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GOVERNMENTAL COMMITTEE OF THE EUROPEAN SOCIAL CHARTER

8th REPORT TO THE COMMITTEE OF MINISTERS

containing the conclusions of the Governmental Committee
set up under Article 27 of the Social Charter
(1980-81 period)

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I. INTRODUCTION

1. In accordance with Article 27 of the European Social Charter, the Governmental Committee examined the reports submitted by the Contracting Parties in pursuance of Article 21 of the Charter for the 8th supervision period. The following reports were submitted:

- the 6th report submitted by the Government of Austria,
- the 7th report submitted by the Government of Cyprus,
- the 4th report submitted by the Government of France,
- the 8th report submitted respectively by the Governments of:
 - . Denmark
 - . the Federal Republic of Germany
 - . Ireland
 - . Italy
 - . Norway
 - . Sweden
 - . the United Kingdom,
- the 2nd report submitted by the Government of Iceland,

all referring to the period 1 January 1980 to 31 December 1981.

2. First reports were also submitted by the Governments of the Netherlands and Spain, referring respectively to the period 22 May 1980 to 31 December 1981 and the period 5 June 1980 to 31 December 1981.

3. In addition to the national reports, the committee received the Conclusions VIII of the Committee of Independent Experts; these are appended hereto in accordance with Article 27, paragraph 3, of the Charter.

4. The committee met four times in 1984 with Mr Vicente TORO ORTI (Spain) in the Chair; Mr Heinz Michael MELAS (Austria) was Vice-Chairman. A list of participants appears in Appendix I.

5. Greece ratified the European Social Charter, and deposited its instrument of ratification with the Secretary General of the Council of Europe on 6 June 1984; Mr STRATAKIS therefore participated in the final part of the committee's proceedings.

6. The European Trade Union Confederation was represented at committee meetings by Mr F STAEDLIN. The Union of Industries of the European Community was not able to send a representative.

7. The committee regretted the fact that Ireland had only once taken part in its proceedings and that UNICE had never sent a representative.

8. Moreover, the committee decided not to consult representatives of any international non-governmental organisations having consultative status at the Council of Europe, as authorised in Article 27, paragraph 2, of the Charter, in respect of questions with which the organisations are particularly qualified to deal. The committee was nevertheless of the opinion that such consultation could take place in respect of a future supervision period.

9. The committee began by discussing the procedure to be followed in examining the national reports in the light of the Conclusions VIII adopted by the Independent Experts. It was decided to take all the articles of the Charter into consideration and make a more detailed examination of all the provisions in respect of which the Independent Experts believed a Contracting Party was not fulfilling entirely or in part its undertakings, with a view to examining the Experts' comments.

10. During this discussion on procedure, a number of delegations and the ETUC representative made more detailed proposals regarding the committee's working methods. In particular, the committee received a note from the Netherlands delegation containing suggestions for improving the efficiency of the procedure adopted by the committee in deciding on its position in the event of a Contracting Party not respecting the commitments it had undertaken by virtue of the Social Charter.

11. The committee examined this note very carefully and decided to continue discussing the proposals set out in it in order to reach conclusions which could serve as the basis for a review of its working methods from the next supervision period onwards.

12. Also in connection with the procedure, the committee noted the decision adopted by the Committee of Ministers in January 1984 to split the Contracting Parties to the Social Charter into two groups, with a staggered two-year reference period, as an experimental measure for six years.

13. The committee believes that this change should genuinely improve the operation of the supervisory system, but points out that the Secretariat staff may need to be expanded. Whereas the number of Contracting Parties has increased from seven to fourteen over a period of nineteen years, the number of staff appointed to assist the supervisory bodies (not least the Committee of Independent Experts) has remained unchanged, despite a constant increase in the workload. The committee would like to draw the attention of the Committee of Ministers to the fact that the resources available to the Secretariat may need to be increased if it is to answer the needs of the supervisory bodies more satisfactorily.

14. The committee also took note of the completion of the procedure for submitting reports concerning provisions of the Social Charter which are not accepted (Article 22), called for by the Committee of Ministers for the second time. It believes that this was a useful exercise and that it could be repeated in the future at an appropriate moment. It will therefore submit its proposals to the Committee of Ministers in the spring of 1985, as invited.

15. The committee has at all times been kept informed by the Secretariat of progress made within the Council of Europe as regards extending and strengthening the protection offered by the economic and social rights. It received information on the preliminary draft additional Protocol to the Social Charter to be drawn up by the Steering Committee for Social Affairs, and on work on concluding a new Protocol to the European Convention on Human Rights and fundamental freedoms containing further economic and social rights, in particular the right of women and men to equal treatment as regards employment.

16. This, together with Greece's ratification of the Charter and the possibility of other Council of Europe member states doing likewise, was interpreted by the committee as confirmation of the topicality of the Charter and as a sign of its importance as an international instrument devoted to the protection of economic and social rights.

17. Likewise, the committee was pleased to note - as were the Independent Experts - that the Social Charter is increasingly referred to with the European Convention on Human Rights among those Council of Europe conventions which, in the field of the defence of fundamental rights, uphold the common heritage of the peoples of Europe. The Charter is referred to in both the Solemn Declaration on European Union adopted in Stuttgart on 19 June 1983 by the Heads of State and Government of the Ten, and the Draft Treaty establishing the European Union adopted by the European Parliament on 14 February 1984.

