

European Social Charter

European Committee of Social Rights

Conclusions XIX-3 (2010)

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General introduction

Introduction

1. The European Committee of Social Rights, established by Article 25 of the European Social Charter, composed of:

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Administrative Chamber (Spain)

Ms Jarna PETMAN (Finnish)
Professor *ad interim* in International Law
Deputy Director of the Erik Castrén Institute
Faculty of Law
University of Helsinki (Finland)

assisted by Mr Régis BRILLAT, Executive Secretary,
between February 2010 and December 2010 examined the reports on
the application of the European Social Charter by Austria, Croatia,

Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, the Netherlands in respect of the Antilles, Poland, Slovakia, Spain, “the former Yugoslav Republic of Macedonia” and the United Kingdom. Hungary, Luxembourg and the Netherlands in respect of Aruba did not submit a report in time.

The International Labour Organisation, who may nominate a representative to participate in a consultative capacity pursuant to Article 26 of the Charter, was not present at the sessions held during the above-mentioned period.

2. The Committee emphasises that the Charter requires the submission of a complete report. This means that formulae such as “no new developments”, “the situation has not changed” (since the previous cycle) or similar ones may in certain situations be valid in relation to the legal framework, but they are not sufficient when the *Form for Reports* asks for information on practical measures and developments (e.g. updated statistics on the number of sanctions, accidents, etc.) in order to demonstrate the application of the Charter in practice. In such cases, lack of the requisite information will lead the Committee to a conclusion of non-conformity.

Furthermore, in case of non-submission of a report, the Committee considers that there is a violation of the formal obligation to report and that there is, in effect, nothing to demonstrate that the situation as regards the substantive provisions concerned is in conformity with the Charter.

3. At the 1097th meeting of the Ministers’ Deputies on 10 November 2010 the Committee of Ministers held an election to fill the five seats falling vacant on 31 December 2010. Mr Lauri LEPPIK (Estonian) and Mr Colm O’CINNEIDE (Irish) were elected for a second term and Ms Karin LUKAS (Austrian), Mr Giuseppe PALMISANO (Italian) and Ms Elena MACHULSKAYA (Russian) were elected for a first term. The term begins on 1 January 2011 and ends on 31 December 2016.

4. The Committee wishes to express its appreciation and gratitude to the two outgoing members, Ms Polonca KONCAR (Slovenian) and Ms Lyudmila HARUTYUNYAN (Armenian), for their contribution to the Committee’s work and for their tireless efforts to promote social rights. Ms KONCAR was elected in 2000 and served for two terms. She was a longstanding member of the Committee’s Bureau and President of the Committee from 2006 to 2010. Ms HARUTYUNYAN was a member of the Committee from September 2007 to 2010.

5. The function of the European Committee of Social Rights is to rule on the conformity of the situations in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. Its conclusions appear in the following chapters by State. They are also available on the website of the Council of Europe and in the case law database that is also available on this site. A summary table of the Committee's Conclusions XIX-3 (2010) as well as the state of signature and ratification of the 1961 European Social Charter and the 1996 Revised European Social Charter appears below.
6. The conclusions adopted by the Committee in December 2010 concern the accepted provisions of the following articles of the Charter belonging to the thematic group "Labour rights":
 - the right to just conditions of work (Article 2)
 - the right to a fair remuneration (Article 4),
 - the right to organise (Article 5),
 - the right to bargain collectively (Article 6),
 - the right of workers to be informed and consulted (Article 2 of the 1988 Additional Protocol),
 - the right of workers to take part in the determination and improvement of working conditions and working environment (Article 3 of the 1988 Additional Protocol),
7. In addition to the state reports, the Committee had at its disposal comments on the reports submitted by different trade unions and non-governmental organisations (see introduction to the individual country chapters).

Statements of interpretation

8. The Committee makes the following statements of interpretation:
9. Statement of interpretation on Article 2 §2: public holidays with pay

The Committee considers that work performed on a public holiday requires a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The remuneration may also be provided as compensatory time-off, in which case it should be at least double the days worked.

10. **Statement of interpretation on Article 4 §1**

The Committee holds that a “decent standard of living”, which is at heart of this provision of the Charter, goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities. It follows that guaranteeing a decent standard of living means ensuring a minimum wage (and supplemented by any additional benefits where applicable) the level of which should be sufficient to meet these needs.

11. **Statement of interpretation on Article 5**

Unemployed and retired workers may join and remain in trade unions. However, States are not required to allow them to form trade unions, as long as they are entitled to form organisations which can take part in consultation processes that may impact on their rights and interests.

12. **Statement of interpretation on Article 6 §2**

The Committee considers, like the ILO Freedom of Association Committee, that the extension of collective agreements should take place subject to tripartite analysis of the consequences it would have on the sector to which it is applied” (Digest of the Freedom of Association Committee of the Governing Body of the ILO, 5th (revised) edition, 2006, para. 1051).

General questions from the Committee

13. The Committee addresses the following general questions to all the States Parties and invites them to provide replies in the next report on the provision concerned:

14. **Article 6 §2**

The Committee asks that the next report on Article 6 §2 contain information on the procedures governing the possible extension of collective agreements.

Statement on the examination of Article 4 §3

15. In the General Introduction to Conclusions 2002 on the Charter, the Committee indicated that national situations in respect of Article 4 §3 (right to equal pay) would be examined under Article 20 of the Revised Charter. Consequently, States which had accepted both provisions were no longer required to submit a report on the application of

Article 4 §3. This rule was also applied to the relationship between Article 4 §3 and Article 1 of the 1988 Additional Protocol.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above-mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4 §3 and Article 1 of the 1988 Additional Protocol, thus every two years (under the thematic group 1 "Employment, training and equal opportunities", as well as thematic group 3 "Labour rights"). Henceforth, the Committee invites [country] to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

50th anniversary of the European Social Charter

16. On 18 October 2011 it will be 50 years since the European Social Charter was adopted. This anniversary will be marked by the Council of Europe in different ways during the course of 2011. The Committee for its part will launch a reflection on how the visibility and impact can be improved and for this purpose it will, *inter alia*, review existing procedures and working methods. It also invites the States Parties to consider how a wider application of the Charter can be ensured and in this respect it wishes to encourage those States who have not already done so will take steps to ratify the Revised Charter and the collective complaints procedure in 2011.

Next report

17. The next reports, which are due before 31 October 2010, will concern the accepted provisions of the following articles belonging to the thematic group "Children, families, migrants": 7, 8, 16, 17 and 19.

Summary of the Committee’s Conclusions

	Article																
	2.1	2.2	2.3	2.4	2.5	4.1	4.2	4.3*	4.4	4.5	5	6.1	6.2	6.3	6.4	P Article 2	P Article 3
Austria	NA	+	+	-	+	0	+		NA	+	+	+	+	+	NA	NA	NA
Croatia	-	-	+	+	0	NA	NA	NA	NA	NA	+	-	-	-	-	-	0
Czech Republic	-	0	+	+	-	NA	+		-	+	-	+	+	+	-	+	0
Denmark	NA	0	-	NA	+	+	-		NA	NA	-	+	-	+	-	+	+
Germany	-	0	+	+	-	-	+	-	NA	+	+	+	+	+	-	NA	NA
Greece	+	-	+	-	-	0	+		-	+	NA	NA	NA	NA	NA	0	+
Hungary†																	
Iceland	-	NA	+	NA	+	-	+	-	-	-	-	+	+	+	+	NA	NA
Latvia	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	-	+	-	+	+	NA	NA
Luxembourg†																	
Poland	-	NA	+	+	+	NA	-	+	-	-	-	+	+	+	NA	NA	NA
Slovakia	-	-	0	+	+	-	-		-	-	0	+	-	0	-	+	0
Spain	-	0	-	+	+	-	-		-	+	-	+	+	+	-	+	+
“The former Yugoslav Republic of Macedonia”	0	0	0	+	+	NA	NA	NA	NA	NA	0	0	-	0	0	NA	NA
United Kingdom	NA	-	-	-	-	-	-	NA	-	+	-	+	-	+	-	NA	NA
	+ Conformity				- Non-conformity				0 Deferral				NA Non-accepted provision				

* Please refer to paragraph 15 of the General Introduction.

† Please refer to paragraph 1 of the General Introduction.

Member states of the Council of Europe and the European Social Charter

Member states	Signatures*	Ratifications*	Acceptance of the collective complaints procedure
Albania	21/09/98	14/11/02	
Andorra	04/11/00	12/11/04	
Armenia	18/10/01	21/01/04	
Austria	07/05/99	29/10/69	
Azerbaijan	18/10/01	02/09/04	
Belgium	03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina	11/05/04	07/10/08	
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	06/11/09	26/02/03	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	03/11/99	
Denmark†	03/05/96	03/03/65	
Estonia	04/05/98	11/09/00	
Finland	03/05/96	21/06/02	17/07/98‡
France	03/05/96	07/05/99	07/05/99
Georgia	30/06/00	22/08/05	
Germany†	29/06/07	27/01/65	
Greece	03/05/96	06/06/84	18/06/98
Hungary	07/10/04	20/04/09	
Iceland	04/11/98	15/01/76	
Ireland	04/11/00	04/11/00	04/11/00
Italy	03/05/96	05/07/99	03/11/97
Latvia	29/05/07	31/01/02	
Liechtenstein	09/10/91		
Lithuania	08/09/97	29/06/01	
Luxembourg†	11/02/98	10/10/91	
Malta	27/07/05	27/07/05	
Moldova	03/11/98	08/11/01	
Monaco	05/10/04		
Montenegro	22/03/05	03/03/10	
Netherlands	23/01/04	03/05/06	03/05/06
Norway	07/05/01	07/05/01	20/03/97

Member states of the Council of Europe and the European Social Charter

Member states	Signatures*	Ratifications*	Acceptance of the collective complaints procedure
Poland	25/10/05	25/06/97	
Portugal	03/05/96	30/05/02	20/03/98
Romania	14/05/97	07/05/99	
Russian Federation	14/09/00	16/10/09	
San Marino	18/10/01		
Serbia	22/03/05	14/09/09	
Slovak Republic	18/11/99	23/04/09	
Slovenia	11/10/97	07/05/99	07/05/99
Spain	23/10/00	06/05/80	
Sweden	03/05/96	29/05/98	29/05/98
Switzerland	06/05/76		
"The former Yugoslav Republic of Macedonia"	27/05/09	31/03/05	
Turkey	06/10/04	27/06/07	
Ukraine	07/05/99	21/12/06	
United Kingdom†	07/11/97	11/07/62	
Number of states: 47	2 + 45 = 47	13 + 30 = 43	14

* The dates in bold on a shaded background correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

† State whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

‡ State having recognised the right of national NGOs to lodge collective complaints against it.

**Chapter 1 – Conclusions concerning Articles 2, 3, 4, 5
and 6 of the Charter in respect of Austria**

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by Austria on 29 October 1969. The time limit for submitting the 27th report on the application of this treaty to the Council of Europe was 31 October 2009 and Austria submitted it on 19 October 2009.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

Austria has accepted all of these articles, with the exception of Articles 2 §1, 4 §4 and 6 §4 of the Charter and Articles 2 and 3 of the Additional Protocol.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter concerns 11 situations and contains:

- 9 cases of conformity: Articles 2 §2, 2 §3, 2 §5, 4 §2, 4 §5, 5, 6 §1, 6 §2 and 6 §3 ;
- 1 case of non-conformity: Article 2 §4.

In respect of the other situation concerning Article 4 §1, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the article in question.

The next Austrian report deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 2 – Public holidays with pay

The Committee takes note of the information contained in the report submitted by Austria.

In its previous conclusion (Conclusions 2007), the Committee asked for updated information on the increased remuneration paid in respect of work done on a public holiday. According to the report, employees who work on public holidays receive the standard pay for the work carried out plus a supplement, which is generally 100%.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a

higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee asks whether the base salary is maintained, in addition to the increased pay rate.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 2 §2 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Austria.

In its previous conclusion (Conclusions XVIII-2), the Committee asked for information on the rules of postponement. Under section 4 §5 of the Annual Paid Leave Act, paid leave may be carried over up to a time limit of two years following the year in which the entitlement accrued.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 2 §3 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 4 – Reduced working hours or additional holidays in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by Austria.

The Committee refers to the statement of interpretation it made on Article 2 §4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2 §4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protection measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these measures should be to afford the persons

concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk. Article 2 §4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter. Under no circumstances, however, can financial compensation be considered appropriate under Article 2 §4 (*Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2 §4).

The Committee refers to its conclusion under Article 3 of the Charter (Conclusions XIX-2) which describes the dangerous occupations performed and the preventing measures taken in this regard.

The Committee recalls that Section 21 AZG reduced working time or longer breaks may be stipulated by Ministerial Order (*Verordnung*) for particularly dangerous and unhealthy work. In its two previous conclusions (Conclusions XVI-2 and XVIII-2), the Committee wished to have further information on the groups of workers who benefit from reduced working hours on the grounds of the nature of their work or other measures reducing their exposure to occupational risks under the AZG. It also asked whether any other measures are in place besides additional holidays or reduced working hours, in order to reduce exposure to residual risks in certain occupations. In the absence of such information, the Committee considers that the situation is not in conformity in this respect.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 2 §4 of the Charter because it has not been established that, despite the risk elimination policy, workers employed on dangerous or unhealthy work are entitled to appropriate compensation.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by Austria.

The report gives statistics from the Labour Inspectorate on infringements of the Rest Periods Act. The Committee asks that the next report provides a full

and up-to-date description of the situation in law and practice in respect of Article 2 §5.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 2 §5 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 1 – Decent remuneration

The Committee takes note of the information contained in the report submitted by Austria.

The Committee takes notes of the measures implemented, such as tax relief aimed at safeguarding the “decent standard of living” requirement set out in this paragraph.

In its previous conclusion (Conclusions XVIII-2) the Committee held that the situation in Austria was not in conformity with the Charter as it had not been established that a decent standard of living was guaranteed for a single worker earning minimum wage. It notes from the report that in 2007 the *median* annual net income of all employed workers amounted to €17 376 which corresponds to €1 241 per month. The Committee also notes that the *average* annual wage in 2007 amounted to €18 476, corresponding to €1 320 per month.

As regards the minimum wage, according to the report, on 2 July 2007 the Austrian Trade Union Federation and the Austrian Federal Economic Chamber entered into a framework agreement on the implementation of a minimum wage of €1000 in the industry-specific collective agreements. This amount corresponds to a net monthly minimum wage of €958 for white-collar employees and €957 for blue-collar employees. The Committee observes that the net minimum wage as stipulated by the industry-specific collective agreements represents more than 60% of both national average and national median wages.

According to the report, with the framework agreement social partners pledge that they will advocate and support universal application of the minimum wage requirements also beyond their immediate sphere of influence. The Committee asks what is the actual scope of coverage of this framework agreement and what policy measures are taken to ensure that workers not covered actually receive a minimum wage of €1000.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by Austria.

The report indicates that there have been no changes in respect of the legal framework related to private sector employees.

As regards employees in the public sector, pursuant to an amendment to the Salary Act of 1956, overtime is paid to federal civil servants for hours worked in excess of the agreed working hours at an enhanced 50% pay rate or time off in lieu. The Committee asks whether the time off granted in such cases is longer than the overtime hours worked. It recalls that where remuneration for overtime is entirely given in the form of time off, Article 4 §2 requires that this time be longer than the additional hours worked (Conclusions XIV-2, Belgium)

In addition, an amendment to the Civil Service Act in 2007 gives part-time workers a legal claim to a premium rate of 25% for overtime work (on condition that overtime is not fully compensated by reductions in the working day within a three-month period).

The Committee requests information on whether the statutory provisions on compensation for overtime apply to all categories of workers. The next report should indicate if there are any exceptions, namely as regards senior state officials or senior managers.

It also asks the next report to provide information on the activities of the Labour Inspection in respect of any breaches related to the failure to pay overtime wages.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 4 §2 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 3 – Non-discrimination between and women men with respect to remuneration

In the General Introduction to Conclusions 2002 on the Charter, the Committee indicated that national situations in respect of Article 4 §3 (right to equal pay) would be examined under Article 1 of the Additional Protocol of 1988. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4 §3.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4 §3 and Article 1 of the Additional Protocol of 1988, thus every two years (under the thematic group 1 “Employment, training and equal opportunities”, as well as thematic group 3 “Labour rights”). Henceforth, the Committee invites Austria to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

Article 4 – Right to a fair remuneration

Paragraph 5 – Limits to deduction from wages

The Committee notes that there have been no changes to the situation with regard to the limitation of deductions from wages, which it has previously considered to be in conformity with the Charter.

As the most recent reports have not submitted any information, the Committee requests that the next report provide a full and up-to-date description of the situation in law and practice in respect of Article 4 §5.

Conclusion

The Committee therefore concludes that the situation in Austria is in conformity with Article 4 §5 of the Charter.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by Austria.

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions (Conclusions XV-1, XVI-1, XVII-1, and XVIII-1). It will therefore only consider recent developments and additional information in this conclusion.

Forming trade unions and employer associations

In its last conclusion (Conclusions XVIII-1) the Committee noted that the public security directorate has final authority to rule on matters pertaining to the Associations Act which governs, *inter alia*, the forming and dissolution of trade unions and employer associations. It asked whether this body qualifies as a judicial authority or whether there is a right of appeal to domestic courts against refusals to authorise the formation of trade unions. The report indicates that the public security directorate is not a judicial authority but that appeals can be lodged against its decisions with an Administrative Court and the Supreme Administrative Court.

In reply to the Committee's query concerning the dissolution of trade unions, the report indicates that Section 29 §1 of the Associations Act provides that any association (including trade unions) can be dissolved by an administrative decision if the requirements of Article 11 §2 of the European Convention on Human Rights are met, and if the association violates criminal law, acts beyond the scope of by-laws or no longer meets the conditions for its legal existence. Finally, the Committee takes note of the additional information provided on the central register of information on associations.

The Committee concludes that the situation is in conformity with Article 5 on this aspect

Personal scope

The Committee found in its last conclusions that the situation was not in conformity because foreigners could not stand for elections to works councils unless they had the nationality of a member state of the European Union or a state party to the European Economic Area Agreement. The report indicates that Federal Act No. 4 of 2006 remedied this situation and that all migrants can now stand as candidates to works councils, irrespective of their citizenship. The Committee therefore considers that the situation is in conformity with Article 5 on this aspect.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 5 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 1 – Joint consultation

The Committee notes from the report and all the information at its disposal that there have been no changes in the situation which it has previously considered to be in conformity with Article 6 §1 of the Charter.

The report informs that the legislative framework has been amended to enforce Community directives. More particularly:

- Council Directive 2001/86/EC concerning European companies (Societas Europaea or SE), was transposed by an amendment to the Labour Constitution Act (Arbeitsverfassungsgesetz, ArbVG, Federal Law Gazette I no. 82/2004). The report informs that in companies which are founded or managed in the form of an SE with its registered office in Austria, have to adopt measures in view of henceforth establishing an SE works council or a different procedure for the purposes of informing and consulting employees.
- Council Directive 2003/72/EC regulating employee involvement in the European Cooperative Society (SCE), was transposed by means of an amendment to the ArbVG (Federal Law Gazette I no. 104/2006). The report informs that in companies which are founded or managed in the form of an SCE with its registered office in Austria, have to adopt measures in view of henceforth establishing an SCE works council or a different procedure for the purposes of informing and consulting employees.
- Directive 2005/56/EC on cross-border mergers of limited liability companies from different Member States, was transposed by means of an amendment to the ArbVG (Federal Law Gazette I no. 77/2007). The report indicates that the regulations are modelled on the regulations for the SE.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 6 §1 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee takes note from the information contained in the report submitted by Austria and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §2 of the Charter.

In addition to certain statutory bodies which are guaranteed the power to conclude collective agreements by operation of law, voluntary occupational associations (*Berufsvereinigungen*) and other associations (*Vereine*) may also conclude collective agreements if the Federal Conciliation Board has granted them the power to do so. The report states that as of 31 December 2008, 50 such associations were granted the power to enter into collective agreements as opposed to 54 as of 31 December 2004.

The report further specifies that 457 collective agreements were deposited with the Federal Ministry of Labour, Social Affairs and Consumer Protection in 2005, 492 in the year 2006, 448 in 2007 and 583 in 2008.

The Committee wishes the next report to provide up-dated information on collective bargaining in Austria.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 6 §2 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee notes from the report submitted by Austria and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §3 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

The Committee concludes that the situation in Austria is in conformity with Article 6 §3 of the Charter.

**Chapter 2 – Conclusions concerning Articles 2, 3, 5
and 6 of the Charter and Articles 2 and 3
of the Additional Protocol
in respect of Croatia**

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by Croatia on 26 February 2003. The time limit for submitting the 4th report on the application of this treaty to the Council of Europe was 31 October 2009 and Croatia submitted it on 22 January 2010.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

Croatia has accepted all the articles from this group with the exception of Article 4.

The applicable reference period was 1 January 2005]to 31 December 2008.

The present chapter on Croatia concerns 12 situations and contains:

- 3 conclusions of conformity: Articles 2 §3, 2 §4 and 5;
- 7 conclusions of non-conformity: Articles 2 §1, 2 §2, 6 §1, 6 §2, 6 §3, 6 §4 and Article 2 of the Additional Protocol.

In respect of the other 2 situations concerning Article 2 §5 and Article 3 of the Additional Protocol, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Croatian report deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable working time

The Committee takes note of the information contained in the report submitted by Croatia.

It recalls that under the Labour Act full-time working hours should not exceed 40 hours per week. Overtime is possible in cases of force majeure, extraordinary increase in work and other similar cases where there is a pressing need, but should not exceed 10 hours a week (Conclusions XVIII-1).

The report provides clarifications on the flexible working arrangements foreseen under Article 43 of the Labour Act (“Rescheduling of working hours”). Such arrangements must be included in a collective agreement or specifi-

cally authorised by the Labour Inspectorate. When working hours are re-scheduled, they shall not exceed 52 hours a week (or 60 hours in seasonal jobs). The reference period for the calculation of average working hours is 1 year. The Committee finds that such flexible working time schemes are acceptable under the Charter.

It notes however that the 12-hour maximum working day can be exceeded in seasonal jobs in industry, agriculture, commerce and other non-industrial activities, where the working day can be extended to 14 hours (Article 45). This can take place during a maximum of 60 working days a year for seasonal jobs in industry, but for seasonal activities in the other sectors mentioned no yearly maximum is laid down in the Labour Act.

The Committee considers that working days of 14 hours over extended periods of time in seasonal occupations can not be deemed as reasonable under this provision. Whilst statutory provisions authorising flexibility of working time do not as such breach the Charter, the Committee finds that in the instant case the limit on daily working time is too flexible, especially considering that the workers concerned can be required to work 14 hours over long periods. Such working arrangements could therefore be detrimental to the health and safety of workers. Moreover, the Committee notes that the Labour Act does not contain any provisions on compensatory rest which should immediately be granted to workers in cases where the standard working day is extended. It therefore finds that the regulations on working time in respect of seasonal occupations in non-industrial sectors do not comply with the Charter.

The report indicates that the new Labour Act which entered into force on 1 January 2010 includes regulations on the question of time spent on-call at the workplace. As this legislation came into force outside the reference period, the Committee will examine it during its next assessment of this provision.

According to the report, the Labour Inspectorate found that 130 employers breached regulations in 2005 and 107 in 2008. The number of workers who worked overtime illegally were 5 684 in 2005 and 4 001 in 2008. Companies may be fined between HRK 31 000 (€4 251) and 100 000 (€13 715), depending on the breach.

The Committee asks the next report to provide updated information on the supervision of working time regulations by the Labour Inspectorate, including the number of breaches identified and penalties imposed in this area.

Conclusion

The Committee concludes that the situation in Croatia is not in conformity with Article 2 §1 of the Charter on the ground that regulations permit daily working time of 14 hours over long periods in various seasonal occupations.

Article 2 – Right to just conditions of work

Paragraph 2 – Public holidays with pay

The Committee takes note of the information contained in the report submitted by Croatia.

Under Article 84 of the Labour Code, employees' wages must be increased for work carried out on public holidays. The amount of the increased payment is not stipulated by the Labour Code; instead it may be set by legislation or regulations, collective agreements, employment rules or employment contracts. Section 5 of the Act on Public Holidays, Commemorative Days and Non-Working Days provides for compensatory payment, but only for workers who would not usually be required to work on a public holiday or non-working day. Under the Labour Code, work carried out on a public holiday is paid at a rate of 150%. Under the aforementioned act, pay for work carried out on a public holiday varies between 150 and 250%.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee asks whether the base salary for the work carried out on a public holiday is maintained, in addition to the increased pay rate.

In its last conclusion (Conclusions XVIII-1), the Committee asked for information on the categories of workers or sectors who do not enjoy the right guaranteed by Article 2 §2 and also an estimation of the number of workers concerned. The report does not answer these questions. The Committee therefore repeats these questions. In the absence of information allowing the Committee to consider whether the right to public holidays with pay is guaranteed, it concludes that the situation is not in conformity.

In its previous conclusion (Conclusions XVIII-1), the Committee asked for information on the regulations on public holidays in the trade sector. Under section 58 of the Trade Act, shops must be closed on Sundays and public hol-

idays save in exceptional circumstances prescribed by law. Sections 59 and 60 include a list of exceptions such as service stations. The Committee asks at what rate people who work on public holidays for commercial concerns of this type are paid.

Conclusion

The Committee concludes that the situation in Croatia is not in conformity with Article 2 §2 of the Charter on the ground that it has not been established that the right to public holidays with pay is guaranteed.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Croatia.

In its previous conclusion (Conclusions XVIII-1), the Committee noted that under section 47 of the Labour Act, employees were entitled to paid annual leave of no fewer than eighteen working days per calendar year. However, under paragraph 4 of section 48 of the Labour Act, the sixth day of a five-day working week – usually Saturday – is also included in annual leave (unless otherwise stated in collective agreements, employment rules or employment contracts), with the result that the actual length of statutory annual leave is three weeks. The Committee asked for confirmation that this was the case. According to the report, working hours should indeed be considered to be distributed over six working days when the duration of annual leave is being determined. The Committee concludes that the length of annual leave is three weeks.

With regard to the rules on carrying over annual leave, the report states that under Article 54 of the Labour Code, employees may take their leave in two instalments, the first of which may be no less than twelve consecutive days during the year for which the leave is due. The second instalment must be taken by 30 June of the following year at the latest.

The report gives statistics from the Labour Inspectorate on infringements of the provisions of the Labour Code on annual paid leave. Offences declined significantly between 2007 and 2008.

Conclusion

The Committee concludes that the situation in Croatia is in conformity with Article 2 §3 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 4 – Reduced working hours or additional holidays in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by Croatia.

The Committee refers to the statement of interpretation it made on Article 2 §4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2 §4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protection measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk. Article 2 §4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter. Under no circumstances, however, can financial compensation be considered appropriate under Article 2 §4 (*Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2 §4).

In its previous conclusion (Conclusions XVIII-2), the Committee asked for further information on any measures taken to reduce exposure to residual risks in some occupations. Under section 48 of the Occupational Health and Safety Act, employers must ensure that the concentration of dangerous substances in workplaces is at a reasonable level and permanently below the maximum permitted level of concentration. If concentrations rise above the authorised maximum, employers must immediately halt activities, establish the causes of the unauthorised emissions and take appropriate measures to protect their employees' health. The Ordinance on maximum permitted

levels of harmful substances in the workplace includes a series of measures designed to protect employees' health.

In reply to the Committee's request, the report states that during the inspections carried out in 2005 and 2006, labour inspectors did not identify any infringements of occupational health and safety rules or the rules on the awarding of additional paid leave for dangerous or unhealthy work. However, they did identify eight infringements in 2007 and thirteen in 2008 and have referred these cases to the relevant judicial authorities for the employers to be punished.

In the absence of any information in the report, the Committee asks again whether reduced working hours are actually applied to the great majority of the workers concerned.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Croatia is in conformity with Article 2 §4 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by Croatia.

In its previous conclusion (Conclusions XVIII-1), the Committee asked for information on the supervisory activities of the labour inspectorate to ensure compliance with the rules on weekly rest periods. According to the report, labour inspectors established that there had been 448 violations of these rules in 2005, 507 in 2006, 1312 in 2007 and 1103 in 2008. The labour inspectorate referred these cases to the relevant judicial authorities for the employers to be punished.

The Committee recalls that Article 2 §5 guarantees that weekly rest period may not be replaced by compensation and workers may not be permitted to give them up. Also, although the weekly rest period may be deferred to the following week, no worker should work more than twelve days consecutively before being granted a two-day rest period. In the absence of information in the report, the Committee asks again if this is the case in Croatia.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by Croatia.

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusion (Conclusions XVIII-1). It will therefore only consider recent developments and additional information in this conclusion, in particular replies to question raised by the Committee in its last conclusion.

Right to join or not to join a trade union

The report indicates that there have been no example of closed shop practices which would have been contrary to Section 2 of the Labour Act which prohibits discrimination of persons seeking employment or employed on the ground, *inter alia*, of membership or non-membership of a union, and to Section 188 of the same Act which prohibits unequal treatment linked to membership of a trade union or participation in union activities and stipulates that employers must not take into account membership of a union and participation in union activities when deciding whether to offer a work contract.

Representativeness

In reply to the Committee, the report specifies that each union that has submitted a request for the assessment of their compliance with the requirements of representativeness can challenge the minister of labour's decision not to grant representativeness status before the Administrative Court of the Republic of Croatia which will have to decide within 30 days from the date of appeal.

The Committee reiterates its question as to who decides on the representativeness of employers associations and whether there is any judicial supervision.

Personal scope

The Committee noted in its last conclusion that Section 4 of the Civil Servants and Civil Service Employees Act authorises public officials to form trade unions in accordance with general labour regulations, unless there is specific legislation to the contrary. The report indicates that there is no such legislation and therefore that civil servants fully enjoy the right to organise.

In reply to the Committee, the report specifies that there are no barriers preventing foreign nationals legally residing or regularly working in Croatia from joining or founding a trade union in the same way as Croatian nationals.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Croatia is in conformity with Article 5 of the Charter.

Article 6 – Right to bargain collectively**Paragraph 1 – Joint consultation**

The Committee takes note of the information contained in the report submitted by Croatia.

Levels of joint consultation

The Committee refers to its previous conclusion (Conclusions XVIII-1) for a description of the Economic and Social Council, the tripartite body for joint consultation at the national level. It further notes from the report that tripartite economic and social councils (“county councils”) operate with similar functions at the local or regional levels.

Notwithstanding the Committee’s request, the report does not specify whether employers’ and employees’ organisations are entitled to and have the opportunity for joint consultation also on a bi-partite basis at all levels. The Committee reiterates its question and asks for specific examples of such consultation giving rise to new rights for workers and/or improving their working conditions to be provided in the next report.

Matters for joint consultation

The Committee understands from the report that joint consultation in the above mentioned tripartite bodies concerns primarily matters related to economic and social policy.

The Committee reiterates that consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, industrial health, safety

and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.) (Conclusions I, Statement of Interpretation on Article 6 §1 and Conclusions V, Ireland). It thus requests the next report to clarify whether this is the case. Meanwhile, it cannot establish whether joint consultation covers all matters of mutual interest.

Conclusion

The Committee concludes that the situation in Croatia is not in conformity with Article 6 §1 of the Charter as it has not been established that joint consultation covers all matters of mutual interest.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee takes note of the information contained in the report submitted by Croatia.

It recalls that it previously deferred its conclusion (Conclusions XVIII-1) pending receipt of information, *inter alia*, on:

- the criteria applied in practice to determine the participation of different trade unions active in the same area in a bargaining committee;
- the procedure for extending the application of a collective agreement to persons or entities who did not take part in its conclusion;
- the rules governing collective negotiations in the public service.

Legislative framework

The Committee refers to its previous conclusion (Conclusions XVIII-1) for a description of the rules governing collective bargaining in the private sector and refers to the section “Public sector” below as regards the rules governing collective negotiations in the public service.

In reply to its request, the Committee notes from the report that legislation lays down no requirements regarding representativeness for concluding collective agreements. Trade unions decide autonomously who may enter negotiations for concluding a collective agreement. If they fail to reach an agreement in this regard, the decision falls on the Economic and Social Council, or the minister responsible for labour affairs. The Committee refers to its conclusion under Article 5 for a description of the possibilities to complain against decisions in this regard. It also refers to its questions under

Article 5 as concerns representativeness of employers' associations and their possibility to seek judicial redress.

The Committee has noted that once concluded, a collective agreement covers all workers of the sector concerned, irrespective of whether or not they are trade union members.

As to the extension of collective agreements, the report indicates that according to the Labour Code, one or both of the parties to a collective agreement may request its extension to the Minister responsible for labour affairs. After seeking and obtaining opinions from trade unions, employers' associations or representatives of the employer to which the collective agreement is to be extended, the Minister decides whether or not its application will be extended, provided that there is a public interest for the extension. The report further specifies that practice shows that the collective agreements most frequently extended are those binding a large number of employers and covering a large number of workers. They include agreements applied to one economic branch or activity or those covering several economic branches or activities.

Conclusion of collective agreements

In its previous conclusion (Conclusions XVIII-1), the Committee asked that the next report provide updated information on collective agreements concluded in the private and public sector at enterprise, sectoral and national level and on the number of employers and employees covered by these agreements. It also asked how many of the total number of employers and employees in Croatia are covered by collective agreements.

In reply, the report indicates during the reference period the number of collective agreements registered increased (from 50 in 2006, 2 of which were branch-level collective agreements to 92 collective agreements in 2008, 7 of which were branch-level collective agreements). The report also highlights that employers are more interested in concluding collective agreements at the enterprise level than at the branch level.

The Committee reiterates that it requests information on the number of employers and employees covered by collective agreements to assess the extent to which the terms of workers' employment are influenced by collective negotiation.

