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EUROPEAN SOCIAL CHARTER

Addendum to the
11th National Report on the implementation
of the European Social Charter

submitted by

THE GOVERNMENT OF CZECH REPUBLIC

(Article 2§1, 4§3, 5, 6§2, 6§3 and 6§4
for the period
01/01/2009 – 31/12/2012)

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16 June 2014

CYCLE 2014

Answers to Additional Questions Addressed to Czech Republic
Conclusions XX-3 (2014)

Article 2§1 - Right to just conditions of work – Reasonable working time

The Committee asks whether jobs and situations in which workers may be requested to work up to 16 hours go beyond what can be considered as exceptional situations, such as natural disaster.

The Act No 262/2006 Coll., Labour Code, stipulates in section 83 the maximum length of the shift which cannot exceed 12 hours. The section 90 subsection 1 of the Labour Code determines the minimum length of uninterrupted rest period between two shifts when stipulating: "The employer shall distribute working hours in such a way so that his employee has a minimum rest period of 11 hours, and an employee younger than 18 minimum rest period of 12 hours, between the end of one shift and the start of a subsequent shift within 24 consecutive hours. In accordance with section 88, after an employee's continuous work for six hours at the utmost, he/she must be given a work break for meal and rest lasting at least 30 minutes by the employer.

Overtime work may be performed only exceptionally. The employer may order overtime work only due to serious operational reasons exhaustedly listed by law under the conditions laid down in section 91 subsections 2 to 4; it means that employer must not plan employee´s overtime in advance. Overtime must be ordered only in unforeseen and accidental situations such as disaster, breakdown or unexpected short-term sickness of another employee.

As mentioned above, an employee´s work including overtime (in case of unforeseen and accidental situations) and two breaks for meal and rest (lasting at least 30 minutes each) within 24 consecutive hours can be maximum 15 hours in total which cannot go beyond what can be considered as exceptional situations.

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

In its Statement of interpretation XX-1 (2012) on Article 20 (Article of the Additional Protocol of 1988) the Committee stated that it requires that in equal pay litigation cases the legislation should allow pay comparison across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that in situation in the Netherlands complied with this principle, as in equal pay cases in the Netherlands a comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands).

The Committee considered that equal pay comparison should be allowed outside the company in at least one or more of the following situations:

- *Cases in which statutory rules apply to the working and pay conditions in more than one company;*
- *Cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;*
- *Cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate.*

In this connection, the Committee has referred to the judgment of the European Court of Justice of 17 September 2002 on the A.G. Lawrence and Others v. Regent Office Care Ltd. (case C 320/00) where the Court held that there is nothing in the wording of Article 141 (1) EC

to suggest that the applicability of the provision of equal pay is limited to situations in which men and women work for the same employer. However, where the differences identified in the pay conditions of workers performing equal work or work of equal value cannot be attributed to a single source, there is no body which is responsible for the inequality and which could restore equal treatment. Such a situation does not come within the scope of Article 141 (1) EC. The work and the pay of those workers cannot therefore be compared on the basis of that provision.

Furthermore, in its judgment of 13 January 2004 Debra Allonby v. Accrington and Rossendale College (Case C-256/1) the European Court of Justice held that Article 141 EC must be interpreted as meaning that a woman whose contract of employment with an undertaking has not been renewed and who is immediately made available to her previous employer through another undertaking to provide the same service is not entitled to rely, vis-à-vis the intermediary undertaking, on principle of equal pay, using as a basis for comparison the remuneration received for equal work or work of the same value by a man employed by the woman´s previous employer. The fact that the level of pay received by that woman is influenced by the amount which her previous employer pays to the intermediary undertaking is not a sufficient basis for concluding that those two undertakings constitute a single source to which can be attributed the differences identified in the conditions of pay.

The Committee asks whether pay comparison outside company are possible in equal pay litigation cases, when difference identified in the pay conditions of female and male workers performing work of equal value is attributable to a single source. This could signify employees working for the same legal person or group of legal persons, employees of several undertakings or establishments covered by the same collective work agreement or regulation. In such cases, regulation of the terms and conditions of employment actually applied is traceable to one source, whether it be the legislature, the parties to a collective works agreements or the management of a corporate group (Opinion of Advocate General Geelhoed of 14March 2002 regarding the ECJ Case C-320/00).

The Committee asks whether in equal pay litigation cases it is possible to make comparison of pay and jobs outside the company directly concerned, in the meaning of the above mentioned Statement of Interpretation.

The principle of justified remuneration is guaranteed by Article 28 of the Charter of Fundamental Rights and Freedoms ("CFRF"). Employees have a right to justified remuneration for work and for satisfactory working conditions.

