March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

AUSTRIA

This text may be subject to editorial revision.

The following chapter concerns Austria which ratified the Charter on 20 May 2011. The deadline for submitting the 6th report was 31 October 2017 and Austria submitted it on 16 November 2017.

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 concerns the following provisions of the thematic group "Labour Rights":

- right to just conditions of work (Article 2),
- right to a fair remuneration (Article 4),
- right to organise (Article 5),
- right to bargain collectively (Article 6),
- right to information and consultation (Article 21),
- right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- right to dignity at work (Article 26),
- right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- right to information and consultation in collective redundancy procedures (Article 29).

Austria has accepted all provisions from the above-mentioned group except Articles 2§1, 4§4, 6§4, 21, 22, 26§2 and 29.

The reference period was 1 January 2013 to 31 December 2016.

The conclusions relating to Austria concern 16 situations and are as follows :

– 14 conclusions of conformity: Articles 2§2, 2§3, 2§4, 2§5, 2§6, 2§7, 4§1, 4§2, 4§5, 5, 6§1, 6§2, 6§3 and 26§1;

– 1 conclusion of non-conformity: Article 28.

In respect of the situation related to Article 4§3, 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 Austria under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

Article 4§2

Teaching and educational staff in private teaching and education institutions are also covered by a separate scheme, falling either under the Ordinance of 17 November 2016 (M 21/2016/XXIII/97/1, Federal Law Gazette III, no. 327/2016), or the collective agreement for employees of private educational institutions (S 5/2016/XXIII/97/1), as amended, depending on whether the employer belongs to the professional association of private education institution employers (BABE). Teaching staff who have worked overtime receive a 50% overtime supplement in addition to basic hourly remuneration.

* * *

The next report will deal with the following provisions of the thematic group "Children, families and 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 right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 October 2018.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

The Committee takes note of the information contained in the report submitted by Austria.

It notes from the report that the situation which it previously found to be in conformity with the Charter (Conclusions 2014) has not changed during the reference period, and therefore reiterates its conclusion of conformity with the Charter in this respect.

It also asks for updated information on any changes to the legal framework concerning public holidays with pay to be provided in the next report.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 2§2 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Austria.

It notes from the report that the situation which it previously found to be in conformity with the Charter (Conclusions 2014) has not changed during the reference period, and therefore reiterates its conclusion of conformity with the Charter in this respect.

It also asks for updated information on any changes to the legal framework concerning paid annual holiday to be provided in the next report.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 2§3 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by Austria.

The Committee points out that the States Parties to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations and to apply compensatory measures to workers exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced either despite the effective application of the preventive measures referred to above or because they have not been applied.

Elimination or reduction of risks

The Committee refers to its conclusion concerning Article 3§1 of the Charter (Conclusions 2017) for a description of dangerous occupations and the prevention measures taken in this respect.

Measures in response to residual risks

In reply to the Committee's questions (Conclusions 2014), the report states that Section 66 of the 1994 Workers' Protection Act (ASchG) requires employers to take all appropriate measures, so as to reduce to a minimum the level and duration of exposure to vibrations and other stress factors detrimental to workers' health when such factors cannot be avoided. It indicates that there are no ordinances based on the ASchG which specify the tasks with limited working hours.

The Committee notes from the report that Section 91c, paragraph 3, of the 1984 Agricultural Labour Act (No. 287/1984) requires implementing laws at *Länder* level to provide for measures to reduce or compensate for stress factors detrimental to workers' health.

The report also indicates that the compensatory measures provided for in the 1981 Heavy Night Work Act, as amended, apply solely to workers performing heavy night work for at least six hours between 10 pm and 6 am.

Lastly, the report states with regard to possible reductions in working hours that only one administrative decision by the Labour Inspectorate based on Section 11, paragraph 6, of the Working Hours Act (AZG) ordering longer rest periods was issued during the reference period.

The Committee points out that it previously found the situation in Austria not to be in conformity with the Charter on the grounds that public-sector employees at federal level were compensated by a salary supplement.

