March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

LATVIA

This text may be subject to editorial revision.

The following chapter concerns Latvia which ratified the Charter on 26 March 2013. The deadline for submitting the 13th report was 31 October 2017 and Latvia submitted it on 23 April 2018.

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).

Latvia has accepted all provisions from the above-mentioned group except Article 4§1.

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

The conclusions relating to Latvia concern 22 situations and are as follows:

– 13 conclusions of conformity: Articles 2§1, 2§2, 2§3, 2§4, 2§5, 2§6, 2§7, 4§2, 6§1, 6§3, 21, 26§1 and 26§2;

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

In respect of the 5 other situations related to Articles 4§3, 6§4, 22, 28 and 29, 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 Latvia 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 5

On 6 March 2014 the Parliament of Latvia adopted the new "Law on Trade Unions" which entered into force on 1 November 2014 and accordingly the previous "Law on Trade Unions" of 13 December 1990, was repealed.

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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 Latvia.

Article 2§1 of the Charter guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime. The Charter does not explicitly define what constitutes reasonable working hours. The Committee therefore assesses the situations on a case by case basis. Extremely long working hours, which are those of up to 16 hours on any day or, under certain conditions, more than 60 hours in one week are unreasonable and therefore contrary to the Charter (Conclusions XIV-2 (1998), the Netherlands).

The Commitee considers that flexibility measures regarding working time are not as such in breach of the Charter. It recalls (*Confédération Française de l'Encadrement CFE-CGC v. France*, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§29-38) that in order to be found in conformity with the Charter, national laws or regulations must fulfill three criteria:

- they must prevent unreasonable daily and weekly working time. The maximum daily and weekly working hours referred to above must not be exceeded in any case.
- they must operate within a legal framework providing adequate guarantees. A flexible working time system must operate within a precise legal framework which clearly circumscribes the discretion left to employers and employees to vary, by means of a collective agreement, working time.
- they must provide for reasonable reference periods for the calculation of average working time. The reference periods must not exceed six months. They may be extended to a maximum of one year in exceptional circumstances.

Chapter 31 (Articles 130-137) of the Labour Law lays down the general provisions regarding working time. Article 130 provides that working time is a period from the beginning until the end of work during which an employee performs work or is at the disposal of the employer, except for breaks in work. The beginning and end of work must be specified in working procedure regulations, shift schedules or employment contracts. Standard daily working time may not exceed eight hours and standard weekly working time may not exceed 40 hours. If daily working hours on any weekday are less than the standard working hours, the standard working hours on some other weekday may be extended, but not by more than one hour.

The Committee notes that Article 131 of the Labour Law provides that the working hours of employees exposed to a particular risk may not exceed seven hours a day or 35 hours a week if they engage in such work for at least 50% of their standard daily or weekly working hours.

As a rule, workers are entitled to a rest period of two days a week, on Saturday and Sunday. However, when a five-day working week is impossible due to the type of production, companies may apply six-day working weeks, following consultation of workers' representatives. If a six-day working week is applied, daily working time may not exceed seven hours (six hours in the case of workers exposed to a particular risk). Work on Saturdays must end earlier than on other days. The length of the working day on Saturdays must be specified in collective agreements, working procedure regulations or employment contracts.

In accordance with Article 140 of the Labour Law, which regulates aggregated working time, if the nature of the work means it is impossible to observe the standard daily or weekly working hours determined for the relevant worker, the employer, following consultation with workers' representatives, may determine aggregated working hours such that working hours over an accounting period do not exceed standard working time. The Committee notes from the report that in any case it is prohibited to employ a worker for more than 24 hours in succession or 56 hours a week in the context of aggregated working hours. Unless a longer

accounting period is provided for by collective agreement or employment contract, the accounting period for aggregated working hours is one month. Employers and workers may agree longer accounting periods of up to three months in employment contracts or up to a maximum of 12 months in collective agreements.

The Committee notes that the Law on the Career Course of Service of Officials provides that the standard daily working time of government officials is eight hours over a 24-hour period (seven hours on days preceding public holidays) and the working week is 40 hours. According to the report, if the nature of the work means it is impossible to observe standard working hours, employers may determine aggregated working hours which may not exceed the standard working hours for a four-month period.

The Committee notes from the report that Article 53.1 of the 2009 Law on Medical Treatment provides that the norms of the laws and regulations governing employment legal regulations apply to medical practitioners insofar as the said law does not provide otherwise. Under the law, working hours exceeding those specified in the Labour Law may be applied on the initiative of medical practitioners or medical institutions, subject to the written consent of the employees concerned. In such cases, consent to the application of extended working hours must be granted at least once every four months. The Committee asks for details of the maximum permitted working hours, including overtime, for medical personnel.

The Committee notes from EUROSTAT data that the number of hours worked per week by full-time employees remained stable (40.4 in 2013 and 40.5 in 2016). According to OECD statistics, the average number of hours worked per year per worker was 1 928 in 2013 and 1 902 in 2016.

The Committee recalls that working overtime must not simply be left to the discretion of the employer or the employee. The reasons for working overtime and its duration must be subject to regulation (Conclusions XIV-2, Statement of Interpretation on Article 2§1).

In this connection, the Committee notes from the report that overtime means work done by an employee in addition to standard working hours. The written consent of the worker and the employer is required. Employees may be required to work overtime without their written consent in the case of urgent public needs, *force majeure*, unexpected events or other exceptional circumstances and for the completion of urgent, unforeseen work within a specified period of time. If the overtime continues for more than six consecutive days, the employer needs a permit from the labour inspectorate for further overtime work, except in cases where repetition of similar work is not expected. The report states that overtime work may not exceed an average of eight hours over a seven-day period calculated within an accounting period not exceeding four months. However, pregnant women, breastfeeding women (up until the child reaches two years) and mothers of children aged under one year may be asked to work overtime, subject to their written consent.

The report indicates that Article 134 makes provision for part-time working. The Committee notes that part-time workers are treated equally with full-time workers.

The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France* (§§ 64-65), Complaint No 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined *a posteriori* for a period of time that the employee *a priori* did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee holds that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home. The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered or not as a rest period.

The Committee recalls under Article 2§1 of the Charter that an appropriate authority must supervise whether the limits are being respected (Conclusions I (1969), Statement of Interpretation on Article 2§1). The Committee asks the next report to provide information regarding any violations of working time regulations identified by the Labour Inspectorate.

In this connection, the Committee notes from the report that under the Law on the State Labour Inspectorate, the latter is responsible for supervising and controlling observance of the regulations governing employment legal relationships and labour protection. With regard to the penalties imposed, under Article 41§1 of the Administrative Violations Code, warnings must be issued or fines imposed on employers – natural persons or officials (from €35 to €350) or legal persons (from €70 to €1 100) – in the event of violations of the regulations governing employment legal relationships. The Committee notes from the report that the number of violations of Chapter 31 of the Labour Law fell from 368 in 2014 to 284 in 2016, while the number of penalties was 96 in 2014, 110 in 2015 and 101 in 2016.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 2§1 of the Charter.

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 Latvia.

The Committee recalls that Article 2§2 guarantees the right to public holidays with pay, in addition to weekly rest periods and annual leave. Public holidays may be specified in law or in collective agreements. Work should be prohibited during public holidays. However, working on public holidays may be carried out in special situations. The Committee considers that work performed on a public holiday requires a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The remuneration may also be provided as compensatory time-off, in which case it should be at least double the days worked.

