



March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

LITHUANIA

This text may be subject to editorial revision.

The following chapter concerns Lithuania which ratified the Charter on 29 June 2001. The deadline for submitting the 15th report was 31 October 2017 and Lithuania 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).

Lithuania has accepted all provisions from the above-mentioned group.

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

The conclusions relating to Lithuania concern 23 situations and are as follows :

– 12 conclusions of conformity : Articles 2§2, 2§3, 2§4, 2§5, 2§6, 2§7, 5, 6§1, 6§3, 21, 22 and 29,

– 9 conclusions of non-conformity : Articles 2§1, 4§1, 4§2, 4§4, 4§5, 6§2, 26§1, 26§2 and 28.

In respect of the 2 other situations related to Articles 4§3 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 Lithuania 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 26§2

A specific prohibition of moral (psychological) harassment has been introduced in the new Labour Code, adopted in September 2016, but entered into force in July 2017, out of the reference period.

* * *

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 1 - Reasonable working time

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

In its previous conclusion (2014) the Committee found that the situation was not in conformity with Article 2§1 on the ground that for some categories of workers a working day of up to 24 hours was allowed. The Governmental Resolution, which allowed a working day up to 24 hours, was abolished by the new Labour Code on 1.7.2017. The report provides details of the amended rules on working time, including on-call time. However these amendments occurred outside the reference period therefore the Committee will examine them in the next cycle of control. As there was no change to the situation during the reference period, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 2§1 of the Charter on the ground that, during the reference period, for certain categories of workers a working day of 24 hours was permitted.

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 Lithuania.

The Committee previously found that the Lithuanian legislation was in conformity with the Charter (Conclusions 2014), however it requested further information on certain issues. No information was provided on these issues. The Committee notes that a new Labour Code entered into force outside the reference period. The Committee will examine the provisions of the new Labour Code relating to work on public holidays during the next cycle of control. Meanwhile it reiterates its previous conclusion.

Conclusion

The Committee concludes that, during the reference period, the situation in Lithuania was 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 Lithuania.

The Committee previously concluded that the situation was in conformity with the Charter (Conclusions 2014). The Committee notes that a new Labour Code entered into force outside the reference period. The Committee will examine the provisions of the new Labour Code relating to annual holidays during the next cycle of control. Meanwhile it reiterates its previous conclusion.

Conclusion

The Committee concludes that, during the reference period, the situation in Lithuania was 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 Lithuania.

The Committee previously concluded that the situation was in conformity with Article 2§4 of the Charter (Conclusions 2014). The report provides no information on the situation, therefore the Committee reiterates its previous conclusion and asks the next report to provide information on any developments in the situation.

Conclusion

The Committee concludes that the situation in Lituanie 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 Lithuania.

The Committee previously found that the situation was in conformity with the Charter (Conclusions 2014). The Committee notes that a new Labour Code entered into force outside the reference period. The Committee will examine the provisions of the new Labour Code relating to weekly rest periods during the next cycle of control. Meanwhile it reiterates its previous conclusion.

Conclusion

The Committee concludes that, during the reference period, the situation in Lithuania was 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 Lithuania.

The Committee previously found that the situation was in conformity with the Charter (Conclusions 2014). The Committee notes that a new Labour Code entered into force outside the reference period. The Committee will examine the provisions of the new Labour Code relating to information on the employment contract during the next cycle of control. Meanwhile it reiterates its previous conclusion.

Conclusion

The Committee concludes that, during the reference period, the situation in Lithuania was 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 Lithuania.

The Committee previously found that the situation was in conformity with the Charter (Conclusions 2014), The Committee notes that a new Labour Code entered into force outside the reference period. The Committee will examine the provisions of the new Labour Code relating to night work during the next cycle of control. Meanwhile it reiterates its previous conclusion.

Conclusion

The Committee concludes that, during the reference period, the situation in Lithuania was 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 Lithuania.

The Committee previously concluded that the situation in Lithuania was not in conformity with Article 4§1 of the Charter on the ground that the minimum wage applied to private sector workers did not ensure a decent standard of living (Conclusions 2014).

