

Interview with Stein Evju (18 October 2001)

Caption: In this interview, published on the 40th anniversary of the European Social Charter on 18 October 2001, Stein Evju, President of the European Committee of Social Rights from 2000 to 2002, stresses the importance of the Charter as a binding international instrument for the protection of rights.

Source: Proposed questions for Mr. Evju, president of the European Committee of Social Rights (2000-2002). [ON-LINE]. [s.l.]: Council of Europe, [02.10.2003]. Available on http://www.coe.int/T/E/Human_Rights/Esc/2_General_Presentation/Interview_Evju.asp.

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Interview of Stein Evju, President of the European Committee of Social Rights (2000-2002)

What is the place of the Charter in the Council of Europe?

The Charter's intended role, from the outset, was to complete the protection of all basic rights within Europe, complementing the Convention. Early expectations were not met, though, for both political and structural reasons. Politically, a number of the member states failed to ratify the Charter for many years, denying it the same broad base and political authority as the Convention. Structurally, the system established to monitor compliance was complex and slow and operated in virtual secrecy. The process of reform initiated in the early 1990s tackled all of these shortcomings: the original rights were updated and new rights were created in the Revised Charter; procedural reforms were introduced to clarify and accelerate the supervisory process; trade unions and INGOs were, for the first time, given direct access to the process in the form of collective complaints. All of these reforms have now taken effect and have radically transformed the Charter. The political implication of this is plain: all states of the Council now accept the importance of this treaty and all are embarked on the journey towards ratification. The Council of Europe as an organisation stands for the essence and objective of every claim that we call a human right - the dignity of the person. The Charter is central to this vocation.

What does the Charter mean for member states?

The Charter has always found champions among member states. Within the EU, for example, the references to the Charter which are to be found in the Treaties (Single European Act, Treaty of Amsterdam, EU Charter of Fundamental Rights) are there at the behest of states. The long line of countries from central and eastern Europe that have accepted the Charter or are close to doing so points not just to the importance of the instrument, but, crucially, to the substance of the rights it contains: equality, solidarity, fairness, adequate living standards etc. The same can be said of the supervisory process. States are mindful of their legal obligations under the Charter, and are required to take the necessary steps to fully comply with them. However, the real impetus for full compliance is not so much any sanction that may issue in the form of a recommendation of the Committee of Ministers, rather the simple fact that the rights concerned are truly vital. For example, the steps taken in Portugal to eradicate child labour, while prompted in part by the verdict of the ECSR that the situation fell short of the requirements of the Charter, are essentially driven by a shared conviction that children must be allowed to learn and grow. It is this which mobilises a broad coalition of agencies and other actors to effect long-lasting social change.

What is the relationship between the Council of Europe Charter and the EU Charter of Fundamental Rights?

Until the EU Charter's status has been settled, there cannot be a definite answer to this question. For the moment, they enjoy very different formal standing. The ESC/RC is a binding international treaty, while the EU Charter, for the present, remains more of a political text. That said, the EU Charter has already been pleaded by lawyers before the Luxembourg Court on the question of the right to paid holidays for workers (BECTU case form UK). Looking at the text of the EU Charter, its arrangement of provisions by theme is very significant: it took 50 years to be able to combine all human rights in the same instrument. What is also significant, in political terms so far but perhaps in legal terms later on, is the clear influence of many ESC/RC provisions on many provisions of the EU Charter. Certain states have always been opposed to the idea that reasonable working time or paid holidays for workers were human rights, to give just two examples. Such views are no longer tenable.

I should also mention that the Council of Europe and the European Commission are currently running a joint programme for EU candidate states to assist them in the ratification and implementation of the ESC/RC. This is an important exercise in co-operation towards shared goals.

What about Russia?

Russia signed the RC one year ago and has been working ever since on ratification. There should be no underestimation of the efforts involved for this country. However, the political will to advance towards the RC is plain to see. The Council of Europe, in co-operation with the European Commission, is funding a series of technical initiatives to prepare for ratification, in particular legal compatibility studies and selection of provisions for acceptance. It is difficult to make predictions as to the timing of the ratification by Russia, but I hope we are looking at a medium term perspective, rather than a long term perspective.

How can an ordinary member of the public find out about his rights under the Charter and what can he do to enforce them?

The first thing to do is to get a copy of the Charter and read through it (!). The Charter exists in many European languages, published by the Council of Europe. The meaning of each provision is fleshed out by the ECSR, which has the authority to interpret the Charter and assess national law and practice in light of this interpretation. Every year, we publish our assessment on a selection of Charter provisions. These conclusions are published in French and English and are immediately available on Internet. There is a series of publications on many different aspects of the Charter, including a short guide to the case law, which identifies the main issues under each provision. A database is under development that will allow all of our work of the last 30 years to be accessed according to various criteria. This will be an extremely valuable tool for all of us.

As for enforcement, the main arena remains national courts. Many states accord supremacy to international law, opening up the possibility for the national judge to draw on the ESC where appropriate. But other states do not have this tradition. At international level, the collective complaints process opens up a gateway to trade unions and NGOs at European level to "claim ownership" of the Charter by bringing complaints. They have the possibility to take "test cases" (Quakers), to raise new problems directly in Strasbourg and have an authoritative resolution of the issue within a brief period of time.