Under Article 144 of the Labour Law, employees are not required to work on statutory public holidays. However, work is permitted on public holidays if it is necessary to ensure continuity of the work process, provided that the workers concerned are granted a compensatory rest period or paid appropriate compensation.

According to the report, Article 68 of the Labour Law provides that employees who work on public holidays are paid at twice the usual rate. Collective agreements or employment contracts may provide for higher supplements. The Committee requests that the next report indicate whether the compensatory time off granted in lieu of wage compensation is equivalent to or longer than the hours worked on a public holiday.

The report states that Article 14§6 of the Law on Remuneration of Officials and Employees of State and Local Government Authorities provides that officials, except officials with special service ranks, who work on public holidays are paid at twice the usual rate or are granted rest time on another weekday. The Committee asks whether the law provides for restrictive criteria defining the circumstances under which work by officials on public holidays may be allowed and how the authorities control the implementation of such criteria. It also asks whether the compensatory time off granted in lieu of wage compensation is equivalent to or longer than the hours worked on a public holiday.

The Committee notes from the report that Article 27§2 of the Law on the Career Course of Service of Officials provides that officials with special service ranks with standard working time may not be employed on public holidays. Otherwise, the rules of the Labour Law apply. The Committee asks whether the law provides for restrictive criteria defining the circumstances under which work by officials with special service ranks on public holidays may be allowed and how the authorities control the implementation of such criteria.

The Committee takes note of the statistics on the complaints received by the labour inspectorate and the penalties imposed on employers following administrative proceedings concerning compensation for work on public holidays.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Latvia 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 Latvia.

The report states that Article 107 of the Constitution provides that all employees have the right to paid annual leave. In accordance with Article 149 of the Labour Law, such leave must not be less than four calendar weeks, not counting public holidays. Workers aged under 18 years are entitled to one month's paid annual leave.

The Committee notes that by agreement between workers and employers, paid annual leave in a given year may be granted in parts, but one part of the leave must not be less than two uninterrupted calendar weeks. In exceptional circumstances, when granting full annual leave to a worker in the current year may have an adverse effect on the normal operation of the undertaking, part of the leave may be carried over to the following year with the worker's written consent. As far as possible, the leave carried forward must be added to the leave for the following year. In this case, the part of the leave in the current year must not be less than two consecutive calendar weeks. The Committee takes note of the categories of staff not covered by this provision (persons aged under 18 years, pregnant women, etc.).

The report indicates that paid annual leave is compulsory and employees may not waive their right to it. Only where their employment contract has been terminated do employees have the right to financial compensation for unused leave.

Article 150 of the Labour Law provides that annual leave may be taken at any time in the year in accordance with agreements between workers and employers or with leave schedules drawn up by employers following consultation with workers' representatives. The report states that employees may request paid annual leave for the first year of employment if they have worked for at least six months without interruption.

The report indicates that annual leave must be deferred or extended in the event of temporary incapacity of employees.

The Committee notes from the report that Article 41§1 of the Law on Remuneration of Officials and Employees of State and Local Government Authorities provides that officials are entitled to paid annual leave in accordance with the Labour Law. Officials with special service ranks are entitled to at least 30 calendar days of paid annual leave, not including public holidays.

The Committee recalls that, under Article 2§3 of the Charter, an employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. In the light thereof, the Committee considers that the situation is in conformity with Article 2§3 of the Charter.

Conclusion

The Committee concludes that the situation in Latvia 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 Latvia.

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 in spite of the effective application of the preventive measures referred to above or because they have not yet been applied.

Elimination or reduction of risks

The Committee recalls that the first part of Article 2§4 requires states to eliminate risks in inherently dangerous or unhealthy occupations. This part of Article 2§4 is closely linked to Article 3 of the Charter (right to safe and healthy working conditions, see below), under which the states undertake to pursue policies and take measures to improve occupational health and safety.

The Committee refers to its conclusions in respect of Article 3 of the Charter (Conclusions 2017) for a description of dangerous activities and the preventive measures taken in this regard.

In particular, the report states that the Labour Protection Law passed on 20 June 2001 requires employers to ensure that employees' health and safety are properly protected in the workplace. In addition, this law and Cabinet of Ministers Regulation No. 660 of 2 October 2007 on procedures for the performance of internal supervision of the working environment provide that employers are responsible for internal supervision of the working environment and for assessment of risks, including chemical, biological, physical (noise, vibration, radiation, etc.), and psychosocial risks, etc.

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

Measures in response to residual risks

When the risks have not been eliminated or sufficiently reduced despite the application of the measures described above, or if such measures have not been applied, the second part of Article 2§4 requires States to grant workers exposed to such risks one form or another of compensation. The aim of these compensatory measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk.

The Committee recalls that Article 2§4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be compatible with the Charter (Conclusions 2005, statement of interpretation of Article 2§4).

In this connection, the Committee notes from the report that in accordance with Article 1 of the Labour Protection Law, particular risks are working environment risks related to an increased psychological or physical load or increased risks to the safety or health of employees such as cannot be prevented or reduced to the permissible level by labour protection measures other than reducing working hours. In order to determine the occupations in which workers are exposed to such risks, Articles 5 and 8 of the law provide that employers must organise labour protection systems, including assessment of working environment risks, the procedures for which are determined by Regulation No. 660 of 2 October 2007.

The Committee asks for a list of activities regarded as involving exposure to particular risks to be included in the next report.

The report indicates that the standard working time of workers exposed to particular risks may not exceed seven hours a day or 35 hours a week if they are engaged in such activities for at least 50% of standard daily or weekly working time. The Committee notes that the reduction in working hours for workers engaged in activities involving exposure to particular risks applies to all sectors.

In accordance with Article 145 of the Labour Law, workers exposed to particular risks are entitled to additional daily rest periods. The length of the breaks is determined following consultation with workers' representatives and is included in working time.

In addition, in accordance with Article 151§1 of the Labour Law, such workers are granted at least three days of additional paid annual leave.

In accordance with Article 66 of the Labour Law, workers doing work involving particular risks are also entitled to financial compensation. The amount of the latter is determined by collective agreements, working procedure regulations, employment contracts or employers.

The Committee points out that the aim of the compensation must be to offer those concerned sufficient and regular time to recover from the associated stress and fatigue, and thus to maintain their vigilance. Accordingly, Article 2§4 encompasses measures such as reduced working hours, additional paid holidays and other similar measures to comply with health and safety objectives. However, early retirement or financial compensation are not relevant and appropriate measures to achieve the aims of Article 2§4. The Committee notes from the information provided that the situation is in conformity with Article 2§4 of the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Latvia 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 Latvia.

It notes from the report that all employees are entitled to a weekly rest period, usually on Sundays. The report states that the weekly rest period may not be less than 42 consecutive hours (this provision need not be applied if aggregated working time has been adopted). Employees who work five days a week are entitled to two days of rest and those who work six days a week are entitled to one day of rest. The two days of rest are usually granted consecutively. If it is necessary to ensure continuity of a work process, it is permitted to have employees work on a Sunday provided they are granted a day's rest on another day of the week. The Committee asks what safeguards are in place to ensure that no workers work more than 12 days consecutively before being granted a two-day rest period.

On the basis of written orders by employers, employees may be required to work during their weekly rest periods, provided that they are granted equivalent compensatory rest time and that at least two weekly rest periods are granted within any 14-day period, in the following cases:

- if required by the most urgent public needs;
- to prevent the consequences of *force majeure*, unexpected events or other exceptional circumstances which adversely affect or may affect the usual course of activities in the undertaking; and
- for the completion of urgent, unforeseen work within a specified period of time (Article 143§4 of the Labour Law).