The report provides information on the monthly and hourly minimum wage during the reference period, but provides no information on the net average wage. In 2016 the monthly minimum wage was 350 euros and the hourly wage 2.32 euros. According to EUROSTAT data for 2016, the gross NLW as a proportion of the gross average earnings was 50.6%.

The Committee recalls that under Article 4§1 of the 1961 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 therefore requests for information on net values of both minimum and average wages and, where applicable, direct taxation, social security contributions, the costs of living and earnings-related benefits

The information available to the Committee indicates that the minimum wage is still below 60% of the net average wage (although the data available to the Committee relates to gross amounts) and no information has been provided to show that it is sufficient to provide a decent standard of living. Therefore, the Committee notes that although the situation has improved, it remains in breach of the Charter.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§1 of the Charter on the ground that the minimum wage does not ensure a decent standard of living

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 Lithuania.

The Committee previously concluded that the situation in Lithuania was not in conformity with Article 4§2 of the Charter on the ground that it had not been established that the exception to the right to increased remuneration applied only to senior officials and management executives (Conclusions 2016).

Article 4§2 requires that work performed outside normal working hours be paid at a rate higher than the normal wage. Granting leave to compensate for overtime (instead of granting an increased remuneration) is in conformity with Article 4§2, on condition that this leave is longer than the overtime worked. The right of workers to an increased rate of remuneration for overtime work can have exceptions in certain specific cases. These “specific cases” have been defined as “state employees, and management executives of the private sector (Conclusions X-2 (1990), Ireland). As regards state employees: the only acceptable exception is the category of senior officials, such as police commissioners or administrative court judges. Exceptions to a higher rate of overtime pay for all state employees or public officials, irrespective of their level of responsibility, is not in conformity with Article 4§2 (Conclusions XV-2 (2001), Poland). The Committee recalls that while exceptions may be applied to all senior managers, certain limits must apply, particularly on the number of hours of overtime not paid at a higher rate (*Confédération Française de l'Encadrement CFE-CGC v. France*, Complaint No. 9/2000, decision on the merits of 16 November 2001, §45).

The report provides information on the provisions of the new Labour Code as they relate to overtime work. The Committee notes that this entered into force outside the reference period, and it will examine the situation during the next cycle of control. The Committee recalls that Article 150 of the previous Labour Code, provided that the working hours performed by administrative officials outside the standard working hours were not classified as overtime work and consequently not reimbursed at an increased rate. Administrative officials in the meaning of Article 24 of the Labour Code were those entitled, according to their competence, to give binding instructions to the employees subordinate to them. The Committee noted the notion of “competence to give binding instructions to employees in a position of subordination”, a category, was much wider than that of senior officials (Conclusions 2014).

The Committee reiterates its previous conclusion of non conformity.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§2 of the Charter on the ground that the exception to the right to increased remuneration does not apply exclusively to senior officials and management executives.

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 Lithuania.

Legal basis of equal pay

The Committee takes note of the legislative developments during the reference period. It notes that the New Labour Code regulates the wage setting. According to Article 140, the remuneration system shall be prepared in such a way that any discrimination on the grounds of gender or other grounds is avoided in its application. Any direct or indirect discrimination is prohibited. Men and women shall receive equal pay for the same work or equivalent work. Same work shall mean work activity which, based on objective criteria, is the same as or similar to another work activity to such extent that both employees can be interchanged without a significant cost for the employer. Equivalent work shall mean that, based on objective criteria, it requires qualifications which are not lower, and not less significant for the employer's objectives, than another comparative work.

The Committee further notes that Article 6 of the Law on Equal Opportunities of Women and Men imposes an obligation on the employer or employer's representative to exercise equal rights for men and women at work. To this end, the employer or employer's representative shall provide equal pay for the same work or for the work of equal value.

Finally, Article 11 of the Law on Equal Opportunities to Women and Men stipulates that the actions of an employer or employer's representative shall be treated as violating equal rights for women and men, if, because of a person's sex, he/she applies to a person less (more) favourable terms of recruitment or employment, including, pay for the same work or for the work of equal value.

