March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

MONTENEGRO

This text may be subject to editorial revision.

The following chapter concerns Montenegro which ratified the Charter on 3 March 2010. The deadline for submitting the 7th report was 31 October 2017 and Montenegro submitted it on 26 December 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).

Montenegro has accepted all provisions from the above-mentioned group except Articles 2§3, 2§4, 2§5, 2§7, 4§1, 4§4, 21, and 22.

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

The conclusions relating to Montenegro concern 14 situations and are as follows:

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

– 1 conclusion of non-conformity: Article 6§4.

In respect of the 7 other situations related to Articles 2§1, 2§6, 4§3, 4§5, 26§1, 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 Montenegro under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 4§2

In 2014, the Government and the social partners signed a general collective agreement (OG No. 14/14 of 22 March 2014), valid for two years. The contracting parties are responsible for overseeing its application. In 2016, an agreement was signed to extend it for two years (OG No. 39/16 of 29 June 2016). According to this new general collective agreement, employees' wages must be increased by at least 40% per hour of overtime worked.

* * *

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 Montenegro.

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 2§1 of the Charter. It will therefore only consider recent changes and relevant additional information.

In reply to the Committee's question concerning a maximum working day, the report states that under Article 64 of the Montenegrin Constitution, employees are entitled to a limited working week of six working days with daily rest periods, while the seventh day is a rest day. The weekly rest period consists of at least 24 uninterrupted hours.

In its previous conclusion, the Committee asked for confirmation that under flexible working time arrangements the average working week could not exceed 40 hours within the reference period of one year. In reply, the report again states that the full-time working week is 40 hours and overtime may not exceed 10 hours per week. However, in exceptional circumstances, employees may be asked to work more than 10 hours of overtime in a week (Conclusions 2014, Article 2§1), therefore, the maximum length of the working day or week in such situations is not laid down in law. The Committee refers to its previous conclusion for a description of the exceptional circumstances that are the subject of Article 50 of the Labour Code.

The Committee notes that, in accordance with the Decree governing the organisation and functioning of public service, the working week in public service bodies lasts from Monday to Friday and the normal working day may not exceed eight hours, including a 30 minute rest period.

With regard to information concerning possible violations of working time regulations identified by the labour inspectorate, the report states that the latter has recorded cases where employers were in breach of the legal requirement to issue a written decision before introducing overtime working. The Committee asks for information on this subject in the next report.

In its previous conclusion, the Committee asked what rules applied to on-call service and whether inactive periods of on-call duty were considered as rest periods. The report replies that, under the Labour Code, health establishments are authorised to introduce overtime working (work on duty) if it is not possible to secure permanent in-patient and out-patient care through the creation of new posts, shift work or the rescheduling of working hours. In addition, Article 18 of the health care branch collective agreement of 2016 provides for increased pay for overtime work performed. Employees are also entitled to time off for overtime worked, which must be taken on the following day. In connection with on-call service, under Article 19 of the above collective agreement, employers are required to pay employees 10% of their hourly rate of pay for each hour of on-call duty performed at home. Similarly, the branch collective agreement for agriculture, the food and tobacco industry and water management requires employers to increase the basic rate of pay by 15% for each hour spent at home on call.

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 again asks whether inactive periods of on-call duty are considered or not as rest periods, particularly with regard to employees in areas other than those mentioned. In the meantime, the Committee reserves its position on this point.

Conclusion

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

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 Montenegro.

The Committee deferred its previous conclusion and asked whether there was an exhaustive list of criteria to determine the circumstances under which work was allowed on public holidays. The report indicates that no such criteria or rules have been adopted.

In reply to the Committee's request for updated information on the new general collective agreement, the report states that in 2014, the Government and the social partners signed a general collective agreement (OG No. 14/14 of 22 March 2014), valid for two years. The contracting parties are responsible for overseeing its application. In 2016, an agreement was signed to extend it for two years (OG No. 39/16 of 29 June 2016). The Committee notes that the contracting parties have established a six-member board to monitor, apply and interpret the collective agreement.

Moreover, in reply to the Committee's question concerning the increased compensation granted in case of work performed on public non-working holidays, the report states that compensation for such work is deemed to be a supplement and is paid at the same time as the wage or salary. The new collective agreement provides for an increase of 150% per hour for work performed on public or religious holidays. The Committee understands it that this increase does not include the basic wage or salary, and asks the next report to confirm it.