In accordance with Article 140 of the Labour Law governing aggregated working time, employees are granted rest periods of at least 35 consecutive hours over a seven-day period, including the rest day immediately after performance of the work. In accordance with Article 140§2, the duration of the daily and weekly rest provided for in the Labour Law may not be applied in the case of aggregated working time if:

- employees have to spend a long time travelling to work;
- employees perform security guard or surveillance duties;
- it is necessary to ensure the continuity of work on account of its nature;
- employees perform seasonal work;
- short-term expansions in the scope of undertakings' activity or increases in production levels are expected.

In the light of the above information concerning aggregated working time, the Committee requests that the next report give details of the safeguards in place to ensure that workers are entitled to a weekly rest period of at least twenty-four hours, that they may not waive this right and that if a weekly rest period is deferred, it may not be deferred for more than twelve consecutive days.

With regard to officials, the Committee notes that the Law on the Career Course of Service provides that Saturday and Sunday are the weekly rest days in the case of standard working time. If aggregated working time is applied, officials with special service ranks are granted rest periods of at least 36 consecutive hours over a seven-day period.

The Committee recalls that the right to weekly rest periods may not be renounced to or replaced by compensation. Although the rest period should be "weekly", it may be deferred to the following week, as long as no worker works more than twelve days consecutively before being granted a two-day rest period. In the light thereof, the Committee considers that the situation is in conformity with Article 2§5 of the Charter, pending receipt of the information requested.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Latvia 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 Latvia.

It notes that Article 40 of the Labour Code provides that an employment contract must be drawn up in writing in two copies signed by both parties. Employers are required to conclude written employment contracts before the dates on which employees actually start working for them.

The report states that employment contracts must include the following information (Article 40§2):

- the identities of the parties;
- the date of commencement of employment and its intended duration if the contract is for a fixed term;
- the place of work;
- the duties performed;
- the amount of remuneration and the payment date;
- the agreed daily or weekly working hours;
- the amount of paid leave;
- the periods of notice required in the event of termination of the contract or the employment relationship;
- reference to the collective agreements governing the employee's conditions of work;
- the provisions of collective agreements and working procedure regulations applicable to the employment relationship;
- other conditions.

Conclusion

The Committee concludes that the situation in Latvia 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 Latvia.

It notes that Article 138§1 of the Labour Law defines night work as any work performed at night for more than two hours. Night time is the period from 10 pm to 6 am (8 pm to 6 am for children). Under Article 138§2, a night worker is a person who normally performs night work in accordance with a shift schedule or for at least 50 days in a calendar year.

The Committee notes that standard daily working time for night workers is reduced by one hour. This provision does not apply to workers already covered by shortened working hours. According to the report, the daily working hours of night workers are not reduced if that is required by the particular characteristics of the undertaking. It is prohibited to employ night workers whose work involves particular risks for more than eight hours within 24-hour periods during which they have performed night work (does not apply in the case of aggregated working hours).

With regard to medical examinations, Article 138 of the Labour Law provides that night workers are entitled to undergo health examinations before employment in night work and regularly thereafter, at least once every two years (once a year for workers who have reached the age of 50); the costs of the examinations are borne by the employers.

With regard to moving to daytime work, the report states that employers must transfer night workers to appropriate work to be performed during daytime if a doctor finds that night work is having a negative impact on their health.

Under the Labour Law, night work is prohibited for pregnant women, breastfeeding mothers and mothers with children aged under one year and workers aged under 18 years. Women with children under three years of age may be assigned to night work with their written consent.

The report also states that collective agreements or employment contracts may provide for night workers to be granted additional paid annual leave (Article 151§2 of the Labour Law). In addition, night workers, including officials, receive a supplement of at least 50% of hourly or daily wage rates (Article 67 of the Labour Law and Article 14§4 of the Law on Remuneration of Officials and Employees of State and Local Government Authorities). Nevertheless, collective agreements and employment contracts may provide for higher supplements.

Article 137§1 of the Labour Law requires employers to keep records of hours worked at night, among others.

In view of the above information, the Committee considers that the situation is in conformity with Article 2§7 of the Charter. The Committee asks whether there is regular consultation with workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work.

Conclusion

The Committee concludes that the situation in Latvia is in conformity with Article 2§7 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 Latvia.

The Committee recalls that Article 4§2 is inextricably linked to Article 2§1, which guarantees the right to reasonable daily and weekly working hours. Overtime includes work performed in addition to normal working hours. Employees working overtime must be paid at a higher rate than the normal wage rate (Conclusions I (1969), Statement of Interpretation of Article 4§2). This increase must apply in all cases, even if the compensation for overtime work is made on a flat-rate basis.

Article 68 of the Labour Law provides that workers who perform overtime or work on a public holiday receive a wage supplement of at least 100%. Collective agreements or employment contracts may provide for higher supplements.

The report also explains that the Labour Law was amended in 2017 to introduce the possibility of compensating overtime with additional paid rest periods instead of an increased rate of remuneration. The Committee notes that the law was amended outside the reference period, and it will examine the situation during the next supervision cycle.

In the case of shift work, the report states that Article 139 of the Labour Law governing shift work provides that time worked by workers after the end of their shifts is considered overtime. In the case of aggregated working time, Article 140 provides that work done by workers in addition to the standard working time determined for a reference period is regarded as overtime work.

In the case of officials, the Committee notes from the report that the Law on Remuneration of Officials and Employees of State and Local Government Authorities provides that overtime work is compensated with a supplement of at least 100% of hourly wages or the granting of rest time on another weekday. The Committee asks whether the length of time off which may be awarded to replace increased remuneration is itself also increased.

In this respect, the Committee recalls (Conclusions XIV-2, Belgium) that granting leave to compensate for overtime is in conformity with Article 4§2, on the condition that this leave is longer than the overtime worked. It is not sufficient, therefore, to offer employees leave of equal length to the number of overtime hours worked. The time off granted in lieu of overtime remuneration should be of an increased duration.

The Committee recalls that the right of workers to an increased rate of remuneration for overtime work allows for exceptions in certain specific cases. These "special cases" have been defined by the Committee as "senior state employees and management executives of the private sector" (Conclusions IX-2 (1986), Ireland). The Committee asks whether the legislation provides for such exceptions.

In addition, the report indicates that Article 137§1 of the Labour Law requires employers to keep records of overtime hours, among others.

The report indicates that the labour inspectorate is responsible for supervising and controlling observance of the regulations governing employment legal relationships and labour protection, including remuneration for overtime. The Committee refers to its examination under Article 2§1 (Conclusions 2018) for a description of the penalties imposed for offences in this connection. According to the report, the number of violations of Article 68 of the Labour Law fell from 47 in 2014 to 38 in 2016, while the number of penalties remained stable during the reference period, at 27 in 2014 and 2015, and 25 in 2016.

In the light thereof, the Committee considers that the situation is in conformity with Article 4§2 of the Charter, pending receipt of the information requested.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Latvia 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 Latvia.

Legal basis of equal pay

The Committee recalls that under Article 4§3 of the Charter, the right of women and men to equal pay for work of equal value must be expressly provided for in legislation. This means that the States Parties are obliged to enact a sufficiently detailed legislation explicitly imposing equal treatment in all aspects. It is not sufficient merely to state the principle in the Constitution.

