



March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

ROMANIA

This text may be subject to editorial revision.

The following chapter concerns Romania which ratified the Charter on 7 May 1999. The deadline for submitting the 17th report was 31 October 2017 and Romania submitted it on 10 January 2018.

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

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

Romania has accepted all provisions from the above-mentioned group except Articles 2§3, 22 and 26.

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

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

- 11 conclusions of conformity: Articles 2§1, 2§4, 2§5, 2§6, 2§7, 4§2, 5, 6§1, 6§3, 21 and 29,
- 5 conclusions of non-conformity: Articles 4§1, 4§4, 4§5, 6§4 and 28.

In respect of the 3 other situations related to Articles 2§2, 4§3 and 6§2, 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 Romania 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 Romania.

In its previous conclusion, the Committee asked what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part (Conclusions 2014).

According to the report submitted by Romania that, in accordance with Article 111 of the Law No. 53/2003 – the Labour Code working time is any period in which the employee performs work, is at the disposal of the employer and fulfills their tasks and duties. The on-call service is therefore considered as working time according to the national legislation, irrespective of whether the employee actually works or not.

The Committee notes that Article 137§1 of the Labour Code was clarified by Law No. 97 of 7 May 2015, and now reads: “weekly rest is 48 consecutive hours, as a rule, on Saturday and Sunday.”

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 2§1 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

The Committee previously asked the next report to clarify whether the regular salary is always paid during public holidays, even when the employee does not work (Conclusions 2014).

According to the current report all legal holidays are paid by the employer, even if the employees do not work.

The Committee recalls that persons employed in the health sector, those involved in the supply of essential foodstuffs, and in jobs in which the activity cannot be interrupted due to the production character of the undertaking or the characteristics of activity, are entitled to compensatory time off to be taken within the following 30 days, which can be replaced by a remuneration that is at least double when, due to justified reasons, the granting of compensatory time off is not possible (Article 140 and 141 of the Labour Code).

The Committee previously asked what compensation applies, to persons working, on an exceptional basis, on public holidays other than covered by the abovementioned provisions of the Labour Code and whether, in all cases, the regular base salary is paid to persons working on public holidays in addition to the compensatory time off or the increased salary.

According to the report the compensation rates stipulated in the Labour Code are applicable exclusively to the employees that carry out their activity in the jobs described by Articles 140 and 141 of the Labour Code (jobs in which activity cannot be interrupted due to the production character of the characteristics of activity, sanitary entities and public food service entities).

The Committee asked whether employees working on an exceptional basis on public holidays other than those targeted by Article 140-141 of the Labour Code, may receive additional compensation by virtue of collective agreements.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

The Committee concluded (Conclusions 2014) that the situation was in conformity with Article 2§4 of the Charter. According to the report there has been no change to this situation.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

The Committee previously concluded that the situation was in conformity with Article 2§5 of the Charter (Conclusions 2014).

The Committee asked for the report to provide updated information on the cases where the Labour Inspectorate issued permits to postpone the weekly rest period.

In response, the report indicates that 319 requests were filed by employers during the reference period with a view to postponing the weekly rest period after a continuous activity that may not exceed 14 calendar days. In all cases authorization was given. The Committee notes that the number of requests for postponement declined significantly towards the end of the reference period.

Conclusion

The Committee concludes that the situation in Romania 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 Romania.

The Committee previously held that the situation was in conformity with the Charter (Conclusions 2007 and 2014). The report states that there has been no change to the situation.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

The Committee previously concluded that the situation was in conformity with Article 2§7 of the Charter.

From the information provided in the report the Committee notes that there has been no change to the situation. Therefore it reiterates its previous conclusion.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§1 of the Charter, on the ground that the national minimum wage is not sufficient to ensure a decent standard of living.

The report indicates that the minimum monthly wage (net of taxes and social contributions) in January 2013 amounted to RON 538 (€ 122.73), as of 1 February 2013 it amounted to RON 574 (€130.69) and as of 1 July to RON 609 (€ 136.99), while the net average monthly wage in 2013 amounted to RON 1 579 (€ 357.40). As of 1 January 2014 the net minimum monthly wage amounted to RON 644 (€ 144.53) and as of 1 July to RON 678 (153.26), while the net average monthly wage in 2014 amounted to RON 1 697 (€ 381.89). Furthermore, as of 1 January 2015 the monthly minimum wage amounted to RON 732 (€164.58) and as of 1 July 2015 to RON 785 (€ 176.66), while the net average monthly wage in 2015 amounted to RON 1 859 (€ 418.17). As of 1 May 2016 the net minimum monthly wage amounted to RON 925 (€ 205.92), while the net average monthly wage amounted to RON 2 088 (€ 464.93). The report indicates that the net minimum monthly wage as a proportion of the net average monthly wage was 38.6% in December 2013, 40.0% in December 2014, 42.2% in December 2015 and 44.3% in December 2016. According to the EUROSTAT data, the monthly gross minimum wage as a proportion of the average gross monthly wage amounted to 36.3% in 2013, to 38.5% in 2014, to 40.5% in 2015 and to 43.6% in 2016. The Committee considers that the situation is not in conformity with Article 4§1 of the Charter on the ground that the national minimum wage is not sufficient to ensure a decent standard of living.