Conclusion

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 2§6 of the Charter. It will therefore only consider recent changes and relevant additional information.

In reply to the Committee's question as to whether the length of period(s) of notice of termination of contract or the employment relationship were also specified in writing (in the contract or another document), the report states that employees have both the right and the duty to continue working for at least 30 days from receipt of notice of termination of their contracts. The Committee again asks which written document (contract or other document) specifies the notice period or periods for termination of contract or the employment relationship. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Montenegro is in conformity with Article 2§6 of the Charter.

Conclusion

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

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 Montenegro.

The Committee refers to Article 2§2 for a description of a new general collective agreement, under which employees' wages must be increased by at least 40% per hour of overtime worked.

The report also indicates that the law does not provide for exceptions to the right to increased remuneration for overtime worked in the case of senior public officials and senior managers in the private sector.

In reply to the Committee's question concerning the right to time off in lieu of remuneration for overtime work, the report indicates that there is no provision for this in either the Labour Code or the general collective agreement, nor is such provision made in the Civil Service and State Employment Act, or the branch collective agreement for the administration and justice sector.

In the light of the foregoing, the Committee considers that the situation is in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Montenegro 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 Montenegro.

Legal basis of equal pay

According to the report the Labour Law establishes the principle of equality in employment. It prohibits discrimination, both direct and indirect of employed persons, on various grounds, including gender. Direct discrimination, pursuant to this Law, shall include any treatment based on any of the listed grounds whereby an employed person is placed in a less favourable position in comparison to other persons in the same or similar situation. Indirect discrimination, pursuant to this Law, exists when a certain provision, criterion or practice places or would place a person seeking employment and an employed person in a less favourable position in comparison to other persons on the basis of his or her particular characteristic, status, orientation or belief.

Article 77 of the Labour Law stipulates that men or women employees shall be guaranteed the same salary for equal work or work of equal value performed with an employer. An employer's decision or an agreement with an employee which is not in accordance with this provision shall be null and void. Work of equal value shall include work for which the same level of professional education or professional qualification, responsibility, skills, working conditions and work results are required. The collective agreement with the employer or general act of the employer shall determine the criteria and standards for evaluating work. The issue of salaries is regulated in more detail by branch collective agreements. The Committee further asks whether the methods are used to evaluate work are gender neutral and exclude discriminatory undervaluation of jobs traditionally performed by women.

Guarantees of enforcement and judicial safeguards

In its previous conclusion (Conclusions 2014) the Committee asked what rules applied as regards the guarantees of enforcement of the equal pay principle as well as domestic case law on equal pay.

In case of alleged discrimination an employee may initiate proceedings before a relevant court in accordance with the law. Anyone who considers to be damaged by discriminatory treatment of an authority, business entity, other legal person, entrepreneur and natural person shall be entitled to the court protection. A lawsuit may also be filed by organisations or individuals who are dealing with the protection of human rights. The court decides in civil proceeding for the violation of the principle of non-discrimination, to which the provisions of the Law on Civil Procedure apply. The law also provides for the shift of burden of proof on the respondent if the plaintiff has proved the likelihood of discrimination.

Besides, an employee and an employer may entrust the Agency for Amicable Settlement of Labour Disputes with resolving disputes arising from and based on employment.

Under the Law on Prohibition of Discrimination, appropriate misdemeanour sanctions are foreseen, depending on the grounds and specific forms of discrimination. A fine of €1,000 to 20,000 shall be imposed for misdemeanour on a legal entity for unequal treatment based on gender.

The report states that according to the data obtained from all competent courts, there have been no disputes relating to equal pay for women and men in judicial practice.

As regards compensation awarded in equal pay cases, according to the report, in case of violation of these rights, an employee shall be entitled to an indemnification in the amount of the unpaid portion of the salary. The Committee recalls in this regard that adequate compensation in pay discrimination cases must include the right to both pecuniary and non-

pecuniary damage. The Committee asks what rules apply in this regard. The Committee states that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

In its previous conclusion (Conclusions 2016 on Article 20 and 1§2) the Committee recalled that any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed (Conclusions 2012 (Article 1§2) Albania). The Committee reiterates its question whether the amount of the unpaid portion of the salary that may be awarded in case gender pay discrimination case represents the ceiling to compensation that can be awarded for both material and moral damages.

The Committee also asks what rules apply (as regards reinstatement, compensation for pecuniary and moral damages) to the cases of unlawful dismissal following the equal pay claim.

