Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 927
12 January 1959

Draft European Social Charter

Report
Committee of Ministers

1. PREAMBLE

The Governments signatory hereto, being Members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the European Convention for the protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950, and the Protocol thereto signed at Paris on 20th March 1952, the Member States of the Council of Europe agreed to secure to their peoples the civil and political rights and freedoms therein specified;

Being resolved to make every effort in common to improve the standard of living and to promote the social well-being of their peoples,

Have agreed as follows:

1.1. Part I

The Contracting Parties accept as an aim of policy to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Every one shall have the opportunity to earn his living in a freely accepted occupation.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair wage sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.
7. Children and young persons have the right to a special protection against physical and moral hazards arising in their work.
8. Expectant or nursing mothers in employment, and other employed women as appropriate, have the right to a special protection in their work.
9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him to choose an occupation suited to his personal aptitude and to his interests.

10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
12. All workers and their dependents have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Disabled persons have the right to rehabilitation and resettlement, whatever the origin and nature of their disability.
15. The family as a fundamental unit of society has the right to appropriate social and economic protection.
16. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.
17. The nationals of any of the Contracting Parties have the right to engage in any gainful occupation in the territory of any of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
18. Migrant workers have the right to protection and assistance.

1.2. Part II

The Contracting Parties undertake to consider themselves bound by the obligations laid down in the following Articles and paragraphs as provided for in Part III.

1.2.1. ARTICLE 1 - The right to work

With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake :

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of a high and stable level of employment;
2. to protect effectively the right of the worker freely to choose any available occupation, provided that this provision shall not be interpreted as prohibiting or authorising any trade union security clause or practice ;
3. to establish or maintain free employment services;
4. to promote appropriate vocational guidance, training and rehabilitation.

1.2.2. ARTIGLE 2 - The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit.
2. to provide for recognised public holidays with pay;
3. to provide for a minimum of two weeks' annual holiday with pay;
4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;
5. to ensure a weekly rest period.

1.2.3. ARTICLE 3 - The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions the Contracting Parties undertake to provide for adequate protection of life and health during work.

1.2.4. ARTICLE 4 - The right to a fair wage

With a view to ensuring the effective exercise of the right to a fair wage, the Contracting Parties undertake:

1. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award;

and recognise:

2. the right of all workers to additional wages for work performed at the request of the employer in addition to normal working hours;

3. the right of men and women workers to equal pay for work of equal value.

The exercise of these rights may be assured by voluntary collective agreement, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

1.2.5. ARTICLE 5 - The right toorganise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests, and to join these organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this paragraph shall apply to the armed forces, the police and the administration of the State shall be determined by national laws or regulations.

1.2.6. ARTICLE 6 - The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:

1. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements,

2. to promote the establishment and use of appropriate machinery for conciliation or arbitration for the settlement of labour disputes;

3. to promote joint consultation of workers and employers;

and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest

1.2.7. ARTICLE 7 - The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that a higher minimum age of admission to employment shall be fixed with regard to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development and particularly with their need for vocational training;
5. to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;
6. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national law or regulations;
7. to provide that persons under 18 years of age employed in occupations prescribed by national law or regulations shall be subject to regular medical control.

1.2.8. ARTICLE 8 - The right of employed women to protection

With a view to ensuring the effective exercise of the the right of employed women to protection, the Contracting Parties undertake:

1. to provide, either by paid leave or by adequate social security benefits, for women to take leave before and after childbirth up to a total of at least 12 weeks;
2. to prohibit dismissal from employment during or on account of maternity absence;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. to regulate the employment of women workers on night work in industrial employment and to prohibit their employment in underground mining or, as appropriate, on other work which is unsuitable for them.

1.2.9. ARTICLE 9 - The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Contracting Parties will endeavour :

1. to provide or promote assistance to individuals to as to enable them to solve problems related to occupational choice and progress with due regard for the individual's characteristics and their relation to occupational opportuni t y ; such assistance to be available both to young persons, including school children, and to adults;
2. to encourage the full utilisation of the facilities provided, by appropriate measures such as reducing or abolishing any fees or charges.