Guarantees of enforcement and judicial safeguards

A person who exercises this right can apply directly to the court. According to Article 3 of the Law on Equal Opportunities for Women and Men, when investigating the complaints or applications of natural persons as well as the disputes of persons concerning discrimination on grounds of sex, in courts or other competent institutions, it shall be presumed that the fact of direct or indirect discrimination has indeed occurred. A person or institution against whom/which a complaint was filed must prove that the principle of equal rights has not been violated. The Committee notes that Article 18 of the Law on Equal Opportunities for Women and Men stipulates that a person who has suffered discrimination on the grounds of sex shall have the right to compensation for pecuniary and non-pecuniary damage in the manner prescribed by laws.

The Committee noted previously that under the Civil Code, there is no upper limit on the amount that they may be awarded (Conclusions 2008, Article 1§2). The Committee asks for updated information in this regard.

Methods of comparison

In its previous conclusion the Committee asked whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as if the pay comparison is possible outside one company, for example, if such company is a part of a holding company and the remuneration is set centrally by such holding company. The Committee notes that the report does not provide this information. Therefore, the Committee reiterates this question.

Statistics

The Committee notes from Eurostat that the gender pay gap stood at 14.2% in 2015 and at 14.4% in 2016. The Committee notes that the gender pay gap has not declined. It asks the

next report to provide updated information regarding the gender pay gap and its main causes as well as measures implemented with a view to promoting gender equality and reducing the gender pay gap. In the meantime, the Committee reserves its position as regards measures taken to guarantee the right to equal pay in practice.

Policy and other measures

The Committee takes note of the legislative developments during the reference period and, in particular, that the New Labour Code requires that any employer employing more than 50 employees, must adopt and publish, in the ways that are accustomed at the workplace, the measures for implementation of the principles of enforcement of the equal opportunities.

The Office of the Equal Opportunities Ombudsperson carries out research and presents its findings about the prohibited grounds of discrimination, including sex, as stipulated by the Law on Equal Treatment.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

The Committee previously concluded that the situation in Lithuania was not in conformity with Article 4§4 of the Charter on the ground that no notice is given in case of termination of employment "based on a judicial decision which prevents the performance of work, the withdrawal of administrative licences required for the performance of work; a request from bodies or officials authorised by the law; and the unfitness for work certified by authorised bodies" (Conclusions 2014).

The report provides information on the provisions of the new Labour Code as they relate to notice of termination of employment. The Committee notes that these entered into force outside the reference period, and it will examine the situation during the next cycle of control. Meanwhile as the situation remained unchanged during the reference period the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§4 of the Charter on the ground that no notice period is given in case of termination of employment based on a judicial decision which prevents the performance of work; the withdrawal of administrative licences required for the performance of work; the request from bodies or officials authorised by the law; and the unfitness for work certified by authorised bodies.

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 Lithuania.

The Committee previously concluded that the situation in Lithuania was not in conformity with Article 4§5 of the Charter on the ground that after all authorised deductions, the wages of workers with the lowest pay do not allow for them to provide for themselves or their dependants.

The report provides information on the provisions of the new Labour Code. The Committee notes that these entered into force outside the reference period and it will examine the situation during the next cycle of control. Meanwhile, as the situation remained unchanged during the reference period, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§5 of the Charter on the ground that, in the reference period, after all authorised deductions, the wages of workers with the lowest pay do not allow for them to provide for themselves or their dependants.

Article 5 - Right to organise

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

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

The Committee previously found the situation to be in conformity with the Charter. The report provides no information on the situation, therefore the Committee reiterates its previous conclusion and asks the next report to provide information on any developments in the situation.

Personal Scope

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

Conclusion

The Committee concludes that the situation 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 Lithuania.

The Committee previously found the situation to be in conformity with the Charter. The report provides information on new provisions on consultation at the workplace, introduced by the new Labour Code. The Committee notes that the current Labour Code entered into force outside the reference period, therefore it will examine the new provisions during the next cycle of control. Meanwhile it reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Lithuania 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 Lithuania.

The Committee concluded in 2014 that it had not been established that the machinery for voluntary negotiations has been efficiently promoted (Conclusions 2014, Lithuania). In Conclusions 2016 the Committee took note of the measures adopted to promote collective bargaining as well as information on the result of these measures. It asked to receive updated measures in the next report and deferred its conclusion.

