children had limited access to education². As a result, Ireland changed its policy towards migrant children in the asylum system, providing them with better access to schools. The decision was an impetus for education reform, which revised the Direct Provision system (International Organisation for Migration, 2014), which previously limited the ability of families with children to take an active part in public life, including access to education. The reform included improved living conditions for children and access to educational materials and extracurricular programmes. In 2015, the Education Act³ was adopted, which included provisions for equal access to education for all children, regardless of their parents' migration status. The country introduced educational and language courses for children who do not speak English or Irish, as well as intercultural integration programmes aimed at reducing the social exclusion of migrant children.

In 2005, the Committee found⁴ that Swedish legislation^{5,6} restricted workers' rights to collective action in violation of Article 6 of the Charter⁷. Specifically, it was noted that the restrictions on employees, including the right to strike, established in Swedish legislation, created an imbalance between the rights of employees and employers, violating the principles of social justice. This decision led to changes in Swedish labour legislation, reducing the number of conditions under which employees could go on strike, expanding the rights of trade unions in terms of collective

bargaining, and protecting the labour rights of their members. Particular attention was paid to industries with an elevated level of atypical employment.

The decision in the case of European Disability Forum (EDF) and Inclusion Europe v. France⁸, was a resonant one, where the Committee recognised that the lack of support services, limited accessibility of buildings, infrastructure, and public transport lead to the vulnerable situation of people with disabilities and their families. This contradicts the provisions of Article 16⁹ (the right of the family to social, legal, and economic protection). As a result, the French government took measures to improve conditions for people with disabilities. Specifically, it invested EUR 1.5 billion over five years to improve accessibility (Barets *et al.*, 2024), adopted the Law "On Full Employment" dated 18 December 2023¹⁰, which grants equal rights to employees in protected work environments, including health insurance, transport allowances, and the right to strike. Furthermore, since October 2023, only the recipient's personal income, not the partner's income, has been factored in when calculating the Adult Allowance for Persons with Disabilities (AAH) (Valdes, 2022), which positively influenced the income of hundreds of thousands of citizens.

The reform of the system of care for persons with disabilities in Bulgaria was also stimulated by the decision in the case of Mental Disability Advocacy Centre v. Bulgaria (2008)¹¹, in which the Committee found that the conditions of detention of persons with mental disorders in Bulgarian institutions, as prescribed in the National Education Act¹² and the Integration of Disabled Persons Act¹³ were in breach of Article 13¹⁴ (right to social and medical assistance). On the issue of combating discrimination, in 2019, in the case of University Women

¹ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

² Decision of the European Committee of Social Rights No. 110/2014 "International Federation for Human Rights (FIDH) v. Ireland". (2017, April). Retrieved from <https://hudoc.esc.coe.int/eng/?i=cc-110-2014-dmerits-en>.

³ Education (Miscellaneous Provisions) Act of Ireland. (2015, May). Retrieved from <https://www.irishstatutebook.ie/eli/2015/act/11/enacted/en/print.html>.

⁴ Decision of the European Committee of Social Rights No. 85/2012 "Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden". (2013, July). Retrieved from [https://hudoc.esc.coe.int/eng/#f22sort%22:\[%22escpublicationdate%20descending%22\],\[%22escdidentifier%22:\[%22cc-85-2012-dadmissandmerits-en%22\]\]](https://hudoc.esc.coe.int/eng/#f22sort%22:[%22escpublicationdate%20descending%22],[%22escdidentifier%22:[%22cc-85-2012-dadmissandmerits-en%22]]).

⁵ Law of Sweden No. 580 "On Co-Determination at the Workplace". (1976, June). Retrieved from https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-1976580-om-medbestammande-i-arbetslivet_sfs-1976-580/.

⁶ Law of Sweden No. 678 "On the Posting of Workers". (1999, June). Retrieved from https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-1999678-om-utstationering-av-arbetslagare_sfs-1999-678/.

⁷ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

⁸ Decision of the European Committee of Social Rights No. 168/2018 "European Disability Forum (EDF) and Inclusion Europe v. France". (2022, October). Retrieved from <https://hudoc.esc.coe.int/eng/?i=cc-168-2018-dmerits-en>.

