

The Turin Protocol of 22 October 1991: A Major Contribution to Revitalizing the European Social Charter

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I. Origin and Background

The Council of Europe Ministerial Conference on Human Rights held in Rome in November 1990 gave fresh impetus to efforts to strengthen and revitalize the European Social Charter (ESC). It led to the formation of an ad hoc committee (CHARTE-REL) which met three times in the course of 1991 and produced the draft of a Protocol Amending the European Social Charter.¹ Following its endorsement by the Committee of Ministers, the protocol was presented for signing at the Ministerial Conference held in Turin on 21-22 October 1991. The conference was held to mark the 30th anniversary of the signing of the European Social Charter.

The Protocol revises and supplements the implementation mechanisms of the Social Charter, notably Articles 23-25 and 27-29. It represents a choice to strengthen socio-economic human rights through the improvement of the Charter's implementation system. Another possibility, of course, would be to attach individual rights in this field to the system of the European Convention on Human Rights (ECHR) by means of supplementing instruments (protocols).² Although the work carried out in this direction (within the Council of Europe) had reached quite an advanced stage, priority was given to the former option.³ But it has not been easy to make headway by these means either, particularly when one considers that proposals for improvement have remained on the table for many years in spite of the evident inadequacies of the control mechanism of the European Social Charter.

The fact that it was possible to achieve a breakthrough at the start of the nineties has something to do with the changes in the political situation generally. Lamentations about the

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¹ See CHARTE-REL (90)2, 1 et seq.; CHARTE-REL (90)23, 1. See also the text of the Protocol in Annex 1.

² See, e.g., L. Wasescha, *Le système de contrôle de l'application de la Charte Sociale européenne* (1980) 273 et seq.; Wiebringhaus, 'The Application of the European Social Charter', in *Het europees social handvest* (1982) 33.

³ See Berchthold, 'Council of Europe Activities in the Field of Economic, Social and Cultural Rights', in F. Matscher (ed.), *The Implementation of Economic and Social Rights. National, International and Comparative Aspects* (1991) 355 et seq. There is even a draft of an autonomous new European Convention on Economic, Social and Cultural Rights; cf. CDDH(90)16.

lack of political will for cooperation within the sphere of the Social Charter⁴ have given way to the adoption of a new agenda in which basic social rights, and the Charter in particular, play a prominent part. The transformations in Central and Eastern Europe, as well as problems associated with the development of western societies themselves have contributed to this development.⁵ In addition, there is the pressure weighing down on the Council of Europe in connection with activities within the EC (EC Social Charter, rulings of the European Court).⁶ The debate on guaranteeing socio-economic human rights has been stepped up (e.g. within the UN Human Rights Commission), and the Committee on Economic, Social and Cultural Rights (CESCR), established to monitor compliance with the UN Social Rights Covenant has become much tougher in its procedural practice.⁷

The European Social Charter is thus being revitalized at a favourable and important juncture. This is all the more significant given the declining role of social human rights within the CSCE system. Finally, the unity of political and social human rights and certain generally valid principles for the arrangement of international supervision systems form the legal and political background to this process.

II. New Arrangement for the Committee of Independent Experts (CIE)

It is perfectly in accordance with general experience and trends that Article 3 of the Protocol calls for the enlargement of the CIE with the flexible formulation that it shall consist of 'at least nine members'. The principle of sovereign equality does not absolutely demand that each contracting party be represented,⁸ but it is vital to achieve a balanced representation to ensure that the supervising body is able to function properly. There were problems here in the past due to the CIE's limited size, its lack of expertise and the absence of members. Increasing the number of members from 7 to 9 or more⁹ will enable the CIE to take on a greater workload and will improve in the working atmosphere. It will also allow the introduction of substructures to aid the CIE in the organization of its work and have a 'loosening up' effect through the creation

4 See Aubert, 'Les mécanismes d'application de la Charte social européenne', 26 *Cahiers de Droit* (1985) 529.

5 See CHARTE-REL (90)2, 4 et seq.; Worrell, 'The System of Supervision of the European Social Charter. Comments', in L. Betten (ed.), D. Harris, T. Jaspers, *The Future of European Social Policy* (1989) 49 et seq. See also the results of the Salzburg Colloquy of April 1991 in Matscher, *supra* note 3, or Mohr, 'Salzburger Kolloquium über wirtschaftliche und soziale Menschenrechte', 45 *Neue Justiz* (1991) 314.