Public sector

In its previous conclusion (Conclusions XVIII-1), the Committee asked the Government to clarify whether there are regulations allowing for a participa-

tion of employees in the public sector in the determination of their working conditions. The report does not provide information in this regard.

The Committee however notes from another source² that the 1993 Act on the Realisation of the Government Budget allows the Government to modify the substance of a collective agreement in the public sector, if there are not sufficient funds in the budget to meet all the financial obligations arising from that agreement. Moreover, according to the same source, the Act on Salaries in Public Services also limits collective bargaining rights in the public sector to basic salaries only. In this regard, the Committee notes that within the framework of ILO, again in 2009, the Committee of Experts on the Application of Conventions and Recommendations (CEACR)³ reiterated its request to the Croatian Government to comment on both of the above statements (i.e. that the Government may modify the substance of a collective agreement in the public sector for financial reasons and that public sector workers can negotiate on their basic salaries only). The Committee asks the Government to clarify the situation in this regard. Meanwhile, it has not been established that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them.

Conclusion

The Committee concludes that the situation in Croatia is not in conformity with Article 6 §2 of the Charter on the ground that it has not been established that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee takes note of the information contained in the report submitted by Croatia.

Conciliation and mediation in the private sector

The Committee previously sought confirmation that decisions by the mediator were only binding on the parties with their joint consent. The report confirms that this is the case.

2. 2009 ITUC Survey of violations of trade union rights available at: <http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=HRV&Lang=EN>.

3. Comment issued at its 80th session in 2009 by the CEACR concerning the application by Croatia of ILO Convention No. 98.

It further asked the Government to confirm that recourse to arbitration is based on a joint agreement between the parties to a dispute, and that recourse to arbitration at the request of one party is not possible. The report provides no explicit information on this point. However, having reexamined the previous Croatian report, the Committee considers that parties may bring a dispute before an arbitration body by mutual agreement only.

Conciliation and mediation in the public sector

The Committee previously requested information on conciliation and arbitration procedures in the public sector. The report provides no information on this point. Therefore the Committee finds that it has not been established that conciliation and arbitration procedures exist in the public sector.

Conclusion

The Committee concludes that the situation in Croatia is not in conformity with Article 6 §3 of the Charter on the ground that it has not been established that arbitration procedures exist in the public sector.

Article 6 – Right to bargain collectively

Paragraph 4 – Collective action

The Committee takes note of the information contained in the report submitted by Croatia.

Meaning of collective action-permitted objectives of collective action

The Committee previously asked the next report to confirm that the right to strike was not limited to strikes aimed at the conclusion of a collective agreement. The report does not answer this question. But the Committee notes that the report states that trade unions have the right to call and undertake strikes in order to protect and promote the economic and social interests of their members and that solidarity strike are permitted, therefore it understands that the right to strike is not limited to strikes aimed at the conclusion of a collective agreement.

Who is entitled to take collective action?

The Committee previously noted that the right to call a strike is reserved to trade unions (Conclusions XVIII-1). The Committee recalled its case law on this point: The decision to call a strike can be taken only by a trade union provided that forming a trade union is not subject to excessive formalities. It then noted that in order to form a trade union, it had to be registered in the

register of associations and that a decision on an application for registration has to be issued no later than 30 days following its filing. The Committee asked for confirmation that this was the case. The report confirms that this is in fact the case but states that in practice a decision is issued within 5 days. The Committee recalls that it has previously found that where the right to strike is reserved to trade union, and the formation of the union may take up to thirty days this is not in conformity with the Charter (Portugal XVII-1). Therefore it concludes that the situation is not in conformity in this respect.

Restrictions on the right to strike

The Committee recalls that pursuant to Section 228 of the Labour Act, strikes in the armed forces, police, state administration and public services is regulated by a separate law. The report states in this context that, although Article 60 of the Constitution allows the right to strike to be restricted in the armed forces, the police, the public administration and the public services, the legislator has not made use of this authorisation with respect to employees in public administration and the public services who therefore have an unrestricted right to strike in accordance with the provisions of the Labour Act. The Committee asks again whether this means that all civil servants have the right to strike.

The Committee further recalls that pursuant to Section 222 of the Labour Act, upon a proposal by the employer, the trade union and the employer must agree on the provision of those services which must not be interrupted during a strike or a lock-out such as (i) production maintenance services with the aim of enabling the restoration of regular work immediately after the strike and (ii) essential services required for the prevention of risks to life, personal safety or health of the population. The Labour Act explicitly states that the imposition of such services may not prevent or substantially restrict the employees' right to strike.

If the trade union and the employer do not reach an agreement on the determination of the services to be maintained within 15 days after the employer's proposal was forwarded to the trade union, the employer or the trade union may, within the next 15 days, request that these assignments be defined by an arbitration body. This arbitration body consists of one representative of the trade union, one representative of the employer and an independent chairperson who is appointed subject to an agreement between the trade union and the employer.

The arbitration body must render a decision on the services to be provided within 15 days following the institution of the arbitration procedure. In order

to be able to assess whether the restrictions to the right to strike in connection with the determination of minimum services fell within the limits of Article 31 of the Charter and were in conformity with Article 6 §4, the Committee asked for information in the next report on what are the criteria used to determine whether a minimum service has to be introduced and what would be its scope, what are the sectors concerned and what are the possibilities of appeal against a decision rendered by the arbitration board in this respect. The Committee repeats its request for this information.

Procedural requirements pertaining to collective action

The Committee previously examined the situation under all the above mention headings and found the situation to be in conformity with the Charter.

Consequences of collective action

Pursuant to Section 223 of the Labour Act, the organisation or participation in a lawful strike does not constitute a violation of an employment contract and may not trigger any disadvantages for the striking worker. Dismissal on the ground of participation in a lawful strike is also excluded. The Committee asks what are the consequences in the event a worker is dismissed in violation of these rules.

Conclusion

The Committee concludes that the situation in Croatia is not in conformity with Article 6 §4 of the Charter on the ground that the right to call a strike is reserved only to trade unions the formation of which may take up to thirty days which is excessive.

Article 2 of the Additional Protocol – Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Croatia.

The Committee examined in its last conclusion the role and functioning of the work councils which, in their role to ensure adequate participation of workers in decision-making process in the workplace, act as an intermediary body through which the employer informs and consults the employees.

The right to information and consultation is provided for under Articles 151 and 152 of the Labour Act (LA), according to which the employer has a duty to duly, accurately and integrally inform the works council, at least every

three months about the business situation and results, development plans, trends and changes in salaries, the extent and reasons for introduction of overtime work and other issues of particular importance for the economic and social position of workers.

According to Article 152 §1 of the LA, before rendering a decision that is important for the position of workers, the employer must consult with the work council about the proposed decision and must communicate to the work council the information important for rendering a decision and understanding its impact on the position of workers. Under Article 152 §2 important decisions are deemed to include those on the adoption of employment rules, recruitment plan, transfers to another job and dismissals, working hours schedules, night work, the adoption of redundancy social security plans and other decisions which, under the provisions of the LA or a collective agreement, must be rendered in consultation with the work council. Under Article 152 §11 of the LA, a decision rendered by the employer contrary to the LA's provisions on consultations with the works council is null and void.

Article 2 of the Additional Protocol of the Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.

As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 2 of the Additional Protocol of the Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 2 of the Additional Protocol of the Charter, the Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (Judgment of the European Court of Justice of 18 January 2007 (*Confédération générale du travail (CGT) and Others*, Case C-385/05).

Consequently, the Committee asks whether this is the scope of Croatia's legislation, particularly as regards the calculation of these minimum thresholds.

In its last conclusion the Committee asked that the report provide an estimate of the proportion of the labour force which enjoys the right to information and consultation. The report contains no information as to the question posed. The Committee reiterates therefore its question.

In its last conclusion the Committee asked whether legal provisions governing the information and consultation of workers cover all categories of workers and whether they cover all undertakings, including companies controlled by public authorities. The report contains no information as to the question posed. The Committee reiterates therefore its question.

In its last conclusion the Committee asked what the remedies and sanctions applicable were in case of a violation by an employer of the information and consultation obligations. The report states that a fine of 31 000 to 60 000 HRK (€4 217 to €8 163) is imposed on the employer as a legal person:

- for failing to inform the work council on the issues on which it is obliged to inform them (Article 151 of the LA),
- for failing to consult with the work council on the issues on which it is obliged to consult with them (Article 152 of the LA).

The report provides statistics on cases of violation of Articles 151 and 152 of the LA during the reference period with a total of 55 cases of violations under Article 151 and 61 cases of violations under Article 152.

Conclusion

The Committee concludes that the situation in Croatia is not in conformity with Article 2 of the Additional Protocol of the Charter on the ground that it has not been established that legal provisions governing the information and consultation of workers cover all categories of workers and all undertakings.

Article 3 of the Additional Protocol – Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by Croatia. It refers to its last conclusion (Conclusions XVIII-1) for a full description of the situation and will address here the outstanding questions.

In its previous conclusion, the Committee noted that workers' councils represent workers' interests in particular by participating in decision-making processes alongside employers or their representatives. It also noted that workers' council are established upon request of a trade union or at least 10% of the workers employed in a given enterprise (Section 140 of the Labour Act). The Committee asked what the proportion of enterprises where workers' councils have been established was. In the absence of any information on the matter, it reiterates this question. The Committee also noted that employees of the public sector were not covered by the relevant provisions of the Labour Act, and asked how employee participation in the determination and improvement of working conditions and working environment takes place in undertakings of the public sector. As the report fails to address this issue, the Committee underlines that Article 3 of the Additional Protocol applies to all undertakings, whether private or public. It therefore emphasises that should the next report not provide the relevant information, there will be nothing to establish that the situation is in conformity with the Charter.

Working conditions, work organisation and working environment

As regards the right of workers' representatives sitting on the supervisory board of an enterprise (Section 158a of the Labour Act), the report indicates, in reply to the Committee, that they enjoy the same rights as any other member of the supervisory board. The report also states that supervisory boards supervise the management of a company's business and can examine and inspect the company's business books and other related documents.

Protection of health and safety

In reply to the Committee, the report states that under Section 37 §1 of the State Inspectorate Act, labour inspectors must investigate all requests made by safety and health representatives. According to section 79 §4 of this Act, a labour inspector must examine within 48 hours the merits of a worker's allegations.

Organisation of social and socio-cultural services and facilities

The Committee reiterates its request for information on whether workers participate in the organisation of social and socio-cultural services and facilities within their undertaking where those exist.

Enforcement

In its last conclusion, the Committee asked for confirmation that workers' councils and trade unions may challenge any violation of a worker's right of participation before competent courts or administrative bodies, and for information on which courts or administrative bodies are competent in this field and what remedies are available. It reiterates its question and underlines that should the next report not provide the relevant information, there will be nothing to establish that the situation is in conformity in this respect.

In its last conclusion, the Committee noted that, in accordance with several provisions of the Labour Act, employers were subject to fines if they interfered with the participation of workers' representatives (for a comprehensive description of these provisions, see Conclusions XVIII-1 as well as the report). It asked whether there had been cases where employers had been fined for such interference. In reply, the report indicates that, during the reference period, misdemeanour proceedings were launched, at the labour inspectorate's initiative, in cases where employers had breached provisions of the Labour Act relating to workers' participation, and which led, in 2006, to 6 rulings and 1 order from the competent courts with corresponding fines ranging from HRK 1 000 to HRK 15 000; in 2007, to 7 rulings and 3 orders with fines ranging from HRK 1 000 to HRK 35 000; and in 2008, to 6 warnings, 4 rulings and 3 orders with fines ranging from HRK 1 000 to HRK 31 000.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

**Chapter 3 – Conclusions concerning Articles 2, 4, 5
and 6 of the Charter and Articles 2 and 3
of the Additional Protocol
in respect of the Czech Republic**

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by the Czech Republic on 3 November 1999 and the 1988 Additional Protocol on 17 November 1999. The time limit for submitting the 7th report on the application of this treaty to the Council of Europe was 31 October 2009 and the Czech Republic submitted it on 11 February 2010.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The Czech Republic has accepted all the articles from this group with the exception of Article 4 §1.

The applicable reference period was 1 January 2005 to 31 December 2008.

The present chapter on the Czech Republic concerns 15 situations and contains:

- 7 conclusions of conformity: Articles 2 §3, 2 §4, 4 §2, 4 §5, 6 §1, 6 §2 and 6 §3.
- 5 conclusions of non-conformity: Articles 2 §1, 2 §5, 4 §4, 5 and 6 §4.

In respect of the other 3 situations concerning Article 4 §2 of the Charter and Articles 2 and 3 of the Additional Protocol, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next report from the Czech Republic deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable working time

The Committee takes note of the information contained in the report submitted by the Czech Republic.

The Committee notes that a new Labour Code, Act No. 262/2006, came into force on 1 January 2007. Many of the statutory provisions on working time

remain unchanged. The Committee recalls that the basic length of working time according to the Labour Code is 40 hours a week or 48 hours including the maximum overtime limit. The maximum length of a shift is restricted to 9 hours within an even distribution of work and 12 hours in the case of an uneven distribution of work. It considers that these limits are acceptable under the Charter.

The amended Labour Code has introduced a new flexible form of working time (“working hours account”) which enables employers to react to fluctuations in production and regulate employees’ working hours in a more efficient manner. The use of this system requires prior consent of individual employees. The reference period for such flexible working arrangements should in principle not exceed 26 weeks, but may be extended to a maximum of 52 weeks by collective agreement.

The Committee recalls that the reference period for the calculation of average working hours should not exceed four to six months, or 12 months in exceptional circumstances (General Introduction to Conclusions XIV-2). It asks in this respect if the possibility foreseen in the Labour Code to extend the reference period to 52 weeks by collective agreement is subject to any objective or technical reasons or reasons concerning the organisation of work (or whether it is limited to certain sectors of activity, organisations or professions).

As regards the possibility of reducing the daily rest period to 8 hours, the report states this is maintained in the new Labour Code. A number of conditions are required: the employee must be over the age of 18, the subsequent rest period must be extended in the same proportion as the initial reduction and this option only applies to a limited number of types of work – continuous operations, agriculture, provision of services to the population (catering, cultural facilities, telecommunications and postal services, healthcare facilities, social services – urgent repair works or during natural disasters or other exceptional cases).

The Committee recalls that daily working time should in no circumstances go up to sixteen hours per day. This is a limit which cannot be exceeded even in the context of the above-mentioned types of work or despite the subsequent recovery of the lost rest hours. The Committee must therefore conclude that the situation breaches Article 2 §1 on this ground.

Legislation on on-call work was amended during the reference period (in line with European Court of Justice rulings in the cases of SIMAP, Jaeger and Dellas). The Labour Code now considers time spent on-call at the workplace

as working time. The Committee takes note of this development, which brings the situation into conformity with the Charter on this point.

It also notes from another source² that the Czech Republic had one of the highest levels of weekly working time actually worked in the EU (in 2007 full-time employees worked on average 41.2 hours a week in their main job).

According to the report, the Labour Inspectorate carried out 438 inspections in 2005 and 5 058 in 2008. The number of infringements to regulations on working hours/rest period increased from 27 in 2005 to 1 815 in 2008. The inspection bodies can impose measures to eliminate any inadequacies discovered or fines of up to 2 000 000 CZK (80 912 EUR).

The Committee asks that the next report provide updated information on the supervision of working time regulations by the Labour Inspectorate, including the number of breaches identified and penalties imposed in this area.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 2 §1 of the Charter on the ground that daily working hours may be extended to 16 hours in various occupations.

Article 2 – Right to just conditions of work

Paragraph 2 – Public holidays with pay

The Committee takes note of the information contained in the report submitted by Czech Republic.

In its previous conclusion (Conclusions XVIII-2), the Committee requested information on the amount of increased remuneration paid in respect of work done on a public holiday. According to the new Labour Code, which came into force on 1 January 2007, employees are entitled to their wages and compensatory time off for working on public holidays. The compensatory time off may be replaced by increased pay if the employer and employee agree. In such cases, employees receive their normal wage plus additional pay equivalent to at least their average wage.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a

2. Eironline, Czech Republic: Industrial relations profile, at <http://www.eurofound.europa.eu/eiro/country/Czech Republic>.

higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee asks whether the compensatory pay corresponds to at least twice the usual wage.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Czech Republic.

According to the new Labour Code, which came into force on 1 January 2007, there is a minimum of four weeks' annual paid holiday. Holidays may be deferred to the end of the next calendar year. No more than four weeks' holiday may be deferred and financial compensation may not be offered in place of it. Employees who do not take all of their paid holidays within the specified period lose their entitlement to them. However for employees who cannot take their holidays because they are on parental leave, employers must designate a period following the parental leave to which the employees concerned can postpone their holidays.

Conclusion

The Committee concludes that the situation in Czech Republic is in conformity with Article 2 §3 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 4 – Reduced working hours or additional holidays in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by Czech Republic.

The Committee refers to the statement of interpretation it made on Article 2 §4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2 §4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protection measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk. Article 2 §4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter. Under no circumstances, however, can financial compensation be considered appropriate under Article 2 §4 (*Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2 §4).

The Committee refers to its conclusion under Article 3 of the Charter (Conclusions XIX-2) which describes the dangerous occupations performed and the preventing measures taken in this regard.

The Committee notes that the legislation provides for both reduced working hours and additional holidays for workers performing certain types of work. Working time in dangerous and unhealthy occupations may be reduced further by collective agreement, the Committee had previously requested to what extent this in fact happens. According to the report, reduced working hours are generally the subject of collective agreements negotiated by private companies and the Ministry of Labour and Social Affairs does not have access to the relevant information to establish the frequency of such reductions.

The Committee also asked whether any other measures are in place besides additional holidays or reduced working hours, in order to reduce exposure to residual risks in certain occupations. Act 309/2006 on further occupational safety and health protection conditions entitles employees carrying out work that is monotonous or puts them under physical stress to have their work interrupted with safety breaks. The report lists the legislation requiring such breaks for at-risk occupations.

Conclusion

The Committee concludes that the situation in Czech Republic is in conformity with Article 2 §4 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by Czech Republic.

The Committee recalls that it has previously (Conclusions XVIII-2) found that the situation was not in conformity with Article 2 §5 of the Charter on the ground that agricultural workers may, pursuant to collective agreement or individual agreement, postpone weekly rest so as to permit an excessive number of consecutive working days (collective agreements relating to the agricultural sector or individual agreements with the employee may provide that the uninterrupted rest period may be postponed for up to three weeks).

According to the report, reductions in the period of uninterrupted rest in the week may only occur in agriculture for objective, technical or organisational reasons. However, employees must still be provided with the same legal rest periods on average as other employees. The regulations on weekly rest periods have not therefore been changed. As there has been no change in the situation, the Committee confirms its non-conformity conclusion.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 2 §5 of the Charter on the grounds that agricultural workers may, pursuant to collective agreement or individual contract, postpone weekly rest so as to permit an excessive number of consecutive working days.

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by the Czech Republic.

The report states that the new Labour Code, Act No. 262/2006, which came into force on 1 January 2007, has not introduced any changes to the regulations on compensation of overtime work. However, it mentions that a new flexible system of working hours has been introduced. The Committee asks whether this system has influenced the calculation of overtime and asks for a clarification of the concept of overtime.

The Committee recalls that in return for overtime work an employee is entitled to normal wages plus at least 25% of his or her average earnings, which has previously been considered to be in conformity with the Charter (Conclusions XVI-2).

It is also possible for the employer and employee to agree to replace the increased remuneration with time off in lieu. The Committee asks how much time off is granted in compensation for overtime work, as this is not evident from the wording of the relevant provision of the Labour Code (Section 114). It recalls in this respect that where remuneration for overtime is entirely given in the form of time off, Article 4 §2 requires that this time be longer than the additional hours worked (Conclusions XIV-2, Belgium).

The Committee previously (Conclusions XVII-2) noted that exceptions to the rules on remuneration for overtime were made with regard to workers with managing responsibilities, whose wages were set to cover the possibility of overtime work up to 150 hours per year. It asks that the next report provide a full and up-to-date description of the situation concerning such workers.

It also asks the next report to provide information on the activities of the Labour Inspection in respect of any breaches related to the failure to pay overtime wages.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Czech Republic is in conformity with Article 4 §2 of the Charter

Article 4 – Right to a fair remuneration

Paragraph 3 – Non-discrimination between and women men with respect to remuneration

In the General Introduction to Conclusions 2002 on the Charter, the Committee indicated that national situations in respect of Article 4 §3 (right to equal pay) would be examined under Article 20 of the Revised Charter. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4 §3. This rule was also applied to the relationship between Article 4 §3 and Article 1 of the 1988 Additional Protocol.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four

thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4 §3 and Article 1 of the Protocol, thus every two years (under the thematic group 1 “Employment, training and equal opportunities”, as well as thematic group 3 “Labour rights”).

In the case of the Czech Republic, the report contained information in respect of Article 4 §3. The Committee takes note of this information. However, since this report is not a full report, namely, it does not address the issues of sanctions and remedies in case of failure to observe the principle of equal pay (a reason leading to the conclusion of non-conformity under Article 1 of the Additional Protocol), the Committee invites the next report to be submitted on Article 1 of the Additional Protocol, and subsequently on Article 4 §3, to include all relevant information on equal pay.

Article 4 – Right to a fair remuneration

Paragraph 4 – Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by the Czech Republic.

It points out that during the previous supervision cycle, the situation was found not to be in conformity with Article 4 §4 of the Charter. From the report, the Committee notes that there has been no change in the situation concerning the application of at least two months’ notice of termination of employment. Longer notice periods may be negotiated between employers and employees on a case-by-case basis. The Committee asks for examples of notice periods arising from one-to-one negotiations.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 4 §4 of the Charter on the ground that two months is not reasonable notice for employees with more than fifteen years’ service.

Article 4 – Right to a fair remuneration

Paragraph 5 – Limits to deduction from wages

The Committee takes note of the information contained in the report submitted by the Czech Republic.

According to the report the rules on non-deductible sums are contained in Government Regulation no. 595/2006 Coll. Currently, the basic non-deductible amount is two-thirds of the sum of the subsistence minimum of CZK 3 126 (€126.97) and normative housing costs of CZK 3 155 (€128.15). The resulting sum is increased by one quarter for each dependant, meaning, for example, that for an employee with four dependants, the non-deductible sum will be:

$$\text{— } \frac{2}{3} \times (3\,126 + 3\,155) + (4 \times \frac{1}{4}) \times (\frac{2}{3} \times (3\,126 + 3\,155)) = \text{CZK } 8\,375 \text{ (€340.18)}$$

With regard to its previous finding of non-conformity, the Committee notes that Government Regulation no. 595/2006 and Living and Subsistence Minimum Act no. 110/2006 make it possible to limit deductions from wages so as to ensure that workers can provide for themselves and their dependants.

Conclusion

The Committee concludes that the Czech Republic is in conformity with Article 4 §5 of the Charter.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by Czech Republic. The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion.

The Committee observes that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted the divergence of views between, on the one hand, the International Trade Union Confederation of Trade Unions (ITUC) and the Czech-Moravian Confederation of Trade Unions (CMKOS) which claim that there are frequent anti-union practices, especially in newly established companies, and, on the other, the Labour In-

spectorate which had not registered any proven case of discrimination. In view of this divergence, the CEACR asked for comments from the Government.³ Likewise, the Committee asks for information to be provided in the next report on this matter.

The Committee previously noted that members of the Security and Intelligence Service were not permitted to form trade unions (Section 49 of Act No. 154/1994 on the Security and Intelligence Service), and were prohibited forming any type of association to protect their economic and social interests (Conclusions XVI-I). Given the insufficient information provided in the following report, the Committee asked in its last conclusion (Conclusion XVIII-1) for information which specify what proportion of its tasks are civilian in nature and what proportion are military, in order to assess the situation with regard to the Security and Intelligence Service. In the absence of any information in the report, the Committee cannot consider it as established that the situation is in conformity on that point.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 5 of the Charter on the ground that it has not been established that depriving members of the Security and Intelligence Service from the right to form trade unions (Section 49 of Act No. 154/1994 on the Security and Intelligence Service), and prohibiting them from forming any type of association to protect their economic and social interests was justified.

Article 6 – Right to bargain collectively

Paragraph 1 – Joint consultation

The Committee takes note from the information contained in the report submitted by the Czech Republic and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §1 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

3. CEACR: Individual Observations concerning the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), published: 2008. Document No. (ilolex): 062008CZE098.

Conclusion

The Committee concludes that the situation in the Czech Republic is in conformity with Article 6 §1 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee takes note of the information contained in the report submitted by Czech Republic.

Legislative framework

The Committee refers to its previous conclusions (Conclusions XVII-1 and XVIII-1) for a description of the rules governing collective bargaining in the private and in the public sector and recalls that it previously held the situation in the Czech Republic to be in conformity with Article 6 §2 of the Charter.

The Committee notes from the report that as of 1 July 2005, Act no. 255/2005 Coll. amending Collective Bargaining Act no. 2/1991 Coll. came into effect enabling the extension of higher-level collective agreements to further employees in the relevant branch. The Committee takes note of the conditions, defined by the Act, for the extension to take place. The Committee asks the next report to indicate how often this procedure is used in practice and what impact it has on the coverage of the workforce by collective agreements and refers, in this regard also to its statement of interpretation and general question under Article 6 §2 in the General Introduction to these Conclusions.

Conclusion of collective agreements

The Committee notes from the report that the number of higher level collective agreements decreased during the reference period (from 19 in 2005 to 10 in 2008). However, the number of extensions of collective agreements increased during the reference period (from one to three). The Committee also notes that according to a publication⁴ by the European Commission on “Industrial Relations in Europe 2008”, overall 49.6% of employees in the Czech Republic were covered by collective bargaining. The Committee requests that the next report contain an up-dated overview of the situation, including information on how many of the total number of employers and employees in the Czech Republic are covered by collective agreements.

4. Figures and publication referred to at: <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Czech-Republic/Collective-Bargaining>.

Conclusion

The Committee concludes that the situation in the Czech Republic is in conformity with Article 6 §2 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee notes from the report submitted by the Czech Republic and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §3 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in the Czech Republic is in conformity with Article 6 §3 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 4 – Collective action

The Committee takes note of the information contained in the report submitted by Czech Republic.

Definition of collective action – Permitted objectives of collective action

The Committee has previously examined the situation under these headings and found it to be in conformity with the Charter (Conclusions XVIII-1). There has been no change to this situation.

Who is entitled to take collective action?

Pursuant to Section 17 of the Collective Bargaining Act, a strike is declared by the competent trade union organ subject to approval by a proportion of employees concerned. In a dispute concerning the conclusion of a collective agreement at enterprise level, a strike may be called “provided that at least one-half of the employees to whom such agreement is to apply agree” (Section 17 (1) of the Collective Bargaining Act). In a dispute concerning the conclusion of a higher-level collective agreement, a strike may be called “if so agreed by no less than one-half of those employees to whom such higher-level collective agreement is to apply” (Section 17 (2) of the Collective Bargaining Act). The Committee previously sought clarification whether all

workers could vote in such a ballot or only trade union members. The report confirms that all workers are entitled to vote.

Restrictions on the right to strike

The Committee had previously noted that Strikes are unlawful for certain categories of workers listed in Section 20 (g) to (k) of the Collective Bargaining Act. These include, *inter alia*, employees in nuclear power stations, oil or gas pipelines, air traffic controllers or fire-fighters.

In order to assess whether the situation is in conformity with Article 6 §4 of the Charter, the Committee asked in its previous conclusions whether the strike ban extends to all the employees within the aforementioned categories regardless of their particular functions and further repeated its request for information what interpretation was given in practice to the restrictions on the right to strike of the following groups of employees:

- employees of healthcare and social care establishments (“should such strike endanger the life and health of citizens”);
- employees working in telecommunications operations (“should their strike endanger citizens’ lives, health or property”).

From the information provided in the report it appears to the Committee that all strikes are prohibited at nuclear power stations, oil or gas pipelines, in the fire service and by air traffic controllers. Therefore the Committee concludes that the situation is not in conformity with the Charter. No information is provided in the report on how the restrictions on the right to strike for employees of healthcare and social care establishments, or for employees working in telecommunications are interpreted in practice. The Committee finds that the situation is not in conformity with Article 6 §4 of the Charter as it has not been established that restrictions in the above mentioned sectors are in conformity with Article 31 of the Charter.

Procedural requirements

Pursuant to Section 20 (a) of the Collective Bargaining Act, strikes that start before mediation attempts are deemed to have failed are unlawful. The Committee considered in its former conclusions that this mediation requirement, which was considerably more onerous than a cooling off period, constituted a restriction of the right to take collective action which is not in conformity with the Charter. In particular, it found that the length of the period prescribed in Section 12 of the Act (“Proceedings before a mediator shall be regarded as unsuccessful if the dispute is not resolved within 30 days of the day when the mediator was acquainted with the subject-matter of the

dispute, unless the contracting parties agree on another time-limit”) was excessive. The Committee notes from the report that there have been no changes to the situation. However, the Committee asked for further information on how this time-limit is applied in practice and reserves its position on the matter.

Consequences of collective action

The Committee has previously examined the situation and found it to be in conformity with the Charter (Conclusions XVIII-1). There has been no change to this situation.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 6 §4 of the Charter on the grounds that:

- all categories of personnel are prohibited from striking at nuclear power stations, oil or gas pipelines, in the fire service and air traffic control centres;
- it has not been established that the restrictions on the right to strike in healthcare and social care establishments and in telecommunications are in conformity with Article 31 of the Charter .

Article 2 of the Additional Protocol – Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by the Czech Republic.

Legal framework and personal scope

Article 2 of the Additional Protocol of the Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.

As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 2 of the Additional Protocol of the Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the

choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 2 of the Additional Protocol of the Charter, the Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation.

There have been amendments to the legal situation during the reference period, in particular with the adoption of Act No. 262 of 2006 which amended the Labour Code. The amendments now permit works councils and health and safety committees to be established even where trade unions are present. Any enterprise may establish a works councils and/or health and safety committee all that is required is that the proposal to do so is supported by at least one third of the employees.

The Committee understands that all workers have the right to information and consultation.

Material scope

The Committee previously found the situation to be in conformity in this respect (Conclusions XI-1) but asks the next report to provide information on the material scope of information and consultation.

Rules, enforcement and remedies

The Committee previously found the situation to be in conformity in this respect (Conclusions XI-1) but asks the next report to provide updated information on enforcement of the right to information and consultation and remedies available to workers where their rights have not been respected, it also asks the next report to provide the number of inspections carried out by the Labour Inspectorate as well as the number of sanctions imposed in this particular field.

Conclusion

Pending receipt of the requested information, the Committee defers its conclusion.

Article 3 of the Additional Protocol – Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by the Czech Republic.

In its previous conclusions, the Committee asked how the right of non-unionised workers to take part in the determination and improvement of the working conditions and working environment is ensured.

According to the Labour Code, in force since 1 January 2007, employees are entitled to participate in the improvement of occupational safety and health protection not only through trade unions but also occupational safety and health protection representatives or employees themselves if no representative has been designated. Employers must let trade unions, occupational health and safety protection representatives or the employees themselves take part in meetings concerning health and safety protection; hear their representations on related matters, including suggestions to eliminate existing risks; discuss essential measures concerning safety and health protection, risk assessment, the adoption of measures aimed at reducing risks, the organisation of training on the rights and regulations pertaining to health and safety.

If an employer fails to fulfil these obligations, employees may contact the labour inspectorate which can impose sanctions, including fines, for any breach of his obligations. Employees may also raise complaints with the courts to obtain that the employer fulfils his obligations.

The Committee takes note of this information but asks for information concerning the involvement under the new Labour Code of workers or their representatives in matters covered by Article 3 of the Additional Protocol other than health and safety, i.e. working conditions, work organisation and working environment, as well as the organisation of social and socio-cultural services and facilities.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

**Chapter 4 – Conclusions concerning Articles 2, 4, 5
and 6 of the Charter and Articles 2 and 3
of the Additional Protocol
in respect of Denmark**

Denmark

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by Denmark on 3 March 1965 and the 1988 Additional Protocol on 27 August 1996. The time limit for submitting the 29th report (7th report on the Additional Protocol) on the application of this treaty to the Council of Europe was 31 October 2009 and Denmark submitted it on 5 February 2010. Comments on the report from the Independent Danish Union Kristelig Fagbevægelse (KRIFA) were registered on 18 June 2010.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the 1988 Additional Protocol),

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the 1988 Additional Protocol).

Denmark has accepted all the articles from this group with the exception of Articles 2 §1 and 4 and 4 §4 and 5.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter on Denmark concerns 11 situations and contains:

- 5 conclusions of conformity: Articles 4 §1, 6 §1, 6 §3 and Articles 2 and 3 of the 1988 Additional Protocol;
- 5 conclusions of non-conformity: Articles 2 §3, 4 §2, 5, 6 §2 and 6 §4.

In respect of the remaining situation concerning Article 2 §2, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the article in question.

The next Danish report deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 2 – Public holidays with pay

The Committee takes note of the information contained in the report submitted by Denmark.

In its previous conclusion (Conclusions 2007), the Committee asked for updated information on the increased remuneration paid in respect of work done on a public holiday. According to the report, work done on a public holiday is extraordinary and should be fully justified. The Act of salaried

workers ensures a full salary to employees working on a public holiday. As regard other workers, the question is covered by collective agreements (with concern around 80% of workers) or the individual employment contract.

The Committee considers that work performed on a public holiday requires a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The remuneration may also be provided as compensatory time-off, in which case it should be at least double the days worked. The Committee asks what rate of pay is applied for public holidays worked.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Denmark.

