EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

30 May 2006

REPORT ON THE MEETING WITH REPRESENTATIVES OF THE NORWEGIAN GOVERNMENT ON PROVISIONS OF THE REVISED EUROPEAN SOCIAL CHARTER NOT ACCEPTED BY NORWAY

Oslo, 28 March 2006

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Situation of Norway under the Revised Charter
1 January 2006

Ratifications

Norway ratified the European Social Charter on 26/10/1962: it accepted 60 of the Charter's 72 paragraphs.

Norway ratified Protocol No. 3 on "collective complaints" on 20/03/1997. It has not yet made a declaration enabling national NGOs to submit complaints.

Norway ratified the Revised Charter on 07/05/2001: it accepted 80 of the Revised Charter's 98 paragraphs.

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1*****	27.2	27.3	28	29	30	31.1
31.2	31.3							= Accepted provisions			

***** Sub-para. c acccepted.

Reports

Between 1964 and 2005, Norway submitted 22 reports on the application of the Charter and 3 reports on the application of the Revised Charter. The next report (on part of the non-core provisions) should be submitted before 31/03/2006.

The Charter in domestic law

Statutory ad hoc incorporation by specific implementing legislation.

Context of the meeting

The Oslo meeting took place in the framework of the new procedure for examination of non-accepted provisions – Article 22 of the 1961 Social Charter – agreed by the Committee of Ministers in December 2002[1].

The Deputies had decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights would review non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Experience had shown that states tended to forget that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation after five years and encourage them to accept more provisions.

In the case of Norway, the European Committee of Social Rights had agreed with the Norwegian authorities that it would meet representatives of various ministries in Oslo on 28 March 2006.

[1] Committee of Ministers decision of 11 December 2002.

Composition of the delegation and Government representatives

The Council of Europe delegation comprised the following persons:

Mr Andrzej SWIATKOWSKI, Second Vice-President of the European Committee of Social Rights (ECSR)
Mr Stein EVJU, General Rapporteur and former President of the ECSR
Mr Rolf BIRK, member and former President of the ECSR
Mr Henrik KRISTENSEN, Deputy Executive Secretary of the European Social Charter

The delegation held meetings with the following representatives of the relevant Ministries and Agencies:

Representatives of the Ministry of Children and Equality:

Senior adviser Hilde BAUTZ-HOLTER GEVING
Senior adviser Elisabeth SOLBERG HALVORSEN

Representatives of the Ministry of Government Administration and Reform:

Deputy Director General Odd BØHAGEN
Senior adviser Tanya M. SAMUELSEN

Representative of the Norwegian Maritime Directorate (appointed by the Ministry of Trade and Industry, Department of Regulatory Affairs and Shipping (NR)):

Adviser Unn C. LEM

Representatives of the Ministry of Labour and Social Inclusion:

Director General Gundla KVAM, Working Environment and Safety Department
Senior adviser Mona SANDERSEN, Working Environment and Safety Department
Adviser Cecilie SÆTHER, Working Environment and Safety Department
Adviser Linda GRAN, Department of Migration
Senior adviser, Else Pernille TORSVIK, Department of Labour Market Affairs

Tuesday 28 March 2006

PROGRAMME OF THE MEETING

Morning session: 9.30-12.30

OPENING STATEMENTS

- Representative of the Ministry of Labour and Social Inclusion, Director General Mrs KVAM
- Mr KRISTENSEN, Deputy Executive Secretary of the European Social Charter

EXAMINATION OF PROVISIONS

Article 2§7: Night work

- Presentation of Charter case law by Mr EVJU
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion and the Norwegian Maritime Directorate

Article 3§1: Health and safety and the working environment

- Presentation of Charter case law by Mr BIRK
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion and the Norwegian Maritime Directorate

Article 3§4: Occupational health services

- Presentation of Charter case law by Mr BIRK
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion and the Norwegian Maritime Directorate

Article 7§4: Length of working time for young workers under 18

- Presentation of Charter case law by Mr SWIATKOWSKI
- The Norwegian situation (law and practice): presentation by officials of Ministry of Labour and Social Inclusion

Article 7§9: The right to regular medical control for employed persons under 18 years of age

- Presentation of Charter case law by Mr SWIATKOWSKI
- The Norwegian situation (law and practice): presentation by officials of Ministry of Labour and Social Inclusion

11.00 – 11.15: Coffee break

Article 8§2: Illegality of dismissal during maternity leave

- Presentation of Charter case law by Mr BIRK
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion complimented by the Ministry of Children and Equality

Article 8§4: Regulation of night work of pregnant women, women who have recently given birth and who are nursing their infants

- Presentation of Charter case law by Mr BIRK
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion
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Article 8§5: Prohibition of dangerous, unhealthy or arduous work of pregnant women, women who have recently given birth and who are nursing their infants

- Presentation of Charter case law by Mr BIRK
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion

12.30: Lunch

<u>Afternoon session: 14.00-17.00</u>

Article 18§1: The right to engage in a gainful occupation in the territory of the other Parties - application of existing regulations in a spirit of liberality

- Presentation of Charter case law by Mr EVJU
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion

Article 18§2: Simplification of existing formalities and reduction of dues and taxes

- Presentation of Charter case law by Mr EVJU
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion

Article 18§3: Liberalisation of regulations

- Presentation of Charter case law by Mr EVJU
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion

Article 18§4: Right of nationals to leave the country

- Presentation of Charter case law by Mr EVJU
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion

Article 19§8 Guarantees concerning deportation

- Presentation of Charter case law by Mr EVJU
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion

15.30 – 15.45: Coffee break

Article 26§1: The right to dignity at work - sexual harassment

- Presentation of Charter case law by Mr SWIATKOWSKI
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion and the Norwegian Maritime Directorate, complimented by officials of the Ministry of Children and Equality and the Ministry of Government Administration and Reform

Article 26§2: Moral harassment

- Presentation of Charter case law by Mr SWIATKOWSKI
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion and the Norwegian Maritime Directorate, complimented by officials of the Ministry of Children and Equality

Article 27§1 (a, b): Participation in professional life
- Presentation of Charter case law by Mr SWIATKOWSKI
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion, complimented by officials of the Ministry of Government Administration and Reform

Article 27§3**:** Prohibition of dismissal for reasons relating to family responsibilities

- Presentation of Charter case law by Mr SWIATKOWSKI
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion

Article 29: The right to information and consultation in collective redundancy procedures

- Presentation of Charter case law by Mr BIRK
- The Norwegian situation (law and practice): presentation by officials of the Ministry of Labour and Social Inclusion and the Norwegian Maritime Directorate

CONCLUDING REMARKS

- Council of Europe delegation
- Norwegian Government

Executive summary

The meeting consisted of presentations by members of the delegation on the case law relating to the provisions which have not been accepted by Norway and representative(s) of the competent Ministry gave an explanation of the national situation with regard to the provisions in question. This was followed by discussions on the situation in Norway concerning the individual provisions.