According to the report, Article 7 of Labour Law provides that everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair remuneration. These rights shall be ensured without any direct or indirect discrimination – irrespective of a person's race, skin colour, gender, age, disability, religious, political or other conviction, ethnic or social origin, property or marital status, sexual orientation or other circumstances. Article 29 of Labour Law provides that differential treatment based on the gender of an employee is prohibited when establishing employment relationships, as well as during the period of existence of employment relationships, in particular when promoting an employee, determining working conditions, work remuneration or occupational training or raising of qualifications, as well as when giving notice of termination of an employment contract. Direct discrimination exists if in comparable situations the treatment of a person in relation to his/her belonging to a specific gender is, was or may be less favourable than in respect of another person. Less favourable treatment due to granting of a prenatal and maternity leave or a leave to the father of a child shall be considered as direct discrimination based on gender. Indirect discrimination exists if apparently neutral provisions, criterion or practice cause or may cause adverse consequences for persons belonging to one gender.

Article 60 of Labour Law provides that an employer has the duty to provide equal remuneration for men and women for equal work or work of equal value. If an employer violates this provision, the employee has the right to request the remuneration that the employer normally pays for the same work or for work of equal value.

Guarantees of enforcement and judicial safeguards

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Anyone who suffers wage discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the loss and damage suffered by the victim and has deterrent effect on employer. This means that compensation must compensate not only pecuniary but also non-pecuniary damage. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed.

According to Article 29 of the Labour Law if in case of a dispute an employee indicates conditions which may serve as a basis for his/her direct or indirect discrimination based on gender, the employer has a duty to prove that the differential treatment is based on objective circumstances not related to the gender of the employee, or also that belonging to a particular gender is an objective and substantiated precondition for performance of the relevant work or the relevant employment. If the prohibition against differential treatment and the prohibition against causing adverse consequences is violated, an employee in addition to other rights specified in this Law, has the right to request compensation for losses and compensation for moral harm. In case of dispute, a court at its own discretion shall determine the compensation for moral harm. The Committee understands that the legislation provides for the shift in the burden of proof and does not establish a ceiling to the compensation that may be awarded in pay discrimination cases.

The Committee further recalls that when the dismissal is the consequence of a worker's claim about unequal pay, the employee should be able to file a complaint for unfair dismissal. In this case, the employer must reintegrate her/him in the same or a similar post. If this reinstatement is not possible, she/he has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. The Committee asks the next report to indicate what rules apply in case of retaliatory dismissal of an employee following his/her claim about unequal pay.

The Committee also reiterates its request for information (Conclusions 2016) concerning the measures taken to raise awareness of the relevant legislation, to enhance the capacity of the competent authorities, including judges, labour inspectors and other public officials, to identify and address cases of unequal pay, and also to examine whether the applicable substantive and procedural provisions, in practice, allow claims to be brought successfully. It asks that the next report provide information on the number, nature and outcome of complaints of equal remuneration addressed by the judicial and administrative bodies.

Methods of comparison

The Committee notes from the Direct Request (CEACR) – adopted 2017, published 107th ILC session (2018) concerning Convention No 100 that the amendments to Cabinet Regulation No. 1073 of 30 November 2010 provide more specifically that the purpose of classification of occupations is to ensure that equivalent and similar occupations are classified in the same way and sets out the comparators used for the classification system such as complexity of work, mental strain, cooperation, management functions, responsibility, as well as education and experience necessary to carry out the duties. The Committee asks the next report to indicate what is the definition of equal work or work of equal value. It also asks whether the methods used to evaluate work are gender neutral and exclude the discriminatory undervaluation of jobs traditionally performed by women.

In this respect, the Committee takes note of the judgement of the Supreme Court in Case No. SKC-67 of the Civil Matters Department of the Supreme Court of the Republic of Latvia where it was recognised that the principle of equal pay for men and women for the same work or work of equal value was not only limited to such cases where men and women concurrently perform the same work or work of the same value with the same employer (the Direct Request (CEACR) – adopted 2017). The Committee asks the next report to provide more information concerning outside company comparisons in unequal pay litigation cases. In particular, the Committee asks whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as whether the pay comparison is possible outside one company, for example, where such company is a part of a holding and the remuneration is set centrally.

Statistics

The Committee recalls that the States Parties must provide information on the gender pay gap and are under obligation to take measures to improve the quality and coverage of wage statistics. They should collect reliable and standardised statistics on women's and men's wages. The Committee notes that the report does not provide this information. Therefore, it asks the next report to provide detailed information regarding the percentage difference between hourly earning of men and women, in all occupations.

In 2016 (Conclusion on Article 20) the Committee noted from the data provided in the report and by Eurostat that the unadjusted gender pay gap had increased during the reference period from 13.6% in 2011 and 13.8% in 2012 to 14.4% in 2013 and to 15.2% in 2014 (which was below the average for the 28 EU countries of 16.1% in 2014). It now notes from Eurostat that in 2015 and 2016 the gender pay gap stood at 17%, which indicates an increase compared to the previous reference period. The Committee asks the next report to provide detailed analysis of the main determinants of the pay gap.

Policy and other measures

Taking into account persistant and increasing pay gap 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 action/measures taken and actual national plans and strategies. It asks in particular for information on their implementation and impact on combating occupational sex segregation in employment and on reducing 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 4 - Reasonable notice of termination of employment

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

The report indicates that, according to Article 103 of the Labour Law, in the event of termination of the employment by the employer, the following notice periods apply:

- 10 days in the event of dismissal on grounds of violation of the employment contract or specified working procedures without justification (Article 101§1 point 1); immoral act of the employee incompatible with the continuation of the employment relationship (point 3); violation of labour protection regulations the put into risk the health and safety of others (point 5); inability to perform due to employee's state of health (point 7) and temporary incapacity of 6 months uninterrupted or of 1 year within 3 years (point11).
- 1 month in the event of dismissal on grounds of incompetence (point 6); reinstatement of another employee (point 8); staff reduction (point 9) and liquidation (point 10).

The Committee notes from the report that collective agreements and employment contracts may provide for longer notice periods. It also notes from the report that the notice periods provided for in Article 103 of the Labour Law apply in cases of termination of civil service as well (Article 41 of the State Civil Service Law).

It considers that the situation is not in conformity with Article 4§4 of the Charter, on the grounds that the notice period of 10 days, applicable to dismissals on grounds of inability to perform due to employee's state of health and temporary incapacity, is not reasonable for employees and civil servants with more than six months of service and that the notice period of one month, where applicable, is not reasonable for employees and civil servants with more than three years of service.

The report indicates that immediate dismissals are allowed in the event of dismissal on the ground of an illegal act that led to the loss of the employer's trust (Article 101§1 point 2) and where the employee works under the influence of alcohol, narcotic or toxic substances (point 4).

The report also indicates that the notice period applicable to dismissals during the probationary period is 3 days (Article 47 of Labour Law). The Committee asks the next report to indicate the statutory maximum duration of probationary period. It also notes from the report that the conditions concerning the notice of termination of employment apply to all employees covered by Labour Law, including part-time employees. It, therefore, asks the next report to confirm that they also apply in cases of early termination of fixed- term contracts.

