Recommendation 839 (1978)[1]

Revision of the European Social Charter

Parliamentary Assembly

The Assembly,

1. Emphasising the success of the Symposium on "The European Social Charter and Social Policy Today", organised by its Committee on Social and Health Questions in accordance with Resolution 649 (1977), which was held in Strasbourg from 7 to 9 December 1977 ;

2. Noting that the general public and the groups most concerned, such as employers' and workers' organisations, are ill-informed of the importance of the Social Charter and the possibilities it offers ;

3. Recalling that, though the Social Charter has contributed to social progress in Europe, there are still numerous deficiencies in its application and the operation of its supervisory procedure ;

4. Noting that nine member states of the Council of Europe have still not ratified the Charter, and that it is desirable that they should be asked to do so in the near future ;

5. Considering that, in the same spirit, it is desirable to call upon member states to accept as many of the Charter's provisions as possible ;

6. Convinced that the protection of economic and social rights should be given equal value and importance to that accorded to civil and political rights, and that this can only be achieved by strengthening the supervision of the application of the Charter ;

7. Considering, however, that to meet current social aspirations and the standards already in force in a number of member states, the European Social Charter would need to be revised and supplemented,

8. Recommends that the Committee of Ministers take the following proposals into account in implementing and revising the Social Charter.

A. Promotion of the Charter

1. Knowledge of the Charter

There can be no doubt that the Social Charter has brought about very many improvements in social and economic laws, regulations and practices since its entry into force in 1965, not least through the operation of its supervisory system. However, its importance is not sufficiently appreciated either by the interested parties or by the general public. Governments of member states and the Council of Europe should therefore substantially step up their information efforts to ensure that all those concerned by the Charter have a better knowledge of this instrument of social progress, of the fundamental economic and social rights it guarantees, and of its supervisory system. Whenever possible, this exercise should involve the mass media.

2. Ratification of the Charter

1. Assembly debate on 27 and 28 September 1978 (9th and 10th Sittings) (see Doc. 4198, report of the Committee on Social and Health Questions). Text adopted by the Assembly on 28 September 1978 (10th Sitting).

Nine member states of the Council of Europe have not yet ratified the Charter. Considering, firstly, that governments may ratify the Charter by entering into a fairly small number of undertakings and, secondly, that the same importance must be given to social, economic and cultural rights as to civil and political rights, the Committee of Ministers should launch an urgent appeal to the member states concerned to deposit their instruments of ratification in the near future. The Committee of Ministers, when considering any revisions to the Charter, should always remember that such revisions should be designed to encourage and not to discourage ratification by the nine member states who have not yet ratified.

3. Acceptance of all the provisions of the Charter

Within an organisation such as the Council of Europe, whose primary aim is to safeguard human rights, the system for the international protection of social and economic rights as set up by the Charter requires all member states not simply to endeavour to ratify the Charter, but also to agree to accept the largest possible number of its provisions within a reasonable period, the ultimate aim being the acceptance of all its provisions by the member states. Sixteen years after the opening for signature of the Charter, only one state has accepted every one of its provisions. An appeal from the Committee of Ministers to member governments on this point is of equal importance.

B. Revision of the contents of the Charter

The revision of the Charter should include the following measures :

1. Updating of certain standards

1.1. The right to work (Article 1) :

Everybody's right to work should be stressed. The existing provisions of para. 1 of this article on full employment should be strengthened by requiring states to pursue an active employment policy, and ensuring every actual or potential worker appropriate protection against unemployment and its consequences.

In connection with engagement, promotion, dismissal and transfer, no difference should be made between men and women.

1.2. Paid annual leave (Article 2) :

Four weeks' minimum leave is proposed instead of two as at present.

1.3. Safe and healthy working conditions (Article 3) :

The present text of Article 3 should be revised, emphasising that the working environment should be satisfactory, taking into account the nature of the work, and the social and technical development of society. Working conditions should be adapted to the individual's physical and mental conditions.

A new provision should foresee protective measures, when necessary, for workers of both sexes, such as in connection with night work (with a consequential deletion of the corresponding provision in the existing Article 8).

1.4. Trade union rights and collective bargaining (Articles 5 and 6) :

- Provide in Article 6 (4) for better protection of the right to strike, in order to safeguard workers' interests ;

- Delete in Article 6 (4) the reference to the right of employers to collective action.

1.5. Health protection (Article 11) :

A new paragraph providing for regular medical checks of all workers should be added, to protect them from all danger to health arising from their work.

1.6. Social security (Article 12) :

Basic social security and old-age pension for all.

1.7. Rights of the disabled (Article 15) :

Add a third paragraph to this article, giving the disabled the right to a properly planned place of work.

1.8. Protection of the family (Articles 16 and 8) :

- Enable parents to devote themselves to their children's care and education.

- Paid parental leave (financed from public funds), it being understood that a consequential amendment to the present text of Article 16 was necessary, and that the duration of such parental leave should be greater than that of the maternity leave provided for in the existing text of the Charter.

1.9. Rights of mothers and children (Article 17) :

The concept "mother" in this provision should be replaced by that of "parents".

1.10. Migrant workers (Article 19) :

- Strengthen the provisions, with a view to eliminating obstacles to family reunion, preventing arbitrary expulsions, giving immigrants the right to instruction in the language of the host country and, as far as possible, the right to vote in local elections.