The last conclusion (Conclusions XVIII-2) was not in conformity with Article 2 §3 of the Charter on the grounds that workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time. The Committee recalls that an employee is entitled to 5 weeks paid holiday from the employer if the employee has worked for the employer for a full calendar year prior to the holiday year. However an employee who is ill at the start of the holiday is not under an obligation to start the holiday and the employee may postpone the holiday. But if an employee becomes sick or is injured after the holiday has started he/she will not have a right to suspend the holiday or to compensatory holiday due to the illness or injury.

According the Danish Holiday Act of 2001, a paid holiday leave is considered to begin at the first working hour of the holiday. The holiday in respect to illness began the last working hour before the holiday. This means that an employee who falls ill in the weekend before the beginning of the holiday have the right to claim the cancelled holiday at another time. In addition to this, the Danish Holiday Act has opened up the possibility that paid holidays, which cannot be taken during the year because of illness or injury, can be transferred to the next year without reduction of the ordinary paid holidays that year.

The social partners can conclude agreements giving better rights to the employees than those laid down in the Holiday Act. According to at least two major collective agreements holidays can be suspended due to serious or durable illness or injury which occurred during the holiday.

The report highlights that as the minimum holiday entitlement is 5 weeks in practice even if a worker should fall sick during his holidays the vast majority will benefit from at least two weeks as stipulated by this provision of the Charter.

The Committee recalls that workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time so that they receive the two weeks annual holiday provided for under this paragraph, possibly under the condition of producing a medical certificate. Given that this is still not the case in Denmark, the Committee considers that the situation is not in conformity with Article 2 §3.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 2 §3 of the Charter on the grounds that workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by Denmark.

It notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter. The Committee asks that the next report provides a full and up-to-date description of the situation in law and practice in respect of Article 2 §5.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 2 §5 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 1 – Decent remuneration

The Committee takes note of the information contained in the report submitted by Denmark.

The Danish report recalls that there is no general legislation in Denmark concerning remuneration, including minimum wage, and pay and working conditions are determined between the social partners in collective agreements (covering nearly 80% of the employees in general, and about 100% of those employed in the public sector) or individual agreements. The report reiterates that the working conditions determined by collective and individual agreements are usually at the same level as the trade unions supervise that no wage dumping takes place on the part of non-organised employer.

In its previous conclusion (Conclusions XVIII-2) the Committee held that the situation in Denmark was in conformity with the Charter. It now notes from the report that a typical minimum wage after deduction of taxes and social security contributions amounted to DKK 114 000 (€15 285) per year in 2005 and DKK 124 000 (€16 639) per year in 2008 (the gross minimum wage equalled DKK 195 000 and DKK 213 000 respectively). The report further provides for examples of wages in different representative fields of the economy in the private sector. The Committee notes that in 2008 the net wage in sales and service amounted to DKK 160 000 (€21 470) per year, while the net wage in the field of skilled manual work amounted to DKK 207 000 (€27 777) per year. Accordingly, the minimum net wage represents respectively 77% and 60% of the wage in the fields of service and skilled manual work.

The Committee recalls that the net national average wage of a full-time worker is calculated with reference to the labour market as a whole, or, in where this is not possible, with reference to a representative sector, such as the manufacturing industry or for several sectors. In this respect, it notes that the report does not provide information on net wages in the manufacturing industry (blue collar), which the Committee took as a reference wage for its calculations in the previous reference period. Nevertheless, from supplementary information provided by the Danish Government the Committee notes that the gross average wage in the manufacturing industry in 2008 amounted to DKK 337 000 (€45 222). Compared with the corresponding figures for 2008 available from the report, this wage can be situated between the gross wages in the fields of sales and services (DKK 280 000) and skilled manual work (DKK 380 000). Consequently, the available data indicate that the relationship between the net minimum wage and the net wage in man-

ufacturing industry would fall between 60% to 77% and therefore complies with the fair wage threshold established by the Committee.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 4 §1 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by Denmark.

The report reiterates that no legislation exists concerning overtime pay. The principal features of overtime schemes are solely regulated by collective bargaining. In employment relationships that are not covered by any collective agreement, the agreed pay and working conditions, including the question of overtime pay, are covered by the employment contract.

Updated information is provided as regards payment for overtime in two representative sectors covered by collective agreements. In Industry, the first two hours of overtime are remunerated at DKK 34.65 (€4.6) in addition to the normal hourly rate. For overtime during night hours DKK 103.50 (€13.8) is paid and for overtime without notice DKK 88.35 (€11.8). In the sales sector, the first three hours are remunerated at an enhanced rate of 50% and by 100% thereafter. However, it wishes to receive information on the amount or percentage of overtime payment outside the selected sectors.

As regards the situation of workers not covered by collective agreements, the report indicates there is no information available concerning their payment of overtime. According to the Independent Danish Union *Kristelig Fagbevægelse*,² collective agreements cover 100% of the public labour market but only around 60% of the private labour market. Therefore, there are around 40% of employees in the private sector not covered by a collective agreement, whose rights -including on the question of overtime pay- will therefore depend on the contract of employment.

Accordingly, given that not all workers in the private sector fall under a collective agreement, together with the fact that there is no legislation guaran-

2. Shadow report on Denmark's 29th report under the European Social Charter, June 2010.

teeing an enhanced pay rate and/or time off in lieu for overtime, the Committee considers that the situation is not in conformity with Article 4 §2.

Moreover, in its previous conclusions (XVI-2 and XVIII-2) the Committee asked for information on the rules regulating flexible working time arrangements in order to assess their impact on workers' right to an increased rate of remuneration in compensation for overtime work. The report fails again to provide the requested information, the Committee therefore finds that there is nothing to show that the situation in Denmark is in compliance with Article 4 §2 of the Charter.

The Committee asks that the next report describe the concept of overtime and also to provide information on the activities of the Labour Inspection in respect of any breaches related to the failure to pay overtime wages.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 4 §2 of the Charter on the following grounds:

- it has not been established that flexible working time arrangements have not impacted negatively on the right of workers to increased remuneration for overtime;
- workers in the private sector do not have adequate legal guarantees ensuring them increased remuneration for overtime.

Article 4 – Right to a fair remuneration

Paragraph 3 – Non-discrimination between and women men with respect to remuneration

In the General Introduction to Conclusions 2002 on the Revised Charter, the Committee indicated that national situations in respect of Article 4 §3 (right to equal pay) would be examined under Article 20 of the Revised Charter. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4 §3.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4 §3 and Article 20, thus every two years (under the thematic group 1 "Employ-

ment, training and equal opportunities”, as well as thematic group 3 “Labour rights”). Henceforth, the Committee invites Denmark to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by Denmark.

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion, in particular on grounds of non-conformity.

Freedom to join and not to join a trade union

The Act on Protection against Dismissal due to Association Membership was amended in 2006 in order to protect the right not to be a member of a union including during recruitment. Closed shop agreements have therefore become prohibited on Danish labour market. The Committee considers that the situation is now in conformity with Article 5 on this point.

From another source³, the Committee notes however that there are in practice serious allegations of pressure or discrimination based on non-membership of one of the three main trade unions in the areas of career and promotion, in particular in the public sector. This type of pressure and discrimination is in breach of Article 5, and the Committee therefore asks for the Government’s comments on these allegations and information on any concrete measures that are taken to fight against such phenomena.

Personal scope

The Committee has considered since Conclusions XII-1 that the situation is not in conformity with Article 5 on the ground that the legislation on the Danish International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade union were only applicable to seafarer resident in Denmark. This restriction impairs the right of non-resident seafarers – i.e. including those of other states parties –

3. Comments from KRIFA on the 29th National Report on the implementation of the European Social Charter, registered on 1 October 2009.

engaged on vessels entered in the Register to be fully represented by their trade unions and the right of Danish trade unions to protect effectively the social and economic interests of such workers. The Committee notes from another source⁴ that there have been no changes to the situation, and concludes that the situation is still not in conformity with Article 5.

Conclusion

The Committee concludes that the situation is not in conformity with Article 5 of the Charter on the ground that the legislation on the International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark.

Article 6 – Right to bargain collectively

Paragraph 1 – Joint consultation

The Committee takes note from the information contained in the report submitted by Denmark that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §1 of the Charter.

The Committee notes from comments on the report from the Independent Danish Union “*Kristelig Fagbevægelse*” (KRIFA),⁵ that “unions other than the traditional ones are excluded from tripartite consultations”. The Committee asks for the Government’s comments on these allegations and information on any concrete measures that are taken to involve all trade unions in such consultations.

The Committee also asks that the next report provide a full and up-to-date description of the situation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 6 §1 of the Charter.

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4. CEACR: Individual Observation concerning Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Denmark (ratification: 1955) Published: 2010, Document No. (ilolex): 062010DNK098.
 5. Comments from KRIFA on the 29th National Report on the implementation of the European Social Charter, registered on 1 October 2009.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee takes note of the information contained in the report submitted by Denmark.

It observes that during the reference period the situation regarding the legislation on the International Shipping Register remains unchanged. Since collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seamen resident in Denmark, this legislation impairs the right of non-resident seafarers engaged on vessels entered in the Register to be represented by their trade union and imposes a restriction on the right of Danish trade unions to bargain collectively on behalf of such workers, which is not in conformity with Article 6 §2 of the Charter.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 6 §2 of the Charter on the ground that the right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register is restricted.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee notes from the report submitted by Denmark and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §3 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 6 §3 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 4 – Collective action

The Committee takes note of the information contained in the report submitted by Denmark.

Definition of collective action

Permitted objectives of collective action – Who is entitled to take collective action?

The Committee has previously examined the situation under these headings and found it to be in conformity with the Charter (Conclusions XVIII-1). There has been no change to this situation.

Restrictions on the right to strike

The Committee has already considered in detail the powers granted to the Public Mediator under Section 12 of Act No. 192/1997, which authorises him to impose arbitration to end a collective dispute (Conclusions XV-1, pp. 147-148 and XVII-1, pp. 131-135). The Committee noted in particular that on the occasion of the mediation procedure the Public Mediator is entitled to decide that several settlement proposals in different sectors are to be considered as a whole for voting purposes, so that the results of the voting in the different sectors are linked together. Before applying this “linkage rule”, negotiation possibilities must be exhausted. It is the Mediator who decides when this is the case. The Committee considered that the power of the Public Mediator to apply, without any pre-established criteria, the linkage rule amounted to an undue restriction of the right to strike, which was not in conformity with Article 6 §4 of the Charter (Conclusions XVII-1). According to the report the Government held consultations with the most representative social partners on Section 12 of the above mentioned Act, however they see no need to amend the situation.

As far as the restrictions on civil servants’ right to strike are concerned, the report reveals no changes to the situation previously described in Conclusions XVI-1 and XVIII-1. The Committee notes that civil servants are still denied the right to strike, irrespective of which category they belong to and which grade they hold, a A recommendation has been addressed to Denmark by the Committee of Ministers (No. R ChS (95)2) in this respect.

Procedural requirements pertaining to collective action

The Committee refers to its assessment of the procedural requirements pertaining to collective action in Conclusions XV-1. There has been no change to this situation.

Consequences of collective action

The Committee previously found that the situation was not in conformity with the Charter on the grounds that workers who participate in a lawful strike are not guaranteed to be re-employed and workers who are not members of the trade union having called a strike are not protected and their participation in a strike is considered as a breach of their contract of employment.

As regards the first ground under this heading the Committee decided to re-examine the situation. It recalls its case law on this point: A strike should not be considered a violation of the contractual obligations of the striking employees entailing a breach of their employment contract. It should be accompanied by a prohibition of dismissal. If, however, according to well-established practice admitting no exceptions, strikers are fully reinstated when the strike has ended and their previously acquired entitlements (e.g. concerning pensions, holidays and seniority) are not affected, then formal termination of the employment contract does not violate Article 6 §4.

The Committee notes that in Denmark the long standing customary rule so called no detriment rule ensures that the broken employment relationship is reestablished after an industrial dispute ensues and therefore all striking workers are reinstated at the end of a strike. Therefore it finds that the situation in this respect is in conformity with the Charter

The Committee has also re-examined the situation as regards non-unionised workers. According to the report the right to strike under Danish law can only be exercised by a collective, typically a trade union. The Committee understands on this basis that “non-unionised” workers acting as a collective may, in principle, initiate a strike. Furthermore, while noting that trade unions may not force non-members to participate in a strike, the Committee assumes that non-members in a given workplace nevertheless have the freedom to join a strike called by a trade union in the same workplace. . The Committee asks that the next report confirm whether this understanding is correct and in particular indicate whether non-unionised workers enjoy the same protection as unionised workers in such situations, including in respect of reinstatement after termination of the strike (the no-detriment rule). Meanwhile, the Committee reserves its position on this point.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 6 §4 of the Charter on the following grounds:

- the Public Mediator's power to apply, without any pre-established criteria, the linkage rule constitutes an undue restriction of the right to strike;
- civil servants employed under the Civil Service Act are denied the right to strike;

Article 2 of the Additional Protocol – Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Denmark

Legal framework and scope

Article 2 of the Additional Protocol of the Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking. As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 2 of the Additional Protocol of the Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 2 of the Additional Protocol of the Charter, the Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation.?

The Committee previously noted (Conclusions XVIII-1) that the right to information and consultation of workers in the undertaking is mainly implemented through a series of collective agreements based on the model of the special Co-operation Agreement concluded in 1986 between the Danish

Employers' Confederation (DA) and the Confederation of Danish Trade Unions (LO) as amended by Agreement of 17 December 2003.

In the state sector corresponding rules are laid down in an Agreement of 29 May 2002 regarding the establishment of co-operation and co-operation committees in state enterprises and institutions which covers all employees in this sector.

The Committee previously noted (Conclusions XVI-2,) that according to figures provided by LO on the basis of a 2000 survey, the total coverage of the collective agreements laying down rules on the right to information and consultation is 83% of the total work force, including a coverage rate of 100% in the public sector and of 71% in the private sector. With regard to the private sector, figures provided by DA were slightly different since they showed a coverage rate of 77%.

During the reference period, the Act on Information and Consultation of Workers (No 303 of 2 May 2005) entered into force implementing Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (Official Journal L 80, 23.3.2002, pp. 29-34). The Act guarantees a right to information and consultation for workers in enterprises with a minimum of 35 employees. The report specifies that the Act only applies to workers who are not by virtue of a collective or other agreement already covered by a procedure which gives them a right to be informed at an appropriate time of matters of essential importance for their employment, including the situation of the enterprise and the long-term perspectives as regards employment and the financial situation.

The Committee understands that following implementation of the Act all employees in undertakings employing at least 35 employees are granted a right to information and consultation irrespective of whether they are covered by a collective (co-operation) agreement or not.

Material scope

The Committee has previously (Conclusions XI-1) examined the material scope of the right to information and consultation in Denmark and found it to be in conformity with the requirements of the Protocol.

Enforcement

The Committee previously requested information on sanctions in the event the right to information and consultation is not respected. The report states that employers who fail to inform and consult workers in accordance with

the applicable rules may be fined. The Committee asks the next report to provide the number of inspections carried out by the Labour Inspectorate as well as the number of sanctions imposed in this particular field.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 2 of the Additional Protocol of the Charter.

Article 3 of the Additional Protocol – Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by Denmark. The Committee refers to its previous conclusions concerning workers' participation in the determination and improvement of occupational health and safety and their working environment (Conclusions XVII-1 and XVIII-1), and will only address here outstanding issues.

Working conditions, work organisation and working environment

In its last conclusion (Conclusions XVIII-1), the Committee asked for information on how employee participation in decision-making within the enterprise regarding working conditions and work organisation is guaranteed by legislation, collective agreements or other means. According to the report, insofar as working conditions and work organisation are concerned, employee participation is guaranteed on a general level in collective agreements setting out standards for working conditions and work organisation. Employee participation is also guaranteed through collective agreements reached at enterprise level. The report also refers to works councils, known as co-operation committees, set up in enterprises of more than 35 employees which have secretariats composed of representatives of the different social partners and which ensure the implementation of these co-operation agreements.

Organisation of social and socio-cultural services and facilities

The aforementioned works councils also serve as focal points for the promotion of social and socio-cultural services at the workplace, and employees are involved in all decisions relating to social and socio-cultural initiatives. The report indicates that there is a general trend of employers increasingly investing in a wide range of social and socio-cultural activities for their employees. For example, in the collective agreements concluded in 2008 for the

public sector it was agreed to include a wide range of initiatives to promote the well-being of employees.

Enforcement

In reply to the Committee, the report specifies that employees can contact the Danish Working Environment Authority (WEA) if they have been denied their right to take part in the determination and improvement of the working environment. The WEA will then consider the complaint and take appropriate action. If the legislation on the safety organisation is breached, the employer can be served an improvement notice, and should the employer fail to abide by the improvement notice, he or she can be fined or sentenced to prison in serious cases.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 3 of the Additional Protocol to the Charter.

**Chapter 5 – Conclusions concerning Articles 2, 4, 5
and 6 of the Charter
in respect of Germany**

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by Germany on 27 January 1965. The time limit for submitting the 27th report on the application of this treaty to the Council of Europe was 31 October 2009 and Germany submitted it on 26 October 2009.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

Germany has accepted all of these articles, with the exception of Article 4 §4 of the Charter and Articles 2 and 3 of the Additional Protocol.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter concerns 14 situations and contains:

- 8 cases of conformity: Articles 2 §3, 2 §4, 4 §2, 4 §5, 6 §1, 6 §2, 6 §3 ;
- 4 cases of non conformity: Articles 2 §1, 2 §5, 4 §1, 4 §3, 6 §4.

In respect of the other situation concerning Article 2 §2, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next German report deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable working time

The Committee takes note of the information contained in the report submitted by Germany.

The Committee recalls that statutory daily working time is 8 hours in Germany (during a 6-day week). There is no statutory weekly maximum, but a 48-hour limit can be deduced from the daily working time rule. An extension of daily working time up to 10 hours is possible if within a six month reference period an average of 8 hours a day is not exceeded.

In its previous conclusions (Conclusions XVIII-2) the Committee noted that certain reference periods for averaging working hours under flexible

working arrangements were very long, finding that the situation was not in conformity with the Charter on this ground.

The report explains that Article 7 §8 of the Working Time Act establishes, in accordance with Directive 2003/88/EC concerning certain aspects of the organisation of working time, that when a reference period is extended by collective agreement, weekly hours should not exceed on average 48 over a 12-month period. When a collective agreement sets a reference period longer than one year, the working week will be shorter than the latter. Therefore, flexibility only exists to the extent that weekly working time does not exceed 48 hours on average during one year.

The authorities argue that by allowing social partners to determine long reference periods in which working time remains below 48 hours per week, employees are guaranteed that any time worked in excess of 48 hours will be compensated within 12 months. They also consider that extended reference periods with shorter working weeks is more advantageous for employees than the situation foreseen under Directive 2003/88/EC.

The Committee considers that the daily limit on working time, which can be calculated over a 6 month reference period, is in conformity with the Charter. It recalls in this respect that the reference period for the calculation of average working hours should not exceed four to six months, or 12 months in exceptional circumstances (General Introduction to Conclusions XIV-2). The extension of the reference period by collective agreement up to a 12 month period would also be acceptable, provided there were objective or technical reasons or reasons concerning the organisation of work justifying such an extension.

However, the existence of longer reference periods for the averaging of working hours are not permissible, irrespective of whether the number of actual hours worked are below 48 per week, as is the case according to the German authorities. This is a question of legal security, since in principle the longer a reference period, the more flexibility exists to distribute working hours unevenly, a situation which could lead to unreasonably long working weeks (of more than 60 hours) at certain times.

The Committee also refers to its Introductory Observation on the relationship between European Union Law and the European Social Charter in collective complaint No. 55/2009, *Confédération générale du travail (CGT) v. France*, decision on the merits of 23 June 2010, paragraph 38. It reiterates that the fact that a domestic regulation reproduces or is inspired on a European Union Directive can not prejudice its conformity with the Charter. Therefore, irrespective of whether German legislation is in conformity or

contravenes Directive 2003/88/EC on the question of reference periods, a separate assessment on compliance by States Parties with Article 2 §1 is carried out by the Committee.

Finally, the Committee notes that the average number of actual hours worked per week – in full-time employment – was 41.1 (in 2007), which is above the European Union average of 40 hours². It asks the next report to provide information on the supervision of working time regulations by the Labour Inspection, including the number of breaches identified and penalties imposed in this area.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 2 §1 of the Charter on the ground that under certain collective agreements the reference period for the calculation of average working hours can be extended beyond 12 months.

Article 2 – Right to just conditions of work

Paragraph 2 – Public holidays with pay

The Committee takes note of the information contained in the report submitted by Germany.

In its previous conclusion (Conclusions XVIII-2), the Committee asked for updated information on the increased remuneration paid in respect of work done on a public holiday. According to the report, increased wages are provided for by collective agreements. At the end of 2008, supplements for work carried out on public holidays varied between 62% and 149% of standard pay. The Committee asks what percentage of workers receive less than 100% of standard pay.

Federal public service employees receive a supplement of 135% of the hourly pay rate set by the standard wage scale when they work on a public holiday without taking compensatory time off and 35% of this rate when they do take compensatory time off.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least

2. Eironline, at <http://www.eurofound.europa.eu/eiro>.

double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee asks whether the base salary is maintained, in addition to the increased pay rate.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Germany.

In its previous conclusion (Conclusions XVIII-2), the Committee asked for information on the rules on the postponement of annual leave. Postponement of leave is permissible under section 7 §3 of the Federal Paid Leave Act (*Bundesurlaubsgesetz – BUrlG*), which entitles employees to carry over leave to the year following that in which the entitlement to leave was acquired if imperative reasons related to the company's activities or the worker's circumstances warrant the decision. Imperative reasons related to the company's activities may be, for example, the need to fulfil orders by a deadline or the absence of other employees for health reasons.

According to the report, since 1982, the Federal Labour Court (*Bundesarbeitsgericht – BAG*), which has jurisdiction over the right to leave, had interpreted the relevant provisions of the Federal Paid Leave Act (*BUrlG*) to mean that employees lost their right to leave, and hence their right to pay for leave, if, as a result of incapacity for work due to illness, they were unable to take their leave before the deadline by which carried-over leave had to be taken (that is by 31 March of the following year). Following a judgment of the European Court of Justice of 20 January 2009 in the case of Schultz-Hoff, the Federal Labour Court changed its case-law in this respect. In a judgment of 24 March 2009 (case No. 9 AZR 983/07) given in a dispute relating to the question of the loss of entitlement to leave in the event of illness, the Court decided that employees did not lose their legal right to leave if they suffered from a condition rendering them incapable of work up to the expiry of the leave deadline.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 2 §3 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 4 – Reduced working hours or additional holidays in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by Germany.

The Committee refers to the statement of interpretation it made on Article 2 §4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2 §4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protection measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk. Article 2 §4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter. Under no circumstances, however, can financial compensation be considered appropriate under Article 2 §4 (*Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2 §4).

The Committee refers to its conclusion under Article 3 of the Charter (Conclusions XIX-2) which describes the dangerous occupations performed in Germany and the preventing measures taken in this regard.

In its previous conclusion (Conclusions XVIII-2), the Committee needed further information in order to properly assess the situation, it therefore asked for further information on all measures taken to reduce exposure to residual risks in certain occupations, such as those involving exposure to ionising radiation, extreme temperatures, noise, steel making etc. Section 3 of the Federal Working Hours Act (*Arbeitszeitgesetz – ArbZG*) sets a limit of ten hours on the working day. Although this Act also sets the limit for weekly

working hours at 48 hours, the maximum set in collective agreements lies well below this (at 37.4 hours in the western *Länder* and 39 hours in the eastern *Länder*). Annual leave amounts to nearly six weeks (28.5 days in the western *Länder* and 27.5 in the eastern *Länder*). According to the report, this means that it is not necessary to adopt a regulation under section 8 of the *ArbZG* to arrange for specific measures regarding working hours for dangerous occupations. The Committee asks how, in companies or sectors where it is not possible to eliminate or reduce significantly the risks, the working time actually ruling on the basis of collective agreements can satisfy the requirements of Article 2 §4.

The report also states that public service employees to whom the relevant collective agreement applies and who work in shifts, either in teams or at night, are entitled to up to six days' additional leave for the year used as a reference to calculate leave entitlement (Article 27 of the *TVöD* collective agreement, and Article 53, *mutatis mutandis*).

Conclusion

Pending receipt the information requested, the Committee concludes that the situation in Germany is in conformity with Article 2 §4 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by Germany.

In its previous conclusion (CVIII-2), the Committee asked for further information on the possibility to derogate from the provisions of the Working Time Act by collective agreement, in particular whether collective agreements permit workers to work for longer than 12 days before being granted a rest period, and if so in what circumstances. Under section 11 §3 of the Federal Working Hours Act (*Arbeitszeitgesetz – ArbZG*) employers are entitled to a compensatory day off when they are required to work on Sunday. The day off must be granted within two weeks of the Sunday concerned, inclusive. Under section 12 §2 of *ArbZG*, provision may be made in collective, company or departmental agreements for this two-week period to be prolonged.

The Committee points out that, although the rest period must be weekly, it may be deferred until the following week provided that no-one is made to work more than twelve days in succession before being granted a two-day rest period. In view of the fact that the time limit for granting compensatory

time off for work on Sunday may exceed two weeks, the Committee finds that the situation is not in conformity.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 2 §5 of the Charter on the ground that the time in which a weekly rest day is granted may exceed twelve successive working days.

Article 4 – Right to a fair remuneration

Paragraph 1 – Decent remuneration

The Committee takes note of the information contained in the report submitted by Germany.

In its previous conclusion the Committee held that the situation in Germany was not in conformity with the Charter as it had not been established that the lowest wage paid was adequate. The Committee asked the next report to provide the information on the net amounts of minimum and average wages. It notes in this regard that the average monthly gross wage of a full-time worker amounted to €3 042 in 2006, which, according to the report, by way of example, can be transformed into a net wage of €1 815. The report also provides information on the lowest wages paid in enterprises with more than 10 employees. In the instant case the Committee takes into consideration the lowest net wage, which amounted to €881 for a single person in 2006 and thus represents only 48% of the average net wage. Therefore the Committee holds that the lowest wage paid is manifestly unfair.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 4 §1 of the Charter on the ground that the lowest wage paid is manifestly unfair.

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by Germany.

The report recalls that substantially all collective agreements foresee an enhanced pay rate or time off in lieu in compensation for overtime. By the end

of 2008, the increased pay rate/time off for overtime work varied between 24% and 41%. The Committee reiterates that this is in conformity with the Charter.

It asks that the next report provide information on whether the Labour Inspection has identified any breaches related to the failure to pay overtime wages.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 4 §2 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 3 – Non-discrimination between and women men with respect to remuneration

The Committee takes note of the information contained in the report submitted by Germany.

Legal basis

It notes the entry into force, on 18 August 2006, of the Equal Treatment Act (*AGG, Allgemeines Gleichbehandlungsgesetz*) in the fields of labour, public and civil law. This legislation forms the legal basis of the right to equal pay and replaces the provisions of the Civil Code on equal treatment between women and men (BGB, articles 611a, 611b and 612 §3).

Section 7 of the AGG establishes a general ban on discrimination on grounds of ethnic origin, race, sex, age, disability, sexual orientation, religion or beliefs. It includes direct and indirect discrimination and applies explicitly to remuneration. Section 7 §1, in conjunction with sections 2 §1 no. 2 and 8 §2, guarantees the right to equal remuneration for the same work or work of equal value, by stating that remuneration below that received by an employee of the opposite sex for the same work or work of equal value cannot be justified by the application of special provisions to protect employees on account of their sex, such as the ban on working to protect pregnant women.

Legal protection

The AGG grants employees the rights to lodge complaints (section 13), to refuse to perform certain work (section 14) and to receive appropriate compensation for pecuniary and non-pecuniary damage suffered. Section 16

makes it unlawful for employers to penalise employees who wish to exercise their rights under the act. This also applies to persons who support such employees and to witnesses. The Committee asks how, in practice, the courts ensure that victims of wage discrimination based on sex receive adequate compensation. Under the Charter, any compensation granted for unequal wages on grounds of sex must, as a minimum, cover the difference in pay and provide adequate reparation for the victim and act as a sufficient deterrent for the perpetrator. The Committee notes that in the previous supervision cycle (Conclusions XVIII-2) the situation was found not to be in conformity with the Charter because the only compensation for discrimination provided for in article 611a of the Civil Code (BGB) was for the payment of lost wages. This was not considered sufficiently dissuasive to ensure that employers would not again commit the same offence. It therefore asks whether the new legislation provides for other forms of compensation.

Section 22 of the AGG (Equal Treatment Act) provides for an adjustment of the burden of proof in discrimination cases. In practice, when a party can adduce evidence to establish a presumption of discrimination on one of the grounds specified in the legislation, the other party must prove that there has been no violation of the provisions prohibiting discrimination.

Section 17 of the AGG authorises works councils or trade unions represented in the workplace to require employers to take action against violations of the right not to be discriminated against. Under section 23, disadvantaged persons wishing to bring actions in the labour courts are entitled to legal assistance from anti-discrimination associations. An independent anti-discrimination centre (*ADS, Antidiskriminierungsstelle*) has also been established, under the auspices of the federal ministry for the family, elderly persons, women and youth (*BMFSFJ, Bundesministerium für Familie, Senioren, Frauen und Jugend*). Persons who consider themselves to be the victims of sexual discrimination can apply to it. In the event of disputes, the ADS can provide victims with free advice and if necessary refer them to other agencies or seek an out-of-court settlement between the parties. The Committee asks whether the ADS has already had to deal with cases of wage discrimination on grounds of sex and what action it took to rectify the situation.

Protection against reprisals

In the previous conclusions (Conclusions XVIII) the situation was considered not to be in conformity because there was a ceiling on the compensation payable to employees dismissed as a reprisal and the compensation paid to employees where the contract had been terminated by a court was not sufficiently dissuasive or compensatory. According to the report, reprisal dis-

missals are prohibited under article 612a of the BGB, and section 134 of the BGB makes them null and void. Employees are entitled retroactively to any unpaid salary or wages for the period following such unlawful dismissal and employers are obliged to reinstate them in the same post or in a similar one. On the other hand, even if the courts rule that dismissals are null and void, when employees do not consider reinstatement to be a desirable or viable option they can also ask them to end the employment contract and order the payment of compensation. Such compensation is an alternative to continued employment and its amount set by the court, within the legal maximum level which is of 12 monthly wages (or 18 monthly wages if the employee is 50 years old and if the working relationship lasted for more than 15 years). The Committee considers that courts should be free to decide upon the amount aimed at compensating the damage caused by the termination of the working relationship.

Salary and job comparisons

In its last conclusion (Conclusions XVIII-2) the Committee asked whether comparisons were possible between employees of different employers especially when one employer has predominantly female employees. In reply, the report states that it is possible to compare the wages of part-time and full-time employees with different employers. This is based on sections 2 §1 and 4 §1 of the legislation on part-time work and fixed-term contracts (*TzBfG, Teilzeit- und Befristungsgesetz*), which provide that where intra-firm comparisons are not possible because there are no comparable employees, employees may refer to the relevant collective agreement. If there is no collective agreement, it is possible to refer to employees performing similar work in the relevant sector of employment.

The Committee notes from comments presented by the German trade union federation (DGB) that when pay is determined by individual negotiations this leads to wide differences in wages or salary. On the other hand, when there are collective agreements and/or works councils the salary structure is more transparent in formal terms, though in practice it is difficult to prevent discrimination. In answer to the Committee's question as to whether collective agreements are concerned with minimum pay or what is paid in practice, the report states that for employees covered by collective agreements it is the minimum level of pay that is set. The parties may, at any time, agree on a higher level of pay than that specified in the collective agreement, which makes it impossible to make full and relevant comparisons. The Committee asks to be kept informed regularly of any developments of jurisprudence regarding non-discrimination cases with respect to remuneration and prob-

lems encountered in practice by employees who wish to make wage comparisons and who do not work for the same employer.

Situation of part-time employees

In answer to the Committee's request for practical examples of objective reasons that might justify different treatment of full and part-time employees, the report states that the criteria used to assess such differences of treatment are those used by the European Court of Justice. Pertinent reasons are deemed to include objective factors associated with the real needs of the undertaking that are appropriate and necessary in order to achieve its objectives. The reasons may be linked to employees' performance at work, workload, qualifications, training, responsibilities or professional experience, or to different requirements linked to the work or the post. The report presents two examples. The first concerns a part-time female employee who only works afternoons. When a new position becomes available for which the employee might apply, her application will not be taken into account because she will only work afternoons whereas the post to be filled has to be worked in the mornings. The second case concerns a better paid position for which knowledge of a second language, such as Russian, is necessary. The part-time employee in question cannot be considered for this post because he lacks the required language skills.

Other measures

According to the report, women's gross hourly pay is on average 23% below that of men. Federal government studies of the reasons for this differential have identified three main explanations:

- horizontal and vertical segregation of the labour market because of the lack of women in certain sectors and branches and in senior management positions;
- women interrupt their working lives and reduce their hours more frequently and for longer periods than men for family reasons;
- typically female occupations are less well paid than those traditionally performed by men, despite a considerable number of individual and collective wage and salary negotiations.

To reduce the wage gap between women and men, the government encourages a number of positive measures under various forms. Thus, the Committee notes a federal statistics office project on differences in remuneration between women and men designed to achieve a lasting improvement in the data on wage equality as well as the project on differences in wages and sal-

aries at the start of working life carried by the Hans Böckler foundation (*HBS, Hans-Böckler-Stiftung*), with the support of the federal ministry for the family, elderly persons, women and youth.

The Committee also notes the Logib-D pilot study sponsored by the federal government. This enables firms that so wish to enter data on their wages and salaries into the Logib-D programme in order to analyse the reasons for wage differentials between women and men in their enterprise. Many firms are encouraged to adopt this system for the purposes of self-evaluation. In its comments, the German trade union federation (DGB) criticises the lack of relevant legislation on the salary evaluation method used in the Logib-D system. The DGB considers that the project requires further analysis and research.

