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## **EUROPEAN SOCIAL CHARTER**

4th National Report on the implementation of  
the European Social Charter

submitted by

**THE GOVERNMENT OF ARUBA**

(Articles 5 and 6  
for the period 01/01/2005 – 31/12/2008)

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Report registered by the Secretariat on 17 December 2010

**CYCLE XIX-3 (2010)**

## **ESH REPORT 2005 - 2008**

For the period 1 January 2005 to 31 December 2008 made by the Government of Aruba in accordance with Article 21 of the European Social Charter, on the measures taken to give effect to the accepted provisions of the European Social Charter.

In accordance with Article 23 of the Charter, copies of this report have been communicated to:

### **The employer's organisations:**

- |   |              |
|---|--------------|
| ➤ <b>Associated General Contractors of Aruba</b>  | <b>AGCA</b>  |
| ➤ <b>The Aruba Hotel and Tourism Association</b>  | <b>AHATA</b> |
| ➤ <b>The Aruba Trade and Industry Association</b> | <b>ATIA</b>  |

### **The worker's organisations:**

- |   |              |
|---|--------------|
| ➤ <b>The Union of Nurses of Aruba</b>                       | <b>ABV</b>   |
| ➤ <b>The Federation of Workers of Aruba</b>                 | <b>FTA</b>   |
| ➤ <b>The Union of Public and Private Employees of Aruba</b> | <b>SEPPA</b> |

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## **ARTICLE 5: THE RIGHT TO ORGANISE**

*"With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organizations for the protection of their economic and social interests and to join those organizations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations."*

### **Question A**

**a. Please indicate whether any, and if so what, categories of workers and employers are prohibited by law from forming organizations, or restricted in doing so.**

The Government of Aruba refers the Committee to its previous report.

Please indicate, *inter alia*:

- the existence of legislation or special regulations applicable to the forming of organizations by civil servants and other persons employed by the public authorities at central or local level;
- to what extent the rights provided for in this Article apply to members of the armed forces and of the police, explaining in particular the nature and functions of any staff associations which may be available to them;
- whether nationals of other Contracting Parties lawfully resident or working regularly in the territory of your country may join or be a founding member of trade union. Please indicate in particular whether they may hold positions in the administration or management of a trade union;
- the eligibility of workers, nationals of other Contracting Parties to the Charter, for election to consultation bodies at the enterprise level such as works councils.

**b. Please indicate any conditions of registration or otherwise with which employers' and workers' organizations must comply when they are founded and the provisions with which they must comply in the course of their existence.**

The Government of Aruba refers the Committee to its previous report.

**c. Please indicate the measures intended to guarantee the exercise of the freedom to organize and in particular those to protect workers' organizations from any interference by employers and by the state. Please indicate how such protection from outside interference applies to employers' organizations.**

The Government of Aruba refers the Committee to its previous report.

**d. Please indicate, where appropriate, any statutory provisions regarding the affiliation of employers' and workers' organizations with national federations of organizations and with international organizations of the same type.**

The Government of Aruba refers the Committee to its previous report.

#### **Question B**

**a. Please describe how the right to join a trade union is protected in law and in practice and indicate whether any, and if so which, categories of workers are prohibited from joining a trade union or restricted in doing so.**

The Government of Aruba refers the Committee to its previous report.

**b. Please indicate whether and how the right of workers not to join a union is protected in law and in practice. Please indicate in particular whether examples exist in practice of an obligation to belong to a trade union (closed shop clauses, etc.) and what are the measures taken in this regard.**

The Government of Aruba refers the Committee to its previous report.

#### **Question C**

**a. Please furnish a complete description of any representatively criteria, i.e. Any conditions which trade unions must fulfill in order to be considered representative.**

The Government of Aruba refers the Committee to its previous report.

**b. If such criteria exist, please also give information on the existence and type of appeal against decisions by the authority or authorities responsible for determining whether a trade union is representative or not. Please indicate the functions, which are reserved for representative unions in respect of the negotiation and conclusion of collective agreements, participation in the nomination of various types of workers' representatives and participation in consultation bodies.**

The Government of Aruba refers the Committee to its previous report.

**c. Please replies to the questions under a. and b. in respect of representatively of employers' organizations, except when negotiations at enterprise level are concerned.**

The Government of Aruba refers the Committee to its previous report.

**Question D**

**Please indicate under what circumstances and on which conditions trade union representatives have access to the workplace. Please indicate also whether trade unions are entitled to hold meetings on the premises of the enterprise.**

The Government of Aruba refers the Committee to its previous report.

**Question E**

**Please give information on the measures taken to ensure protection against reprisals on grounds of trade union activities.**

The Government of Aruba refers the Committee to its previous report.

## **ARTICLE 6: THE RIGHT TO BARGAIN COLLECTIVELY**

### **ARTICLE 6 PARA. 1**

*"With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:*

*to promote joint consultation between workers and employers;"*

**Please indicate the legislative or other steps taken to encourage joint consultation between workers and employers in your country. In what way do the public authorities encourage or participate in such consultation? Please give particulars on the bodies responsible for such consultation, at the national, regional, or local levels as the case may be, and on the procedures entailed, together with information on the issues covered (financial issues, social issues, working conditions, etc.) and on the sectors of the economy to which the procedures apply.**

The Government of Aruba refers the Committee to its previous report.

