March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

MALTA

This text may be subject to editorial revision.

The following chapter concerns Malta which ratified the Charter on 27 July 2005. The deadline for submitting the 11th report was 31 October 2017 and Malta submitted it on 8 November 2017.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Labour Rights":

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

Malta has accepted all provisions from the above-mentioned group except Articles 2§4, 21 and 22.

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

The conclusions relating to Malta concern 19 situations and are as follows:

– 5 conclusions of conformity: Articles 2§3, 2§5, 2§6, 28 and 29;

– 9 conclusions of non-conformity: Articles 2§1, 2§2, 4§1, 4§3, 4§4, 4§5, 6§3, 6§4 and 26§2.

In respect of the 5 other situations related to Articles 4§2, 5, 6§1, 6§2 and 26§1, 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 Malta under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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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 Malta.

The Committee refers to its previous conclusions (Conclusions 2010, 2014, 2016) for a description of the relevant legislation. It previously found (Conclusions 2016) that the situation was not in conformity with Article 2§1 of the Charter on the ground that the law does not guarantee the right to reasonable weekly working hours.

In particular, the Committee noted that although the relevant legislation (Organization of Working Time Regulations, SL 452. 87) provided for the limit of 48 hours per week, this limit could be exceeded with the worker's written consent as long as the daily and weekly minimum rest periods were granted and the average weekly working time did not exceed 48 hours per week over a reference period which could be up to a year in certain sectors.

The Committee asked for information on the situation in practice, including on the extent to which working time of more than 60 hours in individual weeks is encountered in practice, especially in the manufacturing and tourism sectors where the reference period is one year.

The report does not provide any new information in this respect. The Committee accordingly reiterates its question and maintains in the meantime its finding of non-conformity.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 2§1 of the Charter on the ground that the law does not guarantee the right to reasonable weekly working hours.

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 Malta.

The Committee refers to its previous conclusions (Conclusions 2010, 2014, 2016) for a description of the relevant legislation. It previously found (Conclusions 2016) that the situation in Malta was not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated for all workers.

In particular, the Committee noted that, in certain sectors, workers were only paid "time-and-a-half", i.e. an increase of 50%, for work performed during public holidays falling in the period Monday to Friday and considered that a 50% increase could not be regarded as adequate compensation for the purposes of Article 2§2 and in the absence of information showing that the great majority of workers, in the meaning of Article I of the Charter, effectively benefit from adequate compensation.

The report states that in the private sector there are 326 collective agreements, covering 43 782 employees whilst in the Public Sector (including Public Service), there are 35 collective agreements covering 62 365 employees, but does not explain how many of these workers are entitled to a double time compensation for work performed on public holidays, in addition to a compensatory rest. The Committee accordingly reiterates its request for clarifications on this point, and maintains in the meantime its finding of non-conformity.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated for all workers.

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 Malta.

The Committee refers to its previous conclusions (Conclusions 2010, 2014) for a description of the relevant legislation.

The report indicates that there has been no development concerning the situation which the Committee previously found to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Malta is in conformity with Article 2§3 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 Malta.

The Committee refers to its previous conclusions (Conclusions 2010, 2014) for a description of the relevant legislation.

It previously deferred its conclusion pending receipt of information regarding the exceptional circumstances where the weekly rest period is not granted and the measures taken in such a case. The Committee asked in particular what control is applied over such exceptions to the normal rules and what safeguards apply to ensure that no worker works more than twelve days consecutively before being granted a two day rest period.

According to the report, the Organisation of Working Time (S.L. 452.87) specifically stipulates that a worker is entitled to either two uninterrupted rest periods each of not less than 24 hours, each preceded by a daily rest period, in each 14 day period, or one uninterrupted rest period of not less than 48 hours, preceded by a daily rest period, in each such 14 day period. Thus, by virtue of this regulation, an employee cannot work more than 12 consecutive days without being granted a two day rest period. In light of this information, the Committee considers that the situation is in conformity with the Charter on this issue.

Conclusion

The Committee concludes that the situation in Malta 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 Malta.

The Committee refers to its previous conclusions (Conclusions 2010, 2014) for a description of the relevant legislation.

