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Draft European Social Charter

Communication
Mr Per FEDERSPIEL, Denmark

1.

15lh October, 1955

Dear Mr. President,

On September 19th, 1955 the Committee on Economic Questions, meeting in Paris, received from the Committee on Social Questions the draft European Social Charter (Document 403) with the request for an opinion on the Articles concerning the creation of a European Economic and Social Council. Attached to the draft was the Report thereon presented by M. Dehousse, Rapporteur of the Committee on Social Questions and of the Joint Sub-Committee on the Economic and Social Council. Having heard M. Mutter's presentation of the document, the Committee appointed M. Kalbitzer as Rapporteur.

Subsequently, the Standing Committee, on September 26th, requested the Committee on Economic Questions to give its opinion on the whole of the draft European Social Charter, !.. e. also on the Social Charter proper. This extension of mandate was in full agreement with the views of the Committee on Economic Questions, as expressed by me at the time, that the consideration of the Economic and Social Council could not be divorced from a study of the provisions that form the basis of one of its main tasks.

The Committee on Economic Questions discussed the subject during its meeting of 14th October in the light of your suggestion —made in. the course of our conversation yesterday afternoon—that the debate of the Assembly on Tuesday next might take the form of a first reading, at the end of which a vote in principle would be taken on Chapters I and II of the Charter, but not on Chapters III and IV concerning the Ecosoc, leaving the final vote on the project as a whole to be taken next May. However, the Committee on Economic Questions, at its meeting on October 14th, unanimously decided to instruct me to ask you for a postponement of the debate until the next session of the Consultative Assembly.

In making this request the Committee is' moved by its strong conviction that the draft Social Charter deserves a thorough examination on its part, in view of the essentially economic character of numerous provisions carrying far-reaching economic implications. The short time which the Committee has had at its disposal for this important enquiry has manifestly not been sufficient to permit it to arrive at a considered opinion either on the proposed Social Charter proper or on the proposed Economic and Social Council.

In justification of the Committee's decision I ask to submit, on behalf of the Committee, the following remarks, based on its ' first preliminary examination of the draft European Social Charter, dealing first with the Charter itself and, secondly, with the Economic and Social Council.

The Social Charter is set forth in Parts I and II of the draft.

Part I, headed Preamble, takes the form of a series of introductory clauses enunciating the general principles of social and economic policy by which the Member States will be guided.

In illustration of the economic substance of these principles one can mention Article 2, which stakes out the general lines of economic policies that Governments should pursue; Article 6, which asserts the right to work and consequent maintenance of full employment; Article 7, which claims workers' participation in the profits of the enterprise as a step towards a more equal distribution of income; Articles 10 and 11, which proclaim the responsibility of Member States for the economic and social expansion of their overseas territories and collective responsibility for their own under-developed areas; Article 13, which recommends the lowering of barriers of all kinds to the free circulation of persons and goods, particularly manpower and capital. The essentially economic character of these provisions is as clear as their scope is vast.

These principles are of a declaratory character. The last article of Part I, Article 15, however, establishes a legally binding commitment on signatories :

1. to recognise a number of rights of individuals ;
2. to introduce and authorise all measures required to ensure the effective enjoyment of these rights.
3. These rights—derived from the general principles—are enumerated in Part II. Again, many of the rights —and particularly those set forth in the first two Sections, headed respectively (a) Rights pertaining to employment and (b) Right to an adequate standard of living and to social security—are clearly economic in character either by their nature or by their economic implications.

(i)

The structure of all the articles setting forth the rights is the same, each beginning with a declaration relating to the subjective aspect of a right which is recognised as such, and continuing with a definition of the objective conditions required to ensure the exercise of such right. Principles arc thus defined in ternis of the ways and means of attaining them. Conversely, obligations are expressed in terms of precise policies.

It is a truism to say that many economic policies are highly controversial, not only because of the element of political philosophy they almost invariably contain, but also because of our faulty knowledge of the complex working of the economic mechanism. Thus, a policy which might be adequate—-in relation to a particular right —in one country at one time might well be totally inadequate at another time or in another country.

This raises the question whether it is advisable to lay down in an Act of this nature, in a Charter, obligations concerning concrete economic policies. In any event it calls for the closest scrutiny from an economic angle of each separate element and of the compatibility of the several elements.

A few examples will bring out the controversial character of some of the strictly economic provisions of the Charter and the need of weighing them carefully against each other.

Article 1 of Part II commits signatories to make up by public investments any inadequacy in the volume of investment needed to maintain full employment. Important as this policy may be in many cases, it will probably never be sufficient by itself. It constitutes one of several instruments to attain a desired volume of investment and it may in certain circumstances not be the most adequate.

The principle of full employment and that of the stability of the purchasing power of money, joined together in one and the same paragraph in the Preamble (Article 2) and reiterated separately in Articles 1 and 13 of Part II, each constitute very complex problems upon which there is heated argument, not to mention that the two have been most difficult to reconcile in the recent past. The problems that will arise whenever a priority must be determined between them—and that need will often be felt—will, obviously, depend on the conditions at hand in a given country at a given time.