### **ARTICLE 6 PARA. 2**

*"With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:*

*to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements;"*

### **Question A**

**Please give a description of the existing collective bargaining machinery and its results in both the private and public sector (indications of the number of negotiations and agreements concluded and other indicators or evaluation criteria).**

The Government of Aruba refers the Committee to its previous report.

### **Question B**

**Please indicate whether and how the law encourages or obliges employers or their organizations to bargain with workers' organizations collectively, and whether and how it encourages or obliges workers' organizations to bargain with employers or their organizations. Please also indicate how the question of union recognition is dealt with.**

The Government of Aruba refers the Committee to its previous report.

### **Question C**

**Please indicate to what extent, under what conditions, according to which procedures and for which types of subject matter the State can intervene in the process of free collective bargaining. Please indicate where state intervention occurred during the reference period.**

The Government of Aruba refers the Committee to its previous report.

**ARTICLE 6 PARA. 3**

*"With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:  
to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labor disputes;"*

**Question A**

**Please describe such machinery as exists by virtue either of law, collective agreements or practice for the settlement of disputes by:**

- a. Conciliation;**
- b. Arbitration or court procedure;**
- c. Other methods of dispute resolution.**

The Government of Aruba refers the Committee to its previous report.

**Question B**

**In so far as certain machinery may be compulsory, please describe:**

- The sanctions imposed by law or by collective agreements used for its enforcement;**
- Their significance in practice.**

The Government of Aruba refers the Committee to its previous report.

**Question C**

**Please describe the procedures provided, whether by law, staff regulations or practice, for settling disputes between public sector employees and the administration, and show whether existing procedures are open to them.**

The Government of Aruba refers the Committee to its previous report.

**ARTICLE 6 PARA. 4**

*"With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties recognize:  
the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."*

**Question A**

**Please explain the meaning of collective action in your country specifying what forms of action are recognized (strike, lockout, other forms), what are the permitted objectives of collective action and how the right to collective action is guaranteed.**

The Government of Aruba refers the Committee to its previous report.



**Question B**

**Please indicate who is entitled to take collective action (individuals, groups/coalitions of workers, trade unions, employers or employers' organizations, etc.).**

The Government of Aruba refers the Committee to its previous report.

**Question C**

**If the right to collective action is restricted, please state what the content of these restrictions, and whether they are related to the purposes pursued or the methods employed by those taking action, or both, and by which authority they may be imposed.**

The Government of Aruba refers the Committee to its previous report.

**Please also state any procedural requirements pertaining to collective action (eg. notice rules, cooling-off periods, conciliation/arbitration, ballot requirements, quorums, etc.).**

The Government of Aruba refers the Committee to its previous report.

**Question D**

**Please indicate whether any existing restrictions to the right to collective action "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" (Article 31 of the Charter).**

The Government of Aruba refers the Committee to its previous report.

**Question E**

**Please state the effect of strikes or lockouts on the continuation of the employment contract and any other consequences, eg. deduction from wages, liability, etc.**

The Government of Aruba refers the Committee to its previous report.

**Question F**

**Please supply available statistics on strikes and lockouts.**

Please refer to Annex 1, page 2 and 3

**In 2008 SEPPA (The Union of Public and Private Employees of Aruba,) SPA (police union), SADA (customs union), SIMAR (teachers union) joined together in a mass strike regarding income index. After a seven-week strike and additional appearance before the Court, the parties reached an agreement.**

## **ANSWER TO THE QUESTION OR REQUEST FOR INFORMATION BY THE ECSR**

### **ARTICLE 5: THE RIGHT TO ORGANISE**

#### ***Freedom to join or not to join a trade union***

**The report states that the tripartite committee for the modernization of labor legislation (CMLL) has recommended that the relevant legislation should be amended to include an express ban on employers dismissing employees because they belong to a trade union or take part in trade union activities. The Committee asks for the next report to provide information on progress in the legal situation in response to this recommendation.**

The Government would like to inform the Committee that the labor legislation review is still underway. The Government will communicate any progress made in this regard in a subsequent report.

### **ARTICLE 6: THE RIGHT TO BARGAIN COLLECTIVELY**

#### ***Paragraph 1 – Joint consultation***

**The Committee notes that the Labor Ordinance Committee, a tripartite consultative body established in 1992 and the activities of which have ceased in the year 2001, is supposed to be reactivated. A new state decree is currently under discussion replacing the industrial relations order of 1990, GT 57, which previously governed the composition and functioning of the Labor Ordinance Committee. As under the previous legislation, the Labor Ordinance Committee will be composed of three government representatives and four representatives of each of the employers' and employees' organisations. The Committee asks the next report to provide information on whether the said state decree has been adopted and how it is implemented in practice. It wishes in particular to know what are the activities carried out by the Labor Ordinance Committee as regards joint consultation between the social partners.**

The Government informs the Committee that the Labor Ordinance Committee (COL) has been reactivated by State Decree 6 February 2006 (Annex 2), replacing the previous decree AB 1990 no. 8. The COL consists of eleven delegates, where the most representative organizations of employers (4), workers (4) and the Government (3) are represented. The COL is scheduled to meet four times annually. During the reporting period five consultations took place.