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 4§4 of the Charter on the grounds that:

- notice period of ten days, applicable to dismissals on grounds of inability to perform due to employee's state of health and temporary incapacity, is not reasonable for employees and civil servants with more than six months of service;
- notice period of one month, applicable to dismissals on grounds of incompetence; reinstatement of another employee; staff reduction and liquidation , is not reasonable for employees and civil servants with more than three years of service.

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 Latvia.

According to Article 78 of the Labour Law, the employer may make deductions from the employee's wage in order to recover:

- amounts overpaid due to employer's mistake or if the employee is responsible;
- advance paid work remuneration or advance payments in relation to travel or work trip that were not used and not repaid on time or advance payments for other expenses;
- paid average earnings for days of leave that were not earned because of the employee's dismissal.

Furthermore, upon the employee's written consent, the employer may offset his/her obligation to wage payment with claims due to losses caused by an employee's wrongful act. In this case, the deduction cannot exceed 20% of the monthly wage and under no circumstances can extend to more than the amount equal to the minimum monthly wage and the social security benefit for each minor child. If the employee questions the amount of compensation for losses, he/she is entitled to recourse to a court. Under the Civil Procedure Law (Article 594), the limits applicable to the attachment of wages in some cases may be 30% or 50% of the minimum wage.

The Committee asks the next report to indicate the limits applicable to deductions from wages according to the Labour Law and whether employees may waive their right to limits imposed by legislation. It also asks information on other claims, not provided by the Labour Law or the Civil Procedure Law, such as trade union dues and fines that might lead to wage deductions.

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 4§5 of the Charter on the ground that the attachable amount of wages leaves workers who are paid the lowest wages and their dependents insufficient means of subsistence.

Article 5 - Right to organise

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

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

Forming trade unions and employers' organisations

In its previous conclusions (Conclusions XVII-2 (2005), XVIII-2 (2007) XIX-3 (2010) and XX-3 (2014)), the Committee concluded that the situation was not in conformity with Article 5 of the 1961 Charter on the ground that the requirement established by Section 3§2 of the Trade Union Act, of a minimum of 50 members or at least one quarter of the employees of an undertaking to form a trade union represented an excessive restriction on the right to organise. However the Committee noted that new legislation on trade unions was before Parliament and requested information on this legislation and in particular the requirements for the creation of a trade union (Conclusions 2014).

According to the report on 6 March 2014 the Parliament of Latvia adopted the new "Law on Trade Unions" (hereinafter – the law) which entered into force on 1 November 2014 and accordingly the previous "Law on Trade Unions" of 13 December 1990, was repealed.

The law regulates the activity of trade unions, provides for the definition of a trade union as well as regulates the right to establish a trade union and to join a trade union, provides the right of trade unions to establish associations of trade unions, stipulates the independence and equality of trade unions. The law explicitly stipulates person's right not to join a trade union.

According to Article 7 of the law, the number of founding members of a trade union may not be less than 15 or less than one fourth of the total number of the employees of the undertaking which may not be less than 5 employees. The number of founding members of a trade union established outside an undertaking may not be less than 50. An association of trade unions may be established when a minimum three trade unions register in compliance with the procedure provided for in the law unite.

The Committee notes that the number of members required to form a trade union has decreased from 50 to 15 however the legislation still requires at least one fourth- a quarter of the employees in an undertaking to form a trade union and recalls that it has previously found that this constitutes an excessive restriction. Further the Committee considers that requiring at least 50 members in order to found a trade union outside an undertaking to be excessive. Therefore the Committee maintains the situation is still not in conformity with Article 5 of the 1961 Charter, in particular in light of the low level of trade union membership.

The law provides that a trade union is granted the status of a legal person as from the moment when it is entered in the Register of Associations and Foundations.

In the course of representing and protecting the labour, economic, social and professional interests of employees, trade unions are entitled to conduct collective negotiations, to receive information and to consult with employers, the organisations of employers and their associations, to sign collective agreements (general agreements), to declare strikes. Trade unions are also entitled to participate in the development of draft regulations/legislation and policy planning documents and are entitled to request and to receive the information required for the performance of their functions and for the attainment of their objectives from State and local government authorities.

Freedom to join or not to join a trade union

The Committee previously requested information on cases of discrimination on grounds of trade union membership, the report provides information on two cases of such discrimination.

Personal scope

According to the report the right to organise for public servants, has not changed. The Committee recalls that the Police Act authorises police personnel to form and join trade unions.

The Committee refers to its general question on the right of members of the armed forces to organise. It also requests information on the right of members of state security services (other than the police) to form and join trade unions.

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 5 of the Charter on the ground that a minimum of at least one quarter of the employees of an undertaking are required to form a trade union in an undertaking, and 50 founding members are required to form a trade union outside an undertaking which constitutes an excessive restriction on the right to organise

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee previously concluded that the situation was in conformity with Article 6§1 of the 1961 Charter (Conclusions XX-3, 2014).

According to the report the new law on Trade Unions 2014 contains provisions on the representation of trade unions in social dialogue and tripartite cooperation institutions as well as in the relations with the State and local government authorities. It regulates issues concerning bipartite social dialogue.

The report provides information on various projects undertaken to increase and strengthen social dialogue.

The Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Latvia 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 Latvia.

The Committee previously concluded that the situation was not in conformity with Article 6§2 of the 1961 Charter on the grounds that as only approximately 20% of the workforce was covered by a collective agreement, voluntary negotiations were not sufficiently promoted in practice (Conclusions XX-3, 2014).

According to the report Article 18 of the new Law on Trade Unions 2014 was adopted in order to stimulate the conclusion of collective agreements and fill previous legal gaps. The report provides a description of the new legislation. The Committee notes that the threshold for extending an industry wide collective agreement was lowered.

As regards collective bargaining coverage, according to the report, general collective agreements in Latvia cover approximately 24% of workers. There is one branch collective agreement in private sector (railway transport) and one branch collective agreement in public sector (health care). The Committee considers that the level of coverage remains low and despite the measures taken the situation is still not in conformity on the grounds that voluntary negotiations are not sufficiently promoted in practice.

Conclusion

The Committee concludes that the situation in Latvia 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 Latvia.

The Committee previously concluded that the situation was in conformity with Article 6§3 of the 1961 Charter (Conclusions XX-3, 2014).

According to the report on 15 January 2015 amendments to the Labour Dispute Law of 26 September 2002 were adopted. The Committee notes that the amendments are of a procedural nature.

Further the report states that in 2014 a Mediation Law was adopted. The purpose of this Law is to promote the use of mediation as an alternative way for the settlement of disputes. The parties have the right to decide freely on their participation in mediation, commencement of mediation, selection of a mediator, the course of mediation within limits determined by the mediator, discontinuation and termination of mediation with or without entering into an agreement.

Conclusion

The Committee concludes that the situation in Latvia 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 Latvia.

Collective action: definition and permitted objectives, Entitlement to call a collective action and Consequences of a strike

The Committee has already examined the situation with respect to collective action (definition, permitted objectives, entitlement; restrictions; procedural requirements; consequences) in its previous conclusions (Conclusions XVII-2 (2005), XVIII-2 (2007) and XIX-3 (2010) XX-3 (2014)), and found the situation to be in conformity with the 1961 Charter.

The report indicates that no changes were made to the relevant legal framework and its implementation during the reference period.