6 See, e.g., Parliamentary Assembly, opinion No. 149(1990); Betten, 'Introduction', in L. Betten, *supra* note 5, at viii et seq.

7 See, e.g., the reports of the Committee's fifth and sixth session (in particular the description of its Working Methods) in ECOSOC, Official Records, Suppl. No. 3 (1991/1992); see also Simma, 'The implementation of the International Covenant on Economic, Social and Cultural Rights', in F. Matscher, *supra* note 3, at 75 et seq.

8 See, e.g., with reference to the composition of the European Human Rights Commission, Harris, 'The System of Supervision of the European Social Charter – Problems and Options for the Future', in L. Betten, *supra* note 5, at 14.

9 As to the different numbers mentioned (11, 14, 15 and others), see CHARTE-REL (91)23, para. 34 and CDDH (91)15, 2 (Belgium). The last mentioned proposal also contained the suggestion to confer upon the ILO representative in the CIE full status of a Committee member. This may be problematic under international law, as discussed herein; what matters is to make full use of the cooperation offered by the ILO representative (see references to 'very uneven use' of its contributions by the CIE in CHARTE-REL (90)2, at 11).

of working groups and similar measures, as have proved successful in other supervisory bodies.

The committee members are now to be elected by the Parliamentary Assembly. The experts are expected to have recognized competence in national as well as international social issues and may stand for re-election once only. A separate paragraph stresses the need for independence, impartiality and availability (cf. revised version of Article 25, paragraphs 1, 2 and 4).

Apart from improving the committee's functioning, these new arrangements may help satisfy the urgent need for greater openness in its activities.

III. Beginnings of a Demarcation of Bodies and Competences

The main problem of the ESC supervision system is that its bodies do not work together effectively, as can be seen most notably from the tensions existing between the CIE and the Governmental Committee (GC). The desire of the governments involved to have some means of correcting the decisions and influencing the work of the CIE, a relatively well-functioning though 'uncanny' and remote body, has led to unbearable rivalry, an absolute doubling of work and a decline in the effectiveness of procedures.¹⁰ In order to revise the procedures, it will therefore be necessary first to clarify the roles and spheres of competence of the bodies involved, particularly the CIE and the GC. The radical proposal to abolish the GC altogether was defeated.¹¹

The CIE sees itself as occupying the 'legal stage' of the supervision process as distinct from its 'political stage'. This would not prevent the committee's findings from being (exceptionally) called into question by other supervising bodies.¹² This approach to the 'division of labour', a distinction or combination between expert and political bodies, is quite common practice for an international supervision system. It makes possible corrections, the exertion of certain influences and a consolidation of political processes. But the problem with the ESC system is that this mixture – as distinct from that in other systems like the ILO,¹³ the UN Social Rights Covenant and even the ECHR – has not worked.

Signs of this differentiation are evident in the revised versions of the relevant ESC stipulations (Articles 24(2) and 27(3)). While the CIE is charged with monitoring compliance with standards 'from a legal standpoint', the GC is to concentrate on situations which should, in its view, be the subject of recommendations by the Committee of Ministers 'on the basis of social, economic and other policy considerations'. It is precisely this occupation with situations which – according to the universal concept of human rights – may involve serious systematic violations that calls for a political overview and for 'reinforcement'.

