

2000

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### Recommended Citation

Briggs, Anne Theodore. "Waking "Sleeping Beauty": The Revised European Social Charter." Human Rights Brief 7, no. 2 (2000): 24-25, 27.

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## Waking "Sleeping Beauty": The Revised European Social Charter

by Anne Theodore Briggs\*

The European Social Charter (Charter) has been in force for 35 years, providing to the citizens of its ratifying states the protection of social and economic rights, such as safe working conditions, medical assistance, and vocational training. The Charter was created by the Council of Europe, an intergovernmental organization established in 1949 of which 41 European states currently are members. The Council of Europe, which is a separate organization from the European Union, has three decision-making bodies: the Committee of Ministers, comprised primarily of the ministers for foreign affairs of the member states or their deputies; the Parliamentary Assembly, comprised of delegates from the national parliaments of each member state; and the Congress of Local and Regional Authorities of Europe, comprised of designated local or regional authorities from the member states. Before conventions, amendments, or other legislation adopted by the Committee of Ministers will be binding in a given member state, the member state must sign and ratify the legislation, and in some cases must amend its own domestic law to reflect the new legislation.

The Charter is a controversial product of this legislative process due to conflicting definitions of economic and social rights, as well as disagreements over the Council of Europe's enforcement powers to protect these rights. The Charter also has struggled to keep pace with social changes, such as the increasing role of women in the workplace, rising rates of divorce and out-of-wedlock births, and changing conceptions of the role of the elderly and disabled in society. Over the course of its history, while many people admired the aims of the Charter, most people felt that the Charter paled in importance compared to the European Convention on Human Rights, the premiere document protecting civil and political rights in Europe. Peter Leuprecht, former deputy secretary general of the Council of Europe, stated at a May 1997 colloquy on the Charter that "[f]or a long time, for too long it would have been fair to describe the European Social Charter as a 'Sleeping Beauty.'"

In the early 1990s, the Charter received its awakening in the form of amending protocols and ultimately a complete revision. The Revised European Social Charter (Revised Charter), which entered into force July 1, 1999, attempts to modernize the Charter to reflect social concerns of the twenty-first century and provide additional enforcement mechanisms. The creation of a Revised Charter, rather than a series of amendments to the original Charter, was thought necessary to "relaunch" the Charter and affirm its importance. Also, given the substantial number of changes made to the original Charter, a Revised Charter was administratively easier to draft and understand.

The Revised Charter incorporates important modifications, including the recognition of a number of new social and economic rights. Considering the small number of member states that have ratified it, however, and in light of legislative overlap from other instruments for the protection of social and economic rights, questions remain as to the significance of the Revised Charter.

### Charter History

Soon after adopting the European Convention on Human Rights in 1950, the Parliamentary Assembly of the Council of Europe urged the creation of "common policy in the social field." Support for the idea among the Committee of Ministers, however, was not uniform. Critics felt that a specific European docu-

ment on economic and social rights would duplicate the efforts of the International Labor Organization (ILO) and the United Nations. Despite these comments, member states maintained a commitment to drafting a Charter, believing that such a document would facilitate European unification by ensuring minimum standards of living in all member states and preventing competitive economic disadvantages among states due to differences in social policy. After eight years of drafting, a final text was adopted by the Committee of Ministers, signed by 13 member states, and entered into force on February 26, 1965. Initial reaction to the Charter was not uniformly positive. Critics argued that the conservative standards in the Charter were out of step with progressive trends in society and that the member states only needed to sign a small number of provisions in order to become contracting parties, thereby undermining the force and purpose of the Charter.

Thirteen years after the Charter entered into force, suggestions for revisions to update the Charter's content and enforcement mechanisms began to circulate, but were not acted upon because political opinion was not sufficiently strong. An Additional Protocol finally amended the Charter in 1988. Among other protections, it recognized the right to equality of employment opportunities on the grounds of sex and extended social protections to the elderly. In 1991, a Protocol Amending the Charter was adopted by the Committee of Ministers that improved the reporting and enforcement procedures of the Charter by specifying in detail the proce-

dures for submission of reports and their review by various committees. In 1995, the Committee of Ministers adopted a new Additional Protocol providing for a system of collective complaints. This 1995 Additional Protocol enabled trade unions and other groups to file collective complaints to further enforcement of Charter provisions.

