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## Social Charter and Tripartite Conference

### Communication

to Recommendation 167 (1958)

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### 1. Introduction

The Tripartite Conference, which was held in Strasbourg from 1st to 12th December 1958, was convened by the Governing Body of the International Labour Office at the request of the Committee of Ministers of the Council of Europe, in accordance with the Agreement concluded on 23rd November 1951 between the Council of Europe and the International Labour Organisation.

Organisation. It will be recalled that Article 3, paragraph 2, of this Agreement stipulates that, whenever the Committee of Ministers deems it necessary to hold a European meeting of a tripartite character to deal with matters of interest to the Council of Europe which are within the sphere of action of the I.L.O., it shall propose to the Governing Body of the latter that it convene such a meeting.

This applied most appropriately to the draft European Social Charter, which deals with a number of questions that have already been the subject of various Conventions and Recommendations adopted by the International Labour Conference. It should be noted in this connection that the Consultative Assembly had already in July 1955—in its Resolution 69, in reply to the Fourth Report of the I.L.O. to the Assembly—proposed that the draft Social Charter should be submitted to a European Tripartite Conference, i.e. a Conference composed of representatives of the Governments and of the employers' and workers' organisations of the Member States of the Council of Europe.

The purpose of the Conference was to obtain, to the fullest extent possible, the technical contribution of the I.L.O. to the drafting of the final version of the Charter. It was clearly understood that the Conference would have no power of decision. Its report, which was to be addressed to the Committee of Ministers and also brought to the attention of the Governing Body of the I.L.O., would record the views of participants or groups of participants. The Conference might, however, in certain cases formulate its opinion by suggesting texts presented in the form of provisions of the draft Charter. It will be for the Council of Europe itself to undertake the final drafting of the Charter.

All the Member States of the Council except Iceland and Turkey sent tripartite delegations to the Conference. Turkey was represented by an observer. Each tripartite delegation was composed of two Government delegates (high-ranking officials in the social and labour fields), one Employers' delegate and one Workers' delegate. In addition, the delegation were accompanied by a certain number of technical advisers.

The Council of Europe, the Governing Body of the I.L.O. and the O.E.E.C. were represented by delegations entitled to participate in the work of the Conference, but without the right to vote.

The Delegation of the Council of Europe was composed as follows:

Committee of Ministers:

Mr. G. C. Veysey, C. B., Chairman, Social Committee.

Dr. Geller, Vice-Chairman, Social Committee..



Consultative Assembly:

Bureau:

M. F. Dehousse, President.

M. B. Elmgren, Vice-President.

Social Committee:

M. P. Strasser, Chairman.

M. W. J. Schuijt, Vice-Chairman.

M. W. Birkelbach.

M. L. Montini.

M. B. Ecevit.

Economic Committee:

M. H. Vos.

The United Nations, the European Coal and Steel Community, the Western European Union, the European Economic Community, the European Atomic Energy Community and the Intergovernmental Committee for European Migration were represented by observers, as were also the International Confederation of Free Trade Unions, the International Federation of Christian Trade Unions and the International Organisation for Employers.

The International Federation of Agricultural Producers and the European Confederation of Agriculture were also invited to send observers.

## **2. Opening and procedure of the Conference**

Before the official opening of the Conference the Secretary-General of the Council of Europe made a brief welcoming speech in which he stressed the attention which the Council of Europe, and particularly its Assembly, has paid to social questions and to such action as may favour social and economic progress in Europe. The I.L.O. had given the Council of Europe the benefit of its long-standing and precious technical experience in international social co-operation. Fruitful relations between the two organisations were established through the Agreement of 1951, and the I.L.O. had, through its annual reports, kept the Assembly informed of its activities in Europe, thus enabling the Assembly to discuss in public the work thus performed.

The Conference was officially opened by the Chairman of the Governing Body of the I.L.O. whereupon the Conference elected as President M. Fernand Dehousse, President of the Consultative Assembly.

In his presidential address M. Dehousse recalled the draft texts of the Social Charter previously worked out by various committees of the Assembly, such as that contained in Doc. 536 (prepared by the General Affairs Committee) and, particularly, the one contained in Doc. 403 (prepared by the Social Committee). He said he would have liked to see these documents distributed to the Conference<sup>1</sup>.

