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Draft European Code of Social Security and the draft Protocol thereto

Report[1]
Social, Health and Family Affairs Committee
Rapporteur: Mr Willy BIRKELBACH, Germany

1. 1957 - 9th Session - Second part

The Assembly,

In reply to the request by the Committee of Ministers for an Opinion, dated 18th March 1957,

1. Recalls its statement, in Opinion No. 25 of 4th May 1957, that a foregathering of its Social Committee with the Committee of Experts of the Committee of Ministers was essential in order to clarify and amplify certain points in the draft Code ;

2. Regrets that the Committee of Ministers did not authorise such a meeting ;

3. Expresses its disapproval of the new procedure initiated by the Joint Committee, by which contacts between members of the Assembly and governmental experts may take place only within the Joint Committee, and asks that this procedure be reconsidered ;

4. Adopts the following Opinion on the draft European Code of Social Security and the Protocol.

(a) The Assembly draws particular attention to the drafting of the Code and Protocol. The French version of many articles seemed almost unintelligible. The fact that most of the articles were taken from the ILO Convention No. 102 does nothing to alter this state of affairs.

The Assembly requests that in any event the texts should be submitted to a Committee of Experts with instructions to revise the drafting. The definitions set forth in Article 1 of the Code are open to criticism : the term " prescribed " in point (d) is likely to be ambiguous; the term " widow " in point (g), to indicate a woman who was maintained by her husband at the time of his death, is too restrictive; the term " qualifying period " in point (i) is imprecise. Moreover, the term " contingency" is almost unintelligible, and is in any case an unhappy choice. Finally, the Assembly finds that the English and French versions are often divergent and considers that for this reason as well both texts should be completely overhauled.

(b) The Assembly notes that every effort has been made to enable the maximum number of Governments to ratify the Code. But, in this endeavour to gain the widest acceptance, the Code has been robbed of much of its value. At all events, the Assembly considers it necessary to recommend to all Member States which have not yet done so, to ratify as soon as possible ILO Convention No. 102.

(c) The Assembly considers that all the standards laid down in the Code are quite inadequate. Admittedly, the Protocol considerably raises the standards of the Code, but the Assembly has grave doubts as to the advisability of adopting a manifestly inadequate Code simultaneously with a Protocol which will probably be ratified by only a very small number of Member States. Albeit, the Assembly considers the two documents as being a first step towards the development of a European standard of social security.

(d) Article 10, paragraph 2, of the Code should be amended as follows :

" The beneficiary or her breadwinner shall not be required to share in the cost of the medical care the beneficiary receives in respect of pregnancy and confinement and their consequences. Should the beneficiary or her breadwinner be required to share in the cost of the medical care which the beneficiary receives in respect of a morbid condition, the rules concerning such cost-sharing shall be so designed as to avoid hardship."

The object of this amendment is to prevent the Article from being interpreted as either recognising or justifying the principle of such cost-sharing.

Secondly, the Assembly suggests that Article 10, paragraph 3, of the Code be amended to avoid giving the impression that social security is concerned solely with persons who can be restored to health. A provision should therefore be added to cover persons classed as permanently unfit.

Thirdly, the Assembly considers that Article 10 (Code and Protocol) should be amended so as to avoid giving the impression that the beneficiary is denied a free choice of doctors.

The Assembly would also have liked to know on what basis the Experts determined the percentages of medical costs which the beneficiary may be required to pay.

Finally, with regard to Article 10, paragraph 1 (a) (iv), of the Protocol, the Assembly is opposed to the restriction to children of conservative dental treatment.

On the other hand, conservative dental treatment for children should be included in the Code.

(e) The Assembly suggests that Article 18 of the Code be amended to read as follows :

" The benefit specified in Article 16 shall be granted throughout the contingency [the term " contingency " being subject to revision], excepb that the benefit may be limited to 25 weeks in each case of sickness, and that payment must begin at latest on the fourth day of suspension of earnings ".

All Articles of the Code and Protocol concerning suspension of earnings should be amended in consequence.

(f) The Assembly proposes the following wording for Article 24, paragraph 4, of the Protocol :

" The benefit shall be paid (a) at latest from the fourth day in each case of suspension of earnings, counting the days of unemployment before and after temporary employment lasting for not more than a specified period...".

(g) The Assembly considers that Article 40 of the Code should be worded as follows :

" The contingency [this term being subject to revision] envisaged shall be the maintenance of dependent children and of the mother if she is fully occupied with their care and upbringing."

(h) The Assembly proposes the following wording for Article 42 of the Code :

" The benefit shall be payable at least to every protected person having fulfilled the conditions laid down in Article 43. It shall consist in periodic payments, and may include additionally, in certain cases and for special purposes, assistance in kind ".

(i) The Assembly proposes that Article 44 of the Protocol be amended to read :

" The total value of the benefit granted in accordance with Article 42 shall be such as to represent at least 2 per cent of the wage..."

(j) The Assembly would have liked to know on what basis the Experts worked out the percentage figures for participation in the cost of pharmaceutical supplies in Article 49, paragraph 2 (c), of the Protocol.

(k) In Article 56, paragraph 1 (6), of the Protocol the Assembly draws attention to the equivocal nature of the term " qualifying conditions ". It is suggested that it be replaced by the term " a qualifying period ".

(l) With regard to Article 68 of the Code, concerning equality of treatment, the Assembly much prefers the variant appearing as a footnote on page 28 of Doc. 631, which contains more generous provisions than the text proposed by the Experts. The Assembly considers, in fact, that equality of treatment for non-national residents should not depend on bilateral or multilateral agreements.

(m) In connection with Articles 75 and 76 of the Code the Assembly considers it necessary that Governments' Reports should also be submitted direct to the Assembly.

The Assembly therefore requests that the beginning of Article 76 be amended to read as follows :

"After consulting the Assembly the Committee of Ministers shall determine...",

For this principle to be put into practice it will be necessary for the Ministers to arrange for regular contacts between the Social Committee of the Assembly and the Committee of Experts on Social Security so that the annual report may be discussed in detail.

(n) Finally the Assembly draws attention to the advisability of including in the text of the Code and of the Protocol a clause stipulating that under no circumstances may the articles of the Code affect adversely higher standards guaranteed under domestic legislation.