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EUROPEAN SOCIAL CHARTER

Addendum to the
2nd National Report on the implementation of
the European Social Charter
submitted by

THE GOVERNMENT OF AUSTRIA

(Article 4§1, 4§3 and 28
for the period
01/01/2009 – 31/12/2012)

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CYCLE 2014

Reply to the additional questions submitted by the Committee of Social Rights regarding Austria's 2nd Report on the implementation of the Revised European Social Charter

Article 4 § 1 – Right to fair remuneration

The Committee noted from data provided by Statistics Austria (Allgemeiner Einkommensbericht 2012 – Tabelle unselbständig Erwerbstätige) that some wages paid to workers were particularly low in education and teaching; agriculture, forestry and fishing; hospitality and catering; and finance and insurance.

It would ask the Government of Austria to comment on the data. It would in particular like to know whether, in practice, seasonal or part-time employment is relevant in these sectors, in which case it would ask for data on full-time average monthly wages paid, net of social security and income tax dues.

Note: Upon request, the Council of Europe specified that the question referred specifically to the “Women and men” section of the “Net annual income of blue-collar workers by industry” table, showing especially low average wages in sections A, I, K, P, R, T and U.

Reply:

- Many of the ÖNACE 2008 sections referred to are relatively small industries (e.g. section U comprises activities of extraterritorial organisations and bodies; T concerns households with employees, A is agriculture, forestry and fishing, R is art, entertainment and recreation).
- Sections K (financial and insurance activities) and P (education) are by nature not industries dominated by blue-collar workers, i.e. the percentage of blue-collar workers working in those industries is very small.
- The percentage of full-time workers in those industry sections working all year round is clearly below average compared to the total number of workers (especially in section A - agriculture, forestry and fishing; P - education; U - activities of extraterritorial organisations and bodies).
- If we look only at the workers working full-time and all year round in those industries, the income gaps are considerably smaller (see table 1 and chart 1 enclosed).
- Other sources of income that are not reflected in the income tax data (e.g. tips, transfer payments for seasonal workers) may play an important role, in particular in section I (accommodation and food service activities).

Please find enclosed a table showing the net annual income in 2011 of blue-collar workers working full-time and all year round (net monthly income data for blue-collar workers by industry are not available) and a table giving the percentages of workers working all year round, full-time workers and full-time workers working all year round by ÖNACE 2008 sections.

One chart additionally illustrates the income gaps of all blue-collar workers in general and those working full-time all year round by ÖNACE 2008 section.



STAT_netto_arb_nac
eab_2011.xlsx

Article 4 § 3 - Right to a fair remuneration – Non-discrimination between women and men with respect to remuneration

The Committee asks whether in equal-pay litigation cases it is possible to make comparison of pay and jobs outside the company directly concerned.

Reply:

Wages and working conditions in Austria are generally governed by industry-specific collective agreements. Taking into consideration that the equal pay requirement, of course, also applies to collective agreements (cf. Section 11 of the Austrian Equal Treatment Act, *GIBG*), this in itself implies that regulations concerning the remuneration of employees which are binding not only at corporate or trans-corporate level but for the entire industry are the basis for these employment relationships and that the principle of equal pay for equal work or work of equal value has to be complied with when assessing the jobs.

From Austria's point of view, this fully meets the ECSR's requirement because the crucial assessment of the job and the fixing of the remuneration take place at industry level rather than at corporate level.

Differences among the companies may arise only if wages/salaries higher than specified in the binding provisions of the individual industry-specific collective agreements are paid, with these differences affecting men and women alike. If a prospering company, for example, pays its employees 20% more than required by the collective agreement (overpayment), this company is internally bound to the equal pay principle in the remuneration of its employees; however, this cannot be used as a reference for a different company in the same industry which cannot afford the same overpayment as the first company due to lack of commercial success. Hence it would be inappropriate to impose the remuneration scheme of the prospering company upon the less prospering/successful company by applying the remuneration comparison scheme claimed by the ECSR.

Furthermore, comparing the wages/salaries of different companies would require making the remuneration schemes public, which may produce data protection issues especially in smaller companies where the remuneration can easily be matched with individual employees.

Article 28 – Right of workers’ representatives to protection in the undertaking and facilities to be accorded to them

The Committee asks whether adequate compensation is granted in proportion to the damage suffered by a workers’ representative who has been dismissed.

Reply:

Works council members are under special protection against termination of employment according to Section 120 Para. 1 of the Austrian Labour Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*). Their employment relationship can be terminated only upon previous court approval, with the termination not having any legal effect otherwise. If the court’s approval is not obtained or granted, any employment termination imposed upon a works council member will be null and void. This special protection applies from the time of acceptance of being elected a works council member to three months after expiry of works council membership. Substitute works council members acting in place of a works council member who is not able to exercise his or her function for at least two weeks are under this special termination protection for a period of three months after acting as a substitute, provided that the business owner was notified without undue delay of the beginning and end of the substitute function.

The court is allowed to approve a termination only if one of the reasons set out in Section 121 *ArbVG* applies, i.e. if

- the business owner provides evidence in the case of permanently closing down or reducing the business, or in case of closing down individual business divisions, that he/she cannot continue to employ the works council member involved, despite the latter’s request, at a different workplace in the business or at a different company site without suffering substantial damage;
- the works council member concerned becomes incapable of doing the work agreed upon in the employment contract, if the capacity to work cannot be expected to return in the foreseeable future and the business owner cannot be expected to continue to employ said works council member or the business owner cannot be expected to accept that said employee carries out a different job that he/she agreed to be able to do;
- the works council member persistently violates his/her obligations conferred upon him/her by the employment relationship and the business owner cannot be expected to continue to employ said employee for reasons of violating discipline at work.

In the latter case, the court nevertheless has to deny its approval if the application is based on the behaviour of a works council member that occurred in exercising his/her function and if such behaviour was justifiable considering all circumstances.

The statutory provisions therefore aim at retaining the status as defined in the law. The employment relationship, and consequently the entitlement to remuneration, continue to exist.