In this regard, the report stresses that the safety of federal employees in a public or contractual relationship is in any case guaranteed to the greatest possible extent by the existing legislation, in particular, in the case of exposure to ionising radiation, by the 2006 legislation on measures for the protection of life or health of humans against damage caused by ionising radiation (StrSchG).

The Committee notes that the existing statutory and regulatory framework, in requiring the elimination of agents and other risk factors for workers' health and safety or, where such cannot be satisfactorily eliminated, a reduction in their impact, in terms both of their level and of the length of workers' exposure to them, so that they no longer pose any threat to health or safety, is in conformity with the Charter on this point (Conclusions 2014, Finland).

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 2§4 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee takes note of the information contained in the report submitted by Austria.

In particular, it takes note of the list of collective agreements adopted pursuant to Section 12a of the Rest Periods Act (*Arbeitsruhegesetz, ARG*), and of the statistics from the Labour Inspectorate concerning infringements of the said act. It also takes note of the data from Statistics Austria concerning the number of persons working on Saturdays and Sundays.

It notes that the situation which it previously considered to be in conformity with the Charter (Conclusions 2014) has not changed, and therefore reiterates its conclusion of conformity.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 2§5 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

The Committee takes note of the information contained in the report submitted by Austria.

It refers to its previous conclusion (Conclusions 2014) for a detailed review of the situation.

In reply to the Committee's questions, the report states that the employment contracts of contractual public-sector employees must always include provisions such as those relating to termination, notice periods and compensation for any annual leave not taken. The Committee requests that the next report provide exhaustive, updated information on the provisions of the 1948 Contractual Employees Act (VBG), as amended, and on the implementing ordinances as amended. It also asks what measures were implemented to ensure that workers are informed in written form, as soon as possible, of the essential aspects of the contract or employment relationship.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 2§6 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

The Committee takes note of the information contained in the report submitted by Austria.

In reply to the Committee's question, the report states that, pursuant to Section 6, para. 1, of the 1974 Labour Constitution Act (ArbVG), as amended, employers are required to inform works councils of all matters affecting the economic, social, health or cultural interests of employees. Employers must also consult works councils at least four times a year.

The report states that works agreements may be concluded on measures to prevent, eliminate, ameliorate or compensate for stress to workers arising from activities defined in Article VII of the Heavy Night Work Act (NschG). The Committee requests that the next report indicate the activities concerned.

The report further states that in the public service, in particular the federal public service, the 1967 Federal Staff Representation Act (*Bundes-Personalvertretungsgesetz, PVG)* lays down the rights and duties of staff representatives. In this connection, the Committee takes note of Sections 2 and 9, para.1, of the act.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 2§7 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

The Committee takes note of the information contained in the report submitted by Austria.

The report states that approximately 98% of all Austrian employees are covered by a collective agreement. Exceptionally high percentages of workers in the arts and crafts, and industry and trade sectors (98-99%) are covered. By contrast, the lowest coverage can be found in the tourism and leisure (90%), and the information and consulting sectors (85%), and among businesses which are not members of the Federal Chamber of Commerce and Industry, in particular the teaching and education, health, social and personal care services sectors (82%).

The report points out that in the sectors where not all the employers are represented by an employers' organisation (teaching, research, health, social services, concierges, caretakers and print media) no collective agreement is applicable and, therefore, the legislation on minimum wages applies. In principle, the minimum provided for is a gross monthly wage of more than €1,200.

In reply to the Committee's questions, the report states that the minimum monthly wages stipulated in the collective agreements represent gross income and it provides, in this regard, estimates as to the net amounts of the lowest wages set out in the collective agreements for 2017. The Committee notes that the data cover a period extending beyond the reference period. It notes, however, from the wage calculation interface available on the website of the Federal Ministry of Finance that, in 2015, the net wage for gross remuneration estimated at €1,200, €1,300 and €1,400 amounted to €1,016.34, €1,062.02 and €1,106.42 respectively.

