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Monitoring of commitments concerning social rights

Reply to Recommendation¹: Recommendation 1795 (2007)
Committee of Ministers

1. The Committee of Ministers has considered with interest Parliamentary Assembly [Recommendation 1795 \(2007\)](#) on monitoring of commitments concerning social rights. It has forwarded this recommendation to the governments of member states, the European Committee of Social Rights (ECSR) and the Governmental Committee of the European Social Charter for information and any comments. The comments received from these committees are appended to this reply.

2. The Committee of Ministers notes that the recommendation contains several proposals for strengthening the Charter. It reiterates that the European Social Charter is a legal basis for securing the social rights of citizens in order to improve their social well-being. It points out that even though at present 39 Council of Europe member states are parties to the Charter or the revised Charter, and 24 of these states are parties to the revised Charter of 1996, there are still areas where it would be possible to increase the number of ratifications. This relates in particular to:

- the 1991 amending protocol: this protocol is applied in almost its entirety by decision of the Ministers' Deputies but it requires a further five ratifications before it can formally come into force;
- the collective complaints procedure, which is currently accepted by only 14 states;
- acceptance of the right of national NGOs to submit complaints, to which only one state has agreed.

The Committee of Ministers calls on states which have not yet done so to consider ratifying these instruments taking their national situation into consideration. In the same vein it also calls on member states to consider broadening the scope of their commitments in respect of the European Social Charter.

3. With regard to paragraph 11.3 of the recommendation, the Committee of Ministers points out that the election of committee members by the Parliamentary Assembly is provided for by the 1991 amending protocol, which is not yet in force. It encourages those member states which have not yet already done so to ratify this instrument without further delay. However, it is up to the member states to discuss the matter beforehand.

4. Concerning paragraph 11.4 of the recommendation, the Committee of Ministers took the view in one specific complaint that it was not necessary to take into account requests for reimbursement of expenses incurred by the organisation lodging the complaint. It instructs the Rapporteur Group on Human Rights (GR-H) to consider this issue from a more general standpoint taking into due consideration all the consequences of such a possibility.

5. With regard to paragraph 11.5 of the recommendation, the Committee of Ministers recalls that the member states already conducted a comprehensive debate on the introduction of a system of individual complaints to the European Court of Human Rights in the field of social rights and finally decided not to continue this discussion because it did not lead to any specific outcome nor brought up the need to launch a

1. Adopted by the Committee of Ministers on 21 May 2008, at the 1027th meeting of the Ministers' Deputies.



new additional protocol to the European Convention on Human Rights (the work of the Steering Committee for Human Rights' (CDDH) Working Group on Social Rights (GT-DH-SOC) was therefore not continued after 2005; see decision of the CDDH in June 2005).

6. With regard to paragraph 11.6 of the recommendation, the Committee of Ministers notes that the growing number of ratifications, particularly of the revised Charter, which contains significantly more provisions than the 1961 Charter, plus the entry into force of the collective complaints procedure, has led to a constant increase in the Committee's workload. The workload of the Governmental Committee has increased accordingly. The Committee of Ministers will bear this in mind in its budget discussions.

7. In respect of paragraph 11.7.1, the Committee of Ministers notes that the new system for presenting national reports which it adopted on 3 May 2006 came into effect on 31 October 2007. It further reiterates the need for the Governmental Committee to be systematically and regularly informed in line with the agreed procedures of reporting by the parties to the Charter of any relevant changes improving application of the provisions of the Charter that they have ratified. With regard to paragraph 11.7.2, the Committee of Ministers notes that the European Committee of Social Rights is prepared to contribute to the reflection on updating certain Charter provisions. In this regard, the Committee of Ministers recalls the Governmental Committee's opinion that the main objective should be the full ratification and effective implementation of social rights guaranteed by the Charter. Concerning paragraph 11.7.3, the Committee of Ministers notes that the European Committee of Social Rights wishes to strengthen its co-operation with the Parliamentary Assembly and the European Parliament so as to secure more effective application of the Charter.

8. In addition, the Committee of Ministers welcomes the co-operation initiated between the European Committee of Social Rights and the Commissioner for Human Rights in defending and promoting social rights, and hopes that this co-operation will continue.

9. With regard to paragraphs 12.1 and 12.2 of the recommendation, which refer to the revised Social Charter, the Committee of Ministers concurs with the Assembly's call for states to be attentive to situations that fail to comply with the Charter and take effective steps to bring national situations into compliance. It calls on state parties to involve national NGOs more closely in the regular supervision process.