The report provides information on the Governance Program 2017-2020 (outside the reference period), which aims, among others, to the increase of the gross minimum wage at a level of 45-50% of the average wage. The Committee takes note on the information and will assess the situation in the next reporting cycle of Article 4§1.

In its previous conclusion (Conclusions 2014), the Committee asked for information on any social transfers or benefits awarded to workers earning the national minimum wage and their families. The Committee takes note of the information provided in the report concerning the income support in the context of the minimum guaranteed income, the family support, the winter fuel allowances, the educational incentive, the welfare benefits for supporting the child and family, the welfare benefits for supporting persons with special needs and the welfare benefits for special situations. That kind of benefits and social transfer might be taken into account when the net minimum wage lies between 50 and 60% of the net national average wage. As the net minimum wage during reference period was below 50%, the benefits described in the report are not included when assessing the situation during the reference period.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 4§1 of the Charter on the ground that the national minimum wage is not sufficient to ensure a decent standard of living.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

In its previous conclusion, the Committee concluded that the situation was in conformity with Article 4§2 of the Charter (Conclusions 2014). The report indicates that there were no legislative amendments during the reference period.

The Committee takes note of the information contained in the report regarding the results of the control actions of the Labour Inspectorate regarding overtime work.

Conclusion

The Committee concludes that the situation in Romania 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 Romania.

Legal basis of equal pay

The Committee notes from the report that the principle of equal pay is enshrined in the Labour Code (Law No. 53/2003) and in Law No. 202/2002. The Labour Code states the principle of equal treatment of all employees and prohibits direct and indirect discrimination on various grounds, including gender. It provides explicitly for the right to equal pay for equal work or work of equal value irrespective of sex with regards to any elements or remuneration.

Law No. 202/2002 includes the definition of work of equal value.

Guarantees of enforcement and judicial safeguards

According to the report, a victim may file a claim before a court and claim damages and reinstatement.

The Committee asked in its former Conclusions under Article 4§3 (Conclusions 2014) the rules applicable on compensation available for victims of wage discrimination. In its former conclusions on Article 1§2 (Conclusions 2016), the Committee noted that there is no upper limit on compensation in cases of discrimination and the amount is determined by courts. However, the Committee asks for further clarification on whether the law provides for the right to compensation for pecuniary and non-pecuniary damages and whether there is any limit on such compensation. The Committee also reiterates its question on the level of compensation granted to victims of pay discrimination by the courts in practice. 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.

The Labor Inspection is responsible for identifying and punishing non compliance with the principle of equal pay. However, there are no examples of such practice and its follow up. The National Council for Combatting Discrimination (NCCD) is competent to issue only administrative warnings or recommendations without any financial penalty.

Methods of comparison

In its former conclusion on Article 4§3 (Conclusions 2014), the Committee asked for further clarification on whether in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned. The report does not provide a clear answer to this issue and, therefore, the Committee reiterates this question and asks information on whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as, if the pay comparison is possible outside one company, for example, if such company is a part of a holding company and the remuneration is set centrally by such holding company. The Committee 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.

According to the information provided by the Government, pursuant to the provisions of art. 4, letter (f) of the Law no. 202/2002, work of equal value means remunerated activity. Following comparison, based on the same indicators and the same units of measurement, with another activity, shows the use of some similar or equal professional knowledge and skills and making some equal or similar intellectual and/or physical efforts.

Pay statistics

The Committee notes from Eurostat that the unadjusted pay gap in 2016 was 5.2%, while it was 11% in 2011. It is well below the EU average. The Government submits in the report that pay inequality between women and men is based on various reasons, among which women's work is still perceived as less valuable than the work performed by men; gender related stereotypes limit for both women and men the possibility of choosing their education and profession, a fact that leads to the creation of a labor market which is gender segregated and where the women dominated occupations are undervalued, by comparison with the men dominated occupations; women who have children work on a shorter and more flexible work schedule, in order to deal with and take care of them; women's careers are shorter and with interruptions, in occupations and industries situate on a lower value scale, and women have lower pensions because their remuneration per work hour is lower, as well as the total number of hours worked during life. Therefore, women are more exposed to the risk of poverty in old age.

Policy and other measures

From the point of view of public policies, one of the specific objectives of the National Strategy for Equal Opportunity for Women and Men, for the period 2014-2017, was reviewing the reasons for gender pay gap. Therefore, on 3 November 2016, the National Agency for Equal Opportunity for Women and Men (ANES), carried out an ample action for increasing awareness, upon the celebration of the European Equal Pay Day, by publishing a press release and sending by email some information materials to the members of the National Commission for Equal Opportunity for women and men; the presidents of the County Commissions for Equal Opportunity for women and men; the management of the Bucharest Stock Exchange (BVB) and the 72 companies listed on BVB; the directorates and subordinates of the Ministry of Labour and Social Justice.

