



Recommendation 1168 (1991)¹

Future of the Social Charter of the Council of Europe

Parliamentary Assembly

1. The Assembly considers that Europe today stands in need as never before of a strong and unequivocal statement of social rights and principles of social protection.
2. The Social Charter of the Council of Europe can meet this need with relatively minor adjustment, provided that its procedures and resources for verification whether countries are applying comparable standards are redesigned and strengthened. This is the essential message of [Resolution 967](#) adopted on 28 June 1991 in Helsinki (Rapporteurs : Mr Beix and Mr Rathbone), reaffirming in today's context the position taken by the Assembly in 1989 (Resolutions 915 and 931, Recommendations 1103 and 1107).
3. The application of reasonably comparable standards in terms of social rights, in the light of national circumstances, should become a criterion for membership of the Council of Europe.
4. Member states of the Council of Europe must recognise that their obligations in terms of social rights extend, in principle, to all persons within their jurisdiction - in keeping with the principle established in Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.
5. With most member states now seeking membership or stronger links with the European Community, the Assembly calls for a clear Council of Europe perspective to be established - by the governments of those of its member states taking part in the intergovernmental conferences on political union and on economic and monetary union - on issues of social policy and social cohesion within the European Community.
6. There must be no "two-tier" or "fortress" social Europe. The European Community has as yet no legal competence for the position and condition of nationals of non-Community countries within the Community. For their part, Contracting Parties to the Social Charter of the Council of Europe are not bound under the Charter in respect of nationals of Council of Europe states which are not Contracting Parties. With the advent of new rights and freedoms in the countries of Central and Eastern Europe, the numbers of such nationals may rise dramatically. Accordingly, as reiterated by the Assembly since the first launching of the proposal for a charter for social rights of the European Community in 1988, the time has come for negotiating a proper relationship between the Community and the Council of Europe's Charter, on the basis of specific references in the Single European Act (1986) and in keeping with the *raison-d'être* of the regular "quadrupartite" meetings between the Community and the Council of Europe (see [Recommendation 1107](#)).
7. An initial and immediate updating of the Council of Europe's Social Charter and revitalisation of its verification procedures can be achieved through the amendments set forth in annex to this recommendation, thus providing a new structure in which the Assembly can play a positive role.
8. This updating should also take account of the effects of science and technology on the working environment, society and the family.
9. The Assembly thus seeks to enhance the political value of the Charter as an instrument for comparing, appraising and stimulating national social policies based on respect for human rights, through the holding of an annual debate as prescribed in Order No. 463 (1991), focusing on respect shown for commitments actually entered into by governments, and simultaneously to allow for the development of the judicial character of

1. Assembly debate on 24 September 1991 (17th Sitting) (see [Doc. 6499](#), report of the Social, Health and Family Affairs Committee, Rapporteur : Mr Foschi). Text adopted by the Assembly on 24 September 1991 (17th Sitting).



proceedings in each cycle of supervision by withdrawing (as a political body) from its formal role in the penultimate phase of each cycle, but without renouncing the opportunity of expressing its opinion on measures proposed or taken in the social field by the governments of member states, whether or not they are Contracting Parties to the Charter.

10. The scale of redesign required of current procedures is proportionate to the probability of any real strengthening of resources. Despite promising moves towards consensus on redesign in the deliberations of the ad hoc intergovernmental committee to which the Assembly has contributed, there is as yet no indication of political will greatly to strengthen resources. Accordingly, the Assembly seeks significant redesign of current procedures through strengthening and transformation of one of the present supervisory bodies into a European social rights committee to examine inter alia collective complaints.

11. The Ministerial Conference convened in Turin, on 21 and 22 October 1991, to mark the 30th anniversary of the Charter, should have an opportunity to express consensus on proposals for amendments to the Charter which are at least comparable in scope and substance to those in annex to the present recommendation.

12. The Assembly recommends that the Committee of Ministers should give immediate consideration to any proposals for amendments to the Charter placed before it following the Conference in Turin in conformity with the procedure prescribed under Article 36 of the Charter, this present recommendation and [Resolution 967 \(1991\)](#) serving to express the opinion of the Assembly.