1.2.10. ARTICLE 10 - The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Contracting Parties undertake:

1. to provide or promote, as necessary, the technical and vocational training of workers;
2. to provide or promote a system of apprenticeship;
3. to provide or promote, as necessary, special facilities for re-training of adult workers where this is necessary as a consequence, particularly, of technological developments or of dislocations of the employment market;
4. to encourage the full utilisation of the facilities provided, by appropriate measures such as :
   - *a.* reducing or abolishing any fees or charges;
   - *b.* granting financial assistance in appropriate cases;
   - *c.* including in the normal working hours time spent on supplementary training, taken by the workman with the consent of his employer, during employment;
   - *d.* ensuring, through adequate supervision, the efficiency of apprenticeship arrangements and the adequate protection of apprentices.

1.2.11. ARTICLE 11 - The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisprofession ations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health ;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health ;
3. to prevent as far as possible epidemic, endemic and other diseases.

1.2.12. ARTICLE 12 - The right to social security

With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that required for ratification of the European Code of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements, or by other means, and subject to the conditions laid down in such agreements, to ensure:
   a. equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Contracting Parties;
   b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties;

1.2.13. ARTICLE 13 - The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted the necessary means of subsistence and in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate services such advice and personal help as may be required to prevent, to remove, or to alleviate want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this Article on an equal footing to nationals of other Contracting Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11th December 1953.

1.2.14. ARTICLE 14 - The right of the disabled to rehabilitation and resettlement

With a view to ensuring the "effective exercise of the right of the disabled to rehabilitation and resettlement, the Contracting Parties undertake:

1. to take adequate measures for the provision of training facilities, including specialised institutions where necessary;
2. to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment, and measures to encourage employers to admit disabled persons to employment.

1.2.15. ARTICLE 15 - The right of the family to social and economic protection

The Contracting Parties, recognising the importance of the family as a fundamental unit of society, will endeavour to ensure the economic and social protection of family life.

1.2.16. ARTICLE 16 - The right of mothers and children to social and economic protection

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.

1.2.17. ARTICLE 17 - The right to engage in a gainful occupation in other member countries

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in other member countries, the Contracting Parties will endeavour:

1. to apply existing regulations in a spirit of liberality;

2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;

3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;

and recognise:

4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Contracting Parties

1.2.18. ARTICLE 18 - The right of migrant workers to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers to protection and assistance, the Contracting Parties undertake:

1. to maintain or to satisfy themselves that there is maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and receptions of such workers, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to secure for such workers lawfully within their territories, in so far as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than of their own nationals in respect of the following matters:
   a. remuneration and other employment and working conditions;
   b. membership of trade unions and enjoyment of the benefits of collective bargaining;
   c. accomodation;
4. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
5. to secure for such workers lawfully within their territories treatment not less favourable than of their own nationals, with regard to legal proceedings relating to matters referred to in this Article;
6. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
7. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
8. to extend the protection and assistance provided for in this Article to self-employed migrants in so far as such measures apply.

2. Part III

2.1. ARTICLE 19 - Undertakings

1. Each of the Contracting Parties undertakes:

a. to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that Part;

b. to consider itself bound by not less than 1 0 of the Articles or by not less than 45 of the numbered paragraphs and Articles containing only one paragraph of Part II of this Charter to be selected by it. The Articles or paragraphs selected shall be notified to the Secretary-General of the Council of Europe at the time when the instrument of ratification of the Contracting Party concerned is deposited.

2. Any Contracting Party may, at a later date, declare by notification to the Secretary- General that it considers itself bound by any Articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this Article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification and shall have the same effect as from the thirtieth day after the date of the notification.

3 . The Secretary-General shall communicate to all the other Contracting Parties any notification which he shall have received pursuant to this Part of the Charter.

3. Part IV

3.1. ARTICLE 20 - Reports concerning accepted provisions

The Contracting Parties shall send to the Secretary-General of the Council of Europe a report at two-yearly intervals, in a form to be determined by the Committee of Ministers, concerning the application of such provisions of Part II of the Charter as they have accepted.