The report provides information on the project "Pattern of Cooperation between Trade Unions and Employers through Social Dialogue", financed from the European Union structural funds which seeks to inter alia promote social dialogue between the social partners.

The project activities are to run from April 2017 to October 2020, which is outside the reference period. No information is provided on the situation during the reference period. The Committee recalls that it had previously noted that, according to the European Industrial Relations Observatory that on 20% of workers were covered by collective agreements and noted that this was very low. It notes that according to European Trade Union Institute only about 15% of workers are covered by collective agreements, and that "There is virtually no collective bargaining other than at company or organisation level, and even here the extent of bargaining is limited." According to EUROFOUND, almost 20% of employees are covered by collective wage bargaining in Lithuania (in private sector companies with establishments >10 employees). There are no national data/surveys on collective (wage) bargaining coverage in Lithuania. According to expert evaluations, the overall collective (wage) bargaining coverage in Lithuania might be less than 15–20%." However in 2017, sectoral collective agreements were signed in the education and healthcare sectors covering (for the first time) wage-related issues.

The Committee recalls that it has in the past found that where collective agreement coverage is weak, 15-20%, it considers that the situation cannot be considered as being in conformity with the Charter on the ground that low coverage indicates that the machinery for voluntary negotiations has not been efficiently promoted (Conclusions 2010, Latvia). Accordingly it finds that the current situation is not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining is not sufficient.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee notes that a new Labour Code entered into force in 2017 which regulates conciliation and arbitration procedures. As it entered into force outside the reference period the Committee will examine its provisions relating to conciliation and arbitration during the next cycle of control. Meanwhile it reiterates its previous conclusion.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

The Committee examined the situation with respect to the definition and permitted objectives of collective action and the consequences of a strike previously and found that the situation was in conformity with Article 6§4 (Conclusions 2010).

Entitlement to call a collective action, Specific restrictions to the right to strike and Procedural requirements

As regards entitlement to call a collective action and restrictions on the right to strike, the Committee previously found the situation to be in conformity with the Charter pending receipt of information on the establishment of a works council and the criteria used to determine whether a minimum service should be introduced in a particular sector. No such information was provided on these issues. The Committee notes that the report provides information on the new Labour Code (which entered into force outside the reference period). The Committee will examine this new legislation during the next cycle of control. Meanwhile it defers its conclusion.

The Committee refers to its general question regarding the right of members of the police to strike.

Conclusion

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

Article 21 - Right of workers to be informed and consulted

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

The Committee previously found the situation to be in conformity with the Charter but requested further information on sanctions.

Remedies and supervision

According to the report Article 103 of the Code of Administrative Offences of the Republic of Lithuania ("CAO") imposes administrative liability on employers and other liable persons for the failure to respect the information and consultation obligations provided for in the Republic of Lithuania Law on the Involvement of Employees in Decision Making in European Companies. Fines range from one hundred to five hundred and eighty euros.

The Committee notes from information submitted in the report under Article 6§3 of the Charter that Article 209 of the New Labour Code regulates the liability for failure to fulfil the Information and consultation duties, in domestic companies. Where an employer has failed to inform and consult, the work council or the trade union shall be entitled to initiate legal action. The body hearing the dispute shall have the power to reverse the employer's decisions and to oblige him/her to take certain measures, as well as to impose fines as provided for under the Code or the CAO. The Committee notes that the Labour Code entered into force outside the reference period. Therefore it will examine the situation in depth during the next cycle of control. Meanwhile it reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Lithuania is in conformity with Article 21 of the Charter.

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

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

The Committee previously found the situation to be in conformity with the Charter but requested further information on remedies and supervision.

Enforcement

The report primarily refers to the new Labour Code and the new Code of Administrative Offences, which entered into force outside the reference period. The Committee will examine the relevant provisions during the next cycle of control. The State Labor Inspectorate is empowered to impose fines.

Conclusion

The Committee concludes that the situation in Lithuania is in conformity with Article 22 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 Lithuania.