¹⁰ See, e.g., the contribution of the Secretary-General of the Council of Europe to the Rome Conference, CIM-DH (90)3, 4; D. Harris, *The European Social Charter* (1984) 262 et seq.; Öhlinger, 'Die Europäische Sozialcharta', in M. Nowak, D. Steurer, H. Tretter (eds.), *Fortschritt im Bewußtsein der Grund- und Menschenrechte. Festschrift für F. Ermacora* (1988) 218; Jaeger, 'Der Schutz der sozialen Grundrechte im Rahmen des Europarats', in O. Schmuck (ed.), *Vierzig Jahre Europarat: Renaissance in gesamteuropäischer Perspektive?* (1990) 219; Nowak, 'The Contribution of Intergovernmental Organisations to an All-European System of Human Rights Protection', in Z. Kedzia, P. Leuprecht, M. Nowak (eds.), *1 All-European Human Rights Yearbook* (1991) 214 et seq.

¹¹ See CHARTE-REL (91)23, para. 11 et seq.; CHARTE-REL (90)2, 31.

¹² See Harris, *supra* note 8, at 16.

¹³ See, e.g., Wasescha *supra* note 2, at 74 International Labour Conference, 78th Session 1991, Report III (Part 4 A), 8, para. 9.

In the CHARTE-REL discussion some delegations insisted that the GC should continue to be granted 'legal' and 'interpretative' powers.¹⁴

This discussion and the tension in relations between the GC and the CIE produced a proposal to include an independent agency – like the European Court of Human Rights – in the system. Others suggested the Committee of Ministers for this role.¹⁵ Finally, agreement was reached by a slim majority on the 'principle' of a relatively meaningless 'Article X'¹⁶ which does not figure in the text of the Protocol as adopted.

The entire 'interpretation discussion' is the result first and foremost of existing rivalries over competencies between the CIE and the GC, rivalries that some would like to see maintained. Any international control activity necessarily involves interpretative effects, even if they are not binding and authoritative. The point is that states must accept a relevant interpretation. No special arrangements are required here, not even special arbitration or appeal mechanisms.

The fact that the CIE is entitled to formulate (non-specified) 'conclusions' means that it can also make more general 'statements of interpretation' beyond specific cases, countries and situations. This is reflected particularly in the case-law collections of the secretariat¹⁷ and is quite similar to the practice of 'general comments' in the CESCR. The proposal raised during the debate to introduce a 'general discussion' (on specific ESC rights) in the CIE is clearly also borrowed from this practice.¹⁸

The greater flexibility in terms of procedural competences also allow the inclusion of 'studies' on social questions or the possible revision of ESC stipulations. They may be put forward by the GC and adopted by the Committee of Ministers (CM) (cf. wording of Articles 27(4) and 28(2) in the Protocol). The CM is now obliged to make individual recommendations to the contracting parties as a result of the supervision process (Article 28, paragraph 1). The underlying idea is to overcome the noticeable reluctance of the CM in the past to reach decisions.¹⁹ The decisions only require a majority of two thirds of the contracting parties. This seems to be more effective than if a simple majority among the member states of the Council of Europe was required.²⁰

Under the Protocol, the Parliamentary Assembly is to carry out merely the secondary function of holding periodical plenary debates on the reports of the CIE and the GC as well as resolutions of the CM (see Article 29, revised version). The Assembly only views itself as a vehicle for encouraging the other bodies and for holding discussions.²¹ The 'replacement role' it played until now as a relatively active public political forum had much to do with the failure of the CM to take action and the rivalry between the CIE and the GC.²²

IV. Efforts towards a Dialogue

14 See especially Germany and Austria; CHARTE-REL (91)23, paras. 43, 53.

15 See *id.*, para. 51 et seq.; Harris, *supra* note 8, at 24.

16 It read: '... A Contracting Party shall have the possibility to refer any question or dispute relating to the interpretation of the Charter to an independent authority, not composed of representatives of the Contracting Parties' (CHARTE-REL (91)3, at 25).