3.2. ARTICLE 21 - Reports concerning provisions which are not accepted

The Contracting Parties shall send to the Secretary-General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of Part II of the Charter which they did not accept at the time of their ratification or in a subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided.

3.3. ARTICLE 22 - Communication of copies

1. Each Contracting Party shall communicate copies of its reports referred to in Articles 2 0 and 2 1 to such of its national organisations as are members of the international organisations of employers and trade unions in consultative status with the Council of Europe.

2. The Contracting Party shall forward to the Secretary-General any comments on the said reports received from these national organisations, if so requested by them.

3.4. ARTICLE 23 - Examination of the reports

The reports sent to the Secretary- General in accordance with Articles 2 0 and 21 shall be examined by a Committee of Experts, who shall have also before them any comments forwarded to the Secretary-General in accordance with paragraph 2 of Article 2 2 .

3.5. ARTICLE 24 - Committee of Experts

3. The Committee of Experts shall consist of not more than seven members appointed by the Committee of Ministers from a list of independent experts of the highest integrity and of recognised competence in social and international questions, nominated by the Contracting Parties.

4. The members of the Committee shall be appointed for a period of six years. They may be re-appointed. However, of the members first appointed, the terms of office of two members shall expire at the end of four years.

5. The members whose terms of office are to expire at the end of the initial period of four years, shall be chosen by lot by the Committee of Ministers immediately after the first appointment has been made.

6. A member of the Committee of Experts appointed to replace a member whose term of office has not expired, shall hold office for the remainder of his predecessor's term.

3.6. ARTICLE 25 - Participation of the International Labour Organisation

The International Labour Organisation shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts.

3.7. ARTICLE 26 - Sub-committee of the Governmental Social Committee

7. The reports of the Contracting Parties and.the conclusions of the Committee of Experts shall be submitted for examination to a Subcommittee of the Governmental Social Committee of the Council of Europe.

8. This Sub-committee shall be composed of one representative of each of the Contracting Parties. The international employers' and trade union organisations in consultative status with the Council of Europe shall be invited to be represented by observers in a consultative capaci ty at the meetings of the Sub-committee.

9. The Sub-committee shall present to the Committee of Ministers a report containing its conclusions and appending the report of the Committee of Experts.

3.8. ARTICLE 27 - Committee of Ministers

The Committee of Ministers may, on the basis of the report of the Sub-committee, and after consultation with the Consultative Assembly, make to each Contracting Party any necessary recommendations.

4. Part V

4.1. ARTICLE 28 - Emergency clause

10. In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

11. Any Contracting Party which has availed itself of this right of derogation shall within a reasonable lapse of time keep the Secretary- General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary-General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.

12. The Secretary-General shall in turn inform the other Contracting Parties of all communications received in accordance with paragraph 2 of this Article.

4.2. ARTICLE 29 - Restrictions

The rights and principles set forth in Part I when effectively realised, and their effective exercise, as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those Parts, except such as are prescribed by legal provision or are imposed constitutionally, and are compatible with the nature of these rights and principles or are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

4.3. ARTICLE 30 - Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

4.4. ARTICLE 31 - Implementation by collective agreements

In Member States where the provisions of paragraphs 1, 2 , 3 , 4 and 5 of Article 2, paragraphs 4 and 5 of Article 7 and paragraphs 1, 2 , 3 and 4 of Article 1 0 of Part II of this Charter are matters normally left to agreements between employers or employers' organisations and workers' organisations or are normally

carried out otherwise than by law, the undertakings of those paragraphs may be given and compliance with them shall be treated as effective if their provisions are applied through such agreements or other means to the great majority of the workers concerned.

In Member States where these provisions are normally the subject of legislation, the appropriate undertakings may likewise be given, and compliance with them shall be treated as effective if the provisions are applied by law to the great majority of the workers concerned.

4.5. ARTICLE 32 - Territorial application

13. This Charter shall apply to the metropolitan territory of each Contracting Party. Each Contracting Party may, at the time of signature or of the deposit of its instrument of ratification, specify, by declaration addressed to the Secretary-General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.