10. Lastly, concerning paragraph 13 of the recommendation, the Committee of Ministers welcomes the Assembly's intention to organise regular debates on social policy to increase the Charter's influence on social policy in greater Europe and to become a political body for encouraging new initiatives and discussion in the field of monitoring social rights.

The Governmental Committee invites the states party to the Charter to be more concise in drafting national reports, in particular by attaching more importance to a clear and precise presentation of decisions in law and in practice taken and implemented at national level, and also by taking into consideration remarks from the European Committee of Social Rights, and specifically by paying more attention when replying to its questions.

Appendix 1 – Opinion of the Governmental Committee of the European Social Charter on Parliamentary Assembly Recommendation 1795 (2007)

1. At the request of the Committee of Ministers (998th meeting, 13 June 2007), the Governmental Committee of the European Social Charter examined [Recommendation 1795 \(2007\)](#) of the Parliamentary Assembly, and adopted the following opinion.
2. The Governmental Committee notes the interest shown by the Parliamentary Assembly in the European Social Charter. It takes note of [Recommendation 1795 \(2007\)](#) of the Parliamentary Assembly, and has carefully examined it.
3. The fundamental values of our societies, such as the respect for human rights, democracy and the rule of law are part of our common European heritage.
4. The Governmental Committee reaffirms its commitment to the protection of social rights and recalls the indivisible nature of human rights – civil, political, social, economic and cultural.
5. The Governmental Committee points out that the Social Charter should be perceived as the necessary legal basis to secure the social rights of the citizens in order to improve their standards of living and social well-being. It has been signed, to date, by the 47 member states of the Council of Europe, and ratified by 39 of them. The ratification and effective implementation in law and in practice of all social rights guaranteed by this fundamental European human rights treaty should be considered as the main objectives.
6. The Governmental Committee draws the attention of member states non-party to the Charter to the effects the application of rights and rigorous observation of principles guaranteed by the European Social Charter has had in the states party to the Charter, by resolving many social problems in European society today, which can only encourage them to ratify the Charter.
7. The Governmental Committee once again invites states party to the Charter to guarantee more effectively in law and in practice the implementation of their commitments on national territory.
 - 7.1. The new reporting system for the submission of national reports, established by the Governmental Committee, and with the opinion of the European Committee of Social Rights, was adopted by the Committee of Ministers on 3 May 2006. It entered into force on 31 October 2007
 - 7.2. Furthermore, the Governmental Committee insists that the states party to the Charter inform it systematically and regularly of any pertinent changes to attain a better implementation of the Charter provisions they ratify.
8. The Governmental Committee reminds the states party to the Charter that the Committee of Ministers and itself attach great importance to respect of deadlines by the states party for submission of national reports.

Appendix 2 – Opinion of the European Committee of Social Rights (ECSR) on Parliamentary Assembly Recommendation 1795 (2007)

The European Committee of Social Rights has studied carefully [Recommendation 1795 \(2007\)](#) adopted by the Parliamentary Assembly of the Council of Europe, on monitoring of commitments concerning social rights, in order to give an opinion to the Ministers' Deputies, who consulted it before replying to the Assembly.

Overall, the committee notes with satisfaction the numerous constructive proposals made by the Parliamentary Assembly. It is generally in agreement with these proposals and hopes that they will be implemented, though the precise arrangements and timetable would have to be very carefully worked out. The committee would like to take part in any relevant discussions.

It would like to make the following comments on the various elements of the recommendation in paragraphs 11 and 12:

“11. The Assembly therefore recommends that the Committees of Ministers:

11.1. take the necessary measures to ensure that member states that have not already done so ratify the revised European Social Charter, the protocol amending the European Social Charter and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints and grant national NGOs the right to lodge complaints;

11.2. invite the states parties to extend the scope of their undertakings so that the revised European Social Charter can become a reference standard for European social policy and thus help to develop the legislation of Council of Europe member states;”

The committee notes with satisfaction that there has been a considerable and unprecedented rise in the number of signatures and ratifications over the last few years. Nevertheless, although practically all the Council of Europe member states are now parties to the Charter, and a majority of them to the revised treaty of 1996, there are still grey areas where ratifications are still insufficient. This applies particularly to:

- the 1991 amending protocol: the protocol is applied in almost its totality by decision of the Ministers' Deputies but five ratifications are still lacking before it can formally come into force;
- the collective complaints procedure, which is currently only accepted by 14 states;
- acceptance of the right of complaint of national NGOs, which only Finland has agreed to. The committee wishes to point out that states should recognise this right for national NGOs; the complaints lodged by trade unions are in fact mainly concerned with employment rights, whereas the Charter's material scope is much wider, and NGOs could consequently play a significant part in areas other than labour law;
- acceptance of certain provisions of the Charter. In particular, the committee notes that Greece and Turkey have still not accepted Article 5 on the right to organise, even though this provision is intrinsically linked to Article 11 of the European Convention on Human Rights.