The delegation had at its disposal a summary report prepared by the Norwegian authorities on the non-accepted provisions. This was supplemented by information presented during the meeting, including translations of Norwegian legislation and regulations.

The views expressed by the ECSR delegation during the meeting were based on this information, i.e. information on the current situation in law and in practice or on intended changes to legislation or current developments in the law and practice, in light of the case law of the ECSR.

Following the meeting the Norwegian authorities provided detailed written information on the situation in Norway for each provision, which has been included in this report and is taken into account in the conclusion as to whether acceptance is possible.

The exchange of view showed that the state of Norwegian law and practice in fact permits acceptance of a number of additional provisions. The delegation concluded that immediate acceptance seemed possible in respect of six provisions. In respect of a further five provisions acceptance might also be possible and only in respect of seven provisions did acceptance not seem feasible in the short term.

It is recalled that an opinion expressed by the ECSR delegation that Norway could accept a provision does not imply that the situation will automatically be found to be in conformity with the revised Charter; it simply indicates that no major obstacles to ratification of and compliance with the provision have been found.

The present report will serve, *inter alia,* as a basis for a more detailed analysis and consultation process on the part of the Norwegian Government in order to determine exactly which provisions can be accepted.

Provisions which could be immediately accepted by Norway

2§7 – Night work
3§1 – Health and safety and the working environment
18§1 – Applying existing regulations in a spirit of liberality
18§4 – Right of nationals to leave the country
27§1 (a and b) – Participation in professional life
27§3 – Prohibition of dismissal for reasons relating to family responsibilities

Provisions which could be possibly accepted by Norway

3§4 – Occupational health services
7§4 – Length of working time

7§9 – Regular medical examination
8§4 – Regulation of night work
26§1 – Sexual harassment

Provisions which could not be accepted by Norway in the short term

8§2 – Illegality of dismissal during maternity leave
8§5 – Prohibition of dangerous, unhealthy or arduous work
18§2 – Simplification of existing formalities and reduction of dues and taxes
18§3 – Liberalisation of regulations
19§8 – Guarantees concerning deportation
26§2 – Moral harassment
29 – Right to information and consultation in collective redundancy procedures

Survey provision by provision

This part[2] has been drafted on the basis of the European Committee of Social Rights Case-Law Digest (document prepared by the Secretariat) as well as the summary report on provisions not accepted by Norway prepared and submitted by the Ministry of Labour and Social Inclusion. Reference is made to the additional information provided as well as to the comments made during the meeting.

Article 2: The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

ECSR case-law presented by Mr EVJU

Article 2§7 guarantees compensatory measures for persons performing night work. These measures must at least include the following:

– periodical medical examinations, including a check prior to employment on night work;
– the provision of possibilities for transfer to daytime work;
– continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.[3]

Article I applies to this provision: this means that the situation is considered to be in conformity when the right enshrined in Article 2§7 is enjoyed by at least 80% of workers. However:

1. any law failing to satisfy the above criteria and which is potentially applicable to all workers, is in breach of paragraph 7, even if it affects less than 20% of workers in practice.

2. the application of Article I 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.

National law or practice must define "night work" within the context of this provision.[4]

Mr EVJU further emphasized that the exclusion of certain sectors or occupations from the generally applicable protection is not necessarily contrary to this provision.[5]

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[2] The report is drafted in the order the provisions were discussed during the meeting.

[3] See, for example, Conclusions 2003, p.368.

[4] See Explanatory Report to the revised European Social Charter

[5] See Conclusions 2003, p. 251 (Italy).

Finally, he pointed out that Article 2§7 applies to men and women, i.e. there is no specific gender aspect to this provision.

The situation in Norway

Night work is in principle prohibited by the Working Environment Act (WEA). Night work is only permitted in those cases were it is necessary because of the nature of the work or in situations where it is an exceptional and time-limited need for it and this is agreed upon in a collective agreement (WEA Section 10-11).

Before imposing night work, the employer shall discuss the necessity of doing so with the employees elected representatives, cf. WEA Section 10-11 subsection 3.

Furthermore the working environment act contains special regulations with regard to employees who regularly work in the night time.

- Section 10-2 subsection 2 gives the employee a right to exemption from the working-hour arrangement that applies to the employee group if such exemption is needed by the employee concerned for health, social or other weighty welfare reasons and can be arranged without major inconvenience to the undertaking.

The restriction to “major inconvenience” will limit the opportunity the employee has after this Section, for instance in those cases where this will be inconvenient to the other employees in the undertaking because they have to work more night time work.

The employer is not obliged to establish a position with daytime work if this is not needed in the establishment.

- Section 10-11 subsection 5 limits the normal working hours to 8 hours on average within a 24 hours period. The limit of 8 hours in average will not only be a limit for the work preformed in the night time, but also for daytime work.

- Section 10-11 subsection 6 limits the working hours to 8 hours per 24 hours period if the work involves an exceptional risk or considerable physical or mental strain. In these cases there will not be an opportunity to average the working hours.

Section 10-11 subsection 8 gives the opportunity to derogate from subsections 5 and 6 in a collective agreement. In such cases, the employees shall be ensured corresponding compensatory rest periods or, where this is not possible, other appropriate protection. Because the main rule for derogation will be to ensure the employee corresponding compensatory rest, there will normally not be possible to derogate from the requirements in subsections 5 and 6 several days after each other. Only in those cases where compensatory rest periods are not possible, will there be an opportunity to derogate several days after each other.

- Section 10-11 subsection 7 give the employee a right to a medical examination before commencing employment and subsequently at regular intervals. There is in the preparatory work not stated anything about how often the employee shall have a right to a medical examination. This assessment will therefore be left to the employer, taking into account the risk factors in the enterprise.

With respect to seafarers, the Seamen's Act of 30 May 1975 no. 18 (hereinafter Act No. 18) regulates the seafarers' working and living conditions on Norwegian ships. Act of 17 June relating to working environment, working hours and employment protection, etc. WEA does not apply to seafarers.

Act No. 18 does not regulate beneficial measures which take account of the special nature of night work. However, there are provisions which limit or prohibit night work for young seafarers in Act 3 June 1977 No. 50 concerning working time and hours of rest on board ships in Section 11, and in Regulation 25 April 2002 No. 423 concerning work and outplacement of young seafarers on Norwegian ships in Section 10. Furthermore, Regulation 1 January 2005 concerning the working environment, safety and health of workers on board ships, has general provisions stating that the workers shall have sufficient/adequate rest in paragraph 1 e) of Section 2-3, and if a risk assessment discovers that the worker's safety and health is at risk, the necessary measures for removing or reducing the dangers shall be effectuated, cf. paragraph 3 of Section 2-2.

This being said, we find, in Article I of the revised European Social Charter, that compliance with the undertakings deriving from the provisions of, amongst others, paragraph 7 of Article 2 shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of Article I, to the great majority of the workers concerned. As there are approximately seventeen thousand – 17,000 – Norwegian seafarers, it is our opinion that compliance with paragraph 7 of Article 2 is effective as long as provisions of the WEA implementing the paragraph are applied to the majority of Norwegian workers.

