



March 2023

EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions XXII-3 (2022)

DENMARK

This text may be subject to editorial revision.

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, statements of interpretation, and general questions from the Committee, are contained in the General Introduction to all Conclusions.

The following chapter concerns Denmark, which ratified the 1961 European Social Charter on 3 March 1965. The deadline for submitting the 41st report was 31 December 2021 and Denmark submitted it on 10 November 2022.

Denmark submitted its report too late for examination. However, the Committee decided to examine Denmark's report relating to Articles 5 (right to organise) and 6§2 (right to bargain collectively, negotiation procedures) due to the fact that a meeting had been held in March 2022 with the Danish authorities on the topic of the Danish International Shipping Register.

The reference period was from 1 January 2017 to 31 December 2020.

The conclusions relating to Denmark concerning the two situations examined by the Committee (Articles 5 and 6§2) are two conclusions of non-conformity.

The Committee considers that the failure to meet the deadline for submitting the report amounts to a breach of the reporting obligation entered into by Denmark under the 1961 Charter.

The next report from Denmark will deal with the following provisions of the thematic group IV "Children, families, migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for submitting that report was 31 December 2022.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by Denmark, as well as the information provided during and after the Committee's meeting with representatives of the Danish Maritime Authority that took place in Strasbourg on 22 March 2022 (in pursuance of Article 24§3 of the 1961 Charter as amended).

The Committee notes that for the purposes of this report, States have been asked to respond to the specific targeted questions in relation to Article 5 of the Charter, as well as, where applicable, to previous findings of non-conformity or deferrals (see the appendix to the letter whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the remit of the thematic group "Labour rights").

In its previous conclusion, the Committee considered that the situation in Denmark was not in conformity with Article 5 of the 1961 Charter on the ground that the legislation on the International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark (Conclusions XXI-3 (2018)).

The Committee has examined the situation regarding trade union rights (formation of trade unions and employers' organisations, freedom to join or not to join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and to the targeted questions.

Prevalence/Trade union density

The Committee asked in its targeted question for data on trade union membership prevalence across the country and across sectors of activity.

The report notes that no data is available on trade union prevalence.

Personal scope

In its previous conclusion, the Committee considered that the situation in Denmark was not in conformity with Article 5 of the 1961 Charter on the ground that the legislation on the Danish International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark (Conclusions XXI-3 (2018)). The Committee considers that the issues raised by this conclusion of non-conformity are better addressed under the section on trade union activities below.

Restrictions on the right to organise

In its targeted question, the Committee asked for information on public or private sector activities in which workers are denied the right to form organisations for the protection of their economic and social interests or to join such organisations.

The report notes that there are no activities in which workers are not allowed to unionise.

Trade union activities

Regarding its previous conclusion of non-conformity following from the restrictions on collective bargaining rights resulting from Article 10 of Act No. 408/1988 on the Danish International Shipping Register, the Committee refers to the Conclusion under Article 6§2 of the Charter, which summarises the information contained in the report submitted by Denmark, and the information provided during and after the Committee's meeting with representatives of the Danish Maritime Authority that took place in Strasbourg on 22 March 2022 (in pursuance of Article 24§3 of the 1961 Charter as amended).

On that basis, the Committee notes that despite incremental improvements of safeguards in respect of seafarers not residing in Denmark onboard of ships registered in the Register, the fundamental facts that gave rise to the previous findings of non-conformity with Article 5 of the 1961 Charter remain unchanged. Namely, Article 10 of Act No. 408/1988 on the Danish International Shipping Register continues to impair the right of Danish trade unions to effectively protect the social and economic interests of members not residing in Denmark working on board ships registered in the Danish International Shipping Register, by not allowing them to engage in collective bargaining on their behalf. Consequently, the Committee reiterates its previous finding of non-conformity.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 5 of the 1961 Charter on the ground that the legislation on the International Shipping Register restricts the right of trade unions to bargain collectively on behalf of all their members.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by Denmark, as well as the information provided during and after the Committee's meeting with representatives of the Danish Maritime Authority that took place in Strasbourg on 22 March 2022 (in pursuance of Article 24§3 of the 1961 Charter as amended).

The Committee recalls that no targeted questions were asked for Article 6§2 of the 1961 Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

The Committee also recalls that in the General Introduction to Conclusions XXI-3 (2018), it posed a general question under Article 6§2 of the 1961 Charter and asked States to provide, in the next report, information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

In its previous conclusion, the Committee considered that the situation in Denmark was not in conformity with Article 6§2 of the 1961 Charter (Conclusions XXI-3 (2018)). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, including the information provided in the framework of the above-mentioned meeting with the Danish Maritime Authority, and the information provided in response to the general question.