Other initiatives such as “Equal Pay Day”, the “Fair P(l)ay” guide and “Girls’ Day” represent further positive measures to reduce discrimination between women and men in the field of pay.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with the Article 4 §3 of the Charter on the ground that there is a ceiling on the compensation payable to employees dismissed as a reprisal.

In accordance with Article 22 §3 of the Committee’s Rules, a dissenting opinion from Ms Monika Schlachter, joined by Mr Andrzej Swiatkowski and Mr Lauri Leppik, is appended to this conclusion (page 105).

Article 4 – Right to a fair remuneration

Paragraph 5 – Limits to deduction from wages

The Committee notes that there have been no changes to the situation with regard to the limitation of deductions from wages, which it has previously considered to be in conformity with the Charter.

As the most recent reports have not submitted any information, the Committee requests that the next report provide a full and up-to-date description of the situation in law and practice in respect of Article 4 §5.

Conclusion

The Committee therefore concludes that the situation in Germany is in conformity with Article 4 §5 of the Charter.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by Germany.

It notes from the report that there have been no changes, either in law or practice, in the situation which was previously considered to be in conformity (Conclusions 2006).

The Federation of German Trade Unions (DGB) raised the question of access to undertakings by external union representatives. In reply, the Government draws attention to a judgment of the Federal Constitutional Court of 1995 and a judgment of the Federal Labour Court of 2006 which guarantee the right of external union representatives to enter any undertaking for the purpose of seeking new members.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 5 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 1 – Joint consultation

The Committee notes from the report submitted by Germany and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §1 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 6 §1 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee takes note of the information contained in the report submitted by Germany.

It is recalled that following the privatisation of the post and railway services, their employees were entitled to choose whether or not to retain their status

as civil servants. The Committee asked for clarifications concerning the scope of the right to collective bargaining of those employees having retained civil servant status in the privatised enterprises.

The Committee notes that the German Federal Constitutional held (in June 2002) that it may not be expected that the advantages of two different regimes (i.e. that of civil servant and that of employee in the private sector) are cumulated in the situation of civil servants working for privatised companies who choose to retain their civil servant status. In this regard, the Committee notes that the employees having retained their civil servant status do not enjoy the right to strike. It refers to its conclusion under Article 6 §4 concerning this issue. As to the right to bargain collectively, the Committee understands that collective agreements may not be concluded on the issue of remuneration of these employees. However, they are entitled to participate in the bargaining processes that result in the determination of all other conditions of employment applicable to them.

In the light of the above, the Committee holds that the interference in the right to bargain collectively of the employees in question is not disproportionate and satisfies the requirements of Article 6 §2. This does not affect its conclusion of non conformity under Article 6 §4.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 6 §2 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee notes from the report submitted by Germany and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §3 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 6 §3 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 4 – Collective action

The Committee takes note of the information contained in the report submitted by Germany.

Meaning of collective action – Permitted objectives of collective action

The Committee recalls that the German law pertaining to collective action, based on Article 9 para. 3 of the Constitution as interpreted by the courts, still forbids strikes which are not concerned with the conclusion of collective agreements, since report does not indicate that there has been any change to this situation the Committee still finds the situation not to be in conformity with Article 6 §4 of the Charter.

Who is entitled to call collective action

In its previous conclusions, the Committee has taken note of the conditions laid down by the courts before trade unions can call lawful strikes (see Addendum to Conclusions XV-1, p. 29) and has found that these are difficult to satisfy. It observes that the situation has not changed in this respect and given that a group of workers may not readily form a union for the purpose of a strike, considers the situation not to be in conformity with the Charter.

Restrictions on the right to strike

The Committee recalls that it falls to it to examine whether domestic courts act reasonably and that in particular their interventions do not strike at the very substance of the right to strike, thus depriving it of its effectiveness (Conclusions XVII-1, Germany).

The Committee notes that in the case of preliminary injunctions issued by a court at the request of an employer against a strike, there is no possibility of appeal at federal level, in particular to the Federal Labour Court. This means that, in the absence of legislation guaranteeing the right to strike, there is a risk of legal uncertainty given that different courts in different Länder may reach diverging rulings in similar cases. The examples of case-law provided in the report regarding the principle of proportionality demonstrate the fluctuation of case law between courts. The Committee therefore asks again for further information on ways and means to avoid any legal uncertainty that may restrict the right to strike in this respect, and reserves its position on this point.

The Committee recalls that in the case of civil servants who are not exercising public authority only a restriction can be justified, not an absolute ban (Con-

clusions XVII-1, Germany). As regards the absolute strike ban applied to civil servants employed in privatised postal and rail undertakings which the Committee held not to be in conformity with the Charter, it refers to its observations in its conclusion regarding Article 6 §2 with respect to the decision of the Federal Administrative Court of 7 June 2000 stating that a civil servant who is being granted leave to take up work under a private law contract with the privatised companies of the German Mail and Railway “is generally not subject to a prohibition to strike”. The Committee reiterates its question whether the scope of application of the court decision extends to all post and rail employees with civil service status who do not exercise public authority or whether there are civil servants, assigned to posts in privatised enterprises without being granted leave to take up work who are denied the right to collective action. Meanwhile, it reserves its position on this point.

Procedural requirements – Consequences of collective action

As regards the procedural requirements pertaining to and the consequences of collective action, the Committee refers to its assessment of the situation in Conclusions XV-1 and XVI-1. The report mentions no change to the situation in this respect.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 6 §4 of the Charter on the following grounds:

- strikes not aimed at achieving a collective agreement are prohibited;
- the requirements to be met by a group of workers in order to form a union satisfying the conditions for calling a strike constitute an excessive restriction to the right to strike.

Dissenting opinion on Germany, Article 4§3, by Ms M. Schlachter, joined by Mr. A Swiatkowski and Mr L. Leppik

Additionally to my statement on the sufficiently deterrent effect of civil liability compensation mentioned in the separate opinion to conclusions XVIII-2 that can be referred to, I present a comment on this cycle’s conclusion adding a paragraph on protection against reprisal dismissal:

Article 4 §3 of the Charter provides for equal pay for work of equal value to male and female employees. Nothing in such words allows for the conclusion the Committee arrives at. Legal protection against reprisal dismissal following equal pay claims can surely be pay discrimination in itself. But such

outcome will have as a prerequisite that the norms as such directly or indirectly lead to different payments for male and female claimants. The right to fair remuneration (= Article 4 ESC) forbids in its equal pay section that men and women earn wages of different standards, and legal protection of this right will have to guarantee that there is no inequality in the outcome, i.e. nobody receives less money than a comparator of the opposite sex under otherwise same circumstances.

The mere fact that a norm provides for an upper limit on compensation set for payments that a claimant may opt for instead of continued employment does not lead to different treatment between the sexes. Neither are women directly treated worse than men nor is there statistical evidence for an effective difference in such claims' success (= indirect discrimination). All claimants preferring compensation over continued employment are treated equal.

If the Committee wishes to criticise the existence of an upper limit to compensation as such, this would be of concern under Article 24 (b) of the Revised Charter, instead of Article 4 §3 of the 1961 Charter. I therefore dissent from the conclusion.

**Chapter 6 – Conclusions concerning Articles 2 and 4
of the Charter and Articles 2 and 3 of the
Additional Protocol in respect of Greece**

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by Greece on 6 June 1984 and the 1988 Additional Protocol on 18 June 1998. The time limit for submitting the 20th report on the application of this treaty (6th report on the Additional Protocol) to the Council of Europe was 31 October 2009 and Greece submitted it on 9 December 2009.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

Greece has accepted all of these articles, with the exception of Articles 5 and 6 of the Charter.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter concerns 11 situations and contains:

- 5 cases of conformity: Articles 2 §1, 2 §3, 4 §2, 4 §5 and Article 3 of the Additional Protocol;
- 4 cases of non-conformity: Articles 2 §2, 2 §4, 2 §5 and 4 §4.

In respect of the other 2 situations concerning Article 4 §1 and Article 2 of the Additional Protocol, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Greek report deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable working time

The Committee takes note of the information contained in the report submitted by Greece.

The report indicates that there have been no changes to the legal framework, which was previously found to be in conformity with the Charter (Conclusions XVIII-2).

The Committee notes from another source² that the actual working time per week in 2007 was estimated at 42.6 hours. The increase in actual working time compared with the early 2000s is due to the low level of workers' wages, who then try to work longer hours in an effort to meet their needs. It is also due to the policy followed by employers, who seem to prefer overtime work to hiring new workers, because of the higher cost of wages.

The Committee asks the next report to provide information on the supervision of working time regulations by the Labour Inspection, including the number of breaches identified and penalties imposed in this area.

Conclusion

The Committee concludes that the situation in Greece is in conformity with Article 2 §1 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 2 – Public holidays with pay

The Committee takes note of the information contained in the report submitted by Greece.

In its previous conclusion (Conclusions XVIII-2), the Committee asked updated information on the increased remuneration paid in respect of work done on a public holiday. It asked information as to whether a compensatory rest period is provided to workers in addition to increased remuneration, as well as any information as to approximately what percent of the private sector is probably covered by such a rule.

Royal Decree No. 748/1966 establishes the legal framework that applies to the private sector for the remuneration of work on public holidays. All private-sector employees who work on a public holiday are entitled to their daily wage plus a supplement of 75%. No compensatory days off are awarded in addition to this wage increase.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off,

2. Eironline, Greece: Industrial relations profile, at <http://www.eurofound.europa.eu/eiro/country/Greece>.

in which case it should be at least double the days worked. Given that this is not the case in Greece, the Committee considers that the situation is not in conformity with Article 2 §2

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 2 §2 of the Charter on the ground that work performed on a public holiday is not compensated at a sufficiently high level.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Greece.

In the private sector, under Article 3 of the National General Collective Labour Agreement, which came into force on 1 January 2008, an additional day's leave is granted to employees who have completed 25 years of service, bringing the annual leave entitlement up to 31 days for those working six days a week and 26 days for those working five days a week.

In its previous conclusion (Conclusions XVIII-2), the Committee asked for information on the rules on the postponement of annual leave. In the public sector, leave must be used up during the current calendar year and no leave may be carried over unless it was cancelled, reduced or not granted because of an emergency in the workplace. Under section 49 of Act No. 3528/07 (the Public Sector Employee Code), employees are required to take 15 days of leave between 15 May and 30 October every year. In the private sector there is no rule on the carrying over of leave exceeding the 15 days of compulsory annual leave. Under Emergency Act No. 534/45, annual leave must be used by 31 December of each year.

Conclusion

The Committee concludes that the situation in Greece is in conformity with Article 2 §3 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 4 – Reduced working hours or additional holidays in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by Greece.

The Committee refers to the statement of interpretation it made on Article 2 §4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2 §4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protection measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk. Article 2 §4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter. Under no circumstances, however, can financial compensation be considered appropriate under Article 2 §4 (*Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2 §4).

The Committee refers to its conclusion under Article 3 of the Charter (Conclusions XIX-2) which describes the dangerous occupations performed and the preventing measures taken in this regard.

In its previous conclusion (Conclusions XVIII-2), the Committee noted that there are no special provisions regarding reduced working hours or additional paid holidays for workers employed in bauxite, lignite, nickel and lead mines. The workers in question are covered by the general working time provisions of the National General Collective Agreement (forty hours per week).

The Committee considers that mining and underground work are potentially dangerous and unhealthy activities and workers engaged in such activity should therefore benefit from reduced working hours or additional paid holidays.

However the Committee further recalls that in *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (complaint No. 30/2005, decision on the

merits of 6 December 2006), it found a violation, inter alia of Article 2 §4 on the grounds that while the law provides for compensation for lignite miners because of the arduous nature of their work, such as early retirement and special bonuses for most Public Power Cooperation staff and additional leave for those working shifts, such measures must be implemented by collective agreements and are not in fact so implemented in practice.

According to the report, as regards the workers working in the lignite mines of the Public Power Corporation (DEH), on the basis of the Corporation's Administration decision No273/85 the granting of five more working days in a year as special paid leave has been established for the employees who work in rotating shifts. This decision is applied and implemented in practice, without the need of any collective labour agreement special provision

The Committee notes that, even if workers in the lignite mines are granted additional leave, some categories of employee working underground are still not entitled to compensatory time-off. The situation therefore is not in conformity in this respect.

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 2 §4 of the Charter on the grounds that some workers in the mining industry do not benefit from compensatory measures due to the arduous nature of their work.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by Greece.

In its previous conclusions (Conclusions XVI-2 and XVIII-2), the Committee noted that certain categories of workers were not covered by the legislation guaranteeing a weekly rest period (workers in agriculture, livestock, hunting and fishing, and domestic staff). The Committee recalled that the application of Article 33 cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision (*Confédération française de l'encadrement CFE-CGC v. France*, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§39-41). The Committee considered that the situation was not in conformity with the Charter.

According to the report, Article 3 of Presidential Decree No.76/2005, which replaced article 5 of the amended decree No.88/99, stipulates that a minimum continuous rest period of twenty four hours a week is ensured for workers; in the said period Sundays are mainly included, according to the provisions of the labour legislation and to practices applying to each category of workers, to which twelve continuous hours of daily rest are added. The provisions of Presidential Decree No.88/99, as amended by the regulations of Presidential Decree No.76/2005, apply to all enterprises, establishments, business undertakings and works in both the private and the public sectors, but not to domestic staff or seamen, bearing in mind the special nature of their work. The rules on weekly rest periods for seamen are set out in the International Convention on Work in the Fishing Sector and Directive 2003/88/EC of 4 November 2003. Furthermore, under Article 14b of Presidential Decree No. 76/2005, seamen's rest periods must be calculated on the basis of a 12-month reference period.

the Committee notes that domestic staff and seamen are not covered by the legislation guaranteeing a weekly rest period. It considers that the situation is not in conformity in this respect.

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 2 §5 of the Charter on the grounds that domestic staff and seamen are not covered by the legislation guaranteeing a weekly rest period

Article 4 – Right to a fair remuneration

Paragraph 1 – Decent remuneration

The Committee takes note of the information contained in the report submitted by Greece.

In its previous conclusion (Conclusions XVIII-2) the Committee held that it had not been established that a decent standard of living was guaranteed for a single worker earning minimum wage. In particular, the Committee asked whether the minimum wage together with additional benefits, paid specifically to a single worker earning minimum wage, could guarantee a decent standard of living.

The Committee now notes from the report that the lowest annual gross wage in 2007 amounted to €9 066 and to €7 616 net of insurance contributions. No income tax is levied on this amount since it is below the taxable income threshold of €12 000. As regards the average wage, the Committee

notes from the National Statistical Service of Greece that in 2007 the average annual net wage amounted to €16 566.

According to the report there are additional bonuses and benefits that aim at improving the standard of living of single employees on minimum wage. These are the benefits paid by the Workers' Housing Organisation to workers through rent subsidy programmes. In 2007 to qualify for rent subsidy programme, the worker's income had to be lower than the family income threshold of €11 500. The Committee thus understands that all workers receiving the minimum wage could qualify for this assistance, which amounted to an annual €1 380 in 2007. The Committee also takes note of other benefits such as the interest subsidy programme and benefits paid by the Workers Fund. It holds, however, that these benefits shall not be taken into account in assessing the situation as they appear to have a broader scope and do not address specifically the persons receiving the minimum wage.

The Committee observes that the minimum wage, together with benefits constituted 54% of the net average wage in 2007. The Committee holds that a "decent standard of living" which is at heart of this provision of the Charter, goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities. It follows that guaranteeing a decent standard of living means ensuring a minimum wage (and supplemented by any additional benefits where applicable) the level of which should be sufficient to meet these needs. Therefore, the Committee asks the next report to demonstrate whether the level of the minimum wage and its possible supplements in Greece meets this requirement. In the meantime it reserves its position.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by Greece.

The legal framework on remuneration of overtime was amended during the reference period pursuant to Law 3385/05. The law permits employer's to request "additional" hours above the 40 hour threshold (5 hours in the case

of employees on a five-day week; 8 hours for those working six-days) which are remunerated at an enhanced rate of 25%.

Any work exceeding 45 hours (in the case of a five-day week) or 48 hours (six-day week) is considered as “overtime” and remunerated at an increased rate of 50%. The maximum overtime limit is 120 hours per year. The report states that hours worked beyond this limit are compensated by a 75% increased rate of remuneration or even at 100% for “exceptional” work.

The Committee recalls in this respect that the approval of overtime beyond statutory limits is possible in Greece via a ministerial decision. This “transgression” of the statutory limits does not however entail an extension of the upper working time limits as defined in Presidential Decree 88/99 on “minimum standards for the organisation of working time”, namely 12 hours per day or 48 hours per week over a 4-month reference period, overtime inclusive. This situation has previously been considered acceptable under Article 2 §1 (Conclusions XVIII-2).

The Committee asks if it possible for an employer and employee to replace remuneration for overtime with compensatory leave. If the answer is affirmative, it asks how much rest period is granted in relation to the overtime work. It recalls in this respect that where remuneration for overtime is entirely given in the form of time off, Article 4 §2 requires that this time be longer than the additional hours worked (Conclusions XIV-2, Belgium).

Finally, it asks the next report to provide updated information on the activities of the Labour Inspection in respect of any breaches related to the failure to pay overtime wages.

Conclusion

The Committee concludes that the situation in Greece is in conformity with Article 4 §2 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 3 – Non-discrimination between and women men with respect to remuneration

In the General Introduction to Conclusions 2002 on the Charter, the Committee indicated that national situations in respect of Article 4 §3 (right to equal pay) would be examined under Article 1 of the Additional Protocol of 1988. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4 §3.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4 §3 and Article 1 of the Additional Protocol of 1988, thus every two years (under the thematic group 1 “Employment, training and equal opportunities”, as well as thematic group 3 “Labour rights”). Henceforth, the Committee invites Greece to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

Article 4 – Right to a fair remuneration

Paragraph 4 – Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by Greece.

In its two previous conclusions (Conclusions XVI-2 and XVIII-2), the Committee found the situation in Greece not to be in conformity with the Charter because the number of days’ wages paid in lieu of notice to manual workers with fewer than ten years’ service was inadequate. According to the report, Article 3 of the National General Collective Labour Agreement for 2006 to 2007 established a scale linking the number of days’ wages paid in lieu of notice to employees’ lengths of service. The Committee notes from this that employees with over twenty years’ service are entitled to 120 to 165 days and that this meets the requirements of Article 4 §4 of the Charter. However, the situation is not in conformity with regard to employees with two months’ to 20 years’ service, for whom the number of days’ wages granted in lieu of notice (between 5 and 100) falls short of the Committee’s requirements. By way of an example, the Committee has considered periods of 30 days for employees with up to 9 years’ service (Conclusions 2003, Bulgaria) and of 6 weeks for employees with between 11 and 15 years’ service (Conclusions XIV-2, Italy) to be inadequate.

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 4 §4 because manual workers with fewer than twenty years’ service are not entitled to an adequate payment in lieu of notice.

Article 4 – Right to a fair remuneration

Paragraph 5 – Limits to deduction from wages

The Committee notes that there have been no changes to the situation with regard to the limitation of deductions from wages, which it has previously considered to be in conformity with the Charter.

Conclusion

The Committee therefore concludes that the situation in Greece is in conformity with Article 4 §5 of the Charter.

Article 2 of the Additional Protocol – Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Greece.

In its last conclusion, the Committee found Greece not to be in conformity with Article 2 of the 1988 Additional Protocol to the Charter on the ground that it had not been established that the great majority of workers was granted an effective right to information and consultation within the undertaking. The Committee asked what were the mechanisms of information and consultation under the new legislation regarding employees under fixed-term contracts and what was the proportion of workers out of the total workforce covered by them.

The report states that no changes have occurred to the legislation governing information and consultation of the employees with fixed-term contracts, but it fails to provide information regarding the proportion of workers out of the total workforce covered. The Committee therefore reiterates its question.

The report describes the role and functioning of the works council (Council of the Employees) and states that the works council responsibilities regarding information and consultation of workers, are exercised only if there is no trade union functioning in the enterprise and these issues are not subject of a collective labour agreement. In its last conclusion the Committee held that trade unions thus have a monopoly on representing workers for the purpose of information and consultation. This can lead to a situation where a works council representing a majority of non-unionised employees would be deprived of the right to be informed and consulted, while this right would be granted to a trade union representing only a minority of employees. The Committee further noted that despite the

existence of legislation on works councils since 1988, very few works councils have actually been established in practice.

Legal framework

With the Presidential Decree 240/06 “On establishing a general framework for informing and consulting employees”, the Directive 2002/14/EC of the European Parliament and of the Council of 11th March 2002 was incorporated into national law.

Scope

Article 2 of the Additional Protocol to the Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.

As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 2 of the Additional Protocol to the Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 2 of the Additional Protocol to the Charter, the Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (Judgment of the European Court of Justice of 18 January 2007 (*Confédération générale du travail (CGT) and Others*, Case C-385/05).

Consequently, the Committee asks whether this is the scope of Greece’s legislation, particularly as regards the calculation of these minimum thresholds.

Personal scope

The above-mentioned decree applies on:

- establishments (“enterprises”) that employ at least 50 employees;
- undertakings that employ at least 50 employees.

- Lowest numbers of employed workers in the enterprise or undertaking are specified according to the number of employees at the beginning of the calendar month when the present article applies independently of any possible changes in the number of employed workers during the same month.

Material scope

Information and consultation cover:

- information about the recent and likely future development of the activities and of the economic condition of the undertaking or the enterprise;
- information and consultation about the condition, the structure and likely future development of the employment in the undertaking or the enterprise, as well as the prevention measures probably foreseen, especially in the case that employment is at risk;
- information and consultation about decisions that may result in substantial changes as regards organisation of work or employment contracts, including contracts that fall under the relevant provisions of Law 1387/1983 “Controlling mass redundancies and other provisions” (Official Gazette 110/A’) and of Presidential Decree 178/2002 (Official Gazette 162/A’/2002) “Measures for the protection of the rights of employees in the case of transfer of undertakings, businesses or of parts of businesses or undertakings”.

Information procedures are carried out at appropriate time, place and with the appropriate content so that the representatives of the employees are able to do the necessary examination and, possibly, prepare for consultation.

Rules and procedure

Consultation procedures are carried out:

- at appropriate time, place and with the appropriate content;
- at the proper level of management and representation depending on the issues discussed;
- on the basis of information provided by the employer and the opinion presented by the representatives of the employees according to their rights;
- in a way that makes sure that the representatives of the employees can meet the employer and can receive a justified reply to the opinion that they have possibly presented;

- with a view of achieving an agreement as regards the decisions that belong to the responsibilities of the employer and are mentioned in paragraph 2, point c of this article.
- Furthermore, the social partners may use an agreement in order to freely and at any time specify at the proper level the practical details of informing and consulting the employees.

Enforcement

Failure to comply with the obligations emanating from the provisions of the decree results in the enforcement of administrative penalties in accordance with Article 16 of Law 2639/1998.

To the employer who violates the provisions of the Labour Law with a justified act of the responsible Supervisor of Directorate of Labour Inspectorate or of Centre for the Prevention from Professional Risks or of the Special Labour Inspector who checked the case and after the employer has been invited to provide explanations, is imposed:

- a fine for each violation, from five hundred euros (€500) up to fifty thousand euros (€50 000);
- temporary pause of the operation of the particular productive procedure or of the department or of the departments or of the whole of the enterprise or undertaking for a time interval up to 3 days.

In addition, with a decision of the Minister of Employment and Social Insurance, it is possible, after a justified proposal of the competent Labour Inspector, to impose on the employer a temporary pause of the operation for a time interval longer than three days or even a permanent pause of the operation of the particular productive procedure or of the department or of the departments or of the whole of the enterprise or undertaking.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 3 of the Additional Protocol – Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by Greece.

The report clarifies that the right to participate in the improvement of working conditions and the working environment is enjoyed by all employees without exception. All employees have the right to choose representatives in connection with issues of regulation and improvement of their working conditions in accordance with Sections 3 and 5 of the Presidential Decree No. 17/1996 on Measures for the Improvement of the Safety and Health of Employees at Work.

The report also specifies that while employees have the right to elect committees or representatives of employees this does not prevent them from participating directly themselves in procedures for the regulation and improvement of their working conditions. Pursuant to Section 10 – entitled “consultations and participation of employees” – of Presidential Decree No. 17/1996, employers must ask for their employees’ opinion and facilitate their participation in respect of any issue pertaining to health and safety at work, in particular through consultations and the exercise of the right of employees or their representatives to make proposals. Therefore, the existence of representatives is not a prerequisite for the enjoyment by employees of their right to participate in the determination and improvement of working conditions and the working environment. In addition, employers who fail to comply with Section 10 of the aforementioned Presidential Decree face administrative penalties (fine and temporary suspension of the enterprise’s activities) as well as penal sanctions.

The Committee notes that the legal framework in place is satisfactory but asks that the next report provide information sufficient for it to be able to assess whether the great majority of employees enjoy in practice the right to participate in the determination and improvement of working conditions and the working environment within their undertaking.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Greece is in conformity with Article 3 of the Additional Protocol to the European Social Charter.

Chapter 7 – Conclusions concerning Articles 2, 5 and 6 of the Charter and Articles 2 and 3 of the Additional Protocol in respect of Hungary

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by Hungary on 8 July 1999 and the 1988 Additional Protocol on 4 February 2004.² The time limit for submitting the 7th report (3rd report on the Additional Protocol) on the application of this treaty to the Council of Europe was 31 October 2009. Hungary failed to submit the report.

This report should have concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the 1988 Additional Protocol),

1. The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int/socialcharter).

2. Hungary ratified the Revised Charter on 20 April 2009.

- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the 1988 Additional Protocol).

Hungary has accepted all the articles from this group, with the exception of Article 4.

The applicable reference period was 1 January 2005 to 31 December 2008.

The Committee notes the failure of Hungary to respect its obligation, under the Charter, to report on the implementation of this treaty. Under the circumstances the Committee was unable to reach any conclusions and it considers that there is nothing to demonstrate that the situation as regards the provisions concerned is in conformity with the Charter.

The next Hungarian report, which is the first on the Revised Charter, deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

The deadline for the report was 31 October 2010.

**Chapter 8 – Conclusions concerning Articles 2, 4, 5
and 6 of the Charter in respect of Iceland**

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by Iceland on 15 January 1976. The time limit for submitting the 23rd report on the application of this treaty to the Council of Europe was 31 October 2009 and Iceland submitted it on 9 October 2010.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

Iceland has accepted all the articles from this group with the exception of Article 2 §2, 2 §4 and Articles 2 and 3 of the Additional Protocol.

The applicable reference period was 1 January 2005 to 31 December 2008.

The present chapter on Iceland concerns 13 situations and contains:

- 8 conclusions of conformity: Articles 2 §3, 2 §5, 4 §2, 4 §5, 6 §1, 6 §2, 6 §3 and 6 §4 ;
- 5 conclusions of non-conformity: Articles 2 §1, 4 §1, 4 §3, 4 §4 and 5.

The next Icelandic report deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable working time

The Committee takes note of the information contained in the report submitted by Iceland.

The report indicates that the only amendment during the reference period to the Health and Safety at Work Act (No. 46/1980) was related to the inclusion of doctors undergoing training within its scope. No changes are reported to the working time provisions in collective agreements.

The Committee recalls from its previous conclusion (Conclusions XVIII-2) that average working time per week, including overtime, should not exceed 48 hours. The reference period for calculating average working time is 6 months, but may be extended to 12 months by collective agreement when there are objective or technical reasons, or in view of the special nature of the jobs in question (Section 55 of the Act).

In reply to the Committee, the report provides examples of jobs where the reference period for averaging working hours can be extended up to 12 months. This includes jobs where there are seasonal peaks in work or fluctuations in an industry due to for example weather conditions (in fishing) or even market conditions.

Concerning the Committee's question on what are the absolute limits on daily and weekly working hours, the report makes reference to Article 53 of the Act, which provides that workers should have at least 11 consecutive hours of rest in each 24-hour period. Therefore, although there is no explicit maximum working day, a 13-hour maximum can be derived from the application of the 11-hour daily rest.

The report also mentions that pursuant to Article 53 of the Act the rest period can be reduced to 8 hours by agreement between the social partners if the nature of the work or particular working methods necessitates such derogation. The statutory 11 hour rest period may also be derogated from in cases of disruption of normal activities due to external causes, such as the weather or other natural forces, accidents, power failure, malfunction in machinery, equipment or other device or other comparable unforeseeable events.

The Committee finds that the reduction of the rest period to 8 hours may be justified in situations aimed at avoiding substantial loss or damage when operations are affected by external circumstances (weather, forces of nature, accidents, power failures, breakdown of equipment, etc.).

However, as regards the reduction of the rest period by agreement between the social partners, it considers that the Act gives social partners too much freedom in this area. The Committee notes that social partners will be able to agree on an extension of daily working hours to 16 hours (by reducing the rest period to 8 hours), subject to the only condition that "the nature of the work or particular working methods requires this". It recalls in this respect from information previously submitted by the Government some examples of activities where the social partners can reduce the rest period, such as shift work, security duties, agriculture and salvaging operations.

Accordingly, the Committee considers that the Act gives too broad a margin of discretion to the social partners in determining sectors of activity where working time can be extended to 16 hours. It recalls that working time should in no circumstances go up to 16 hours per day, and therefore considers, irrespective of the fact that the Act foresees compensatory rest when the daily rest time is shortened, that the situation is in breach of Article 2 §1 of the Charter on this point.

In its previous conclusion (Conclusions XVIII-2) the Committee also found that the situation was not in conformity with Article 2 §1 because working hours for seamen could reach up to 72 hours per week. There have been no changes to the situation, and, under the Seamen's Act (No. 35/1985) the working time limits continue being 14 hours per day or 72 hours per week. The report again states that such regulations are in line with relevant Community directives and other international instruments.

The Committee refers to its Introductory Observation on the relationship between European Union Law and the European Social Charter in Complaint No. 55/2009, *Confédération générale du travail (CGT) v. France*, decision on the merits of 23 June 2010, paragraph 38. It reiterates that the fact that a domestic regulation reproduces or is inspired on a European Union Directive can not prejudice its conformity with the Charter. Therefore, given that weekly working time of more than 60 hours is too long to be considered as reasonable under Article 2 §1 of the Charter, the Committee reiterates its conclusion of non-conformity on this ground.

The Committee notes that average actual working hours in 2008 stood at 41.4 hours, which is a slight decrease from the previous reference period.

The Committee asks that the next report provides information on the supervision of working time regulations by the Labour Inspection, including the number of breaches identified and penalties imposed in this area.

Conclusion

The Committee concludes that the situation in Iceland is not in conformity with Article 2 §1 of the Revised Charter on the grounds that:

- the social partners can agree to extend daily working time to 16 hours in various occupations;
- working hours for seamen may go up to 72 hours per week.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Iceland .

Under collective agreements concluded in 2008 between the Icelandic Confederation of Labour (ASI) and the Confederation of Icelandic Employers (SA), the annual leave has been increased. Under the agreements, the duration of leave was extended to 30 days after 10 years working in the same company,

27 days after five years working in the same company and 25 days after five years of working in the same profession.

In its previous conclusion (Conclusions XVIII-2), the Committee asked for information on the rules on the postponement of annual leave. The report states that according to the Holiday Allowance Act N° 30/1987, that if a worker is not able to take scheduled leave during the period 2 May to 15 September due to illness or accident the worker may, subject to the presentation of a medical certificate, take the leave at another time, however not later than 31 May in the following year.

Conclusion

The Committee concludes that the situation in Iceland is in conformity with Article 2 §3 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by Iceland .

It notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter. The Committee asks that the next report provides a full and up-to-date description of the situation in law and practice in respect of Article 2 §5.

Conclusion

The Committee concludes that the situation in Iceland is in conformity with Article 2 §5 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 1 – Decent remuneration

The Committee takes note of the information contained in the report submitted by Iceland .

The report states that the minimum wages in Iceland, as well as other working terms, are determined in collective agreements between the social partners. Each collective agreement specifies the minimum wages for the particular occupation group and applies to all employees in the relevant occupation. The Committee notes from the report that between 2004 and 2007 the

wages in Iceland rose overall by 30%. Further, the purchasing power of the minimum wage taken together with the lump-sum payments increased in the reference period.

According to the report, the minimum monthly wage of unskilled workers on the Icelandic labour market amounted to ISK 98 904 in January 2005 (€1 190 at the relevant time) and ISK 137 752 (€1 502) in January 2008. The report also provides the amounts of minimum and average monthly wages after deduction of pension-fund premiums and taxes. Net minimum wage represented ISK 87 445 (€1 052) in 2005 and 119 039 (€1 298) in 2008.

The report provides two kinds of average wages, namely average daytime wage and average aggregate wage. In its previous conclusion the Committee decided to take the aggregate average wage (which is higher than the average daytime wage) as the reference wage, since it represented the total income on which the income tax was based and therefore, in the Committee's view, better represented the national cross-sector average. Consequently, in the present conclusion the Committee made the comparison with the net aggregate average wage, which amounted to ISK 234 559 (€2 823) in 2005 and ISK 314 192 (€3 426) in 2008. The Committee notes that in 2005 the net minimum wage represented 37.3% of the aggregate net average wage and 37.9% in 2008. (The proportion to the net average daytime wage is higher and equals 45.8% and 47% respectively). The Committee notes that this relationship is not in conformity with Article 4 §1 of the Charter.

In its previous conclusion the Committee asked whether the lump-sum supplements agreed in collective agreements paid to workers on a minimum wage, such as December supplement and holiday pay supplement, were included in the figures on net minimum wage provided in the report. In this connection the Committee notes from the report that the December supplement and the holiday supplement are not only paid to minimum wage earners. Those supplements constitute fixed amounts and are not related to an employee's wage. According to the report, the December supplement and the holiday pay supplement were included in the calculations of the minimum and average wages.