18. However, the committee would draw attention to the need to avoid a situation where identical rights are enshrined in protocols to two international instruments (the European Convention on Human Rights and the European Social Charter) having different supervisory procedures. On this problem, the committee requested the Secretariat to bring its opinion to the attention of the bodies concerned.

II. GENERAL REMARKS ON THE IMPLEMENTATION OF THE SOCIAL CHARTER

19. The committee examined all the articles of the Charter and discussed all the provisions in respect of which the Independent Experts felt that a Contracting Party was not complying - either in part or in full - with its undertakings. In doing so, it studied closely the Independent Experts' Conclusions VIII, and all the information and clarifications provided by the representatives of the Contracting Parties.

20. The committee was pleased with the quality of the analytical and assessment work carried out by the Independent Experts; their Conclusions VIII provide an extremely rich source of information and comments of both a socio-economic and a legal nature.

21. As regards actual presentation, however, the committee wondered if it was appropriate to raise in the general introduction specific questions or criticisms in respect of specific states since the wording of these arguments - which are developed more fully in the body of the text concerning the appropriate sections of the Charter - could lead to confusion or give rise to misunderstandings.

22. Moreover, the recapitulation in Part II of Conclusions VIII, devoted to the assessment of the position of each Contracting State, does not always correspond exactly to the comments made in Part I, which analyses the situation article by article.

23. Likewise, the committee felt obliged to stress the importance for the work of the Independent Experts, and ultimately for the Contracting Parties, of the sources of information on which the comments of the Independent Experts are subsequently based. For the procedure to function properly, it is important for all the supervisory bodies to have access to the same information in order firstly to be aware of and secondly to assess the positions of the various Contracting Parties in as standard a form as possible.

24. It follows that, if the Independent Experts are sent documents and information other than those explicitly mentioned in Article 23 of the Social Charter, the Governmental Committee would also like to have access to such information in its work.

25. The supplementary questions put by the experts to the Contracting Parties with regard to each supervision period are certainly an essential means of gaining more information about national positions or clarifying details which it is not possible to go into at length in the two-yearly reports. Nevertheless, the committee questioned the relevance of some of the questions: some concerned points that would in any case be developed in subsequent reports, while others put forward arguments which appeared strange within the scope of the articles about which the questions were asked.

26. For instance, the committee wonders whether the Independent Experts are not giving an excessively wide interpretation to Article 11 of the Charter, under which any question concerning human health is of course permissible - provided that it is within the limits set in the questionnaire adopted by the Committee of Ministers. On the other hand, other questions which refer more to the protection of flora and fauna in the context of protection of the natural environment would appear to be beyond the scope of this provision. While the decision whether to answer - and the content of such an answer - is the free choice of the Contracting Party, the Governmental Committee nevertheless reserves the right, on the basis of the interpretations of the provisions of the Charter it has adopted, to evaluate the relevance of the questions put to the governments.

27. Lastly, in the light of the situation with regard to a number of countries, the committee wished to point out that while the supervisory bodies should be prudent when information was missing from a national report and refrain from concluding that the Contracting Party in question failed to abide by an undertaking, Contracting Parties should, for their part, endeavour to reply within a reasonable period of time to the questions put to them so that the supervision procedure functioned properly.

28. The committee has studied the development of the socio-economic situation in the states presenting two-yearly reports, on which the Independent Experts made general comments.

29. The committee is aware of the fact that during the period 1980-81 unemployment was the major problem facing the governments, management and workers, and indeed Europeans as a body. However, it does not share the Independent Experts' opinion that "the steps taken by certain governments did not succeed in creating the conditions necessary to reduce unemployment".

30. The committee believes that all the governments made considerable efforts to fight against unemployment and that the measures they adopted have kept the unemployment rate down to a level which is without doubt lower than it would have been if they had taken no action.

31. One trend which has become consolidated during the period under consideration is that of increasing numbers of women in the labour force, which goes hand-in-hand with the elimination of all kinds of discrimination against women in their working lives, in their access to careers, as regards employment, etc. The activities in this direction undertaken by the Council of Europe have already been mentioned. However, the elimination of all kinds of discrimination also raises questions about the provisions - of both international and domestic legislation - which are aimed at the protection of women in general, and working women in particular. In fact, standards dictated in the past by a concern to "protect" women could now be seen as so many provisions confirming de facto discrimination against women.

32. The European Social Charter is one of the texts which could be questioned in this way, were a state having accepted Article 8 of the Charter also wanting to ratify the United Nations Convention on the elimination of all forms of discrimination against women.

33. In dealing with this question, it is obviously not possible to ignore current developments in several countries, in terms of both mentality and legislation. The committee therefore invites the Independent Experts to study this further, in the light of Article 8 of the Charter and on the basis of legislation and experience which the Contracting Parties may be able to report on in future two-yearly reports.

34. Another cause for concern in recent years, resulting from developments in the economic situation, is the role of the social security institutions in a crisis period. The crisis has imposed new and sometimes heavy restrictions (one merely has to think of unemployment benefit) on institutions set up in the main to operate in a socio-economic situation where there is less imbalance. This has led the governments to consider or implement sometimes radical reforms in certain social security benefits, mainly by changing the conditions for entitlement. While reforms or readjustments are timely and even essential, it is important that they should still remain within the limits laid down in the Social Charter. In other words, the committee restates its opinion that, where it is not at present possible to implement the provisions of Article 12, paragraph 3, of the Charter fully, care must nevertheless be taken that the measures states are thereby required to take should not affect the ceiling provided for in this paragraph of the Charter, ie the level mentioned in the Protocol to the European Social Security Code.