The Committee also notes that according to the Court of Audit's 2016 report (*Rechnungshof, Bericht über die durchschnittlichen Einkommen der gesamten Bevölkerung 2016, Wien: Rechnungshof 2016),* in 2015, the average annual net income of all workers (excluding apprentices) amounted to €19,558 for an average gross annual salary of €26,678, while that of labourers (excluding apprentices) was €14,956 net for an average annual gross salary of €19,215.

According to EUROSTAT data, in 2015, the average annual wage of single workers without children (100% of the average worker) was €28,524.14 after social contributions and tax deductions, for a gross annual wage of €43,910.76.

The Committee states that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. When the net minimum wage is between 50% and 60% of the net average wage, the State Party must show that the wage provides a decent standard of living.

The Committee notes in the present case that the minimum wage set out in the collective agreements is approximately 62% of the average net wage. It concludes that these thresholds are in conformity with Article 4§1 of the Charter.

The report moreover states that the tax reforms announced became effective as of 1 January 2016. The reforms changed the tax rates by lowering to 25% the rate for persons in the lowest tax bracket, i.e., those earning between €11,000 and €18,000 per year. The tax rate for the highest bracket remains 50%, but it now covers those earning €90,000 or more (and no longer €60,000). The report indicates that persons earning an income lower than €11,000 pay no tax.

Since the report does not provide additional information or examples regarding the lowest wages actually earned by full-time workers not covered by a collective agreement, the Committee cannot assess the conformity of the methods used by Austrian courts to calculate "adequate remuneration" within the meaning of Article 1152 of the General Civil Code. It

therefore reiterates its request in this respect. It also asks the next report to provide further information on the situation of workers in agriculture, forestry and fishing. In the meantime, it reserves its position on these points.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 4§1 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by Austria.

In reply to the Committee's questions, the report states that in the public service, senior officials receiving a fixed salary or a salary supplement as compensation for additional time worked or additional workload accounted for only 3.61% of federal public service employees as at 31 December 2016.

The report also indicates that in the private sector, only executives with key management responsibilities, given their influential position within companies, are exempt from the Working Hours Act (AZG). In this connection, the report provides a list of criteria and examples employed by the Committee for Social Administration *(Ausschuss für soziale Verwaltung*), the Administrative Court (Verwaltungsgerichtshof*, VwGH)* and the Supreme Court of Justice (Oberster Gerichtshof, *OGH)*. In view of the rulings mentioned in the report, the Committee understands that any employees who, on account of their key managerial responsibilities within businesses and of their independence in planning their work, influence the continued existence and development of entire businesses or, at least, certain key areas, are regarded as "high-level managing executives" within the meaning of Section 1, para. 2, no. 8, of the AZG and are therefore exempt from the statutory provisions on overtime.

The report further states that caretakers are subject to special conditions under which remuneration is based on completed tasks. It explains that even though their presence at their workplace is compulsory, it is nevertheless confined to the time they need to do their work, so they are, in principle, able to decide their schedules themselves. It adds that caretakers may be required to perform exceptional tasks, which are not provided for in their contracts, if they agree to do so in advance. Under Section 4, para. 5, of the Caretakers' Act (*Hausbesorgergesetz, HBG*), remuneration for such exceptional tasks is higher than for their ordinary work. The report stresses that this is a type of compensation for the additional work, which largely corresponds to overtime pay for other employment categories. To avoid excessive workloads, Sections 4, para. 5, of the HBG and 19 of the AZG limit the amount of work to that performed by a full-time worker when complying with the normal weekly working hours applicable to the vast majority of workers.

Lastly, the report states that teaching and educational staff in private teaching and education institutions are also covered by a separate scheme, falling either under the Ordinance of 17 November 2016 (M 21/2016/XXIII/97/1, Federal Law Gazette III, no. 327/2016), or the collective agreement for employees of private educational institutions (S 5/2016/XXIII/97/1), as amended, depending on whether the employer belongs to the professional association of private education institution employers (BABE). Teaching staff who have worked overtime receive a 50% overtime supplement in addition to basic hourly remuneration.

