Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 145 (1989)[1]

First stage of the tenth supervision cycle of the application of the European Social Charter

Parliamentary Assembly

The Assembly,

1. Having regard to Part IV of the European Social Charter, in particular to Articles 28 and 29, which require the Assembly to be consulted on the application of the charter ;

2. Having examined the conclusions of the Committee of Independent Experts on supervision of the application of the charter during the period 1984-85 (tenth supervision cycle) in seven of the contracting states (Denmark, Greece, Iceland, Norway, the Netherlands, Sweden and the United Kingdom), and having also taken into consideration the tenth report (I) of the Governmental Committee of the European Social Charter ;

3. Welcoming the convergence in several instances between the conclusions of the Committee of Independent Experts and those of the Governmental Committee, but deploring, however, the many instances in which the Governmental Committee did not join the Independent Experts in their conclusions, but deviated from them or deferred its own conclusions, and deploring also the instances in which the Governmental Committee deviated from the interpretation of charter provisions given by the Committee of Independent Experts ;

4. Noting with satisfaction that, as during the previous supervision cycles, further progress has been made on several points in the various countries towards the achievement of the European Social Charter's objectives through the adoption of statutes, regulations and practices ensuring a better application of the charter ;

5. Noting also with satisfaction that, in many countries, various policies have been introduced to combat unemployment, in particular, unemployment of young people, women, older workers, migrant workers and the disabled ;

6. Noting, however, that in spite of such policies the unemployment rate - in particular, the youth unemployment rate - is still very high in some countries ;

7. Noting with regret that not all the contracting states, whose reports have been examined, are complying fully with their undertakings under the charter ;

8. Drawing attention, in particular, to the unsatisfactory situation concerning respect for the obligation to protect effectively the right of the worker to earn his living in an occupation freely entered upon (Article 1, paragraph 2, of the charter), which should be considered as one of the basic rights of workers ;

9. Noting also the problems which still occur with regard to respect for the right to collective action in case of labour conflicts, including the right to strike (Article 6, paragraph 4), and stressing the fact that collective action, an essential element of freedom of association, is recognised in international law as one of the fundamental rights of workers, and that accordingly states should make every effort to prevent infringements thereof ;

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1. Assembly debate on 9 May 1989 (3rd Sitting) (see Doc. 6030, report of the Social, Health and Family Affairs Committee, Rapporteur : Mr Bohl). Text adopted by the Assembly on 9 May 1989 (3rd Sitting).

10. Considering also that those contracting states which have not yet accepted all the provisions of the charter should be called upon to implement the necessary procedures for their acceptance ;

11. Regretting that, vis-à-vis those member states which have not yet ratified the Social Charter, the Committee of Ministers has taken no specific action to secure ratification ;

12. Stressing once again that, in order to ensure full observance of the charter and effective supervision of its application, the Committee of Ministers should draw the attention of the governments of the contracting states specifically to those provisions which they have not fully complied with, by making the necessary recommendations pursuant to Article 29 of the charter ;

13. Expressing therefore its great disappointment that the Committee of Ministers has still not acted upon the Assembly's recommendation that specific recommendations should be made to certain contracting states in accordance with Article 29 of the charter, not even in cases where the Assembly's recommendation was based upon convergent conclusions of the Committee of Independent Experts and the Governmental Committee ; and desirous that the Committee of Ministers initiate discussions to amend its voting procedure under Article 29 of the charter to enable it to perform its functions under that article in a more effective way ;

14. Noting with satisfaction that, in this phase of the tenth supervision cycle, some national employers' organisations and trade unions, as provided for in Articles 23 and 24 of the charter, have made comments on the governmental reports, and expressing the hope that more national organisations will in future make use of the opportunities made available to them under Article 23 ;

15. Reiterating its intention to highlight efforts at seeking ways and means to improve the implementation of the charter,

16. Accordingly recommends that the Committee of Ministers :

a. ask those member states which have not yet accepted the Social Charter (Belgium, Liechtenstein, Luxembourg, Portugal, San Marino, Switzerland and Turkey) to submit reports to the Committee of Ministers before the end of 1989 stating the difficulties which prevent or delay signature or ratification ;

b. include the Additional Protocol in the group of core provisions which must be accepted upon ratification of the charter ;

c. apply Article 22 positively and dynamically, so that this procedure may result in the acceptance of all provisions within a reasonable time ;

d. draw the specific attention of the governments of the following contracting states to the desirability of implementing the necessary procedures for the acceptance of the provisions of the charter examined by the Assembly, to the extent that they have not yet accepted them :

Denmark, as regards Article 4, paragraph 4, and Article 7, paragraph 9 ;

Greece, as regards Article 6, paragraph 4 ;

Iceland, as regards Article 7, paragraph 9 ;

Norway, as regards Article 7, paragraph 9 ;

e. make specific recommendations to the following member states in accordance with Article 29 of the Social Charter :

Denmark, as regards the application of Article 6, paragraph 4 ;

Greece, as regards the application of Article 1, paragraph 2 ;

Iceland, as regards the application of Article 1, paragraph 2, and Article 6, paragraph 4 ;

the Netherlands, as regards the application of Article 1, paragraph 2, Article 3, paragraph 1, and Article 4, paragraph 4 ;

Sweden, as regards the application of Article 7, paragraph 9 ;

the United Kingdom, as regards the application of Article 1, paragraph 2, Article 4, paragraph 4, and Article 6, paragraph 4 ;

f. draw the attention of all contracting states to the fact that effective supervision of the application of the charter depends on having the biennial reports submitted in time and containing all relevant information, including the additional information requested during the previous supervision cycle ;

g. i invite governments to promote the effective application of Articles 23 and 24 as an intermediate stage to full participation of national employers' organisations and trade unions in the supervision cycle at the level of the Governmental Committee ;

h. convene an international conference on the revision of the European Social Charter, which should focus on the desirability and feasibility of both modifying and supplementing the substantive rights contained in the charter, and of revising its supervisory mechanism, taking also into account developments within the European Community ;

i. pending the outcome of this conference, strengthen the resources and instruments of the Committee of Independent Experts - including the provision of an adequate secretariat - to enable it to perform its functions more efficiently and effectively.