



Resolution 218 (1962)¹

European Social Charter

Parliamentary Assembly

The Assembly,

Having taken formal note of the following Communication regarding the European Social Charter signed at Turin on 18th October 1961, presented by the Social Committee to the Assembly on 16th January 1962,

Resolves to transmit this Communication to the Committee of Ministers with the request that it be brought to the knowledge of the Governmental Social Committee.

Statement by the Rapporteur

The European Social Charter was signed at Turin on 18th October 1961 by the Ministers Plenipotentiary of the following thirteen member countries of the Council of Europe :

Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden, Turkey and United Kingdom.

Thus an undertaking begun by the Assembly long ago has been brought to fulfilment. In [Recommendation 14](#) of 7th December 1951 addressed to the Committee of Ministers, the Assembly requested the adoption of a common social policy by member States of the Council of Europe.

The Assembly carried the idea further in its [Opinion No. 5](#) of 23rd September 1953, laying down the basic principles for a European Social Charter.

On 20th May 1954 the Committee of Ministers decided to instruct the Governmental Social Committee to prepare a text for the Charter.

The Consultative Assembly meanwhile also continued its work, the outcome being three drafts : Document 403, discussed by the Assembly in October 1955 but not adopted; Document 488, discussed in April 1956 and referred back to Committee; and Document 536, appended to [Recommendation 104](#) and sent on 26th October 1956 to the Committee of Ministers for examination.

Taking [Recommendation 104](#) into consideration, the governmental Social Committee prepared a new draft, Document 927, which, in accordance with a proposal by the Assembly Social Committee, was submitted to a Tripartite Conference. The Conference was organised jointly by the Council of Europe and the International Labour Office and was held at Strasbourg from 1st to 12th December 1958, bringing together Government, workers' and employers' delegates.

The conclusions of the Conference were sent to the Committee of Ministers for study.

As a further check, the Committee of Ministers sought the opinion of the Consultative Assembly on Document 927.

This opinion couched in the form of a new draft, Document 1035, was adopted by the Assembly on 21st January 1960 as Opinion No.32 and duly transmitted to the Ministers.

1. Assembly debate on 16th January 1962 (21st Sitting) (see [Doc. 1382](#), Report of the Social Committee) Text adopted by the Assembly on 16th January 1962 (21st Sitting)



The present text is based on these three documents : the governmental draft, Document 927, the conclusions of the Tripartite Conference and the Assembly Opinion.

The Social Committee is gratified to see the fruits of an undertaking to which it has devoted so much effort. It hopes that this instrument will attain a twofold aim :

to contribute towards European unity through the interest it will arouse among the workers in free Europe;

to add an important and necessary element to building the Europe of tomorrow in accordance with the principles of democracy.

Now that the Charter has been signed, and the work thus successfully completed, the Assembly will no doubt wish to see to what extent the suggestions contained in [Opinion No. 32](#) have been taken into account.

Many of the differences between the Assembly's text and that of the Committee of Ministers are so slight as to be not worth mentioning, and I propose to refer only to the most important points.

This report is divided into three parts :

Major amendments proposed by the Assembly in [Opinion No. 32](#) which were accepted by Governments;

Major amendments which were rejected;

Conclusions.

PRINCIPAL AMENDMENTS PROPOSED BY THE CONSULTATIVE ASSEMBLY WHICH WERE RETAINED BY THE GOVERNMENTS

1. Article 14² - "The right to benefit from social welfare services"

The draft Charter drawn up by the governmental Social Committee and submitted for opinion to the Consultative Assembly ([Doc. 927](#)) made no mention of social welfare services.

The Assembly Committee considered that these services filled a modern need and that their importance was continually growing, in view of their effective contribution to the welfare of workers.

Hence the text of Article 15 as drafted in [Opinion No. 32](#).

The ideas expressed therein were retained in a slightly different form in Article 14 of the final text of the Charter.

One obvious shortcoming of the text was thus dealt with.

2. Article 20, paragraph 5- "Labour inspection"

The Tripartite Conference discussed the problem of establishing a system of labour inspection to guarantee respect for the rights set forth in Part II of the Charter, on conditions of work and the protection of workers. The workers' delegates were of the opinion that, without an effective means of supervising obedience to the undertakings in the Charter within each country, the text would lose much of its authority.

