



11 November 2002

RAP/Cha/**AU**/XX(2002)ADD

EUROPEAN SOCIAL CHARTER
REPLIES TO SUPPLEMENTARY QUESTIONS

Twentieth report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF AUSTRIA

(for the period 1 January 1997 to 31 December 2000:
Articles 2, 3, 4, 9, 10 and 15)

Report registered at the Secretariat on 11 November 2002

CYCLE XVI-2

QUESTIONS FOR AUSTRIA

Article 2 § 4

Having noted in the report that collective agreements provide for working hours which are shorter than the statutory normal hours in certain sectors (the chemical, metallurgical and metal processing industries, the iron and metalworking trade, the wood treatment industry, building and carpentry) the Committee asks whether the reduced hours apply only to work regarded as dangerous and unhealthy or whether they are of a general nature.

Reply:

The reduced hours provided for in the collective agreements are generally applicable to all employees working in the respective sectors.

As already stated in the 20th report, Austrian legislation aims in principle at the preventive avoidance of health and safety risks for employees (regulation instrument for preventive measures: Employee Protection Act; see information given in respect of articles 2 and 3).

In addition, equalisation measures are envisaged for particularly dangerous work in the Act regulating heavy work at night (reduced hours by means of longer rest periods, and entitlement to more leave). This act refers to the type of work and not the sector. As regards the conditions to be met in order to be eligible for additional equalisation benefits, please read the detailed comments/reply to the additional question to article 2, para 4.

Article 4 § 1

Having noted that certain collective agreements provide for minimum wages which fall below 10,000 ATS gross per month (8,235 ATS net) and having also noted the statement in the report that the wages actually paid are „usually“ higher than these minimum rates, the Committee requests the Government to provide evidence indicating that this is the case for all workers, including illustrative examples.

Reply:

Evidence of individually agreed higher pay for all employees whose minimum wages in the respective collective agreements fall short of ATS 10.000.- gross per month cannot be furnished since no assessment or investigation has so far been carried out in this respect.

However, the employee categories mentioned in the 20th report show that the low minimum wages are currently stipulated in very few collective agreements only and thus cover but a small percentage of employees on the one hand, and, the 20th report records initiatives on the part of the Austrian Trade Union to achieve a minimum wage of € 1.000 in collective agreements on the other hand, as pointed out by employee interest groups.

Article 4 § 3

1. The Committee took note in a previous report that the equal pay requirement refers to equal work and any comparable work with the enterprise. It asks whether there has been any development as far as the later point is concerned.

Reply:

The principle of equal pay for equal work or any comparable work is further defined in section 2, para 2 of the Equal Treatment Act in so far as collective legislation standards (collective agreements, occupational agreements) and occupational job ranking rules are required to adhere to this principle when assessing payment criteria and must not stipulate different criteria for work by women and work by men that would in turn lead to a discrimination.

The objective of this provision, introduced with the amendment to Federal Law Gazette No 833/1992 already, had been to illustrate the prohibition of any discrimination when determining pay and to ensure that diverging criteria for work by women and work by men would be adequately considered in collective agreements and be of such nature that any discrimination would be suo ipse excluded with the correct application of the latter.

Since the general pay policy falls within the competence of the interest groups representing employers and employees (the social partners) the concrete evaluation of individual burden criteria and their conversion in terms of pay rates rests with the social partners within the framework of collective pay policy. It is the responsibility of the social partners to arrange for collective agreements to provide for a regulation of pay criteria corresponding to the Equal Treatment Act.

In a resolution passed by the National Council in the spring of 1998 the then competent authority, the Federal Ministry of Labour, Health, and Social Affairs was requested to submit, in co-operation with the social partners, a study on income development, and to prepare gender-independent criteria for the abolition of pay differences between men and women. The study on income of men and women working on employee basis illustrates above all income differences and the respective development in the course of time, and offers also an analysis of the individual grounds for income inequality. It was published by the Federal Ministry of Economics and Labour in 2000 (as the by then competent ministry).

Furthermore, upon completion of a pilot study and the collection of international examples, a research project on „non-discriminatory evaluation and organisation of labour“ was commissioned by the Federal Ministry of Economics and Labour since a gender-neutral design of labour plays an important role in the implementation of the law. The objective of this project which is supervised by a social partner advisory body is the elaboration and implementation of analytical labour evaluations in individual enterprises and also the preparation of a practical guide.

2. It appears from the Austrian law that a dismissal is found to be unlawful, because ordered in retaliation, it is declared null and void. In that case, the employee has no right to reinstatement as such, as the employer may refuse to take him or her back in which case the employer must nevertheless pay the employee's wages by virtue of Article 1155 ABGB. The Committee asks how long the employer ought to pay the wage.