It previously asked for comprehensive up-to-date information on how the right of workers to written information when starting employment is ensured, in law and practice, in Malta.

In reply to this question, the report confirms that, under the Information to Employees Regulations (S.L. 452.83), when an employer engages an employee, he is bound to provide the employee either with a written contract or a letter of engagement or a signed statement within eight working days from the commencement of employment.

The Committee notes that the information to be provided to the employee complies with the requirements of Article 2§6 of the Charter (see the report for details, as well as Conclusions 2010) and asks the next report to provide updated information on the labour inspectorate's activities regarding compliance, in practice, with the legislation on employment contracts. It considers in the meantime that the situation is in conformity with the Charter.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

The Committee refers to its previous conclusions (Conclusions 2010, 2014) for a description of the relevant legislation.

As the previous report did not contain any relevant information, the Committee deferred its conclusion (Conclusions 2014) and pointed out that, should the following report fail to provide information on Article 4§1 of the Charter, it would not be possible to establish the conformity of the situation in Malta with this provision.

The report merely states that the pay must not be less than the minimum set by law (national minimum wage or the minimum wage applicable to the sector concerned) or regulated by a collective agreement applicable per enterprise. In any case, according to the report, this must not be lower than the statutory minimum wages. The report does not contain however any information as to the level of the net minimum wage, the special bonuses or relevant social transfers, the net average wage of a full-time worker. The Committee points out in this respect that it is for the State Party concerned to provide this information.

In the absence of the information needed to assess compliance with Article 4§1, the Committee reiterates its request for full and updated relevant information. In the meantime, it considers that it has not been established that the right to a fair remuneration that ensures a decent standard of living is guaranteed for all workers.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 4§1 of the Charter on the ground that it has not been established that the minimum wage ensure a decent standard of living for all workers.

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 Malta.

The Committee refers to its previous conclusions (Conclusions 2010, 2014, 2016) for a description of the relevant legislation.

It previously noted (Conclusions 2010) that overtime rates were typically calculated at 'one and a half' times the normal hourly rates on weekdays (150%). It asked however if remuneration for overtime could be replaced by compensatory leave and, should this be the case, whether the time off given in lieu of overtime was longer than the additional hours worked. It furthermore asked what penalties were imposed in case of infringements concerning payment of overtime. As the subsequent report did not answer these questions, the Committee asked again how and to what extent an increased compensation for overtime was guaranteed to all workers, whether by statute, collective agreement, individual employment contract and/or any other means. In the absence of this information, it maintained that it had not been established that the right to an increased remuneration for overtime work was guaranteed to all workers (Conclusions 2014 and 2016).

The Committee notes from the report that overtime payment cannot be replaced by time off in lieu. It asks the next report to clarify whether this means that all employees, including those covered by Wage Regulations Orders are entitled to overtime rates calculated at 'one and a half' times the normal hourly rates on weekdays (150%) and whether any exceptions apply to certain sectors of activity or categories of workers (notably, as regards senior management staff). It furthermore notes that the Overtime Regulations were amended in 2015, during the reference period, and that the possibility to bank overtime hours was introduced. It asks the next report to provide all relevant information on the amendments introduced to overtime legislation. It reserves in the meantime its position as regards the conformity of the situation with Article 4§2 of the Charter.

Conclusion

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

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 Malta.The Committee takes note of the information contained in the report submitted by Malta. It refers to its previous conclusions (Conclusions 2007, 2014 on Article 4§3 as well as Conclusions 2016 on Article 20) for a description of the relevant legislation.

Legal basis of equal pay

The Committee refers to its conclusion under Article 20 (Conclusions 2016) where it found that the situation was in conformity as regards the legal basis of equal pay.

Guarantees of enforcement and judicial safeguards

The Committee refers to its previous conclusion (Conclusions 2014) as well as to its conclusion under Article 20 (Conclusions 2016) where it noted the compensation and redress measures included in Article 28 of the Employment and Industrial Relations Act, supplemented by the provisions of the Equality of Men and Women Act of 2003. It also refers to its conclusion on Article 1§2 (Conclusions 2016), where it noted that the shift in the burden of proof in discrimination cases had been introduced in 2014 (Section 19 (2) of Chapter 456 Equality for Men and Women Act)".