The Committee recalls that to be considered fair, a net minimum wage should amount to no less than 60% of a net average wage. If the wage lies between 50% and 60%, a state is asked to demonstrate that the wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living. However, a net wage which is less than half the net national average wage will be deemed to be unfair and therefore the situation

of the Party concerned will not be in conformity with Article 4 §1. Therefore, the Committee holds that the minimum net wage in Iceland is not fair as it falls too far below the average wage.

The Committee observes, however, that the proportion between minimum and average wages is considerably lower for this reference period compared to the previous one. It notes in this regard that the figures provided in the present report concerning net wages, insofar as they cover previous reference period, differ significantly from those provided in the last report. The Committee therefore asks for a clarification of this divergence, in particular what was the method used in both reports to calculate net wages.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Iceland is not in conformity with Article 4 §1 of the Charter on the ground that the minimum wage is not fair.

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased remuneration for overtime work

The Committee notes from the Icelandic report that there have been no changes in the situation which was previously considered to be in conformity (Conclusions XVIII-2).

As the most recent detailed information on the situation dates back from the period 1993-1996, the Committee reiterates its request that the next report provide a full and up-to-date description of the situation in law and practice in respect of Article 4 §2.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Iceland is in conformity with Article 4 §2 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 3 – Non-discrimination between and women men with respect to remuneration

The Committee takes note of the information in the Icelandic report.

A new Act (10/2008) on the equal status and rights of women and men came into force on 18 March 2008. It replaces the Act on the same subject adopted

in 2000. The Act of 2008 reiterates companies' obligations with regard to gender equality in the areas of pay, working conditions, vocational training and leave. New supervisory and disciplinary powers have been assigned to the Centre for Gender Equality. Employees are now permitted to disclose information on their wages outside the company. As a result of these measures, the independence of the committee that deals with complaints on gender-related issues has been enhanced; its decisions are now binding and its investigation and information-gathering powers have been extended.

In 2007, the Minister of Social Affairs and the Minister of Finance established three committees which were asked to look into the situation and propose measures to bridge the gender pay-gap. Since February 2008, collective agreements negotiated in the private sector have referred specifically to gender equality and the development of gender equality policies by the companies concerned. In October 2008, the Minister of Social Affairs and Social Security, the Confederation of Icelandic Employers and the Icelandic Confederation of Labour adopted a declaration in which they undertook to adopt equal pay standards.

Legal Protection

Under the new legislation, the Complaints Committee on Gender Equality consists of three lawyers, all appointed by the Supreme Court of Iceland. The Committee now gives binding decisions whereas previously it could only issue non-binding opinions. No other authority may give it instructions and its decisions may only be contested in a court of law. In this event, the Committee may, at either party's request, postpone the legal effects of its decisions. Individuals, companies, institutions and non-governmental organisations may submit a case to the Committee on their own or their members' behalf. The Centre for Gender Equality may also refer cases to it. Under the new Act, complainants are allowed to ask the Centre to ensure that the Committee's decisions are fully complied with. In this connection, the Centre will, where necessary, issue instructions to the party concerned with regard to the reparation measures decided on by the Committee. If the instruction is ignored, the Centre may decide to impose a fine until the Committee's decision is implemented. Under the new legislation, the Committee is entitled, after consulting the complainant, to refer the case for arbitration by the Centre. This applies to cases in which a result may be reached more quickly without infringing the complainant's rights. The Committee may also decide that a party found to have violated the law must pay the complainant's costs. The Committee gave eight rulings in 2005, sixteen in 2006, five in 2007 and nine in 2008. During the period from 2005 to 2008, the

Supreme Court gave three judgments on gender equality cases (on the basis of the Act of 2000). They all related to job appointments and in only one was there found to have been an infringement of the law.

Comparison of Salaries

The Committee points out that the right of women and men to “equal pay for work of equal value” must be expressly provided for in legally binding form (Conclusions XV-2). As comparisons need to be made in order to determine whether women and men really do receive equal pay, the Committee has consistently found that “the possibility to look outside an enterprise for an appropriate comparison should exist where necessary” (Conclusions XIII-1). It considers that the possibility of looking outside the enterprise for appropriate comparisons is of fundamental importance in those exceptional cases when it is necessary “for a system of objective job evaluation to be efficient in certain circumstances, in particular in enterprises where the workforce is largely, or even exclusively, female” (Conclusions XIII-5).

Based on the information provided by the Icelandic authorities, the Committee notes the following: the new Act of 2008 authorizes pay comparisons with regard to the same employer but not between employers; wages are dependent on firms’ financial results. Consequently, the Committee considers that the situation is not in conformity with the Charter on this point, nonetheless that in practice, according to the information provided by the Icelandic authorities, when the social partners negotiated wages and adopted collective agreements by sector, they took account of the situation in other firms.

Studies on equal pay

With regard to the Committee’s request for other studies to be conducted, particularly with a view to collecting reliable data to be able to determine whether qualifications have an impact on the scale of the pay gap between women and men, the Icelandic report refers to the following items:

- the survey on “Wage Formation and Gender-Based Wage Differentials” (Launamyndun og kynbundinn launamunur), conducted in 2006 by Capacent Gallup for the Ministry of Social Affairs (the previous survey had been carried out in 1994);
- surveys carried out by the trade unions among their own members (autumn 2006);

- research launched by Statistics Iceland in February 2008 on the main methods that scientific theories on gender-based wage differences have formulated;
- the findings of a survey on gender-based wage differences for the period 2000-2007 published by Statistics Iceland in 2010;
- a research project on the wage gap launched in 2007 by the Centre for Gender Equality in collaboration with the Ministry of Social Affairs in connection with the European Year of Equal Opportunities for All;
- a survey on gender-based wage differences carried out by the University of Iceland in 2008 at the request of the Ministry of Social Affairs.

The latter survey, which covered the entire national labour market, showed that the overall wage gap is 16.3%. The difference is greater among people working in the private sector and even greater among those employed outside the greater capital area. In the public sector, no significant gender-based wage difference was measured among employees with primary school education and university education. However, there were significant differences among employees with secondary school education.

Retaliatory dismissal

The Committee points out that in the event of retaliatory dismissal, reparation must, in principle, take the form of reinstatement in the same or a similar post. Where this is not possible or not desired by the employee, financial compensation may be acceptable, but only if it is of a sufficient amount to deter the employer and to compensate the worker (see, in particular, Conclusions VII and VIII, Denmark; Conclusions XIII-5, general observation; Conclusions XIV-2, Luxembourg and Iceland).

The Gender Equality Act of 2008 reiterates that employers are prohibited from dismissing workers who have filed complaints or instituted court proceedings under the Act. Employers are also required to ensure that employees will not be disadvantaged in their employment conditions because they have made a complaint. Employers who wilfully or negligently violate the provisions of the Act are required to pay compensatory damages under the general rules and possibly compensation for non-pecuniary damage. There is no statutory ceiling on compensatory damages, the amount of which is determined by the court.

The report states that Icelandic law does not address the rights of individuals who believe that their rights to demand reinstatement with the same employer have been violated. The Committee notes that the report states that although the courts do not in practice order reinstatement this is not to say

that they may do so or will not do so in the future. However, it considers that this is not sufficient to bring the law of Iceland into compliance with the Charter on this point.

Conclusion

The Committee concludes that the situation in Iceland is not in conformity with Article 4 §3 of the Charter on the grounds that:

- legislation does not permit pay comparisons to determine whether there is equal pay for equal work or work of equal value beyond a single employer;
- law makes no provision for declaring a dismissal null and void and/or reinstating an employee in the event of a retaliatory dismissal connected with a claim for equal pay.

Article 4 – Right to a fair remuneration

Paragraph 4 – Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by Iceland .

In its last conclusion the Committee found that the situation in Iceland was not in conformity with Article 4 §4 of the Charter on the ground that the two weeks' notice period in the collective agreement between the Confederation of Icelandic Employers and Skilled Construction and Industrial workers, for employees with more than six months' service, was not reasonable.

The present report does not provide information allowing the Committee to assess whether the situation has changed since the previous conclusion. Instead, the report describes the employee's right to know the reason for the termination of his/her employment. In the absence of any relevant information, the Committee requests the Icelandic authorities to address these matters fully in the next report. In the meantime, it renews its finding of non-conformity.

Conclusion

The Committee concludes that the situation in Iceland is not in conformity with Article 4 §4 of the Charter on the ground that the two weeks' notice period for employees with more than six months' service, covered by the collective agreement between the Confederation of Icelandic Employers and Skilled Construction and Industrial workers, is not reasonable.

Article 4 – Right to a fair remuneration

Paragraph 5 – Limits to deduction from wages

The Committee notes from the Icelandic report that there have been no changes in the situation which was previously considered to be in conformity (Conclusions XVIII-2).

As the most recent reports have not submitted any information, the Committee requests that the next report provide a full and up-to-date description of the situation in law and practice in respect of Article 4 §5.

Conclusion

The Committee concludes that the situation in Iceland is in conformity with Article 4 §5 of the Charter.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by Iceland.

In its previous conclusion (Conclusions XVIII-1) the Committee took note of the amendment to Article 74 of the Constitution on freedom of association but considered that, in the absence of any case law to the contrary, it had not been established that the changes made to the Constitution protected the negative freedom of association of a scope large enough to avoid an obligation to belong to a trade union being imposed by a closed shop or priority clauses in collective agreements.

The report states that it is prohibited to oblige workers to join trade unions or other associations, in line with the judgment of the European Court of Human Rights of 30 June 1993 (*Sigurdur A. Sigurjónsson v. Iceland*) which found a violation of Article 11 of the European Convention of Human Rights on the ground that Act No. 77/1980 obliged taxi-drivers to be members of trade unions in their profession – this is reflected in the explanatory memorandum of the law which amended Article 74 of the Constitution. However, the report differentiates such cases from those where priority clauses are agreed on by trade unions and employers as part of collective bargaining.

The report indicates that priority rights, which result from priority clauses, mean that the employer undertakes to accept union members in preference to non-unionised workers as long as they are available. The report states that the Constitutional Committee of the Parliament considers that priority clauses contained in collective agreements do not entail compulsory mem-

bership of the type covered by Article 74 of the Constitution, which was not intended to change the legal situation prevailing on the labour market as regards priority clauses. This was confirmed by the Labour Court in a judgment of 28 May 2002 where the court considered that priority clauses were not in contradiction with Article 74 of the Constitution. The Labour Court underlined that nothing prevented other trade unions than the one which benefits from a priority clause to negotiate priority clauses for their own members. In a judgment of 23 January 2007 the Labour Court held that the amendment to Article 74 was not meant to alter the situation of the labour market as regards priority clauses. The Labour Court also stated that priority rights apply not only to recruitment but also to termination of employment.

The Committee considers that such priority clauses constitute a serious interference with the right not to join trade unions as non-unionised workers find themselves in a clearly disadvantageous position on the labour market compared to workers belonging to trade unions having negotiated priority clauses for their members. The report indicates that it is the Government's position that intervention by way of legislation or measures aiming to prohibit priority clauses in collective agreements would risk jeopardising the stability of the labour market. Arguing that these clauses are the result of agreements freely reached by employers and unions and are long-standing practice, the Government appears to leave it to the social partners themselves to stop having recourse to them. The Committee, however, considers that, ultimately, it remains for the Government to ensure conformity of the national situation with the Charter. For this reason it asks what concrete steps are taken to encourage social partners not to have recourse to priority clauses anymore and whether a decrease has been noted as a result of such action. In the meantime, and given the current state of legislation and case law as described in the report, the Committee still cannot consider the situation to be in conformity with Article 5 by reason of the existence of such priority clauses.

Conclusion

The Committee concludes that the situation in Iceland is not in conformity with Article 5 of the Charter on the ground that the existence of priority clauses in collective agreements which give priority to members of certain trade unions in respect of recruitment and termination of employment infringes the right not to join trade unions.

Article 6 – Right to bargain collectively

Paragraph 1 – Joint consultation

The Committee notes from the report submitted by Iceland and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §1 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in Iceland is in conformity with Article 6 §1 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee notes from the report submitted by Iceland and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §2 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in Iceland is in conformity with Article 6 §2 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee notes from the report submitted by Iceland and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §3 of the Charter.

Conclusion

The Committee concludes that the situation in Iceland is in conformity with Article 6 §3 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 4 – Collective action

The Committee takes note of the information contained in the report submitted by Iceland .

Who is entitled to take collective action?

Under Section 14 of Act No. 80/1938 only trade unions have the right to call a strike. However there are no formal conditions for the establishment of trade unions in Iceland. The Committee previously considered that the situation in this regard was in conformity with Article 6 §4 of the Charter. There has been no change to this situation.

Restrictions to the right to strike

The Committee notes that according to the report there were no Government interventions to terminate strikes during the reference period.

The Committee previously sought clarification whether the right to strike for civil servants was now guaranteed in the context of any negotiation between employers and employees in order to settle a collective dispute and was no longer limited to situations where the strike is aimed at the conclusion of a collective agreement. Meanwhile, it reserved its position on this point. The report confirms that the changes made mean that civil servants may strike

Procedural requirements

The Committee previously found the situation to be in conformity in this respect (Conclusions XVIII-1) but asks the next report to provide updated information on procedural requirements before a strike can take place.

Consequences of a strike

The Committee previously found the situation to be in conformity in this respect (Conclusions XVIII-1) but asks the next report to provide updated information on the consequences of a strike.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Iceland is in conformity with Article 6 §4 of the Charter.

Chapter 9 – Conclusions concerning Articles 5 and 6 of the Charter in respect of Latvia

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by Latvia on 31 January 2002. The time limit for submitting the 5th report on the application of this treaty to the Council of Europe was 31 October 2009 and Latvia submitted it on 30 October 2009.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

Latvia has accepted Articles 5 and 6 from this group.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter concerns 5 situations and contains:

- 3 cases of conformity: Articles 6 §1, 6 §3 and 6 §4 ;
- 2 cases of non-conformity: Articles 5 and 6 §2.

The next Latvian report deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by Latvia.

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion.

Forming trade unions and employer associations

In its last conclusions (Conclusions XVII-2 and XVIII-2) the Committee held that the situation was not in compliance with Article 5 because “the high number of members required to form a trade union constitutes an unreasonable obstacle to the right to organise”. Under Section 3 of the Trade Union Act a minimum of 50 members or at least a quarter of the employees of an undertaking, organisation, profession or industry are necessary for the establishment of a trade union. The report indicates that the situation remained unchanged during the reference period but that the possibility of

amending the Trade Union Act on this issue is being considered. The Committee sees no reason to depart from its finding of non-conformity on the ground of the high number of members required to form a trade union. At the same time, in view of the information provided, it asks to be kept informed of developments in this area.

Freedom to join or not to join a trade union

The Committee already noted that the Employment Act 2001 protects workers against dismissal, disciplinary sanctions, discrimination in working conditions and pay or any other form of discrimination based trade union membership or intention to join a union. It asked for further information on remedies and the nature and scale of the penalties to which employers are liable in such cases of discrimination. The report indicates that according to Section 41 §1 of the Administrative Violations Code “in the case of a violation of regulatory enactments regulating employment legal relations relating ... a warning shall be issued or a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 25 up to LVL 250, and for a legal person from LVL 50 up to LVL 750”. If an employer commits the same offence within a year after the imposition of a first administrative sanction, a fine shall be imposed on him, of an amount ranging from LVL 250 to LVL 500 for a natural person and from LVL 750 to LVL 2000 for a legal person.

In addition, employees have the right to request compensation, both for pecuniary and non-pecuniary damage, in cases of discrimination based on union membership; in case of dispute, the competent court will rule on the amount to be paid for non-pecuniary damage (Section 29 of the Labour Act). The Committee already stated that domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim (Conclusions 2004, Bulgaria). Accordingly, in light of the insufficiently precise information furnished, it asks for further information on the amounts that can be awarded by domestic courts in case of discrimination based on trade union membership. Should this information not be provided in the next report, there will be nothing to establish that the situation is in conformity with Article 5 on this aspect.

In reply to the Committee’s question as to whether there was a shift of the burden of proof in favour of workers alleging discrimination based on trade union membership, the report indicates that Section 9 of the Labour Act provides that it is for the employer to prove that the employee has not been punished or has not been submitted to adverse treatment linked to the exercise of his rights, including the right to organise which is guaranteed by

Section 8 of this Act. The Committee considers the situation to be in conformity with the Charter on this point.

Personal scope

As regards the right to organise of retired and unemployed workers, the report indicates that the Associations and Foundations Act allows retired and unemployed workers to form associations to defend their interests. It further adds that, while retired workers are not allowed to form trade unions in accordance with Section 2 of the Trade Union Act, it does not prevent unions from having retired workers as members. The Committee considers that organisations of retired and unemployed workers, irrespective of their status, should have access to consultation procedures open to trade unions in which they are formally consulted on public policies or legislative developments that may affect retired or unemployed workers. The Committee therefore asks the next report to indicate whether the associations of unemployed and retired workers which exist in Latvia are entitled to participate in consultation procedures which are concerned with public policies of legislative developments which can affect their situation.

As regards police staff, the report states that as from 1 January 2006 they are entitled to establish and join trade unions and enjoy union prerogatives (Police Act of 2005). The Committee therefore concludes that the situation is now in conformity with Article 5 in this respect.

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 5 of the Charter on the ground that a minimum of 50 members or at least one quarter of the employees of an undertaking are required to form a trade union, which is an excessive restriction on the right to organise.

Article 6 – Right to bargain collectively

Paragraph 1 – Joint consultation

The Committee takes note of the information contained in the report submitted by Latvia.

The Committee recalls that in its previous conclusions (Conclusions XVII-1 and XVIII-1), it held the mechanisms for joint consultation in Latvia to be in conformity with Article 6 §1 of the Charter. It however asked for further information on envisaged developments. It will therefore only consider recent developments and additional information in this conclusion.

Levels of joint consultation

As to joint consultation at the national level, the report informs that in September 2005 the Regulation of the National Tripartite Cooperation Council (NTCC) was amended and that further to such amendments each participating party in the NTCC nominates nine representatives, including *inter alia* a chairman or a chairwoman of each participating party and its substitute in the NTCC. Either chairperson is entitled to initiate the convocation of the NTCC. In 2006, three new sub-councils started work within the NTCC respectively on environmental protection; regional development and transport, communications and information technologies.

In 2007 a new general agreement on social dialogue was signed by the Latvian Free Trade Union Confederation (*Latvijas Brīvo arodbiedrību savienība*, LBAS), the Employers' Confederation of Latvia and the Government with a view to strengthening social dialogue at the national level between employers and employees as well as negotiations with the *Saeima* (Latvian Parliament), the Cabinet of Ministers and municipalities.

As to joint consultation at the sectoral level, the Committee notes the efforts undertaken by the Government to encourage such consultation.

Matters for joint consultation

The Committee understands that joint consultation between employers and employees or the organisations that represent them may take place on all matters of mutual interest, particularly productivity, efficiency, industrial health, safety and welfare, working conditions, etc. It wishes the next report to provide information showing that all these matters are indeed covered by the consultations.

Conclusion

The Committee concludes that the situation in Latvia is in conformity with Article 6 §1 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee takes note of the information contained in the report submitted by Latvia.

Legislative framework

The Committee refers to its previous conclusions (Conclusions XVII-1 and XVIII-1) for a description of the rules governing collective bargaining in the private and in the public sector and recalls that it previously deferred its conclusions pending receipt of information on measures taken by the Government to promote collective negotiations and clarifications on the rules governing collective negotiations in the public service.

Conclusion of collective agreements

The Committee notes from the report that the number of collective agreements decreased during the reference period from 2033 in 2005 to 1921 in 2008.

The Committee recalls that if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place are, collective bargaining should remain free and voluntary (Conclusions I, Statement of Interpretation on Article 6 §2).

The Committee notes that on 4 July 2006 the Cabinet of Ministers of the Republic of Latvia adopted the National Development Plan for 2007-2013, which, *inter alia* acknowledges the fundamental role of social dialogue and encourages social partners to bargain collectively to implement the Plan. The Committee asks the next report to include information on the role effectively played by social partners in the implementation of the Plan. It also requests the Government to indicate what other measures it has taken or plans to take to facilitate and encourage the conclusion of collective agreements.

Meanwhile, it however notes from statistics from the European industrial relations observatory (ERIO) and the European trade union institute (ETUI)² that it is estimated that approximately 20% of the workforce is covered by collective agreements. The Committee considers this coverage to be too weak and thus not in conformity with Article 6 §2 of the Revised Charter.

Public sector

The report informs that on 20 December 2005 the Cabinet of Ministers adopted Regulation No 995 "On the System of Work Remuneration and Qualification Levels of Civil Servants, Employees and Officials of Institutions of Direct Administration and Employees of the Central Electoral Commission

2. Figures available at: http://www.eurofound.europa.eu/eiro/country/latvia_1.htm and <http://www.worker-participation.eu/Systemes-nationaux/Pays/Lettonie>.

and the Central Land Commission, as well as Allowances and Compensation for Civil Servants". According to the report, these regulations state the maximum acceptable amount of allowances and bonuses for civil servants and state officials, whose employment relationship is otherwise regulated through collective agreements.

The report also indicates that on 1 January 2009 the Law "On Remuneration of State and Local Government Institutions' Officials and Employees in 2009" came into force. It applies not only to the state and local government institutions, but also to the state and local government enterprises. The report points out that the purpose of this law is to diminish all expenses concerning remuneration of state and local government institutions' officials and employees in 2009.

According to a source other than the national report³, collective bargaining in the public administration is a formal procedure with no real substance, since all employment conditions are fixed by law.

The Committee asks the Government to comment on the above statement. It reiterates that to be in compliance with Article 6 §2 of the Charter civil servants should be entitled to participate in the processes that result in the determination of the regulations applicable to them (Conclusions III, Germany). It thus also asks the next report to contain examples of collective bargaining in the public sector. Meanwhile, it reserves its position in this regard.

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 6 §2 of the Charter on the ground that coverage of workers by collective agreements is weak.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee notes from the report submitted by Latvia, and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §3 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

3. 2009 ITUC Survey of violations of trade union rights available at: <http://survey09.ituc-psi.org/survey.php?IDContinent=4&IDCountry=LVA&Lang=EN>.

Conclusion

The Committee concludes that the situation in Latvia is in conformity with Article 6 §3 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 4 – Collective action

The Committee takes note of the information contained in the report submitted by Latvia.

Meaning of collective action – Permitted objectives of collective action

The Committee assessed the meaning and the permitted objectives of collective action in its previous conclusion on Article 6 §4 of the Charter (Conclusions XVII-2, pp. 483-487) and found the situation to be in conformity with the requirements of the Charter.

Who is entitled to take collective action?

The Committee previously concluded that the situation in Latvia was not in conformity with Article 6 §4 of the Charter, on the ground that the statutory majority required to call a strike was such that the exercise of the right to strike was excessively limited (three-quarters of the employees/ trade union members required to be present at meeting and three quarters having to vote in favour of a strike).

Amendments to the relevant parts of the Strike Act were adopted by the Parliament on 10 November 2005. The amended provisions now stipulate that decisions regarding the declaration of a strike shall be taken by a simple majority vote at a general meeting in which at least half of the members of the respective trade union or the employees of the respective undertaking participate.

The Committee finds that the situation is now in conformity with the Charter in this respect.

Restrictions on the right to take collective action

The Committee noted (Conclusions XVII-2, XVIII-2) that Section 17 of the Strike Act requires employers and strike committees to guarantee a minimum service when strikes are called in services, undertakings, organisations and institutions necessary to the community, where the interruption of activity could threaten national security or the security, health or life of the entire population, certain groups of inhabitants or particular individuals. The

services considered to be necessary to the community are medical and emergency care, public transport, drinking water supplies, electricity and gas production and supply, air traffic control, safety of transport, refuse and sewage collection and treatment, storage, use and monitoring of radioactive substances and waste and civil defence.

The Committee considered that such restriction is prescribed by law and may serve a legitimate purpose within the meaning of Article 31 of the Charter

It asked the next report to provide further examples of minimum services established during strike action in the aforementioned sectors, if any. The report provides information on minimum services to be guaranteed during a strike in the public transport sector; a network of routes to educational establishments, healthcare establishments, and to state an local government office during opening hours. Employers and strikes committees are required to not later than three days before the beginning of a strike agree the minimum service to be carried out and the employees designated to work.

Procedural requirements pertaining to collective action

The Committee assessed the procedural requirements prior to collective action in its previous conclusions on Article 6 §4 of the Charter (Conclusions XVII-2, pp. 483-487) and found the situation to be in conformity with the requirements of the Charter.

Amendments to the Strike Law were adopted on 10 November 2005 decreasing the notice period for the strike declaration to seven days (Article 28 of the Strike Law).

Conclusion

The Committee concludes that the situation in Latvia is in conformity with Article 6 §4 of the Charter.

**Chapter 10 – Conclusions concerning Articles 2, 4, 5
and 6 of the Charter
in respect of Luxembourg**

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by Luxembourg on 10 October 1991. The time limit for submitting the 13th report on the application of this treaty to the Council of Europe was 31 October 2009. Luxembourg failed to submit it in time, however parts of the report were submitted on 2 September 2010 (Article 2), 26 October 2010 (Article 4 §§1-4), 19 November 2010 (Article 6) and 2 December 2010 (Article 4 §5).

This report should have concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the 1988 Additional Protocol),

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the 1988 Additional Protocol).

Luxembourg has accepted the articles from this group, with the exception of Articles 4 §4, 6 §4 and Articles 2 and 3 of the 1988 Additional Protocol.

The applicable reference period was 1 January 2005 to 31 December 2008.

The Committee considers that Luxembourg failed to respect its obligation, under the Charter, to report on the implementation of this treaty in due time. Under the circumstances the Committee was unable to reach any conclusions and it considers that there is nothing to demonstrate that the situation as regards the provisions concerned is in conformity with the Charter.

The next report by Luxembourg deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

**Chapter 11 – Conclusions concerning Articles 2, 4, 5
and 6 of the Charter in respect of Poland**

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by Poland on 25 June 1997. The time limit for submitting the 9th report on the application of this treaty to the Council of Europe was 31 October 2009 and Poland submitted it on 13 November 2009.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

Poland has accepted all of these articles, with the exception of Articles 2 §2, 4 §1, 6 §4 of the Charter and Article 2 and 3 of the Additional Protocol.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter concerns 12 situations and contains:

- 7 cases of conformity: Articles 2 §3, 2 §4, 2 §5, 4 §3, 6 §1, 6 §2, 6 §3;
- 5 cases of non-conformity: Articles 2 §1, 4 §2, 4 §4, 4 §5, 5.

The next Polish report deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable working time

The Committee takes note of the information contained in the report submitted by Poland.

The report indicates that there have been no changes to the legal framework, which was previously found not to be in conformity with the Charter.

It describes again the exact circumstances under which a working day may be extended to 16 or 24 hours (namely for jobs such as surveillance of machines and guards), as well as the compensatory rest periods for work of this type. The Committee recalls that daily working time should in no circumstances exceed sixteen hours per day, even in the context of the above-mentioned occupations. The Committee therefore reiterates its conclusion of non-conformity.

Moreover, the report mentions that during the reference period there has been a sharp increase in the number of inspections by the Labour Inspec-

torate in respect of working time. In 2007, 547 employers were inspected (covering 86 000 workers), and 389 criminal fines were imposed.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 2 §1 of the Charter on the ground that regulations permit daily working time of more than 16 hours in various occupations.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Poland.

In its previous conclusion (Conclusions XVIII-2), the Committee asked for information on the rules of postponement. Under Article 161 of the Labour Code, leave must be granted to workers during the year in which they gained the leave entitlement. Deferral of leave is granted only in exceptional circumstances, as prescribed by Articles 164 and 165 of the Labour Code, justifying postponement of the deadline for leave. According to Article 168 of the Labour Code, leave not taken in accordance with the leave calendar, or determined in consultation with the employer, must be granted to workers not later than the end of the first quarter of the following calendar year.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 2 §3 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 4 – Reduced working hours or additional holidays in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by Poland.

The Committee refers to the statement of interpretation it made on Article 2 §4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2 §4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protec-

tion measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk. Article 2 §4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter. Under no circumstances, however, can financial compensation be considered appropriate under Article 2 §4 (*Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2 §4).

The Committee refers to its conclusion under Article 3 of the Charter (Conclusions XIX-2) which describes the dangerous occupations performed and the preventing measures taken in this regard.

Under Article 145 §1 of the Labour Code, workers employed under conditions which are significantly harsh or detrimental to their health are entitled to a reduction in working time that may be constituted by additional breaks included in the working time, or by a reduction of working time. Article 145 §2 of the Labour Code provides that the list of activities considered arduous or unhealthy shall be drawn up by the employer after consulting the workers or their representatives and obtaining an opinion from the doctor in charge of workers' preventive medical care. Collective agreements may also prescribe a right to additional leave with pay for persons working under such conditions.

In its previous conclusion (Conclusions XVIII-2), the Committee sought confirmation that workers employed in the ship building industry and the chemical and pharmaceutical industry are entitled to reduced working time or benefit from other measures reducing their exposure to risks. In reply to the Committee's question, the report confirms that workers employed in these sectors receive a reduction in working time having regard to the specific working conditions that obtain in each of the enterprises concerned.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 2 §4 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by Poland.

The report provides information on the measures taken by the Labour Inspectorate to ensure compliance with the legislation as well as information on the number of violations detected and the trends in violations.

The Committee asks that the next report provides a full and up-to-date description of the situation in law and practice in respect of Article 2 §5.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 2 §5 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by Poland.

The report indicates that there have been no changes to the legal framework, which was previously found not to be in conformity with the Charter.

The report states once again that an amendment to the Labour Code is under consideration with a view to compensating overtime in the proportion of 50% extra time off for employees that request this type of compensation. Likewise, an amendment to the Law on Public Service is also underway, which foresees time off increased by 25% to compensate overtime work of civil servants.

The Committee finds that these draft amendments would bring the situation into conformity with the Charter. However, until they are adopted and enter into force it reiterates its conclusion of non-conformity.

Finally, it asks the next report to provide information on the activities of the Labour Inspection in respect of any breaches related to the failure to pay overtime wages.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 4 §2 of the Charter on the ground that time off granted to compensate overtime is not sufficiently long.

Article 4 – Right to a fair remuneration

Paragraph 3 – Non-discrimination between and women men with respect to remuneration

The Committee takes note of the information contained in the report submitted by Poland.

Legal basis

Under Article 112 of the Labour Code, all employees must have equal rights and equal obligations, and this relates in particular to equality between women and men. The principle of non-discrimination on grounds of sex is crucial and this must be taken into account in all other labour legislation and its interpretation.

According to the report a bill designed to transpose the relevant European Union directives on equal treatment into Polish law was adopted by the Cabinet Committee on 29 June 2009 and referred to the Cabinet. The Committee asks to be kept informed of future developments in relation to the adoption of this bill, particularly as regards its content and the effects of its adoption at national level.

In reply to the Committee's question on how wages are fixed, the report states that employers are required to apply Article 183C of the Labour Code, which guarantees employees the right to equal pay for equal work or work of equal value. Furthermore, under Articles 771 and 773, arrangements for pay and the award of other work-related benefits must be established by employers through collective agreements within their company or between several companies or, in the case of employees of public sector employers, through regulations of the Minister of Labour adopted at the request of the relevant Minister. In companies employing at least 20 people, arrangements for pay are set out in pay regulations. If the company is not covered by a collective agreement or has no pay regulations, these arrangements are set out directly in the individual employment contract. The Committee wishes to know what methods are used to fix wages and if provision is made for penalties in case the principle of equal pay is breached, particularly where individual employment contracts are concerned.

Disputes over equal pay

Although there is not very much case-law on equal pay for women and men, the report outlines the main lines of the Supreme Court's reasoning in cases relating to breaches of the general principle of equal pay. For instance, in judgment II PK 154/05 of 15 March 2006, the Supreme Court ruled in relation to professional duties performed on a post that was unique to the employer's organisational set-up, that there was no real means of assessing and comparing the wages for similar types of job (alleged infringement of Article 183C of the Labour Code). In a second judgment of 22 February 2007 (I PK 242/06), the Supreme Court ruled that, where different wages were paid to employees doing the same job (Article 183C, paragraph 1 of the Labour Code), employers were required to prove that the difference was based on objective criteria (the end of paragraph 1 of Article 183B of the Labour Code). Employers who use professional qualifications and length of service as criteria must prove that these criteria are essential for the employees concerned to carry out their tasks. Where the principle of non-discrimination in the workplace has been breached, Article 183D provides that employers must pay compensation, which must be no lower than a minimum amount fixed in accordance with other provisions of the law. There is no upper limit on the amount that the court may order them to pay. To ensure that compensation provides sufficient reparation for employees and acts as a sufficient deterrent for employers, the Committee asks for specific examples of compensation awarded for breaches to the principle of equal pay. The Committee also asks whether domestic law provides for the burden of proof to be shifted away from the employee in cases of alleged sexual discrimination.

Other measures taken to ensure equal pay treatment

Numerous factors account for the fact that there is still a wage gap between women and men. Among the main ones are objective differences linked to individuals (age, training, experience), jobs (profession, contract type or working methods) or companies (sphere of activity or company size). The Committee takes note of the two projects set up by the Ministry of Labour and Social Policy which are to touch, among other things, the problem of the wage gap, namely a project for the social and economic activation of women at local and regional level, running from December 2008 to April 2011, and another on reconciling women's and men's work and family roles, from January 2009 to April 2011. These projects get the social partners, the public employment services, employer organisations and trade unions more directly involved in action to combat sex discrimination in employment, including wage discrimination.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 4 §3 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 4 – Reasonable notice of termination of employment

The Committee takes note of the information in the Polish report.

