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REVISED EUROPEAN SOCIAL CHARTER

REPLY TO SUPPLEMENTARY QUESTION

Seventh report on the implementation of
the Revised European Social Charter

submitted by

THE GOVERNMENT OF SLOVENIA

(for the period 1/1/05 to 31/12/06:
Articles 1§2)

Report registered at the Secretariat on 30 May 2008

CYCLE 2008

EMPLOYMENT RELATIONSHIPS ACT

2. Obligations of the Employer

a) Obligation to Provide Work

Article 41 (Providing Work)

- (1) The employer must provide the worker with work agreed upon in the employment contract.
- (2) Unless agreed otherwise, the employer must provide the worker with all the necessary means and material for work he requires in order to fulfil his obligations uninterruptedly and ensure him access to business premises.

b) Obligation of Remuneration

Article 42 (Obligation of Remuneration)

The employer must ensure the worker appropriate remuneration for his work in accordance with the provisions of Articles 126 to 130, 133 to 135 and 137.

c) Obligation to Provide Safe Working Conditions

Article 43 (Safe Working Conditions)

The employer must provide the conditions for safety and health of workers in accordance with special regulations on safety and health at work.

d) *Obligation to Protect the Worker's Personality*

Article 44 (General)

The employer must protect and respect the worker's personality and take into account and safeguard the worker's privacy.

Article 45 (Protecting the Worker's Dignity at Work)

(1) The employer shall be obliged to provide such a working environment in which none of the workers is subject to employer's, superior's or co-worker's undesired treatment of sexual nature including undesired physical, verbal or nonverbal treatment or other sexually based behaviour which creates intimidating, hostile or humiliating relationships and environment at work and offends the dignity of men and women at work.

(2) The concerned worker's rejection of the treatment referred to in paragraph (1) may not represent the reason for discrimination in employment and at work.

(3) If in case of dispute the worker states facts which justify the assumption that the employer behaved contrary to paragraphs (1) and (2), it is the employer who has to supply the evidence.

*Article 46
(Protection of the Worker's Personal Data)*

(1) Personal data of workers can be gathered, processed, used and provided to third persons only if this Act or other laws stipulate, and if it is necessary in order to exercise the rights and obligations arising from employment relationship or related to employment relationship.

(2) Personal data of workers can only be gathered, processed, used and provided to third persons by the employer or the worker who is specially authorised to do so by the employer.

(3) If the legal basis for gathering personal data of workers does not exist any more, they shall be deleted immediately and no more used.

(4) The provisions of the first three paragraphs shall also apply to personal data of applicants.

APPENDIX

SECRETARIAT GENERAL

DIRECTORATE GENERAL OF HUMAN RIGHTS
AND LEGAL AFFAIRS

DIRECTORATE OF MONITORING

DEPARTMENT OF THE EUROPEAN SOCIAL CHARTER
THE HEAD OF DEPARTMENT
EXECUTIVE SECRETARY OF THE EUROPEAN COMMITTEE
OF SOCIAL RIGHTS

ESC 109
NC / SF



Ms Nataša Sax
Ministry of Labour, Family and Social
Affairs
Kotnikova 5
SL – 1000 Ljubljana

Strasbourg, 10 April 2008

Dear Ms Sax,

The European Committee of Social Rights is currently examining the 7th Slovenian report on the Revised European Social Charter and has instructed me to forward to you the enclosed question concerning Article 1§2.

The Committee would be grateful if you could reply to these questions before 30 May 2008 in order to allow the information to be taken into account in Conclusions 2008.

Yours sincerely,

Régis Brillat

10 April 2008

Question in respect of the 7th report of Slovenia

Article 1§2:

The Committee asks Slovenia to provide information allowing the Committee to assess how employees' individual dignity and freedom are protected by legislation or through case law of courts from interference in their private or personal lives that might be associated with or result from the employment relationship. It refers, to the comments made in the General Introduction to Conclusions 2006 below:

“c. Comment on Article 1§2 – Right to Private Life

13. Individuals must be protected from interference in their private or personal lives associated with or arising from their employment situation. Modern electronic communication and data collection techniques have increased the chances of such interference.

14. Since the term “private life” may be defined with varying degrees of strictness it may be preferable to speak of “infringements of private or personal life”.

15. In the first place, employers may place unnecessary restrictions on their employees' freedom of action. These include interference in their personal, or non-working, lives, even though the activities included in this autonomous sphere may be viewed as “public” because they occur in public. Examples include dismissing employees for attending a political rally or for buying a make of car in competition with that sold by their employer. The Charter's insistence that anyone is entitled to earn his living in an occupation freely entered upon (Revised Social Charter, Part I, 26 and Article 1§2) means that employees must remain free persons, in the sense that their employment obligations, and hence the powers of management, are limited in scope.

16. The principle is indisputable, even though it is sometimes difficult to determine the precise boundary between the occupational and non-occupational spheres, bearing in mind the nature of the work and the purpose of the business.

17. Admittedly, Article 1§2 only refers explicitly to the time when workers enter into employment. Logically, though, the fundamental principle of freedom which the Charter refers to with respect to this particular occasion must continue to apply thereafter in the non-work sphere. According to the Committee's case-law, “the discriminatory acts and provisions prohibited by this provision are all those which may occur in connection with recruitment and employment conditions in general (mainly remuneration, training, promotion, transfer, dismissal and other detrimental action)” (Conclusions XVI-1, Vol. 1, p. 313).

18. Secondly, employees must be protected against infringements of their dignity, as embodied in the Charter (Part I, Article 26, in which “dignity” appears in the title). What is at issue here is people's private lives in the strictest sense. For example, certain employers, taking advantage of their dominant position over employees, intercept oral or written conversations of their employees or of job seekers between themselves or with third parties or question them about their sexual relationships or their religious or political beliefs.

19. Infringements of the two principles described above take many diverse forms. They may arise from questions to employees or job seekers about their family situation or background, their associates, their opinions, their sexual orientation or behaviour and their health or that of members of their family and about how they spend their time away from work. They may also arise from the storage, temporarily or permanently, and processing of such data by the employer, from their being shared with third parties and from their use for purposes of taking measures regarding the employees.

20. In Articles 1§2 and 26, as cited above, the principles protecting employees from unnecessary interference in their personal or private lives are worded in the most general terms. However, it should not be overlooked that under various specific circumstances, violations of these principles can also constitute violations of other articles of the Revised Social Charter. This applies in particular to Article 3 (one of whose aims is to counter threats to workers' health, including their mental health), Article 5 (in relation to the right to join organisations and not to disclose that one is a member), Article 6 (in relation to collective bargaining), Article 11 (in relation to mental health), Article 20 (in relation to discrimination on the ground of sex), Article 24 (in relation, in particular, to paragraph a., on reasons for dismissal) and Article 26 (in relation to protection against various forms of harassment).

21. Quite apart from the fact that the various types of conduct described above are sometimes aggravated by an intention to discriminate, they may in themselves upset the balance between the needs of the workplace and the individual's right to protection."