The Committee recalls that the situation in Denmark has been held to be in breach of the 1961 Charter since Conclusions XII-1 (1988-1989) on the ground that the legislation impairs the right to collective bargaining in respect of non-resident seafarers engaged on vessels entered in the Danish International Shipping Register ('DIS') by imposing a restriction on the right of Danish trade unions to bargain collectively on behalf of such workers. More specifically, Article 10 of Act No. 408/1988 on the Danish International Shipping Register ('DIS Act') provides that collective agreements on wages and working conditions concluded with Danish trade unions can only cover seafarers who are domiciled in Denmark or who pursuant to EU law or other international obligations can be regarded as being domiciled in Denmark. Conversely, Article 10 of the DIS Act further provides that collective agreements concluded with third-country trade unions can only cover seafarers who are members of those unions or are citizens within the jurisdiction of which those unions operate. The Danish authorities state that two collective agreements covering approximately 2,000 seafarers from India and the Philippines are currently in place.

The Danish authorities reiterate that the provisions of the DIS Act should be read in conjunction with the terms of the Danish International Register of Shipping Framework Agreement ('the DIS Main Agreement'), involving employers' and workers' organisations in the shipping industry and which has been updated regularly since 1997. The DIS Main Agreement includes an engagement that terms agreed under collective agreements covering third-country seafarers on board ships entered in the DIS comply with basic international standards on pay and working conditions. It further secures the presence of Danish trade unions during negotiations between third-country trade unions and Danish shipowners' associations and enables Danish trade unions to represent and assist third-country seafarers or trade unions in matters apart from collective bargaining in the strict sense, namely relating to Danish legislation and to dealings with the Danish public authorities. Shipowners' organisations have further committed to notifying Danish trade unions of any work-related injuries sustained by third-country seafarers aboard their ships. They conclude that as a result of such arrangements, third-country seafarers largely benefit from the same working conditions and occupational health services as Danish seafarers, with the exception of pay.

The Danish authorities further reiterate that there is nothing preventing third-country seafarers working on board ships registered in the DIS to join Danish trade unions, subject to those organisations' internal rules. Accordingly, Danish trade unions would be entitled to represent such members, subject to the restrictions provided under Article 10 of the DIS Act (that is, such third-country members must be domiciled in Denmark). The example of a Danish trade union was provided, which reported having only five European Union seafarers and no third-country seafarers registered as members. The Committee observes that in practice there would be little incentive for third-country seafarers to join Danish trade unions.

These arrangements are justified based on economic considerations, as they are intended to prevent the risk of Danish ships being flagged out to third-countries, with the attendant loss of employment and revenue for the Danish shipping industry. The Danish authorities estimate that the total number of seafarers currently working on board ships entered in the DIS is just under 17 000, including approximately 7 000 Danish seafarers, 3 000 seafarers from other European Union member states, and 7 000 from third-countries, with the latter two categories registered mostly as non-resident seafarers for the purposes of Article 10 of the DIS Act. The Committee previously noted that the number of ships registered in the DIS register had increased constantly and that this increase was mostly accounted for by third-country seafarers (Conclusions 2014).

The Committee notes that despite incremental improvements of safeguards in respect of third country seafarers onboard of ships entered in the DIS, the fundamental facts that gave rise to the previous findings of non-conformity with Article 6§2 of the 1961 Charter remain unchanged. Namely, under Article 10 of the DIS Act, Danish trade unions continue to be prevented from concluding collective agreements on behalf of third country seafarers on board ships entered in the DIS, when those third-country seafarers are not domiciled in Denmark or cannot be legally regarded as being domiciled in Denmark. The Committee further notes that the arrangements provided by the DIS Main Agreement do not sufficiently mitigate the restrictions in question, as evidenced among others by the relatively large number of third-country seafarers who are currently not covered by a collective agreement concluded with trade unions from their country of residence (8,000 out of approximately 10,000). The low rates of collective bargaining evidenced by these numbers leave the other facilities mentioned by the Danish authorities, such as the right of Danish trade unions to be present during negotiations with third-country trade unions, somewhat devoid of practical importance in many cases. Accordingly, the Committee reiterates that the situation in Denmark is not in conformity with Article 6§2 of the 1961 Charter on the ground that the right to collective bargaining in respect of non-resident seafarers engaged on vessels entered in the International Shipping Register is unduly restricted (see also Article 5).

As the report does not provide any relevant information in relation to the above-mentioned general question, the Committee reiterates its request for information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

Covid-19

In reply to the question regarding the special arrangements related to the pandemic, the report does not provide any information.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 6§2 of the 1961 Charter on the ground that the right to collective bargaining in respect of non-resident seafarers engaged on vessels entered in the International Shipping Register is unduly restricted.