35. A third subject which the committee feels it must raise is that of the situation of migrant workers in countries having ratified the Social Charter. The committee is fully aware of the fact that those hardest hit by the economic crisis are the least privileged sections of the population, which often include migrant workers. That is why the committee devoted part of its time to the interpretation of the relevant provisions of the Charter. These interpretations are reproduced below in the examination of the implementation of undertakings arising from Article 19.

III. EXAMINATION OF THE PROVISIONS OF THE SOCIAL CHARTER

36. As mentioned above, the committee examined all the articles of the Social Charter, and in particular those provisions in respect of which the Independent Experts felt that the position in one or more countries does not comply with the Charter. The representatives of all the Contracting Parties concerned were invited to provide explanations for the active participation of all the representatives of these Parties is necessary in order to produce results and help ensure that the Charter is implemented as fully as possible. At the end of a wide-ranging exchange of views, the committee adopted the following opinions, which it submits for the attention of the other supervisory bodies.

37. The committee would like to point out that, where the representatives of the Contracting Parties provided information verbally in response to the request from the Committee of Independent Experts for clarification, this information is not included in the present report but will be included in the next two-yearly report of each Contracting Party concerned. Nevertheless, the committee took note with interest of this information, which was often very useful in averting misunderstandings and in providing a better understanding of the true position in the various countries.

38. The European Trade Union Confederation availed itself of Article 11 of the Committee's Rules of Procedure and formulated differing opinions or explained its views on particular issues. These views appear in Appendix II to this report.

39. The committee would also like to make it clear that the fact that it has not adopted an explicit position in respect of certain provisions of the Social Charter does not necessarily mean that it shares the point of view of the Independent Experts. Likewise, the positions adopted by the committee in previous supervision periods remain valid, even in the absence of specific reference to them in the present report, unless they have been specifically changed by the committee.

Article 1, paragraph 1

40. As mentioned above, the committee discussed at length the application of this provision of the Charter by the Contracting Parties in a period of serious, prolonged economic crisis. It was aware of the difficulties which all the governments concerned had had to face, and was of the opinion that the diversity of national situations and policies adopted in the various countries called for prudence in expressing any assessment of them.

41. Thus, persuaded that all the governments attach the greatest importance to employment, as demonstrated by their efforts in this sphere, the committee noted that the same prudence is shared by the Independent Experts who reviewed the situation in the various countries and on the whole, refrained from making any final judgement on the various national policies.

Article 1, paragraph 2

42. Examination of this provision led the committee to discuss once again the problem raised by the legislation of the various countries concerning merchant seamen abandoning ship and similar situations. It upheld its previous position regarding the lack of justification for penal sanctions when the seaman's behaviour had not endangered either the safety of the vessel or the health of passengers (see second report of the Governmental Committee, doc. CG/Ch Soc (72) 40, paragraph 27).

43. The committee was somewhat surprised to note that the positive appreciation previously expressed in Conclusions VII in respect of the Federal Republic of Germany had been changed in Conclusions VIII since, "in the absence ... of the information requested", the Independent Experts "postponed their conclusion on the application of this provision by the Federal Republic of Germany".

44. For its part, the committee believes that, even when additional information has been requested, a country which has been deemed to fulfil an obligation in the past should be considered as continuing to do so, if the basic facts remain unchanged.

Article 1, paragraph 4

45. The committee discussed the scope of this provision of the Social Charter at length and agreed that Article 1, paragraph 4, of the Charter imposed on Contracting Parties a clear obligation, even if it was formulated in very general terms, "to provide or promote appropriate vocational guidance, training and rehabilitation". More extensive and more detailed undertakings in these same matters were contained in Articles 9, 10 and 15 of the Charter, to which reference should be made in order to assess whether the Contracting Parties did or did not fulfil the obligations which they may have undertaken by accepting one or more of these provisions.

46. The committee therefore cannot concur with the Independent Experts, who sometimes make full compliance with Articles 9, 10 and 15 a condition for fulfilment of the obligation resulting from Article 1, paragraph 4. In that sense, it confirms its position as stated in the 7th report (see Document T-SG (82) 3).

47. The French representative regretted that the Governmental Committee had not seen fit to answer the Independent Experts' critical comments concerning the ratione personae scope of this paragraph.

Article 2, paragraph 4

48. The committee stated that the position it had adopted previously in respect of this provision remained topical and valid. In fact, in its second report, on certain provisions of the Charter not accepted (doc. T-SG (82) 9), it wrote:

"The provision in this paragraph corresponds to concerns which were widespread at the time of drafting the Charter but which were becoming increasingly irrelevant under present conditions. On the one hand technical progress and new production methods have made it possible to mitigate or even eliminate the arduous, dangerous or unhealthy nature of many jobs and on the other hand the trend towards shorter working hours or longer paid leave is growing and it is being sought to extend it to all workers, not merely to those employed in dangerous or unhealthy occupations.

The committee therefore feels that in implementing this provision of the Social Charter equal attention should be paid to the provisions aimed at reducing working hours or increasing the number of days paid leave for the workers concerned and to steps taken by the governments towards eliminating the hazards or dangers inherent in certain jobs. An interpretation which stresses only the 'compensatory' measures for the workers concerned could in fact have the result of discouraging states whose priority aim in their policy in the matter of working conditions is the elimination of dangerous or unhealthy jobs as technical progress makes it possible to achieve this for a growing number of workers."