The situation was found not to be in conformity with Article 4 §4 in its previous conclusion (Conclusions XVIII-2) because the Labour Code made a distinction with regard to notice of termination of employment between employees on fixed-term and permanent contracts. For employees on fixed-term contracts the notice period was two weeks for those with over six months' service whereas, for employees on permanent contracts, the notice period was two weeks for those with fewer than six months' service, one month for those with six months' to three years' service and three months for those with over three years' service. However, fixed-term contracts could only be terminated if they were negotiated for a period of over six months and if the contracting parties had added a special termination clause.

The Committee notes from the report that that no changes have been made to increase the notice periods granted to employees on fixed-term contracts.

According to the report, the justification for this differentiation lies in Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which, it claims, allows the working conditions of employees on permanent contracts and those on fixed-term contracts to differ in some respects provided that the latter are covered by measures protecting them from abuses by their employers.

The Committee reiterates that the fact that a domestic regulation reproduces or is inspired on a European Union Directive can not prejudice its conformity with the Charter. Therefore, irrespective of whether Polish legislation is in conformity or contravenes Directive 1999/70/EC, a separate assessment on compliance with Article 4 §4 is carried out by the Committee.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 4 §4 of the Charter on the ground that a two-week notice period

granted to workers whose working relationships are terminated before the end of the fixed-term contracts is not long enough.

Article 4 – Right to a fair remuneration

Paragraph 5 – Limits to deduction from wages

The Committee takes note of the information in the Polish report.

The Committee notes from the report that there has been no change in the situation as regards limitations on deductions from wages, which it previously found not to be in conformity with Article 4 §5 of the Charter. The Committee notes that after deductions employees must always earn at least 80% of the minimum national wage (report of Governmental Committee on Conclusions XVIII-2). Nevertheless, it considers that after these deductions, the incomes of employees with the lowest wages do not enable them to provide properly for themselves or their dependants. The same applies to the rule that the total amount of deductions may not exceed half the employee's wages or three-fifths in the case of the recovery of maintenance payments.

The report states that under the Labour Code, the financial penalties imposed on employees for disciplinary offences or unjustified absences are relatively low. Deductions from wages for such purposes may not exceed one day's wages and, in total, financial penalties may not exceed one-tenth of the employee's wage after the deductions referred to in Article 87, paragraph 1, points 1 to 3 of the Labour Code.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 4 §5 of the Charter on the ground that the wages of workers with the lowest wages, after deductions, do not ensure means of subsistence for themselves and their dependants.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by Poland.

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion.

Personal scope

The Committee previously ruled that Section 69 §4 of the 1998 Civil Service Act, which prevents public officials from performing trade union functions, impairs their right to organise. The report indicates that a new Act on civil service was enacted in 2008 in replacement of the 1998 Act. According to Section 67 §6 of the 2008 Act public officials are now able to undertake trade unions functions. The only exception concerns senior civil servants exercising public powers. Section 52 lists these civil servants. The Committee notes that the ILO Committee of Experts for the Application of Conventions and Recommendations had asked at the drafting stage of this Act that deputies to the voivodship veterinary offices, to the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, and the Office for Forest Seed Production be removed from the draft list of civil servants deprived of the right to exercise trade union functions.² However, the Committee notes that the text enacted does include these civil servants in above-mentioned Section 52 of the 2008 Act. The Committee considers that depriving such categories of civil servants cannot be considered as justifiable, and therefore finds that the situation is not in conformity with Article 5.

The Committee notes that the Internal Security Agency (ISA) is composed on the one hand of staff who whilst not members of the armed forces are assimilated to them and on the other of civilian staff. The former, in the same way as members of the armed forces, do not enjoy the right to organise, whilst the latter do. It examined in its last conclusion (Conclusions XVIII-1) the functions of the ISA and found that it was indirectly involved in national defence. It considered this restriction in the light of Article 31 of the Charter, which permits restrictions on the right to organise if they are prescribed by law, have a legitimate aim and are necessary in a democratic society. It noted that the restriction is prescribed by law and pursued the legitimate of national security. However, it considered that simply removing ISA personnel's right to organise cannot be deemed proportionate to the legitimate aim pursued and therefore cannot be considered necessary in a democratic society. It found that the situation is not in compliance with Article 5 of the Charter. The Committee asks whether ISA staff who cannot form or join trade unions are entitled to form or join associations with a view to defending their social and economic interests. However, in the meantime and since the report indicates

2. ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR): Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (document No. 062009POL087, published in 2009).

that there has been no change in the situation, the Committee reiterates that the situation is not in conformity with the Charter on this point.

As regards home workers, unemployed workers, and retired workers, the report indicates that no changes have taken place and these categories do not enjoy the right to form trade unions but can form associations (see Conclusions XVIII-1):

- First, the Committee considers that there can be no satisfactory justification to deprive altogether home workers of the right to form trade unions and thus finds the situation in breach of Article 5.
- Secondly, insofar as unemployed and retired workers are concerned, the Committee notes that in Poland they can participate in existing trade unions or form associations to further their specific interests. The Committee considers that organisations of retired and unemployed workers, irrespective of their status, should have access to consultation procedures open to trade unions in which they are formally consulted on public policies or legislative developments that may affect retired or unemployed workers. The Committee therefore asks the next report to indicate whether the associations of unemployed and retired workers which exist in Poland are entitled to participate in consultation procedures which are concerned with public policies of legislative developments which can affect their situation.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 5 of the Charter on the grounds that:

- some categories of civil servants (deputies to the voivodship veterinary offices, to the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, and the Office for Forest Seed Production) cannot perform trade union functions;
- part of the staff of the Internal Security Agency do not enjoy the right to organise;
- home workers do not enjoy the right to form trade unions.

Article 6 – Right to bargain collectively

Paragraph 1 – Joint consultation

The Committee takes note of the information contained in the report submitted by Poland.

It recalls that in its previous conclusions (Conclusions XV-1, XVI-I, XVII-1 and XVIII-1), it held the mechanisms for joint consultation in Poland to be in conformity with Article 6 §1 of the Charter. In its last conclusion, it asked for further information on:

- the introduction of legislation which was under discussion to implement the Directive of the European Parliament and of the Council 2002/14/EC establishing a general framework for informing and consulting employees;
- joint consultation at the enterprise level outside the scope of the negotiation of collective agreements and in enterprises with no trade union representation takes place.

In reply, the report indicates that legislation on information and consultation of workers was indeed enacted on 7 April 2006 to implement the above mentioned Directive. The report also points out that the establishment of work councils and their functioning gave rise to several complaints and inspection which increased during the reference period (15 employers were controlled in 2006 and 86 in 2008; a violation was found in 5 cases in 2006 and 24 in 2008).

The report also highlights that on 1 July 2008, the Constitutional Tribunal (*Trybunał Konstytucyjny*) held that Article 4, paragraphs 1, 3 and 5 of the Law of 7 April 2006 on information and consultation of workers was in contrast with the Constitution. Consequently, on 22 May 2009 amending legislation was adopted (outside the reference period). The Committee asks that the next report to describe the amendments introduced and provide details on the implementation of the law as amended.

Meanwhile, the Committee also notes from a source other than the national report that employers often ignore the law that obliges them to consult trade unions prior to taking decisions that affect workers. According to the same source, the works council at the Factory of Motor Cars (*Fabryka Samochodów Osobowych*) in Warsaw had its right to be informed and consulted enforced via a court ruling. This set a precedent, and some 20 similar petitions were brought before courts. The Committee asks the next report to comment on the above statement and to up-date the Committee on the situation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 6 §1 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee takes note of the information contained in the report submitted by Poland.

Legislative framework

The Committee refers to its previous conclusions (Conclusions XVII-1 and XVIII-1) for a description of the rules governing collective bargaining in the private and in the public sector and recalls that it held this framework to be in conformity with Article 6 §2 of the Charter (Conclusions XVIII-1). It however had asked for clarifications concerning the applicable provisions in between collective agreements and applicable rules in specific cases in the public sector (for the latter see below).

The Committee takes note that during the period between termination of a collective agreement and conclusion of a subsequent one, Article 77 of the Labour Code applies. According to this provision, employers employing at least 20 employees have to set out the modalities concerning remuneration in their rules. Such rules have to be discussed with the work councils.

The Committee asks whether in practice this is the case and if not how employees may seek to have their rights guaranteed.

Conclusion of collective agreements

The Committee notes from the figures provided in the report that during the reference period the number of collective agreements remained overall stable.

It however also notes from other sources that it is estimated that about 30% of the workforce is covered by collective agreements³ and that where there are no unions to take up the issue, pay and conditions are set unilaterally by employers – subject to the national minimum wage.⁴

Furthermore, the Committee notes from ILO⁵ that a number of complaints concerning employers' refusal to negotiate in 2006 and 2007 were made.

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3. See the country profile on Poland on the European industrial relations observatory online (eironline) website: http://www.eurofound.europa.eu/eiro/country/poland_1.htm.
 4. See the country profile on Poland by the European trade union institute available at: <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Poland/Collective-Bargaining>.
 5. CEACR: Individual Observation published in 2009 on Poland and ILO Convention No. 98 on the Right to Organise and Collective Bargaining.

From information in the report it appears that most of these complaints were solved due to interventions of the labour inspectors. The Committee requests that the next report indicate the measures taken or contemplated to resolve the remaining cases of refusal to bargain so as to promote collective bargaining.

The Committee recalls that according to Article 6 §2, if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place are, collective bargaining should remain free and voluntary (Conclusions I, Statement of Interpretation on Article 6 §2). The Committee has noted from the report that in 2008 measures were taken to encourage social partners to participate further in social dialogue. However, since the report does not indicate any concrete detail and in the light of the above, it requests the Government to indicate precisely what measures it has taken or plans to take to facilitate and encourage the conclusion of collective agreements.

Public sector

In its previous conclusion (Conclusions VIII-1), the Committee asked whether collective bargaining rights of employees in the nationalized sector enjoy the same collective bargaining rights as in the private sector. The report confirms that the rights of the former resemble those of the latter. However, in accordance with paragraphs 4 and 5 of Article 240 of the Labour Code, negotiations concerning remuneration of employees in the nationalized sector have to respect budgetary thresholds set by law. The content of collective agreements negotiated is thus subject to preliminary verification by the public authority and the agreements may be registered only if it has been found that the budgetary thresholds are respected.

In the light of the above, the Committee observes that Polish legislation admits, under certain conditions, that collective negotiations take place in the public sector even on wages. The situation is therefore in conformity with the requirements of Article 6 §2 of the Charter in this regard.

In its previous conclusion (Conclusions VIII-1), the Committee asked the next report to show that effective consultation of the different categories of civil servants occurs. The report indicates in this regard the role of the Committee for Dialogue established in 2004 to offer a framework to social partners to discuss questions relating to the public administration. The report however also highlights that this Committee has ceased to exercise its functions in 2006. The Committee therefore asks the next report to indicate what alterna-

tive mechanisms are foreseen to ensure that effective consultation of employees in the public sector takes place to allow them to participate in the determination of their working conditions.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 6 §2 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee notes from the information provided in the Polish report that and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §3 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 6 §3 of the Charter.

**Chapter 12 – Conclusions concerning Articles 2, 4, 5
and 6 of the Charter and Articles 2 and 3
of the Additional Protocol
in respect of the Slovak Republic**

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter and the 1988 Additional Protocol were ratified by the Slovak Republic on 22 June 1998 and the Revised European Social Charter on 23 April 2009. The time limit for submitting the 7th report (6th report on the Additional Protocol) on the application of the European Social Charter to the Council of Europe was 31 October 2009 and the Slovak Republic submitted it on 30 October 2009.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The Slovak Republic has accepted all of these articles.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter concerns 16 situations and contains:

- 4 cases of conformity: Articles 2 §4, 2 §5, 6 §1 and 2 of the Additional Protocol.
- 8 cases of non-conformity: Articles 2 §1, 2 §2, 4 §1, 4 §2, 4 §4, 4 §5, 6 §2 and 6 §4.

In respect of the other 4 situations concerning Articles 2 §3, 5, 6 §3 of the Charter and 3 of the Additional Protocol, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Slovak report will be the 1st report on the application of the Revised European Social Charter and will deal with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable working time

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

It recalls that pursuant to the Labour Code daily working hours are limited to 9 hours or to a maximum of 12 hours in flexible working time arrangements. The maximum weekly hours are 40, whereas average weekly working time, including overtime, cannot exceed 48 hours (over a four-month period). The Committee considers that these limits are in conformity with the Charter.

However, in its previous conclusion the Committee found that the situation was not in conformity with the Charter because the law permitted daily working time of up to 16 hours (Conclusions 2007). It observes in this regard that the situation has not changed, given that under Section 92.2 of the Labour Code the possibility still exists to reduce the daily rest period to 8 hours in continuous operations and batch work as well as in exceptional circumstances. When the rest period is shortened in this manner, the employer is obliged to provide the employee with continuous equivalent rest as compensation within 30 days.

The Committee nevertheless recalls that daily working time should in no circumstances go up to sixteen hours per day. This is a limit which cannot be exceeded even in the context of the above-mentioned types of work. The Committee therefore reiterates its conclusion of non-conformity on the ground that the Labour Code permits daily working time of up to 16 hours in certain types of work.

The report underlines that the current version of the Labour Code (Section 85) considers the inactive part of on-call time as working time, which is in conformity with the Charter.

The Committee notes from another source² that actual weekly working hours increased in the period 2004-07. According to second quarter labour force survey data from the Statistical Office, the actual average weekly working hours for full-time occupations was 40.6 hours in 2004 and 41.6 hours in 2007.

Finally, it asks the next report to provide information on the supervision of working time regulations by the Labour Inspection, including the number of breaches identified and penalties imposed in this area.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 2 §1 of the Charter on the ground that the Labour Code permits daily working time of up to 16 hours in certain types of work.

2. Eironline, Slovakia, Industrial relations profile, at <http://www.eurofound.europa.eu/eiro/country/Slovakia>.

Article 2 – Right to just conditions of work

Paragraph 2 – Public holidays with pay

The Committee takes note of the information contained in the report submitted by Slovak Republic.

Under Article 122 of the Labour Code as well as under Section 34 of Act No. 313/2001 on the public service the employer and the worker have the opportunity to agree on time off in lieu for work performed on a public holiday. An agreement has preference over financial bonus. In case of an agreement time off is granted on a one-on-one basis in relation to the hours worked on the public holiday. In case the employer fails to grant time off as agreed over a period of three months, the worker is entitled to a wage bonus of at least 50% of his/her normal wage in addition to the normal wage for the day worked. However, section 18 of Act No. 553/2003 provides that if an employee works on a public holiday he/she shall be entitled to a bonus of at least 100% of his/her normal wage.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. Given that this is not the case for the compensatory time-off, the Committee considers that the situation is not in conformity with Article 2 §2.

Conclusion

The Committee concludes that the situation in Slovak Republic is not in conformity with Article 2 §2 of the Revised Charter on the ground that work performed on a public holiday is not compensated at a sufficiently high level.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Slovak Republic.

In its previous conclusion (Conclusions XVIII-2), the Committee asked for information on the rules of postponement. The report does not provide the information requested. Therefore, the Committee repeats its question.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 2 – Right to just conditions of work

Paragraph 4 – Reduced working hours or additional holidays in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by Slovak Republic.

The Committee refers to the statement of interpretation it made on Article 2 §4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2 §4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protection measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk. Article 2 §4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter. Under no circumstances, however, can financial compensation be considered appropriate under Article 2 §4 (*Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2 §4).

The Committee refers to its conclusion under Article 3 of the Charter (Conclusions XIX-2) which describes the dangerous occupations performed and the preventing measures taken in this regard.

The Committee refers to its conclusion XVI-2 related to the Slovak Republic for a description of activities considered to be dangerous or unhealthy. According to Section 85 of the Labour Code, the maximum working time of an employee working with chemical carcinogens in processes involving risk of chemical carcinogenicity, or with ionising radiation, is 33.5 hours per week. Under Article 106 of the Labour Code, persons employed in dangerous or unhealthy occupations are entitled to additional paid leave.

Conclusion

The Committee concludes that the situation in the Slovak Republic is in conformity with Article 2 §4 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by Slovak Republic.

It notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter. The Committee asks that the next report provides a full and up-to-date description of the situation in law and practice in respect of Article 2 §5.

Conclusion

The Committee concludes that the situation in the Slovak Republic is in conformity with Article 2 §5 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 1 – Decent remuneration

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

The Committee recalls that in its previous conclusion it held that the situation in the Slovak republic was not in conformity with Article 4 §1 of the Charter as the minimum wage was manifestly inadequate.

The Committee now notes that Act No 663.2007 Coll. on the minimum wage which entered into force on 1 February 2008 defines the legal framework for negotiations between social partners on the amount of the minimum wage. According to the report, the net minimum wage in 2008 was set at €232.82 whereas the net average wage amounted to €558.89. The Committee thus notes that the minimum wage makes 41% of the average wage.

The Committee observes that the minimum wage continues to be very low and the situation which it previously held not to be in conformity has not changed.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4 §1 of the Charter on the ground that the minimum wage is manifestly unfair.

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

According to Section 121 of the Labour Code, overtime work is remunerated at an increased rate of 25% of the normal hourly rate. An employee may also replace overtime pay with time off, in which case the entitlement will be one hour of time off per each hour of overtime work.

The Committee finds that the enhanced pay rate is in compliance with the Revised Charter. However, it recalls that pursuant to Article 4 §2 where remuneration for overtime is entirely given in the form of time off, such time must be longer than the additional hours worked (Conclusions XIV-2, Belgium). It therefore reiterates its conclusion of non-conformity on the ground that employees taking time off in lieu for overtime are not granted a longer rest period in compensation for overtime work.

In its previous conclusion (Conclusions 2007) the Committee found a second ground of non-conformity because legal guarantees as regards overtime for workers whose salary was fixed by an individual contract were not sufficient. According to information from the authorities, an amendment to Section 121 of the Labour Code came into effect on 1 September 2007. Under the amended provision, a collective agreement can determine the employees whose wages shall take into account potential overtime that they could be required to perform (up to a maximum of 150 hours per year). If this matter is not dealt with in a collective agreement, the employer can agree this in writing with senior employees or managers.

The Committee asks whether the collective agreements referred to in Section 121 of the Labour Code contain guarantees in respect of increased remuneration for overtime. While reserving its position on this last point, the Committee finds acceptable a situation where senior officials or managers do not benefit from additional remuneration for overtime that they could be required to perform.

Finally, it asks the next report to provide information on the activities of the Labour Inspection in respect of any breaches related to the failure to pay overtime wages.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4 §2 of the Revised Charter on the ground that time off to compensate overtime work is not sufficiently long.

Article 4 – Right to a fair remuneration

Paragraph 3 – Non-discrimination between and women men with respect to remuneration

In the General Introduction to Conclusions 2002 on the Charter, the Committee indicated that national situations in respect of Article 4 §3 (right to equal pay) would be examined under Article 1 of the Additional Protocol of 1988. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4 §3.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4 §3 and Article 1 of the Additional Protocol of 1988, thus every two years (under the thematic group 1 “Employment, training and equal opportunities”, as well as thematic group 3 “Labour rights”). Henceforth, the Committee invites the Slovak Republic to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

Article 4 – Right to a fair remuneration

Paragraph 4 – Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

In its previous conclusion it found the situation not to be in conformity because the Labour Code made a distinction based on weekly hours worked rather than length of service. For instance, an employee who worked fewer

than twenty hours a week was given only fifteen days' notice. According to the report, Act No. 348/2007 (in force since 1 September 2007) introduced amendments to Article 49, paragraph 6 of the Labour Code on part-time employment relationships, as a result of which employees who work fewer than fifteen hours a week are now entitled to 30 days' notice. The Committee assumes from this that notice periods still take no account of length of service.

Conclusion

Consequently, the Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4 §4 on the ground that the length of service of employees who work fewer than fifteen hours a week is not taken into account when calculating notice periods.

Article 4 – Right to a fair remuneration

Paragraph 5 – Limits to deduction from wages

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

In the previous supervision cycle (Conclusions XVIII-2), it found the situation not to be in conformity with Article 4 §5 because workers could waive their right to limitations on deductions from wages and because deductions from wages could deprive workers of the minimum level of income they required to provide for themselves and their families. The Committee notes from the information in the report that Act No. 460/2008 amending the regulations adopted by the Ministry of Labour, Social Affairs and the Family has extended the limitation on deductions from wages to a level prescribed by a special regulation. Accordingly, it is for employees to decide what deductions other than those prescribed by law may be made from their wages. Examples of this are the contributions paid by employers to insurance funds and tax prepayments. Employers and employees may only agree to such deductions on the basis of a written agreement. The Committee notes that the report indicates no limit below which it is impossible to make any deductions including on the basis of a written agreement. It asks the next report to give information if there is such a limit as well as to include a full list of the deductions which may be made on the basis of a written agreement between the contracting parties.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4 §5 of the Revised Charter on the ground that deductions from wages may deprive workers of the means of subsistence required to provide for themselves and their families.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion, especially on questions asked in previous conclusions.

Forming trade unions and employer associations

In a previous conclusion (Conclusions XVI-2) the Committee noted that the activities and formation of trade unions could be restricted by law where this entailed a measure which was necessary in a democratic society to protect national security, public interest or the freedom and the rights of others. It asked what action might be taken against the formation and activities of a trade union, on what grounds, by what authorities and following what procedure. The report failing to answer this query, the Committee reiterates it.

Representativeness

The Committee previously noted (Addendum to Conclusions XV-2) that a concept of representativeness played a role for the purpose of Act No. 106/1999 on economic and social partnership (Tripartite Act) which provided for negotiations between the state, employers' and workers' representatives on essential issues of economic and social development with the objective of reaching agreement at national level. In its last conclusion (Conclusion XVIII-1) the Committee noted that the aforementioned Act which defined representativeness criteria had been repealed and asked what the new legal basis for determining trade unions' representativeness now was. In view of the lack of information in the report, the Committee reiterates its question. Should the next report not provide the relevant information, there will be nothing to establish that the situation is in conformity with Article 5 in that respect.

Personal scope

The Committee considers that organisations of retired and unemployed workers, irrespective of their status, should have access to consultation procedures open to trade unions in which they are formally consulted on public policies or legislative developments that may affect retired or unemployed workers. Given the lack of information in the report, the Committee asks again whether this is the case. Should the next report not provide the relevant information, there will be nothing to establish that the situation is in conformity with Article 5 in that respect.

In reply to the request for information on the opportunities for nationals of contracting parties legally residing in the Slovak Republic to perform official duties in trade unions and hold elected office, the report indicates that this matter is not covered by law and is left to the exclusive competence of trade unions.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 6 – Right to bargain collectively**Paragraph 1 – Joint consultation**

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

Levels of joint consultation

The Committee examined the mechanisms for joint consultation at the national and sectoral level in the private and the public sector in its previous conclusions on Article 6 §1 of the Charter and found the situation to be in conformity with the requirements of this provision (Conclusions XVIII-1).

In its previous conclusion the Committee however asked more detailed information on the activities of the standing advisory body to the Government, the Council of Economic and Social Partnership of Slovakia (CESP), which took up its functions in 2005.

In particular, the Committee asked for detailed information on the activities of the CESP showing that its operation and the matters covered by the consultations are in compliance with the requirements of Article 6 §1, i.e. joint consultation between employers and employees or the organisations that represent them occurs on all matters of mutual interest, particularly produc-

tivity, efficiency, industrial health, safety and welfare, working conditions, vocational training, etc. Since the report fails to provide the requested information, the Committee reiterates its question. It notes that should such information not be provided in the next report, the situation will be deemed not to be in conformity with the Article 6 §1 of the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 6 §1 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

The Committee refers to its assessment under Article 5 as concerns questions on representativeness of trade unions entitled to bargain collectively.

Legislative framework

The Committee refers to its description of collective bargaining procedures in its Conclusions XV-2, XVI-2 and XVIII-1 and recalls that it asked for several clarifications in order to assess the conformity of the situation in the Slovak Republic with the requirements of Article 6 §2.

In particular, in relation to Act No. 83/1990 Coll. which provides that a failure on the part of the employer to negotiate with the competent trade union body is deemed a labour law violation which is subject to the imposition of a fine, the Committee has repeatedly asked for an indication of the scale and frequency of fines imposed for violations of the statutory obligation. The Committee notes that once again the report fails to provide the requested information.

Moreover, as to the Committee's request for comments on the assertion that many employers' associations have been transformed into new legal entities not falling within the scope of Act No. 83/1990 Coll. to avoid their duty to bargain collectively under the said provisions, the report remains silent.

The Committee recalls that according to Article 6 §2, if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place are, collective bargaining

should remain free and voluntary (Conclusions I, Statement of Interpretation on Article 6 §2).

In the light of the foregoing and given the incomplete information on the conclusion of collective agreements (see below), it cannot be established whether the development of collective bargaining is encouraged.

Conclusion of collective agreements

The report informs that during the reference period the social partners concluded in both the private and the public sector:

- 21 higher-level collective agreements (HLCA) and 21 addenda to them in 2005;
- 22 HLCA and 34 addenda to them in 2006;
- 10 HLCA and 27 addenda to them in 2007;
- 20 HLCA and 17 addenda to them in 2008.

The Committee reiterates that it needs information on the number of employers and employees covered by these agreements. It thus asks the next report to contain updated information on collective agreements concluded in the private and public sector at enterprise, sectoral and national level and on the number of employers and employees covered by these agreements.

As to the possible extension of collective agreements, in its previous conclusion (Conclusions XVIII-1), the Committee asked for clarification:

- on the procedures governing such extension. In the absence of any additional information in this regard, the Committee reiterates its questions and refers in this regard to its statement of interpretation and general question under Article 6 §2 in the General Introduction to these Conclusions.
- On the new condition according to which higher level collective agreements (covering a whole industry, sector or region) only applied to those employers who specifically agreed to them in writing. In this respect, the Committee notes from ILO³ that section 7 of Act No. 2/1991 was amended so that employer consent is no longer required in order to be bound by the extension of a higher level collective agreement.

3. CEACR: Individual Observation concerning Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Slovakia (ratification: 1993) Published: 2009.

Public sector

The Committee reiterates that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them (Conclusions III, Germany).

It recalls that it previously asked what regulations apply to police officers' participation in the determination of their working conditions following the amendment of the Collective Bargaining Act by Act No. 551/2003 on the Civil Service. Since the report fails to provide the requested information, it cannot be established whether the situation in Slovakia is in conformity with Article 6 §2 on this point.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 6 §2 of the Charter on the grounds that:

- it has not been established whether the development of collective bargaining is encouraged;
- it has not been established that police officers are entitled to participate in the processes that result in the determination of the regulations applicable to them.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

Conciliation mediation and arbitration in the private sector

The Committee has previously examined the procedures for conciliation and arbitration in the private sector and found the rules to be in conformity with the Charter. The Committee notes from the information provided in the report that there has been no change to this situation.

Conciliation mediation and arbitration in the public sector

The Committee previously sought confirmation that following amendments to the Collective Bargaining Act introduced by Act No551/2003 on the Civil Service, the Collective Bargaining Act also applies to the public sector. It also wishes to receive information on how collective conflicts were resolved between police trade unions and the Ministry of Interior Affairs as the Collective Bargaining Act does not apply in these circumstances. The report fails to

provide any information on these issues. The Committee repeats its request for this information, and points out that if this information is not provided in the next report there will be no evidence to show that adequate conciliation and mediation procedures have been established in the public sector.

Conclusion

Pending receipt of the information requested the Committee defers its conclusion.

Article 6 – Right to bargain collectively

Paragraph 4 – Collective action

The Committee takes note of the information contained in the report submitted by the Slovak Republic, as well as the information provided to the Governmental Committee by the representative of the Slovak Republic.

Meaning of collective action-Permitted objectives of collective action

The Committee noted previously that the Supreme Court does in principle recognise the right to strike outside the context of collective bargaining. However, the Committee also noted the comments by the Confederation of Trade Unions of Slovakia (KOZ) stating that since there is no law regulating the right to strike outside collective bargaining, strikes outside the collective bargaining context are in practice held unlawful by courts in Slovakia. The Committee wished to receive the Government's comments on this information in the next report. The report provides no information on this point. The Committee asks the next report to provide information on any cases where strikes were held by the courts to be unlawful.

Who is entitled to take collective action?

The Committee recalls that this provision of the Charter does not require states to grant any group of workers authority to call a strike but leaves them the option of deciding which groups shall have this right and thus of restricting the right to call strikes to trade unions. However such restrictions are only compatible with Article 6 §4 of the Charter if there is complete freedom to form trade unions and the process is not subject to excessive formalities that would impede the rapid decisions that strike action sometimes requires. The Committee notes from information provided previously under Article 5 that the formation of trade unions is not particularly difficult (3 persons, a set of by laws and legal personality acquired immediately upon submission of registration documents).

Restrictions on the right to take collective action

The Collective Bargaining Act provides for restrictions to the right to strike as described in the Committee's previous conclusions (Addendum to Conclusions XV-2, pp. 165-170 and Conclusions XVI-2, pp. 739-742). Restrictions particularly concern civil servants such as judges, prosecutors, members of the armed forces, fire-fighters and air traffic controllers but also workers employed in the social, health, telecommunication and nuclear sectors, where a strike could endanger people's life or health.

Given that any restriction to the right to strike may only be imposed under the conditions set in Article 31 of the Charter, the Committee has on two consecutive occasions asked whether and how the limitations provided in Slovak law have been interpreted and applied in practice in the light of this provision. Furthermore, the Committee asked how minimum services during strike action were organised in practice. The previous report did not provide the requested information, and the Committee considered that there was no evidence that the restrictions to the right to strike applying to the above mentioned categories of employees fell within the limits of Article 31 of the Charter and that the situation was not in conformity with Article 6 §4 of the Charter

The Committee has received confirmation that judges, prosecutors, members of the armed forces, employees in charge of air traffic control, employees operating equipment of nuclear power stations are prohibited from striking. The Committee recalls that the right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article 31 of the Charter. Public officials such as judges, prosecutors, and members of the armed forces may be prohibited from striking given the nature of their duties. Further restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes in these sectors is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6 §4. As no provision is made for the introduction of a minimum service and strikes are simply prohibited for employees in charge of air traffic control and employees operating nuclear power stations the Committee finds that the situation is not in conformity with the Charter.

Where strike involving the employees of healthcare facilities or social care institutions, fire rescue services and telecommunications endangers people's life or health the Government may terminate the strike. The Committee

again asks for more information on how the Government may do this. The Committee notes from the report that the right to strike is rarely resorted to in the Slovak Republic and that during the reference period there were no government interventions terminating a strike.

Procedural requirements

The Committee has on two consecutive occasions asked who are the workers entitled to participate in the vote necessary for the trade union to call a strike and in particular whether the vote is open to all concerned workers or only to trade union members. It appeared from the relevant provisions of the Collective Bargaining Act and the comments submitted by the KOZ in this respect that all employees and not only trade union members may participate in the ballot. The current report confirms this.

Consequences of collective action

Part missing

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 6 §4 of the Charter on the ground that restrictions on the right to strike for persons working in nuclear power stations or those employed in air traffic control go beyond those permitted by Article 31 of the Charter.

Article 2 of the Additional Protocol – Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

Legal framework

The right to information is provided in Article 238 as well as in other provisions such as Articles 29 §1, 47 §4 and 98 §7 of the Labour Code.

Scope

Article 2 of the Additional Protocol of the Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests,

particularly ones that might have a significant impact on the employment situation in their undertaking.

As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 2 of the Additional Protocol of the Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 2 of the Additional Protocol of the Charter, the Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (Judgment of the European Court of Justice of 18 January 2007 (*Confédération générale du travail (CGT) and Others*, Case C-385/05).

Consequently, the Committee asks whether this is the scope of the Slovak Republic's legislation, particularly as regards the calculation of these minimum thresholds.

Personal scope

The report states that the measures prescribed by the legal framework are adopted particularly at the level of employers and employees' representatives in particular undertakings. The right to information and consultation is applied in both the private and the public sector and is not restricted by regulations, collective agreement or other measures.

Material scope

The consultation process is the exchange of views and a dialogue between the employees' representatives and the employer. The employer consults the employees' representatives beforehand concerning in particular,

- the situation, the structure and the anticipated development in employment and the planned measures, particularly where employment is endangered,
- the essential issues of the corporate social policy, the measures to improve work hygiene and the working environment,
- the decisions that may lead to essential changes to the work organisation or to contractual conditions,

- the organisational changes that are deemed to include the reduction or suspension of the activity of the employer or a part thereof, merge, amalgamation, division, change to the legal form of the employer,
- the measures to prevent employment accidents at work and occupational diseases and to protect the employees' health.

The consultation is held in a comprehensible way, and at the appropriate time, with the adequate content, with a view to reaching agreement. For this purpose the employer provides the employees' representatives with the necessary information, consultations and documents, and, within the possibilities of the undertaking, has regard to their standpoints.

Consultation is applied, for example, in the provisions of the Labour Code governing the transfer of the rights and obligations from the employment relations, collective dismissals, the termination of employment on the part of the employer by notice or summary termination of employment, ordering of work for days of rest, employees' training.

The employees or employees' representatives have the right to be informed about the economic and financial situation of the undertaking and the anticipated development of its activities, namely in a comprehensible way and at the appropriate time. Employees may express their positions and make their proposals for the prepared decisions of the employer, which have an impact on their status in the employment relations.

Rules and procedure

The report states that the Labour Code makes special provision for the way and dates the consultation and information is carried out but does not make any further clarifications. The Committee asks for information on the rules and procedure followed and especially what remedies are available to the damaged parties due to failure of employer to comply with the obligation to inform.