Specific restrictions to the right to strike and procedural requirements

According to information provided in previous reports paragraph one of Article 20 of Law on State Security Institutions stipultates that it is prohibited for officials of State Security institutions to inter alia, organise strikes, demonstrations, pickets and to participate therein. The Committee therefore asks for information on the right of the police to strike. It recalls its case law in this respect; an absolute prohibition on the right of the police to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it. On the other hand the imposition of restrictions as to the mode and form of such strike action can be in conformity to the Charter, (European Confederation of Police (EuroCOP) v. Ireland, Complaint No.82/2012, Decsion on the admissibility and merits of 2 December 2013.

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 Latvia.

This is the first time the Committee examines the national policy framework on the right to information and consultation.

The Committee recalls that consultation at the enterprise level is dealt with by Article 6§1 and Article 21. For the States which have ratified both provisions, consultation at enterprise level is examined under Article 21 (Conclusions 2004, Ireland).

Legal framework

The Committee notes that the right of workers to be informed and consulted is enshrined in law, reflected in the Labour Law and implemented through collective agreements. The exercise of this right is entrusted to the trade unions represented within undertakings or to other representative bodies and to some extent to the individual employees themselves.

The report indicates that Article 11 of Labour Law gives the description of rights and duties of employee representatives and provides definitions of informing and consultation. In particular, informing means transmission of data from the employer to workers' representatives. Information shall be provided in good time, as well as in an appropriate way and amount. The Law also defines consulting as an exchange of opinions and establishment of a dialogue between workers' representatives and the employer. Consultations shall be performed at the appropriate level, in good time, as well as in an appropriate way and amount so that the employee representatives may receive substantiated answers.

Personal scope

The report indicates that according to Article 10§2 of the Labour Law authorised employee representatives may be elected if an undertaking employs five or more employees. It further notes that employee representatives safeguard the social, economic and occupational rights of employees and often have broader scoped information and consultation rights compared to individual employees.

The Committee finds that the situation in Latvia is in conformity with the Charter on this point.

Material scope

The Committee notes that according to Article 11 of the Labour Law employee representatives have the right to request and receive information from the employer regarding the current economic and social situation of the undertaking, and possible changes thereto, as well as relevant information regarding the employment in the undertaking of an employee appointed by the work placement service. They also have the right to receive information in good time and consult with the employer before the employer takes such decisions as may affect the interests of employees, in particular decisions which may substantially affect work remuneration, working conditions and employment in the undertaking.

From the detailed description of individual rights to information and consultation the Committee notes especially the necessity to commence far-reaching consultations with employee representatives in case of collective redundancy and transfer of undertaking according to Articles 106 and 120 of the Labour Law. It also notes the requirement to consult employee representatives before determination or amendment of work norms and working procedure regulations according to Articles 51§3 and 55 of the Labour Law as well as the necessity to inform every employee on working procedure regulations according to Article 55§3 of the Labour Law.

Remedies

The Committee notes from the report that according to Article 94 of the Labour Law, an employee has the right, for the purpose of protecting his/her infringed rights or interests, to submit a complaint to the person authorised accordingly by the undertaking. Employee representatives also have the right to submit a complaint in order to protect the rights and interests of an employee.

The report also indicates the fines imposed by Articles 41 and 166 of the Administrative Violations Code on employers, both legal and natural persons, in case of a violation of regulatory enactments regulating employment legal relations or in case of the failure to conclude or fulfil the conditions of a collective agreement.

The Committee asks the next report to clarify whether there is a judicial procedure available to employees, or their representatives, who consider that their right to information and consultation within the undertaking have not been respected.

Supervision

The Committee notes that according to Article 3 of the State Labour Inspectorate Law, the Labour Inspectorate implements supervision and control in the field of employment legal relationships and labour protection. According to the report, labour inspectors have the right to issue warnings and orders to employers in order to ensure the observance of the requirements of the regulatory enactments regulating employment legal relationships and labour protection. They also have the right to impose administrative fines on employers as well as on other persons for the examination of administrative violations on accordance with the procedures prescribed.

The Committee finds that the situation in Latvia is in conformity on this point.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Latvia 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 Latvia.

This is the first time the Committee examines the national policy framework on the right to take part in the determination and improvement of the working conditions and working environment.

According to the report, the right of workers to take part in the determination and improvement of the working conditions and working environment is enshrined in law, reflected in the Labour Law and implemented through collective agreements. The exercise of this right is entrusted to the trade unions represented within undertakings or to other representative bodies and to some extent to the individual employees themselves.

The report indicates that Article 11§1 of the Labour Law governs the rights and duties of workers' representatives within the undertaking. The election of trusted representatives is regulated by the Regulation of Cabinet of Ministers No. 427 of 7 September 2002 on Procedure for the Election of Trusted Representatives and the Activities Thereof. Article 21 of the Labour Protection Law governs the participation of trusted employees in the internal supervision of the working environment while Article 3 of the State Labour Inspectorate Law governs the state supervision by the State Labour Inspectorate.

The Committee recalls that with a view to ensuring the implementation of Article 22 of the Charter, workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, and works councils) must be granted an effective right to participate and contribute in the decision-making process and the supervision of the observance of local regulations within the undertaking. It also recalls that Article 22 applies to all undertakings, whether private or public. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice (Conclusions 2005, Estonia) and tendency undertakings.

The Committee asks the next report to confirme that Article 22 is applied to both private and public undertakings. It also wishes to be informed of the existence of any thresholds established by the national legislation or practice, in order to exclude undertakings which employ less than a certain number of workers.

Working conditions, work organisation and working environment

The report indicates that according to Article 11§1 of the Labour Law, employee representatives have the right to take part in the determination and improvement of work remuneration provisions, working environment, working conditions and organisation of working time. It asks the next report to provide a detailed description of how this right is realised in practise.

The Committee takes note of the activities organised by the Free Trade Union Federation of Latvia aimed at facilitating fair conditions at work, information and consultation rights and rights to improve determination and improvement of the working conditions during the reference period.

Protection of health and safety

The Committee recalls that workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations regarding the protection of health and safety within the undertaking.

It notes from the report that according to Article 11§1 of the Labour Law, employee representatives have the right to take part in protecting the safety and health of employees. According to Article 10 of the Labour Protection Law, an employer has an obligation to

consult with employees or their representatives as well as to let them participate in the meetings regarding safety measures and procedures in the undertaking. According to Article 21 of the same law, an workers' representative has, among others, the right to propose measurements of the working environment risk factors and propose agreements between employer and employees regarding the determination of labour protection measures.

Organisation of social and socio-cultural services and facilities

The report does not provide specific information on the implementation of Article 22(c). The Committee asks that the next report provides specific information on the measures adopted or encouraged by authorities in order to enable workers, or their representatives, to contribute to the organisation of social and socio-cultural services within the undertakings concerned (further to the information provided with respect to Article 22(b).

The Committee recalls that the right to take part in the organisation of social and socio-cultural services and facilities only applies in undertakings where such services and facilities are planned or have already been established. Article 22 of the Charter does not require that employers offer social and socio-cultural services and facilities to their employees but requires that workers may participate in their organisation, where such services and facilities have been established (Conclusions 2007, Italia, Conclusions 2007, Armenia).

Enforcement

The Committee recalls that workers must have legal remedies when these rights are not respected (Conclusions 2003, Bulgaria). There must be sanctions for employers who fail to fulfil their obligations under this Article (Conclusions 2003, Slovenia).