17 See *Case Law on the European Social Charter* (1982); Suppl. (1986); Suppl. No. 2 (1987).

18 See CHARTE-REL (90)2, 22; CDDH (91)15, 4 (Portugal).

19 See, e.g., Harris, *supra* note 8, at 27 et seq.

20 See CHARTE-REL (91)23, para. 49.

21 See *id.*, para. 11; see also, Parliamentary Assembly, Doc. 6440, 5.

22 See, e.g., Harris, *supra* note 10, at 252 et seq.

Another point of criticism in the ESC procedures²³ has been the absence of a direct dialogue, an 'oral hearing' at which CIE members and government representatives come directly into contact with each other rather than via the makeshift agency of the GC. It is the dialogue method which accounts to a large extent for the efficiency of the CESC and other international report auditing bodies. The CIE in particular would stand to gain a great deal from having its information kept up-to-date through contacts and talks with government representatives. Misunderstandings could be sorted out and distrust allayed. Apart from criticism, it would be possible to pass on other aspects of the reporting procedure such as a demonstration of compliance with standards (by the contracting party) or praise (by the supervising body).

Seen from this angle, the inclusion of the possibility of a meeting between the CIE and representatives of the contracting parties (revised version of Article 24(3)) would be of inestimable value. More far-reaching proposals for 'on-the-spot inquiries' and 'contacts' failed to win support; moreover, I do not believe they can be seen as alternatives to the dialogue method described above.²⁴ It remains to be seen whether such meetings will remain the exception and whether one contracting party or another may refuse to take part.²⁵ On the basis of more general considerations and experience, the CIE and governments ought to be interested in making the meeting a regular occurrence. Very important for the effectiveness of such meetings is the stipulation that the respective (national) organizations of employers and trade unions are to be informed (cf. Article 24(3), final sentence). It is also conceivable that a government representative may be accompanied to the meetings by an organization representative.²⁶

V. Publicity and Non-governmental Organizations

Notwithstanding abundant criticism and efforts to find a remedy, the ESC procedure still suffers from a lack of publicity and openness.²⁷ The Protocol represents a certain step forward in this matter of vital importance to the effectiveness of the ESC, even if it only confirms existing practices in writing. The signs of continuing reluctance are all too clear. Article 23(3) only contains a commitment to 'passive publicity', that is the reports and comments are to be made available to the public on request. The conclusions reached by the CIE and the GC report are to be made public in any case (cf. Articles 24(4) and 27(3)).

The degree of involvement of non-governmental organizations is a matter closely associated with the issue of openness and publicity. The Protocol introduces a number of notable improvements on this score. Article 23(1), for instance, specifies that the employers and trade unions are to be sent a copy of the relevant country report at the same time as it is forwarded to the Secretary-General. These organizations are to send their comments directly to the Secretary-General, although it will be legally impossible (despite the somewhat misleading word 'shall') to oblige these organizations to do so. The broader involvement of other NGOs under the revised versions of Article 23(2) and Article 27(2) is to be welcomed. Harris points out that certain ESC stipulations are likely to concern and bring into play NGOs other than the employers and trade unions which enjoy a privileged status with regard to the ESC

²³ See *id.*, 208, 265 et seq.; CDDH (91)15, at 3 (Norway) and others.

²⁴ For an opposing view, see CHARTE-REL (90)2, at 28.

²⁵ See CHARTE-REL (91)23, para. 30.

²⁶ See *id.*, para. 31.

²⁷ Thus, Harris raised the question for what reason states' reports had to be treated as confidential documents; see Harris, *supra* note 8, at 12 et seq.

procedure.²⁸ The required qualification of such NGOs is described more pointedly – rather than by way of an example – in the new wording of Article 27(2). There is also no longer a limit on the number of representatives of such organizations to be consulted.