Conclusion

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Norway.

Article 3 –The right to occupational health services for all workers

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;

ECSR case-law presented by Mr BIRK

In order to ensure that all persons working benefit from the right to health and safety at work, Article 3§1 requires States, in consultation with employers' and workers' organisations, to formulate, implement and periodically review a coherent national policy on occupational health and safety. Such a policy must include strategies for making occupational risk prevention an integral aspect of the public authorities' activity at all levels.

To comply with this provision States must ensure the following:

– the assessment of work-related risks and introduction of a range of preventive measures with regard to the particular risks concerned, monitoring of the effectiveness of those measures and provision of information and training for employees, since occupational risk prevention, within individual firms, means more than simply applying regulations and remedying situations that have led to occupational injuries;

– the development of an appropriate public monitoring system - more often than not a responsibility of the labour inspectorate - to maintain standards and ensure that they apply in the workplace;

– the establishment and further development of programmes in areas such as:

■ training (qualified staff);
■ information (statistical systems and dissemination of knowledge);
■ quality assurance (professional qualifications, certification systems for facilities and equipment);
■ where appropriate, research (scientific and technical expertise).

Mr BIRK considered that Article 3§1 was very much influenced by Scandinavian conceptions in the field of health and safety at work and in his view Norway would not have any particular problems meeting the obligations of this provision.

The situation in Norway

There is extensive legislation, measures and cooperation with the workers' and employers organisations on this subject in Norway.

The national policy on occupational health and safety and the working environment is reviewed continually by the authorities and from time to time more deeply by expert committees, through research projects, by law committees etc.

It is an extensive and continuing cooperation with the workers' and the employers' organizations regarding the national policy on this subject.

Regularly the leaders of the workers' and employers' organisations are meeting with the cabinet minister for discussions in a council for superior political questions about working-life (*Arbeidslivspolitisk råd*).

It is established a council to the Labour Inspection Authority where the organisations are represented (*Arbeidstilsynets råd*). Every fourth year this council address the national strategy in this field in order to give guidelines to the law enforcement exercised by the Labour Inspection. The aim is constantly to improve occupational health and safety and the working environment.

Recently the Directorate of Labour Inspection Authority has established Forum for regulation, where the same organisations are represented (DATs *Regelverksforum*). Here the policy will be followed up by more detailed discussions about regulations.

The Norwegian Government is now working with the establishment of a national monitoring system called *National system for surveillance and documentation of the working environment*. This system will gather, analyse and provide information on working environment and related health injuries in Norway. The object is to monitor

the working environment and follow trends over time, and give a basis for the ranking of priorities and policy in this field.

However, there is no requirements in the Norwegian legislation specifically demanding a periodically review of the national policy on occupational health and safety, and the working environment. But in practice this is ensured.

There are numerous provisions and measures in the WEA (and pursuant to this Act) aiming at:

- improving occupational safety and health and
- preventing accidents and injury to health and
- minimising the causes of hazard inherent in the working environment.

To ensure a systematic follow-up on these provisions by the undertakings, there are provisions in Section 3-1 of the WEA, demanding a systematic work with health, environment and safety. In order to safeguard the employees' health, environment and safety, the employer shall ensure that systematic health, environment and safety work is performed at all levels of the undertaking. This shall be carried out in cooperation with the employees and their elected representatives. There are in detail described a method to implement these requirements, and the Ministry has by regulation issued further provisions concerning implementation of the requirements.

The requirements and method of this systematic work are drawn up in cooperation with the employers and workers organisations. The implementation of the regulations is followed up by law enforcement by the Labour Inspection Authority and at last by the court of justice in cases which are followed up by legal proceeding.

With respect to seafarers, Act No. 18 does not regulate a coherent national policy on occupational safety, occupational health end the working environment.

However, as a means to improve seafarers' and fishermen's working and living conditions, a Council for Seafarers' and fishermen's working and living conditions was established 20 October 2004. The Council treats general issues concerning these workers working and living conditions, as well as special issues that may arise. The Council consists of representatives of the social partners, i.e. employer and worker organizations.

Furthermore, a coherent national policy as required by Article 3§1 of the Charter, will most naturally be formulated for all workers in Norway, and not for seafarers separately.

Conclusion

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Norway.

Article 3 –The right to occupational health services for all workers

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Appendix: It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

ECSR case-law presented by Mr BIRK

According to Article 3§4, workers in all branches of the economy and every undertaking must have access to occupational health services. These services may be run jointly by several undertakings. If occupational health services are not established by every undertaking the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.

Mr BIRK further explained that the “nuts-and-bolts” of how occupational health services are organised and provided is not so important under this provision, the essential requirement is that all workers have access to services one way or the other.

The situation in Norway

According to Section 3-3 of the WEA the employer is obliged to provide occupational health services for the undertaking if necessary due to risk factors in the undertaking.

The Ministry may by regulation issue further provisions prescribing when and to what extent the employer is obliged to provide occupational health services, the professional requirements regarding such services and the tasks it shall perform.

Among others, the Ministry has established such regulation regarding sectors which are obliged to provide occupational health services (the undertakings in these sectors may not assess the need of such services). This regulation is not exhaustive; the rest of the undertakings must provide occupational health services when necessary due to the risk factors in the undertaking concerned. Today 22 different sectors are comprised by the regulation, for instance mining, paper industry, production of chemicals and plastic, oil drilling, building sector, transport, police and fire brigade.

This regulation will in the near future be revised in cooperation with the employers’ and workers’ organisations. For the time being it is uncertain which undertakings or sectors will be the scope of the regulation, and if the occupational health services will be progressively developed to all workers.

Seafarers: Act No. 18 does not regulate a progressive development of occupational health services. The law opens up for the development of an occupational health service in paragraph 4 of Section 26, but such services have not been developed.

Conclusion

In the light of the current case law and the current legal situation and practice the provision could possibly be accepted by Norway subject to further analysis.

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances.

ECSR case-law presented by Mr SWIATKOWSKI

In application of Article 7§4, domestic law must limit the hours worked by young people under the age of eighteen who are no longer in compulsory schooling.

Any law which allows under–sixteen year olds to work as many as eight hours a day or forty hours a week is contrary to this provision. For young workers over the age of sixteen years an upper limit of eight hours daily and 40 hours weekly is in conformity with this provision.

The situation in Norway

In 2002 Norway adopted regulation concerning work in the employer's home that contains a special regulation for those under the age of 18. According to article I § 2 of the Revised Charter the situation will be in compliance with article 7 paragraph 4 if the provision is applied to the great majority of workers concerned. Because the great majority of workers under the age of 18 will be covered by the regulation in the WEA, we will confine our report to this regulation.

Chapter 11 in the WEA contains special regulations regarding children and young persons. The provisions are an implementation of the EC directive regarding protection of young people.