⁹ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

¹⁰ Law of France No. 1196 "On Full Employment". (2023, December). Retrieved from <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000048581935>.

¹¹ Decision of the European Committee of Social Rights No. 41/2007 "European Roma Rights Centre (ERRC) v. Bulgaria". (2008, June). Retrieved from <https://hudoc.esc.coe.int/eng/?i=cc-41-2007-dmerits-en>.

¹² National Education Act of Bulgaria. (1999, July). Retrieved from https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=64318&utm_source=chatgpt.com.

¹³ Integration of Disabled Persons Act of Bulgaria. (2005, January). Retrieved from <https://lex.bg/laws/ldoc/2135491478>.

¹⁴ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

of Europe (UWE) v. Finland¹ the Committee found that the Government of Finland had failed to ensure that women had access to effective remedies and had not made sufficient measurable progress in promoting equal opportunities between women and men regarding equal pay, in violation of Article 20c of the Charter² (right to equal opportunities and equal treatment in matters of employment). As a result, the government revised its policy on gender equality in the labour market: equality and equity in working life are regulated by the Equality Act (*tasa-arvolaki*)³ and the Employment Contracts Act (*työsopimuslaki*)⁴, which mandate equal treatment of employees in terms of employment, working conditions, terms of contracts, staff training, and career advancement. If the workplace employs 30 or more employees, the employer must draft a written plan of equal treatment (*tasa-arvosuunnitelma*) and an equality plan (*yhdenvertaisuussuunnitelma*).

Thus, over the years, the decisions of the European Committee of Social Rights have influenced changes in legislation, policies, and practices in many Member States, contributing to the improvement of standards of protection of social and economic rights, ensuring the practical implementation of the Charter. Therewith, studying the practices within the framework of the European Social Charters⁵ (and protocols), W. Burek (2023) found that the Member States not only use the flexibility of the Charter's provisions, but also unilaterally expand its boundaries by making reservations or declarations to the ratified provisions. Thus, as for Article 6⁶ (right to bargain collectively, right to strike), the Netherlands excluded

its application "to military personnel on active duty and civil servants employed by the Ministry of Defence"⁷. However, the "11th National Report on the implementation of the European Social Charter" of the Government of the Netherlands (2018) noted that the Netherlands cancelled this reservation, providing equal right to strike for all citizens. Portugal limited the application of Article 6 to the observance of the "prohibition of lockouts" as stated in its Constitution⁸. Germany in its interpretative declarations refers to internal legislation in this context. In total, Germany has formulated eight reservations (to Article 4(4), Article 7(1), Article 10(5), Article 21, Article 22, Article 24, Article 30, and Article 31), all of which state that "the Federal Republic of Germany is not bound by Article XY"⁹.

The European Committee of Social Rights may refer to reservations or declarations when considering state reports, and when considering collective complaints – only if the allegations relate to a provision covered by a reservation or declaration. The researcher concluded that despite the considerable flexibility inherent in the European Social Charters^{10, 11} and their Protocols^{12, 13, 14} both the Member States and the European Committee of Social Rights generally consider them as conventional treaties to which the general rules on reservations apply.

To this reasonable view, it is worth adding that the drafters of the Charter should include a provision expressly prohibiting reservations, as was implemented, for instance, in 1992 in the European Charter for Regional or Minority Languages¹⁵ (Article 21: "Any State may, at the time of signature or when depos-

¹ Decision of the European Committee of Social Rights No. 168/2018 "University Women of Europe (UWE) v. Finland". Retrieved from <https://hudoc.esc.coe.int/eng/?i=cc-129-2016-dmerits-en>.

² European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

³ Working Hours Act of Finland. (2019, July). Retrieved from <http://data.finlex.fi/eli/sd/2019/872/ajantasa/2024-12-19/fin>.

⁴ Decree of the Government of Finland "On the Repeal of the Government Decree on the Extension of the Exercise of the Powers Provided for in Sections 86, 88, 93 and 94 of the Emergency Powers Act and the Decrees on the Application of Those Powers". (2020, June). Retrieved from <http://data.finlex.fi/eli/sd/2020/444/ajantasa/2020-06-15/fin>.

⁵ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

⁶ *Ibidem*, 1996.