The crucial point is that – in contrast to the past – the GC will actually make use of the opportunity to consult NGOs. It is explicitly called upon to do so, and there was even a proposal to make such consultations compulsory.²⁹ Invariably, much will depend on encouragement of those organizations.³⁰ The dilemma of the ESC procedure has been that it seemed to be relatively weak and unsusceptible to influence by non-governmental organizations, whose commitment was thus undermined.³¹ These shortcomings in turn reduced the quality and effectiveness of the procedure.

It seems to be a general problem that NGOs do not show great interest or activity in the field of social human rights.³² The opportunities for NGO participation in the work of the CESCR are often not used as much as they might be. The situation within the ILO system is clearly better on the whole.³³ This is doubtless attributable to a fully-fledged tripartite structure of the kind on which the GC was originally established. In practice, however, hardly anything has remained of this structure, leading to proposals for reform (e.g. of the Parliamentary Assembly).³⁴

The ILO system³⁵ also seems to have served as the model for such practices in the ESC as closed meetings and confidentiality. Working behind closed doors has the advantage that criticism can be directed more sharply at the conduct of individual states. The other side of the coin is that an international supervision system based on reporting procedures depends on publicity to be effective. Perhaps the wording in the Protocol has struck a certain balance on this point. It would be an ideal solution and a real breakthrough if, by way of exception, the meeting with the government representatives mentioned above were held in public. While the ESC (as amended by the Protocol) does not rule this out, the Rules of Procedure of the CIE would have to be changed insofar as Rule 7/5 lays down the principle of confidentiality.

VI. Rationalization of the Procedure

There is plenty of room for improvements in the technical and organizational efficiency of the ESC procedure. The growing number of ratifications has brought with it a greater workload and means that more time is required. These constraints are compounded by the existing multi-tier structure and the duplication of work. The CIE has failed for the first time to complete a supervision cycle (the 11th – second group of states).³⁶ The ESC procedures, whose supervision cycles last four years on average, were criticized even before this

28 See Harris, *supra* note 10, at 215 et seq.; see also, Harris, *supra* note 8, at 22.

29 See, *id.*, 21 et seq; CHARTE-REL (90)2, at 17; CHARTE-REL (91)23, para. 39 and at 28.

30 See CHARTE-REL (90)2, 21; CHARTE-REL (91)23, 28.

31 See, e.g., Harris, *supra* note 10, at 236 et seq.

32 See, e.g., Alston, 'U.S. Ratification of the Covenant on Economic, Social and Cultural Rights', in 84 *AJIL* (1990) 388.

33 See, e.g., the report, *supra* note 13, at 24, paras. 69-71.

34 See Harris, *supra* note 8, at 30 et seq.; Berenstein, 'The System of Supervision of the European Social Charter. Comments', in L. Betten, *supra* note 5, at 45.

35 See, e.g., ILO, *Manual on Procedures Relating to International Labour Conventions and Recommendations* (1984) 18, para. 57.

36 See its Conclusions XI-2, General Introduction, 11; CHARTE-REL (90)2, 14.

development for being excessively time-consuming and unresponsive to changes which may have ensued in the meantime.³⁷ The proper focus would be on streamlining and speeding up the procedure. Proposals in this direction include the introduction of time limits for the presentation of country reports and provisions allowing the CIE to invoke decisions made by other supervisory bodies.³⁸

The final resolution of the Turin Conference specifically refers to the possibility of revising the frequency of reporting (cf. operative paragraph 5). Similarly, the secretariat has proposed that reports should be prepared on all ESC provisions every four years and on specific provisions every two (e.g., the 'hard core' under Article 20(1)(b) or provisions which are the subject of 'negative conclusions' for the country concerned.)³⁹

Repeated calls have been made for greater resources to be made available for the ESC, its supervisory system and especially the secretariat.⁴⁰ It was more of a strategic decision than one of principle when the area covered by the Social Charter was included in the sphere of competence of the Human Rights Directorate of the Council of Europe and a section established for this purpose. This organization has to cope with an extremely high workload which is likely to grow even further on account of the revisions introduced in the Protocol (e.g., the broader involvement of NGOs). As with other international supervision systems, a great deal depends on the possibilities open to and the quality of its secretarial services with regard, for example, to analyses developed in preparation for discussion of reports.

