Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 857 (1979)[1]

Social protection for professional, intellectual and artistic workers (self-employed or employees)

Parliamentary Assembly

The Assembly,

1. Considering that, in accordance with its Statute, the Council of Europe is endowed, by its engendering of certain international treaties such as the European Social Charter and European Code of Social Security, with special competence in the field of social protection for the entire population of its member states ;

2. Recalling that social problems have usually accounted for a substantial part of the annual intergovernmental work programmes of the Council of Europe, and that this still holds good under the 1976-80 medium-term plan ;

3. Noting that the above-mentioned international treaties, and the European Social Charter in particular, ensure general social protection for the whole population of each contracting state, but that in many cases this protection is apparently incomplete and insufficiently specific for certain categories of the active population ;

4. Considering that this applies in particular to the self-employed ;

5. Recalling that, in the case of one specific category of self-employed persons, namely fanners, the Social Charter has been supplemented, on the Assembly's initiative, by a new European treaty, the European Convention on the Social Protection of Farmers, concluded in 1974 ;

6. Considering that similar action should also be taken to cover all other categories of self-employed persons, and believing that a start should be made in connection with professional, intellectual and artistic workers, who in many regards constitute a special category ;

7. Recalling its Recommendation 781 (1976), on Council of Europe action for the future of the performing arts, and its Recommendation 815 (1977), on freedom of expression and the role of the writer in Europe, which called for specific Council of Europe work on the social position respectively of performing artists and of writers,

8. Recommends that the Committee of Ministers instruct the competent governmental committees to draw up, on the basis of the draft set out below, a new European Convention on the Social Protection of Professional, Intellectual and Artistic Workers, whether self-employed or employees, with specific provisions on their situation as regards social security, vocational training, retraining and other social problems :

Draft European Convention on the Social Protection of Professional, Intellectual and Artistic Workers _ Preamble

The member states of the Council of Europe, signatory hereto, Considering that the aim of the Council of Europe is to achieve greater unity between its members, in particular for the purpose of facilitating their economic and social progress ;

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1. See Doc. 4270, report of the Committee on Social and Health Questions. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 27 March 1979.

Considering that the improvement or consolidation, as appropriate, of social protection for professional, intellectual and artistic workers by measures in keeping with their situation can contribute to social progress in Europe ;

Recalling that the aim of the European Social Charter, also drawn up within the Council of Europe and opened to signature by member states on 18 October 1961, is to improve the standard of living and to promote the social well-being of the whole of their populations ;

Considering that the special conditions under which many professional, intellectual and artistic workers engage in their occupations, particularly when they are not paid employees, call for specific social protection arrangements ;

Considering, in consequence, that measures should be taken, as appropriate, to extend, reinforce, define or consolidate such protection, if necessary making it comparable with the social protection of other categories of the active population.

Have agreed as follows :

PART I - General provisions

Article 1

Undertakings

9. Each Contracting Party undertakes to apply the provisions of this convention to all its nationals resident in its territory.

10. Application of these provisions may be extended, in whole or in part, to nationals of other Contracting Parties by means of a declaration made in accordance with the final clauses of this convention.

Article 2

Definition

11. For the purposes of this convention, the term "professional, intellectual and artistic workers" means any person, whether an employee or self-employed, whose sole or principal gainful occupation is one in which mental rather than physical effort is usually predominant, bearing in mind the initiative and personality factors involved.

12. Each Contracting Party shall stipulate, by means of a declaration made in accordance with the final clauses of this convention, the categories of professional, intellectual and artistic workers to which the provisions of this convention are to apply.

PART II - Social protection

Article 3 - General principle

Each Contracting Party shall ensure to professional, intellectual and artistic workers social protection that is identical with, or equivalent to, that enjoyed by other categories of the active population.

Section 1 - Employees

Article 4 - Equality of treatment with other employees

In the exercise of their principal social rights, particularly in matters of employment, working conditions, vocational guidance and training, retraining, rehabilitation and social security, professional, intellectual and artistic workers who are employees shall be treated in principle on an equal footing with other employees, taking account, where appropriate, of the particular nature of their occupation.

Article 5 - Right to organise

13. With a view to ensuring or promoting the freedom of professional, intellectual and artistic workers who are employees to form, or to join, local, regional, national or international organisations for the protection of their economic and social interests, the Contracting Parties shall ensure that their national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom.

14. Paragraph 1 of this article shall not affect the right of such workers to form professional organisations together with other categories of workers, or to join existing professional organisations, in so far as their articles of association permit.

15. Professional obligations may not be invoked in order to restrict the freedom of the workers covered by this convention to demonstrate, circulate literature, assemble, form associations, present petitions or strike.

Section 2 - Self-employed persons

Article 6 - General scope of social protection

Each Contracting Party shall ensure to self-employed professional, intellectual and artistic workers, and members of their families, social protection equivalent to that enjoyed by other categories of the active population.

Article 7 - Social security

16. Each Contracting Party shall apply, as may be most appropriate, to self-employed professional, intellectual and artistic workers and persons entitled through them, the social security standards laid down by its laws for the other protected categories of the active population.

17. Without prejudice to the provisions of paragraph 1 of this article, each Contracting Party shall grant professional, intellectual and artistic workers, under appropriate conditions and within appropriate time limits, social security protection in respect of at least four of the following contingencies : sickness, maternity, invalidity, old age, death, occupational injuries and diseases, family commitments, unemployment.