Although no objections on grounds of principle were raised at the Conference by the other participants, no decision was taken either on the drafting of a text or on the place it would occupy in the Charter.

However, the Assembly Committee proposed a paragraph which was included as Article 20, paragraph 5, in Part III of [Opinion No. 32](#).

The Assembly's proposal was accepted by the Committee of Ministers. A system of labour inspection is provided for under Part III, Article 20, paragraph 5, of the final text. In the opinion of the Assembly Social Committee, this paragraph is worded in a much less precise and satisfactory manner than that of [Opinion No. 32](#).

3. Article 28 - "Consultative Assembly"

2. Except where otherwise stated, the Articles are numbered according to the Charter signed on 18th October 1961.

The arrangements for implementing the Charter, as advocated by the governmental Social Committee in the draft submitted to the Consultative Assembly for opinion ([Doc. 927](#)) provoked considerable criticism on the part of several trade-unionists and politicians.

Under Articles 20, 24, paragraph 1, 26 and 27 of that draft, Governments had reserved a virtually exclusive role in those arrangements.

In order to avoid this, the Assembly Committee, among other things, suggested in a new Article, No. 28, that the Consultative Assembly should become one of the bodies supervising the implementation of the Charter.

Public opinion would thus learn through the Assembly whether the basic clauses were being respected and applied in all countries having ratified the instrument.

This proposal was rejected by the governmental Social Committee and then accepted by it, after a joint meeting with a delegation from the Assembly Committee, and a somewhat modified Article 28 appears in the final text signed at Turin.

The Consultative Assembly will thus hold a watching brief over the application of the Charter, and this is extremely important.

4. Article 29 - "Committee of Ministers"

In the Addendum to [Opinion No. 32](#), the Assembly drew the attention of the Committee of Ministers to the fact that, if the present system of unanimity within the Committee of Ministers continued in force, a State which had not ratified the Charter could take decisions on it, since Article 35 provided for entry into force of the Charter after deposit of the fifth instrument of ratification.

This aspect gave rise to lengthy discussion by the governmental Social Committee, leading to amendment of Article 29. Unanimity within the Committee of Ministers is accordingly no longer required for making recommendations to the Contracting Parties on the application of the Charter. A two-thirds majority will be sufficient.

5. Article 1, paragraph 1 - "Full employment"

The Tripartite Conference held a long discussion on whether to include the principle of full employment in the Social Charter; this led to a compromise text which was adopted by the Assembly in its draft and remains unchanged in the final version signed at Turin.

6. Article 6, paragraph 4 - "Right to strike"

This question was also debated at length by the Tripartite Conference. A compromise text was drawn up, which was kept in the Assembly draft and remains unchanged in the final version of the Charter. The article in question is of great importance, particularly vis-a-vis peoples living under a dictatorship.

II - PRINCIPAL AMENDMENTS PROPOSED BY THE CONSULTATIVE ASSEMBLY WHICH WERE REJECTED

1. Article 2, paragraph 1, of [Opinion No. 32](#) - "40-hour week"

Article 2, paragraph 1, of [Opinion No. 32](#) of the Consultative Assembly stipulates that the Contracting Parties undertake

"to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to a maximum of 40 hours".

It was the Assembly's opinion that the 40-hour week was currently considered by European workers as one of the principal objectives at which the sixteen member countries should aim. Perhaps it will be years before the 40-hour week can be adopted throughout free Europe; it is none the less true that the 40-hour week is one of the most cherished aspirations of all the workers of Europe.

Believing that the Committee of Ministers should take this into consideration, the Assembly accordingly endeavoured to draft a text which, while taking these aspirations into account, would only commit Governments to recognising the 40-hour week as one of the objectives of their social policy.

In the proposed text, there could be no doubt in the matter; it was, moreover, very similar to that accepted for Article 1, paragraph 1, of the draft Charter, on full employment.

In this Article 1, Governments are not asked to achieve full employment immediately, but only to accept it as "one of their primary aims".

In both cases there is a declaration of intent concerning extremely important points of the social policy of the member countries, and not a formal undertaking.

The Assembly will probably not quite see why the position should differ in these two cases.

2. Article 19, paragraph 6 - "Reunion of the families of migrant workers"

The Assembly also believes that the free movement of manpower between member countries is another important principle of social policy among those which the Council of Europe should have recognised in the Social Charter.