In view of the above, the Committee considers the situation to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 4§2 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 3 - Non-discrimination between women and men with respect to remuneration

The Committee takes note of the information contained in the report submitted by Austria.

Legal basis of equal pay

The legal consequences of violating the equal treatment principle through discrimination based on gender are laid down under the heading of 'Equal treatment of women and men in the world of work' in Part I, and specifically in Section 12, of the Equal Treatment Act. The legislation was considered as ensuring the principle of equal pay in the last conclusions (Conclusions on 4§3, Austria, 2014).

Guarantees of enforcement and judicial safeguards

In its previous conclusion, the Committee noted that the legislation provides for restitution of both pecuniary and non-pecuniary damage. With the amendment 23 entering into force on 1 August 2013, Section 12 of the Equal treatment Act was supplemented with para. 14, specifying that the amount of indemnity for any personal detriment suffered is to be determined so as to truly and effectively compensate for the detriment, be appropriate for the injury suffered and be suitable to prevent further discrimination.

The Commitete also asked about the rules concerning compensation when the dismissal is the consequence of a worker's complaint about equal wages, and the employee cannot be reinstated. The Supreme Court has interpreted that when determining indemnity for any discrimination suffered, specific consideration is to be given to how substantial the detriment is and how long it continued; according to Section 12, para. 14 of the Equal treatment Act as interpreted by the Supreme Court, the amount of indemnity for the psychological detriment suffered is to be determined so as to truly and effectively compensate for the detriment, be appropriate for the detriment suffered and be suitable to prevent further discrimination (OGH, 26 June 2014, 8 ObA 23/14m, JusGuide 2014/40/12705).

Methods of comparison and other measures

Concerning the methods of comparison, in reply to a question, asked in a former cycle, whether in equal-pay litigation it is possible to make comparisons of pay and jobs outside the company directly concerned, the Committee noted that several measures had been taken with a view to combatting income disparity and asked about their impact. These measures were: a) Firstly, businesses have been required to prepare income reports and remuneration analyses every two years; b) Secondly, the statutory requirement was introduced to indicate the minimum pay level in job advertisements as well as to indicate whether the employer is prepared to provide overpayment. Sanctions for infringements have been imposed since January 2012; c) Thirdly, where individual cases of pay discrimination are suspected, the Equal Treatment Ombuds Office and the Equal Treatment Commission's Senates are legally authorised to collect income data on reference periods from the competent social insurance institution.

In its report, the Government submits that the findings about the measures were published in 2015 and have provided the basis for discussions over further steps towards expanding the legal framework to encourage pay transparency. There is a link to the findings, but these are available only in German. The Committee notes that the obligation to state the minimum salary in job advertisements was among the provisions introduced by the 2013 amendment of the Equal Treatment Act and that it has been braodened. The Government has also funded associations devoted to providing legal protection to women, to support law cases. The Committee requests further information on this respect, mainly in the outcome of the incore reports, measures and on the number and results of the individual cases on pay discrimination presented.

Concerning the measures adopted to narrow down the gender pay gap, a question submitted by the Committee in its last Conclusions, the Government states that the gender pay gap was of 21.7% in 2015. in the private sector. Among the measures taken to reduce it, gender budgeting has been required to be implemented in all areas of the Federal Government since 1 January 2013. This process is to be distinguished from regulatory impact assessment of legislation and major projects, which has been compulsory since 1 January 2013. With all planned regulatory activities (e.g. statutes, ordinances and Art. 15a agreements) as well as other projects of extraordinary budgetary significance, the impacts for the equality of women and men have to be analysed in detail. The Government also presents very detailed data and statistics on the different existing gender pay gaps by profession in public and private sector. In the public sectors, income differences are small and remain mostly unchanged.