The chapter has some general provisions. According to Section 11-1 § 3 it is forbidden that persons under 18 years of age perform work that may be detrimental to their safety, health, development or schooling. Further on, Section 11-2 § 1 requires that working hours for persons under 18 years of age shall be so arranged that they do not interfere with their schooling or prevent them from benefiting from their lessons.

The regulation in the chapter differs between the situations where the person are under 15 years of age or are attending compulsory education, and were the person are under the age of 18. The regulation is of course more restrictive in the first case.

Section 11-2 regulates the working hours:

- Young people under the age of 15 or attending compulsory education can work 2 hours a day and 12 hours a week on days with teaching, or 7 hours a day and 35 hours in a week on days without teaching. When there is a combination of theoretical and practical education, the total hours must not exceed 8 hours a day and 40 hours a week.
- Young people between 15 and 18 and not attending compulsory education can work 8 hours a day and 40 hours a week

Working hours shall be calculated as a total of the hours worked for all employers.

The normal working hours for persons above the age of 18 is also 40 hours a week, but 9 hours a day. The limitation in daily working hours will therefore only be 1 hour a day for those between the age of 15 and 18 years. However, it is forbidden that persons under 18 years of age perform work that may be detrimental to their safety, health, development or schooling (Section 11-1 subsection 3). Furthermore 8/40 hours are the total working hours that are permitted. For people above the age of 18, there is, in addition, also an opportunity to work overtime and an opportunity to calculate average of the normal working hours and therefore possible to work 48 hours some weeks.

Furthermore Section 11-5 stipulates the length of breaks and off duty periods that are much longer compared with the regulation for persons over the age of 18.

- At least 30 minutes break if the working hours exceed 4 ½ hours, compared with 5 ½ hours for people over the age of 18.
- Off duty periods of 14 (under 15 years) or 12 hours compared with 11 hours for people over the age of 18.
- Weekly rest periods of 48 hours compared with 35 hours for persons over the age of 18.

It is also necessary to take into consideration that the opportunity to perform work for persons under the age of 15 years, is strictly limited. Only cultural work, light work provided the child is 13 years of age or more, and work that forms parts of their schooling or approved practical vocational, will be permitted.

Conclusion

This provision could possibly be accepted subject to further analysis.

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control.

ECSR case-law presented by Mr SWIATKOWSKI

In application of Article 7§9, domestic law must provide for compulsory regular medical checks for under–eighteen year olds employed in occupations specified by national laws or regulations.

These check–ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed. They may, however, be carried out by the occupational health services, if these services have the specific training to do so.

The obligation entails a full medical examination on recruitment and regular check–ups thereafter. The intervals between check-ups must not be too long. In this regard, an interval of three years has been considered to be too long by the Committee.

Situation in Norway

According to Section 11-4 the employer shall ensure that young persons assigned to **night work** shall be offered medical examinations prior to commencing employment and subsequently at regular intervals. Pursuant to Section 3-1 subsection 2 letter g, the employer shall ensure continuous control of the working environment and the employee's health, environment and safety in order to ensure that it functions as intended.

According to Section 11-1 subsection 3 it is forbidden that persons under the age of 18 years perform work that may be detrimental to their safety, health, development or schooling. Under this provision it is established a regulation that contain a long list with danger work that is forbidden (Regulation 30 April 1998 no 551 chapter IV. Please find the regulation enclosed).

Conclusion

This provision could possibly be accepted subject to further analysis.

Article 8 – The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;

Appendix: This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases :

a. if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;
b. if the undertaking concerned ceases to operate;
c. if the period prescribed in the employment contract has expired.

ECSR case-law presented by Mr BIRK

Article 8§2 applies equally to women on fixed-term and open–ended contracts.

In cases of dismissal contravening this provision of the Charter, reinstatement of the women should be the rule. Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be available. National rules must not prevent courts (or any other competent authority) from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal.

Situation in Norway

Pursuant to Section 15-9 subsection 1 of the WEA, an employee who is pregnant may not be dismissed on grounds of pregnancy. However, it is not prohibited to dismiss her on other grounds, for instance grounds due to rationalization or misconduct of the employee of various kinds, if this is objectively justified (fair). The pregnancy shall be deemed to be the reason for dismissal of a pregnant employee unless other grounds are shown to be highly probable.

It is the employer who has the burden of proof in these cases, and the burden of proof is stronger than in normal cases of dismissal.

Pursuant to Section 15-9 subsection 2 of the WEA, an employee who has pregnancy leave, leave of absence to care for a child, maternity leave or parental leave for up to one year, shall not (of any reason) be given notice of dismissal, that becomes effective during the period of absence.

It is not prohibited to give a notice of dismissal in this period, but the notice will have no effect before the employee is back to work. If the notice is given before the leave of absence is starting, it will be interrupted by the leave and will start running again when the employee is back to work.

According to the appendix to the Revised Charter, Article 8§2 shall not be interpreted as laying down an absolute prohibition against dismissal. Exceptions can be made, for instance if an employee has been guilty of misconduct which justifies breaking off the employment relationship or if the undertaking concerned ceases to operate. We understand that the examples listed in the appendix are not exhaustive.

Conclusion

Taking into account the fact that it is not prohibited to give notice during the period protected by the Revised Charter (although the notice does not become effective during this period), the situation does not appear to be fully in compliance with Article 8§2 of the Revised Charter and the provision cannot be accepted for the time being.

Article 8 – The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants.

ECSR case-law presented by Mr BIRK

Article 8§4 applies only to industrial work in the strict sense. In industry, there are also non–industrial jobs to which it does not apply:

- women in managerial posts or technical posts carrying responsibilities;
- women working in health and welfare services, who are not usually required to do manual work.

Article 8§4 does not require states to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate these aspects. The regulations must:

- allow only limited exceptions to the rules on night work, which must be authorised only when special production needs make them necessary, having due regard to working conditions and the organisation of work in the firm concerned;

- lay down conditions for night work of women, e.g. prior authorisation by the Labour Inspectorate (when applicable), prescribed working hours, breaks, rest days

following periods of night work, the right to be transferred to daytime work in case of health problems linked to night work, etc.

Situation in Norway

Women are entitled to extensive leave of absence in connection with pregnancy, giving birth and nursing infants, pursuant to provisions in the Chapter 12 of the WEA (pregnancy leave up to twelve weeks, maternity leave up to six weeks, parental leave up to two years inclusive pregnancy and maternity leave). Consequently, there are very few women who are working in the first period after giving birth.

A nursing mother is entitled to request the amount of time off for breastfeeding. At least 30 minutes time off may for example be taken twice daily or as a reduction in working hours by up 1 hour per day, pursuant to Section 12-8 of the WEA.

In Section 10-2 subsection 2 of the new WEA there is a provision which has a general application. Pursuant to this provision an employee who regularly works at night shall be entitled to exemption from the working-hour arrangement that applies to the employee group if such exemption is needed by the employee concerned for health, social or other weighty welfare reasons and can be arranged without major inconvenience to the undertaking. This provision came into force 1 January 2006. We assume that pregnancy, recently birth or nursing an infant may be relevant reasons to get an exemption from night work.

