Parliamentary Assembly
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COUNCIL OF EUROPE
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Opinion 149 (1990)[1]

Application of the Social Charter of the Council of Europe (tenth cycle: phase 2)

Parliamentary Assembly

1. In the periodical opinions which it is given the opportunity to present on the application of the Social Charter,[2] the Assembly usually focuses on respect shown for the specific obligations by which Contracting Parties consider themselves formally bound.

2. 1989, however, was a most exceptional year. Events in Central and Eastern Europe led the Assembly to draw attention to the Social Charter of the Council of Europe ‘‘as an instrument of dialogue and rapprochement" with the countries concerned (Recommendation 1107). In the field of social policy, the year was marked by a strong but unsuccessful[3]effort to produce a ‘‘social charter" for the European Community. The Assembly commented on and sought to influence the direction of this effort in its Resolutions 915 and 931.[4]

3. A side-effect of this effort was to throw light on the value of the Social Charter of the Council of Europe as a statement of principles governing the aims of policy, in contrast to its value as a statement of formal obligations.

3.1. As a statement of social policy principles, the Social Charter of the Council of Europe ‘‘embodies a wider range of rights, fuller standards and a more all-embracing view of social protection" (Resolution 931) than anything the European Community looked like coming up with in the course of last year.

3.2. Nine of the twelve Community states already subscribe to these aims, and it is understood by the Assembly that the governments of the other three are currently promoting their countries' accession.

3.3. Social policy initiatives will continue to be taken within the Community (notably in regard to the health and safety of people at work), yet nothing could be more judicious nor in tune with the views of national parliaments (as expressed in Assembly Resolution 931) than to work towards the realisation of a ‘‘European social area" which encompasses all countries of the Council of Europe, including those of the Community and EFTA, and extends potentially to those of Eastern and Central Europe which are showing interest in stronger relations with the European institutions.

4. Accordingly, the Assembly has called (Resolution 931) for accession by the European Community to the Social Charter of the Council of Europe on the grounds : a. that the latter instrument, suitably adapted, needs to be brought into a proper relationship with Community law ; b. that a broader and richer basis would thereby be afforded for social action and policy throughout the Community (in conformity with the ‘‘principle of subsidiarity") ; andc. that this is in the interest of the wider Europe which is emerging.

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1. See Doc. 6201 and addendum, report of the Social, Health and Family Affairs Committee,Rapporteur : Mr Bohl Text adopted by the Assembly, under the tacit adoption procedure, on 8 May 1990.
2. Under Article 28 of the Social Charter.
3. In so far as it was impossible to reach unanimous agreement between all member states of the Community.
4. Further to the substantive discussions of the Utrecht Symposium (25-26 April 1989) and the Syracuse Hearing (19-20 October 1989).

5. The Assembly has attached great importance to its involvement in the procedures of the Social Charter. It has always marked its appreciation of the work of the committees of independent experts and governmental representatives. It would wish to do so again in respect of the reports/conclusions of these two committees which are currently transmitted for opinion to it on the tenth supervision cycle 1985-86 for Austria, Cyprus, France, the Federal Republic of Germany, Ireland, Italy and Spain.

6. But, on this occasion, the Assembly's presentation of specific comments (see below) on the information and interpretations developed under the procedures of the Social Charter in respect of the period and countries concerned should not be allowed to deflect attention from what is now essential : revision of procedures with a view to the accession of the European Community and to an opening-up towards Central and Eastern Europe.

7. The Assembly is aware of the many legal difficulties which will have to be resolved. These difficulties must not serve as a pretext for inaction.

8. In its Resolution 931, the Assembly called for discussions to be set in train between the EuropeanCommunity and the Council of Europe. It transmits herewith to the Committee of Ministers its opinionthat the time is ripe for the next‘‘quadripartite" meeting (see Recommendation 1107) to set up a ‘‘studygroup" in whatever form might be judged most appropriate.

9. Meanwhile, the Assembly, according to the prescribed procedure of Part IV of the charter, transmitsto the Committee of Ministers the following observations.

10.

10.1. Satisfactory progress has been made in some member states. For example, in Cyprus, a maternityprotection law was adopted in 1987, modelled to some extent on the provisions of Article 8 of the charter. In Austria, as from 1 July 1988, following an amendment to legislation on the employment of foreigners, young second-generation foreigners are henceforth exempt from the obligation of getting a work permit in order to follow training courses.

10.2. As noted, however, by the Committee of Independent Experts and sometimes by the Governmental Committee, certain weaknesses are evident in the application of certain provisions, to which the Committee of Ministers should draw the attention of the states concerned :

a. Article 1, paragraph 2, on the prohibition of forced labour - In France, in Ireland and in Italy, sailors in the merchant navy are subject to penal sanctions in certain cases when the safety of the ship and people aboard are not affected ; the national legislative provisions in question, although in practice obsolete, remain none the less in force and should be formally abolished.

b. Article 7, paragraph 3, on the full respect of school obligations - In Austria, in France, in Ireland and in Italy, there continue to be certain gaps in the legislative or regulatory protection for children of school age who are working in family undertakings, principally in agriculture.

c. Article 8, paragraph 2, on protection against un justified dismissal of women at work - There continue to be anomalies in the legislations of Austria and Italy, which in effect do not protect, in every case, domestic employees against dismissal for reasons of pregnancies.

10.3. In conclusion, the Assembly would wish to register its concern that there are still three member states of the European Community among those which have not yet ratified the charter (Belgium,Finland, Liechtenstein, Luxembourg, Portugal, San Marino, Switzerland), particularly considering that, in the perspective of Community membership and participation, it would seem necessary that the twelve states in question at least subscribe to a ‘‘minimal platform" consisting of the same articles and provisions.