The Committee further notes that the current government programme for 2013-2018 includes action to increase the percentage of women in technical careers as well as plans to set up a web platform for girls and women in technical careers. Schools, businesses, associations and counselling centres can find out about best practice examples and gather inspiration. There are also programes funded in the sector of education to reduce the gender pay gap and a specific projet from 2013 to 2015 to increase the proportion of women sitting on advisory boards and in executive positions. The Federal Government adopted a detailed women's quota in March 2011, applying to the supervisory boards of state-owned and state-affiliated businesses in which the Federal Government holds a share of 50% or more. The plan provides for a gradually increasing percentage of women among the supervisory board members delegated by the Federal Government, specifically 25% by end-2013 and 35% by end-2018. To reinforce the impact of the Federal Government's exemplary policy and to increase awareness of the benefits of involving more women, the Council of Ministers adopted a resolution on 15 March 2011 committing the Federal Government to an annual review of the quota system and to presenting a joint progress report to the Council of Ministers. Among businesses in which the Federal Government holds a share of 50% or more, the average share of women delegated by the Federal Government was 40,3% in 2016. Most recently, more than half of these businesses (31 companies) had already achieved the 35% quota set for 2018.

The Committee also acknowledges that, according to EUROSTAT, the gender pay gap in 2016 in Austria was 20.1%, above the EU average of 16.2%. It also acknowledges that the gap is slowly decreasing, in spite of the fact that there is an important horizontal segregation and income differences between sectors.

As already stated in its Conclusions under Article 20 (Conclusions on Austria, 2016), noting that despite the measures taken, there is still an occupational sex segregation on the labour market and that the gender pay gap is still high, the Committee asks the next report to provide comprehensive information on all measures taken to eliminate *de facto* inequalities between men and women, including positive actions/measures taken and actual national plans and strategies. It asks in particular information on their implementation and impact on combating occupational sex segregation in employment and to reduce the gender pay gap. Meanwhile, it reserves its position on this point.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

The Committee takes note of the information contained in the report submitted by Austria.

The Committee has previously deferred its conclusion (Conclusions 2014), pending receipt of information necessary in order to establish to what extent waivers of limits on deductions from wages were effective in practice and what means employees had to check the calculations of the minimum subsistence level and the attachable portion of wages when employers refuse to draw up pay slips. The Committee also asked to what extent the law or collective agreements may provide for additional grounds for deductions (reduced wages for reduced output; trade union dues; criminal or disciplinary fines; assignment or attachment of wages; etc.).

The report indicates that, under Section 293 of the Enforcement Act (EO), agreements between obligors (debtors) and creditors may not be used to preclude or restrict the application of limitations on attachment. Any provisions in breach of Section 293 of the EO are considered null and void. Section 127 of the BDG requires consideration to be given to the personal and economic circumstances of public service employees when collecting fines. The disciplinary commission is allowed to approve payment of fines in a maximum of 36 monthly instalments. Fines are to be collected from public service employees in active service where necessary through deductions from monthly salaries or, in the case of retired public service employees, through deductions from monthly pension payments. The Committee asks the next report to provide further information on the amount the fines to be collected by the disciplinary commission and reiterates its question concerning the means employees had to check the calculations of the minimum subsistence level .

It also takes note of Section 13a of the Salary Act (*Gehaltsgesetz, GehG*), which essentially requires any unjustified payments (*Übergenüsse*) not received in good faith to be refunded.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 4§5 of the Charter.

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by Austria.

It already examined the situation with regard to the right to organise (forming trade unions and employer associations, freedom to join or not to join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information.

In its previous conclusion (Conclusions XX-3 (2014)), the Committee requested detailed and updated information on the situation with regard to Article 5 of the Charter. In response, the report provides all the necessary information by summarizing its previous reports. Therefore, the Committee notes that there has been no change in the situation which it previously considered to be in conformity and refers to its previous conclusions.

Personal Scope

The Committee refers to its general question on the right of members of the armed forces to organise.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 5 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

The Committee takes note of the information contained in the report submitted by Austria.

In its previous conclusion (Conclusions XX-3 (2014)), the Committee requested detailed and up-to-date information on the situation with regard to Article 6§1 of the Charter. In response, the report states that there have been no changes to the situation regarding joint consultation and provides all the necessary information in a summary of its previous reports.