49. Moreover, in its 7th report the committee drew attention to the efforts of the governments to make working conditions safer and more healthy, and added: "If working hours are not unduly long and efforts to reduce hazards and harmful effects are achieving noticeable results, there is no visible need to continue taking action on the length of working hours for occupations which will have ceased to be dangerous or unhealthy".

Article 3, paragraph 1

50. As the Independent Experts felt that Italy "still failed to comply fully with this provision of the Charter", the committee examined in depth its position in respect of this paragraph of the Charter.

51. It emphasises that Italy has made great progress in the protection for workers at the place of work, most recently through adoption of the Act establishing a national health system and instituting local socio-medical units with responsibility for questions of health and safety at the place of work. It notes that the persons concerned therefore now enjoy the provisions of the Act and are able to obtain the protection of their rights from judicial authorities.

52. The committee would be grateful if the Independent Experts would take account of the information presented by Italy concerning the case law of the Supreme Court. It is true that the existing text of the Charter requires that regulations be issued in that field. Consequently, while court decisions provide employees with some form of guarantee, they are not sufficient to satisfy the requirements of Article 3, paragraph 1.

Article 3, paragraph 2

53. The committee is aware of the importance that every state which has accepted this provision of the Charter attaches to the adoption of measures to enforce safety and health regulations.

54. The committee repeated once again the opinion it expressed in its 4th report (see doc. CG/Ch Soc (76) 6 final), to the effect that paragraphs 1 and 2 of this article are not interdependent to such an extent that "the non-fulfilment of the undertaking in paragraph 2 can automatically be deduced from failure to implement paragraph 1".

55. The French delegation does not agree with the committee on this point, but agrees rather with the Independent Experts that "just as doubts remain as to the existence and the content of safety and health regulations ..., this is even more true as regards supervision of their enforcement".

56. Moreover, the committee is of the opinion that, in the face of technological progress, which is imposing new situations on workers and public authorities, regulations issued in regard to public health and safety at the place of work should evolve in line with progress, and the means given to the labour inspectorate for carrying out its functions should keep pace with all such changes.

Article 3, paragraph 3

57. The committee is aware of the fact that, since the Charter came into force, many developments have occurred in the field covered by this provision. Many successive texts, for example those of the International Labour Organisation and the European Communities, are witness to this and demonstrate real progress towards a broader association of trade union organisations in the elaboration and implementation of provisions for health and safety at the place of work.

58. This development is certainly an extension of the Charter's present recommendations, but does not yet necessarily constitute a de jure obligation on the part of the Contracting Parties. In this respect, the conclusion of the activities carried out within the Council of Europe with a view to achieving the adoption of an Additional Protocol to the Charter should be awaited, since it could in fact include a provision responding to these preoccupations.

Article 4, paragraph 1

59. In examining the Conclusions of the Independent Experts on the way in which the various Contracting Parties implement this provision of the Charter, the committee was again led to query the scope and usefulness of the assessment methods used by the Independent Experts, which are not, of course, binding on respective governments. The majority of the committee considered that a more acceptable method of assessment should be sought, given the rather vague terms used in the Social Charter itself. Now that the solution adopted by the Experts (68% of the national average wage taken as parameter for setting the "decent wage" level) has been in practice for several supervision periods, it appears that the results obtained are not satisfactory.

60. A large majority on the committee is in fact convinced that, apart from the actual wage itself, other factors, often not inconsiderable ones - allowances and various grants, tax rebates and relief, which affect real purchasing power - should be taken into consideration in determining a "decent standard of living". The method used by the Independent Experts does not allow for this - as indeed they seem to realise (see Conclusions V).

61. Furthermore, the committee believes that it must be borne in mind that wages are normally fixed through collective bargaining between the representatives of the workers and the employers. This raises the question of the attitude the public authorities should adopt on a subject which is within the scope of the independence of management and labour, which is implicitly safeguarded by Articles 5 and 6 of the Charter.

Article 4, paragraph 2

62. The committee is of the opinion that, in consideration of recent tendencies in Europe, it would be possible to accept as compatible with this provision of the Charter compensation for overtime carried out by workers in the form of a number of hours of holiday with pay in proportion to the increase in wage corresponding to the overtime carried out.

Article 4, paragraph 3

63. The committee studied the content of the "interpretational statement" with which the Independent Experts prefaced the part of Conclusions VIII devoted to this provision of the Charter, and will question during the 9th supervision period, the need for a Contracting Party to follow up this provision of the Charter exclusively by means of legislation, as the Independent Experts would appear, from the first paragraph of their general principles of interpretation, to believe.

64. Moreover, the committee is surprised that the Experts changed their appreciation in respect of Austria after obtaining the additional information requested. As in the case of the Federal Republic of Germany mentioned in respect of Article 1, paragraph 2, it believes that in the event of additional information being such as to raise further questions the previous positive appreciation should be upheld in the interim.

Article 4, paragraph 4

65. The committee studied the interpretation to be given to the word "reasonable" which qualifies the "notice period" in the event of dismissal of a worker. It reviewed the legislation and practice in a number of the Contracting Parties' countries, and the appreciation expressed by the Independent Experts over the years.

66. It appears to the committee, from all these elements, the following interpretation emerges: the minimum period of notice, on the basis of period of service alone, could be:

- at least one week for service up to two years;
- one week per year of service for employment of between two and twelve years;
- twelve weeks for service longer than twelve years.