Appendix

Amendments proposed to the text of the Social Charter of the Council of Europe²

Part I

2. Everyone has the right ...
3. Everyone has the right ...
7. ... the right to such protection and care as is necessary for their well-being and full personal development.
8. Every woman has the right to special protection during pregnancy and after childbirth.
9. (No amendment necessary in French)
... him or her ...
... his or her ...
11. (No amendment necessary in French)
... him or her ...
12. Everyone has the right ...
15. Every disabled person has the right to rehabilitation with a view to maximum self-reliance and the realisation of his or her social and economic rights, whatever the origin and nature of his or her disability.
17. Mothers, single parents and children ... protection, without discrimination.

Part II

Article 1

2. ... the right of a person to enter the occupation he or she chooses, without discrimination (in particular, discrimination which might be based on the use of genetic tests).

Article 2

1. to provide that daily, weekly and annual working hours be the outcome of reasonable joint agreements ;
3. to provide for an annual paid holiday of reasonable duration in the light of national circumstances and European standards, and of at least three weeks ;
5. to ensure either a weekly rest period ... or alternative days off where required for business reasons and mutually agreed.

Article 3

Insert a new sub-paragraph after sub-paragraph 2 :

to provide for the payment of compensation to persons who sustain injury as a result of the breach of such regulations.

Article 4

2. ... in particular cases ; the right to additional payments for performance and special responsibility ; the right in appropriate circumstances to participate in profit-sharing and share bonus schemes ; and the right of part-time employees to contribute to and benefit from sick-pay and pension schemes on a pro rata basis ;

Last unnumbered paragraph to read :

2. See paragraphs 7 and 8 of the recommendation.

... shall be achieved by freely concluded personal contracts or collective agreements ...

Article 5

Insert a new sentence after the first sentence :

The right to join an organisation to promote the interests of workers or employers shall imply the right not to join.

Last-but-one sentence to read :

... to the police or to those working in areas of extreme importance to national security shall be determined ...

Article 6

4. ... strike, taking account of obligations ... previously entered into and the requirements of a democratic society.

Article 8

Delete sub-paragraphs 4.a and b and replace them by :

4. to guarantee full respect for the rights of women to equal treatment and to provide for any specific measures of protection which may be necessary for women in employment.

Article 10

1. ... organisations and professional bodies, and to grant ...

Insert new paragraph 5 :

5. to provide special facilities for the rehabilitation and retraining of the long-term unemployed.

Article 11

1. ... the endemic causes of ill-health.

Insert new paragraph 4 :

4. to establish and develop programmes of rehabilitation for disabled persons.

Article 15

The right of disabled persons to rehabilitation and social integration

With a view to ensuring the effective exercise of the right of persons with physical, psychological or sensorial disabilities, whatever their origin, to vocational training ...

Insert new paragraph 3 :

3. to assist disabled persons in career development and social integration through measures to overcome architectural, physical, psychological and sensorial barriers to communication and circulation.

Article 17

The rights of mothers, single parents and children to social and economic protection

... the right of mothers, single parents and children ...

Article 19

b. the right to join or not to join trade unions, and enjoyment of the benefits of collective or personal bargaining ;

Part III

Article 20

Insert a new paragraph after paragraph 1 :

The European Community shall be deemed to comply with the obligations deriving from paragraphs 1.b and c if each of its member states parties to the Charter complies therewith.

Part IV

Article 21

... of Europe, at intervals and in a form to be determined by the Social Rights Committee, a report concerning ...

Add a new paragraph :

The European Community may present to the Secretary General a report on behalf of its member states parties to the Charter in respect of the provisions which they have accepted and for which the Community has responsibility.

Article 22

... shall determine, on a proposal from the Social Rights Committee, in respect of which provisions ...

Article 23

1. Each Contracting Party shall communicate copies of its report referred to in Articles 21 and 22 to national non-governmental organisations which are particularly qualified in an area regulated by the Charter and shall make them available to interested parties.

Article 24

... shall be examined by a Social Rights Committee, which shall also ...

Add a new second paragraph :

2. With regard to reports under Article 21, the committee shall draw up conclusions as to whether a Contracting Party is in breach of its obligations under the Charter.