However, the provisions do not give an absolute protection against night work, because the granting of the right will depend on whether it can be arranged without major inconvenience to the undertaking. In the preparatory works to the legislation it is emphasized that it also depends on whether other jobs in the undertaking are available. The employer is not obliged to create a new job for the employee concerned.

Conclusion

This provision could possibly be accepted by Norway subject to further analysis.

Article 8 – The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

ECSR case-law presented by Mr BIRK

Article 8§5 applies to all women in paid employment, including civil servants. Only self-employed women are excluded.

This provision prohibits the employment of the women concerned on underground work in mines. This applies to extraction work proper, but not to women who:

- occupy managerial posts and do not perform manual work,

- work in health and welfare services,
- spend brief training periods in underground sections of mines.

This prohibition must be provided for in law.

Employment in certain activities, such as those involving exposure to lead, benzene, ionising radiation, high temperatures, vibration or viral agents, must be prohibited.

Situation in Norway

There are extensive rights with regard to leave of absence in connection with pregnancy, birth and nursing in Chapter 12 of the WEA. Usually a woman who has recently given birth or is nursing an infant, has maternity/parental leave most of the first year after the birth, under which the employee usually is entitled to payment from the national insurance system.

There is a regulation pursuant to the WEA concerning working environment factors and injuries of reproduction. The employer shall ensure that pregnant or nursing workers are relocated to do other work where it is a risk that influence of the working environment may cause injury of the child. If it is not possible to relocate the employee under these circumstances, she is entitled to pregnancy leave which is paid through the national insurance system.

Conclusion

In the absence of legislation prohibiting the employment of pregnant women in underground mining, the situation is not in conformity with the Revised Charter and this provision cannot be accepted for the time being.

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effecting exercise of the right to engage in a gainful occupation in the territory of any other country, the Parties undertake:

1. to apply existing regulations in a spirit of liberality;

ECSR case-law presented by Mr EVJU

Article 18 applies to employees and the self-employed who are nationals of Parties to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.

Article 18 covers not only workers already on the territory of the Party concerned, but also those in their country of origin.

This article also covers foreign workers who have obtained employment but subsequently lose it.

The Committee's assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications.

Situation in Norway

General information:

In Norway matters dealt with under Articles 18 and 19 are mainly regulated by the Immigration Act (Act concerning the entry of foreign nationals into the kingdom of Norway and their presences in the realm of 24 June 1988 No. 64) and its corresponding Regulation of Immigration (IR). This act will be replaced by a new act, which we are currently working on. A commission of experts submitted their draft, a White Book in December 2004, and thereafter it was submitted to public hearing during the first half of 2005. The Government plans to submit their proposal to the Parliament by the end of 2006. It's expected that the new act can enter into force at the earliest in 2008. Due to this legislative work, the situation in Norway relating to questions under Articles 18 and 19 might be different under the new act; of course depending on what will be the outcome of this process. Therefore, in general it is difficult and not very practical for Norway to consider accepting these articles now before the new act has passed the Parliament. The presentation on the legal situation in Norway is based on the prevailing act, but if the governmental commission has proposed a change, we will try to point this out.

The relevant provisions under Norwegian law relating to labour immigration, which is the main subject of Article 18, can be found in Chapter 2 of the Immigration Act "Work, Residence and Settlement etc." with the corresponding provisions under IR Sections 2 to 43.

We understand that the assessment of the situation under Article 18§1 takes place on the basis of figures showing, *inter alia*, the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications. In general, the Directorate of Immigration is capable of providing such figures as demanded, for each of the States Parties to the Social Charter.

Conclusion

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Norway.

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effecting exercise of the right to engage in a gainful occupation in the territory of any other country, the Parties undertake:

2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;

ECSR case-law presented by Mr EVJU

Formalities and dues and other charges are one of the aspects of regulations governing the employment of workers covered by paragraph 3 but are dealt with specifically under this provision.

With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application. It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.

Chancery dues and other charges for the permits in question must not be excessive and, in any event, must not exceed the administrative cost incurred in issuing them.

Situation in Norway

Usually foreigners are supposed to apply and obtain the permit to work and reside before entering the country, but there are exemptions allowing foreigners to submit an application after having entered the country (Immigration Act Section 6 fourth and fifth paragraph and IR Section 10). The Directorate tries to grant the permits within a reasonable time. Further, there is a possibility for provisional permits under IR Section 14. Normally, one can apply for work and residence permit in the same application.

Regarding charges, this is dealt with under Section § 59 and IR Section. § 197 a. Since 2003 the authorities charge a fee for different applications under this act. For the time being the fee is NOK 800 and is supposed to cover the administrative expenses related to the handling of the applications.

Conclusion

In view of the requirement that application formalities are in principle to be completed before entry into the country and also taking into account the recent introduction of a new application fee the situation may not be in conformity with the Revised Charter and the provision cannot be accepted for the time being.

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effecting exercise of the right to engage in a gainful occupation in the territory of any other country, the Parties undertake:

3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;
[…]

ECSR case-law presented by Mr EVJU

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers in the following areas:

– Access to the national labour market

The conditions laid down for access by foreign workers to the national labour market must not be excessively restrictive, in particular with regard to the geographical area in which the occupation can be carried out and the requirements to be met.

– Right to engage in an occupation:

A person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted.

– Rights in the event of loss of employment

Loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. In such cases, Article 18 requires extension of the validity of the residence permit to provide sufficient time for a new job to be found.

Situation in Norway

Since the 1990s access to the labour marked in Norway has gradually been liberalised. Much of this is a result of the EEA-agreement to which Norway is a Party.

Re: "Loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. In such cases, Article 18 requires extension of the validity of the residence permit to provide sufficient time for a new job to be found."

This is an area where the commission for a new Immigration Act has proposed a change to the legal situation. Under the current act a work permit is normally granted for a specific job and for a specific employer. (Section 7 third paragraph, IR Section 2). If a person loses his job, the person does not have a statutory right to an extension of the work/residence permit.

The commission has proposed a new Section opening for the possibility to grant a permit for specific types of work (the preliminary proposal Section 33 no.2, c, d and i.) This implies that in the case of loss of employment, this will not affect the validity of the work and residence permit.

The requirement concerning the qualification of the worker under Norwegian law is not very high. IR Section 3 regarding "skilled worker", requires three years of education after compulsory school.

Conclusion

The present situation as regards the possibility of an extension of the work/residence permit in case of job loss may be too restrictive and this provision cannot be accepted for the time being.

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effecting exercise of the right to engage in a gainful occupation in the territory of any other country, the Parties undertake:

4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

ECSR case-law presented by Mr EVJU

According to Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter.

The only permitted restrictions are those provided for in Article G of the Revised Charter, i.e. those which 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."

Situation in Norway

We cannot see that our legislation contains any restriction on the right of our nationals to leave the country to engage in gainful employment in other Parties to the Charter.

Conclusion

This provision could be accepted immediately.

Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

ECSR case-law presented by Mr EVJU

This paragraph obliges States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security.

Expulsion for offences against public order or morality can only be in conformity with the Charter if it constitutes a penalty for a criminal act, imposed by a court, or under judicial authority and is based not solely on the existence of a criminal conviction but on all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State.

Risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment.

Seeking social assistance is also not against public order and cannot constitute a ground for expulsion.

States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake.

Migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these

family members have an independent right to stay in the territory.

This paragraph applies to migrant workers and his or her family members if these persons reside legally in the territory of the State.

Situation in Norway

General information:

In Norway matters dealt with under Articles 18 and 19 are mainly regulated by the Immigration Act (Act concerning the entry of foreign nationals into the kingdom of Norway and their presences in the realm of 24 June 1988 No. 64) and its corresponding Regulation of Immigration (IR). This act will be replaced by a new act, which we are currently working on. A commission of experts submitted their draft, a White Book in December 2004, and thereafter it was submitted to public hearing during the first half of 2005. The Government plans to submit their proposal to the Parliament by the end of 2006. It's expected that the new act can enter into force at the earliest in 2008. Due to this legislative work, the situation in Norway relating to questions under Articles 18 and 19 might be different under the new act; of course depending on what will be the outcome of this process. Therefore, in general it is difficult and not very practical for Norway to consider accepting these articles now before the new act has passed the Parliament. The presentation on the legal situation in Norway is based on the prevailing act, but if the governmental commission has proposed a change, we will try to point this out.

The relevant provisions in the Immigration Act are Sections 29-30 and 58 and the IR Sections 121-124, 195 and 196.

In Norway, an expulsion carries an obligation to leave the country at the same time as it is a prohibition to enter the country later on, either for a specific period or for always. When Article 19§8 refers to "such workers (migrant workers and theirs families) lawfully residing within the territories" this refers to foreigners with a legal permission to stay in Norway. That could be a temporary work/residence permit or a permanent residence permit.

A foreigner having a work/residence permit is given extra protection against expulsion in the act. This extra protection means that only more severe criminal offences can be used as grounds for an expulsion. (*"A foreign national who has a work permit or a residence permit may only be expelled if the offence is punishable with imprisonment for a term exceeding one year or if the Criminal Code Section 228 first paragraph, 237, 342 first paragraph b) or c), 352 a, 384 or 385 has been violated.",* cf. Section 29 third paragraph).

For foreigners meeting the requirements to obtain a permanent residence permit, the grounds for expulsion are even more limited, since only even more severe criminal offences can be used as a reason for expulsion. ("*When a foreigner has expiated or been convicted for an offence which according to Norwegian law is punishable with imprisonment of two years or more, and this took place less than five years ago abroad or less than one year ago in the realm.",* cf. Section 30 second paragraph) When a person is expelled having committed criminal offence, this is based on a court conviction.

Furthermore, a foreigner can be expelled if it is deemed necessary due to national security. A foreigner can also be expelled when he or she has violated the provisions in the Criminal Code relating to terrorism or has given safe haven to somebody he

knows has committed such a crime. In this case it is not necessary that the person is convicted. It is sufficient that the authorities find this to be the most probable fact. The provisions also give reason to expel if the person has been rejected from the territory or has been expelled from another country in the framework of the Schengen cooperation.

In addition, all expulsions are followed by an assessment of the proportionality of such a decision. Under this assessment one takes into account the severity of the offence as well as the attachments and affiliation the foreigner has to the country etc. However, there are different provisions for the expulsion of foreigners falling under the EEA-agreement or the EFTA convention, Sec. 58. In principle such foreigners can only be expelled when consideration for public order or safety so indicates. The content of this term is laid out in the regulations. It appears under IR, Section 195 that there is an opening to expel somebody on the basis of dependency on drugs or when the person is suffering from a serious mental disorder. An additional condition is laid out in Section 58, second paragraph, where it said that there must be personal matters which constitute an actual and sufficient threat towards fundamental interests of the society. In addition, if the foreigner has violated the provisions on terrorism in the Criminal Code he can be expelled. Likewise, according to expulsion under Section 58 one has to assess if it is a proportionate measure.

Re: "States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake."

An expulsion order is given by the Directorate of Immigration. This decision can be appealed to the Immigration Appeals Board, an independent quasi-judicial body. Subsequently, the administrative decision may be reviewed by the ordinary courts. The assessment of the proportionality can also be reviewed by the courts. In principle, this regards also cases relating to national security.

Re: "Expulsion for offences against public order or morality can only be in conformity with the Charter if it constitutes a penalty for a criminal act, imposed by a court, or under judicial authority."

As it appears, it is not always a court conviction which forms the basis for an expulsion. In some cases it is sufficient that the authority making the decision finds the facts more probable in order to meet the requirements. However, this decision can be appealed and subsequently reviewed by ordinary courts. Against this background, we deem that the requirement according to Article 19§8 – that the conviction is made by a court or "under judicial authority" – is fulfilled.

Re: "and is based not solely on the existence of a criminal conviction but on all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State."

We understand this as a reference to the proportionality assessment carried out by the authorities. This is spelled out clearly under Section 29 second para. and Section 30 third para.. However, this is not done in cases regarding expulsion based on a "threat to national security". These cases have consciously been left out. According to the above mentioned White Paper, the commission suggests to change the provisions on this point.

Re: "Risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable

treatment. Seeking social assistance is also not against public order and cannot constitute a ground for expulsion."

Actually, Section 58 and IR Section 195 open for the expulsion of persons suffering from a serious mental disorder in some very exceptional cases. It is not a condition for expulsion that the person refuses to undergo adequate treatment in these cases.

Re: "Migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members have an independent right to stay in the territory. This paragraph applies to migrant workers and his or her family members if these persons reside legally in the territory of the State."

The expulsion order will be directed towards the foreigner as such; not his/her family members. However, if the person who has been expelled is the reason for the family members residing in Norway, it is not certain that their permit will be renewed. This will be subject to individual assessment.

Conclusion

Taking into account the criteria upon which expulsion may take place as laid down by Section 29 of the Act concerning the Entry of Foreign Nationals into the Kingdom of Norway and their Presence in the Realm the situation does not appear to be fully in compliance with Article 19§8 of the Revised Charter and this provision cannot be accepted for the time being.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct

Appendix: It is understood that this article does not require that legislation be enacted by the Parties.

ECSR Case-law presented by Mr SWIATKOWSKI

Sexual harassment is not necessarily a form of discrimination based on gender but always qualifies as a breach of equal treatment determined by a preferential or retaliatory attitude, directed towards one or more persons, or by an insistent attitude of other nature which may harm the dignity or the career of the person concerned.

There is no need for a state's legislation to explicitly make reference to harassment where that state's law encompasses measures making it possible to afford employees effective protection against the various forms of discrimination.

From a procedural standpoint, effective protection of employees requires a certain shift in the burden of proof, making it possible for a court to judge in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.

This provision requires that employers be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or at premises under their responsibility from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients etc.