The President then stated that in the view of the Assembly, as confirmed also by the Committee of Ministers, the Social Charter should define the social objectives of the Members of the Council of Europe and serve as a guide for the future action of the Council in the social field. It should constitute, in t h a t field, a complement to the European Convention on Human Rights and Fundamental Freedoms.

With regard to the 18 articles of substance contained in Part II of the draft Charter, the President remarked that they might seem rather laconic by comparison -with the Conventions of the I.L.O. However, the nature of the two types of instruments was quite different. In general, the ILO Conventions provided for the application of the principles laid down therein. They left the appreciation of the application much less to the national authorities than did the draft Charter. Nevertheless, the Charter did not appear to be below the level of the ILO Conventions.

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1. The Conference worked on the basis of a document prepared by the I.L.O. containing the draft Social Charter as established by the governmental Social Committee as well as a comparison between the provisions of the draft Charter and the corresponding Conventions and Recommendations of the I.L.O.

The President then turned to Part III of the draft Charter, under which the Contracting Parties undertake to regard themselves as bound by at least 10 out of 18 articles or by at least 45 out of 62 numbered paragraphs. Similar systems had been used in some Conventions of the I.L.O. but in a stricter and more controlled form. Thus, the Conventions specify in advance the groups of undertakings to be accepted.

If all Members of the Council of Europe could not be expected to agree to be bound by all provisions of the Charter, it would be useful to provide at least for a certain common body of standards and obligations applicable to all. The whole Charter should then be accepted within a reasonable period.

In this connection, provision could be made for the implementation of the Charter by stages, so that the standards of each State and the time allowed to reach them would be determined by successive programmes decided by mutual agreement.

M. Dehousse went on to express some scepticism with regard to the manner in which the Charter, according to the draft before the Conference, was to be implemented. To some extent the system was like that applied by the I.L.O. for the control of the application of Conventions, but the ultimate court of appeal so far as the Charter was concerned, would be the Committee of Ministers, and the Ministers could make recommendations one to another. It would have been preferable to copy more completely the system of the I.L.O., including the procedure of complaints which may be the subject of inquiries, references to the International Court of Justice and action by the International Labour Conference. Regard might also have been had to the system of the European Convention on Human Rights.

The Committee of Ministers, in its Resolution of December 1956 (Resolution (56) 25), had expressly stated that the employers' and trade union organisations should take part in the supervision of the application of the Charter. The provisions to this effect contained in the draft before the Conference were, in his view, not sufficient. Governments should act in close co-operation with those who directly represent the various sectors of economic and social life. Therefore, the President urged a re-examination of the proposal previously discussed by the Consultative Assembly for a European Economic and Social Council.

The Conference set up two Committees, one to deal with the substantive clauses of the draft Charter, i.e. Parts I and II, and one to study the clauses of implementation and legal clauses contained in Parts III, IV and V. After three plenary sittings on 1st and 2nd December, during which the Conference settled various matters concerning organisation and procedure and also held a general exchange of views on the draft Charter, the Committees went into action. Their reports were eventually considered and adopted at further plenary sittings towards the end of the Conference.

On some occasions votes were taken, both in Committees and in Plenary, but an effort was made to proceed to a vote as seldom as possible. In a certain number of cases unanimous conclusions were arrived at. In other cases the views of individual delegates or of groups of delegates were recorded

At the second plenary sitting of the Conference, on 1st December in the afternoon, the President gave the floor to the Chairman of the Social Committee of the Assembly, M. P. Strasser. The latter said that the Assembly was very well aware of the great value which the views of the Tripartite Conference would have, since it brought together so many specialists on social questions. It was with the technical assistance of this Conference that the Consultative Assembly and the Social Committee would be in a position to undertake a final and political examination of the text of the Charter.

M. Strasser urged that the provisions of the Charter must be at least on a level with the standards laid down by the International Labour Organisation. Moreover, the Charter would have no value if it did not provide for a certain number of articles — a nucleus — the ratification of which would be compulsory for all Contracting Parties, as well as a number of other provisions which, at the choice of the Contracting Parties, must be accepted at the outset. The remaining articles should be accepted by all within a reasonable definite period.