Prevention

The report confirms that the Equal Treatment Act (Article 7§6) and the Equal Opportunities Act (Article 6§4) require employers to take appropriate measures to prevent sexual harassment of employees. It furthermore refers to initiatives promoting equal opportunities and equal treatment carried out in the framework of the National Programme of Equal Opportunities for Women and Men 2015-2021 and the Interinstitutional Action Plan for Promotion of Non-discrimination 2011-2016.

The Committee takes note of this information, but reiterates its request for explanations on how, in practice, employers carry out their obligation to prevent sexual harassment. More generally, the report does not provide information on prevention measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) undertaken during the reference period in order to combat sexual harassment specifically. Nor does it provide the requested information on how and to what extent the social partners are involved in the adoption and implementation of such measures. The Committee therefore reiterates its requests for information and notes that in the absence of information in the next report there will be nothing to establish that the situation is in conformity with the Charter in these respects.

The Committee furthermore asks the next report to provide information on the implementation of the Interinstitutional Action Plan for Promotion of Non-discrimination 2017-2019, adopted out of the reference period, which provides inter alia for the preparation and dissemination of information packages for employers and employees about discrimination and how to prevent it.

Liability of employers and remedies

The Committee refers to its previous conclusion (Conclusions 2014) as regards the relevant legislative framework (Equal Opportunities Act, Section 235 of the Labour Code and Article 152 of the Criminal Code) and as regards the procedure applicable to lodge a complaint with the Equal Opportunities Ombudsperson, initiate a civil case for damages or lodge a criminal complaint with the state prosecutor. The Committee requested some explanations concerning alleged shortcomings affecting the effectiveness of the procedure before the Equal Opportunities Ombudsperson, but the report does not provide any information in this respect, nor does it provide the information requested concerning the changes introduced in 2013 in the Labour Code, concerning the mandatory procedure for adjudicating labour disputes under out-of-court procedure and the impact of these changes on sexual harassment cases. The Committee reiterates therefore these questions. It asks in particular the next report to provide information on the activity of the Ombudsperson in respect of sexual harassment and what follow-up is given to complaints of sexual harassment that are found to be established.

As regards the employers' liability, the report clarifies that under Article 152 of the Criminal Code, the employer cannot be held liable for failing to protect an employee from harassment perpetrated by a colleague of the victim or by a third person, in relation to the workplace, or when a third person (independent contractors, self-employed workers, visitors, clients, etc.) is victim of harassment by a person under the employer's responsibility. The report explains that a person cannot be held criminally guilty of sexual harassment unless there is an intention or at least a negligent fault (recklessness or serious negligence).

On the other hand, the report confirms that the Equal Opportunities Act provides that the employer must ensure that the employee or civil servant will not experience harassment and

will not be given instructions to discriminate in the workplace. As a result of an amendment introduced in July 2017 (out of the reference period), the same protection applies also to persons seeking employment. The report also confirms that the Equal Opportunities Act requires employers to protect employees involved in discrimination complaints (either as a victim, representative of a victim or witness) against retaliation. In response to the Committee's request for clarification on this point, the report confirms that the Code of Administrative Offences, as amended, provides for an administrative fine in case of violations of the Equal Opportunities Act and the Equal Treatment Act by officials, employers or their authorized persons. However, the report does not clarify, as requested, whether any liability of the employer applies under the Equal Opportunities Act when a third person (independent contractors, self-employed workers, visitors, clients, etc.) is victim of harassment by a person under the employer's responsibility.

In view of the lack of information available, the Committee considers that, in relation to the employer's responsibility, it has not been established that there are sufficient and effective remedies against sexual harassment in relation to work. It accordingly considers that the situation is not in conformity with Article 26§1 on this point.

Burden of proof

In its previous conclusion (Conclusions 2014), the Committee asked whether a shift in the burden of proof applied in sexual harassment complaints when these were examined respectively by the Ombudsperson, the labour disputes commissions, the administrative or civil courts.

In response to this question, the report confirms that in all cases concerning discrimination, under the Equal Opportunities Act and the Equal Treatment Act, it is presumed that a discrimination has occurred, and it is for the respondent party to prove that the principle of equal opportunities has not been violated. Furthermore, the new Labour Code provides for a shift of the burden of proof in labour disputes, unless otherwise provided in the law.