The current state decree is being revised to include an additional employers' organisation as a committee member, which was inadvertently omitted.

The COL did not carry out any specific activity regarding evaluation of the provisions of the Labor Ordinance or give any advise with regards to awarding overtime permits, termination permits and work schedule chances.

**The Committee further wishes the next report to provide information on joint consultation between employers and employees or the organizations representing them at sectoral and enterprise level on matters of mutual interest such as, *inter alia*, productivity, efficiency, industrial health, safety and welfare, working conditions, economic problems and social matters.**

There are currently no joint consultations between employers and employees or the organizations representing them at the sectoral and enterprises level on matters of mutual interest.

**In reply to the Committee's question as to whether there are consultative or specific representative bodies in the public service, the report states that civil servants may be represented by employees' representative organisations and that there also exist employee's representative organisations for specific parts of the public sector such as for teachers, the police, firemen and customs officers. The Committee noted in its conclusions under Article 5 of the Charter that negotiations on civil servants' working conditions are conducted by the Union of Public and Private Employees of Aruba (SEPPA). It asks for information on joint consultation mechanisms regarding the organizations representing the categories of public sector employees not being members of the SEPPA.**

There are currently no joint consultation mechanisms regarding the organizations representing the categories of public sector employees not being members of the SEPPA. Each specific representative body in the public sector attends to their own unique employment conditions needs. In discussions on general employment conditions the largest representative body being SEPPA and the specific representative bodies may join together, if they so choose. In the discussion in 2008 regarding income index, SEPPA, SPA (police union), SADA (customs union), SIMAR (teachers union) joined together in the negotiations.

**The Committee asks whether the participation of trade unions in consultations between the social partners in the private as well as in the public sector is subject to any representativeness requirements.**

The Government informs the Committee that there are no lawful representatively requirements regarding the participation of trade unions in consultations between the social partners in the private or in the public sector.

***Paragraph 2 – Negotiation procedures***

**State Ordinance Collective Labor Agreement, 1987, GT9, contains the rules governing the conclusion of collective agreements. The Committee understands that these rules correspond to those applicable before**

**Aruba's autonomy which it already examined and considered to be in conformity with Article 6§2 of the Charter (Addendum to Conclusions VIII, p. 9). It asks the next report to confirm that this is actually the case.**

The Government confirms that the State Ordinance Collective Labor Agreement, 1987, GT9, contains the rules governing the conclusion of collective agreements, which correspond to those rules applicable before Aruba's autonomy.

**The Committee asks the next report to provide updated information on collective negotiations at the enterprise level as well as at levels above the enterprise such as the number of collective agreements concluded and the percentage of workers covered by them.**

Please refer to Annex 1, page 4.

***Paragraph 4 – Collective action***

**The committee noted that, in the event a strike occurs or is threatened in enterprises as specified in a particular State Decree, the Government may prohibit such a strike for a period as stipulated in the decree but not exceeding ninety days. The report clarifies that for the time being no such State Decree exists and therefore the provision has never been applied. The Committee asks the next report to provide information on whether a corresponding State Decree has meanwhile been adopted or whether its adoption is envisaged and what would be its content.**

The Government informs the Committee that a state decree as referred to in article 3b sub 2 of the State Ordinance Labor Disputes (1989, no.GT 65) has not been created. The Government would like to clarify that the State Decree can be created in cases of strikes, if in the event a strike occurs or is threatened in enterprises. The abovementioned State Decree referred is therefore not a permanent State Decree.

**The Committee further wishes to know whether employers or public authorities may impose restrictions on the right to strike to maintain a minimum service in sectors considered to be essential for the society.**

Please refer to report 2003, annex 7, the State Ordinance Labor Disputes. Article 3 of the State Ordinance Labor Disputes states that in cases of strikes or lockouts concerning 25 workers or more, the Government Mediator must be informed immediately. Article 3b of the State Ordinance Labor Disputes impose restrictions on the right to strike in certain enterprises. Please refer to report 2003, annex 19, Labor Decree II.

**The Committee also asks whether there are examples of judicial decisions on the legitimacy of strike actions and in particular for information whether and how the courts apply proportionality criteria when deciding on the lawfulness of strike action.**

Please refer to annex 3. The Government refers especially to the court ruling KG number 789 regarding a most recent mass strike in 2008 by public

employees, in which the Court of First Instance confirmed the lawfulness of the strike.

**The Committee observed in Conclusions XVII-1 (p. 357) that decisions of the Netherlands Supreme Court are applicable to the entire kingdom. The Committee asks in this context for clarification whether the principle that a judge may decide on whether collective action is premature (*in obiter dicta*, Decision of the Supreme Court of 19 April 1991, see also conclusion on Article 6§4 Netherlands) applies in Aruba.**

Considering that a collective action is always the ultimum remedy, the judge can indeed decide that the collective action is premature and decide on the lawfulness of the collective action.