The compulsory nucleus should, according to the unanimous view of the Social Committee of the Assembly, comprise Articles 1, 2, 5, 6, 12 and 18.

Basing himself on the decisions taken by the Social Committee at its meeting on 13th September 1958<sup>2</sup> M. Strasser also commended the recognition of full employment as an aim of policy; the explicit guarantee of the right to strike, and the provision for minimum social security standards equal to those to be laid down in the European Code of Social Security. Moreover, the 40-hour week should be one of the aims to be achieved, although this might not necessarily be expressly stated in the text of the Charter.

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2. See Doc. AS/Soc. (10) PV 3 rev.

M. Strasser then went on to speak in some detail of the ideas of the Social Committee concerning the parliamentary control of the implementation of the Charter, without which, he said, the very purpose of the latter would be endangered. The reports of the Governments provided for in Articles 20 and 21, as well as the comments of national organisations of employers and workers provided for in Article 22, should be transmitted by the Secretary-General both to the Assembly and to the committee of independent experts to be set up under Article 23. The conclusions of the Committee of Experts, he continued, should be communicated, not only to the Sub-committee of the Governmental Social Committee referred to in Article 26, but also to the Assembly. The latter would thus be in a position to judge on the basis of the original reports in the light of the conclusions of the experts. It would communicate its views to the Committee of Ministers, which would also receive the views of the Sub-committee of the Governmental Social Committee. Thus, the Assembly would be able to have an influence upon the decisions to be taken by the Committee of Ministers, and it would also be informed of the decisions taken.

### **3. Main lines of the debate**

The official report of the Conference is not yet available, and it would be too early now to go into any details. However, a few essential points may, perhaps, be mentioned:

#### **3.1. (a) The nucleus of common obligations**

When Article 19 of the draft Charter was discussed by the Conference Committee on Implementation Clauses, proposals for alternative texts were submitted by the Workers' Group and by the Governments of Belgium and France.

The Workers suggested that all the provisions of Part II of the Charter should be required to be accepted.

One Government proposed a common nucleus of obligations comprising Article 5 (right to organise), Article 6 (right to bargain collectively) and Article 12 (right to social security).

Another Government proposed that in addition to Articles 5 and 6 and the first paragraph of Article 12, the nucleus should also comprise: Article 1, paragraph 1 (level of employment), Article 2 (just conditions of work), Article 9 (vocational guidance) and Article 10 (vocational training).

There was no support forthcoming for the Workers' proposal. On the other hand, a number of Governments, in particular Austria, Italy, Luxembourg and Sweden, supported the principle underlying the Belgian and French proposals, with certain amendments in regard to the provisions to be compulsorily accepted

The following recommendation was then submitted to the Committee:

" The Government members of Austria, Belgium, Denmark, France, Federal Republic of Germany, Greece, Italy, Luxembourg, Netherlands, Sweden and the United Kingdom, after comparison of their views, consider that, with a view to establishing a common denominator for the social policies of Member States of the Council of Europe, it would be desirable for Article 19 of the Charter to list a certain number of Articles or paragraphs which should be accepted compulsorily on ratification. They believe that the various articles and paragraphs proposed by the Belgian, French, Italian and Swedish delegations on the basis of the Social Committee's draft Charter merit consideration by the Committee of Ministers in deciding which of these articles and paragraphs should form a compulsory common minimum in the final text of the Charter.

The Government members consider that this choice should be made in such a manner as to enable accession to be secured on the widest scale.

This recommendation was supported by the Committee, subject to certain reservations and understandings. Thus the Employers' group would delete the second phrase of the recommendation, concerning the choice of the compulsory provisions. The Workers' group would fix a time-limit which might be five years for the acceptance of the provisions of the Charter not comprised by the nucleus. One Government member stated that he subscribed to the recommendation on the understanding that the intention was to leave the choice of the compulsory provisions to the discretion of the Committee of Ministers.