⁷ Decree of the Ministry of the Interior and Kingdom Relations of Netherlands "On Amending the Decree on the General Legal Status of the Police, the Police Remuneration Decree and the Decree on Medical Care Police 1994 in Connection with the Agreement on Terms of Employment Police Sector for the Period 1 January 1999 up to and Including 31 December 2000". (1999, July). Retrieved from <https://zoek.officielebekendmakingen.nl/stb-1999-370.html>.

⁸ Constitution of the Portuguese Republic. (1974, April). Retrieved from <https://www.parlamento.pt/Legislacao/paginas/constituicaoorepublicaportuguesa.aspx>.

⁹ Announcement by the German Government on the Entry into Force of the European Social Charter (Revised). (2021, October). Retrieved from https://www.bgb1.de/xaver/bgb1/start.xav?startbk=Bundesanzeiger_BGB1&jumpTo=bgb1221s1060.pdf#bgb1%2F%2F%5B%40attr_id%3D%27bgb1221s1060.pdf%27%5D_1741179620998.

¹⁰ European Social Charter. (1961, October). Retrieved from <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=035>.

¹¹ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

¹² Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. (1988, May). Retrieved from <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=128>

¹³ Protocol Amending the European Social Charter. (1991, November). Retrieved from <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=142>.

¹⁴ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. (1995, May). Retrieved from <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=158>.

¹⁵ European Charter for Regional or Minority Languages. (1992, November). Retrieved from <https://surl.li/iqkzgg>.

iting its instrument of ratification, acceptance, approval or accession, make one or more reservations to paragraphs 2 to 5 of Article 7 of this Charter. No other reservation may be made”). Otherwise, there is no reason to assume that the mere fact that the Charter¹ adopts an à la carte system without a reservation provision implies a prohibition of reservations or otherwise discourages their formulation.

Any provisions will not be perfect without public participation. The Additional Protocol to the European Social Charter², which establishes a system of collective complaints, was opened for signature in 1995 and entered into force in 1998. As of 2024, the act has been ratified by 15 states, including Belgium, Bulgaria, Cyprus, Finland, France, Greece, Ireland, and others. Another 3 states signed but not ratified the protocol – Denmark, Iceland, and Luxembourg. The collective complaints mechanism, as well as the submission of information for regular monitoring by the committee, have been crucial for civil society in the Charter system. They entitle non-governmental organisations, trade unions, and other associations to directly address the European Committee of Social Rights in case of violations. The introduction of such mechanisms contributes to a greater level of monitoring of the implementation of commitments by the member States, as it allows identifying systemic problems and facilitating their resolution at the international level, thus strengthening the role of civil society in the country.

This has strengthened NGOs in this area at the national and regional levels. According to the official data of the Council of Europe (2024), between 1998 and 2022, the European Committee of Social Rights registered 219 collective complaints, most of which came from France (57), Italy (39), Greece (23), and Portugal (15). The collective complaints procedure is a unique form of collective action in the human rights system, reflecting a systematic approach to solving social problems that generally affect certain groups of people (Shumliaieva, 2023). This conclusion is reasonable, as it is fundamentally different from the individual complaints procedure considered by the European Court of Human Rights under the European Convention on Human Rights. Unlike the ECHR, where any individual who believes that their rights were violated can apply to the court, the

Charter procedure makes provision only for the possibility of filing collective complaints. According to the Charter's Additional Protocol³, four categories of organisations may submit collective complaints:

- 1) international trade union organisations and employers' organisations;
- 2) non-governmental organisations having consultative status and included in the list drafted by the Governmental Committee;
- 3) trade unions and employers' organisations in the country concerned;
- 4) national non-governmental organisations.

The latter category of organisations may file complaints only with the express consent of the state. The only country that granted this right is Finland. E. Bakirtzi (2022), studying the collective complaints procedure, came to the reasonable conclusion that it includes several features of a trial: arguments of both parties are considered, and the applicable rules are applied to the facts of the case. One cannot but agree with the researcher. Compared to the ECHR procedure, the Charter's collective complaints system⁴ is considered a quasi-judicial process – the first such complaint mechanism in international law that deals specifically with economic and social rights. However, unlike the ECHR, the collective complaints procedure does not make provision for a compensation mechanism. Only in some cases, it has satisfied claims for compensation, e.g., in the case of *Confédération Française de l'Encadrement CFE-CGC v. France*⁵.