The Labour Code relates to that guarantee when stipulates in section 1a one of fundamental rights – right to justified remuneration for all employees. This right is specified in section 109, subsection 4 of the Labour Code which determines that remuneration is provided with regard to complexity, responsibility and strenuousness of the work performed, and with regard to the difficult (arduous) working conditions, work efficiency and attained work results.

Section 110 stipulates that all employees employed by one employer are entitled to receive equal remuneration for the same (equal) work or for work of the same value. The same (equal) work or work of the same value shall mean to be work of the same or comparable complexity, responsibility and strenuousness which is performed in the same or comparable working conditions and which is of equal or comparable work efficiency and brings equal or comparable work results.
Criteria for complexity, responsibility, strenuousness, comparable working conditions and work efficiency consideration are stipulated in section 110 subsection 2 to 5.

Criteria determined in section 110 have been considered as key in case of eventual discrimination in the field of remuneration.

The ban of discrimination and unequal treatment in labour-law relationship including remuneration regulates section 1a subsection e) and 16 of the Labour Code when stipulating "Employers shall ensure equal treatment for all employees as regards employee working conditions, remuneration for work and other emoluments in cash and in kind, vocational (professional) training and opportunities for career advancement (promotion). Any form of discrimination in labour relations is prohibited." Conceptually, including different treatment is discrimination regulated in Anti-Discrimination act.

With respect to remuneration principles in public and private sector, remuneration in public sector predominantly depends on mutual agreement between employer and employee, or trade unions. The level of remuneration fully respects autonomous will of parties. Remuneration thus can be determined by individual agreement between employee and employer (contract of employment); by collective agreement stipulating remuneration rules and conditions for employees or by internal remuneration rules, which also determines the internal rules for remuneration of all employees of an employer. The equal pay comparison is guaranteed only at the level of one employer.

In public sector remuneration conditions of employees are regulated by the same legal regulations.
In spite of it, the practical excise and observance of the principle of equal pay for equal work and work of equal value across different employers in different social economic conditions and regions would seriously affect the elementary function of the wage (motivational, directional, allocating, compensatory) and goes beyond requirements of the Charter. Thus denying elementary laws, primarily the one of supply and demand because wage as the cost of work, is closely linked also to the cost of living in the respective locality or region.

Article 5 – Right to organise

1) *Regarding the constitution of a trade union the Committee wishes to know what is the difference between the registration and the notification procedure, and the implication in practice of the notification procedure in view of the establishment of a trade union.*
2) *The Committee would like to be informed on the scope of Anti-discrimination Act that came into force in 2009. More specifically, it asks whether the scope of this Act covers trade union members.*
3) *The Committee wishes the Government to clarify whether members of the Security and Intelligence Service are part of the armed forces and whether they perform military functions. The Committee asks the Government to indicate what provisions of national law regulate the issue and provide details on the relevant provisions.*

Ad 1) The main difference between the registration and the notification principle lies in the moment of a legal entity foundation. Every legal entity must be firstly established for instance by an agreement or a charter of foundation (section 122 and cons. of the Act No 89/2012 Coll., Civil Code). But the legal existence of the company (i.e. a capacity to have rights and duties within the legal order) commences upon its incorporation, i.e. by registration in the Commercial Register (section 126 subsection 1 of the Civil Code). The registration is determined by Act No 304/2013 Coll., regulating Legal and Private Entities Public Registers.

The incorporation of trade unions, organisations of employers and their collateral organisations regulates section 3025 of the Civil Code and begins the following day after the day when the

Public Administration Office (the Commercial Court having local jurisdiction) received a notification of its foundation. There is not proceeding ordered by law which means it is a liberal foundation independent on public authority interference, based only on duty to notify. Despite the fact that above mentioned legal regulations have come into effect recently, the notifying principal of trade unions was effective also in previous (now legally unenforceable) acts.

Ad 2) The scope of Anti-discrimination Act covers in section 1 subsection 3 all individuals, i.e. trade union members including.

Ad 3) Members of the Security and Intelligence Service status is determined in Act No 153/1994 Coll., regulating Intelligence Service in the Czech Republic, Act No 154/1994 Coll., Security and Intelligence Service Act and Act No 361/2003 Coll., regulating Service Relationship of Members of Security Force.

Security and Intelligence Service is within the intention of the law armed security and intelligence service of the Czech Republic and their members are entitled to possess and carry a service firearm and use it in cases of self-defence or necessity.

Article 6§2 – Right to bargain collectively – Negotiation procedures

According to the Czech-Moravian Confederation of Trade Unions (CMKOS), collective bargaining coverage was 34 % in 2011. The Committee wishes the Government to confirm whether this figure is accurate. In case this figure is confirmed, given the limited coverage of collective bargaining, the Committee asks what measures are taken to promote collective bargaining.