Victims of sexual harassment must be given effective legal remedies. These remedies must include reinstatement, where the employee has been dismissed in the context of a sexual harassment case and appropriate damages, which should be sufficiently reparatory for the victim and sufficiently deterrent for the employer.

Furthermore, States are required to conduct awareness-raising campaigns to promote the protection against sexual harassment among social partners and the general public.

Situation in Norway

Gender Equality Act

- A general prohibition

Sexual harassment has widespread negative consequences for the individual as well as for the entire working- or educational environment in which the harassment is taking place. The government aims to combat this problem. A new provision on sexual harassment was therefore added to the Gender Equality Act in 2002. According to the Section 8 a 1 paragraph sexual harassment is not permitted. The second paragraph defines sexual harassment and it reads:
The term "sexual harassment" shall mean unwelcome sexual attention that is offensive to the object of such attention.
The prohibition pertains to all areas of society and shall be enforced by the courts of law.

- The protection rule

In addition to the general prohibition against sexual harassment, the Gender Equality Act contains *a protection rule*. Employers, organisations and educational institutions are charged with responsibility to prevent and bring to an end sexual harassment. The standard of evaluation set by this protection rule shall be based on whether the responsible party has done enough to prevent sexual harassment from taking place within his/hers area of responsibility. Thus, the standard of evaluation set is not on whether or not sexual harassment has occurred in a particular case.

The provision will supplement existing regulations in the Act relating to workers protection and working environment.

Enforcement

The protection rule will be enforced by the new machinery which went in to force 1. January 2006.

The machinery consists of two parts
- the Equality and Anti-discrimination *Ombud*,
- the Equality and Anti-discrimination Tribunal

The Ombud has competence to investigate incidents where alleged breaches of the law have taken place. The Ombud may then make a recommendation. The parties are not legally bound to comply with the recommendation, but they are normally accepted and followed. If one party can not accept the Ombuds recommendation, he or she can complain to the Equality and Anti-discrimination Tribunal.

The Tribunal can confirm or change the recommendations. The Tribunal's rulings are legally binding. If a decision is not followed within a certain time limit, the Tribunal can give the discriminating party a daily fine until the decision is followed. There is no upper limit to the fine.

- Burden of proof and objective determination of liability

According to an amendment of the Gender Equality Act in 2005, the provisions of Sections 16 and 17 on burden of proof and objective determination of liability, shall apply in connection with the provision on sexual harassment.

Working Environment Act

Section 4-3 in the WEA contains regulations about harassment in general. There is no doubt that Section 4-3 also includes sexual harassment even though this conclusion is a result from an interpretation of the regulation based on preparatory work.

In addition to Section 4-3 in the WEA, the employees are also comprised by the Gender Equality Act Section 8a. The provision prohibits gender-based harassment and sexual harassment in general. In addition the employer is responsible for preventing and seeking to preclude the occurrence of harassment in contravention of provisions of the act within the employer's sphere of responsibility.

For further information concerning the Gender Equality Act, please note the report from the Ministry of Children and Equality.

The Labour Inspection Authority shall according to WEA chapter 18 supervise compliance with the provision in the act. Pursuant to Section 18-6 the Labour Inspection Authority can issue orders and make such individual decisions as is necessary for implementation of this provision. Furthermore, the Labour Inspection Authority can impose a compulsory fine if their orders are not implemented, Section 18-7. Chapter 19 in the WEA also contains penal provisions.

Conclusion

In the light of the current case law and the current legal situation and practice the provision could possibly be accepted by Norway subject to further analysis.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers and workers' organisations:

2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Appendix: It is understood that this article does not require that legislation be enacted by the Parties.

It is understood that paragraph 2 does not cover sexual harassment.

ECSR Case-law presented by Mr SWIATKOWSKI

This provision affords protection against harassment at work other than sexual harassment. The triggering element for the harassment may be based on race, colour, religion, gender or any other specific quality of a person.

As far as legal protection and awareness raising are concerned the requirements are the same as under Article 26§1.

Situation in Norway

Gender Equality Act

The Gender Equality Act was amended in 2005 and the Section 8 a also includes a general prohibition against Gender based harassment. Like sexual harassment, Gender based harassment is defined in the section and the second paragraph reads:

The term "gender-based harassment" shall mean unwelcome conduct that is related to a person's gender and that has the effect or purpose of offending another person's dignity.

The protection rule in Section 8a, covers gender based harassment as well. Thus, employers, organisations and educational institutions are also charged with a responsibility to prevent and bring to an end gender-based harassment. The same standard of evaluation set applies for gender based harassment as for sexual harassment. This means that the standard of evaluation set by this protection rule shall be based on whether the responsible party has done enough to prevent gender-based harassment from taking place within his/hers area of responsibility. Thus the standard of evaluation set is not on whether or not gender based harassment has occurred in a particular case.

Both the general prohibition and the protection rule against gender-based harassment, is enforced by the Equality and Anti-discrimination *Ombud*, and the Equality and Anti-discrimination Tribunal.

- Burden of proof and objective determination of liability

According to an amendment of the Gender Equality Act in 2005, the provisions of Sections 16 and 17 on burden of proof and objective determination of liability, also applies in connection with the provision on gender based harassment.

Working Environment Act

Section 4-3 in the WEA has requirements regarding the psychosocial working environment. Pursuant to subsection 1 the employer is obliged to preserve the employee's integrity and dignity. Furthermore, according to subsection 3 the employer has the responsibility to ensure that the employee is not subject to harassment or other improper conduct and subsection 4 requires that the employee shall, as far as possible, be protected against violence, threats and undesirable strain as a result of contact with other persons.

Section 13-1 in the WEA contains a prohibition against discrimination. According to subsection 2, harassment will be regarded as discrimination. However, Section 13-1 only prohibits discrimination based on political views, membership of a trade union, sexual orientation, disability or age. In addition the employees are comprised by the Gender Equality Act and the new Act on Prohibition of Discrimination on the basis of ethnicity, national origin, ancestry, skin colour, language, religious and ethical orientation (the Discrimination Act). According to the Discrimination Act Sections 4 and 5, harassment on the basis of ethnicity, national origin, ancestry, skin colour, language, religious and ethical orientation, is prohibited.

In addition to the legal regulation, the Government has started a campaign with a view to reduce bullying on the place of work. The Directorate of Labour Inspection is responsible for this campaign that will be one of several priorities within the field of improving the psychosocial working environment.

Seafarers: Act No. 18 stipulates in paragraph 1 of Section 43 that "Each person shall treat his colleagues on board with due consideration."

Furthermore, Regulation 1 January 2005 concerning the working environment, safety and health of workers on board ships regulates in paragraph 3 of Section 2-1 that due consideration shall be made to organizing the working and leisure time on board in order to achieve social and environmental conditions that will contribute to health, prosperity and welfare for the workers.

In addition, the before mentioned Council for Seafarers' and fishermen's working and living conditions will be a natural forum for treating questions in connection with the working environment for seafarers in general and in isolated incidents of principal importance.