The committee wishes to continue to work with countries that have not yet ratified the revised Social Charter of 1996, to secure its ratification by all the Council's member states.

Every state should be subject to the same obligations since the Charter is concerned with basic human rights and as such is complementary to the European Convention on Human Rights. It is unthinkable that certain countries in the Council of Europe should permanently lag behind and not respect the rights concerned.

“11.3. take the necessary measures to ensure that the members of the ECSR are elected by the Parliamentary Assembly as from the next partial renewal of the committee;”

The election of committee members by the Parliamentary Assembly is provided for by the 1991 amending protocol. This is the only provision of the protocol that is not yet applied. The committee strongly wishes that a decision to apply this provision of the protocol can be taken as soon as possible by the Ministers' Deputies so that it may be applied as from the next partial renewal of the ECSR, in 2008.

“11.4. take account of requests for reimbursement of expenses presented by organisations that have lodged collective complaints;”

The ECSR considers that this would be an extremely important development that would strengthen the collective complaints procedure and, in particular, make it easier for trade unions and non-governmental organisations to use it. It is well known that these organisations face financial difficulties when they wish to

lodge collective complaints because of the legal costs involved in preparing and following up complaints. Each time it receives a request for reimbursement of expenses from a complainant organisation, the committee will assess the merits of the application and, if it considers it justified, forward it to the Committee of Ministers.

“11.5. establish a working group to consider the possibility of an additional protocol to the Charter providing for a system of individual complaints;”

The ECSR supports the establishment of a working group to consider the possibility of an additional protocol to the Charter providing for a system of individual complaints. Such a working group should notably assess the nature and extent of the additional tasks for the ECSR that this mechanism would entail. In addition, it should examine the issue of the sharing of competence between the Court and the ECSR that the mechanism might engender taking into account, in particular, Protocol No. 12 to the European Convention on Human Rights.

“11.6. take the necessary measures to respond to the everincreasing workload caused by the growing number of states party and collective complaints;”

The committee considers that this concern of the Parliamentary Assembly is a particularly high priority. The growing number of ratifications, particularly of the revised Social Charter, which contains significantly more provisions than the 1961 Charter, plus the entry into force of the collective complaints procedure, has led to a constant increase in the committee's workload. It is therefore essential for the member states to grant the ECSR and its secretariat the necessary resources to carry out the important functions assigned to it in the treaties.

The ECSR is ready to enter into dialogue with the Ministers' Deputies to identify its requirements and determine what the priorities are in this area.

“11.7. ask the Governmental Committee to:

11.7.1. make proposals to the Committee of Ministers, based on the results of the regular supervision process, for examinations of articles of the Charter that need to be updated;”

The ECSR agrees that certain material provisions of the Charter should be amended or supplemented. It is ready to contribute to such a reflection on the basis of its findings and would draw particular attention to the proposals in recent years concerning the right to health, which it considers to be very important.

“11.7.2. establish new types of interaction to secure the synergies necessary for the effective application of the Charter;”

The ECSR wishes to reinforce its co-operation with the Parliamentary Assembly as well as with the European Parliament, so as to ensure that joint efforts will contribute to making the Charter's application more effective.

“11.8. ask the Commissioner for Human Rights to pay particular attention to respect for social rights, as provided for in the revised European Social Charter.”

The ECSR wishes to qualify the views expressed by the Assembly. It is in fact extremely satisfied with the co-operation it has established with the Commissioner for Human Rights. It notes in particular the latter's unflinching commitment to defending and promoting social rights in general and to the Social Charter specifically.

The ECSR will, moreover, reinforce its contacts with the United Nations High Commissioner for Human Rights and, more generally, with all the UN institutions working in the field of human rights.

“12. The Assembly also recommends that the parties to the revised European Social Charter:

12.1. make further efforts to comply with the provisions they have accepted;”

This part of the recommendation concerns states but the ECSR can only agree with the appeal by the Parliamentary Assembly for countries to pay more attention to situations that fail to comply with the Charter and take rapid and effective steps to bring national situations into compliance with the Charter.