- Add a final paragraph to Article 19, whereby the state undertakes to apply the provisions of the European Convention on the Legal Status of Migrant Workers to migrant workers to the extent that they provide better protection than the Social Charter.

2. Insertion of new rights :

2.1. the right of workers to participate in the decision-making process in business enterprises, as well as the right to information concerning the position, finances and future planning of the organisation for which they work ;

2.2. the right of workers to participate in decisions concerning working conditions ;

2.3. the right of workers to be protected against the effects of rationalisation and of the introduction of new technologies ;

2.4. the right of men and women to equality of opportunity and treatment in the economic, social and cultural fields ;

2.5. the right to education, particularly basic education ;

2.6. the right to educational leave ;

2.7. the right to decent housing ;

2.8. the right of frontier-workers to appropriate social and economic protection, and protection against discrimination in tax matters ;

2.9. the right of elderly people to economic and social protection ;

2.10. the right of the least favoured sectors of the population to reinforced social and economic protection.

3. Undertakings

Having regard to the introduction of new rights and the modification of existing standards, it would be necessary to increase correspondingly the minimum number of undertakings embodied in the current text of the Social Charter, Article 20, paragraph 1, sub-paragraphs b and c.

During the revision of the Social Charter, account should be taken of the fact that this instrument contains a great many provisions relating to everyone or all workers, e.g. women, young persons, the disabled, etc., but that certain provisions also confer special protection on these last mentioned categories.

C. Revision of the supervision procedure of the Charter

Two possible sets of measures to change the supervisory machinery should be contemplated. The first set of measures would not necessarily entail subjecting the Charter itself to revision.

I.1. Making the Charter more effective

1.1. Acceleration of the supervisory procedure

As the Assembly has repeatedly pointed out, the procedure of supervising the application of the Charter is excessively slow, since four or five years elapse between the review period and the time when the Committee of Ministers comes to exercise its functions under Article 29 of the Charter. As a result, the supervisory procedure inevitably loses much of its relevance and usefulness.

To accelerate the procedure, it is suggested :

1. that the governments concerned be invited to adhere strictly to the time-limits for presenting their two-yearly reports on the application of the Charter ;
2. that the Committee of Ministers reach its decisions more quickly at the end of each cycle of supervision ;
3. that the Secretariat departments responsible for assisting the supervisory bodies be given further facilities and staff, so as to be able to complete their work more rapidly.

1.2. Improving the questionnaire (form) used as a basis for the two-yearly reports

Many of the delays in the appraisal of national legislation and practice by the various bodies involved in the supervisory procedure could be avoided if the questionnaire on which the two-yearly reports are based were fuller, in particular where statistics are concerned. Now that the questionnaire is being revised, the Assembly recommends that the new text be designed to establish internationally uniform and comparable information. The Assembly should be consulted on the new draft questionnaire.

On the other hand, co-ordination between the Council of Europe and the ILO should be improved in connection with the national reports respectively on the Social Charter and on the ILO conventions.

2. Strengthening the role of the bodies involved in the supervisory procedure

2.1. Committee of Independent Experts

Two measures could be recommended for strengthening the role of this committee :

a. the Committee of Ministers should seek ways of enabling the Assembly to be directly involved in the appointment of the Committee of Independent Experts' members, so as to provide a further guarantee of the committee's genuine independence in the exercise of its functions ;

b. the conclusions and observations of the committee should have a more decisive impact on the Committee of Ministers when the latter comes to adopt its resolutions at the end of each cycle of supervision.

2.2. Governmental Committee

The Governmental Committee should become a tripartite body, consisting of representatives of national workers' and employers' organisations, in addition to representatives of the international organisations. It could thus play a more constructive part in the supervisory procedure and make proposals as to how the states concerned might apply the Charter more effectively. Such an arrangement would also contribute to a better knowledge of the Social Charter by the parties of the labour market. In order to facilitate the representation of management and labour, the Committee of Ministers should agree to the defrayal by the Council of Europe of the travel and subsistence expenses of representatives of national and international workers' and employers' organisations.

2.3. Parliamentary Assembly

The Assembly's role as a political institution, combined with its now traditional role as sponsor of nearly all Council of Europe initiatives in the social field, proves beyond all doubt its competence to give considered and authoritative opinions on ways of encouraging fuller application of the Charter by the states concerned. It is therefore essential that these political, rather than social, views be taken into consideration if the effectiveness of the Social Charter is to be improved. This should be done above all by the Committee of Ministers when it exercises its functions under Article 29 of the Charter.

In addition, the right, under Article 36, of member states to propose amendments to the Social Charter should also be granted to the Assembly.

II. A second, more radical, set of measures should be to implement effectively the rights and norms laid down in the Charter.

To this end :

a. Individuals or groups protected by the Charter should be able, if they consider that this protection is not, or only inadequately assured, to present petitions to the Committee of Independent Experts ;

b. A "European Court of Social Rights" or a "Social Chamber" would need to be created (administratively attached to the European Court of Human Rights), it being understood that the new organ should have the competence :

to examine petitions introduced according to paragraph a above and considered appropriate for submission by the Committee of Independent Experts ;

to be seized by any of the four supervision bodies, as well as by the Contracting States, on any question related to the application or the interpretation of the Charter ;

to pronounce decisions, in the two preceding cases, binding on the governments concerned.