67. The committee nevertheless feels that these principles, raised by the supervision bodies but not specifically embodied in the Charter, should not be applied automatically and inflexibly. Moreover, it should be recalled that Article 4, paragraph 4, should be applied in respect of the corresponding provision of the Appendix to the Charter.

Article 5

68. The committee considered the introductory sentence which, in the Independent Experts' Conclusions VIII, preceded the chapter on the implementation by the Contracting Parties of Articles 5 of the Social Charter. It considers that, as regards the "closed shop", the Experts have adopted a new attitude compared with that which they held during several supervision periods. This change of opinion, which takes account in particular of the judgement delivered by the European Court of Human Rights in the Young, James and Webster case, should be checked, in practice, during coming periods. For this reason, the committee prefers, at this stage, to postpone any definitive interpretation.

69. Moreover, the committee points out, as regards the trade union rights of the police and the armed forces, in accordance with the opinion it expressed in its 7th report, that the second stage of Article 5 means specifically that the Contracting Parties must guarantee to a certain extent the right of association of the police forces, whereas they may completely refuse this right to members of the armed forces.

Article 6, paragraph 1

70. The committee discussed the precise scope of this provision of the Charter having regard, in particular, to developments in collective labour relations in the countries of Europe in recent years. It noted that this provision does not in fact recognise any "right to joint consultation" as the latter only has an instrumental function in connection with exercise of the right to collective bargaining, whereas a right to information and consultation of workers could be explicitly recognised and defined in the Protocol to the Charter which is in the course of preparation.

71. The committee readily recognised that this new right would represent progress on the existing text of Article 6 of the Charter.

Article 6, paragraph 4

72. This provision also gave the Independent Experts an opportunity to compose their general principles of interpretation to which the committee paid much attention. It noted that there were in fact a number of points in common between the Conclusions of the Independent Experts and the opinion expressed by the Governmental Committee in its 7th report.

73. A large majority on the committee singled out the following points:

- the right to collective action is recognised in all countries in the case of workers and employers;
- a distinction is drawn between strikes (which are explicitly recognised) and lock-outs (which are not expressly mentioned);
- no law is required establishing the conditions of exercise of the lock-out; the same is true as regards the strike;
- the right to lock-out can be restricted, just as can the right to strike in order to prevent its being misused, but the lock-out cannot be prohibited and in fact it is not prohibited by any Contracting Party.

74. In the light of this, the committee also re-states its positions adopted previously in respect of the acceptability of restrictions on the right to strike by certain persons engaged in vital functions by virtue of the provisions of Article 31 of the Charter, taken in conjunction with Article 6.

Article 7, paragraph 1

75. The committee observes once again that this provision, which is accepted by only a few of the Contracting Parties, is moreover considered by the Independent Experts as being poorly fulfilled. The committee recalls that, in its 7th report, it expressed doubts as to the justification for the attitude adopted by the Independent Experts, whose requirements and over-meticulous interpretations might result in dissuading Contracting Parties which have not already done so from accepting this provision of the Charter.

76. Moreover, and without repeating the arguments developed in the previous report, the committee emphasises the difficulty in distinguishing in rural society, between homework and agricultural activities. It regrets that the Independent Experts tend to think that the children of farmers are highly exposed to abuse whereas, except in a few rare cases, there are scarcely any situations prejudicial to the state of health, physical and mental development and, in particular, the school attendance of such children.

77. The committee also feels it is necessary to reconsider the interpretation to be given to the words "prescribed light work" in Article 7, paragraph 1, and believes that the "prescription" of such work could be effected either by drawing up lists of types which are permitted or prohibited, or by checks carried out by the labour or school inspectorate, or on the basis of case-law decisions handed down on the subject.

Article 7, paragraph 3

78. The committee reiterates its opinion already expressed in previous reports, and most recently in the 7th, concerning the danger of an extensive interpretation of this provision and its applicability to children who may occasionally undertake lightwork outside school hours, particularly in their parents' business.

79. Moreover, it believes that it is impossible to argue in the abstract; each case should be examined individually (nature of the work and conditions in which it is done). Thus the committee does not agree with the Independent Experts that any work carried out by children or young people before school is harmful.

80. At any event, the committee emphasises the intention of governments to provide supervision of the measures taken, despite all the difficulties.

Article 7, paragraph 5

81. In examining this provision of the Charter, the committee reviewed recent trends in wage policy as manifested in a number of European countries. It noted that, among the measures adopted or recommended to encourage the employment of apprentices or young workers, relatively low wages are sometimes advocated.

82. The committee points out that subsequent reductions in indemnities paid to apprentices or wages paid to young workers for which there is no express provision in the Charter are inadmissible.

83. The committee has taken note of Italy's view that, in calculating the amount of allowances payable to apprentices in that country, consideration must also be given to the cost-of-living allowance which is an integral part of remuneration and, being equal for all workers, is at present at a very high level.

84. It also believes that the production of statistical data to meet the demands of the Independent Experts could be difficult, hence Question B on the questionnaire under Article 7, paragraph 5.

Article 7, paragraph 9

85. The committee examined with interest the new interpretational statement adopted by the Independent Experts, in which it felt there was an interpretation of the Charter which at last answers some of the questions it had raised in the past to the effect that in countries where all employed persons are subject to regular medical supervision, protection of the health of young workers does not necessarily require the adoption of a broad range of legislative or other provisions establishing special medical structures for these young persons.