In addition to these amendments, in 1990 the Council of Europe created an ad hoc committee called the Charte-Rel. The Charte-Rel worked in conjunction with members of the ILO and European trade unions to remedy other infirmities in the Charter, such as improving the effectiveness of the Charter and its supervisory machinery. After several years of deliberations, in 1994 the Charte-Rel submitted a draft Revised Charter to the Committee of Ministers for adoption. The Committee of Ministers adopted the Revised Charter in April 1996, and opened it for signature on May 3, 1996. It entered into force on July 1, 1999. At present, 24 of the 41 member states of the Council of Europe have ratified the original Charter and 7 have signed it, while 5 member states have ratified the Revised Charter and 17 have signed it.

### Content of the Charter and Revised Charter

The Charter and Revised Charter are constructed similarly, consisting of a preamble, five parts in the Charter, plus one additional part in the Revised Charter, and an appendix. Part I contains policy objectives "to be pursued by all appropriate means," which are not legally binding on the Contracting Parties. These objectives include: the right to work, the right to organize, the right to social security and medical assistance, the rights of migrant workers to protection and assistance, and the rights of families to social, economic, and legal protection. Part II consists of legally

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**European Social Charter**, continued from previous page

binding obligations related to the policy objectives stated in Part I. Contracting Parties may elect to be bound by some or all of these obligations, although they must adopt at least a certain number of provisions, as specified in Part III, to be bound by the Charter. Part IV specifies enforcement procedures and Part V (split into Parts V and VI in the Revised Charter) specifies restrictions on the application of the Charter and Revised Charter—particularly in times of war or emergency, the relation of the Charter and Revised Charter with respect to other domestic or international agreements, and procedures for denunciation. The Appendix contains additional information to aid in the interpretation of specific articles in the Charter and Revised Charter.

**Expanding the Obligations of the Contracting Parties**

The Revised Charter makes many important additions to the core of fundamental rights outlined in the original Charter. To address the increasing rates of divorce and out-of-wedlock births in modern society, the Revised Charter expands the list of core obligations of the Contracting Parties to include the recogni-

**To address concerns about the lack of transparency in the reporting process, the Committee of Ministers adopted the 1995 Additional Protocol to the Charter providing for a system of collective complaints.**

tion of social, legal, and economic rights for children and young persons (pt. I, para. 17). These rights include protection against negligence, violence or exploitation, the right of access to free primary and secondary education, and the right to state aid in the event children are “temporarily or definitely deprived of their family’s support” (pt. II, art. 17, para. 1c). Social protections for the elderly were also added (pt. I, para. 23). These protections include rights of the elderly to housing and health care so that the elderly may “remain full members of society for as long as possible” (pt. II, art. 23). Programs to increase the access of the poor to employment, housing, training, education, and medical assistance are also specified, as are programs to provide adequate compensation to workers terminated “without a valid reason” (pt. II, art. 30 and 24). The Revised Charter also encourages awareness and prevention of sexual harassment in the workplace and advocates policies of parental leave that benefit both mothers and fathers (pt. II, art. 26 and 27).

**Enforcing Compliance to the Charter**

Initially, monitoring and enforcement of Charter compliance depended on the honest assessment of the governments of the Contracting Parties in their reports to the Secretary General of the Council of Europe. The procedure by which Contracting Parties submit reports to the Secretary General was specified in the 1991 Protocol Amending the Charter. Reports, which are required at “two-yearly intervals” (pt. IV, art. 21), are examined by the Committee of Independent Experts (CIE). The CIE is comprised of nine experts elected by the Committee of Ministers and is assisted by an observer from the ILO. The CIE analyzes the reports submitted and gives a legal assessment as to whether the Contracting Party has fulfilled its obligations under the Charter or Revised Charter. The Governmental Committee, composed of representatives from each of the Contracting Parties as well as observers from European labor and management organizations, then reviews the assessments of the CIE. If it finds that the Contracting Party has not complied with the provisions of the Charter or Revised Charter, the Governmental Committee pre-

pares recommendations for the Committee of Ministers to review. If the Committee of Ministers then decides that a Contracting Party failed to comply with its obligations under the Charter or