14. Any Contracting Party may at the time of ratification of this Charter or at any time thereafter, declare by notification addressed to the Secretary-General, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible. It shall specify in the declaration the Articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration.

15. The Charter shall extend to the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary-General shall have received notification of such declaration.

16. Any Contracting Party may declare at a later date by notification addressed to the Secretary-General that, in respect of one or more of the territories to which the Charter has been extended in accordance with paragraph 2 of this Article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the thirtieth day after the date of the notification.

17. In the territories referred to in paragraphs 2, 3 and 4 of this Article the provisions of this Charter shall be applied with due regard to local requirements.

18. The Secretary-General shall communicate to the other Contracting Parties any notification transmitted to him in accordance with this Article.

4.6. ARTICLE 33 - Signature, ratification and entry into force

19. This Charter shall be open for signature by the Members of the Council of Europe. It shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.

20. This Charter shall come into force as from the thirtieth day after the date of deposit of the fifth instrument of ratification.

21. In respect of any Signatory Government ratifying subsequently, the Charter shall come into force as from the thirtieth day after the date of deposit of its instrument of ratification.

22. The Secretary-General shall notify all the Members of the Council of Europe of the entry into force of the Charter, the names of the Contracting Parties which have ratified it and the subsequent deposit of any instruments of ratification.

4.7. ARTICLE 34 - Amendments

Any Signatory Government may propose amendments to this Charter in a communication addressed to the Secretary-General of the Council of Europe. The Secretary-General shall transmit to the other Signatory Governments any amendments so proposed, which shall then be considered by the Committee of Ministers and submitted to the Consultative Assembly for opinion. Any amendments approved by the Committee of Ministers shall enter into force as from the thirtieth day after all the Contracting Parties have informed the Secretary-General of their acceptance. The Secretary-General shall notify all the Members of the Council of Europe, of the entry into force of such amendments

ARTICLE 35 - Denunciation

23. Any Contracting Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it or at the end of any successive period of two years, and in each case after giving six months' notice to the Secretary-General of the Council of Europe, who shall inform the other Parties accordingly. Such denunciation shall not affect the validity of the Charter in respect of the other Contracting Parties provided that at all times there are not less than five such Contracting Parties.

24. Any Contracting Party may, on the terms specified in the preceding paragraph, denounce any of the Articles or paragraphs of Part II of the Charter which it has accepted, provided that the number of Articles or paragraphs binding upon that Party shall at all times not be less than 10 or 45 respectively.

25. Any Contracting Party may denounce the present Charter or any of the Articles or paragraphs of Part II of the Charter, on the terms specified in paragraph 1 of this Article, in respect of any territory to which the said Charter is applicable by virtue of a declaration made in accordance with Article 32, paragraph 2.

26. Any Contracting Party which ceases to be a Member of the Council of Europe shall also cease to be a Party to this Charter.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Charter.

Done at ..... this ..... day of . . . . 19.., in English and French, both texts being equally authoritative, in a single copy which shall be deposited within the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the Signatories.

Appendix APPENDIX

to the draft European Social Charter

" Part I :- Part II :

Paragraph 17: - Article 17, paragraph 1

It is understood that the question of entry into the territories of Contracting Parties is settled in conformity with the obligations of the Contracting Parties under the provisions of the European Convention on Establishment and the Protocol thereto. "

" Part 11 :

Article 7, paragraph 6

I t is understood that a Member State may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under 18 years of age shall not be employed in night work, the exceptions being those persons not covered by law ".

Article 12, paragraph 3

In the event of the adoption of a Protocol to the European Code of Social Security, the higher level of social security referred to in this paragraph shall be at least equal to that required for. ratification of the protocol.

Article 12, paragraph 4

The words " and subject to the conditions laid down in such agreements " in the introduction to this paragraph are taken to imply inter alia that with regard to benefits which are available independently of any insurance contribution a Contracting Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Contracting Parties

Part V:

Article 29

The plenary decisions which the Norwegian Parliament, on the basis of constitutional provisions, takes in budgetary matters shall be considered to be covered by the term " legal provision " as employed in this Article.