It would improve efficiency if the guidelines for reporting were updated.⁴¹ The new reporting guidelines of the CDESCR are a good example of an arrangement which is critical, up-to-date and reflective of the situation prevailing within the respective countries.⁴² In this and other technical and organizational areas of the UN, supervisory systems, standardization, coordination and other rationalization efforts have been under way for some time, including the use of computers.⁴³ The result of these developments should be an intensified exchange of information between the ESC and the UN. But progress seems to be rather sluggish here when compared with the sphere of political human rights (as reflected, for instance, in the interaction between the ECHR jurisdiction and the 'rulings' of the Human Rights Committee).

VII. Proposals for a Complaints Procedure

A working party within CHARTE-REL has produced a draft of an (optional) additional protocol for a complaints procedure in connection with the ESC.⁴⁴ The idea of introducing such a procedure, inspired in part by the model of the ILO system, is by no means new. Harris, for example, provided convincing substantiation of the need for a complaints procedure for individuals in the field of social human rights, as stipulated in the ESC. In combination with the present reporting mechanism, a complaints procedure would make the supervision system

³⁷ See Harris, *supra* note 10, at 264; Wasescha, *supra* note 2, at 110 et seq.

³⁸ See CHARTE-REL (91)23, para. 11 as well as the proposals D/1 and D/3 at 29.

³⁹ See CHARTE-REL (90)2, 21.

⁴⁰ See the Turin Resolution, (operative) para. 4; CHARTE-REL (91)23, para. 10.

⁴¹ See a respective demand in proposal C/1 in CHARTE-REL (90)2, at 28.

⁴² See (for the text) ECOSOC, Off. Documents, 1991, Suppl. No. 3, Annex IV, at 91 et seq.

⁴³ See, e.g., the study prepared by P. Alston, A/44/668, Annex or UN General Assembly Resolution 46/111.

⁴⁴ See CHARTE-REL (91)23, para. 57 ff. and Appendix III. For the text, see Annex 2.

more effective and complete.⁴⁵ Perhaps this 'combination principle' is even one of the generally valid principles for the arrangement of international supervision systems, as mentioned at the beginning. In the CESCR, for example, there is a discussion taking more concrete shape on the possibility of introducing a complaints procedure for the UN Social Rights Covenant.⁴⁶

There is, however, resistance to such proposals. Because Germany, the Netherlands and Britain have voiced reservations in the ESC discussion,⁴⁷ no agreement has been reached on the wording of an additional protocol in 1991. Such resistance helps to explain why the procedure has been conceived of only as a collective complaints procedure (i.e., it does not include any provisions allowing individual complaints regarding specific violations.)⁴⁸ The signing of the protocol renders the procedure automatically applicable to international employers and trade union organizations as well as NGOs having consultative status with the Council of Europe. However, an additional declaration will be required if it is also to cover national employers and trade union bodies.⁴⁹ A 'majority' of the ministers present at the Turin Conference at least has regarded the establishment of a complaints procedure as a way of ensuring maximum possible involvement of employers and trade union organizations, as indicated by preambular paragraph 10 of their final resolution. There is also a link between the duty to keep NGOs informed under the revised version of Article 23(2) and the complaints procedure.⁵⁰ Information from the country reports could be used to initiate a complaint.