Reply:

In accordance with Austrian legislation an employer having given notice or issued a summary dismissal on the grounds of the sex of an employee or the obviously not unjustified assertion of claims according to the Equal Treatment Act has no possibility to refuse the further employment in the event of a successful appeal against such notice or summary dismissal according to section 2a, para 8 of the Equal Treatment Act.

Legal consequences of a successful appeal against a notice or summary dismissal on the grounds of the sex of an employee or an obviously not unjustified assertion of claims according to section 2a, para 8 the Equal Treatment Act:

Basic rule:

The right to appeal according to section 2a, para 8 of the Equal Treatment Act represents an individual right. It is to be understood as an individual protection not forming an integral part of the Industrial Constitution.

Notice:

The successful appeal against a notice renders the latter null and void. If the court decision is issued prior to expiry of the period of notice the employment relationship is not interrupted. If the court decision is issued upon expiry of the period of notice the employment relationship is shortly suspended but is continued retroactively as soon as the judgment has been given. The loss in pay during the interim period must be restituted by the employer to the employee in accordance with section 1155 of ABGB¹.

Summary Dismissal

In this case the employment relationship is terminated without delay but is reinstituted retroactively once the judgment has been passed.(see above)

The employer is entitled to accept the dissolution of the employment relationship though, e.g. because the relationship with the employer has (irretrievably) broken

¹ ABGB= Allgemeines Bürgerliches Gesetzbuch (Civil Code)

down, and may enforce his/her claim by legal action. Subject matter is in such a case the contractual claim to remuneration for the period that would have elapsed upon regular notice by the employer (i.e. non-discriminatory notice in due compliance with notice dates and deadlines) until the termination of the employment relationship (notice-related compensation).

As regards further aspects (in particular regulations in respect of the burden of proof) please see the respective statements in the 20th report.

3. In the event of violation of the equal pay principle, the Equal Treatment Act provides for the victim to be paid the difference. The Committee asks whether the victim, in addition to back pay, may claim for any form of compensation and also whether in such cases the employer may be liable to sanctions, either criminal or administrative.

Reply:

In line with current legislation no sanctions are provided in excess of the claim to payment of the open pay balance.

Discussions are under way, however, between the individual federal ministries as regards the implementation of the EU-Antidiscrimination Directives (Council Directive 2000/43/EC of 29th June, 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27th November, 2000, establishing a general framework for equal treatment in employment and occupation.)

Owing to the constitutional distribution of competence the implementation must be effected by both the federal and the provincial legislators.

As far as the federal government is concerned the implementation is envisaged to be incorporated mainly into the existing Equal Treatment Act currently regulating the prohibition of discrimination on gender basis in employment relationship matters.

Damage settlement in the event of a violation of the equal treatment provision constitutes a central topic in the discussions on implementing the EU-Anti-discrimination Directives.

The further development of these implementation discussions will have to be waited for.

A further amendment of the Equal Treatment Act is also envisaged in respect of the modification of Directive 76/207/EEC as adopted in the spring of 2002 and referring to the implementation of the equal treatment principle between men and women as regards access to employment, education, vocational training and career development, and also in the field of working conditions. Planned is the introduction of uniform damage settlement regulations covering not only material but also immaterial damage for both existing and new discrimination instances.

The next report in respect of article 4 will contain details of the legal measures adopted in the meantime.

APPENDIX

SECRETARIAT GENERAL

DIRECTORATE GENERAL OF HUMAN RIGHTS – DG II

SECRETARIAT OF THE EUROPEAN SOCIAL CHARTER
THE EXECUTIVE SECRETARY

HD/ESC 309
HK/SF



Strasbourg, 25 September 2002

Dear Ms Piffl-Pavelec,

In the context of its ongoing examination of the 20th Austrian report on the European Social Charter, the European Committee of Social Rights has raised questions regarding a number of provisions for lack of sufficient information. In order to have a more detailed picture of some specific issues, it has requested me to forward the enclosed list of questions to your authorities.

The Committee would be grateful if you could reply to these questions before 25 October 2002, to allow it sufficient time to take the information into account.

Yours sincerely,

Régis BRILLAT

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QUESTIONS FOR AUSTRIA

Article 2§4

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Article 4§1

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Article 4§3

1. The Committee took note in a previous report that the equal pay requirement refers to equal work and any comparable work with the enterprise. It asks whether there has been any development as far as the later point is concerned.
2. It appears from the Austrian law that a dismissal is found to be unlawful, because ordered in retaliation, it is declared null and void. In that case, the employee has no right to reinstatement as such, as the employer may refuse to take him or her back in which case the employer must nevertheless pay the employee's wages by virtue of Article 1155 ABGB. The Committee asks how long the employer ought to pay the wage.
3. In the event of violation of the equal pay principle, the Equal Treatment Act provides for the victim to be paid the difference. The Committee asks whether the victim, in addition to back pay, may claim for any form of compensation and also whether in such cases the employer may be liable to sanctions, either criminal or administrative.