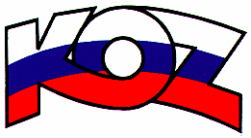

Comments

on the Fourth Report of the Slovak Republic on the implementation of the European Social Charter for the reference period from 1 January 2003 to 31 December 2004

March 2006

General background

On 20 March 2006, within the meaning of Article 23 of the European Social Charter, the Government of the SR has communicated KOZ SR (Confederation of Trade Unions of the SR) as the employees' representative which is a member of the international organisation, that is invited to participate in the meeting of the subcommittee of the Government Committee for Social Issues, a copy of the fourth Report on the implementation of the European Social Charter by the Slovak Republic for the reference period of 2003 – 2004, in which it evaluates the compliance with the obligations contained in Article 1 paragraph 4, in Articles 2, 3, 4, 9, 10, 15 of the Charter and in Articles 2 and 3 of the Additional Protocol.

We need to note at the outset that in the period until 30 November 2004, the Government of the Slovak Republic interrupted the social dialogue at national level and subsequently repealed the Tripartite Act and adopted a number of regulations and legislative amendments which lead not only to the removal of the institutionalisation of the social dialogue but also to the elimination of the influence of employees on the improvement of their living and working conditions. The Government repealed the acts on the tripartite representation of employees in the public-law institutions, such as the Offices of Labour, the Social Insurance Agency, Health Insurance and others that administer the moneys of employees that are transferred for pension and health insurance, unemployment insurance etc., whereby it practically also precluded the opportunity to discuss with social partners the use of the active labour policy funds, the use of the European Structural Funds and those on the building of the civil society.

Subsequently, from 1 December 2004, on the basis of the initiative of KOZ SR, the Government of the SR signed under pressure from international organisations a Declaration on the Renewal of Social Dialogue in the Council for the Economic and Social Partnership.

The Government of the SR, in the majority of cases, did not accept the comments of KOZ SR on the prepared acts in the area of work, wages, social affairs, healthcare, education, science and culture but also in the economic sphere.

It is not the role of KOZ SR to evaluate the implications of the legislation on the implementation of the international treaty and their conformity with the European Social Charter. KOZ SR therefore only notes that the Fourth Report contains a list of the adopted regulations, the required statistics and assessments.

On selected provisions of the European Social Charter the Confederation of Trade Unions (KOZ SR) gives the following comments:

On the compliance with the obligation contained in Article 3 of the ESCH – The right to safe and healthy working conditions

In 2003, the original Standing Working Group of Social Partners for the Issues of Safety and Health Protection at Work was abolished by the decision of the Ministry of Labour, Social Affairs and Family (MLSAF SR). Subsequently, a Coordination Committee for Safety was set up at the MLSAF SR, as an advisory body of the Minister of Labour, Social Affairs and Family, which is currently addressing the issues pertaining to safety and health protection. However, trade unions, as an organisation that represents employees, are not represented on this advisory body, as is the rule in the case in all EU bodies, in which the issues regarding

safety and health protection at work are addressed, taking also the form of agreements of governments, employers and employees.

According to KOZ SR, the Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishes a general framework for informing and consulting employees in the European Community. Article 2 letter g) provides that "consultation" is the exchange of views and establishment of dialogue between the employees' representatives and the employer.

Within the meaning of §11 (a)(1) of the Act No.311/2001 Coll., the Labour Code, the employees' representatives include: the competent trade union, the works council, or the personnel delegate. Subject to a special regulation, the representative for safety and health protection at work is also an employees' representative. This provision lays down that in the case of a trade union it must be the competent body – specialised within its own structure. In the case of a works council, or a personnel delegate, the competency is not required. In employees' safety representatives, the competency is not required either. That means, the provision lacks concrete reference to the competency of these representatives, (for certain issues, or within the structure of these bodies) and also whether one employees' representative or personnel delegate suffices in the consultation, or whether there should be present representatives of every section – whose issues the organisation is currently dealing with. No regulation or framework directive provides for a corresponding procedure for safety representatives in the given system. This is then reflected in the quality of social relations (lacking interpretation – guideline permits opportune steps within the law) and does not encourage social dialogue between employees and employers, as provided for by the objectives of the Community – in Article 136 of the Treaty, to which Article 1 of the introduction of the Directive 2002/14/EC of the European Parliament and the Council of 11 March 2002, establishing a general framework for informing and consulting employees in the European Community, makes reference.