Accordingly, in paragraph 6 of Article 19 of [Opinion No. 32](#), the Assembly's object was to grant migrant workers the right to be accompanied or joined by their families. It was specified that by family group was meant spouse and dependent children or parents.

While the principle is recognised in the final version of the Charter, the latter's definition of the family is much narrower.

3. Article 20, paragraph 1 - "Compulsory minimum undertakings"

The problem of the commitments undertaken by the Contracting Parties on signing the Charter is a point to which the Assembly has always attached the greatest importance.

It is, of course, understood that States ratifying the Charter are not required to conform to all the provisions in Part II, but only to certain chosen ones.

During the Tripartite Conference, the following proposal was adopted :

"The Government members of Austria, Belgium, Denmark, France, the Federal Republic of Germany, Greece, Italy, Luxembourg, the 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".

By this declaration, the Governments appeared to accept the principle of a common "minimum", chosen "in such a manner as to enable accession to be secured on the widest scale".

In [Opinion No. 32](#) the Assembly had chosen six Articles : 1, 2, 5, 6, 12 and 19, which were to form the "minimum" accepted by all the Contracting Parties.

The Social Committee was disappointed to find that the Charter had gone back on the decision taken by the representatives of the Governments at the Tripartite Conference. The new text destroys the very principle of a "minimum", since Article 20, paragraph 1 (b) of the Charter says :

"Each of the Contracting Parties undertakes to consider itself bound by at least five of the following Articles of Part II of this Charter : Articles 1, 5, 6, 12, 13, 16 and 19"

The following table shows quite clearly that if each Contracting Party applies this provision, it is possible that there will not be a single article in the proposed "minimum" which will be common to the sixteen countries :

Appendix

Contracting Parties Parties contractantes	Articles adopted - Articles adoptés						
I	1,	5,	6,	12,	13,	..	..
II	..	5,	6,	12,	13,	16,	..
III	..	..	6,	12,	13,	16,	19
IV	1,	..	..	12,	13,	16,	19
V	1,	5,	..	..	13,	16,	19
VI	1,	5,	6,	..	..	16,	19
VII	1,	5,	6,	12,	..	..	19
VIII	1,	..	6,	12,	13,	16,	..
IX	..	5,	..	12,	13,	16,	19
X	1,	..	6,	..	13,	16,	19
XI	1,	5,	..	12,	..	16,	19
XII	1,	5,	6,	..	13,	..	19
XIII	1,	5,	6,	12,	..	16,	..
XIV	..	5,	6,	12,	13,	..	19
XV	..	5,	6,	..	13,	16,	19
XVI	1,	..	6,	12,	..	16,	19

In these circumstances, it is no longer possible to speak of a "common minimum". Its existence could only be fortuitous, and would depend on the choice made by the Contracting Parties among the seven articles proposed.

It may be objected that the system recommended by the governmental Social Committee exists in certain ILO countries. That is hardly a valid argument, for there are many differences of substance and structure between those conventions and the European Social Charter.

4. Article 20, paragraph 4 of [Opinion No. 32](#) - "Maximum waiting-period for acceptance of all the provisions of the Charter"

In [Opinion No. 32](#), the Consultative Assembly had proposed the following paragraph :

"Within a period of not more than five years from the time when the Charter comes into force in its own country, each Contracting Party shall be obliged to accept all the provisions contained in Part II of the Charter".

This provision is of great importance in the eyes of the Assembly, for it constitutes a guarantee for social progress in member countries and especially in less developed ones, within a fairly brief lapse of time.

This amendment was simply rejected, and no provision of the sort is made in the present text.

5. Article 36 - "Amendments"

In the former draft of the governmental Social Committee ([Doc. 927](#)), this article began as follows :

"Any Signatory Government may propose amendments ..."

In [Opinion No. 32](#) the Consultative Assembly proposed the following text :

"Any Signatory Government or the Consultative Assembly may propose amendments ..."

It is surprising that this amendment was not kept in the final text, as it was in keeping with the Statute of the Council of Europe and improved this article, which is incomplete as it now stands.

It cannot be denied that the Consultative Assembly has the right to propose amendments to the Social Charter or any other Conventions of the Council of Europe. That is clear from Articles 22 and 23 of the Statute of the Council, and there are indeed numerous precedents.