As there is no legal obligation in the Czech Republic to notify the conclusion of company collective agreements, the Ministry of Labour and Social Affairs cannot confirm the extent of collective bargaining in 2011 stated by ČMKOS.

The Czech Republic promotes collective bargaining by fundamental rights guaranteed to all citizens in Constitution of the Czech Republic, in the Charter of fundamental rights and freedoms, in the Collective Bargaining Act and the Labour Code.
Moreover, the legislative change of the Collective Bargaining Act which should stipulate the obligation of employers to announce conclusion of commercial collective agreement and the number of employees covered by that agreement to Ministry of Labour and Social Affairs is discussed at present. The activity of trade unions in non-business sector will be stipulated also in a newly prepared Civil Service Act which is to be effective since January 1, 2015.

Article 6§3 – Right to bargain collectively - Conciliation and arbitration

The Committee notes from the Observation of the ILO Committee of Experts on the Application of Conventions and Recommendations on Article 4 of Convention No. 98, adopted in 2011, that "it has not been established that trade unions have the right to denounce to the labour inspection authorities cases of non-compliance with the legislation and collective agreements". The Committee wishes to have the confirmation that the labour inspection authorities intervene in the conciliation and voluntary arbitration for the settlement of labour disputes and information on their functioning. The Committee asks whether other authorities have a responsibility in this context.

Under section 42 of the Act No 500/2004 Coll., Rules of Administrative Procedure, trade unions are entitled to denounce cases of non-compliance with the legislation and collective

agreements. The administrative authority is obliged to accept such submissions and to initiate an administrative procedure.

The administrative authority shall within 30 days notify the person who submitted the complaint that the proceedings started or there was no ground to initiate proceedings *ex officio* or that the case concerned has been transferred to the competent authority. Under section 5 subsection 2 of the Act No 251/2005 Coll., Labour Inspection Act, the Labour Inspection informs of the outcome the person whose notice in writing it received.

The notification for inspection can be submitted by any subject, including individuals, employees, national enterprise or trade unions. The subject of inspections is observance of labour-law legislation, collective complains in parts stipulating individual labour-law claims regulated by legal regulations and internal rules [section 3 subsection 2 a) of the Labour Inspection Act]. However, Labour Inspection bodies are not entitled to interfere with the collective bargaining, conciliation or arbitration proceeding. As a supervisory body, Labour Inspection cannot be involved in individual dispute settlements between employers and employees or employers and employees representatives.

Labour inspection Act stipulates in sections 10 and 23 particular qualified facts of misdemeanours and administrative delicts concerning cooperation between employers and employees representatives; Labour Code regulates employers' and employees representatives' relationship in sections 62, 277, 279, 280, 287 and 339 subsection 1. A fine up to CZK 200 000 can be imposed for violation of law or right.

	Number of notifications for inspection submitted by trade unions	Number of notifications for inspection in total
2009	43	6052
2010	49	6169
2011	37	5930
2012	50	11131

Approximately one third of notifications submitted by trade unions related to cooperation of employer and trade unions, others related to the employment, remuneration, working hours, health and safety protection at work, equal treatment etc.

Article 6§4 – Right to bargain collectively – Collective action

The Committee wishes to know what categories of workers are excluded from the right to strike.

A strike in a dispute about the conclusion of a collective agreement is governed by Section 16 of the Collective Bargaining Act.
Article 44 of the CFRF limits the right to strike for those occupations that are directly essential in protecting life and health. Section 20 of the Collective Bargaining Act enumerates the cases where strike is illegal. The strike ban subsequently needs to be interpreted in the individual cases in such a way that the strike would have to threaten the life, health or property directly.
The restriction does not cover all employees, it aims only to individuals. Under section 20 of the Collective Bargaining Act, the strike ban only applies only to those employees (individuals) of undertakings, healthcare institutions or social care institutions, intensive care units, emergency rescue teams, air traffic control centres, members of fire brigades and company fire protection personnel, members off the police, judges, operators of equipment at nuclear power stations, equipment working with fissile materials, equipment of oil and gas pipelines

exhaustedly listed by law whose work stoppage would threaten the rights of persons, public interest, national security and public health within the meaning of Article 31 of the Charter.

When a strike occurs, it will be assessed *ad hoc* which employee cannot participate in the strike to ensure the minimum service requirement of each sector, depending on circumstances, so that the lives and health of citizens or property are not jeopardized by the strike. In practice, the trade unions and confederations (for instance CMKOS, Trade Union of Health Service and Social Care of the Czech Republic) post methodical instruction on their websites how to organise and hold strikes without lives and health of citizens being jeopardized including instruction how to ensure the minimum level of services during the strike. As it is impossible to list the specific workplaces to the law, the legal definition can only be of general nature.
Above mentioned limitation of the right to strike complies with the Charter (for example Conclusions V, Conclusions XIII-2).