To Point 22 which deals with recoding and registering of employment injuries and occupational diseases, only an ordinance of SÚBP and SBÚ to No. 111/1975 Coll on recording and registering Employment injuries ... as later amended, is referred to, with further reference to §195 of the Labour Code on employment injury, without any further requisites. Here belongs also Act No. 461/2003 Coll. on social insurance, which in a range of provisions implements indemnification for employment injuries and occupational diseases, and must be regarded important in the protection of life and health of employees at work. The Government report lacks that.

In the reply to question B measures have been listed for the protection of health and safety of workers engaging in hazardous and health-detrimental works, which are provided for in the Act No. 272/1994 Z Coll. on the protection of people's health. Namely in categories 3 and 4 of the works involving risk, in the section - „Other measures to prevent the incidence of diseases conditioned by work and to reduce their occurrence, which the health protection authorities take include, inter alia, the restriction of the effects of work factors detrimental to health and the working environment of employees".

This is contradicted by provision of § 97 paragraph 11 of the Labour Code, where the employer is given a possibility to agree overtime for the risks, in categories 3 and 4 works, where health is directly damaged.

On the compliance with the obligation contained in the ESCH in Article 9 – The right to vocational guidance

It is difficult to evaluate the quality, effectiveness and the meaning of vocational guidance, when actually there is no possibility of selecting a suitable job for the person to whom this guidance should serve. This is particularly true for the regions with highest rate of unemployment. This situation then results in a latent economic migration and very differentiated results in the solution of social problems, from the regional aspect.

This is also why, KOZ SR maintains, that to narrow down the problem, for example, to making a sweeping statement of whether services provided by the public sector are poor quality, inefficient and worse than private, is deliberate. On the contrary, KOZ SR has practical knowledge also of the fact that guidance may be equally of good quality and efficiency in the state as in the private sector. What is decisive, are the people who engage in it.

The information given in the position of MLSAF SR describes essentially truthfully the current situation in the vocational guidance in the SR from the aspect of the activities employed; however it covers only little the essential characteristics and the results of this activity, particularly with regard to the persons with altered work capacity and the groups at risk. In their cases it is possible, also with the support of the counselling activity, to conclude an employment relation, but in most cases it is short-lived. This holds particularly painfully and tragically for persons with altered capacity, coming moreover under the so-called jobseeker groups at risk, and, recently, for persons who return to the market after fighting off a serious illness (e.g. of oncologic nature, infarction, etc). In their case, they are dismissed shortly after returning to work, most frequently under the pretence of organisational change. In such cases – that at present occur to an ever-increasing degree – the guidance is minimally effective, almost worthless, because the man – in the words of the persons concerned – lost the sense of his existence. We see the cause in inadequate incentives for the employer and his effort to take advantage of the options to select from the still existing surplus of the labour force on the Slovak labour market.

The selection and training of persons who are to provide guidance and information activity is a long-term task influencing, to a large extent, this activity. These issues have not been paid sufficient attention in the evaluation. KOZ SR maintains that it would be appropriate to address the issues of career guidance of the staff carrying out career guidance and counselling.

No fundamental changes occurred, either in the vocational guidance within education, or vocational guidance in the labour market, compared to o the preceding years, because neither the ministry of education nor any other ministry began to implement, in tangible form, the so frequently cited and necessary adjustment of schools to the needs of the labour market. The current situation is to a large extent due to the erosion of the system of apprentice schools and their distortions in the period of restructuring of the economy and the society. In our view, the introduction of compulsory 12-year schooling might, at least partially, contribute to the improvement of the situation.

According to KOZ SR, the Internet portal ISTP – Integrated System of Type Positions – proves very useful and practical for the solution of many questions related to employment, but its use is not at a desirable level yet. At the same time, it serves a good example of the application of the methods of good practice, whose examples positively tested in practice, particularly in advanced EU Member States, should be implemented, to a greater extent, also in the vocational guidance and other employment services.

We positively rate the efforts of the Centre of Labour, Social Affairs and Family to test, initially at least experimentally, the potential for implementing certain new activities and use also the ESF funds for the purpose.

With regard to the evaluation of Article 9 of the ESCH, KOZ notes that there, too, are resources and opportunities that have not been used for efficiency and quality increases. With regard to citizens with altered work capacity Slovakia lacks a sophisticated system of their social inclusion, including effective motivation of employers through a systemic links of the labour market policy with other economic and social policies, sectoral in particular.

KOZ would like seeing the MLSAF SR innovate the range of active labour market policy tools also from this aspect.

For the employers to learn comprehensively to understand, judge and solve the above problems, KOZ SR proposes to launch an information and education campaign titled It Pays to Employ.