The report details the means of redress available in case of discriminatory treatment and refers to an investigation concluded in 2015 by the NCPE's Commissioner, which determined the occurrence of wage discrimination in the wage of a female employee. Following the NCPE opinion, the report states that the complainant employee could obtain a substantial increase in salary through negotiations with the employer.

As regards the applicable sanctions in case of infringement to the Equal Treatment in Employment Regulations, the Committee notes that the Regulations provide that the offender is liable to a fine not exceeding €2399.37 and/or to imprisonment for a period not exceeding six months.

The report does not provide however any information concerning the compensation awarded to victims of discrimination in equal pay litigations or cases concerning unfair dismissal of workers complaining of unequal treatment.

The Committee reiterates its request of updated and comprehensive information regarding the effective implementation of the equal pay principle through the relevant domestic case-law on equal pay litigations, including the shift in the burden of proof, the remedies provided and sanctions imposed. In the meantime, as Malta has never provided information on this point, despite the repeated requests (see Conclusions XIII-2 (1994), XIV-2 (1998), XVIII-2 (2007), 2014). In the present report, the Government explains the legislation and the 2015 case-law but no other elements. Therefore, the Committee finds that it has not been established that the principle of equal pay is effectively guaranteed in practice.

Methods of comparison

According to the report (information provided on Article 20) the law does not provide for comparisons of pay and jobs outside the company concerned, but it does not prohibit the Industrial Tribunal to make such comparisons. It is also noted in the report that it is the employer who has to ensure the principle of equal pay, but it is not clear what means are used in terms of cross company comparison. The report also points out that the NCPE did not have any cases of alleged discrimination between women and men in pay where comparison across companies was required, but the Committee recalls that in its previous conclusions it has already highlighted the difficulties regarding proof to find a suitable comparator and asked for more information with examples and case-law son such methods of pay comparisons. In the light of this, the Committee asks for information on whether the

law prohibits discriminatory pay arising out of statutory regulation or collective agreements, as well as whether pay comparisons are possible outside one company, for example, if such company is a part of a holding company and the remuneration is set centrally by such holding company. The Committee also asks if there is legislation concerning how jobs "of equal value" are to be compared to each other.

Statistics

The Committee notes from Eurostat that in 2013 the unadjusted pay gap stood at 9.7, at 10.6% in 2014 and at 11% in 2016. There are no data available for 2017.

Policy and other measures

It also takes note of the additional information provided in the report concerning the Equal Treatment in Employment Regulations (Subsidiary Legislation 452.95) as well as the activities of the National Commission for the Promotion of Equality (NCPE) which are aimed at promoting gender equality, including as regards pay gap (organization of a conference in 2015; awarding of Equality Mark Certification to 71 companies, employing over 18600 persons, by end 2016; awareness-raising statements, articles, interventions on television, radio and social media).

It should also be noted that gender pay gap in Malta, although belowe EU average, has not decreased, but increased during the reporting year. Taking into account this, the Committee asks the next report to inform on what measures, either policy or legislative measures, are taken to tackle gender pay gap.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 4§3 of the Charter on the grounds that it has not been established that the principle of equal pay is effectively guaranteed in practice.

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 Malta.

The Committee refers to its previous conclusions (Conclusions 2010, 2014) for a description of the relevant legislation. It previously found (as from Conclusions XIV-2 (1998)) that the situation was not in conformity with the Charter, on several grounds (see Conclusions 2014).

First of all, the Committee notes that there have been no changes as regards the general notice periods which it previously found to be too short (one week for workers with less than six months of service, two weeks for a length of service between six months and two years, four weeks for a length of service between three and four years). It accordingly reiterates its previous conclusion of non-conformity on this point.

As regards the notice period of one week applicable to probationary periods, the report draws attention to the fact that decisions to terminate a probationary period in public service can be appealed to the Public Service Commission.

Furthermore, the report does not indicate any change as regards dismissal without notice or severance pay in economic, technological or organizational circumstances requiring changes in the workforce. The Committee accordingly reiterates its previous conclusion of non-conformity on this point.