Therefore, the Committee notes that there has been no change in the situation which it previously considered to be in conformity and refers to its previous conclusions, particularly Conclusions XIX-3 (2010), XVIII-1 (2006), XVI-1 (2002), XIV-1 (1998), for a detailed description of the situation with regard to joint consultation.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 6§1 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by Austria.

In its previous conclusion (Conclusions XX-3 (2014)), the Committee requested detailed and up-to-date information on the situation with regard to Article 6§2 of the Charter. In response, the report states that there have been no significant changes to the situation regarding negotiation procedures and provides all the necessary information in a summary of its previous reports.

Therefore, the Committee notes that there has been no change in the situation which it previously considered to be in conformity and refers to its previous conclusions, particularly Conclusions XIX-3 (2010), XVIII-1 (2006), XVI-1 (2002), XIV-1 (1998), for a detailed description of the situation with regard to negotiation procedures.

The report also points out that between 450 and 500 collective agreements are negotiated each year through sectoral bargaining between organisations representing employers and workers.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 6§2 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

The Committee takes note of the information contained in the report submitted by Austria.

In its previous conclusion (Conclusions XX-3 (2014)), the Committee requested detailed and up-to-date information on the situation with regard to Article 6§3 of the Charter. In response, the report states that there have been no significant changes to the situation regarding conciliation and arbitration procedures, and it provides all the necessary information in a summary of its previous reports.

Therefore, the Committee notes that there has been no change in the situation which it previously considered to be in conformity and refers to its previous conclusions, particularly Conclusions XIX-3 (2010), XVIII-1 (2006), XVI-1 (2002), XIV-1 (1998), for a detailed description of the situation with regard to conciliation and arbitration procedures.

The report states that labour and social courts complete conciliation procedures on average in 10 cases each year. The procedures mainly concern regulations pertaining to working hours, rest periods and redundancy measures (measures to prevent, abolish or alleviate the impact of restructuring measures if they entail substantial disadvantages for all or most employees). With regard to the implementation of the Agricultural Labour Act, no cases in which company agreements and working agreements were negotiated under duress were reported during the reference period.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 6§3 of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

The Committee takes note of the information contained in the report submitted by Austria.

Prevention

In its previous conclusion (Conclusions 2014), the Committee noted that regular training activities on sexual and moral harassment, *inter alia*, in the sphere of employment were carried out by the Equal Treatment Ombuds Office. In addition, the report states that the Federal Academy of Public Administration offers practice-oriented training and education programmes for federal public service employees (on relevant legal bases, examples of practice and options for taking legal action). It also offers a series of special workshops on gender and gender equality. The report also indicates that, in conformity with Section 36 of the Federal Equal Treatment Act (Bundes-Gleichbehandlungsgesetz, B-GIBG), contact women are appointed in public-service departments, with the responsibility of handling queries, suggestions and complaints on issues related to gender equality.

As regards the consultation of employers' and workers' organisations in the promotion of awareness, information and prevention of sexual harassment in the workplace, the report confirms the employers' and workers' organisations' commitment as regards awareness-raising activities and indicates that they organise in-house workshops to combat discrimination.

Liability of employers and remedies

The Committee refers to its previous conclusion (Conclusions 2014) as regards the definition of sexual harassment under Section 6 of the Equal Treatment Act (GIBG), the employers's liability, protection from retaliation, the remedies available before the courts, the Equal Treatment Commission and the Equal Treatment Ombuds Office as well as regards the protection of Public service employees at Federal or Länder level. It notes that the situation has not changed on these issues.

In addition to this information, the report points out that, as from 1st January 2016, the definition of sexual harassment and sexual acts in public set out in Section 218 of the Criminal Code was broadened.

Burden of proof

The Committee notes that the situation which it previously found to be in conformity with the Charter (Conclusions 2014) has not changed.

Damages

The Committee previously noted (Conclusions 2014) that a person subject to sexual or gender-based harassment was entitled to compensation covering material and moral damages (at least €1000 in this respect) and asked whether a right to reinstatement was available to all victims of sexual harassment, including in cases where they had been pressured to resign, and whether the damages awarded were sufficiently deterrent for the employer.