A 40-hour week [Part II, Article 2 (d)] and a legal retirement age of 65 [Part II, Article 2 (h)] also raise serious problems separately and in conjunction with one another, and can certainly not be synchronised in all countries. The one may defeat the other, and together they may defeat a third economic objective, for instance the duty placed on Governments, in Part II, Article 10, to supply consumer goods and housing at moderate prices, which is perhaps potentially the most far-reaching economic provision of the Charter.

Another controversial provision (Part II Article 4) is that which claims a share for workers in the management and profits of the enterprise—an issue on which even the trade unions are far from agreed.

This enumeration of controversial economic provisions contained in the Social Charter is far from exhaustive. It should be added that several of the social policies advocated in Parts I and II also carry far-reaching economic implications which deserve the most careful attention.

It is worth noting, finally, that the United Nations draft Covenant on Economic, Social and Cultural Rights, by which the draft Social Charter has been inspired to a great extent, docs not at all go as far as the Charter in defining the rights of individuals in terms of obligations of the State, and that the United Nations organs haA'e been labouring on it for several years and still are.

The fact that the Social Charter is to be implemented by the Economic and Social Council, the vast scope and the binding character of its economic implications clearly indicate an imperative need for the Committee on Economic Questions to undertake a searching examination of the relevant articles of the draft Social Charter as such.

The provisions relating to the proposed European Economic and Social Council are contained in Part III of the draft setting forth the functions and structure of the Council and in Part IV laying down the rules that will govern its implementation of the Charter.

It stands out clearly from the text of Articles 20 and 21 that the main purpose to be served by creating the Council is " to ensure the observance and implementation of the pledges made by the High Contracting Parties in this Charter (Article 20) ". However, " in addition " the Council " shall prepare, guide and facilitate such measures of integration or co-operation as have been or shall be embarked upon for the benefit of all or some of the sectors of European social and economic life " by (a) developing contacts between European professional and social organisations, and between technical and administrative services of the various States; and (b) transmitting recommendations, with the concurrence of the Consultative Assembly, to the Committee of Ministers and to other European governmental organisations (Article 21).

The Council is to be composed of 93 members, one-third representing the employers, one-third the workers and one-third the general public, i. e. Government experts, representatives of the consumer, of independent occupations and of social and cultural activities. Members are not to be bound by any mandate or instructions and shall reach their decisions by simple majority of votes- cast, in the case of recommendations with the added proviso that two-thirds of the members must be present (Articles 23-28).

The wording of Articles 20 and 21 would appear to warrant the reflection that the primary emphasis upon the Council as an organ to ensure the implementation of the Social Charter would seem to relegate its more general and—in principle—at least equally important responsibilities to a secondary place in a way hardly suited to enhance the status of that organ in this sphere.

However, the main question is whether in present circumstances there is need for the creation of a European Economic and Social Council as proposed, quite apart from its contemplated function relating to the implementation of the pledges made in the Social Charter.

In his Report concerning those articles of the draft European Social Charter which relate to the European Economic and Social Council, M. Dehousse devotes Chapter II to a discussion of the need for such an institution.

M. Dehousse introduces his presentation with the following statement :

" Ther e is a general tendency these days for democratic institutions to show ever increasing concern for the opinion of the various sectors of economic and social life or, more specifically, of the professional and trade union organisations which represent them. The effect of this tendency is to create, side by side with the political institutions, more or less developed and co-ordinated bodies whose function is to ensure that these various sectors can officially bring their influence to bear. It has become normal, under the democratic system, for professional, technical or social organisations to be able to express their views ; they have acquired the status of a Fourth Estate. This tendency has also been followed by the international institutions."

Mention is subsequently made of a number of such representative bodies established by Member States, i e. at the national level. Foremost among them are the French Economic Council and the Dutch Social and Economic Council. Although the membership of both of these organs is dominated by representatives of trade unions and employers' organisations, the French Council also includes representatives of other organisations —consumers, co-operatives, middle classes, etc. while in the Netherlands up to one-third of the members are directly appointed by the Crown as experts. All members act in their personal capacity and without, instruction from their organisations.

The functions of the two Councils arc similar : (a) to comply with requests for their opinion on social and economic measures contemplated by the Government—but while the Dutch Ministers are in principle obliged to ask the Council's opinion, the French authorities are under no such obligation and rarely put forward any such request; (b) to express an opinion "I. their own initiative,

The Report goes on to emphasise that, cvon where no such organs are found, Governments very frequently call upon the various non-governmental organisations to givo their opinion on important social and economic proposals.

As for international organs of the kind described above reference is made to the Consultative Committee of the E. C. S. C, composed of an equal number of representatives of producers, workers and consumers and dealers, all appointed by the Council of Ministers. The Committee may be consulted in any case by the High Authority which is, moreover, bound to do so in certain cases.