Conclusion

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

- The notice periods generally applied are not reasonable in the following cases:
    - less than six months of service;
    - between six months and two years of service;
    - between three and four years of service;
- No notice period is provided for in the event of dismissal in economic, technological or organisational circumstances requiring changes in the workforce.

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 Malta.

The Committee refers to its previous conclusions (Conclusions XVIII-2 (2007), 2010, 2014) for a description of the relevant legislation. It previously deferred its conclusion pending receipt of information on a number of issues (Conclusions 2014).

The Commitee notes that there have been no changes concerning the circumstances in which deductions from wages are authorised and that the protected portion of the wages remained set at around 96% of the minimum wage in 2016.

The Committee also takes note of the information provided on deductions from wages for the recovery of fines, as well as regards the information given to employees in the letter of appointment on the circumstances under which fines may be imposed. It reiterates however its request for information on how the reasonable nature of deductions is established and assessed in practice.

According to the report, the law allows employees to assign part of their wage to a third party by a written agreement but there is no indication whether any limits apply. The Committee recalls in this respect that workers should not be allowed to waive their right to limitation of deductions from their wage and the way in which such deductions are determined should not be left at the disposal of the sole parties to the employment contract. It accordingly considers that it has not been established that the safeguards preventing workers from waiving their right to limits wage deductions are adequate.

It is not clear from the report whether provisions on deductions from wages are applicable to all workers, including civil servants and sailors. The Committee accordingly reiterates its request for information in this respect.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 4§5 of the Charter on the ground that it has not been established that the safeguards preventing workers from waiving their right to limits wage deductions are adequate.

Article 5 - Right to organise

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

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

The Committee takes note of the entry into force, in December 2016, of a new law on recognition of trade unions (Recognition of Trade Unions Regulations, SL 452.112), which provides clear rules for verifying which union must be granted recognition by the employer (see details in the report).

Forming trade unions and employers' organisations

In response to the Committee's question, the report indicates that the registration of trade unions and employers' associations is currently free of charge, as the Minister for Employment and Industrial Relations has not established any fees. The Committee asks the next report to provide updated information as regards any development on this issue.

Freedom to join or not to join a trade union

The report does not provide any information, in response to the Committee's question (see Conclusions 2014) concerning the issues raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR). The Committee accordingly reiterates its request of information on the procedures applicable for the examination of allegations of anti-union dismissals of port workers and public transport workers (see also ILO-CEACR Observation, adopted 2016, published 106th ILC session (2017) Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Malta (Ratification: 1965)). It reserves in the meantime its position on this point.

As regards legislative measures taken to prohibit interference by employers' and workers' organisations against each other, the report explains that the problem has been solved by adopting the Recognition of Trade Unions Regulations of 2016 see below.

Trade union activities and Representativeness

The Committee takes note of the entry into force, in December 2016, of a new law on recognition of trade unions (Recognition of Trade Unions Regulations, SL 452.112), which provides clear rules for verifying which union must be granted recognition by the employer (see details in the report).

Personal scope

The Committee previously noted (Conclusions 2016) that in 2015, legislation was passed by Parliament granting, inter alia, members of the Police Force the right to become members of Trade Unions of their choice (Act IV of 2015). It requested however confirmation that refusals to register a police trade union could be contested before a court. As the report does not provide any information thereon, the Committee repeats its question. The Committee refers to its general quesion on the right of members of the armed forces to organise.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

It refers to its previous conclusions for a description of the mechanisms and bodies for joint consultation at national level (Conclusions XVIII-1 (2006) and Conclusions XVII-1 (2004)) and at enterprise level (Conclusions 2010, 2014).

In response to the Committee's question (Conclusions 2014), the report confirms that all categories of employees are taken into account when considering joint consultation in the undertaking, be they full time, part time, indefinite contract employees, definite contract employees etc.

No information is however provided as regards joint consultation in the public service. The Committee accordingly reiterates its request requests for detailed and up-to-date information on this point. It reserves in the meantime its position.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The Committee noted previously that collective agreements in Malta are in principle negotiated at the enterprise level (Conclusions XVIII-1(2006)).