In reply, the report confirms that Section 12§14 of the GIBG, as amended in 2013, specifies that the amount of indemnity for any personal detriment suffered is to be determined so as to truly and effectively compensate for the detriment, be appropriate for the detriment suffered and be suitable to prevent further discrimination. When calculating the compensation for any discrimination suffered, particular attention must be paid to its impact and duration. In addition, the report confirms that, in addition to the award of appropriate compensation, the

response to harassment can entail other legal consequences, for example in cases of discriminatory termination of employment.

The Committee takes note of this information as well as of the statistical data provided on the cases submitted in 2014-2015 to the Equal Treatment Commission (21 applications) and the Federal Equal Treatment Commission (2 applications). However, it considers that this information does not sufficiently clarify whether victims of harassment are entitled to reinstatement, including in cases where they have been pressured to resign on account of the sexual harassment, and what are the damages awarded in this type of case. It accordingly reiterates these questions.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 26§1 of the Charter.

Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them

The Committee takes note of the information contained in the report submitted by Austria.

It already examined the situation with regard to the right of workers' representatives to protection in the undertaking and facilities to be accorded to them. Therefore it will only consider recent developments and additional information.

Protection granted to workers' representatives

In its previous conclusion (Conclusions 2014), the Committee stated that the situation in Austria was not in conformity with Article 28 of the Charter on the ground that the period during which protection was afforded to a workers' representative beyond his/her mandate was not reasonable. Therefore the Committee asked for information on the remedies available to workers' representatives contesting their dismissal. It also asked whether the courts' approval could be contested and whether adequate compensation was granted, proportionate to the damage suffered by the workers' representative who had been dismissed.

The report states that dismissal may be challenged by the works council. It may also be challenged by employees directly if it rejects their request or explicitly approves the intention to dismiss them. During the court proceedings, the onus is on the plaintiff to demonstrate the plausibility of the grounds for challenging the termination.

The Committee notes from the report that the termination of the work contract may be approved by a civil court judgment. Such rulings may be contested through an appeal. Pursuant to Section 61§1(5) of the Labour and Social Courts Act, the judgment enters into force without delay, even though it may be challenged and hence does not yet have final legal effect. However, the preliminary termination applies only temporarily. If the Court rules that the dismissal was illegal, it will declare it null and void and, consequently, the employment relationship will continue. In such cases, employees are entitled to remuneration retroactively for the entire period (since expiry of the notice period and/or when employment was effectively discontinued).

In addition, the Committee notes that Section 105 (3) of the Labour Constitution Act provides a list of invalid reasons for termination, particularly union activities (or assimilated activities such as being a member of the works council or a health and security representative). When termination is challenged in court, the judge assesses whether there were invalid grounds for dismissal or whether it was a case of unfair dismissal. The report notes that termination on such grounds may always be challenged regardless of how long after the employee's departure from the works council it occurred. Thus, this option is open indefinitely after expiry of the employee's mandate.

The Committee asks for additional information in the next report on protection against harmful acts other than dismissal. It asks for examples of when workers' representatives have been dismissed by a court decision on the ground that reasonable co-operation with the employer was no longer possible. It also asks whether it is possible for a workers' representative to be dismissed without the court's prior approval.

The Committee recalls that the protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of period of their office (Conclusions 2010, Statement of Interpretation on Article 28). The Committee has for example found the situation to be in conformity with the requirements of Article 28 in countries such as Estonia (Conclusions 2010) and Slovenia (Conclusions 2010), where the protection is extended for one year after the end of mandate of workers' representatives or in Bulgaria (Conclusions 2010), where the protection granted to workers' representatives is extended for six months after the end of their mandate. The Committee considers that the protection afforded to

workers' representatives, which lasts for three months after the end of their mandate, did not change during the reference period. It therefore upholds its conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 28 of the Charter on the ground that the period of three months beyond the mandate during which protection is afforded to workers' representatives is not reasonable.