86. The committee notes that this interpretation appears correct but insufficient; its opinion is that it should be stated that this provision of the Charter does not require, at the present time, the adoption of new laws or special provisions concerning the medical supervision of young workers.

87. Moreover, the Independent Experts appear to tend to think it necessary for the competent authorities to adopt special instructions concerning young workers. The need for such instructions or directives is not immediately obvious, in the light of the text of the Charter, which does not impose any specific requirement in this respect on the Contracting Parties. The committee believes that if all employed persons were subject to regular medical check-ups the doctors concerned would on these occasions necessarily examine young workers with particular attention.

Article 8, paragraph 1

88. The Independent Experts also adopted general principles of interpretation on this provision, to which the committee paid much attention. This provision which recognises the right for all women not to work before and after childbirth for a minimum of twelve weeks, should nowadays be interpreted in the light of new ways of thinking, particularly as regards the elimination of any discrimination against women, including discrimination at work and in family and social policy.

89. After considerable discussion, the majority of the committee's members felt that this provision should be interpreted in the light of its aim, which is to ensure the well-being of women before and after childbirth and avoid any prejudice to their physical and mental health. This is clearly shown in the actual wording of the article which, in respect of the "protection" of women, states that "leave ... up to a total of at least twelve weeks" should be "provided" to women "before and after childbirth". It follows that, under this article of the Charter, women who have just given birth are implicitly not allowed to work.

90. A minority of committee members, however, were of the opinion that the text of the Charter granted women the right not to work, but in no way made this a requirement. They believe that their interpretation of the wording is in fact more in line with the current trend, which is for women to have greater equality of treatment with men and the right to decide on their own behaviour freely.

91. The committee is aware that the interpretation of this provision of the Charter may influence the attitude of the Contracting Parties as regards other provisions of international law prohibiting any form of discrimination against women - as regards the compatibility or otherwise of Article 8 of the Charter with other international agreements.

92. The committee believes that both the Contracting Parties and the supervisory bodies could usefully continue investigating the subject in order to reach a commonly agreed interpretation.

Article 9

93. The committee recalled the topicality of the commitment contained in this provision of the Social Charter, particularly in a time of crisis, and recognises that vocational guidance measures are part of employment policy. It draws the attention of the Contracting Parties to the need to adapt this policy to present circumstances, particularly by encouraging employers to provide the services responsible for guidance with as much information as possible about their recruitment plans in not only the short term but also, as far as possible, in the medium term.

Article 10

94. The committee once again examined the scope of paragraph 1 as regards the content of the obligation incumbent on the Contracting Parties having accepted this provision. It repeats its opinion, expressed previously, that this paragraph contains a general obligation and does not cover financial assistance, which is expressly mentioned in paragraph 4.

95. As regards the scope of the text ratione personae, the great majority of the committee's members believed that the resources and measures made available by every Contracting Party to its own nationals should also benefit the nationals of other Contracting Parties living or working lawfully on the territory of the Contracting Party in question; three delegations were nevertheless in favour of a limitative interpretation.

Article 11

96. Examination of this provision of the Charter provided the committee with an opportunity of considering the need and real usefulness of the quantity of supplementary information requested by the Independent Experts, in respect of each supervision period, from the governments of the Contracting Parties. Several questions indeed appear to be not only fairly far-removed from the actual content of the provision under consideration, but also a source of additional work for the national authorities. Reference is made in this respect to the preliminary comments included in the introduction to the present report.

Article 12, paragraph 3

97. The committee recalls that in its 7th report it already had occasion to stress that this provision, which contains a commitment of a "dynamic" nature since it commits the Contracting Parties to maintaining the social security system at a level at least equal to that necessary for ratification of ILO Convention No. 102, and to improving it gradually requires the states having ratified it to strive to reach the standard required for ratification of the Protocol to the European Code of Social Security, which is an improved European version of Convention No. 102. Nevertheless, once this level is reached, the obligation of the Contracting Parties should be deemed fulfilled; it is impossible to require them to demonstrate unlimited "dynamism".

Article 12, paragraph 4

98. The committee took note of the explanations provided by the French delegation on the inclusion of the "allowance for adult handicapped persons" among the benefits available under social assistance and not social security, as the Independent Experts had wanted. These may be summed up as follows:

- The allowance for handicapped adults is financed by the State through the sub-head "common expenses" of the budget since 1983. Before that date it was linked to social security funds for functional reasons only.
- The allowance for handicapped adults is granted subject to a means test; it cannot be paid if the income of the person concerned exceeds a given threshold and it is always subject to a ceiling;
- The allowance is granted without any period of affiliation or contribution being required of the person concerned.

99. The committee thinks the French Government may put forward new arguments in its next two-yearly report and urges the Committee of Independent Experts to examine them with the utmost care. It will resume consideration of the matter in the light of further information received at a later date.

Article 13, paragraph 1

100. Having considered the criticisms expressed as regards Italy by the Independent Experts, the committee expressed an interest in the development occurring in Italy and took note of the existence of administrative remedies open to persons seeking assistance. It thinks, however, that it is inappropriate to speak of a subjective right if no judicial remedy is available in assistance matters. In this respect, it also notes that the outline Act currently being prepared in Italy might contain detailed provisions on this.

Article 13, paragraph 4

101. The committee abides by the stand it took during the 7th supervision period: the majority of its members consider that the principle of reciprocity is not applicable in the context of this provision.

Article 14, paragraph 1

102. The committee notes that France has already explained in answer to questions from the Independent Experts, that there is no discrimination whatsoever against foreign nationals and their families as regards entitlement to social services.