Although the report does not provide the information requested concerning the number of collective agreements concluded in the private and public sector and the number of employees covered by these agreements, the Committee notes from the European Trade Union Institute that the collective bargaining coverage was estimated at 61% and the proportion of employees in unions was estimated at 51%. According to Eurofound, the collective agreement for public service employees can be regarded as the sole agreement on a sectoral level and covers around 32,000 employees. According to a report issued by the Central bank of Malta, around 23% of workers in the private sector were covered by a collective agreement in 2013. According to the information provided under Article 2§2, in the private sector there were 326 collective agreements covering 43782 employees whilst in the Public Sector (including Public Service), there were 35 collective agreements covering 62365 employees. The Committee asks the next report to rpovide updated information on the percentage of employees covered by collective agreements.

According to the report, these regulations do not prevent the founding of unions, nor the exercise, by non-recognized unions, of key trade union prerogatives such as representing employees on an individual basis. A trade union which is not recognised may participate in collective negotiations if the employer and recognised union give their consent. The Committee asks the next report to provide updated information on the impact of the implementation of the Law on recognition of Trade Unions on minority trade unions.

As regards the right to bargain collectively of all public servants (including police officers) and its implementation in practice, the report refers to certain amendments to Employment and Industrial Act which allow a trade union representing members of a disciplined force (i.e. naval, military, air force, police force, prison services and assistance and rescue force) to negotiate conditions of employment and to participate in dispute resolution procedures of a conciliatory, mediatory arbitral or judicial nature on behalf of the members of the disciplinary force which it represents. The report also indicates that negotiations for a new sectoral agreement were ongoing. The Committee asks the next report to provide updated information on this issue. It furthermore reiterates its request for information on the right to bargain collectively in the public service.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

As regards conciliation and arbitration in the private sector under the Employment and Industrial Relations Act of 2002 (EIRA) the Committee refers to its previous Conclusions (Conclusions 2004, 2006, 2010, 2014).

The Committee previously noted that in case of failure of conciliation, a trade dispute might be referred by the Minister to a court of inquiry or, upon application by both parties, to the Industrial Tribunal. Although the authorities pointed out that no court of inquiry had ever been appointed since the promulgation of the EIRA in 2002, the Committee found that, insofar as this law allows decisions of the court of inquiry to be binding on the parties without their prior consent, the situation was not in conformity with Article 6§3 of the Charter (Conclusions 2010, 2014, 2016).

The report insists on the fact that this provision has never been implemented. However, it has never been repealed either. Therefore, the Committee maintains its finding of non-conformity on this point.

The Committee has furthermore previously found that the situation was not in conformity with Article 6§3 of the Charter, as Article 74(1) and (3) of EIRA allows compulsory recourse to arbitration at the request of one party without the consent of the other one, i.e. in circumstances which go beyond the limits set out in Article G of the Charter (Conclusions XII-2 (1992), XIII-2 (1994), XIII-3 (1995), XIV-1 (1998), XV-1 (2000), XVI-1 (2002), 2014). The Committee notes that this situation has not changed (see also ILO-CEACR Observation adopted 2016, published 106th ILC session (2017) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Malta (Ratification: 1965)) and maintains therefore its finding of non-conformity on this point.

With regard to the public sector, the Committee previously noted (Conclusions 2014) that the ad hoc conciliation mechanism, which had been established through the public service collective agreement 2005–2010, was under review and asked for up-to-date information on this conciliatory structure as provided by the latest public service collective agreement. According to the report, this mechanism has been maintained in the public service collective agreement 2011–2016 and the collective agreement still provides that both parties shall endeavour to use this conciliatory structure before any industrial action is resorted to by the trade unions. The Committee asks the next report to provide updated information on this issue.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 6§3 of the Charter on the grounds that:

- decisions of the court of inquiry are binding on the parties even without their prior consent;
- compulsory arbitration is permitted in circumstances which go beyond the limits set by Article G 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 Malta.

It refers to its previous conclusions as regards the legislative framework relevant to collective action (Conclusions XVIII-1 (2006), 2010, 2014).

