Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1415 (1999)[1]

Additional protocol to the European Convention on Human Rights concerning fundamental social rights

Parliamentary Assembly

1. The Assembly strongly reaffirms its commitment to the effective protection of human rights. It observes that there can be no genuine democracy without recognition of all human rights, including social rights.

2. Economic and social rights are inherent aspects of human dignity and are clearly human rights, in the same way as are civil and political rights. These two categories of rights are interdependent and cannot be dealt with differently.

3. Most states are currently carrying out economic reforms and substantial social changes. The east and central European countries, in particular, are going through a difficult period of transition. The globalisation of the economy and of commercial and financial markets, as well as increasing pressure on society on the economic front and from the logic of competition, make it essential to promote common values and standards that can be respected by all European countries.

4. Economic progress is not necessarily concomitant with social progress, but there should be no economic progress without recognition of social progress and social rights. The future shape of society depends on this.

5. The member states of the Council of Europe must continue to co-operate to draw up common social standards, and all must accept similar social commitments. They must be firmly committed to guaranteeing the enjoyment and effective exercise of social rights for everyone. This objective must be an absolute priority for governments.

6. On the occasion of the 50th anniversary of the Universal Declaration of Human Rights, the Committee of Ministers adopted, on 10 December 1998, a declaration in which "the governments of member states of the Council of Europe [reaffirm] the need to reinforce the protection of fundamental social and economic rights (…) which form an integral part of human rights protection".

7. The Assembly recalls that the European Social Charter is the benchmark for fundamental social rights and one of the keystones of the European social model.

8. The Assembly has been closely involved in promoting this instrument and, above all, in giving it fresh impetus, and in this connection recalls its Recommendation 1354 (1998). It especially welcomes the success of the campaign launched in January 1997 to promote ratification, and the entry into force of the 1995 protocol providing for a system of collective complaints, and would like to see the European Social Charter and the revised Charter ratified by the largest possible number of states in time for the Council of Europe's 50th anniversary in May 1999.

9. If democracy is to be firmly rooted in Europe, it is necessary to guarantee greater effectiveness and greater enforceability of social rights. Thought should be given to the reinforcement of existing international legal instruments.

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1. Assembly debate on 23 June 1999 (21st Sitting) (see Doc. 8357, report of the Social, Health and Family Affairs Committee, rapporteur: Mrs Pulgar; and Doc. 8433, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens). Text adopted by the Assembly on 23 June 1999 (21st Sitting).

10. In Recommendation 1354 (1998) the Assembly notes that the European Court of Human Rights is "a central authority for the protection of human and civil rights and human dignity" and asks that "the possibility of transferring individual rights from the Social Charter to the European Convention on Human Rights" be examined "in order to create the basis for stricter legal observance".

11. Extending the sphere of jurisdiction of the European Court of Human Rights, to which complaints can be made by individuals, appears to be the most efficient means – complementary to the supervision machinery of the European Social Charter – of improving the protection of European citizens, and of guaranteeing full respect of social rights by states.

12. A protocol to the European Convention on Human Rights would make it possible to remedy deficiencies and would constitute an instrument for strengthening social cohesion, in particular with a view to putting an end to inequalities and safeguarding the interests of the most vulnerable sectors of society. The elaboration of such a protocol is, for the Council of Europe, the challenge of the next millennium.

13. The Assembly notes that a certain number of social rights are already recognised and protected by the European Convention on Human Rights, in particular under Articles 4, 8, 11 and 14. However, these articles are of limited scope in relation to both violations of the principle of non-discrimination (Article 14) and the recognition of collective rights (Article 11).

14. The Assembly recommends that the Committee of Ministers invite member states of the Council of Europe:

i. to pledge, at all levels, to secure the recognition and immediate and practical implementation of social rights;

ii. to adopt legislation recognising and guaranteeing everyone the full benefit of minimum fundamental social rights;

iii. to sign and ratify the relevant international instruments, in particular the European Social Charter, the revised European Social Charter and the revised European Code of Social Security;

iv. to introduce immediately the legislation and regulations required for implementation of these instruments;

v. to reinforce national legal mechanisms and procedures whereby individuals can satisfactorily claim their social rights in their national courts.

15. The Assembly recommends that the Committee of Ministers:

i. carry out a survey to ascertain which of the social rights guaranteed by the constitutions of member states, and considered as enforceable by national courts, might be added to the rights protected by the provisions of the European Convention on Human Rights;

ii. carry out a survey to ascertain which of the rights guaranteed by the European Social Charter and the revised European Social Charter could be considered enforceable and be added to the rights protected by the provisions of the European Convention on Human Rights;

iii. consult the European Court of Human Rights in order to ascertain which of the social rights could be considered as already guaranteed by the Convention, in the light of its case-law;

iv. draft an additional protocol to the European Convention on Human Rights, on the basis of the above-mentioned surveys, with a view to guaranteeing as a first stage some of the following rights

a. Protection of basic needs

– the right to housing;

– the right to basic social and medical assistance;

– the right to a minimum income;

b. Protection in the work environment

– the right to fair remuneration;

– the right to receive regularly and on time wages, pensions and social allowances;

– the right to fair and satisfactory working conditions which preserve human dignity (including the right to reasonable working hours, to annual paid leave, to public holidays with pay and to a weekly rest period);

- the right to safe and healthy working conditions and to protection from unhealthy and dangerous work;
- the right to appropriate vocational training;
- the right to specific protection in the event of termination of employment (minimum period of notice of dismissal, right of workers dismissed for reasons other than misconduct to minimum compensation, prohibition of dismissal and of termination of employment on arbitrary grounds);
- the right of employed women, whether salaried or self-employed, as mothers or pregnant women, to protection;
- prohibition of work by children who have not yet reached the school-leaving age;
- the right to integration in the world of work of persons with disabilities;
- the right to protection from sexual harassment in the workplace.

16. The Assembly, recognising that this is an ambitious and difficult undertaking, is of the opinion that a progressive approach is required, and that the legal enforceability of all these rights should constitute a long-term objective.

17. Moreover the Assembly takes note that the Committee of Ministers, in the Declaration on the occasion of the 50th Anniversary of the Universal Declaration of Human Rights, agreed to "finalise as soon as possible the text of a legally binding instrument providing for the prohibition of discrimination in all its forms".

18. It recalls that it has repeatedly urged the Committee of Ministers to elaborate an additional protocol to the European Convention on Human Rights strengthening the non-discrimination clause of Article 14. It underlines that numerous social rights are related to equality. A draft protocol could therefore deal with a number of social rights, such as non-discrimination in respect of access to health care and social services, equal treatment at work and equal remuneration, in particular between men and woman, or non-discrimination in respect of access to social housing.