Add a new third paragraph :

3. Within three months of the publication date of the committee's conclusions, a Contracting Party may refer any question or dispute relating to the interpretation of the Charter to an independent authority (to be defined in a protocol) which shall be composed of members who are not representatives of the Contracting Parties.

Article 25

Social Rights Committee

1. The Social Rights Committee shall consist of a number of persons equal to that of the Contracting Parties. No two members may be nationals of the same state. Members shall be elected by the Parliamentary Assembly by a majority of votes cast from a list of persons nominated by the Contracting Parties. Each Party shall nominate three candidates, of whom two at least shall be nationals. Members shall be independent experts of recognised competence in national and international social questions.

2. ... shall be elected for a period of six years. They may be re-elected. However, of the members first elected ...

3. ... immediately after the first election has been held.

4. ... elected to replace ...

New Article 25 bis

Collective complaints procedure

1. The Social Rights Committee may examine complaints addressed in writing to the Secretary General from any international organisation of employers or workers, and from any non-governmental organisation having consultative status with the Council of Europe and which is particularly qualified to deal with matters regulated by the Charter, to the effect that a Contracting Party is in breach of its obligations under the Charter.
2. The Social Rights Committee may also examine complaints addressed in writing to the Secretary General from any national organisation of employers or workers in a Contracting Party, if the Contracting Party concerned has recognised the competence of the Social Rights Committee to examine such complaints. An optional protocol to the Charter shall provide for such recognition.
3. The Secretary General shall transmit the complaint to the Social Rights Committee, having informed the Contracting Party concerned and acknowledged receipt to the organisation which lodged it.
4. The Social Rights Committee may request the Contracting Party concerned and/or the organisation which lodged the complaint to submit, within a prescribed period, written observations and information on the admissibility of the complaint.
5. If it decides that a complaint is admissible, the Social Rights Committee may request the Contracting Party concerned and the organisation which lodged the complaint to present in writing within a prescribed period any further explanations and information which it requires.
6. The Social Rights Committee may undertake an examination of the complaint in the presence of representatives of the Contracting Party and the organisation which lodged it. It may send, with the agreement of the Contracting Party concerned, a direct contact mission to a Contracting Party to investigate a specific situation.
7. The Social Rights Committee shall draw up a report on the facts and state its opinion as to whether the facts disclose a breach by the Contracting Party of its obligations under the Charter.
8. The report shall be transmitted to the organisation which lodged the complaint, to the Contracting Party concerned, to the Committee of Ministers and to the Parliamentary Assembly. It shall be made public.
9. Within three months of the publication date of the committee's report, a Contracting Party may refer any question or dispute relating to the interpretation of the Charter to an independent authority (to be defined in a protocol) which shall be composed of members who are not representatives of the Contracting Parties.
10. If the Social Rights Committee considers that a Contracting Party is in breach of its obligations under the Charter, the Committee of Ministers shall make known its views in the form of a recommendation addressed to the Contracting Party concerned.
11. The Contracting Party concerned shall provide information on measures taken to give effect to the recommendation of the Committee of Ministers in the next report it makes to the Secretary General under Article 21.

Article 26

... in the deliberations of the Social Rights Committee.

Article 27

Governmental Committee

1. A Governmental Committee shall advise the Committee of Ministers on the drawing up of recommendations in response to reports and conclusions of the Social Rights Committee.
2. The Governmental Committee shall be composed of one representative of each of the Contracting Parties and of the European Community. It shall invite ...
3. to be deleted.

Article 28

Parliamentary Assembly

The Secretary General of the Council of Europe shall transmit to the Parliamentary Assembly the conclusions and reports of the Social Rights Committee, with a view to the holding of periodical plenary debates.

Article 29

By a majority of its members, the Committee of Ministers shall, on the basis of conclusions and reports of the Social Rights Committee, on the advice of the Governmental Committee, and with simultaneous transmission to the Parliamentary Assembly, make to each Contracting Party any necessary recommendations.

Appendix

Scope of the Social Charter in terms of persons protected

Delete "nationals of other Contracting Parties" in paragraph 1.