Contrasting the limited scope of this Committee with the general competence given in the draft Treaty setting up a Political Community to the Economic and Social Council which was contemplated but which never materialized, M. Dehousse concludes (para. 41)' that " there is in Europe no official institution which can ensure a sufficiently close association of professional and social organisations with the formulation of European social policy ". It may be noted that economic policy has been omitted here.

Referring to the consultation procedure with non-governmental international organisations established by the Council of Europe, O. E. E. C, E. C. E., etc., the Report goes on to state that " the consultative status granted by the Council of Europe to certain trade unions or professional organisations is sufficient illustration of the shortcomings of this system " in that "it is always left to the official body concerned to decide whether a consultation is desirable. The system therefore only allows for fragmentary opinions to be obtained and there is never any opportunity for the different points of view to be compared before they are submitted ".

M. Dehousse sums up that as a general rule " the results of these consultations would carry far more weight if they were co-ordinated by an organisation which had an overall view . of European economic and social problems " (para. 43).

The case for the creation of a European Economic and Social Council (quite apart from its functions in regard to the Social Charter proper) would thus appear to rest upon two distinct arguments :

First, representative non-governmental organisations should be more closely associated with the formulation of European policy than they are at present;

Secondly, the consultation of such bodies would carry enhanced weight if the various organisational points of view were compared and co-ordinated before their submission.

The question is thus to consider, first, the merit of the arguments outlined above, and, in the second place, whether, if accepted, they justify the creation of the proposed Eco-omic and Social Council.

As for the first argument, it is possible to be brief. In so far as the Council of Europe is concerned there would probably be general agreement that the association of international non-governmental organisations with its work is as yet insufficiently developed and that the strengthening of existing links might contribute materially to the successful functioning of the Council.

The second argument is of an entirely different quality and far more controversial in character. The key question may be simply posed as follows : is it really desirable that the views of the various non-governmental organisations be co-ordinated prior to their submission to the appropriate intergovernmental organs?

While it is true, as pointed out by M. Dehousse, that " it has become quite normal, under the democratic system, for professional, technical or social organisations to express their views ", it is equally relevant to emphasise that this trend has been widely regarded with misgivings as implying a threat—de facto if not de jure—to the supremacy of parliamentary assemblies. Far from calling for a further consolidation of extra-parliamentarian centres of power, the trend has frequently been the opposite, calling for alertness on the part of elected representatives to preserve the genuine independence of parliaments from organised interests.

The authors of the Social Charter envisage the prior co-ordination of organisational points of view to take the form of recommendations arrived at by majority decisions (Articles 26 and 28).

The intergovernmental organisations —as well as the Consultative Assembly the approval of which for such recommendations is stipulated (Article 21)—will thus be presented with recommendations, which, at least potentially, will be determined by the weight accorded-—-necessarily very arbitrarily—to the various groups of interests represented in the Economic and Social Council. In practice, if not in theory, it is rather too easy to anticipate the way in which Council decisions will be made as consisting in a scramble by the two major groups, workers' and employers' representatives, for the largest possible share of the representatives of the " general public ". More important, still, is that as a matter of principle the various interests represented—whatever apportionment of seats be finally chosen—are in effect incommensurable—at least as long as the

idea of a corporative community is not accepted as the basis for our political system. If the latter possibility may be ruled out, it would appear important to say, and to insist, that the only proper criterion by which the interests of various groups can be weighed against each other is the political one applied by parliamentary representatives, each of them representing— within their respective countries— approximately the same number of citizens' votes, and by Governments ruling in accordance with their majority. The Committee on Economic Questions feels this to be a highly delicate subject on which no opinion should be formed without the most thorough consideration of its various aspects.

With respect to the procedure envisaged it should be noted, moreover, that the Council's Recommendations are to be transmitted— via the Consultative Assembly—(i) to the Committee of Ministers, (ii) to other European governmental organs. This means that, although the Economic and Social Council is to be set up " within the framework of the Council of Europe ", it is possible for its recommendations to by-pass the Committee of Ministers, thus giving the new organ a status not enjoyed by the Consultative Assembly itself.

Summing up its foregoing observations, the Committee on Economic Questions feels that while it can fully endorse the first argument— the need for closer association of representative non-governmental organisations with the formulation of European policy—it has misgivings as regards the second argument— the need for prior co-ordination of organisational views in the form proposed.

It remains to consider whether, the need for assuring closer links with non-governmental organisations justifies the creation of a European Economic and Social Council, as proposed, still disregarding the contemplated functions of that organ in relation to the implementation of the Social Charter which the Committee on Economic Questions has had no opportunity of discussing.

In a general way, and as a matter of principle, the Committee is anxious that before any decision be taken on the institution of a new; international organ at the European level all possible alternatives be first explored. It would appear from.the available documentation that no such enquiry has been undertaken so far, and the Committee on Economic Questions feels that this issue should he carefully examined before the matter is taken any further.

I have the honour to remain, Mr. President, Your obedient Servant,

Signed : Per FEDERSPIEL

Chairman Committee on Economic Questions