103. It would take this opportunity to request the Independent Experts, when they are prompted to ask a question, to make it more specific.

Article 17

104. The committee can only repeat its opinion that inheritance issues lie outside the scope of this article which, unlike Article 16, is not concerned with legal protection.

Article 18

105. The committee, referring to the attitude adopted at its 7th report, finds the wording of the Charter quite clear and considers it obvious from the very terms of the Appendix (Article 18, paragraph 1) that this provision does not concern admittance to national territory, nor does it in any way oblige the Contracting Parties to apply the rules mentioned in this paragraph "in a spirit of liberality".

106. Secondly, the committee readily recognises that the three paragraphs of Article 18 provide for an element of dynamism but feels that this is not without bounds. Without wishing to repeat in full the arguments already developed in its 5th report, the committee points out on the one hand that paragraph 18 of Part I and Article 31 of Part V of the Charter allows for the restriction for cogent reasons, of the exercise of the rights set out in Article 18, and on the other that any dynamism should be "reasonable", the idea being to place workers who are citizens of states having ratified the Social Charter in a position which puts them at an intermediary level between the protection granted to citizens of EEC member countries, who enjoy freedom of movement and the right of establishment, and the treatment reserved for citizens of other states not bound by the European Social Charter.

Article 19, paragraph 4

107. As mentioned in its previous report, the committee still believes that the Independent Experts give this provision a scope which seems out of keeping with both the terms of the provision and the structure of the Charter as a whole. That "other employment and working conditions" should be taken to include vocational training is even less allowable since Article 10, which does concern vocational training, is applicable to nationals and nationals of other Contracting Parties alike.

Article 19, paragraph 6

108. The committee has examined the scope of the commitments arising from this provision of the Charter on a number of occasions and decided on the following interpretations:

a. "as far as possible"

The members of the committee recognise that the Contracting Parties do have an obligation under paragraph 6 of Article 19 to facilitate the reunion of the family of a migrant worker but, in view of the words "as far as possible", the committee feels that this obligation is not absolute, in the sense that a member state is not obliged to facilitate the reunion at all costs and in all cases.

However, when a Contracting Party is not in a position to facilitate the reunion of the family, it will explain in its two-yearly report the reasons preventing it from doing so.

The delegation of the Federal Republic of Germany had reservations about this interpretation. The Italian delegation took the words "as far as possible" to imply that a positive effort had to be made to facilitate family reunion.

b. "children under the age of 21 years dependent on the migrant worker" (Appendix to the Social Charter under Article 19, paragraph 6)

Although the French and English wording do not fully coincide (the French words "à charge" primarily implying economic dependence, whereas the English word "dependent" covers economic and legal, even psychological and sometimes moral, dependence), the committee, paying particular attention to the situation of young people continuing their studies or who are ill or handicapped, took the view that the term covered all situations in which there is de facto or legal dependence under the relevant laws (the rules of private international law should help to determine which laws are relevant).

The age limit for these children is clearly set at 21 years. If some thought that this age had been determined because at the time the Charter was drafted it was the age of majority in most member states, and hoped that it would be lowered in keeping with current trends, the provision in the Appendix would have to be revised in accordance with the procedure for the revision of the Charter (Article 36).

c. "permitted to establish himself"

The committee noted that in their Conclusions VIII the Independent Experts had not referred to the meaning they give to the words "permitted to establish himself" which are used solely in this paragraph instead of the words "lawfully within their territory" or "lawfully residing within their territory" used in other paragraphs of this article. Indeed, this difference is important, as it shows that this provision is not intended to facilitate family reunion for all categories of migrant workers lawfully within the territory or lawfully residing in the territory.

In the opinion of the Governmental Committee distinction must be drawn between migrant workers lawfully residing in the territory recruited for short term employment (eg seasonal workers and persons on short term non-renewable contracts) and migrant workers lawfully residing and lawfully employed for a longer period (eg persons on short term renewable contracts, on long term contracts and a fortiori on contracts for an indefinite term).

In the former case, the circumstances are such that they do not warrant family reunion in the meaning of this provision of the Charter.

On the contrary, in the latter case, the reunion should be facilitated as far as possible, although a minimum period of residence of a reasonable duration may be obligatory.

The French and Federal German delegations had reservations about the above text.

Article 19, paragraph 8

109. The Independent Experts repeated their criticisms of certain Contracting Parties for failing to make arrangements for appeal to an independent authority in the event of the expulsion of an immigrant worker. The committee repeats that it agrees entirely in principle that all migrants should be protected against arbitrary rulings and have some means of appeal to an independent body in the event of expulsion.

110. The committee believes nevertheless that there can be various ways of appealing, depending on the administrative and legal systems of each state. It considers, moreover, that, in the case of a threat to national security, the public interest or morality, an expulsion order could be immediately enforceable. It must, however, always be possible for the expelled migrant worker to lodge an appeal from abroad and, if successful, to return to the host country.

111. The committee has made sure that in all the states bound by the Social Charter channels for appeal and methods for having decisions reconsidered exist.