### **3.2. (b) Procedure of implementation**

In the Committee on Implementation Clauses the Workers' group together with one Government member expressed the view that workers and employers should have a more direct part in the supervision of implementation. The most important proposals to this effect were:

*the Workers proposed, as an alternative to the first two paragraphs of Article 26, that the reports of the Contracting Parties concerning the implementation and the conclusions of the Committee of Experts provided for in Article 21 should be submitted to a committee composed of one representative of the Government, one representative of the employers and one representative of the workers from each of the Contracting Parties;*

*one Government member proposed a tripartite committee of more limited size, composed of eight Government members, four employers' members and four workers' members*

However, the employers' members and the majority of the Government members fell unable to accept such proposals

However, the employers' members and the majority of the Government members fell unable to accept such proposals.

In the plenary meeting, the same idea was taken up in a somewhat different form by another Government delegation. Since the discussion showed that it did not secure sufficient support, a compromise proposal was made as follows:

"The Conference expresses the hope that the Committee of Ministers will ensure, in such manner as it may determine, that a certain number of representatives of employers' and workers' organisations are associated, with the right to vote, in the working of the machinery to be established to examine the reports of the experts concerning the implementation of the Social Charter. "

This was rejected by 22 votes to 26, with no abstentions. Thereupon, the other proposals were also rejected.

Article 26 was then adopted in its original form. The Conference thus accepted the whole of Part IV without any changes.

### **3.3. (c) Labour inspection**

A Government member proposed to insert in the Charter a new Article, under which the Contracting Parties would undertake to establish and maintain a system of labour inspection designed to ensure the effective enforcement of the standards of the Charter in respect of conditions of work and protection of workers. The details of this system were described in five paragraphs.

The Workers' group made a similar proposal.

The Committee decided to bring these texts to the attention of the Committee of Ministers, and to stress the following points :

*an effective system of labour inspection is of great importance;*

*it was for consideration whether a possible new article concerning such inspection should be inserted in Part II of the Charter or in a later Part;*

*if the new article were to be inserted in Part II, the number of articles or paragraphs to be accepted by the Contracting Parties under Article 19 of the Charter might have to be increased.*

This proposal was adopted by the Conference.

## **4. Conclusions**

Apart from the above-mentioned points, the Conference also adopted a number of detailed recommendations concerning the wording of the substantive clauses of the Charter, and some of the recommendations were unanimously adopted. However, the Delegation of the Assembly, as already mentioned, considers that, in the absence of the official report of the Conference, it is too early to enter into a debate on the details.

The Delegation is of the opinion that the Conference supplied a most valuable technical contribution towards the final drafting of the Charter. The debate threw new light on many of the technical problems involved in the formulation and implementation of the provisions of the Charter. Thus, in the Committee of Substantive

Clauses, a long and instructive discussion arose over the proper understanding and application of the principle of equal pay for work of equal value for men and women workers. The lack of a certain flexibility here would, in the view of the employers, render the employment of women more difficult and might thus result in reduced employment opportunities for women. In collective agreements, explicit discrimination was often made between the sexes, and certain occupations were regarded more as "women's jobs", while others were regarded as "men's jobs" and the former sometimes tended to be less paid than the latter. The workers on their side considered that this way of thinking was out of date. They stressed the increasing importance of women workers in the labour force and pointed out that, as a result of technical progress, many kinds of work formerly considered unsuitable for women could now be satisfactorily performed by them.

In the opinion of the Assembly Delegation the limited character of the contribution which the Tripartite Conference could make to the establishment of a European Social Charter as an instrument of a progressive European social policy lies precisely in the technical character of the Conference. The Government representatives at the Conference, being high officials and experts, could not to a sufficient degree take an uninhibited political view of the matters dealt with, and such political considerations must supplement the technical advice of the Conference. Thus, the Charter should provide for a procedure enabling the Consultative Assembly to take a proper part in the control of the implementation of the provisions contained therein and to exercise a political influence upon the Governments called upon to carry the instrument into effect. In this way, the particularly European aspects of the Charter, over and above its national implications, could be properly developed and stressed.

With regard to the future procedure for the preparation of the final text of the Charter, the Delegation considers it of great importance that the Committee of Ministers should transmit to the Assembly the draft text established by the governmental Social Committee as well as the report of the Tripartite Conference at an early stage, thus enabling the Assembly to express its views in the light of the results of the Conference before any further steps are taken to establish the final text.