According to Article 9 of the 1995 Additional Protocol⁶, the Committee's decision on the admissibility of a complaint is transmitted to the Committee of Ministers, which adopts a resolution and invites the state concerned to take the necessary measures to bring the situation into conformity with the Charter. However, there is a discrepancy in the processes here as well, compared to the ECHR: if the decision is not implemented, the Committee of Ministers adopts recommendations to the state. Thus, the state will be obliged to report on the measures taken to implement the Committee's conclusions. Such a recommendation was adopted only once in case No. 6/1999 *Syndicat National des Professions du Tourisme v. France*⁷. Thus, the ECHR has a Committee of Ministers of the Council of Europe that monitors the implementation of judgments, while in the case of the

¹ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

² *Ibidem*, 1996.

³ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. (1995, May). Retrieved from <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=158>.

⁴ *Ibidem*, 1995.

⁵ Resolution of the Committee of Ministers of Europe No. CM/ResChS(2016)4 in Case No. 100/2013 “European Roma Rights Centre (ERRC) v. Ireland”. (2015, December). Retrieved from <http://hudoc.esc.coe.int/eng/?i=reschs-2016-4-en>.

⁶ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

⁷ Recommendation of the Council of Europe and Committee of Ministers No. RecChS(2001) “On Collective Complaint No. 6/1999 “Syndicat National des Professions du Tourisme v. France”. (2001, January). Retrieved from <https://wcd.coe.int/ViewDoc.jsp?id=182943&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

Charter, the implementation mechanism stays flexible and less effective.

After the resolution of the Committee of Ministers or, if the resolution is not adopted, after 4 months, the decision is officially published and transmitted to the Parliamentary Assembly of the Council of Europe (Lukas, 2021). According to L.O. Simontseva (2024), civil society plays a major role in ensuring international human rights protection. One cannot but agree with this, considering the review of complaints, according to which a significant number of national trade unions and, to some extent, European trade union organisations such as the European Trade Union Confederation (ETUC), have used the collective complaints system. Efforts on the part of employers have been much less. To a large extent, international NGOs also use the system, including the European Roma Rights Centre (ERRC), Defence for Children International (DCI), the World Organisation Against Torture, the Centre for Housing and Eviction Rights (COHRE), and the International Federation of Human Rights Leagues.

The activities of international organisations substantially complement official human rights protection mechanisms and contribute to the effectiveness of international human rights monitoring (Pipyak *et al.*, 2024) Thus, in the protection of the Roma population in Italy and France, the Committee found that the Italian government violated Article 19 (the right of migrant workers and their families to protection) by failing to provide sufficient social support to Roma migrants¹. It also found that France had violated Article 31 (right to housing), as Roma people did not have access to adequate housing and were evicted without being provided with alternative accommodation². These decisions have led to the development of new social integration programmes to improve the living conditions of Roma people and the introduction of special social support programmes.

Using the Committee's reporting procedure under the collective complaint mechanism based on its own research, Amnesty International submitted three complaints, which concerned housing for Roma people (against Italy)³, healthcare for migrants, including Roma people (Sweden)⁴, and the impact of austerity on healthcare systems (Greece)⁵. However, the complaint

against Italy, submitted in 2019⁶, was considered by the Committee only in October 2023 and published on 13 May 2024 following the Committee's rules of procedure. The Committee unanimously found that Italy had violated the rights of Roma through persistent forced evictions, segregation, and substandard housing and unequal access to social housing.

Thus, the situation of those whose rights have been violated, many of whom are children, is continually deteriorating, compounded by challenges in accessing education and healthcare. Optimisation of procedural aspects to expedite the complaint process would ensure more prompt protection of rights. The author of the present study believes that the process lacks not only transparency, but also the urgency that is reasonably expected – not least by victims – from any redress mechanism. It also reinforces the sense of secondary status in relation to the European Convention on Human Rights: The European Court of Human Rights publishes its judgements immediately.

A. Spagnolo (2022) proposed a solution to this problem – automatic publication of judgements after their adoption by the European Committee of Social Rights would lead to prompt publicity and public debate in the Member State involved to start implementation. It can be agreed that faster processing of complaints may reduce the burden on plaintiffs to continue to provide periodic updates on the changing situation of victims or on changes in policy and legal frameworks.