A N N E X E I / A P P E N D I X I

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

1. 35th meeting: 25-27 April 1984
2. 36th meeting: 3-6 July 1984
3. 37th meeting: 17-21 September 1984
4. 38th meeting: 3-7 December 1984

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FRANCE/ FRANCE	1, 2, 3, 4	Mr E SOUTOUL, Chargé de Mission pour les Affaires Européennes, Division des Relations Internationales, Ministère des Affaires Sociales et de la Solidarité Nationale
REP. FED. D'ALLEMAGNE/ FED. REP. OF GERMANY	1, 2, 3, 4	Dr. H M WEBER, Ministerialrat, Bundesministerium für Arbeit und Sozialordnung
GRECE/ GREECE	3, 4	Mr M STRATAKIS, Attaché, Consulat Général de Grèce, Genève
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	3	Mrs M FLORI, Conseillère, Ministère du Travail et de la Prévoyance Sociale
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A P P E N D I X I I

OBSERVATIONS SUBMITTED BY THE EUROPEAN TRADE UNION CONFEDERATION

A. REFORM OF THE WORKING METHODS

ETUC has on several occasions, deplored the fact that the political impact of the Social Charter is lessened by the fact that the supervision machinery does not meet the requirements of a European instrument of this kind.

Although radical changes are essential, it would at least be possible as a first step, to improve working methods considerably. For what do we find? On the basis of the government reports and the conclusions of the Committee of Independent Experts, the Governmental Committee primarily seeks arguments justifying the attitudes of the Contracting Parties. Such an approach automatically leads to differences of opinion between the two committees. In fact, the Governmental Committee will never suggest in its report that action be taken against a Contracting Party, but will try to interpret the text of the Charter in such a way as to satisfy all its signatories.

In order to remedy this situation, it is desirable that the Governmental Committee spend a sitting "interpreting" the Articles of the Charter before beginning to examine the national reports. It would then be useful to examine the national reports in their entirety in the light of this interpretation in order to avoid "multinational" Article-by-Article discussions.

Such an approach would prevent the Articles of the Charter from being interpreted in the light of the desired results, which are then set out in the report to the Committee of Ministers, as is the case at present.

B. COMMENTS ON CERTAIN ARTICLES OF THE CHARTER

ARTICLE 1

Paragraph 1:

ETUC, like the Independent Experts, considers that government policies have not succeeded in bringing down unemployment. On the contrary, economic and monetary decisions have helped to swell the number of job-seekers. No large-scale measures co-ordinated on a European scale - eg measures to revive the economy by increasing both public and private investment and measures to reduce working hours so as to share the work that exists out among all those wanting work - have been taken to combat unemployment. Consequently, the Contracting Parties are not complying with the obligations deriving from this provision of the Charter.

ARTICLE 2

Paragraph 4:

Although ETUC fully shares the Governmental Committee's opinion on the elimination of dangerous and unhealthy working conditions (see contribution to the 7th report), it would nevertheless draw attention to the health hazards to workers that are resulting from the way in which work is organised and, in particular, the increasing recourse, for economic reasons, to night work. Such work is recognised by all the competent authorities as being harmful to health and needs to be restricted. In cases where, in the public interest, it cannot be avoided, working hours need to be substantially reduced.

Paragraph 5:

With the introduction of new technologies, firms and services are increasingly having recourse to weekend work, including work on Sundays. This is contrary to this provision of the Charter. In future, the attitudes of the Contracting Parties should be examined in the light of this new development.

ARTICLE 3

Paragraph 3:

ETUC fully endorses the call from the Committee of Ministers for provisions in a Protocol to the Charter whereby workers and their representatives would have a real influence on working conditions. Nevertheless, in the meantime, in order that they should have a genuine say in matters of health and safety at work, consultation should take place when tools are planned and designed, since any subsequent action is bound to be less effective.

ARTICLE 6

Paragraph 1:

This provision of the Charter is ineffectual if the workers' right to information is not also guaranteed, for joint consultation is meaningless without access to all relevant information.

Paragraph 4:

This provision of the Charter does not explicitly provide for recourse to lock-outs. Indeed employers have a whole range of ways of taking collective action and contrary to the conclusions of the Governmental Committee, national legislation can quite easily prohibit lock-outs without there being violation of the Charter.

ARTICLE 7

Paragraph 3:

ETUC observes that in practice the children who work before school come from socio-professional backgrounds which in any case handicap them educationally in other ways. Moreover, school curricula are sufficiently full for children to be dispensed of all tiring work on schooldays.

Paragraph 5:

In these times of high unemployment, there is a tendency to reduce the wages of young workers. For many years, collective agreements and national legislation have prohibited all reductions connected with the worker's age. Any retrograde step would be contrary to the spirit of this provision of the Charter.

ARTICLE 9

Vocational guidance is pointless unless it leads to jobs, but the fact is that, at present, job prospects are virtually non-existent. Accordingly, the provisions of this Article of the Charter should essentially help ensure that information is provided about opportunities on the labour market. A policy for the long-range management of employment based on employment catchment areas and occupational sectors needs to be implemented in close co-operation with the public services, private and public firms, and all the other parties involved.

ARTICLE 19

Paragraph 4:

Contrary to the opinion of the Governmental Committee, ETUC considers that "employment and working conditions" also encompass vocational training and retraining. In a society undergoing radical technological change, workers with no claim to the vocational training required for new occupations are automatically excluded from the labour market. Employment and working conditions are therefore largely concerned with occupational skills.

Paragraph 6:

The phrase "as far as possible" is being interpreted in an increasingly restricted way in the light of the disastrous employment situation in Europe. ETUC does not consider that an international instrument can be interpreted in the light of particular circumstances; it believes that the words "as far as possible" should be interpreted in the spirit of the Charter, ie that every effort should be made to bring about family reunion.