Methods of comparison

In the absence of any information on this issue, 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

According to the report, the Statistical Office of Montenegro presents data on average earrings which are obtained from the regular monthly statistical survey. The coverage of data on average earnings of employed persons in enterprises, institutions, cooperatives and organisations of private, mixed or state ownership include average earnings of persons employed on a permanent or temporary basis. Since 2011, the Law on Classification of Activities have been implemented and the data on earnings in this Yearbook are presented according to the new Classification of Activities. However, the Committee notes that the report does not provide data concerning the gender pay gap. It asks the next report to updated information on the employment rate of women and the gender pay gap in both the private and the public sectors.

Policy and other measures

The Committee notes from Direct Request (CEACR), adopted in 2017 concerning Convention No 100 that as stated in the Action Plan for Achieving Gender Equality in Montenegro 2017–21 that the difference in wages between men and women in Montenegro is 13%, and that the causes of the gender pay gap include direct and indirect discrimination, lower valuation of women's work, segregation in the labour market, stereotypes and traditions as well as an increased need for women to balance work and private life. The Committee additionally notes that, as of 2016, the Ministry of Human and Minority Rights and MONSTAT are developing a gender equality index, which will measure gender equality in the range from one (complete inequality) to 100 (complete equality).

The Committee asks the next report to provide information on the progress made in developing the new index on gender equality and to indicate what measures are taken or envisaged to reduce the gender pay gap, in particular in sectors in which women are predominantly employed, to ensure their work is not undervalued.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

The Committee has previously deferred its conclusion (Conclusions 2014), pending receipt of the information requested, namely on claims (such as tax debts, civil-law claims, trade union dues of fines) liable to result in deductions from wages in circumstances not covered by the Labour Law, on exceptions to the limitation on deductions to one third of the wage established by Article 85§2 of the Labour Law and the level of protected wages, as well as on circumstances in which workers may waive the limitation on deductions from wages provided for by the law.

In reply, the report indicates that the Labour Law allows the employer to withhold a part of the employee's wage, which amounts to half of the wage as regards maintenance claims, based on a final court decision, and to one third of the wage as regards other obligations. It also states that, upon proceedings, an employer can withhold the employee's wage or part of it in order to collect the latter's debts. The Committee asks the next report to provide information on the nature of the proceedings, in particular whether they constitute judicial proceedings. The report does not provide information on other points, as requested. The Committee, therefore, reiterates its question.

The Committee also asked whether establishing liability and quantifying damage require a court decision or whether this falls within the employer's powers. The report states that in case of a large-scale material damage caused to the employer or of a careless treatment of the employer's property by the employee, disciplinary proceedings may be set in motion by the employer or an executive director and/or the competent authority. As regards the determination of the employee's liability, a representative of the trade union, in which the employee participates, can take part in the proceeding upon permission of the authority or a third person authorized to carry out the disciplinary proceedings. The employee has the right to recourse against the decision of the disciplinary proceedings before a competent court.

The Committee notes from NATLEX database of national labour, social security and related human rights legislation that during the reference period the Labour Law was amended. It asks the next report to indicate any amendments as regards provisions of the Labour Law relevant to Article 4§5 of the Charter.

Conclusion

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

Article 5 - Right to organise

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

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

The Committee previously requested information on the procedure for forming and registering a trade union.

According to the report a trade union shall acquire legal personality on the day of its entry into the Registry of Trade Union Organizations kept by the Ministry of Labour and Social Welfare. The trade union organization submits to the Ministry the application for registration in the Registry, the act establishing the trade union organization, the decision on the selection of a trade union representative, the authorization for the union representative, the statute or rules on the organization and the manner of work of the trade union organization, within 15 days from the date of founding the trade union organization. The Ministry is obliged to register the trade union organization in the Registry and issue a certificate on the registration of the trade union organization within 30 days from the date of receipt of the application and the necessary documentation.

There is no appeal against a refusal to register a trade union, as according to the report, the Ministry does not make a decision but issues a certificate of registration of the trade union organization. The Committee asks whether there have been cases where a trade union has in fact been refused registration.

No fees are required for registration.

There is no minimum membership requirement for establishment of a trade union or employers' organizations, only for determining the representativeness of trade unions and employers' associations.

Freedom to join or not to join a trade union

The report provides information on cases of discrimination on grounds of trade union membership and activity.