Specific restrictions to the right to strike and Procedural requirements

In its previous conclusion (Conclusions 2014), the Committee asked whether public officials were subject to restrictions to their right to strike and under what circumstances such restrictions applied. In relation to every service subject to restrictions with regard to the right to strike, the Committee asked the authorities to indicate if and to what extent work stoppages may undermine respect for the rights and freedoms of others or threaten the public interest, national security, public health, or morals. In this context, it also asked whether such restrictions were in all cases proportionate to achieve the objective of ensuring, in a democratic society, the abovementioned respect.

The report does not answer these questions. The Committee notes however that Article 64, paragraph 6 of the Employment and Industrial Relations Act (EIRA) provides for restrictions to the right to strike for certain categories of workers (Air Traffic Controllers, members of the Assistance and Rescue Force, workers involved in port emergency) or when this is necessary to ensure a minimum service (essential services, import of certain products, transport, water, energy).

It asks the next report to explain in detail the restrictions applicable to the right to strike in the light of the requirements of Articles 6§4 and G of the Charter. It considers that if such information should not be provided, there would be nothing to establish that the situation is in conformity with the Charter on this point. It reserves in the meantime its position.

The report confirms that members of disciplined forces (naval, military and air force, police force, staff of prison services and Assistance and Rescue Force) can join a trade union but are not allowed to strike. The Committee recalls that, concerning police officers, an absolute prohibition on the right 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 with the Charter (European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §211). As the report does not provide any indication of the compelling reasons justifying an absolute restriction to the right to strike for the police, the Committee considers that the situation is not in conformity with Article 6§4 of the Charter on this point.

As regards the consequences of strikes, the Committee refers to its previous conclusions (Conclusions XVIII-1 (2006), 2010, 2014) where it found the situation to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 6§4 of the Charter on the ground that the absolute prohibition of the right to strike of the police goes beyond the limits permitted by Article G of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

Prevention

The Committee takes note of the information provided in the report concerning the prevention measures taken by the National Commission for the Promotion of Equality (NCPE) during the reference period, in particular the issuing of a newsletter in 2015 to employers and the wide dissemination of a poster concerning sexual harassment, the provision of training sessions, the assistance offered on policy drafting regarding equality and sexual harassment policies with both private and public entities, the awarding of Equality Mark Certification (see details of these activities in the report).

The Committee notes however that the report does not clarify, as previously requested (Conclusions 2014), whether the social partners are consulted on measures to promote knowledge and awareness of, and prevent sexual harassment in the workplace. It accordingly reiterates this question.

Liability of employers and remedies

The Committee refers to its previous conclusions (Conclusions 2010, 2014) for a description of the relevant legislation, in particular the definition of sexual harassment and its prohibition under Chapter 456 of the Laws of Malta and Legal Notice No. 181 of 2008, Regulations on Access to Goods and Services and their Supply (Equal Treatment), the liability of employers under Section 29 of the Employment and Industrial Relations Act (EIRA, Chapter 452 of the Laws of Malta) and under the Equal Treatment in Employment Regulations of 2004 and the remedies available before the competent court of civil jurisdiction or the Industrial Tribunal as well as before the National Commission for the Promotion of Equality (NCPE). It notes that there have been no changes in these respects.

According to the data provided in the report, the number of complaints on sexual harassment investigated by NCPE for the period 2013-2016 has been diminishing, from 12 in 2013 to 4 in 2016. The Committee asks the next report to provide updated information on sexual harassment cases.

Burden of proof

The Committee previously noted (Conclusion 2010) that, in the employment context, the burden of proof is shifted to the defendant to prove that he/she did not commit an unlawful act, once the complainant has shown facts from which it can be presumed that there has been direct or indirect discrimination and asked whether this also applied in cases specifically concerning sexual harassment. As the report does not answer this question, the Committee reiterates it and considers that if the information requested should not be provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Damages

The Committee previously noted that, in sexual harassment cases, the competent court of civil jurisdiction may order the payment of compensation for the damages suffered (Section 19(1) of the Equality for Men and Women Act) and that the offender, without prejudice to any greater liability under any other law, would be liable on conviction to a fine of not more than €2 329.37 or to imprisonment of not more than six months or to both such fine and imprisonment (Section 9(3) of the Equality for Men and Women Act).

