Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 71 (1975)[1]

Third period of supervision of the application of the European Social Charter

Parliamentary Assembly

The Assembly,

1. Having regard to Part IV of the European Social Charter, and especially to Articles 28 and 29 ;

2. Having examined the conclusions of the Committee of Independent Experts on the supervision of the application of the Charter during the period 1970-71, and having also taken the third report of the Governmental Committee on the European Social Charter into consideration ;

3. Recalling the terms of its Opinions No. 57 (1971) and No. 64 (1973), on the supervision of the application of the Charter over the first two 2-year periods,

4. Expresses its acute disappointment that the Committee of Ministers should have taken virtually no action to implement the most important proposals contained in the Assembly's opinion and, in particular, made no recommendations to Contracting Parties under Article 29 of the Charter, nor even any precise suggestion regarding the failure of certain national laws or practices to comply with the provisions of the Social Charter accepted by those Contracting Parties ;

5. Again emphasises that the interpretations given by the independent experts are to be regarded as highly authoritative opinions, from which one should not depart without overriding reasons ;

6. Urges the Committee of Ministers most strongly to make recommendations to the following states for the strict application of the Social Charter :

Austria, on the application of Article 8, paragraph 2, and Article 19, paragraph 6 ;

Cyprus, on the application of Article 12, paragraph 2 ;

Denmark, on the application of Article 8, paragraph 1 ;

Ireland, on the application of Article 1, paragraph 2, Article 8, paragraph 1, and Article 18, paragraphs 2 and 3 ;

Italy, on the application of Article 8, paragraph 2, and Article 13, paragraph 1 ;

Norway, on the application of Article 19, paragraph 6 ;

the United Kingdom, on the application of Article 8, paragraph 1, Article 18, paragraphs 2 and 3, and Article 19, paragraph 6 ;

7. Proposes that the Committee of Ministers should invite the states concerned to make their national legislation and practice conform to the provisions of the Charter in the instances referred to in the preceding paragraph, and appoint a period at the end of which they would be required to report on the measures taken to that end ;

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1. Assembly debate on 22 April 1975 (3rd Sitting) (see Doc. 3592see Doc. 3592, report of the Committee on Social and Health Questions). Text adopted by the Assembly on 22 April 1975 (3rd Sitting).

8. Proposes that the Committee of Ministers should communicate to the states concerned, by way of suggestions, the other observations of the Committee of Independent Experts, and in particular to Italy, Norway and Sweden those relating to the application of Article 4, paragraph 3, of the Charter, concerning the right of men and women workers to equal pay for work of equal value ;

9. Reiterates its proposal that the Committee of Ministers should put into practice the procedure provided for in Article 22 of the Charter ;

10. Expressly draws the attention of the Committee of Ministers to the considerations set out in the explanatory memorandum to this opinion (Doc. 3592), and in particular to paragraphs 25-27[2] which concern modifications to the machinery for supervision of the European Social Charter, and requests that the

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2. 25. The Governmental Committee suggests ways in which the workload of Contracting Parties and the supervisory organs could be reduced without amendment to the Charter or prejudice to its implementation. It proposes that supervision of provisions accepted in Part II of the Charter be spread over six years, a detailed study being made of only one third of the provisions every two years. Every two years governments would be asked to submit a detailed report only on the accepted provisions which were to be thoroughly examined by the supervisory organs in the course of the period in question ; in respect of other accepted provisions, they would supply a brief general report in which, if they wished, they could include information about any changes they considered important which had occurred since the previous biennial report. The initial report of any new Contracting Party would, of course, deal in detail with all provisions accepted. This proposal is highly interesting in so far as it would enable the supervisory bodies to deal more effectively with the many problems arising out of the interpretation and application of the Charter. Whereas it is the task of the committee of experts to study the application of all the provisions in the Charter, neither the Assembly nor the Governmental Committee can do the same and are obliged to confine themselves to a necessarily arbitrary selection. It would therefore be an advantage if the supervisory authorities could concentrate their attention on only some of the provisions in the Charter, so that its application could be studied in stages. However, two important reservations must be made in respect of the Governmental Committee's proposal. First, whenever the committee of experts asked the governments concerned to provide additional information, they should do so in their following report, not six years later. Secondly, the system of biennial reporting is expressly laid down in the Charter, and it should in theory cover all provisions that have been accepted. Accordingly, if the Governmental Committee's proposal is put into practice, the states concerned should still inform the Council of Europe organs of any important changes since the preceding report, even if these related to clauses which were not being studied in detail during the period of supervision in question ; the provision of such information should therefore continue to be compulsory, and not become optional. As regards the idea of dividing the Charter's articles into three groups, the Governmental Committee recommends that, in view of the connections between articles, this should be done as follows : - first 2-year period : Articles 1-4, 9, 10 and 15 ; - second 2-year period : Articles 5-8, 18 and 19 ; - third 2-year period : Articles 11-14, 16 and 17. This division is acceptable, but again with the proviso that states should not limit their reports to the provisions under consideration for the period in question but should merely deal in greater detail in their reports with the matters covered by such provisions (which would also enable the supervisory organs to give a fuller opinion on those matters) ; they should still be required to provide essential information on the other subjects, especially if any changes had occurred in the situation. 26. In addition, the Governmental Committee proposes that reports submitted under Article 22 should be considered at the same time and in connection with the same groups of articles as the more detailed reports presented under Article 21. The Assembly will no doubt be able to support this proposal. 27. The Governmental Committee also wishes the questionnaires sent to governments to be simplified and suggests that, when reporting in accordance with Article 22, governments should no longer have to describe the situation but merely explain why they have not accepted the provision or provisions in question. The Assembly will undoubtedly appreciate that national administrations should want some simplification of the possibly tedious work devolving on them under Article 21 of the Charter. But it should bear in mind that the Committee of Independent Experts has frequently been unable to assess whether a state has honoured its obligations under the Charter because the information provided by the state's government has not been precise or detailed enough. If the questionnaires are simplified, the situation may become even worse. The Committee of Ministers should therefore be put on its guard against such simplification. As for the Governmental Committee's proposal, on reporting under Article 22, not only does it appear inexpedient but its compatibility with this provision of the Charter is questionable. If governments were merely asked to state the reasons why they had not accepted this or that provision in the Charter, they would not have to provide any of the desired information on the way in which they were actually applying the Charter's principles, whether or not they had formally accepted them. The Charter specifies that states must provide "reports", not merely information on their reasons for not accepting particular rules laid down in the Charter. The reports have to be sent to employers' organisations and trade unions, and considered by the Committee of Independent Experts, in pursuance of Articles 23 and 24 of the Charter. The conclusions of the committee of experts, which must also deal with the reports, are then submitted to the Assembly and the Governmental Committee for examination. This examination would, however, be very incomplete if, as regards provisions not accepted, it were to be confined to governments' reasons for not accepting such provisions. Besides, if it were necessary for governments merely to state their reasons, it is hard to see why the Charter should have provided for periodic reporting on the subject. It would have been enough to ask governments to give their explanations when ratifying the Charter. The Assembly must therefore urge the Committee of Ministers to ensure that Article 22 is given full effect and that the "reports concerning provisions which are not accepted" (heading of Article 22) are similar in structure to the "reports concerning accepted provisions" (heading of Article 21).

Committee of Ministers submit officially to the Committee of Independent Experts the proposals of the Governmental Committee in this respect and communicate the conclusions of the Committee of Independent Experts on the matter to the Assembly in order to enable it to give a final opinion on the question.