Trade union activities

The report confirms that trade unions have the right to freely draw up their own constitution and rules and to elect their representatives freely. Employers are obliged to provide a union with the conditions for the effective performance of trade union activities, including premises for work and holding meetings, technical and administrative support for the work of the trade unions to the extent necessary for the exercise of trade union activities (use of telephone, fax, Internet, bulletin boards, computers, photocopiers), if the employer has the means.

Representativeness

As regards representativeness the Committee recalls that it previously noted that in order to be recognised as "representative", a trade union must be legally registered, independent from State authorities, employers and political parties, and financed mainly from membership fees and other own sources. In addition within an undertaking representative status is granted to trade unions when they are composed of at least 20% of the total number of employees; at the level of branch activity, group or sub-group of activities, when they have at least 15% of the total number of employees in the branch of activity, group or sub-group of

activities; and at national level, if they are affiliated with at least five trade unions at the level of branch activity, group or sub-group of activities and they are composed of at least 10% of the total number of employees in Montenegro.

The report states that a new draft law on representativeness is currently awaiting adoption. However although the Government proposed reducing the threshold for representativeness the social partners wishes to retain the current thresholds therefore the draft legislation makes no change to the situation in this respect.

The report indicates that at the enterprise level "trade unions representativeness shall be determined by the director on the proposal of the commission for determining the trade union representativeness". The report specifies that this commission consists of two representatives from the employer, the representative trade union (if it exists at the level of that employer) and the interested trade union.

At national level of branch activity, group or sub-group of activities, representativeness shall be determined by the Minister, on the proposal of an ad hoc body; the latter is established by the Minister and consists of two representatives of the Government, the representative trade unions and representative associations of employers

A "representative" trade union shall have the right to conclude collective agreements at the appropriate level, participate in the resolution of collective labour disputes, participate in the work of the Social Council and other tripartite and multipartite bodies at the appropriate level, participate in the work of the governing body of the Pension and disability insurance Fund of Montenegro, the Health Insurance Fund of Montenegro and the Institute for Employment Agency of Montenegro.

The Committee asks whether minority unions i.e. those not deemed representative may still exercise fundamental trade union prerogatives. Meanwhile it reserves its poition on this issue.

Personal scope

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

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

According to the report as a result of the bipartite social dialogue in Montenegro, 20 branch collective agreements were concluded for various branches of activity.

The Committee previously requested information on consultation at the enterprise level (Conclusions 2014). The report provides information on collective bargaining at the company level but no information on consultation rights and obligations. The Committee repeats its request for this information.

Conclusion

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

The Committee recalls that collective bargaining takes place at three levels, and that there are three types of collective agreements: a general collective agreement, branch collective agreements and company agreements.

The Committee recalls that collective agreement coverage is high in Montenegro; 100% of the workforce are covered by the general collective agreement and approximately 75% by branch collective agreements.

The report states that a new General collective agreement was concluded in 2018 and that there are 20 branch collective bargaining agreements for various sectors of activity.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

According to the report the provisions of the Law on the Peaceful Settlement of Labour Disputes on the procedure for resolving collective labour disputes in activities of public interest were incorporated into the new Law on Strikes ("Official Gazette of Montenegro", No. 11/2015), which came into force during the refernce period.

Pursuant to the Law on Strikes, parties to disputes within certain activities shall, within 24 hours of announcing the strike, submit a proposal for the peaceful resolution of the dispute before the Agency for the Peaceful Settlement of Labour Disputes, Failing this, the Agency can initiate a conciliation procedure ex officio. The report states that the conciliation proposal submitted by the conciliator is not compulsory for the parties.

The Committee asks whether arbitration proceedings exist in Montenegro in addition to conciliation proceedings.

Conclusion

The Committee concludes that the situation in Montenegro 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 Montenegro.

The new Law on Strikes entered into force on 20 March 2015, during the reference period.

Collective action: definition and permitted objectives

The above mentioned Act provides that the strike is an interruption of work organised by employees for the purpose of protecting their professional and economic interests when concluding or amending a collective agreement or within the framework of rights and duties that emanate from agreements.

The Committee asks whether strikes may only be called within the framework of collective bargaining.

Entitlement to call a collective action

The Committee recalls that it previously noted that a decision to call a strike within the undertaking shall be made by the responsible authority of an authorised trade union organisation or of more than half of the employees working in the undertaking or its parts. A decision to go on strike in a branch and industry, or a decision to go on general strike shall be made by the responsible authority of authorised trade union organisations.