In this respect, the Committee notes that, according to the report, the burden of proof cannot be transferred to the person who is subject to administrative liability, under Article 567§3 of the Code of Administrative Offences.

Damages

The Committee refers to its previous conclusion (Conclusions 2014), where it noted that victims of sexual harassment could claim compensation for pecuniary and non-pecuniary damages under the Equal Opportunities Act (Article 13) and the Civil Code (Articles 6.245-6.253) and that, in cases of unfair dismissal, the law provided for the employee's reinstatement or the award of an additional compensation.

The Committee notes from the information provided under Article 26§2 that a new Labour Code entered into force in July 2017, out of the reference period. It understands that the same provisions concerning the right to compensation and reinstatement apply in respect of unfair dismissal or suspension on ground of sexual harassment and asks the next report to provide information on whether any limits apply to the compensation that might be awarded to the victim of sexual harassment for moral and material damages.

It furthermore reiterates its request for information on cases concerning dismissals arising in the context of sexual harassment complaints and their outcome. It also reiterates its request for information on whether there are any examples of claims for reinstatement of employees who have been pressured to resign for reasons related to sexual harassment.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against sexual harassment in relation to work.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

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

Prevention

The report confirms that the Equal Treatment Act (Article 7§6) and the new Labour Code (Article 30, see below) require employers to take appropriate measures to prevent harassment of employees. It furthermore refers to initiatives promoting equal opportunities and equal treatment carried out in the framework of the Interinstitutional Action Plan for Promotion of Non-discrimination 2011-2016, renewed for 2017-2019 (this plan, adopted out of the reference period, provides inter alia for the preparation and dissemination of information packages for employers and employees about discrimination and how to prevent it).

The Committee takes note of this information, but reiterates its request for explanations on how, in practice, employers carry out their obligation to prevent moral (psychological) harassment. More generally, the report does not provide information on prevention measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) undertaken during the reference period in order to combat moral (psychological) harassment specifically. Nor does it provide the requested information on how and to what extent the social partners are involved in the adoption and implementation of such measures. It therefore reiterates its requests for information and notes that in the absence of information in the next report there will be nothing to establish that the situation is in conformity with the Charter in these respects.

Liability of employers and remedies

The Committee refers to its previous conclusions (Conclusions 2014 and 2016) for a description of the relevant legislation as regards the definition of moral (psychological) harassment under the Equal Opportunities Act and the protection of honour and dignity of persons under the Criminal Code (Articles 154 and 155) and the Civil Code (Article 2.24). The report indicates that a specific prohibition of moral (psychological) harassment has been introduced in the new Labour Code, adopted in September 2016, but entered into force in July 2017, out of the reference period (Article 30 of the new code requires the employer *"to create such a work environment where an employee or a group of employees would not suffer any hostile, unethical, demeaning, aggressive, insulting, or offensive actions, which violate the honour and dignity of an individual employee or group of employees, physical or psychological personal integrity or are aimed at intimidating, degrading an employee or a group of employees or to pushing him or them into an unarmed or powerless situation. The employer shall take all necessary measures to ensure the prevention of psychological violence in the work environment and to provide assistance to persons who suffered psychological violence in the work environment"*). The Committee asks the next report to provide information on the implementation of these new provisions.

The Committee noted that workers who considered themselves to be victim of moral (psychological) harassment could address the Equal Opportunities Ombudsman (Article 12 of the Equal Opportunities Act). In this connection, the report confirms that, in case of alleged breach of provisions of the Equal Opportunities Act and of the Equal Treatment Act, the Code of Administrative Offences provides that the Office of the Equal Opportunities Ombudsperson shall conduct an investigation, draw up a report and issue administrative decisions. Civil liability is regulated by the Civil Code (Articles 6.246-6.250) in combination with the abovementioned laws. However, the report does not provide, as requested, any information on how the available remedies in case of moral (psychological) harassment are applied in practice, in the light of relevant examples. The Committee accordingly reiterates its question.

