09/11/2015 RAP/RCha/NOR/13(2016)

EUROPEAN SOCIAL CHARTER

13th National Report on the implementation
of the European Social Charter

submitted by

THE GOVERNMENT OF NORWAY

- Follow-up to Collectives complaints No; 74/2011
- Complementary information on Articles 22 and 28 (Conclusions 2014)

Report registered by the Secretariat on
9 November 2015

CYCLE 2016

NORWAY'S 13th NATIONAL REPORT ON THE IMPLEMENTATION OF THE EUROPEAN SOCIAL CHARTER

I
Information on the follow-up given to the decisions of the European Committee Social Rights relating to the collective complaints

Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 02/07/2013, violation of Article 24 and Article 1§2.

The Norwegian government's process for amending the rules concerning termination of employment on grounds of age began before the matter was presented to the Committee of Ministers of the Council of Europe, and was justified on the basis of a general desire to make provisions to enable more workers to continue working longer.

Pursuant to section 19 (1), final paragraph, of the Seamen's Act of 30 May 1975, protection against dismissal for seamen was discontinued at the age of 62. On 18 November 2011, the Government appointed a legislative committee entrusted with the task of proposing a Bill concerning employment protection, etc. for employees on board ships. In its terms of reference, the legislative committee was particularly requested to consider amendment of section 19 (1), final paragraph, of the Seamen's Act concerning termination of employment on grounds of age.

The report of the Committee (Official Norwegian Report NOU 2012:18) was issued on 1 November 2012. With regard to the age limit laid down in section 19 of the Seamen's Act, the Committee stated as follows on page 162 of the report:

"Although the result was that the age limit was upheld [in Norwegian Supreme Court Reports 2010, page 202 (the Kystlink ruling), where the legality of the 62-year limit was considered], the ruling throws doubt on there being special conditions in shipping today indicating a generally lower retirement age.[...] It is moreover clear to the Committee that, since the Kystlink ruling, there have been further developments in case law, both in Norway and in the EU. [...]
The Committee therefore proposes that the general age limit provided by the Act be raised to 70 years."

The Act relating to employment protection, etc. for employees on board ships was subsequently passed on 21 June 2013, and entered into force on 20 August 2013, two months prior to the decision of the Committee of Ministers of the Council of Europe on 16 October 2013. It follows from section 5-12, first paragraph, first sentence of the Act relating to employment protection, etc. for employees on board ships that employment may first be terminated when the employee reaches the age of 70. The general 70-year age limit at sea was thus brought in line with the general age limit in the remainder of the working community.[1] A unanimous Committee (the Ship Labour Law Committee, NOU 2012:18) and Storting resolved to raise the age limit from 62 to 70.

[1] However, the age limit for termination of protection against dismissal laid down in the Working Environment Act was raised from 70 to 72, with effect from 1 July 2015. At the same time, a lower limit of 70 years was introduced for company-internal age limits.

A lower age limit than 70 may still be fixed, but only to the extent that such discrimination on grounds of age is permitted pursuant to section 10-3 of the Act relating to employment protection, etc. for employees on board ships (the provision is compliant with the Working Environment Act, and the Supreme Court of Norway has interpreted the right of derogation as complying with EU law, so that the specific limits for the prohibition against discrimination will largely depend on the practice of the EU and EFTA Courts). Norwegian legislation is now deemed to be in compliance with Norway's obligations pursuant to art. 24 and art. 1 (2) of the European Social Charter.

II
Information required by the European Committee of Social Rights in the event of non-conformity for lack of information (Conclusions 2014).

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee concluded in 2014 that the situation in Norway is not in conformity with Article 22 of the Charter on the ground that it has not been established that workers and/or their representatives have legal remedies when their right to take part in the determination and improvement of working conditions is not respected.

The relevant rules of the Working Environment Act of 17 June 2005 no. 62 (WEA) in respect of the employees codetermination regarding improvement of working conditions are representation rules regarding safety representative (Chapter 6) and the working environment committees (Chapter 7). Additionally, there are several rules on information and consultation. However, these rules does not secure codetermination like the arrangements of safety representatives and working environment committees. Further, the employees individually have an obligation to cooperate on the design, implementation and follow-up of the undertaking's systematic work on health, environment and safety. Employees shall take part in the organised safety and environmental work of the undertaking and shall actively cooperate on implementation of measures to create a satisfactory and safe working environment, cf. the WEA § 2-3.