In this regard, the report indicates that according to Article 3 of the State Labour Inspectorate Law, the Labour Inspectorate implements supervision and control in the field of employment legal relationships and labour protection. According to the report, labour inspectors have the right to issue warnings and orders to employers in order to ensure the observance of the requirements of the regulatory enactments regulating employment legal relationships and labour protection. They also have the right to impose administrative fines for the examination of administrative violations on accordance with the procedures prescribed. The Committee notes the detailed description of fines in Article 41 of the Administrative Violations Code under which a fine of €70 to €350 for a natural person or an official or a fine of €70 to €700 for a legal person may be imposed in case of a violation of regulatory enactments that regulate labour protection.

The Committee asks the next report to contain detailed information on the administrative and/or judicial procedures available to employees, or their representatives, who consider that their right to take part in the determination and improvement of the working conditions and working environment has not been respected. In this framework, the Committee asks to be informed concerning the penalties which can be imposed on the employers if they fail to meet their obligations and whether employees, or their representatives, are entitled to damages. The next report should also contain updated information on decisions taken by competent judicial bodies with respect to the implementation of the right to take part in the determination and improvement of the working conditions and working environment.

Conclusion

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

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 Latvia.

Prevention

The Committee notes from the report that the State Labour Inspectorate (SLI) provides consultations to employers and employees on issues concerning the legislation regulating employment relationships and labour protection. It also replies to questions face to face, by phone, and by e-mail. Furthermore, the SLI's website contains information on issues concerning employment relationships and labour protection. According to the report, in 2013 and 2014 information events for students and young people were held by the SLI concerning the activities of the Inspectorate and labour relations. In addition, in 2013 the Free Trade Union Confederation held a competition for vocational school students, concerning employment relationships and labour protection.

The Committee recalls that Article 26§1 requires States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment. In particular, in consultation with social partners, they should inform workers about the nature of the behaviour in question and the available remedies.

The report does not provide information on measures taken to raise awareness of the issue of sexual harassment in the workplace. The Committee, therefore, asks the next report to provide information on any preventive measures taken during the reference period with the aim of raising awareness of the problem of sexual harassment in the workplace. It also asks whether and to what extent employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace.

Liability of employers and remedies

The Committee notes from the report that Article 29 of the Labour Law implicitly prohibits sexual harassment as a type of harassment and considers it a form of discrimination within the meaning of the Labour Law. Harassment is defined as *"the subjection of a person to such actions which are unwanted from the point of view of the person, which are associated with his/her belonging to a specific gender including actions of sexual nature if the purpose or the result of such actions is the violation of the person's dignity and the creation of an intimidating, hostile, humiliating, degrading or offensive environment"*.

The report indicates that the SLI has the authority to issue warnings and orders to ensure the compliance with the legislation on employment legal relationships and the protection of employees. In cases in which regulations regarding employment relationships and labour protection have been violated, a fine may be imposed on the employer, ranging from € 35 up to € 350 for employers who are natural persons and officials and to € 70 up to € 1100 if the employer is a legal person. In case of violation of the prohibition on discrimination, the fine imposed ranges from € 140 to € 700. The violation of the prohibition of discrimination is also punished under the Criminal Code (Article 149).

The Committee notes from the report that as of January 2013, apart from the Labour Law, the principle of equal treatment is enshrined in the Law on Prohibition of Discrimination towards Physical Entities who are Engaged in Economic Activity. This Law applies to self-employed persons and refers to discrimination on the ground of sex and harassment as an unwanted conduct related to the sex of the person, but not to other grounds. According to the report, this law establishes the right to claim compensation, both for pecuniary and non-pecuniary damage, before courts.

The Committee points out that, under Article 26§1 of the Charter, workers must be afforded effective protection against sexual harassment. This protection must include the right to

appeal to an independent body in the event of sexual harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights. 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.

The Committee asks whether the legal framework provides for the protection of victims of sexual harassment against retaliation and whether employers can be held liable when sexual harassment occurs in relation to work, or on premises under their responsibility when the perpetrator or the victim is a third person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.

Burden of proof

The Committee recalls that, under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge.

The Committee notes from the report that according to Article 29§3 of the Labour Law that in cases of discrimination on the ground of gender, a shift in the burden of proof applies.

Damages

The Committee recalls that victims of sexual 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 sexual harassment.

According to the report, pursuant to Article 29§8 of the Labour Law, in case of discrimination, the employee may claim compensation for pecuniary and non-pecuniary damage. Furthermore, under Article 1635 of the Civil Law, persons who suffered moral injury as a result of illegal acts, may claim compensation before civil courts. The amount of compensation awarded for non-pecuniary damage is determined by the court, taking into account the seriousness and the consequences of the moral injury. The Committee asks the next report to provide information on any example of case-law, in particular with regard to the compensation awarded.

The Committee notes from the European Network of Legal Experts in Gender Equality and Non-discrimination (Latvia, country report-gender equality, 2017), that in cases of discrimination on the ground of gender, the employee is entitled to request his/her reinstatement. The Committee asks the next report to confirm that the right to reinstatement is provided to employees that have been unfairly dismissed or have been pressured to resign for reasons related to sexual harassment and to provide information on this matter.

Conclusion

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

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 Latvia.

Prevention

The Committee notes from the report that, while general measures were taken to promote the principle of equal rights and prohibit discriminatory treatment, no specific measures have been adopted as regards the protection of employees against moral harassment. In this regard the Committee refers to the operation of the State Labour Inspectorate (SLI), which, together with other entities, implements preventive measures and informs the society on equal rights and the prohibition of discriminatory treatment.

The Committee recalls that Article 26§2 imposes positive obligations on States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment. In particular, in consultation with social partners, they should inform workers about the nature of the behaviour in question and the available remedies.

The report does not provide information on measures taken to raise awareness of the issue of moral (psychological) harassment in the workplace. The Committee, therefore, asks the next report to provide information on any preventive measures taken during the reference period with the aim of raising awareness of the problem of moral (psychological) harassment in the workplace. It also asks whether and to what extent employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of moral (psychological) harassment in the workplace.

Liability of employers and remedies

The Committee notes from the report that Article 29 of the Labour Law prohibits harassment and considers it a form of discrimination within the meaning of the Labour Law. Harassment is defined as *"the subjection of a person to such actions which are unwanted from the point of view of the person, which are associated with his/her belonging to a specific gender, [or other proscribed ground of definition in terms of the Law, specifically race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances of an employee], including actions of sexual nature if the purpose or the result of such actions is the violation of the person's dignity and the creation of an intimidating, hostile, humiliating, degrading or offensive environment"*.

The report indicates that the SLI has the authority to issue warnings and orders to ensure the compliance with the legislation on employment legal relationships and the protection of employees. In cases in which regulations regarding employment relationships and labour protection have been violated, a fine may be imposed on the employer, ranging from € 35 up to € 350 for employers who are natural persons and officials and to € 70 up to € 1100 if the employer is a legal person. In case of violation of the prohibition on discrimination, the fine imposed ranges from € 140 to € 700. The violation of the prohibition of discrimination is also punished under the Criminal Code (Article 149).

The Committee notes from the report that as of January 2013, apart from the Labour Law, the principle of equal treatment is enshrined in the Law on Prohibition of Discrimination towards Physical Entities who are Engaged in Economic Activity. This Law applies to self-employed persons and refers to discrimination on the ground of sex and harassment as an unwanted conduct related to the sex of the person, but not to other grounds. According to the report, this law establishes the right to claim compensation, both for pecuniary and non-pecuniary damage, before courts.

The Committee points out that, under Article 26§2 of the Charter, workers must be afforded effective protection against harassment. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights. 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.