Once a violation was declared, the Committee continues to monitor the situation, and the State concerned should report regularly on the measures taken to implement it. L. Seyfried (2022) studied the impact of the European Committee of Social Rights monitoring in the collective complaints procedure and concluded that the government does not always fully and quickly bring the country into compliance with the requirements of the Charter, although there are positive examples. S. Garben (2018), in her study on the European Pillar of Social Rights, noted that its launch is a crucial step towards strengthening the social dimension of the EU, but for real change, the EU must openly acknowledge the conflicts between these areas and make policy decisions to reconcile them, rather than presenting them as non-contradictory.

¹ Decision of the European Committee of Social Rights No. 119/2015 “European Roma and Travellers Forum (ERTF) v. France”. (2017, December). Retrieved from <https://hudoc.esc.coe.int/eng?i=cc-119-2015-dmerits-en>.

² Decision of the European Committee of Social Rights No. 51/2008 “European Roma Rights Centre (ERRC) v. France”. (2009, October). Retrieved from <https://hudoc.esc.coe.int/eng?i=cc-51-2008-dmerits-en>.

³ Decision of the European Committee of Social Rights No. 178/2019 “Amnesty International v. Italy”. (2021, January). Retrieved from <https://hudoc.esc.coe.int/eng/?i=cc-178-2019-dmerits-en>.

⁴ Decision of the European Committee of Social Rights No. 227/2023 “Amnesty International and Médecins du Monde – International v. Sweden”. (2023, December). Retrieved from <https://hudoc.esc.coe.int/eng/?i=cc-227-2023-dadmiss-en>.

⁵ Decision of the European Committee of Social Rights No. 217/2022 “Amnesty International v. Greece”. (2023, September). Retrieved from <https://hudoc.esc.coe.int/eng/?i=cc-217-2022-dadmiss-en>.

⁶ Decision of the European Committee of Social Rights No. 178/2019 “Amnesty International v. Italy”. (2023, October). Retrieved from <https://hudoc.esc.coe.int/eng?i=cc-178-2019-dmerits-en>.

The author of the present study fully agrees with the researcher's opinion in the context of the following.

As for Ukraine, the Committee noted in its conclusion (European Committee of Social Rights, 2023) that the situation in Ukraine does not follow Article 31§1 of the Charter. In its 2019 conclusion on Ukraine's implementation of Article 7 (right of children and young people to protection), the Committee noted that in its 2011 and 2015 conclusions it had noted shortcomings in the legislation on the employment of children under 15 and concluded that the situation was not in conformity with Article 7§1 of the Charter on the grounds that the definition of light work was not sufficiently precise. However, the State did not take measures to remedy this violation. Consequently, the Committee again found that the situation in Ukraine was not in conformity with Article 7§1 of the Charter.

Despite this, no sanctions or enforcement measures were applied to Ukraine, as well as to other countries that were found to be in non-compliance with the ratified provisions of the Charter. Thus, although the Committee can identify violations and make recommendations, the lack of enforcement mechanisms means that countries can fail to implement these recommendations without direct consequences, unlike the ECHR, whose judgments are binding.

At the request of a complainant or on its own initiative, the European Committee of Social Rights may, according to its Rule 36, order immediate measures to "avoid irreparable damage or prejudice to the persons concerned". According to M. Dalli (2020), the inaction of national authorities regarding these measures has almost no consequences. In this context, the author of the present study also considers it expedient to introduce public control over the implementation of decisions. Thus, the exercise of the relevant control function by all-Ukrainian trade union organisations will strengthen their status in society and will be a positive factor for citizens to join in terms of increasing trade union involvement of employees and access to the right to association.

N.A. Papadopoulos (2022), studying the practices of implementing the Charter's provisions by Member States, concluded that compliance with the Charter is predominantly a matter of political will, not a matter of respect for the countries' international human rights obligations. There is always a risk that an employer-oriented government will ignore or misinterpret the content of the Charter without fear of consequences for breaching the state's obligations. This opinion has merit, and attention should be drawn to the example of Ukraine in terms of non-ratification of the collective complaint procedure and some

provisions of the Charter, despite its active dialogue with the Council of Europe.