A complaints procedure in particular requires a 'political reinforcement' in the sense described above. The CHARTE-REL working party's draft provides this by involving the GC and the CM; unfortunately, the less laborious and still sufficient alternative of including the CM only failed to win enough support. A proposal providing for the CM to make explicit recommendations on steps to be taken was also rejected.⁵¹ Though not defined precisely, the CM's authority under Article F to make recommendations seems sufficiently comprehensive. After all, Article G requires contracting parties to give in the ensuing report an account (according to Article 21) of the measures they have taken. The intermingling of the complaints and reporting procedures which this involves may be problematical, but it does accord with the trend in the practice of, for instance, the ILO and the Human Rights Committee.⁵²

In this respect the introduction of an inter-state complaints procedure would also prove useful, as it would enable the contracting parties the means to influence the supervision system. A proposal by Malta in this direction was unfortunately withdrawn.⁵³ Even if in practice, very limited use is made of the possibility for countries to lodge human rights complaints, this procedural alternative does nevertheless have a certain preventive effect. This possibility could be used, among other things, to reprimand countries guilty of serious violations of the obligation to submit reports.

45 See Harris, *supra* note 8, at 35 et seq.; see also, Harris, *supra* note 10, at 266 et seq; CHARTE-REL (91)23, para. 58.

46 On the state of affairs, see ECOSOC, Off. Documents, 1992, Suppl. No. 3, para. 360 ff.

47 See CHARTE-REL (91)23, para. 75.

48 See Art. A/1 of the draft, or CHARTE-REL (91)23, para. 66.

49 See *id.*, paras. 63, 64 and Arts. A and B of the draft.

50 See CHARTE-REL (91)23, para. 23.

51 See, *id.*, paras. 69-71.

52 See *ibid.*, para. 74; Pocar, 'The International Covenant on Civil and Political Rights', in *Manual on Human Rights Reporting*, United Nations (1991) 81.

53 See CHARTE-REL (91)23, paras. 77, 78.

VIII. Outlook

The Protocol Amending the ESC was signed by 11 ESC states while the Turin Conference was still in progress and has already been ratified by Norway. Other countries have since signed the Protocol, although approximately ten ESC states have yet to do so, including Germany, Switzerland and Turkey.

The Protocol will not enter into force until it has been ratified or otherwise recognized in binding form by all ESC states (cf. Article 8). In order to prevent a small minority of countries or even one alone from blocking revision of the procedure, the final resolution adopted in Turin seeks, as far as permissible under the text of the Charter, to apply specific measures provided in the Protocol before it formally enters into force. In any case a number

of improvements could be implemented directly without supplementing the text of the Charter.⁵⁴ They include the proposals for streamlining the ESC procedures as described above. These and other modifications ought then at least to be included in revised rules of procedure, notably of the CIE. As regards the requirement for consent, however, technical problems may arise when important procedural arrangements are left to be settled by the rules of procedure or practice alone and are not incorporated in an instrument requiring ratification. I would include in this category the sanction of a negative conclusion by the CIE where no response is forthcoming from governments⁵⁵ and the stipulation of admissibility criteria within the complaints procedure.⁵⁶

My critical remarks and the remaining inadequacies are not intended in any way to detract from a fundamentally positive evaluation of the ESC revision process which has been initiated and whose first landmark has been reached with the Protocol of October 1991. The Turin Conference resolved to prolong the CHARTE-REL mandate into 1992 (cf. Resolution, operative paragraph 6(c)). In addition to the preparation and adoption of a protocol dealing with the complaints procedure, the next items on the agenda are a revision and updating of the Charter's substance. Here, too, there is no lack of concrete ideas and proposals.⁵⁷

⁵⁴ See *ibid.*, Appendix IV, 28 et seq. and others; the Turin Resolution, operative para. 6(b).

⁵⁵ See the proposal D/2 in CHARTE-REL (91)23, 29.

⁵⁶ See generally, *ibid.*, para. 60.

⁵⁷ See, e.g., CHARTE-REL (90)2, 33 et seq. and Appendix II as well as the draft of the Parliamentary Assembly (Commission on social questions, health and family).