18. Each Contracting Party shall take the necessary steps to ensure that self-employed professional, intellectual and artistic workers conserve their entitlement or partially acquired entitlement in the event of a change of occupation.

19. If necessary, the Contracting Parties shall foster measures to provide self-employed professional, intellectual and artistic workers with supplementary protection by means of complementary schemes, whether based on mutual insurance or other means.

Article 8 - Exercise of profession

20. Each Contracting Party shall ensure that self-employed professional, intellectual and artistic workers can freely engage in their occupation.

21. Without prejudice to the final clauses of this convention, this freedom may not be restricted except as provided by law. Any restrictions shall, as far as possible, be made in consultation with the organisations representing the professions concerned and, if appropriate, any co-ordinating interprofessional organisation

Article 9 - Right to organise

22. With a view to ensuring or promoting the freedom of self-employed professional, intellectual and artistic workers to form, or to join, organisations for the protection of their economic and social interests, the Contracting Parties shall ensure that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom.

23. Paragraph 1 of this article shall not affect the right of the workers concerned to form professional organisations together with other categories of workers or to join existing professional organisations, in so far as their articles of association permit.

Article 10 - Other social rights

24. Each Contracting Party shall ensure that self-employed professional, intellectual and artistic workers are covered by measures appropriate to the special conditions of their occupations in the following fields ;

a. vocational guidance,

b. vocational training,

c. retraining,

d. rehabilitation.

25. In matters of social assistance, self-employed professional, intellectual and artistic workers shall be treated on an equal footing with other persons requiring or receiving such assistance.

PART III -Miscellaneous provisions

Article 11 - Restrictions

26. The undertakings deriving from the provisions of Articles 5, 7, 8 and 9 in this convention shall not be subject to any restrictions or limitations not specified in those articles, except such as are prescribed by law for the protection of the rights and freedoms of others, or for the protection of public order, national security, public health or morals.

27. The restrictions permitted to these undertakings shall not be applied for any purpose other than that for which they have been prescribed.

Article 12 - Relations with other international agreements

The provisions of this convention shall not prejudice the provisions of any international conventions or agreements which are already in force or may come into force, under which more favourable treatment would be accorded to the persons whose social protection is envisaged by this convention.

Article 13 - Consultations

Each Contracting Party shall take the necessary measures so that representative organisations of the different categories of professional, intellectual and artistic workers are consulted by the public authorities concerned before taking any decision capable of influencing the economic and social situation of these workers.

Article 14 - Supervising of the implementation

28. Each Contracting Party shall submit every five years to the Secretary General of the Council of Europe a report, in a form to be determined by the Committee of Ministers, concerning the application of Articles 1 to 13 of this convention.

29. The reports of the Contracting Parties shall be submitted for examination to the Steering Committee for Social Affairs of the Council of Europe which may ask observers of international organisations representing the different categories of professional, intellectual and artistic workers to participate in this examination.

30. The Steering Committee for Social Affairs shall present to the Committee of Ministers a report containing its conclusions ; it may also make any proposals in order to :

30.1. . improve the conditions of application of this convention ;

30.2. revise or add to the provisions of this convention.

31. The aforesaid conclusions shall also be brought to the knowledge of the Parliamentary Assembly of the Council of Europe.

PART IV - Final clauses

Article 15 - Signature, ratification and entry into force

32. This convention shall be open to signature by the member states of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

33. The convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or approval.

34. In respect of a Signatory State ratifying, accepting or approving subsequently, the convention shall enter into force three months after the date of deposit of its instrument of ratification, acceptance or approval.

Article 16 - Accession of non-member states

35. After the entry into force of this convention, the Committee of Ministers of the Council of Europe may invite any non-member state to accede thereto.

36. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 17 - Territorial application

37. Any state may, at the time of signature or when depositing its instrument of ratification, acceptance approval or accession, specify the territory or territories to which this convention shall apply.

38. Any state may, when depositing its instrument of ratification, acceptance, approval or accession, or at any time thereafter, by declaration addressed to the Secretary General of the Council of Europe, extend this convention to any other territory or territories named in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

39. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the declaration of withdrawal.

Article 18 - Categories of workers protected

40. The declaration referred to in Article 2, paragraph 3, of this convention shall be communicated to the Secretary General of the Council of Europe at the time of signature or of the deposit of the instrument of ratification, acceptance, approval or accession.

41. Afterwards, any declaration aiming at extending the terms of this convention to categories of professional, intellectual and artistic workers not previously specified shall be made under the same conditions. These declarations shall take effect three months from the date on which they were made.

Article 19 - Application to non-nationals

Immigrant professional, intellectual and artistic workers shall enjoy such cultural and political rights as are guaranteed by the law, as well as the same social rights and benefits as are enjoyed by workers of the country in which they are resident.

Article 20 - Denunciation

42. No Contracting Party may denounce this convention before the end of a period of four years from the date on which the convention entered into force for it, or before the end of any successive period of three years.

43. Such denunciation shall be effected by means of a notification addressed to the Secretary General of the Council of Europe and shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 21 - Notifications

The Secretary General of the Council of Europe shall notify member states of the Council of Europe and any state which has acceded to this convention of :

1. any signature ;
2. any deposit of an instrument of ratification, acceptance, approval or accession ;
3. any date of entry into force of this convention in accordance with Article 15 ;
4. any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 17 ;
5. any declaration received in pursuance of the provisions of Article 18 ;
6. any notification received in pursuance of the provisions of Article 20 and the date on which denunciation takes effect.