The employees may report the Labour Inspection Authority, anonymously or with full identity, to provide the authorities with information on breaches of the law. The Labour Inspection will take action in cases whitch imply serious breaches of the law. The Authority is authorized to issue orders or impose coercive fines to ensure compliance (WEA Sections 18-6 and 18-7). According to a new piece of legislation which entered into force 1 January 2014, the authority may additionally impose fines as a penalty for the violation of the law (WEA Section 18-10). In the most serious cases the Labour Inspectorate submit cases to the police with a petition to prosecute. It is a punishable offence to violate this statutory set of rules for both the employer (WEA Section 19-1) and for the enterprise (WEA Section 19-3). Finally, the Labour Inspectorate may halt the activity of the enterprise until the orders issued are complied with (WEA Section 18-8).

Due to the well-known authority of the Labour Inspection, the workers and/or their representatives are not normally appealing to the courts in respect of an alleged breach of their right to take part in the determination and improvement of working conditions.

This does not imply that it is not possible to take a case concerning violation of the WEAs rules on codetermination to the court. This is possible according to the general Act of 17 June 2005 no. 90 relating to mediation and procedure in civil disputes. The employees may have a current need for a court decision for example in the absence of enforcement of the Labour Inspection Authority. In principle it is possible for the employees to bring a case to the court, provided that the general requirements for raising av lawsuit is present, cf. specifically the Dispute Act Section § 1-3, concerning cause of action and the parties connection to the case. If employees have a current interest and a specific need for a judicial decision or a clarification related to a legal requirement concerning participation and codetermination, they may bring the case before the court individually (the Dispute Act Section 2-1 Subsection 1), as a group (the Dispute Act Section 35-2) or by a trade union (the Dispute Act Section 2-1 Subsection 2).

Hence, the Norwegian Government is of the opinion that workers and/or their representatives have legal remedies when their right to take part in the determination and improvement of working conditions is not respected.

Article 28 - The right of workers' representatives to protection and facilities

The Committee concludes that the situation in Norway is not in conformity with Article 28 of the Charter on the ground that it has not been established that the protection granted to workers' representatives is extended for a reasonable period after the end of period of their mandate.

According to The Working Environment Act (WEA) Section 15-7 employees may not be dismissed unless this is *objectively justified* on the basis of circumstances relating to the undertaking, the employer or the employee. Dismissal due to curtailed operations or rationalisation measures is not objectively justified if the employer has other suitable work in the undertaking to offer the employee. The employer may summarily dismiss an employee if he or she is guilty of a gross breach of duty or other serious breach of the contract of employment, cf. the WEA Section 15-14.

The above mentioned rules apply generally to all dismissals, also in cases of dismissals of shop stewards. The position of the employee as a shop steward will be a part of the courts assessment of whether a dismissal is objectively justified or not. The employer may allege that actions of the employee performed in the period as a shop steward gives reason to dismiss him/her after ended duty. In that case the court must assess if the dismissal is objectively justified in the light of the special position he/she had as a shop steward. Hence, the protection does not end when the employee ends his/hers duty as a shop steward.

According to Basic Agreements (LO and NHO 2014-2017) Section 5-11, the shop stewards may not be given notice to leave or be summarily dismissed *without just cause*. In addition to seniority and other factors which should reasonably be taken into account, due regard shall be given to the special position the shop stewards have in the enterprise. If shop stewards are given notice individually, the period of notice shall be 3 months unless they are entitled to longer notice under the Working Environment Act or their contracts. This special period of notice does not apply if notice is given owing to the shop steward's own conduct. When implementing workforce reductions, reorganizations and lay-offs, the agreement explicitly express that it must be taken into account the special position of the shop stewards.
The provisions apply correspondingly to safety delegates and members of working environment committees, boards, and corporate assemblies.

Most of the shop stewards rights pursuant to the Basic Agreement is connected to the employee who currently is in the position as a representative. However, the requirement of the agreement regarding "just cause" always will apply. If the employer allege that an action performed under the duty gives reason for a dismissal after ended duty of the shop steward, the court must take into account the special position of the employee under the duty, when assessing if the employer has "just cause" for a dismissal.
The notion "just cause" in the Basic Agreement are to be understood or used in the same way as the notion "objectively justified" in the WEA, according to the agreement parties.
It is the opinion of the Government that a shop steward in this manner have sufficient and reasonable employment protection after the period he/she have served as such.