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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions XXII-3 (2022)

The Netherlands in respect of its Caribbean part

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.

With effect from 10 October 2010, the Netherlands Antilles ceased to exist as a constituent country of the Kingdom of the Netherlands. Two of the five islands which used to be part of the Netherlands Antilles – Curaçao and Sint Maarten – are henceforth separate constituent countries of the Kingdom of the Netherlands, together with Aruba, which is not affected by these changes. The three remaining islands which used to be part of the Netherlands Antilles – Bonaire, Sint Eustatius and Saba (henceforth referred to as “the Caribbean part”) – are now special municipalities, under the direct responsibility of the Netherlands. However, while the Revised Charter applies to the European part of the Netherlands, its Caribbean part remains bound by the engagements subscribed under the 1961 Charter in respect of the Netherlands Antilles, as it is also the case for Aruba, Curaçao and Sint Maarten.

The following chapter concerns the Netherlands in respect of its Caribbean part, which ratified the 1961 European Social Charter on 22 April 1980. The deadline for submitting the 15th report was 31 December 2021 and the Netherlands in respect of its Caribbean part submitted it on 23 December 2021.

The Committee recalls that the Netherlands in respect of its Caribbean part was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions XXI-3 (2018)/XX-3 (2014)).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions XXI-3 (2018)/XX-3 (2014)) found the situation to be in conformity, there was no examination of the situation in 2022.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers’ Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group III “Labour Rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The Netherlands in respect of its Caribbean part has accepted all provisions from the above-mentioned group except Articles 2 and 4 of the 1961 Charter, and Articles 2 and 3 of the Additional Protocol.

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

The conclusions relating to the Netherlands in respect of its Caribbean part concern 5 situations and are as follows:

– 3 conclusions of conformity: Articles 6§1, 6§2, 6§3.

In respect of the other 2 situations related to Articles 5 and 6§4, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by the Netherlands in respect of its Caribbean part under the 1961 Charter.

The next report from the Netherlands in respect of its Caribbean part 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 the Netherlands in respect of the Caribbean part (Bonaire, Sint Eustatius and Saba).

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (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 thematic group “Labour rights”).

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was in conformity pending receipt of the information requested.

The assessment of the Committee will therefore concern the information provided in the report in response to questions posed 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 states that the Government does not collect statistics on trade union membership and therefore is not in a position to provide the requested information.

The report states that central government has taken no measures to promote unionisation, but that trade unions are active in the Caribbean part of the Netherlands.

Restrictions on the right to organise

According to the report there are no restrictions on the right to organise, all workers in all sectors have the right to organise.

Forming trade unions and employers' organisations, Freedom to join or not to join a trade union, Trade union activities, Representativeness, Personal scope

The Committee previously requested updated information on all the above issues. The report provides no information on these aspects of the right to organise, therefore the Committee reiterates its request. The Committee considers that should the requested information not be provided there will be nothing to establish that the situation is in conformity with the Charter.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

The Committee takes note of the information contained in the report submitted by the Netherlands in respect of the Caribbean part (Bonaire, Sint Eustatius and Saba).

The Committee recalls that no targeted questions were asked for Article 6§1 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 1961 Charter in respect of the provisions relating to the “Labour rights” thematic group).

As the previous conclusion found the situation in the Netherlands with regard to the Caribbean part (Bonaire, Sint Eustatius and Saba) to be in conformity with the 1961 Charter, there was no examination of the situation in 2022. Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in the Netherlands in respect of the Caribbean part (Bonaire, Sint Eustatius and Saba) is in conformity with Article 6§1 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by the Netherlands in respect of the Caribbean part (Bonaire, Sint Eustatius and Saba).

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 1961 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 found that the situation in the Netherlands - Kingdom in Europe and the special Caribbean municipalities (Bonaire, Sint Eustatius and Saba) was in conformity with Article 6§2 of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the general question.

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 notes that no special arrangements were made.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands in respect of the Caribbean part (Bonaire, Sint Eustatius and Saba) is in conformity with Article 6§2 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

The Committee recalls that no questions were asked for Article 6§3 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).

As the previous conclusion found the situation in the Netherlands – Kingdom in Europe and the special Caribbean municipalities (Bonaire, Sint Eustatius and Saba) – to be in conformity with the Charter (Conclusions 2018, the Netherlands), there was no examination of the situation in 2022.

Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in the Netherlands in respect of the Caribbean part (Bonaire, Sint Eustatius and Saba) is in conformity with Article 6§3 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

The Committee takes note of the information contained in the report submitted by the Netherlands in respect of the Caribbean part (Bonaire, Sint Eustatius and Saba).

The Committee recalls that no targeted questions were asked for Article 6§4 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 2018 and Conclusions XXI-3 (2018), it posed a general question under Article 6§4 and asked States to provide, in the next report, information on the right of members of the police to strike and any restrictions.

In Conclusion 2014 on the Netherlands (Kingdom in Europe and the special Caribbean municipalities: Bonaire, Sint Eustatius and Saba), the Committee found that the situation was in conformity with Article 6§4 of the Charter pending receipt of the information requested. The assessment of the Committee will therefore concern the information provided in the report in response to the question raised in its previous conclusion and to the general question.

Right to collective action

Restrictions to the right to strike, procedural requirements

In Conclusion 2014 on the Netherlands (Kingdom in Europe and the special Caribbean municipalities), the Committee asked if judicial decisions on the legitimacy of collective action given by Dutch courts were applicable to the special Caribbean municipalities (Bonaire, Sint Eustatius and Saba).

The Committee notes that the Government has not provided the information requested, neither in the report it submitted for the preceding reporting cycle (Conclusions 2018) nor in that submitted for the current one. It therefore repeats its question.

The Committee points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§4 of the 1961 Charter. Pending receipt of the information requested, the Committee reserves its position on this point.

Right of the police to strike

The Committee notes that the Government has not answered the general question asked in the General Introduction to Conclusions 2018 and Conclusions XXI-3 (2018). It therefore reiterates its question and requests that the next report provide information on the right of members of the police to strike and any restrictions.

Covid-19

In the context of the Covid-19 health crisis, the Committee asked all States to provide information on:

- specific measures taken during the pandemic to ensure the right to strike;
- as regards minimum or essential services, any measures introduced in connection with the Covid-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.

The Committee points out that in its Statement on Covid-19 and social rights adopted on 24 March 2021, it specified that Article 6§4 of the Charter entails a right of workers to take

collective action (e.g. work stoppage) for occupational health and safety reasons. This means, for example, that strikes in response to a lack of adequate personal protective equipment or inadequate distancing, disinfection and cleaning protocols at the workplace would fall within the scope of the protection afforded by the Charter.

In its report, the Government states that the Labour Dispute Act (*Arbeidsgeskillenwet* 1946 BES) lays down the rules regarding collective action in cases of conflicts of interest and that no measures have been introduced in connection with the pandemic to restrict the right of workers and employers to take industrial action.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.