As noted above, Ukraine has ratified only part of the Charter's articles¹. Specifically, the government did not commit itself to implementing the provisions of Article 12, parts 1 and 2 (right to social security). At first glance, they are elementary and straightforward – to establish a social security system and maintain its functioning at the proper level. However, since joining the Charter, the minimum pension and unemployment benefits are much lower than in most EU countries, which indicates a low level of social guarantees compared to other Council of Europe countries. Furthermore, according to A. Kupriyanova & T. Kalita, (2024), the lack of official business registration and taxation in Ukraine leads to a large loss of revenue for the state budget and adversely affects the country's economic stability, which complicates the tax collection process. This leads to a decrease in state budget revenues and affects both the calculation of the country's GDP and its financial stability, creating further difficulties in ensuring financial stability and economic development. It is impossible not to concur with the researchers and add that to implement parts 1 and 2 of Article 12, it is necessary to have an effective tax system that would increase revenues to social funds to ensure an adequate level of social protection. Furthermore, ratification of these paragraphs would imply an obligation to report to the Committee. In fairness, Ukraine is not the only country that did not ratify these provisions of the Charter – Eastern European countries, including Poland, the Czech Republic, and Latvia, also avoided commitments that require strict social standards. Thus, new democracies with economies in transition try to avoid excessive social guarantees that are challenging to implement in practice.

Notably, four Council of Europe member states – Liechtenstein, Monaco, San Marino, and Switzerland – have not yet ratified the Charter at all, and seven more – Croatia, the Czech Republic, Denmark, Iceland, Luxembourg, Poland, and the United Kingdom – have not ratified the revised Charter. In this regard, to ensure social rights across Europe and increase the Charter's credibility, it is necessary to make it binding on all Member States. The principal document governing membership in the Council of Europe, the Statute of the Council of Europe², does not explicitly require ratification of the Charter. The author of the present study proposes to amend Article 3 of the Charter, which sets out the criteria for membership, by adding a clause on mandatory ratification of the Charter. At the same time, in the

¹ European Social Charter (Revised). (1996, April). Retrieved from <https://rm.coe.int/168007cf93>.

² Statute of the Council of Europe. (1949, May). Retrieved from <https://rm.coe.int/1680306052>.

future, any state wishing to join the Council of Europe should be required to do so as a precondition. For those countries that are currently members of the Council of Europe, it is proposed to establish a 5-year transition period during which member states should gradually ratify the Charter in full. Another positive aspect is the use of diplomatic influence mechanisms, for instance, the inclusion of recommendations to bring legislation into line with the Charter in the terms of international agreements. At the same time, reasonable is the proposal of L. Jimena Quesada (2021) to introduce the ratification of the collective complaints procedure and the Charter in the spirit of the Turin Process. Ukraine, like some other countries with economies in transition, avoids ratification of certain provisions of the European Social Charter due to challenges with financial stability and ensuring exacting social standards, which indicates the need to reform the tax system, strengthen international influence, and amend the Statute of the Council of Europe to ensure mandatory ratification of the Charter by all member states.

■ Conclusions

The study examined the mechanisms for monitoring the implementation of the European Social Charter (revised) and analysed their effectiveness in ensuring social rights of citizens. The study revealed a series of shortcomings in the reporting procedure of Member States and identified problems related to the implementation of decisions of the European Committee of Social Rights. The study fulfilled its purpose of identifying the key challenges facing the Charter's implementation mechanism and proposing recommendations for improving their effectiveness by analysing international experience and comparing the law enforcement practices of individual states.

The study findings confirmed that the reporting procedure of the Member States has considerable shortcomings. Specifically, countries often expand or change the interpretation of the Charter's articles

through reservations and declarations of ratification, which effectively reduces its legal force. It was been established that due to the non-binding nature of the decisions of the European Committee of Social Rights, member states can effectively ignore their outstanding obligations without any sanctions. The analysis of public control over compliance with the Charter's provisions showed that although this mechanism is potentially effective, NGOs are deprived of the right to directly influence the implementation of the Committee's decisions. As a result, even if they have information about violations of social rights, NGOs cannot initiate interventions that are mandatory for states to consider.