The Committee seeks clarification as to whether a decision to call a strike at branch or industry level may only be made by a representative trade union.

Specific restrictions to the right to strike and procedural requirements

As regards strikes at the level of an undertaking, a strike committee is obliged to announce a strike by giving notice to the employer, no later than five days prior to the day set for commencing the strike.

The Committee asks what is the notice period for branch, industry wide and general strikes. It also wishes to know whether there are cooling off periods during which conciliation is mandatory.

The Committee recalls that it had previously noted that the right to strike was restricted in a wide number of sectors; inter alia, the armed forces, police, state bodies and public services including secondary and higher education, child care, postal services as well as the chemical industry, ferrous and non-ferrous metallurgy industries. It requested further information on the situation.

The report states that strikes are not banned in the above mentioned sectors but may take place provided a minimum service is guaranteed. The Committee considers that the sectors in which the right to strike may be restricted are overly extensive and it has not been demonstrated that the restrictions satisfy the conditions laid down in Article G of the Charter.

The Committee refers to its general question on the right to strike for members of the police force.

The minimum service to be guaranteed is decided by management /the employer upon a proposal of the strike committee. However where the strike committee fails to make s a proposal on the minimum service to be provided management/ the employer decides on the service to be provided. The Committee seeks clarification that this is the case. It recalls that employee representatives should involved in the discussions on the minimum service to be provided on an equal footing with employers.

Consequences of a strike

The report states that normally striking workers do not receive a wages during for the period they are on strike.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 6§4 of the Charter on the ground that the sectors in which the right to strike may be restricted are overly extensive and it has not been established that the restrictions do not go 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 Montenegro.

Prevention

In its previous conclusion (Conclusions 2014), the Committee took note of the employer's obligation (under the Law of Prohibition of Harassment at Work of 2012) to inform the employees in writing on the rights, obligations and responsibilities related to harassment in the workplace in order to identify and prevent harassment, including sexual harassment. It also took note of the role of the Labour Inspection and of the Ombudsman of Human Rights and Freedoms (the Ombudsman) in this field and asked to be kept informed on the preventive measures taken to raise awareness about the problem of sexual harassment in the workplace. It also asked 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.

In reply, the report refers to the legal framework above and clarifies that if the employers fail to their obligation to adopt measures concerning employees' and employees' representatives' information and training aimed at preventing harassment at work or in relation to work, they may be fined (€500-10 000 for a legal entity; €100-1500 for the responsible person in the capacity of legal entity, state body, state administration body and self-government body; €500-3000 for a business)**.** Furthermore, the report states that the Ministry of Labour and Social Welfare issued a Rulebook concerning the conduct of employers and employees regarding prevention and protection from harassment in the workplace. The report does not provide information as regards the consultation of employers' and employees' organisations in the promotion of awareness, information and prevention of sexual harassment in the workplace. The Committee, therefore, reiterates its question.

Liability of employers and remedies

The Committee refers to its previous conclusion (Conclusions 2014) as regards the definition of sexual harassment and its prohibition under the Labour Law, the available procedures before the Ombudsman and the courts and protection from retaliation.

It also took note of the rules relating to employers' liability and asked whether employers could be held liable towards persons, whether employed by them or not, who have suffered sexual harassment from employees under the employers' responsibility or from persons not employed by the employers on premises under their responsibility.

In reply, the report states that, according to the Law on Prohibition of Harassment at Work, perpetrators of harassment could include an employer who is a natural person, a legal person engaged by the employer in capacity of legal entity, an employee/group of employees working for the employer, and/or a third person who interacts with the employer or the employee in the workplace. The report indicates that for the purpose of this law, 'employers' are state authorities, public institutions companies and legal or natural persons, as well as parts of legal entities, are also considered as employers for the needs of the Law of Prohibition of Harassment at Work. The Committee also notes from Article 10 of the Law on Prohibition of Harassment at Work that an employer can be held liable for damages caused to the employee from a responsible person, an employee or group of employees. The Committee asks that the next report provides information on the liability of the employer in case the perpetrator of sexual harassment is a person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. The Committee points out that in the absence of such information in the next report there will be nothing to establish that the situation is in conformity with the Charter in this respect.

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 2014).

Damages

In its previous conclusion (Conclusions 2014), the Committee asked for information on any rules and example of case law regarding compensation in case of sexual harassment. It also asked whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to sexual harassment was guaranteed.