On the compliance with the obligation contained in the ESCH in Article 15 – The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement

In the view of KOZ SR, the Slovak Republic does not provide sufficient number of state social benefits supporting directly the families with disabled children. Child allowances are provided within the benefits provided to all families. However, these benefits are very low and, when compared with the actual living costs, they do not provide even a fraction of resources necessary for a decent life of families with children. These allowances are particularly inadequate for the families with disabled children.

Through changes in the legislation governing the child allowances and the introduction of tax bonus for parents engaging in economic activity, socially dependent families have been affected in a significant way, among them many families with disabled children. As social benefits are not taxable in the SR, the parents dependent on social benefits (unemployed, pension beneficiaries, lone mothers on maternity and parental leave, etc.) have nothing to deduct the tax bonus from in respect of a child. In these cases, parents customarily take care of the disabled child themselves, which means that at least one of them has to cease work. Based on the legislative changes above, the income of the low-income families from child allowances fell 390, 330 and 180 SKK per month, according to the age of the child in respect of which the allowance was provided.

KOZ SR disagreed fundamentally with the reduction of the benefit for families living on social income, but the Government of the SR did not accept these objections.

Within the meaning of the Act 461/2003 Coll. on social insurance, as later amended, the new definition of invalidity is measured in percentage, as a rate of decrease in the capacity to engage in gainful activity. Where this decrease is less than 40%, the citizen is not regarded as a person with disability entitled to invalidity pension, although he may have multiple disability assessed with up to 40%-decrease to engage in gainful activity. He may, for example, have 3 disabilities at 39% but the rate of disability is not added up. Such assessment is much stricter than that under the former legislation effective until 31 December 2003. Equally, the tables scoring individual disability are significantly stricter and caused elimination of a large number of disabled citizens from entitlement to invalidity pension. In keeping with the Act No. 461/2003 Coll. on social insurance, as later amended, over the

course of 2004 and 2005, the health state of all invalidity pension beneficiaries have been reviewed.

On the compliance with the obligation contained in the Additional Protocol to the European Social Charter of 1998 in Article 2 - The right to information and consultation

The employees' rights to information are provided for under the Labour Code. The beneficiaries of this right are either employees directly (where no employees' representation body has been established in an employer), or their representatives, namely a trade union body and a works council. The employer's obligation to inform is specifically expressed for the case of insolvency and collective dismissals. The obligation of the employer to inform about his insolvency has been transferred from the Labour Code to the Act No. 461/2003 Coll. on social insurance.

After discussing collective redundancy with employees' representatives, the employer is obliged to submit information in writing on the results of the deliberations to:

a) the competent labour office,
b) the employees' representatives.

As regards the right to consultation, the Labour Code accords this right to the employees' representatives. In the case of parallel operation of the trade union body and the works council in an employer, the right to consultation (deliberation) does not belong to the trade union body, but only to the works council.

Employees' representatives are installed through the election. In the case of the works council, the way of the election, the active and passive voting right, as well as the minimum number of members, is provided under § 234 of the Labour Code. In the case of a trade union body, these issues are provided for in the Statutes and the Election Rules of the trade union organisation.

In practice, employers neglect the right to information in respect of employees and their representatives, particularly because the SR legislation does not provide for adequate punishment for incompliance with this obligation. In the case of the right to consultation (deliberation) the employer, as a rule, does not take into account the position of the employees' representatives.

Failure to comply with the right to consultation is directly sanctioned by the Labour Code only in the case where the employer would give a notice to an employee, or would immediately terminate employment relationship with him. In such a case his legal act is null and void.

The SR legislation does not stipulate a detailed procedure for informing and consulting, neither the frequency of the provision of information and consultations. If there is a trade union in an employer, it is, as a rule, provided for in the collective agreement.

As regards the right to consultation, under the Labour Code, the employer is obliged to discuss with the employees' representatives in advance the following in particular:

- the status, structure and the anticipated development in employment and the measures planned, particularly when employment is threatened;
- essential issues concerning the corporate social policy, measures to improve the hygiene at work and the working environment;
- decisions that may result in essential changes in the organisation of work, or the contractual terms and conditions;

- organisational changes which entail reduction or discontinuation of the activity of the employer, or a part thereof, mergers and acquisitions, divisions, the change in the company' s legal status;
- measures to prevent accidents at work and occupational diseases and to improve health of employees.

For these purposes the employer should provide employees' representatives with the necessary information, consultation and documents and take into consideration their opinion to the extent possible.

The Labour Code does not establish the borderline when the employer is not obliged to provide information and consultation.

Conclusion

In conclusion KOZ SR considers it necessary to emphasise that the way in which the Government of the SR conducted the social dialogue in the reference period in adopting legislative changes is not consistent with the standards of the European social dialogue.