The scientific originality of the present study lies in the comprehensive analysis of current mechanisms for monitoring the implementation of the Charter, considering both international and national practices. This study was the first to summarises the influence of the Charter on the legal systems of individual states and substantiated the need to strengthen control over its implementation in the context of ensuring social rights of citizens. Specifically, it was concluded that it would be necessary to intensify the participation of civil society in the implementation of the Charter's provisions and to grant non-governmental organisations expanded powers to monitor and initiate consideration of violations.

Prospects for further research in this area may include an analysis of Ukraine's experience in implementing the provisions of the Charter into national legislation, as well as a comparative study of models of public control over social rights in various Council of Europe countries.

■ Acknowledgements

None.

■ Conflict of Interest

The author of this study declares no conflict of interest.

■ References

- [1] Bakirtzi, E. (2022). Book review: The revised European Social Charter, an article by article commentary by Karin Lukas. *European Journal of Social Security*, 24(4), 392-394. doi: 10.1177/13882627221137606.
- [2] Balyńska, O., Yevkhutych, I.M., Serkevych, I.R., Zdrenyk, I., & Andrusyshyn, R. (2024). Transformation of the content of human rights under the influence of globalisation. *Social and Legal Studies*, 7(1), 116-123. doi: 10.32518/sals1.2024.116.
- [3] Baretts, E., Lemaire, V., & Ané, C. (2022). *Little progress in France on inclusion of people with disabilities*. Retrieved from https://www.lemonde.fr/en/france/article/2024/09/05/little-progress-in-france-on-inclusion-of-peop2024le-with-disabilities-6724847-7.html?utm_source=chatgpt.com.
- [4] Batura, Ye., & Tatarinova, S. (2024). *Prospects and ways of implementing European approaches to social policy in Ukraine*. *Universum*, (14), 89-93.
- [5] Bodnaruk, M.I., Orlovskiy, O.Ya., & Burka, A.V. (2021). *The right to social protection: A study guide*. Chernivtsi: Chernivtsi National University named after Yu. Fedkovych.
- [6] Burek, W. (2023). Treaty flexibility unilaterally boosted: Reservations to European Social Charters. *Netherlands Quarterly of Human Rights*, 41(1), 35-52. doi: 10.1177/09240519231151950.

Механізми контролю за виконанням Європейської соціальної хартії та їх значення для держав-учасниць

Наталія Черевко

Кандидат наук з державного управління
Херсонський державний аграрно-економічний університет
73006, вул. Стрітенська, 23, м. Херсон, Україна
<https://orcid.org/0000-0002-5456-8887>

■ **Анотація.** Фундаментом європейської системи забезпечення соціальних прав людини є Європейська соціальна хартія, практична реалізація якої відбувається під егідою Ради Європи. Однак формально її положення не підлягають неухильному виконанню, що обумовлює потребу в підвищенні ефективності реалізації положень Хартії. Метою роботи стало дослідження недоліків механізмів контролю за дотриманням норм Європейської соціальної хартії, оцінка їх значення для держав-учасниць, розроблення рекомендацій щодо підвищення їх ефективності. Методологічною основою дослідження став комплексний аналіз механізмів контролю за виконанням Європейської соціальної хартії. У статті проаналізовано рішення Європейського комітету із соціальних прав щодо порушень норм Європейської соціальної хартії різними державами та їх вплив на розвиток законодавства й покращення соціальної політики в цих країнах. Увагу зосереджено на механізмі подання колективних скарг, який викладено в Додатковому протоколі. За результатами дослідження встановлено, що розширення впливу національних неурядових організацій та посилення громадського контролю істотно сприятиме покращенню стану реалізації Хартії. Водночас негайне оприлюднення висновків Комітету матиме позитивний вплив на іміджеву складову, а також забезпечить прозорість і своєчасність реалізації соціальних прав громадян. У дослідженні систематизовано вплив положень Хартії на правові системи окремих країн, акцентовано на ролі громадянського суспільства та значенні розширення повноважень неурядових організацій у цьому процесі, обґрунтовано необхідність посилення контролю за її реалізацією. Отримані результати мають практичну цінність для вдосконалення правозастосовної діяльності й забезпечення соціальних прав громадян

■ **Ключові слова:** соціальне забезпечення; соціальний захист; соціальні права; європейські стандарти; колективні скарги