In reply, the report states that there were no cases pending before the Basic Court or judicial decisions concerning sexual harassment in the workplace as of 1st January 2017 (out of the reference period). The Committee reiterates its question and asks the next report to provide any relevant case law or other evidence of the effectiveness of remedies, whether judicial, administrative or other kind, in particular as regards to the range of damages awarded in cases of sexual harassment. The Committee points out that in the absence of such information in the next report there will be nothing to establish that the situation is in conformity with the Charter in this respect .

As regards the right to reinstatement in case of dismissal for reason related to sexual harassment, the report indicates that a decision of termination of the employment can be contested before the competent court and the Agency for Amicable Settlement of Labour Disputes. In case the employment was terminated without legal or justifiable grounds, the employee is entitled to reinstatement and compensation for pecuniary and non-pecuniary damage. The amount of pecuniary damage equals to wages and other earnings lost that would have been earned by the employee in addition to payment of contributions for mandatory social insurance. Non-pecuniary damage is awarded in case the termination of employment led to a violation of the rights to personality, honour, reputation and dignity.

The Committee notes from NATLEX database of national labour, social security and related human rights legislation, that during the reference period the Law on Prohibition of Harassment at Work was amended to Act No. 1121 of 22 July 2016. It asks the next report to indicate any amendments as regards provisions of the Law on Prohibition of Harassment at Work relevant to Article 26§1 of the Charter.

Conclusion

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

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 Montenegro.

Types of workers' representatives

Employees are represented in Montenegro by trade unions or other representatives of employees. In order to obtain a comprehensive picture of the situation, the Commitee asks the next report to provide more details on the additional forms of employee representation.

Protection granted to workers' representatives

In its previous conclusions (Conclusions 2014), the Commitee noted that both trade union and other workers' representatives enjoy protection from dismissal, which is extended for 6 months after the expiry of their mandate.

In reply to the question raised by the Committee (Conclusions 2014) about remedies available to workers' representatives to challenge a dismissal, the report submits that workers' representatives may begin litigation before the Agency for Amicable Settlement of Labour Disputes or seek compensation before courts. In case of a dispute, the burden of proof of the legality and necessity of the termination of employment lies with the employer. If determined that the termination of employment was in violation of the representative's rights, he/she shall be entitled to reinstatement or compensation in the amount of the lost salary and other earnings in accordancy with the law and contract of employment, as well as to payment of contributions for mandatory social insurance and compensation for non-pecuniary damage, if established. The report confirms that the Labour Inspectorate found no instances of failure to comply with these provisions.

The Committee recalls that the protection should also cover the prohibition of detriment in employment other than dismissal (Conclusions 2003, France), 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. The Committee asks that the next report provide information on this aspect. Meanwhile, it reserves its position on this point.

Facilities granted to workers' representatives

In reply to questions raised by the Committee as regards facilities afforded to workers' representatives (Conclusions 2014), the report explains that the General Collective Agreement provides for detailed normative conditions for trade unions' work and stipulates that the employer is obliged to provide the unions with all necessary means for the effective performance of their activities, including premises, technical and administrative support, access to media, paid time off (20 hours per month), right to participate in seminars, courses and conferences, etc. According to the Labour Inspectorate, there were no indications of any irregularities in this respect.

The Committee asks the next report to confirm that there is also a legal basis upon which the listed facilities could likewise be accorded to workers' representatives other than trade union representatives.

Conclusion

Pending receipt of the information requested, 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 Montenegro.

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 29 of the Charter. It will therefore only consider recent changes and relevant additional information.

The report indicates that under the new general collective agreement (see Conclusions 2018, Article 2§2), employers are required to notify trade unions once a year of any planned introduction of structural, technological or economic changes and of any programme to protect the rights of employees whose work is no longer required. The trade unions or employee representatives and the country's employment agency must respond to this notification within 15 days. Once their opinion has been received the relevant employer must draw up a programme of measures to assist redundant employees. The Committee refers to its previous conclusion for a description of the content of such programmes. The report indicates that employing companies that fail to adopt such programmes are liable to fines of between €2 000 and €20 000.

In its previous conclusion, the Committee asked what sanctions were available if employers failed to notify workers' representatives about planned redundancies and what preventive measures existed to ensure that redundancies did not take effect before employers had met their obligation to inform and consult employees' representatives. The report does not provide this information so the Committee therefore reiterates its request and defers its conclusion.

Conclusion

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