As regards the employer's liability, the report confirms that both the Equal Treatment Act (Article 7) and the Equal Opportunities Act (Article 6) provide for the employer's obligation to protect any worker involved in discrimination proceedings from retaliation. However, the Committee understands from the information presented in the report that, under the Equal Opportunities Act (Article 11), employers or their representatives are only directly responsible for acts of discrimination committed by them; no liability applies in case of harassment between colleagues or involving third parties. It asks the next report to clarify this point.

The Committee recalls that, under Article 26§2 of the Charter, it must be possible for employers to be held liable when harassment occurs in relation to work, or on premises under their responsibility, even when it involves, as a perpetrator or a victim, a third person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. In the light of the available information, the Committee considers that it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in relation to work and considers therefore that the situation is not in conformity with Article 26§2 on this point.

Burden of proof

The Committee previously noted (Conclusion 2010 and 2014) that the law provides for a shift of the burden of proof to the defendant in discrimination cases. When examining natural persons' or legal entities' complaints, applications, requests, reports or claims of discrimination on the grounds of age, sexual orientation, social status, disability, race or ethnic group, religion, convictions or beliefs in courts or other competent bodies, the defendant has to prove that the principle of equal treatment has not been violated (Article 4, Equal Opportunities Act).

According to the report, the same applies under the new Labour Code (which entered into force out of the reference period): in labour disputes, the employer shall prove the specific circumstances relevant to the resolution of the dispute and provide evidence, if available or more easily accessible to the employer. In the cases concerning dismissal from work and unlawful refusal to employ, it is for the employer to prove – unless otherwise provided by the law – that the dismissal from work or the refusal to employ has been lawful.

However, the Committee notes that, according to the report, the burden of proof cannot be shifted to the person who is subject to administrative offences liability, under Article 567§3 of the Code of Administrative Offences.

Damages

As the Committee previously noted (Conclusions 2010 and 2014), victims of discrimination – both on grounds of sexual or moral (psychological) harassment – are entitled to claim pecuniary and non-pecuniary damage from guilty persons in compliance with the procedure established by law.

The report indicates that the new Labour Code (which entered into force out of the reference period) also provides a right to compensation for material and non-material damage caused by a faulty violation of the work-related obligations (Article 151) as well as a right to reinstatement and compensation (Article 218) in case of unlawful suspension or dismissal (see the report for details).

The Committee asks whether any limits apply to the compensation that might be awarded to the victim of harassment for moral and material damages and whether the right to reinstatement also applies when the victim of harassment has not been formally dismissed but has been pressured to resign.

The Committee points out that victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in

particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or pressured to resign for reasons linked to harassment.

The report does not contain the information repeatedly requested (Conclusions 2010, 2014, 2016) concerning examples of cases concerning dismissals occurred in the framework of moral (psychological) harassment complaints and the amounts effectively awarded as compensation in such cases, which does not allow the Committee to find that the redress granted in practice is adequate and effective. It accordingly considers that it has not been established that the situation is in conformity with Article 26§2 on this point.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 26§2 of the Charter on the grounds that:

- it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work;
- it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.

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 Lithuania.

Protection granted to workers' representatives

The Committee previously concluded that the situation in Lithuania was not in conformity with Article 28 of the Charter on the ground that the protection afforded to workers' representatives does not extend for a period after the mandate.

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 report provides information on the new Labour Code, which entered into force outside the reference period. Therefore the Committee infers that there was no change to the situation during the reference period, and reiterates its previous conclusion.

Facilities granted to workers' representatives

The report provides information collective agreements which make provision for the cost of training or worker representatives to be borne by the employer.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 28 of the Charter on the ground that the protection afforded to workers' representatives does not extend for a period after their mandate.

Article 29 - Right to information and consultation in procedures of collective redundancy

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

The Committee previously concluded, pending receipt of the information requested, that the situation in Lithuania was in conformity with Article 29 of the Charter. However it requested information on what sanctions exist if the employer fails to notify the workers' representatives about the planned redundancies. It also asks what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has been fulfilled. The report provides information on the new Labour Code which entered into force outside the reference period. The Committee therefore will examine this information during its next cycle of control. Meanwhile it reiterates its previous conclusion.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 29 of the Charter.