On several occasions, the Assembly has proposed amendments to other Conventions in the Council of Europe and some of them have been adopted by the Committee of Ministers.

Since the principle affirmed in the amendment proposed by [Opinion No. 32](#) of the Assembly is absolutely indisputable, there are two possibilities : either it is considered unnecessary to mention those who can propose amendments, since the Governments and the Assembly possess this right under the Statute; in that case, the first sentence of Article 36 should have been deleted and the rest of the article corrected accordingly; or it is thought necessary to specify who has the right to propose amendments, In that case, the enumeration should have been complete in order not to give rise to misinterpretations on the part of those who are not familiar with the Statute of the Council of Europe.

III - CONCLUSIONS

It is clear from the preceding that the instrument signed at Turin on 18th October 1961 is not perfect.

We should, of course, be pleased that the amendments proposed by the Assembly which are mentioned in Part I of this document were accepted.

I am happy to see that, for the first time, the Consultative Assembly is to have a share in supervising the application of a Council of Europe Convention, as stated in Article 28 of the Charter.

It is also important to note that under Article 29 of the text, the right of veto in the Committee of Ministers is not applied; this occurs for the second time since the Council of Europe was founded, the first instance being in the Convention on Human Rights.

I also attach great importance to the inclusion of a new article in the Charter on "the right to benefit from social services", and to the paragraphs on "labour inspection" and "full employment".

With regard to the "right to strike", it should be observed that this is the first time, to my knowledge, that an international convention has guaranteed this right to workers and their organisations for the defence of their social and economic interests.

As to Part II of this report, concerning the matters on which the attitude of the Committee of Ministers has been somewhat disappointing, I should prefer not to have had to write it.

But how could I pass over in silence the rejection of the paragraph on the "40-hour week", which the Assembly had drafted with such great care, or the changes made in the paragraph on "Compulsory minimum undertakings" which was so weakened despite the declarations made by the Tripartite Conference?

I also regret that the amendments proposed by the Assembly to paragraph 6 of Article 19 on the "reunion of families of migrant workers" and to Article 36 on the problem of "Amendments" were not retained by the Committee of Ministers.

With regard to the "maximum waiting-period for acceptance of the Charter" proposed by the Consultative Assembly, it is understandable that this undertaking may have caused some hesitation in countries which did not want to commit themselves too far.

It is to be regretted, however, that no compromise solution was found; it might have been possible to lengthen the waiting-period in particular cases or, perhaps, to allow signatory States to accept all but two or three of the provisions, where the principles involved were particularly difficult to apply.

Notwithstanding the foregoing remarks, should the signing of the European Social Charter nevertheless be cause for rejoicing?

In reply, the Social Committee recalls a passage from the address by the Vice-President of the Consultative Assembly at the official ceremony of signature of this instrument :

"What is the meaning and the value of the Charter for us, the European parliamentarians?"

I shall attempt to answer this question.

In the opinion of the Consultative Assembly, the Charter was to achieve three things. Does it do so ? First of all, this instrument was to guide future activities of the Council of Europe in the social field, by laying down the main principles for a common policy in its member countries.

Secondly, it was to provide an international guarantee to European workers by ensuring that their economic and social rights would be respected.

Finally, it was to show the Communist world and Afro-Asian and Latin American countries how great was the protection which European countries afforded their workers. It should be stressed that this protection represents, of course, no more than a "minimum". More favourable standards for workers can exist, and do in fact exist in several of our countries.

In all sincerity I can affirm that the signed instrument accomplishes these three things.

This is why we can say today that the Social Charter is one of the most important accomplishments of the Council of Europe."

The Committee entirely subscribes to this opinion, which is a reflection of its own point of view.

But what is to be its position in the future, faced with the new situation created as a result of this signature ?

I do not at present intend to lay before the Assembly any further amendments to the text signed by the Ministers.

I think that this would be premature, and I believe instead that all the Assembly's efforts should tend in one direction : towards securing the ratification of the Charter by the largest possible number of member countries in the shortest possible time.

In this respect I am pleased to refer to [Resolution 216](#) of 28th September 1961, and I invite every member of the Assembly to see that ratification proceedings are begun as soon as possible in his own Parliament.