Conclusion

The material scope of Section 4§3 of the Working Environment Act would appear to be too narrow to comply with the revised Charter and the provision cannot be accepted at present.

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:

a to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;

b to take account of their needs in terms of conditions of employment and social security;

Appendix : It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating on or advancing in economic activity. The terms "dependent children » and « other members of their immediate family who clearly need their care and support" mean persons defined as such by the national legislation of the Party concerned.

ECSR case-law presented by Mr SWIATKOWSKI

Under Article 27§1a of the Revised Charter States should provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment. It underlines that persons with family responsibilities may face difficulties on the labour market due to their family responsibilities. Therefore, measures need to be taken by States to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular in the field of vocational guidance, training and re-training. Actions must be taken to promote training aimed at facilitating the remaining and the reintegration of workers with family responsibilities in the employment market. Particular attention should be devoted to part-time workers' unemployment.

The aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security. Measures need to be taken to implement this provision, especially measures concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment. It should be borne in mind that worker's needs cannot be left to the mere employer's goodwill but must be provided is some binding legal instrument. Periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes.

Situation in Norway

As regards a:

We assume that paragraph 1 a, is aiming at further rights than the provisions of the WEA concerning maternity/parental leave and employees entitlement to leave of absence when child or childminder is sick.

The new WEA states in Section 1-1 that one of the purposes of the act is to facilitate adaptations of the individual employee's working situation in relation to his or her capabilities and circumstances of life. This purpose was established in the new act which came into force 1 January 2006, and must be taken into consideration when interpreting the provisions of the act.

In addition there are provisions which will facilitate the employee with family responsibilities in the chapter concerning working hours of the WEA. According to Section 10-2 subsections 2 – 4

- an employee who regularly works at night shall be entitled to exemption from the working-hour arrangement that applies to the employee group if such exemption is needed by the employee concerned for health, social or other weighty welfare reasons and can be arranged without major inconvenience to the undertaking.
- an employee shall be entitled to flexible working hours if this may be arranged without major inconvenience to the undertaking.
- an employee who for health, social or other weighty welfare reasons needs to have his normal working hours reduced, shall have this right if the reduction of working hours can be arranged without major inconvenience to the undertaking. When the agreed period of reducing working hours has expired, the employee has the right to resume previous working hours.

The last provision also existed in the previous WEA, and it is interpreted strongly in favour of the employees. Most of the cases concern parents who need more time to take care of their children. In practice caretaking for children aged up to 10 years is considered as a valid reason for reducing the working hours.

The first two provisions are new and it remains to see how they will be used and interpreted. If there is a disagreement between an employer and an employee about the application of these provisions, the dispute may be settled by a dispute board, cf. Section 10-13 and Section 17-2 of the WEA.

According to Section 10-6, subsection 10 of the WEA, the employee is entitled to exemption from performing work in excess of agreed working hours when he/she so requests for health reasons or weighty social reasons. Otherwise, the employer is obliged to exempt an employee who so request when the work can be postponed or performed by others without harm. Care of children may in many cases be a valid reason for exemption from overtime work.

As regards b:

There are no further measures taken beyond all the provisions mentioned under paragraph 1 a, to take account of the needs of workers with family responsibilities in terms of conditions of employment.

The National Insurance Act

With reference to the National Insurance Act Chapter 14, a pregnant woman who is required to give up her job because the working conditions may harm the unborn child, is entitled to *pregnancy benefits*. Parents, who have care of the child and stay home from work during leave of absence, are entitled to *parental benefits.* The parental benefit period is 53 weeks with 80 per cent pay or 43 weeks with 100 per cent pay. The benefit period will be lengthened to 54/44 weeks on 1 July 2006.

The right to *daily cash benefits due to care for a sick child* is laid down in chapter 9 of the National Insurance Act. This chapter also includes the right to daily cash benefits due to care for a hospitalised child or a close relative during the terminal phase.

The Gender Equality Act

The Gender Equality Act Section 3 provides protection against differential treatment in relation to pregnancy, childbirth and leave –of-absence in this regard. The Section includes an absolute prohibition against differential treatment that places a woman or a man in a weaker position than in which she or he otherwise would have been as a result of pregnancy, childbirth and leave of- absence.

The protection rule against differential treatment is enforced by the Equality and Anti-discrimination *Ombud* and the Equality and Anti-discrimination Tribunal.

Conclusion

In the light of the current case law and the current legal situation and practice these provisions could be immediately accepted by Norway.

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Appendix : It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating on or advancing in economic activity. The terms "dependent children » and « other members of their immediate family who clearly need their care and support" mean persons defined as such by the national legislation of the Party concerned.

ECSR case-law presented by Mr SWIATKOWSKI

Family responsibilities must not constitute a valid ground for termination of employment. Workers dismissed on such grounds must be afforded the same level of protection afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter. Article 27§3 of the Revised Charter requires that courts or other competent bodies are able to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim. Therefore limits to levels of compensation that may be awarded are not in conformity with the Revised Charter.

Situation in Norway

Section 15-7 subsection 1 of the WEA states that employees may not be dismissed unless this is objectively justified (fair) on the basis of circumstances relating to the undertaking, the employer or the employee. This is a legal standard which is filled out by the court of justice. Each case is judged specifically on the base of the concrete circumstances. We are not familiar with judicial decisions on higher level showing that it is considered legitimate to dismiss an employee due to family responsibilities alone, and our opinion is that a dismissal solely based on family responsibilities, will not be according to the WEA.

Conclusion

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Norway.

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

ECSR Case-law presented by Mr BIRK

This provision guarantees workers' representatives the right to be informed and consulted in good time by employers who are planning collective redundancies. The collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity. This obligation is not just an obligation to inform unilaterally, but implies that a process be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers' representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached.

For this purpose, all relevant documents must be supplied before consultation starts: reasons for the redundancies, planned social measures, criteria for being made redundant, order of redundancies.

The right to be informed and consulted must be backed by guarantees to ensure that consultation actually takes place. If an employer fails to respect his obligations, provision must be made for minimum administrative or judicial proceedings before the redundancies take effect, to ensure that they do not take place until the obligation to consult has been fulfilled. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers. The right of employees to contest the lawfulness of their being made redundant is examined with reference to Article 24 of the Charter.

Mr BIRK emphasised that the Revised Charter, as opposed to EU rules, in principle does not allow for exceptions to the personal scope of the applicable protection in collective redundancies.

Situation in Norway

The WEA Section 15-2 contains regulation regarding information and consultation in connection with collective redundancies. The reason for not ratifying this article in 2001 was the legal situation in the maritime regulation. For further information concerning this article, please note the report from the Ministry of Trade and Industry concerning seafarers (see below).

Seafarers: The legislation and practice concerning Norwegian seafarers do not cover the right to information and consultation in collective redundancy procedures, and are therefore not in conformity with Article 29 of the Charter for this group of workers.

Conclusion

As there are no rules protecting seamen in cases of collective redundancies this provision cannot be accepted at present.