The report does not provide the information requested concerning the amounts of compensations effectively awarded and the right to reinstatement to all victims of sexual harassment, including when the employee has been pressured to resign on account of the sexual harassment, in the light of relevant examples of case law. The Committee accordingly reiterates its request for updated and more detailed information on these issues. It points out that in the absence of information in the next report there will be nothing to establish that the situation is in conformity with the Charter in these respects.

Conclusion

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

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 Malta.

Prevention

As regards the Committee's question concerning the preventive measures taken to raise awareness about the problem of moral (psychological) harassment in the workplace, the report indicates that the National Commission for the Promotion of Equality (NCPE) disseminates information on rights and responsibilities emanating from its remit through participation in media programmes as well as through training sessions on specific topics with different stakeholders.The Committee asks whether and to what extent the social partners are consulted on measures to promote knowledge and awareness of, and prevent moral (psychological) harassment in the workplace.

Liability of employers and remedies

The Committee refers to its previous conclusions (Conclusions 2010) for a description of the relevant legislation, in particular as regards the prohibition of harassment (Regulations on Equal Treatment in Employment, Legal Notice No. 461, of 2004 as amended), the remedies available before the Industrial Tribunal or other civil courts and the liability of employers.

In this respect, the report does not provide any information, in reply to the Committee's question, concerning the liability of employers towards persons employed or not employed by them who have suffered moral (psychological) harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. The Committee accordingly reiterates its question.

In view of the lack of information, it considers that it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work and considers therefore that the situation is not in conformity with Article 26§2 of the Charter on this point.

Burden of proof

The Committee notes that there have been no changes to the situation which it previously found to be in conformity with the Charter (Conclusions 2010).

Damages

The report does not provide the information requested on the applicable kinds and amounts of compensation awarded to victims of moral (psychological) harassment.

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

The Committee reiterates its request for updated and comprehensive information on the kinds and amount of compensation which is awarded in cases of moral (psychological) harassment, in the light of relevant examples of this type of cases. It also asks whether the right to reinstatement is guaranteed to persons who have been unfairly dismissed or pressured to resign for reasons linked to harassment.

In view of the lack of information, the Committee considers that it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in

cases of moral (psychological) harassment and considers therefore that the situation is not in conformity with Article 26§2 of the Charter on this point.

Conclusion

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

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

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

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

It refers to its previous conclusions (Conclusions 2010, 2014) for a description of the relevant legislation.

In response to the Committee's question, the report confirms that in case of unfair dismissal or other forms of discrimination the Industrial Tribunal can award to the victim a compensation, taking into consideration the real damages and losses incurred by the employees' representative as well as other circumstances such as the employees' representative's age and skills as may affect the employment potential of said worker. The report points out that there is no capping or ceiling which limits the amount of compensation that the Tribunal may order.

As regards the duration of protection for workers' representatives, the report confirms that they enjoy such protection even after their function as employees' representatives has ceased. The Committee asks the next report to specify how long the protection for workers' representatives lasts after the cessation of their functions. It reserves in the meantime its position on this point.

As regards the facilities granted to workers' representatives, the report confirms that they are entitled to take reasonable time off with pay during their working hours in order to perform their functions as employees' representatives (Regulation 8 of the Employee (Information and Consultation) Regulations (S.L.452.96)).

The report furthermore states that the Collective agreements normally provide that the employees' representatives be allowed all the facilities in order to execute their mandate (posting notices on the company's notice board, distributing information leaflets, talking to workers etc.).

The report does not clarify, however, whether workers' representatives are entitled to participate without costs to training courses on economic, social and union issues (Conclusions 2010, Statement of Interpretation on Article 28). The Committee accordingly reiterates this question and reserves in the meantime its position on this point.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 28 of the Charter.

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 Malta.

It refers to its previous conclusions (Conclusions 2010, 2014) for a description of the relevant legislation and notes that according to the report there have been no changes to the situation which the Committee previously found to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Malta is in conformity with Article 29 of the Charter.