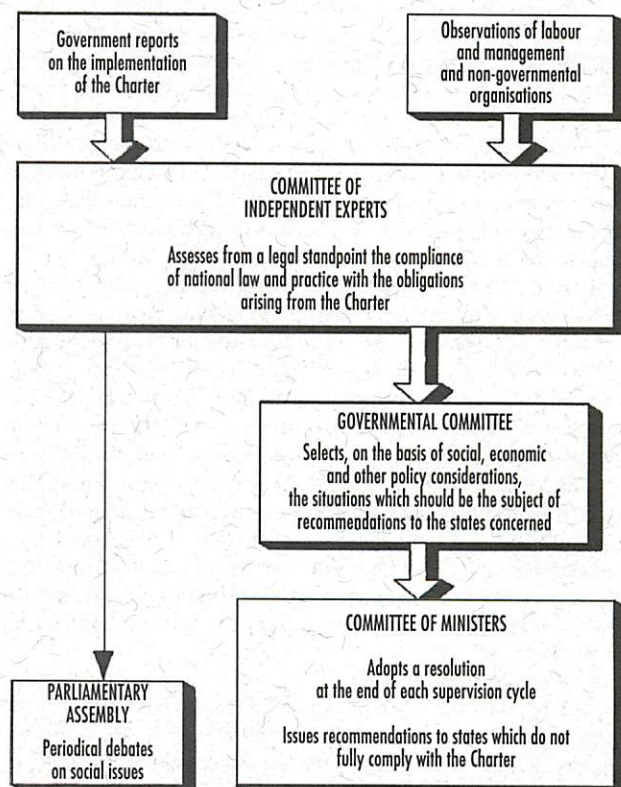
**Over the course of its history, while many people admired the aims of the Charter, most people felt that the Charter paled in importance compared to the European Convention on Human Rights, the premiere document protecting civil and political rights in Europe.**

the Revised Charter, it will issue recommendations to that state. The Charter is silent on the power granted to the Committee of Ministers to enforce its recommendations and does not provide for punitive measures should a Contracting Party fail to comply with its obligations.

To address concerns about the lack of transparency in the reporting process, the Committee of Ministers adopted the 1995 Additional Protocol to the Charter providing for a system of collective complaints. Under this protocol, members of international organizations, trade unions, and non-governmental organizations (NGOs) can also submit complaints if a Contracting Party fails to meet its obligations under the Charter. Collective complaints are

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### Council of Europe EUROPEAN SOCIAL CHARTER Supervisory mechanism



From European Social Charter: The Charter, its protocols, the revised charter (ISBN 92-871-3272-0). Courtesy of the Council of Europe. DRPP/34/FR/CP.



## Alumni Profile, continued from previous page

According to Yakir, this case is one of the most important cases in Israeli legal history. The decision of the Supreme Court surprised many civil rights advocates because of the sweeping rhetoric it employed. In the opinion, rendered amid hostile public opinion against limiting GSS authority, the Supreme Court stripped the GSS of the wide latitude the government previously allowed the service. The Court held the GSS did not have the authority to use physical force against prisoners, stating that GSS interrogators had no more power than regular policemen.

Israeli Prime Minister Ehud Barak subsequently has appointed a committee of jurors to study the decision and make recommendations on its implementation. Yakir testified before this committee in November 1999. He stated that ACRI opposed any legislation that would authorize the GSS to use force during interrogation. He urged the committee to legislate a specific prohibition against the use of torture.

Though he believes the Supreme Court decision is an extremely important victory, Yakir still maintains that the battle against torture is not over. Recently, the opposition party *Likud* introduced a private bill in the *Knesset* to authorize the GSS to use special means of interrogation in certain emergency situations. Such a bill, if passed, would threaten the progress made in the area of torture.