Enforcement

The report states that the exercise of the right to information and consultation within the employers' organisation is not centrally monitored. Nevertheless, the Committee points out that if the next report does not provide the necessary information, there will be nothing to show that the situation in the Slovak Republic is in conformity with Article 2 of the Additional Protocol of the Charter. Indeed, the Committee recalls that the rights recognised in the Charter must take a practical and effective, rather than purely theoretical

form. To this end, the Charter implies the positive obligation of supervising the real number of workers covered by Article 2 of the Additional Protocol.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 2 of the Additional Protocol of the Charter.

Article 3 of the Additional Protocol – Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

The Committee already examined the situation with respect to the right of workers to take part in the determination and improvement of working conditions and the working environment (legal framework, scope and enforcement) in its previous conclusion (Conclusions XVIII-2). It will therefore only consider in this conclusion recent developments and additional information provided in reply to its questions.

Working conditions, work organisation and working environment

The Committee reiterates its request for information on the manner and extent that an employer has to take into account the opinion of employee representatives when taking a decision in the matters covered by Article 237 of the Labour Code (e.g. current and envisaged employment and social policy in the undertaking, measures to improve hygiene at work and the working environment, decisions with an impact of the organisation of work).

The report indicates that Article 133 of the Labour Code stipulates that changes in the required amount of work and the work pace must be agreed in a collective agreement. If they are not agreed in a collective agreement, these changes will only be implemented upon agreement with employees' representatives until a collective agreement is made.

Protection of health and safety

Act No. 124/2006 Coll. on occupational safety and health protection entered into force in 2006. Pursuant to Section 10 of this Act, employers must enable employees and their representatives for safety and health protection at work to take part in the improvement of occupational safety and health, and must consult them beforehand about issues which may significantly affect health

and safety at the workplace. Section 12 stipulates that employees must have the possibility to discuss in the undertaking all issues connected with health and safety at their workplace. Employers must submit to employees or employees' representatives for health and safety at work the relevant background material and give them reasonable time to make representation on, *inter alia*, (i) the draft concept of occupational health and safety policy, the draft programme of its implementation and evaluation; (ii) the risk assessment, identification and implementation of protective measures; (iii) the way and the extent of information if employees, representatives for health and safety protection and the designated technical workers for the implementation of preventive and protective services; (iv) the planning and provision for instruction and information of employees and the training of employees' representatives for safety.

Organisation of social and socio-cultural services and facilities

The Committee reiterates its question as to how workers' representatives participate in the organisation of social and socio-cultural services to the extent these services exist.

Enforcement

The Committee noted in its last conclusion (*ibid*) that employees' representatives or workers may in their individual capacity file complaints with the National Labour Inspectorate which is under a statutory obligation to deal with the complaint. It asked to have more details on the competence of the Labour Inspectorate as regards the violation of the employees' right to take part in the determination and improvement of the working conditions and working environment. It also asked what other remedies are available to work councils, workers' representatives and workers in the event this right is violated by employers. In the absence of any information in the report, the Committee reiterates these questions.

The Committee asked the report to specify whether adequate sanctions exist in the event employers do not respect the right of workers to take part in the determination and improvement of the working conditions and working environment. It also reiterates this question.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

**Chapter 13 – Conclusions concerning Articles 2, 4, 5
and 6 of the Charter and Articles 2 and 3
of the Additional Protocol
in respect of Spain**

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by Spain on 6 May 1980 and the 1988 Additional Protocol on 24 January 2000. The time limit for submitting the 22nd report on the application of this treaty (6th report on the Additional Protocol) to the Council of Europe was 31 October 2009 and Spain submitted it on 2 November 2009.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- ?the right to information and consultation (Article 2 of the Additional Protocol),

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

Spain has accepted all these articles.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter concerns 16 situations and contains:

- 8 cases of conformity: Articles 2 §4, 2 §5, 4 §5, 6 §1, 6 §2, 6 §3, Articles 2 and 3 of the Additional Protocol;
- 7 cases of non-conformity: Articles 2 §1, 2 §3, 4 §1, 4 §2, 4 §4, 5 and 6 §4.

In respect of the other situation concerning Article 2 §2, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Spanish report deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable working time

The Committee takes note of the information contained in the report submitted by Spain.

It recalls that pursuant to Article 34 of the Workers’ Statute weekly working hours may be longer than the statutory 40-hour maximum, provided that a 40-hour average is maintained over a reference period of 1 year. Flexible working time arrangements may be introduced by collective agreement, but

minimum daily and weekly rest periods, 12 hours and 1.5 days respectively, must be respected.

The Committee reiterates that the reference period for the calculation of average working hours should not exceed four to six months, or 12 months in exceptional circumstances (General Introduction to Conclusions XIV-2). The extension of the reference period by collective agreement up to 12 months is acceptable, provided there are objective or technical reasons or reasons concerning the organisation of work justifying such an extension. In this respect, the Committee notes that the Workers' Statute sets a reference period of 1 year as a general rule, not as an exception, without laying down any requirements of an objective or technical nature or limiting this to certain types of companies or sectors. It must therefore reiterate its conclusion of non-conformity on this point.

In its previous conclusion the Committee also found that the situation was not in conformity with the Charter because the law permitted weekly working time in excess of 60 hours (Conclusions 2007). It observes in this regard that the situation has not changed, given that under the Workers' Statute daily working hours can, by collective agreement, be longer than the statutory 9 hours. In theory, a 12-hour day would be possible if 12 hours of daily rest were respected. This together with the fact that the weekly rest period may be accumulated over fourteen days, could lead to working weeks longer than the 60 hours threshold.

As regards maximum working time of personnel in sanitary and health services, the Committee notes from other information by the Government², that a working week exceeding 60 hours was permitted if the employer had obtained the agreement of the employee to perform such work.

Accordingly, noting that the 60-hour limit may be exceeded in the context of flexible working time arrangements, or for some categories of workers, the Committee reiterates its conclusion of non-conformity also on this point.

The Committee notes from another source³ that the number of agreements that include clauses on flexible distribution of working time has increased in the last few years. In 2007, about 20% of the agreements featured clauses of this type, affecting 49.2% of the workers covered. Other aspects of flexible working time organisation, such as working days longer than 9-hours and

2. European Social Charter, Governmental Committee, Report concerning Conclusions XVIII-2.

3. Eironline, Spain: Industrial relations profile, at <http://www.eurofound.europa.eu/eiro/country/Spain>.

accumulating weekly time off, have less importance in collective agreements: long working days concern 18.9% of the workers covered and accumulating time off concerns 17.3% of the workers.

The Committee asks the next report to provide information on the supervision of working time regulations by the Labour Inspection, including the number of breaches identified and penalties imposed in this area.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 2 §1 of the Charter on the grounds that:

- the Workers' Statute sets out, as a general rule, a reference period of 1 year for the calculation of average working hours;
- the Workers' Statute, as well as specific legislation for certain categories of workers, permit weekly working time in excess of 60 hours.

Article 2 – Right to just conditions of work

Paragraph 2 – Public holidays with pay

The Committee takes note of the information contained in the report submitted by Spain.

In its previous conclusion (Conclusions XVIII-2), the Committee requested information on the rules concerning work on public holidays and confirmation that workers who do work on public holidays are given time off in lieu or increased remuneration. The report does not provide the information requested

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee asks what rate of pay is applied for public holidays worked, whether the base salary is maintained, in addition to the increased pay rate, and whether there is a compensatory day off in addition to any payment.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Spain.

In its previous conclusion (Conclusions XVIII-2), the Committee held that the situation in Spain was not in conformity with Article 2 §3 of the Charter as workers who fall ill or have an accident during their holiday are, in general, not entitled to take the holiday at another time.

According to the report, Act No. 3/2007 of 22 March 2007 on effective gender equality added a new paragraph to Article 38 of the Workers' Statute on annual leave, under which annual leave must not coincide with periods of maternity, childbirth or nursing. Under this provision, where annual leave occurs at the same time as temporary incapacity deriving from pregnancy, childbirth or nursing, the annual leave may be taken at a later date. The Committee notes, however, that this new rule applies only to maternity-related leave, not to cases of illness or accidents occurring during annual leave of all workers. It considers therefore that the situation is still not in conformity

The Committee considers that annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. The Committee asks again the next report to provide information on the rules relating to the postponement of annual leave.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 2 §3 of the Charter on the grounds that workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time.

Article 2 – Right to just conditions of work

Paragraph 4 – Reduced working hours or additional holidays in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by Spain.

The Committee refers to the statement of interpretation it made on Article 2 §4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2 §4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protection measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk. Article 2 §4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter. Under no circumstances, however, can financial compensation be considered appropriate under Article 2 §4 (*Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2 §4).

The Committee refers to its conclusion under Article 3 of the Charter (Conclusions XIX-2) which describes the dangerous occupations performed and the preventing measures taken in this regard.

Act No. 31/95 of 8 November 1995 on the prevention of occupational risks and its implementing regulations require employers to ensure that employees' health and safety are properly protected in the workplace. Under section 25 of this Act, occupations are considered dangerous if they expose employees to physical, chemical or biological substances which may have mutagenic or toxic effects on procreation. The Committee again asks in what sectors or activities reduced working hours have been introduced by collective agreement (or by decision of the labour authority as the case may be).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 2 §4 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by Spain.

The Committee recalls that Section 37 of the Workers' Statute guarantees a minimum weekly rest period of one and a half days, which should as a rule

include Sunday. However, the rest period may be accumulated over fourteen days, in which case the rest period shall be three consecutive days. In reply to the Committee, the report states that the three rest days must fall within the fourteen-day period.

Further Royal Decree No. 1561/1995 provides that weekly rest periods in the retail trade, in hotel and catering, in transport and for work at sea may accrue over longer time spans and may even be added to the annual holiday

In the retail, hotel and catering sectors, the weekly rest day is compulsory but the half-day may be postponed for up to four weeks. In practice, employees take their weekly rest day and may store up the remaining four half-days and take two uninterrupted days of leave before the end of the fourth week.

In the transport and seafaring sectors, the weekly rest period of one and a half days may be taken at any time over a period of four weeks or twenty-eight days. In practice the weekly rest period may be accumulated over four weeks, meaning that employees must take six rest days every four weeks. Furthermore, under Article 18 of Royal Decree No. 1561/1995, all seamen must have at least one rest day per week, but the additional half-days of rest may be replaced by financial compensation of an equivalent amounting to no more than half of any unused rest days.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 2 §5 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 1 – Decent remuneration

The Committee takes note of the information contained in the report submitted by Spain.

In its previous conclusion (Conclusions XVIII-2) the Committee held that the minimum wage was manifestly inadequate as it fell far below the threshold of 60% of the average wage. It also requested detailed information on net values of both minimum and average wages.

The Committee notes from the report that on the basis of the Royal Decree 1632/2006 of 29 December the minimum interprofessional wage was fixed at €570.60 per month. It rose to €624 in 2009 by virtue of Royal Decree 2128/2008 of 26 December. The Committee however observes that the report, again, fails to provide information as requested on the net values of

minimum and average wages. It notes from Eurostat that the average annual gross earnings in 2007 amounted to €21 890 in 2007 (€1 824 per month). Therefore, even in the absence of information on the net values, the Committee considers that despite the growth of minimum wage, the situation remains unchanged – the level of the minimum wage remains very low and thus not fair. The Committee also notes from OECD⁴ that minimum relative to average wages of full-time workers in 2007 amounted to 45%.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 4 §1 of the Charter on the ground that the minimum wage is manifestly unfair.

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by Spain.

It recalls that the threshold marking the beginning of overtime starts after the 40-hour statutory maximum working week, and that the maximum overtime limit per year is 80 hours.

As regards compensation of overtime, Section 35 of the Workers' Statute leaves it to collective bargaining (or the individual contract) to fix the increased rate of remuneration or compensatory leave. In the absence of the latter, the Statute provides that overtime cannot be paid at a lower rate than a regular working hour, or should be compensated with leave of equal length to the overtime worked.

In its previous conclusion (Conclusions 2007) the Committee asked what was the proportion of workers covered by collective agreements that provided for an increased rate of remuneration or a longer rest period.

The report fails to provide any information at all on Article 4 §2. The Committee however notes from other information by the Government (Governmental Committee, Report concerning Conclusions XVIII-2) that in 2007 54.83% of all collective agreements – representing 49.35% of workers – provided for an increased remuneration for overtime.

4. <http://stats.oecd.org/Index.aspx?DatasetCode=MIN2AVE>.

Accordingly, given that not all collective agreements provide for an increased remuneration for overtime, and the fact that the Workers' Statute does not guarantee an enhanced pay rate and/or time off in lieu, the Committee reiterates that the situation is not in conformity with this provision.

Finally, it asks the next report to provide information on the activities of the Labour Inspection in respect of any breaches related to the failure to pay overtime wages.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 4 §2 of the Charter on the grounds that the Workers' Statute does not guarantee workers the right to an increased remuneration or to a longer rest period in compensation for overtime.

Article 4 – Right to a fair remuneration

Paragraph 3 – Non-discrimination between and women men with respect to remuneration

In the General Introduction to Conclusions 2002 on the Charter, the Committee indicated that national situations in respect of Article 4 §3 (right to equal pay) would be examined under Article 1 of the Additional Protocol of 1988. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4 §3.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4 §3 and Article 1 of the Additional Protocol of 1988, thus every two years (under the thematic group 1 "Employment, training and equal opportunities", as well as thematic group 3 "Labour rights"). Henceforth, the Committee invites Spain to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

Article 4 – Right to a fair remuneration

Paragraph 4 – Reasonable notice of termination of employment

The Committee notes that there is no information in the Spanish report on reasonable notice of termination of employment. It assumes that there has been no change in the situation which it previously considered not to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 4 §4 of the revised Charter because:

- workers with fixed-term contracts of less than a year whose contracts are broken before they end have no right to notice;
- workers with fixed-term contracts of more than one year whose contracts are broken before they end are entitled to only fifteen days' notice.

Article 4 – Right to a fair remuneration

Paragraph 5 – Limits to deduction from wages

The Committee notes the lack of information in the Spanish report on this point. It notes the situation regarding the limitation on deductions from wages, which has previously considered to be in conformity with the Charter, has not changed.

Conclusion

The Committee concludes that the situation in Spain is in conformity with the Charter.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by Spain.

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. The report indicates that there has been no developments regarding the framework of the right to organise,

which has been considered in conformity with the exception of two issues which have prompted the Committee to raise questions in its last two conclusions. The Committee will therefore only consider additional information in reply to these questions.

Freedom to join or not to join a trade union

As regards collective bargaining fees (*canon de negociación colectiva*) the report draws attention to the tenor of Section 11 of Organic Law No. 11/1985 on Trade Union Freedom. According to Section 11, each worker must expressly agree in writing to the payment of such fees. Therefore, it cannot be imposed on workers against their will. The report underlines that the importance of the principle of free will of the worker is warranted by the fact that this requirement is provided for by an organic law, the highest legislative level under the Constitution. The Committee asks for information on how frequent these fees are collected and what their amount is.

Trade union activities

The Committee previously noted that, under Section 9.1 of Organic Law No. 11/1985 on Trade Union Freedom, elected representatives of the most representative trade unions must be given access to workplaces to take part in trade union activities or those of the employees as a whole. The Committee asked what the situation is for representatives of other trade unions in terms of access to workplaces. In the absence of any information in the report on this aspect and the fact that it has been asked several times (Conclusions XVII-1 and XVIII-1), the Committee cannot consider as established that the situation is in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 5 on the ground that it has not been established that representatives of trade unions other than the most representative have access to workplaces.

Article 6 – Right to bargain collectively

Paragraph 1 – Joint consultation

The Committee notes from the information provided in the Spanish report and all the information at its disposal that there have been no changes to the situation which it has previously considered to be in conformity with Article

6 §1 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 6 §1 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee takes note of the information contained in the report submitted by Spain.

Legislative framework

The Committee refers to its previous conclusions (Conclusions XVII-1 and XVIII-1) for a description of the rules governing collective bargaining in the private and in the public sector and recalls that it has held this framework to be in conformity with Article 6 §2 of the Charter.

As to the public sector, the Committee notes from the report the adoption and entry into force of Law 7/2007 of 12 April 2007 on the Statute of Public Employees, which:

- provides for public employees' right to collective bargaining, representation and participation in the determination of their working conditions;
- establishes that General Platforms of Public Administration be created;
- regulates issues concerning representation of civil servants and their election.

The Committee also notes from the report the adoption of Convention II of 12 September 2006 on Employees of the General Administration of the State. This Convention, which was valid until 2008, *inter alia*, reiterated the right of the employees at stake to information and consultation. A new Convention is being negotiated.

The Committee requests that the next report contain details on the implementation of above mentioned legislative developments as well as an update concerning the situation of employees of the General Administration of the State.

The report also refers to the endorsement of an Agreement of 3 December 2007 on the establishment of a General Platform for Negotiation of the

General Administration of the State concerning public employees working abroad.

Conclusion of collective agreements

The Committee notes from the statistics provided in the report that during the reference period the number of collective agreements increased slightly. It further notes from another source⁵ that it is estimated that about 60% of the workforce is covered by collective agreements.

In its previous conclusion (Conclusions XVIII-1), the Committee referred to Royal Decree 718/2005 of 20 June 2005 establishing a new procedure for the extension of collective agreements asking for detailed information on the extension procedure and its implementation in practice. Since the report fails to provide such information, the Committee reiterates its request and refers in this regard to its statement of interpretation and general question under Article 6 §2 in the General Introduction to these Conclusions.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 6 §2 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee notes from the information provided in the Spanish report and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §3 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 6 §3 of the Charter.

5. See the country profile on Spain on the European industrial relations observatory online (eironline) website: http://www.eurofound.europa.eu/country/spain_1.htm.

Article 6 – Right to bargain collectively

Paragraph 4 – Collective action

The Committee takes note of the information contained in the report submitted by Spain.

Meaning of collective action – Who is entitled to take collective action?

The Committee previously examined the situation under these headings and found that it was in conformity with the Charter. The report indicates that there has been no change to this situation.

Restrictions on the right to strike

The Committee recalls that pursuant to Section 10.1 of Royal Legislative-Decree No. 7 of 4 March 1977 the Government may impose arbitration to end a strike in exceptional circumstances, namely when it considers that there is a threat to the rights and freedoms of others because a strike had gone too long, the parties' positions were irreconcilable and too much damage was being done to the national economy. According to a Supreme Court judgment of 9 May 1988, a situation permitting Government interference has to be exceptional or there has to be a cumulative series of circumstances, all of which have to be considered by the Government, before the latter can make use of its exceptional discretionary power.

The Committee recalled that compulsory arbitration to end a strike can only be in conformity with Article 6 §4 of the Charter if it falls within the limits of Article 31 of the Charter. Restrictions to the right of strike fall within the limit of Article 31 of the Charter if they are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.

In Conclusions XVIII the Committee found that compulsory arbitration had been imposed in certain circumstances outside the limits prescribed by Article 31 of the Charter and considered that Section 10.1 of Royal Legislative-Decree No. 7 of 4 March 1977 allows recourse to arbitration to end a strike in cases that go beyond those permitted by Article 31 of the Charter and that therefore the said provision is not in conformity with Article 6 §4 of the Charter.

The report provides no information on this issue therefore the Committee considers that there has been no change to this situation and that the situation remains not in conformity with the Charter.

Procedural requirements pertaining to collective action – Consequences of collective action

The Committee notes that there have been no changes to the situation under these headings which it previously held to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 6 §4 of the Charter, on the ground that legislation authorises the Government to impose compulsory arbitration to end a strike in cases which go beyond the derogations permitted by Article 31 of the Charter.

Article 2 of the Additional Protocol – Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Spain.

It takes note of the legislative changes for the reference period.

Article 2 of the Additional Protocol of the Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.

As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 2 of the Additional Protocol of the Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 2 of the Additional Protocol of the Charter, the Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (judgment of the European Court

of Justice of 18 January 2007 (Confédération générale du travail (CGT) and Others, Case C-385/05)).

Consequently, the Committee asks whether this is the scope of Spain's legislation, particularly as regards the calculation of these minimum thresholds.

The Committee takes note also of the information on the decisions of the Constitutional Court as well as the statistics provided by the Labour Inspection.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 2 of the Additional Protocol of the Charter.

Article 3 of the Additional Protocol – Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by Spain.

The Committee assessed the situation as regards workers' right to take part in the determination and improvement of the working conditions and working environment in its previous conclusions (Conclusions XVI-2, XVII-2 and XVIII-2) and considered it to be in conformity with Article 3 of the Additional Protocol. It asks that the next report indicates any changes to the situation in this respect.

With regard to health and safety at work, the report refers to Royal Decree 286/2006 of 10 March 2006 on the protection of workers' health and safety against noise, and Royal Decree 396/2006 of 31 March 2006 on measures for the protection of workers' health and safety in respect of asbestos. In both decrees, the right of employees to information, consultation and participation in respect of questions pertaining to noise and asbestos are guaranteed.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 3 of the Additional Protocol.

Chapter 14 – Conclusions concerning Articles 2, 5 and 6 of the Charter in respect of “the former Yugoslav Republic of Macedonia”

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by “the former Yugoslav Republic of Macedonia” on 31 March 2005. The time limit for submitting the 3rd report on the application of this treaty to the Council of Europe was 31 October 2009 and “the former Yugoslav Republic of Macedonia” submitted it on 14 December 2009.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

“The former Yugoslav Republic of Macedonia” has accepted Articles 2, 5 and 6 from this group.

The applicable reference period was 1 January 2005 to 31 December 2008.

The present chapter on “the former Yugoslav Republic of Macedonia” concerns 10 situations and contains:

- 2 conclusions of conformity: Article 2 §4; 2 §5;
- 1 conclusion of non-conformity: Articles 6 §2.

In respect of the other 7 situations concerning Articles 2 §§1, 2, 3; 5; 6 §§1, 3, 4 the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next report from “the former Yugoslav Republic of Macedonia” deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable working time

The Committee takes note of the information contained in the report submitted by “the former Yugoslav Republic of Macedonia”.

Pursuant to Article 30 of the Labour Relations Law (Official Gazette No. 80/93 – 2007) maximum working time per week is 40 hours. Employers may introduce shorter working weeks under conditions stipulated in the Law (work or-

ganised in shifts, employees exposed to exceptionally difficult or strenuous jobs or when required by the nature of the work).

Overtime work is regulated by Article 35 of the Law which sets out the circumstances – natural disasters, need to complete a working process, etc. – when the employer can request longer working hours, which should not exceed 10 hours a week. The report indicates that an amendment to the Labour Relations Law will decrease the maximum overtime limit to 8 hours a week, with a view to adjusting legislation to Directive 2003/88/EC concerning certain aspects of the organisation of working time.

Article 37 of the Law stipulates that working hours may be rearranged if required by the nature of the work. In such cases the total working hours of employees should not exceed 40 hours per week on average in the course of one year.

The Committee recalls that the existence of flexible working time arrangements are not *per se* contrary to the Charter. However, the reference period for the calculation of average working hours should not exceed four to six months, or 12 months in exceptional circumstances (General Introduction to Conclusions XIV-2). The extension of the reference period by collective agreement up to 12 months would also be acceptable, provided there were objective or technical reasons or reasons concerning the organisation of work justifying such an extension.

The Committee asks whether a collective agreement is required for the introduction of the "rearrangement of working hours" schemes referred to in Article 37.

It also asks the next report to indicate whether there exist regulations on the question of on-call time spent at the workplace, in particular whether it is counted as working time.

According to the report, the Labour Inspectorate received 63 complaints from employees related to their working time in 2005 and 114 in 2008. The number of regular inspections carried out in 2005 were 11 758 and 19 477 in 2008, following which 484 decisions requesting the employer to adjust working time were taken in 2005 and 332 in 2008. Sanctions for violations of regulations on working time can include the suspension of work for 7 days or the starting of a misdemeanour procedure.

The Committee asks the next report to provide updated information on the supervision of working time regulations by the Labour Inspectorate, including the number of breaches identified and penalties imposed in this area.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 2 – Right to just conditions of work

Paragraph 2 – Public holidays with pay

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The rules on pay for work on public holidays are set out in the Holidays Act. Work is authorised exceptionally during public holidays where it is impossible to suspend a production line or for other technical reasons.

Employees who work on public holidays are paid their ordinary wage plus a "contribution to salary" and a "salary supplement". The amount of the contribution and the supplement is determined by collective agreement. Under the general collective agreements for the public sector and for the economy, work on public holidays is paid at a rate of 250% (100% salary, 100% contribution to salary and 50% salary supplement). The Committee asks if this rate applies to all sectors or if a lower rate is applied in other sectors and, if so, what it is.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee asks whether a day off in lieu is awarded in addition to the remuneration.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Under the Labour Code, employees are entitled to at least 20 days of annual leave.

Paid leave is compulsory and employees may not waive their right to it. Only where their employment contract has been terminated do employees have the right to financial compensation for unused leave.

Paid leave may be divided up. However, one of the periods of leave must be at least 12 days and to be used until the end of the calendar year. The Committee recalls that an employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due. The Committee asks whether the 12-day minimum leave period corresponds to 12 consecutive days or whether only working days are taken into account, meaning that in reality the period amounts to a little over two weeks.

According to the report, the unused part of annual leave must be used until the end of the month of June the following year.

The Committee asks whether employees who fall ill during periods of annual leave may take their leave at a later date.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 2 – Right to just conditions of work

Paragraph 4 – Reduced working hours or additional holidays in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by “the former Yugoslav Republic of Macedonia”.

The Committee refers to the statement of interpretation it made on Article 2 §4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2 §4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protection measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk. Article 2 §4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis

the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter. Under no circumstances, however, can financial compensation be considered appropriate under Article 2 §4 (Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2 §4).

The Labour Act and collective agreements set out special measures for the protection of workers engaged in dangerous or unhealthy activities. Section 116 §4 of the Labour Act provides for a reduction in weekly working hours. The report contains lists of activities considered to pose a threat to employees’ health and of sectors in which working hours are reduced. The labour inspectorate is responsible for seeing to it that this legislation is applied. The Committee asks if measures other than reduced working hours have been introduced to limit exposure to residual risks in some occupations, despite the risk elimination policy.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is in conformity with Article 2 §4 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by “the former Yugoslav Republic of Macedonia”.

According to this information, the weekly uninterrupted rest period must last at least 24 hours. The weekly rest day is usually Sunday. Work is authorised exceptionally on rest days in the cases where the working process evolves continuously and where the employees work in three shifts. Workers are not permitted to give up weekly rest period. Work performed on a rest day must be offset by time off in lieu or by financial compensation.

The Committee points out that weekly rest periods may not be replaced by financial compensation and that employees may not forfeit their rest. Although the rest period must be weekly, it may be deferred until the following week provided that no-one is made to work more than twelve days in succession before being granted a two-day rest period.

The Committee asks for additional information in the next report on exceptions to the rules on weekly rest periods.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is in conformity with Article 2 §5 of the Charter.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by “the former Yugoslav Republic of Macedonia”.

Forming trade unions and employers’ associations

Freedom to form trade unions and employers’ associations is guaranteed through the freedom of association enshrined in Article 22 of the Constitution. Article 37 also specifically secures the right to establish trade unions to further social and economic rights.

Trade unions and employers’ associations can be founded without prior authorisation. They obtain legal personality upon registration. The registers of trade unions and employers’ associations are kept by the Ministry of Labour and Social Policy. Applications for registration must include: the decision to establish the organisation; the minutes from the founding meeting; the statute, name of founders and members of the executive body; the name of the person entitled to represent the organisation; data on the number of members of the trade union based on paid membership.

The Committee underlines that if fees are charged for the registration or establishment of an organisation, they must be reasonable and designed only to cover strictly necessary administrative costs, and that the requirements as to minimum numbers of members comply with Article 5 if the number is reasonable and presents no obstacle to the founding of organisations. It therefore asks for the next report to specify what the situation is in domestic law in respect of registration fees and the required number of founding members.

The Labour Relations Law (Official Gazette No. 62/2005 and 130/2009) guarantees the autonomy and independence of trade unions by prohibiting interference by employers or employers’ associations with the establishing and functioning of trade unions.

According to Article 37 of the Constitution trade unions can constitute confederations and become members of international trade union organisations. The Committee asks whether this provision also applies to employers associations.

The Committee emphasises that domestic law must provide for a right to appeal to a court to ensure that the right to form trade unions and employers association is upheld. It therefore asks that the next report give further information in this regard.

Freedom to join or not to join a trade union

According to the Labour Relations Law employees are free to join trade unions. The Committee underlines that workers must also be free not to join a trade union or not remain member of a union. Any form of compulsory trade unionism is incompatible with Article 5. The freedom guaranteed by Article 5 is the result of a choice and such decisions must not be taken under the influence of constraints that rule out the exercise of this freedom. To secure this freedom, domestic law must clearly prohibit all pre-entry or post-entry closed shop clauses and all union security clauses (automatic deductions from the wages of all workers, whether union members or not, to finance the trade union acting within the company). Consequently, clauses in collective agreements or legally authorised arrangements whereby jobs are reserved in practice for members of a specific trade union are in breach of the freedom guaranteed by Article 5. The same principle also applies to employers' freedom to organise. Therefore the Committee asks that the next report indicate whether the right not to join a trade union is protected by law. Should the next report not give this information, there will be nothing to establish that the situation is in conformity.

The report states that, according to law, employers should not rely on membership of a trade union or participation in a union's activities when deciding to employ someone, move an employee from one post to another, grant promotion, and terminate a work contract.

The Committee underlines that trade union members must be protected from any harmful consequence that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities. Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim. The Committee therefore asks for information in the next report on this point.

Should this information not be provided, there would be nothing to establish that the situation is in conformity.

Trade union activities

The report indicates that the Labour Relations Law stipulates that employers must facilitate the activities of a trade union which protects the rights of its employees. However, the Committee notes from another source that employers are expected to do so only in respect of the predominant union.² The Committee emphasises that trade union officials must have access to the workplace and union members must be able to hold meetings at work in so far as employers’ interests and company requirements permit. The report indicates that further details are provided in the General Collective Agreement for Economy and the General Collective Agreement on the Public Sector. The Committee therefore asks for more information in the next report regarding access to workplaces of officials of all trade unions.

The Labour Relations Law governs the cases where a union or employers association should terminate their activities, namely: if, without serious and justified reasons, it did not hold a meeting of its highest executive body for a period exceeding twice the period provided in its statute; the number of members of the organisation have gone below the minimum number of founding members provided for by law. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) criticised the first possibility of dissolution considering that not holding a meeting of the highest executive body for two consecutive times is not a sufficient ground for terminating the activities of a trade union or an employer association. The Committee concurs and finds termination of activities an excessive step in such cases. The CEACR also noted in respect of the minimum number of founding members not being attained that no section in the Labour Relations Law fixes such a minimum. The Committee did not find in the report any information concerning such a minimum. As a consequence it asks for clarification in the next report on this point. Should no information be provided in the next report, there will be nothing to establish that the situation is in conformity with Article 5.

The report also states that trade union representatives are offered protection under the Labour Relations Law: they are protected from dismissal, and their salaries cannot be decreased. The protection against dismissal lasts for two

2. International Trade Union Confederation (ITUC) Annual Survey of violations of trade union rights 2009: <http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=MKD&Lang=EN>.

after leaving the functions of union representative. The General Collective Agreement also states that union representatives should be entitled to undergo training in order to carry out their union functions. In addition, the report indicates that members of a trade union or employers association can ask for court protection. A trade union or employers association can ask courts to prohibit an activity that run counter the right of employees to engage in union activities.

Representativeness

Representativeness is determined on the basis of the registry of trade unions or employers' associations held by the Ministry of Labour and Social Policy and the number of members. Section 212 of the Labour Relations Law stipulates that for a trade union to be considered representative in order to sign collective agreements with an employer must reach at least 33% of employees of the enterprise concerned or must be member of a representative trade union on higher level of organisation. In order to sign a collective agreement at branch or state level a trade union must have a membership comprising at least 33% of the total number of employees in a given branch or the area for the agreement is signed, or be a member of a representative trade union. The Labour Relations Law also states that employer associations to be representative must gather 33% of the employers of the branch or area in which the collective agreement is being concluded.

The report indicates that this high threshold was criticised notably by the ILO and the European Commission, which led to the Labour Relations Law being amended in 2009. At the outset, the Committee observes this is beyond the reference period here at issue. For collective agreements at state level, new conditions for representativeness have been laid down. To be representative, trade union need: to be registered; to have at least 10% members from the total number of employees in the sector for which the collective agreement is signed; to count as members at least three unions at national level; to act at national level and to have registered members in at least 1/5 of the municipalities of the country; to act in accordance with its statute and democratic principles; to count as members trade unions that have signed or joined at least three collective agreements at branch level.

To be representative employers associations need: to be registered; to have members of at least 5% of the total number of employers or members who employ at least 5% of the total number of employees in the country; to have members who are employers in at 3 branches; to have members in at least one-fifth of the municipalities in the country; to have signed or joined at least three collective agreements at branch level; to act in accordance with

its statute and domestic principles. A Commission composed of nine members of the Ministry of Labour and Social Policy, Ministry of Justice and the Ministry of Economy decides on whether the requirements are met. Registered trade unions and employers associations can send a representative to participate in the work of this Commission to ensure transparency of the procedure. The Committee asks what appeals are available to contest a decision not to grant representative status. The Committee reserves its position as to the conformity of the representativeness procedure as the reform described was made outside the reference period.

Personal scope

According to Article 22 of the Constitution the law may restrict the conditions for the exercise of the right to form or join trade union organisations in the armed forces, the police and administrative bodies. There are currently no statutes restricting the right to organise of members of the police and administrative bodies. The Committee asks to be kept informed of any changes in this respect.

The Committee underlines that under Article 19 §4b of the Charter, states party must secure for nationals of other parties treatment not less favourable than that of their own nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining. Therefore, it asks for information on this question in the next report. Should this information not be provided, there will be nothing to establish that the situation is in conformity in this regard.