The Committee asks whether the legal framework provides for the protection of victims of moral (psychological) harassment against retaliation and whether employers can be held liable when harassment occurs in relation to work, or on premises under their responsibility when the perpetrator or the victim is a third person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.

Burden of proof

The Committee recalls that, under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.

According to the report, under Articles 9 and 29§3 of the Labour Law, in cases of discrimination, a shift in the burden of proof applies.

Damages

The Committee recalls 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.

According to the report, pursuant to Article 29§8 of the Labour Law, in case of discrimination, the employee may claim compensation for pecuniary and non-pecuniary damage. Furthermore, under Article 1635 of the Civil Law, persons who suffered moral injury as a result of illegal acts, may claim compensation before civil courts. The amount of compensation awarded for non-pecuniary damage is determined by the court, taking into account the seriousness and the consequences of the moral injury. The Committee asks the next report to provide information on any example of case-law regarding compensation.

It furthermore asks whether the right to reinstatement is provided to employees who have been unfairly dismissed or have been pressured to resign for reasons related to moral (psychological) harassment.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 26§2 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 Latvia.

Types of workers' representatives

Employee representatives are defined by Article 10 of Labour Law, which specifies two types of representation: trade union representatives and other elected workers' representatives.

The Committee recalls that according to the Appendix of Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice. Article 28 is not intended to impose an obligation to introduce any specific types of workers' representatives but to ensure that adequate forms of representation are available to all employees, both within and outside the scope of collective bargaining with the employer. In the light of the above, in order to obtain a comprehensive picture of the situation, the Committee asks that next report provide more details on the types of workers' representatives other than trade union members.

Protection granted to workers' representatives

According to Article 110 of the Labour Law and Article 13.7 of the Trade Union Law, trade union members cannot be dismissed without a prior concent of the relevant trade union, except for in situations defined by law. The Committee asks about more information about the above-mentioned exceptions. It also notes that the Trade Union Law restricts some rights of trade union members to a limited number of authoritised officials of the trade union and asks the next report to explain this limitation. It further wishes to know, how workers' representatives other than trade union members are protected in the undertakings in which no trade union is active and for how long this protection extends.

As regards protection against prejudicial acts other than dismissal, in addition to a general prohibition of causing adverse consequences to an employee acting in a lawful manner, the Labour Law provides that performance of the duties of an employee representative may not serve as a ground for restricting the rights of an employee. The Committee asks that the next report provides more details on this aspect and exhaustively explains how workers' representatives (both trade union members and other elected representatives) are protected from prejudicial acts, which may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts cut-down or any other taunts or abuse.

In case of a dispute, the employer bears the burden of proof that any adverse concequences caused by the employer were not directly or indirectly based on the fact of excercising the employees rights, including in the function of a workers' representative. The court may order reinstatement of an employee whose contract was unlawfully terminated. The Committee asks whether workers' representatives have also a right to compensation in case of a violation of their rights.

Pending receipt of a comprehensive reply to the above questions, the Committee reserves its position on this point.

Facilities granted to workers' representatives

Under Article 110 of the Labour Law, trade union members have a right to receive and impart inforrmation, enter the territory of the undertaking and hold meetings in its premises. According to Article 13.4 of the Trade Union Law, authorised trade union representatives are entitled to paid time off, not exceding a half of the contracted working time. The Committee asks how this limitation is calculated.

The Committee asks the next report to elaborate on the facilities afforded to workers' representatives, including all these mentioned in its Statement of Interpretation on Article 28 (Conclusions 2010, Statement of Interpretation on Article 28). It also asks that a particular attention is given to information on facilities granted to unauthorised trade union members and to other workers' representatives.

Conclusion

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

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 Latvia.

The Committee refers to its Statement of Interpretation of Article 29 (Conclusions 2003) and recalls that this provision of the Charter provides for the employer's duty to consult (and not only to inform) workers' representatives, and defines the purpose of such consultation. The Committee has held that the obligation to inform and consult is not just an obligation to inform unilaterally, but implies that a process (of consultation) is set in motion, meaning that there is sufficient dialogue between the employer and the worker's representatives on ways of avoiding redundancies or limiting their number and mitigating their effects. The consultation procedure must cover:

- the redundancies themselves, including the ways and means of avoiding them or limiting their occurrence; and
- support measures, such as social measures to facilitate the redeployment or retraining of the workers concerned and the redundancy package.

Definition and scope

The Committee recalls that the collective redundancies referred to in Article 29 are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity (Conclusions 2003, Statement of Interpretation on Article 29).

The report indicates that, in accordance with Article 105§1 of the Labour Law, collective redundancies are such where the number of employees to be made redundant within 30 days is:

- at least five in undertakings employing between 20 and 50 persons;
- at least 10 in undertakings employing between 50 and 100 persons;
- at least 10% of employees in undertakings employing between 100 and 300 persons; or
- at least 30 employees in undertakings employing 300 or more persons.

The Committee notes that the definition of collective redundancies is not restrictive and finds that the situation is in conformity with the Charter in this respect.

Prior information and consultation

The Committee recalls that under Article 29 consultation procedures must take place in good time before the redundancies, as soon as the employer contemplates making collective redundancies.

The consultation procedure must cover the redundancies themselves, the ways and means of avoiding collective redundancies or limiting their occurrence and ways and means of mitigating their consequences, for example by recourse to accompanying social measures designed, in particular, to facilitate the redeployment or retraining of the workers concerned (Conclusions 2003, Statement of Interpretation on Article 29).

According to the report, Article 106 of the Labour Law requires employers to conduct notifications and consultations before proceeding with collective redundancies. In accordance with Article 106§1, employers who intend making collective redundancies must in good time commence consultations with workers' representatives with a view to agreeing the number of employees concerned, the collective redundancy procedure and the social safeguards for the employees to be made redundant. These consultations should cover the ways and means of avoiding redundancies or reducing their number and mitigating their consequences through social measures for the retraining or further employment of the employees concerned.

Employers are required to supply the workers' representatives with all the relevant information in writing, such as the reasons for collective redundancies, the number and categories of employees concerned, the number of persons normally employed by the undertakings, the periods over which the redundancies are to take place and the methods for calculating severance pay.

Employers must also give a written notification to the State Employment Agency and the local governments in the areas where the undertakings are located. In addition to the information communicated to the workers' representatives, the notification must include the employers' identities, the locations and types of activity of the undertakings and details of the consultations with the workers' representatives. The employers must also send copies of the notifications to the workers' representatives.

The report states that, in accordance with Article 107 of the Labour Law, employers may not commence collective redundancies until at least 30 days after notifying the State Employment Agency, unless they have agreed on a later date with the workers' representatives. The State Employment Agency may extend this period to 60 days, in which case it must give the employers and the workers' representatives written notification of the extension and the reasons for it two weeks before the end of the initial period.

In view of the above, the Committee considers that the situation is in conformity with the Charter on this point.

Preventive measures and sanctions

The Committee points out that consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers. (Conclusions 2003, Statement of Interpretation on Article 29).

The Committee notes from the report that in the event of breaches of the provisions of the law on information, consultation and notification, Article 41§1 of the Administrative Violations Code provides for warnings to be issued or fines imposed on employers – natural persons or officials (from €35 to €350) or legal persons (from €70 to €1 100).

According to the report, one complaint was made to the State Labour Inspectorate during the reference period concerning infringement of the right to information and consultation in collective redundancy procedures.

The Committee 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.

Conclusion

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