Yakir feels privileged to work as a lawyer with ACRI because he can devote his time to worthwhile cases. Although his work can be frustrating at times, Yakir obtains great satisfaction from it. He looks forward to continuing his crusade for greater protection of civil rights and liberties in Israel. Currently, Yakir is working on another case involving the GSS use of torture against detainees, this time, in the *Al Khaim* prison in South Lebanon. Although Israeli troops are visibly present in South Lebanon, Israel denies any responsibility for the human rights violations occurring in the prison. On behalf of ACRI, Yakir has filed a petition asking the Israeli Supreme Court to order the Minister of Defense to release the detainees or allow them their due process rights. It is Yakir's hope that a victory in this case would force Israel to take responsibility, under international law standards, for the enforcement of human rights in South Lebanon. ☉

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submitted to the CIE, which assesses whether the state party failed to comply with its obligations under the Charter or Revised Charter and drafts a report for the Committee of Ministers. The Committee of Ministers may then issue a recommendation to the party if it agrees with the assessment of the CIE. To date, only 8 of the 41 member states of the Council of Europe have ratified the 1995 Additional Protocol. Although the Revised Charter also relies primarily on government reports for monitoring and enforcement, it provides that where a Contracting Party has ratified the 1995 Additional Protocol on collective complaints, it will continue to be bound by that protocol. The Revised Charter also provides that Contracting Parties that have not ratified the collective complaints protocol, may accept the supervision of this protocol upon notification to the Secretary General.

## Future of the Revised Charter

The Revised Charter has suffered from a remarkable lack of publicity, which threatens public and political commitment to the aims it delineates. There are a significant number of treaties and declarations addressing the subject of social and economic rights, such as the UN Universal Declaration of Human Rights, the UN International Covenant on Economic, Social and Cultural Rights, and various ILO Conventions. The Charter and the Revised Charter have as yet failed to fully distinguish themselves from these documents. Whether the Revised Charter will ever realize its proper significance is uncertain, depending largely on the extent to which Council of Europe member states ratify it. Economic prosperity in Europe, which is fueled by the New Economy resulting from recent advances in technology, may also highlight the importance of the provisions of the Revised Charter in securing social and economic benefits to all Europeans. As Peter Leuprecht eloquently stated at the May 1997 colloquy, "The reality of the world we live in shows us that it is only if all fundamental rights in it are guaranteed, civil and political rights as well as economic, social and cultural rights, that man can have a dignified existence." ☉

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## Ending the Laogai System

Aside from the PRC's obligations to eliminate the *Laogai* system, nations other than the PRC should stop importing products manufactured with forced labor in the *Laogai*. The United States is one country that is currently making an effort to stop importing such products. In 1992, for example, the governments of the United States and PRC signed a Memorandum of Understanding (MOU) prohibiting trade in prison labor products. Two years later, the two countries signed a Statement of Cooperation which detailed specific working procedures for the implementation of the MOU. Unfortunately, enforcement of the MOU thus far has proved largely unsuccessful. In 1998, for example, U.S. customs officials attempted to pursue eight standing requests to visit sights they suspected of manufacturing prison labor products. The Chinese Ministry of Justice, however, refused access on the grounds that *Laogai* inmates are not technically prisoners, and thus the MOU did not apply.

There are currently a number of organizations that are actively campaigning against the continued use of the *Laogai* system and many critics also have requested that the United Nations establish a special

tribunal to investigate *Laogai* activities. Harry Wu and the Laogai Research Foundation are leading this fight. Wu has returned to China numerous times in order to document the current conditions and continued abuses occurring in the *Laogai* system.

## Conclusion

The *Laogai* system continues to be a major concern to many human rights organizations and countries around the world. The manner in which the PRC places individuals in the *Laogai* system and the conditions of the camps violate Chinese law and international standards. One way in which *Laogai* can be countered is by further educating the international community about abuses that take place in the system. On September 17-19, 1999, for example, the Laogai Research Foundation presented a conference, "Voices from *Laogai*," at American University in Washington, D.C. The conference included numerous survivor testimonies. Only through continued perseverance by the international community and organizations such as the Laogai Research Foundation will the *Laogai* system ever come into compliance with international human rights norms. ☉

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