According to the Law on Defence, trade union rights are removed in the armed forces only in case of military and state emergency.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 6 – Right to bargain collectively

Paragraph 1 – Joint consultation

The Committee takes note of the information contained in the report submitted by “the former Yugoslav Republic of Macedonia”.

The Committee asks that the next report provide all relevant information on joint consultation in the light of the explanations given below and questions raised.

Levels of joint consultation

Section 21 of the Labour Code of “the former Yugoslav Republic of Macedonia” provides for the establishment of a national tripartite body, the Economic and Social Council (ESC). The report informs that this body was set up and serves as a forum for consultations and exchanges of information among the social partners and the Government.

The Committee notes from the report that the ESC is chaired by a representative of the Ministry of Labour and Social Policy assisted by a secretary from the same Ministry. Other members of the body are representatives of the Ministry of Finance and of the Ministry of Economy and three representatives selected by the Federation of Trade Unions of Macedonia and three representatives of the Organisation of Employers. The agenda of the sessions of the ESC is determined by the Chairperson but any other member may request that other items be added to the agenda. The ESC sessions are convened by its Chairperson. They must take place at least four times a year. The sessions of the ESC are public and announcements are made on the results of the consultations after each session.

The Committee highlights that under Article 6 §1 consultation must take place on several levels: national, regional/sectoral and enterprise (Conclusions III, Denmark, Germany, Norway, Sweden). It notes from the report that tripartite structures such as the ESC also exist at the local level to prepare local action plans in the economic and social areas. It asks the next report to provide more information in this regard as well as with reference to possibilities for consultation at the sectoral and enterprise levels.

The Committee moreover asks whether employers’ and employees’ organisations also have the opportunity for joint consultation on a bi-partite basis.

The Committee recalls that within the meaning of Article 6 §1, joint consultation is consultation between employees and employers or the organisations that represent them (Conclusions I, Statement of Interpretation on Article 6 §1). Such consultation can take place within tripartite bodies provided that the social partners are represented in these bodies on an equal footing (Conclusions V, Statement of Interpretation on Article 6 §1).

While referring to the questions raised in its assessment under Article 5 as regards the reform of the criteria to determine representativeness, the Committee recalls that with respect to Article 6 §1, any requirement of representativeness of trade unions must not excessively limit the possibility of trade unions to participate effectively in consultation. In order to be in conformity with Article 6 §1, representativity criteria should be prescribed by law, should

be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusals (Conclusions 2006, Albania). The Committee asks the next report to provide details about the impact of the new requirements for representativeness (in force after the reference period) on consultation procedures. Meanwhile, it reserves its position in this regard.

Matters for joint consultation

Under Article 6 §1 consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.) (Conclusions I, Statement of Interpretation on Article 6 §1 and Conclusions V, Ireland). From the report the Committee understands that the above national tripartite body does discuss all such matters.

Public sector

Finally, the Committee highlights that consultation should take place also in the public sector, including the civil service (Conclusions III, Denmark, Germany, Norway, Sweden and *Centrale générale des services publics, CGSP v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41). It therefore asks whether there are specific consultative bodies in the public sector and if so what their structure is and how they operate. Meanwhile, it reserves its position in this regard.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee takes note of the information contained in the report submitted by “the former Yugoslav Republic of Macedonia”.

Legislative framework

“The former Yugoslav Republic of Macedonia” ratified ILO Convention No. 98 on the Right to Organise and carry out Collective Bargaining in 1991. It has not yet ratified ILO Convention no. 154 on Collective Bargaining.

Collective bargaining procedures are governed by the Labour Relations Act (No. 62/2005), which provides that negotiations have to be held in good faith, collective agreements are valid two years and their duration may be prolonged if the parties agree. The Act also stipulates that any eligible party may join a collective agreement after it has been signed by submitting a Statement of accession to the agreement.

As regards the requirements to be an eligible party to a collective agreement, the Committee understands from the report and from other sources³ that during the reference period collective bargaining was restricted to trade unions representing at least 33% of the employees at the level at which the agreement was concluded (company, sector or country). The report acknowledges that this restriction created problems in practice and thus the representativeness requirements were modified in 2009 (outside the reference period). While referring to its questions and remarks in this regard under Article 5 and 6 §1, the Committee holds that during the reference period the requirements to be met to be entitled to enter negotiations were excessive and therefore such as to infringe the right to bargain collectively.

Conclusion of collective agreements

The Committee recalls that according to Article 6 §2, if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place are, collective bargaining should remain free and voluntary (Conclusions I, Statement of Interpretation on Article 6 §2). The Committee thus requests the Government to indicate what measures it has taken or plans to take to facilitate and encourage the conclusion of collective agreements.

The report informs that during the reference period two general collective agreements were signed at the national level: one for the private sector (Agreement No. 76/2006) and one for the public sector (Agreement No. 10/2008). The report also indicates that 11 collective agreements were signed at the branch level.

The Committee asks the next report to continue to provide information on collective agreements concluded in the private and public sector at enterprise, sectoral and national level. It also asks the next report to indicate the number of employers and employees covered by these agreements.

3. 2009 ITUC Survey of violations of trade union rights available at: <http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=MKD&Lang=EN>.

The Committee asks the next report to provide information on the procedures governing the possible extension of collective agreements. It refers, in this regard, to its statement of interpretation and general question under Article 6 §2 in the General Introduction to these Conclusions.

Public sector

The report informs that a collective agreement signed in 2008 regulates collective labour relations in the public sector. The Committee asks the next report to provide details on the parties to this agreement as well as on its content.

The Committee recalls that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them (Conclusions III, Germany). It therefore asks the next report to indicate whether the above mentioned collective agreement, and if relevant other regulations, allow a participation of employees in the public sector in the determination of their working conditions. In the absence of such a right, the situation will be deemed not to be in conformity with the requirements of Article 6 §2 of the Charter.

Conclusion

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 6 §2 of the Charter as during the reference period the requirements to enter negotiations infringed the right to bargain collectively.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee takes note of the information contained in the report submitted by “the former Yugoslav Republic of Macedonia”.

Mediation and conciliation in the private sector

The Committee recalls that Article 6 §3 applies to conflicts of interest, i.e. generally conflicts which concern the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement. It concerns neither conflicts of rights, i.e. conflicts related to the application and implementation of a collective agreement, nor political disputes.

The “Law on Peaceful Solving Labour Relations”, no. 8/2007, sets out the procedure for resolving inter alia collective labour disputes. The law provides for the establishment of a “council” whose role is to train mediators and arbitrators and provide the parties to a dispute with a list of mediators. The Committee notes from the information provided under both Article 6 §3 and 6 §4 that recourse to mediation/conciliation is compulsory prior to resorting to industrial action, but no solution may be imposed on the parties. The parties to the dispute must agree on the choice of mediator and if they cannot do so a mediator will be appointed by the Director of the above mentioned council. The Committee asks what the timeframe is for mediation.

According to the report general collective agreements provide that labour disputes which have not been solved through mediation will be resolved by arbitration. They must be submitted to arbitration within 5 days of cessation of mediation proceedings. The parties to the dispute select the arbitrator from a list, the arbitrator must then initiate discussions within 5 days of being seized by the dispute and reach a decision within 15 days. The Committee considers that this cannot be deemed to be compulsory arbitration as the parties have agreed in the collective agreement to have recourse to arbitration and be bound by it.

The Committee asks for further information on which collective agreements make provision for arbitration.

Mediation and conciliation in the public sector

The Committee asks for information to be provided on mediation and conciliation procedures in the public sector.

Conclusion

Pending receipt of the information, requested the Committee defers its conclusion.

Article 6 – Right to bargain collectively

Paragraph 4 – Collective action

The Committee takes note of the information contained in the report submitted by “the former Yugoslav Republic of Macedonia”.

The Committee highlights that should all the information requested in the current conclusion not be submitted in the next report there will be nothing to show that the situation is in conformity.

Meaning of collective action

Article 38 of the Constitution guarantees the right to strike, and the right is regulated in further detail by Chapter XX of the Labour Law (“Official Gazette of the Republic of Macedonia” Nos. 62/2005, 106/2008 and 161/2008).

The Committee asks for information on the permitted objectives of collective action, the Committee recalls that under Article 6 §4 the right to strike should be guaranteed in the context of any negotiation between employers and employees in order to settle an industrial dispute.

Who is entitled to call collective action?

According to the report trade unions have the right to call and lead a strike. The Committee recalls its case law in this respect; when the decision to call a strike can be taken only by a trade union, the forming of a trade union must not be subject to excessive formalities. It recalls from its conclusion under Article 5 that trade unions and employers’ associations can be founded without prior authorisation. They obtain legal personality upon registration. The registers of trade unions and employers’ associations are kept by the Ministry of Labour and Social Policy. Applications for registration must include: the decision to establish the organisation; the minutes from the founding meeting; the statute, name of founders and members of the executive body; the name of the person entitled to represent the organisation; data on the number of members of the trade union based on paid membership. The Committee asks how long it takes to register a trade union.

The Committee seeks confirmation that non union members may participate in a strike.

Restrictions on collective action

The Constitution provides that the law may restrict the right to strike for the armed forces, police and authorities of the state administration, strikes in the armed forces, police, civil administration, public enterprises and public institutions are regulated by special laws.

Pursuant to Article 121 of the Law on Interior Affairs (“Official Gazette of the Republic of Macedonia” No. 92/2009), strikes are prohibited in the Ministry of Interior in a military, emergency and crises situations. In the case of a complex security situation, large scale disturbance of the public law and order, natural disasters and epidemics or large scale endangerment of the life and health of people and properties, not more than 10% of the workers in the Ministry may participate in a strike, and it cannot last more than three days. Similar conditions and restrictions apply to the police.

For the employees in public enterprises, the conditions under which a strike may be organised are prescribed in the Law on Public Enterprises (Official Gazette of the Republic of Macedonia" nos. 38/1996, 40/2003, 49/2006, 22/2007 and 83/2009). A trade union, should it decide to exercise the right to strike, should deliver a letter of warning to the director at the latest 7 days before their intention to call for a strike, wherefore they must specify the reasons and the intentions for the strike. After delivery of the warning, representatives of the board of managers and the director are obliged to make a proposal to resolve the dispute and to inform the workers and the public of the proposal. If no agreement is reached within 15 days the trade union, may call a strike. The Committee asks whether is any requirement that public enterprises providing essential services must maintain minimum services during a strike.

The Law on Civil Servants ("Official Gazette of the Republic of Macedonia" Nos. 59/2000 and 34/2001) stipulates that, when exercising their right to strike, civil servants are obliged to ensure "undisturbed operation of the functions of the authority/body". The Committee asks for information on what this in fact means and how it is organised.

The report also states that not every type of "work process" can be halted during a strike. Therefore the employer, and the trade union must prepare and adopt rules for the maintenance of a minimum service in "necessary work processes" that cannot be interrupted during a strike. These rules shall in particular contain the number of employees and the "work processes" that must be maintained during the strike, with a view to enabling the resumption of work after the strike's completion (manufacturing sustainability work processes), or rather with the aim of ensuring work that is necessarily essential with a view to protecting the lives, personal security or the health of the citizens (i.e. necessary job/work processes). Nevertheless, according to the report the right to strike cannot in any way be prevented or seriously restricted by requiring minimum services.

Should the trade union and the employer fail to reach a settlement within 15 days from the date of the employer's proposal to the trade union on the minimum services to be guaranteed, the employer or the trade union may request arbitration to make a decision within the subsequent 15 days.

The Committee asks for information on what sectors may be required to introduce a minimum service, as described above.

Procedural requirements pertaining to collective action

The trade union which has called the strike must notify the employer against whom it is directed, specifying the reasons for the strike, the place where it is to be held, and the date and time of the strike’s commencement.

A strike cannot take place before the completion of the conciliation/mediation procedures.

The Committee asks whether there are any other procedural requirements that must be fulfilled before a lawful strike can take place, such as ballot requirements.

Consequences of collective action

Participation in a law strike does not entail a breach of the employment contract and therefore striking workers may not be dismissed. Further the report states that workers who participated in a strike may suffer no detriment on their return to work.

Conclusion

Pending receipt of the information requested the Committee defers its conclusion.

**Chapter 15 – Conclusions concerning Articles 2, 4, 5
and 6 of the Charter
in respect of the United Kingdom**

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter was ratified by the United Kingdom on 11 July 1962. The time limit for submitting the 29th report on the application of this treaty to the Council of Europe was 31 October 2009 and the United Kingdom submitted it on 19 November 2009.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

1. The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

The United Kingdom has accepted all of these Articles, with the exception of Articles 2 §1 and 4 §3 as well as Articles 2 and 3 of the Additional Protocol.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter on the United Kingdom concerns 13 situations and contains:

- 3 conclusions of conformity: Articles 4 §5, 6 §1 and 6 §3.
- 10 conclusions of non-conformity: Articles 2 §2, 2 §3, 2 §4, 2 §5, 4 §1, 4 §2 4 §4, 5, 6 §2, 6 §4.

The next United Kingdom report deals with the accepted provisions of the following articles belonging to the fourth thematic group “Children, families and migrants”:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for the report was 31 October 2010.

Article 2 – Right to just conditions of work

Paragraph 2 – Public holidays with pay

The Committee takes note of the information contained in the report submitted by the United Kingdom.

The Committee points out that public holidays are not a right that is enshrined in legislation. They are covered instead by collective agreements and individual employment contracts. In its previous conclusions (Conclusions XVI-2 and XVIII-2), the Committee asked for information demonstrating that the great majority of workers were entitled to paid public holidays through collective agreements or otherwise. It also asked under what circumstances work could be performed on public holidays and whether employees were entitled to time off in lieu and/or increased remuneration. The report does not answer these questions. The Committee therefore reiterates them.

In the absence of information allowing the Committee to consider whether the right to public holidays with pay is guaranteed, it concludes that the situation is not in conformity.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 2 §2 of the Charter on the ground that it has not been established that the right to public holidays with pay is guaranteed.

Article 2 – Right to just conditions of work

Paragraph 3 – Annual holiday with pay

The Committee takes note of the information contained in the report submitted by the United Kingdom.

The Working Time Regulations were amended in 2007 and as a result, annual paid leave entitlement was extended to 28 days. Financial compensation may not be offered as an alternative to such leave.

On the Isle of Man, the right to paid annual leave was introduced in September 2007 by way of the Annual Leave Regulations and the Annual Leave Order. Workers are entitled to four weeks' paid leave per year.

The Committee considers that annual leave exceeding two weeks may be postponed in particular circumstances prescribed by domestic law, the nature of which should justify the postponement. It asks again for information in the next report on the rules on the postponement of annual leave.

In its previous conclusion (Conclusions XVIII-2), the Committee considered that the situation was not in conformity on the ground that workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time. According to the report, the Government is currently examining the impact of two recent judgments of the European Court of Justice (Stringer and Pereda)² and how they apply to rules governing working time. As there was no change in the situation during the reference period, the Committee renews its finding of non-conformity.

2. ECJ, 20 January 2009, Case No. C-520/06, Stringer e.a. v. Her Majesty's Revenue and Customs; ECJ, 10 September 2009, Case No. C-277/08, Pereda v. Movilidad SA.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 2 §3 of the Charter on the ground that workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time.

Article 2 – Right to just conditions of work

Paragraph 4 – Reduced working hours or additional holidays in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by the United Kingdom.

The Committee refers to the statement of interpretation it made on Article 2 §4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2 §4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protection measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk. Article 2 §4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter. Under no circumstances, however, can financial compensation be considered appropriate under Article 2 §4 (*Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2 §4).

The Committee refers to its conclusion under Article 3 of the Charter (Conclusions XIX-2) which describes the dangerous occupations performed and the preventing measures taken in this regard.

According to the report, in July 2006, the Government published guidelines for employers on managing the risks associated in particular with dangerous work. This tool takes account of the type of work, commuting time, the number and frequency of breaks and shift lengths. It highlights the points in the shift schedule where fatigue and risk are highest so that employers can

reduce risks by changing work schedules or working hours or incorporating more breaks.

In its previous conclusion (Conclusions XVIII-2), the Committee concluded that the situation in the United Kingdom was not in conformity with Article 2 §4 of the Charter as there is no provision in legislation for reduced working hours or additional holidays for workers exposed to occupational health risks coupled with the fact that no evidence was given demonstrating that such measures were provided by collective agreement or by other means. It asked for information on specific measures taken to reduce exposure to risks in occupations or involving work processes where it has not been possible to eliminate all residual risks, in particular in those occupations typically considered as dangerous and unhealthy. The Committee notes that the guidelines published by the Government do not form a binding legal basis and that there is still no provision in United Kingdom legislation for working hours to be reduced or additional leave to be granted to workers engaged in dangerous or unhealthy occupations. It therefore reiterates its finding of non-conformity.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2 §4 of the Charter on the ground that it has not been established that measures reducing exposure to risks are provided.

Article 2 – Right to just conditions of work

Paragraph 5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by the United Kingdom.

The Committee refers to its previous conclusion (Conclusions XVIII-2), in which it gave a list of situations in which it was possible to postpone weekly rest periods and work for more than 12 consecutive days. It found the list to be very broad-ranging and to contain few safeguards. It concluded that the situation was not in conformity with Article 2 §5 of the Charter.

As there was no change in the situation during the reference period, the Committee renews its finding of non-conformity.

As regards Sunday work in 2006, 16% of all persons in employment and in 2008, 15.1% of all persons in employment worked regularly on a Sunday.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2 §5 of the Charter on the grounds that there are inadequate safeguards to prevent that workers may work for more than twelve consecutive days without a rest period.

Article 4 – Right to a fair remuneration

Paragraph 1 – Decent remuneration

The Committee takes note of the information contained in the report submitted by the United Kingdom.

In its previous conclusion the Committee held that the situation was not in conformity with Article 4 §1 of the Charter on the ground that the minimum wage fell far below the threshold of 60% of the average wage.

It now notes from the report that in 2008 the adult rate of the United Kingdom National Minimum Wage (NMW) amounted to £ 5.73 (€6.90) gross per hour. According to the report the NMW has increased substantially faster than both average earnings and prices, especially since 2001. Since it was introduced in 1999, it has risen by around 59% up to October 2008. The Government takes advice on NMW rates from the independent Low Pay Commission. The aim when setting the rates is to help the low paid through an increased minimum wage, while making sure that no damage is done for their employment prospects by setting these rates too high.

As regards the minimum wage as a per cent of median earnings (the so called NMW bite), the Committee observes from the report that it is higher in low paid sectors such as hotels and restaurants, cleaning, hairdressing etc. On average, in all sectors it represented around 50% of the median wage in 2008. The report also describes the system of tax credits which aims at achieving fairness combined with flexibility in the labour market. The Committee observes that when combining the NMW with tax credits, a single person in October 2009 earned £197 (€237) per week.

The report does not provide information on the average wage. The Committee notes from Eurostat that the average gross annual earnings in industry and services in 2007 amounted to €46 050. The Committee notes from OECD³ that the minimum relative to average wage of full-time workers represented 46%.

3. <http://stats.oecd.org/Index.aspx?DatasetCode=MIN2AVE>.

Taking all elements at its disposal into account, the Committee still considers that the situation is not in conformity with the Charter. Despite a number of efforts aimed at improving the overall situation of minimum wage earners, and notwithstanding the fact that the pound value of the minimum wage has gone up during the reference period, this wage remains low and cannot be considered fair in the meaning of the Charter.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 4 §1 of the Charter on the ground that the minimum wage is manifestly unfair.

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by the United Kingdom.

The report shows that there have been no changes to the situation which has previously been considered as not being in conformity with the Charter.

The Committee recalls that both the threshold marking the beginning of overtime as well as the pay rates for overtime are determined freely between the employer and employee (usually by agreements at company level). According to information by the Government (Governmental Committee, Report concerning Conclusions XVIII-2, T-SG(2009)3) this aspect of the English Law of Contracts will not be changed.

The report fails to provide evidence that all workers are actually paid for overtime at an enhanced rate or compensated with leave of a longer duration than the overtime worked.

Moreover, the Committee notes from another source⁴ that there are around five million United Kingdom employees who regularly work unpaid overtime (an average of 57 days a year without being paid).

Accordingly, given the absence of evidence that all workers received increased remuneration for overtime, and the fact the law does not guarantee an enhanced pay rate and/or time off in lieu, the Committee reiterates that the situation is not in conformity with this provision.

4. Trades Union Congress (IUC), Annual Survey, 2010.

It also asks the next report to provide information on the activities of the Labour Inspection in respect of any breaches related to the failure to pay overtime wages.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4 §2 of the Charter on the grounds that workers do not have adequate legal guarantees ensuring them increased remuneration for overtime.

Article 4 – Right to a fair remuneration

Paragraph 4 – Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by the United Kingdom.

It points out that the situation in the United Kingdom has never been found to be in conformity with Article 4 §4 of the Charter because notice periods for employees with fewer than three years' service are too short. From the report, the Committee notes that there has been no change in the situation in this respect. Notice periods are established by the Employment Rights Act of 1999 but individual employment contracts may set longer periods. In order to establish that reasonable notice periods are guaranteed, the Committee asks for the next report to contain examples of notice periods negotiated by the parties to an employment contract.

The Committee notes that in 2006, a new Employment Act came into force on the Isle of Man. The Act has enhanced some of the rights connected with notice periods granted under the previous Act of 1991. In particular, it has extended the right to notice periods to all full-time and part-time employees irrespective of the number of hours they work.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4 §4 of the Charter on the ground that notice periods for employees with less than three years' service are too short.

Article 4 – Right to a fair remuneration

Paragraph 5 – Limits to deduction from wages

The Committee takes note of the information contained in the report submitted by United Kingdom.

In its previous conclusion (Conclusions XVIII-2) it was not possible to establish whether there was any limit on deductions from wages. According to the report the National Minimum Wage Act 1999 protects workers from deductions which may deprive them of the minimum subsistence level. Accordingly, employers may not make deductions which would reduce pay below the national minimum wage, even if the employee has given written permission to do so. The only exception to this rule are deductions from wages related to housing. Following recommendations from the Low Pay Commission, the amount which can be deducted for housing provided by the employer has been increased from £4.46 to £4.51 per day. This increase took effect on 1 October 2009. The Committee asks if the National Minimum Wage Act applies to all forms of deductions, including trade union dues, fines, maintenance payments, repayment or wage advances, etc.

The Committee points out that the aim of Article 4 §5 is to ensure, firstly, that it is only possible to make deductions from wages under certain well defined circumstances prescribed by a legal instrument (a law, a regulation, a collective agreement or an arbitration award) and, secondly, to ensure that reasonable limits are placed on such deductions.

The Committee considers the prohibition on making deductions from the minimum wage guaranteed by the National Minimum Wage Act 1999 to be in conformity with Article 4 §5 of the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the United Kingdom is in conformity with Article 4 §5 of the Charter.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by United Kingdom.

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and per-

sonal scope) in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion, in particular on grounds of non-conformity retained in the last conclusion (Conclusions XVIII-1).

Forming trade unions and employer associations

In the previous conclusion (Conclusions XVIII-1) the Committee noted that Section 174 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended by Sections 33 and 34 of the Employment Relations Act 2004, made it possible to exclude union members for reasons linked exclusively or mainly to the fact they have taken part in the activities of a political party but exclusion could not be carried out merely because they were affiliated to the party. It considered that this constituted an excessive interference with trade union membership conditions. In 2007 the European Court of Human Rights ruled on a case where a trade union was prevented from excluding a member who was affiliated with an extreme right party despite the fact that membership of this party was contrary to the union's rules (*ASLEF v. United Kingdom*, judgment of 27 February 2007). The Court, which referred to the Committee's conclusion and case law on Section 174 of the 1992 Act, held that this constituted a violation of Article 11 of the European Convention of Human Rights which guarantees the right to freedom of association. Section 19 of the Employment Act 2008 has since broadened trade unions' ability to exclude or expel members and made it possible for a union to exclude or expel on the grounds of political party membership where membership of that party is contrary to the rules of the union, or contrary to an objective of the union. The Government attempted to balance competing human rights, i.e. freedom of expression of the individual member and freedom of association of unions, and decided in line with the Court's judgment to provide the following conditions for an exclusion or expulsion to be lawful: the decision to exclude or expel must be taken in accordance with the union's rules; the decision must be taken fairly; exclusion or expulsion must not cause the individual to lose their livelihood or suffer exceptional hardship. The Committee notes that while the Employment Act 2008 was enacted during the reference period, the entry into force took place after the reference period in April 2009. It thus reserves its position until the next report, and will examine the situation in the light of examples to be provided in the next report of how it is applied and interpreted by domestic courts.

In its last conclusions (Conclusions XVI-1, XVII-1 & XVIII-1) the Committee considered that Section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992, which makes it unlawful for a trade union to indemnify an

individual union member for a penalty imposed for an offence or contempt of court, constituted an unjustified incursion into the autonomy of trade unions. The Government previously stated that Section 15 encourages union officials to act responsibly and prudently. However, the Committee previously noted that there was no positive right to strike under domestic law for employees and that the scope for workers to defend their interests through lawful collective action was excessively restrictive (Conclusions XVIII-1, Article 6 §4). In addition, it notes that employees participating in collective action do not have immunity against civil wrongs or criminal offences committed in the course of any collective action, such as intentional damage to property or unlawful trespass, e.g. by entering premises without the employer's authorisation or by staging a "sit-in" on the premises of the enterprise. Furthermore, an employer can apply for an interim injunction requiring an industrial action not to go ahead or to cease (for example if one of the formal requirements for a collective action to be considered lawful has not been met). If the organisers or individuals do not obey the injunction, they will be in contempt of court. In light of the above, the Committee concludes again that Section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992 is incompatible with the Charter.

In its last conclusions (*ibid*) the Committee also found that Section 65 of the aforementioned Act, which severely restricts the grounds on which a trade union might lawfully discipline members, constituted another unjustified incursion into the autonomy of trade unions. The Government stated that it did not consider this provision excessively restrictive as the law provides sufficient scope for unions to discipline their members for serious misdemeanours, including financial irregularities or bringing the union into disrepute. The report indicates that the Government's position regarding these two provisions has not changed. The Committee considers that, insofar as Section 65(2)(a) prohibits sanctions linked to the failure of a union member to participate in or support a strike or other industrial action, or to a union member's opposition or lack of support for this action, this provision continues to constitute an unjustified incursion into the autonomy of trade unions.

Trade union activities

In its last conclusion (Conclusions XVIII-1) the Committee enquired about the planned strengthening of individual rights in respect of trade union activities at recruitment, during employment and at termination of employment. According to an official source,⁵ the Committee notes that, according to Employment Act 2006, a worker has the right not to suffer any detriment for

union membership or activities notably in terms of career or dismissal. Employees who are members of a trade union have the right to time off for trade union duties – notably in relation to collective bargaining – and activities. All these rights are enforceable with competent local courts and compensation may be awarded. The Committee considers the situation to be in conformity with Article 5 in this respect.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 5 of the Charter on the ground that Section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992, which makes unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and Section 65 of this Act, which severely restricts the grounds on which a trade union may lawfully discipline members, represent unjustified incursions into the autonomy of trade unions.

Article 6 – Right to bargain collectively

Paragraph 1 – Joint consultation

The Committee takes note of the information contained in the report submitted by the United Kingdom.

Having found British joint consultation mechanisms in the public and private sector and at national, sectoral and company level to be in conformity with Article 6 §1 since 2002 (Conclusions XVI-1), in these conclusions the Committee will focus exclusively on recent developments.

In reply to a request for additional information by the Committee, the report specifies that the Regulations implementing the EC Directive establishing a general framework for informing and consulting employees in the European Community (2002/14/EC) came into force on 6 April 2005 for organisations with 150 or more employees, 6 April 2007 for organisations with 100 or more employees and 6 April 2008 for those organisations with 50 or more employees. The regulations apply to public and private undertakings which carry out an “economic activity”, including non-profit making organisations, public sector bodies who undertake commercial activity, but not central government departments.

5. The Isle of Man Government’s website: <http://www.gov.im/ded/employmentRights/rights.xml>.

The Committee notes that the obligation on employers to inform and consult does not operate automatically. It asks the next report whether the triggering of the obligation in practice is controversial or not.

The Committee also notes that a failure to inform and consult under either a negotiated agreement or the standard provisions can result in a complaint being taken to the Central Arbitration Committee (CAC). Complaints can be made by any individual employee, or a representative of the employees such as a trade union official. If the complaint is upheld, the CAC could order the employer to comply with the relevant requirements of the negotiated agreement or of the standard provisions. The complainant can also apply to the Employment Appeal Tribunal for a financial penalty to be imposed on the employer of up to £75 000.

The report further points out that on 6 April 2007, the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 came into effect. These require employers with a hundred or more employees to consult affected members of the pension scheme (or their representatives) before making a significant change to their work-based pension scheme. On 6 April 2008, employers with 50 or more employees came within scope of the Regulations.

Conclusion

The Committee concludes that the situation in the United Kingdom is in conformity with Article 6 §1 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 2 – Negotiation procedures

The Committee takes note of the information contained in the report submitted by United Kingdom.

In its previous conclusion (Conclusion XVIII-1), it noted that following the judgment of the European Court of Human Rights in the *Wilson, NUJ and others* case, the Employment Relations Act (ERA 2004) made it unlawful for employers to offer financial incentives to induce workers to exclude themselves from the scope of collective bargaining. However, as United Kingdom law permits financial incentives to be offered for other purposes, the Committee deferred its conclusion requesting that the next report clarify:

- under which circumstances the financial incentives would not be deemed to be made with the sole purpose to undermine collective bargaining agreements;
- whether workers have the right to claim that employers made offers to co-workers in order to induce them to surrender their union rights and whether trade unions can claim a violation of the right to collective bargaining in such cases.

In reply, the report explains that:

- According to the law, it is for the employer to show what was his sole or main purpose in making the offers was. Employment Tribunals are accustomed to apply the “sole or main purpose” test and therefore will distinguish between cases where offers are made for the purpose of, in effect, achieving derecognition of a union and cases where they are made for the purpose of retaining or rewarding valuable staff;
- The ERA 2004 does not provide workers who did not receive an offer with the right to complain about the making of offers to co-workers. Additionally, the Act also does not create a free-standing right for a trade union to appeal about infringement of its own right to collective bargaining.

The Committee understands from this information that only workers having received an offer of financial inducement may complain. Moreover, trade unions do not have a free standing right to claim a violation of the right to collective bargaining in such event. Therefore the Committee holds that under Article 6 §2 of the Charter the free and voluntary character of the right to bargain collectively is not sufficiently guaranteed in the particular circumstances at stake.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 6 §2 of the Charter on the grounds that:

- workers do not have the right to bring legal proceedings against employers who made offers to co-workers in order to induce them to surrender their union rights
- and, in such cases, trade unions too cannot claim a violation of the right to collective bargaining.

Article 6 – Right to bargain collectively

Paragraph 3 – Conciliation and arbitration

The Committee notes from the report submitted by the United Kingdom and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6 §3 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in the United Kingdom is in conformity with Article 6 §3 of the Charter.

Article 6 – Right to bargain collectively

Paragraph 4 – Collective action

The Committee takes note of the information contained in the report submitted by United Kingdom.

Meaning of collective action, Permitted objectives of collective action, Who is entitled to take collective action?

In its previous conclusions (Conclusions XVII-1, Conclusions XVII-1) the Committee found that lawful collective action was limited to disputes between workers and their employer, thus preventing a union from taking action against the de facto employer if this was not the immediate employer. It furthermore noted that British courts excluded collective action concerning a future employer and future terms and conditions of employment in the context of a transfer of part of a business (University College London NHS Trust v UNISON). The Committee therefore considered that the scope for workers to defend their interests through lawful collective action was excessively circumscribed in the United Kingdom. Given that there have been no changes to the situation, the Committee reiterates its finding that the situation is not in conformity with Article 6 §4 of the Charter in this respect.

Restrictions on the right to take collective action

The Committee asks for updated information as to whether section 235A of the Trade Union and Labour Relations (Consolidation) Act 1992 (which provides for the possibility for third parties to obtain an injunction against a trade union organising industrial action under certain conditions) has been used to try to stop strike action.

Procedural requirements pertaining to collective action

The Committee considered in its previous conclusions (Conclusions XVII-1, XVIII-1) that the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive (even the simplified requirements introduced by the Employment Relations Act (ERA)2004). As there have been no changes to the situation, the Committee reiterates its finding that the situation is not in conformity with Article 6 §4 of the Charter in this respect.

Consequences of collective action

Pursuant to the ERA 2004, workers participating in lawful industrial action are protected against dismissal for twelve weeks. The Committee previously held the period of twelve weeks beyond which those concerned lost their employment protection to be arbitrary. It notes from the report that 96.5% of all industrial actions last less than 12 weeks. The report specifies that days on which employees are locked out from their workplace by their employer do not count towards the protected period. Furthermore, employers are obliged to take all reasonable procedural steps to resolve the dispute with the union before dismissing any employees after the end of the protected period. However the Committee previously considered that this did not alter its view of the situation. The situation has not changed in this respect and therefore the Committee reiterates its conclusion of non-conformity.

The Committee had previously held that the United Kingdom is not in conformity with Article 1 §2 of the Charter because under Section 59 of the Merchant Shipping Act seamen on strike may face criminal sanctions. The Committee then decided to deal with this issue under Article 6 §4 of the Charter. The previous report stated that Section 59 of the above mentioned Act must be read so as to be in conformity with the Human Rights Act 1998 which incorporates the European Convention of Human Rights into United Kingdom law. Therefore, according to the report a sanction could not be imposed on a striking seaman unless such action endangered the life of persons, etc. However, the Government again states that it nevertheless intends to amend the relevant legislation. The Committee wishes to be informed of any developments in this respect and reserves its position on this point.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 6 §4 of the Charter on the following grounds:

- the scope for workers to defend their interests through lawful collective action is excessively circumscribed;
- the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive;
- the protection of workers against dismissal when taking industrial action is insufficient.

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