Labor Inspection performs control actions, preventive in character, regarding the manner in which the provisions of the Law no. 202/2002 regarding equal opportunity and treatment for women and men are complied with. The Committee requests to continue submitting information on the measures follow to further reduce the gender pay gap in the next cycle.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§4 of the Charter on the grounds that the notice period for dismissal due to physical or mental incapacity or professional inadequacy or as a result of the abolition of posts was insufficient and that the legislation did not provide for notice periods during probationary periods or in the event of the death of the employer who is a natural person, or winding up of an employer who is a legal person.

The report refers to the notice period of 20 days irrespectively of the length of the employee's service, provided for by Article 75 of the Labour Code. The report does not indicate any change in this regard since the previous assessment, nor does it indicate changes as regards the situations in which there is no notice period provided for by the legislation. The Committee, therefore, reiterates its previous conclusion of non-conformity.

As regards notice period applicable to dismissal on grounds not related to the employee (Article 65 and 66 of the Labour Code), the report states that the parties may negotiate additional rights. It also states that, in this case, the employee may receive compensation, according to law and the applicable collective labor agreement. The Committee asks the next report to provide examples of longer notice periods applicable. It also asks information on the compensation available such cases, in particular as regards the amount of such compensation.

In its previous conclusion (Conclusions 2014), the Committee asked for information on the grounds and periods of notice for early termination of fixed-term contracts.

In reply, the report states that Article 87§1 and 2 of the Labour Code prohibits the less favorable treatment of employees under fixed-term contracts than the comparable permanent employees working on the same or similar activities, based on the duration of the contract. The Committee asks the next report to confirm its understanding that notice period provided for by Article 75 of the Labour Code are applicable in cases of early termination of fixed-term contracts.

Conclusion

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

- the notice period for dismissal for physical or mental incapacity or for professional inadequacy or as a result of the abolition of posts is insufficient;
- the legislation makes no provision for notice periods during probationary periods and in the event of the death of the employer who is a natural person, or winding up of an employer who is a legal person.

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 Romania.

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§5 of the Charter, on the ground that, after the deduction of the combined amount of all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

The report does not indicate changes as regards the limits of the combined deductions. The combined amount of deductions may not exceed 50% of wages net of social contributions and tax deductions (Article 169§4 of the Labour Code), while at the same time the monthly installments from the salary for settlement of damages may not exceed the one third of net wages, within the limit of the combined amount deductions of 50% of net wages. In the light of the above, the Committee, reiterates its previous conclusion of non-conformity.

In its previous conclusion, the Committee asked for clarification on whether the provision of Article 170 of the Labour Code, according to which the employee's approval of payslips may not be considered equivalent to them waiving their rights under the law or the employment contract, effectively prevents workers, in law or in practice, from waiving the general prohibition of deductions from wages established by the Labour Code. The report does not provide the requested clarification. The Committee, therefore, reiterates its previous question.

The Committee further asked to indicate any "other debts" referred to in Article 169§3 of the Labour Code and whether the "amounts not due" referred to in Article 256§1 of the Code were subject to the limit on the combined amount deductions of 50% of net wages. In addition, the Committee reiterated its request for information on the circumstances (such as civil claims, fines, trade union dues) and/or operations (attachment) liable to result in deductions from wages not provided for by the Labour Code. The report does not provide the requested information. The Committee, therefore, reiterates its previous questions.

The Committee also notes from NATLEX database of national labour, social security and related human rights legislation that the Labour Code was amended several times during the reference period and asks the next report to indicate whether national provisions related to Article 4§5 of the Charter were amended.

Conclusion

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

Article 5 - Right to organise

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

The Committee has examined the situation with respect to the right to organise (forming trade unions and employers' organisations, freedom to join or not to join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion.

Forming trade unions and employers' organisations

The Committee previously notes that a minimum number of 15 employees was required for the establishment of a trade union. However it also noted that many enterprises in Romania had fewer employees and requested information on how this requirement affected the establishment of trade unions.

According to the report the number of newly formed trade unions increased during the reference period by 3%.

Freedom to join or not to join a trade union

The Committee previously requested the Government to provide examples of cases related to trade union discrimination. It also asks whether compensation is provided to the victims of discrimination based on trade union membership or activities (Conclusions 2016).

The Committee notes that the report provides an extensive list of cases where allegations of discrimination on grounds of membership of a trade union were made. In particular it notes that many of these involved allegations of discrimination on grounds of membership of a non representative trade union. The Committee notes compensation is payable to victims of discrimination.

Representativeness

The Committee previously found that the situation was not in conformity in this respect as the right of the non-representative trade unions to exercise key trade union prerogatives was restricted at company level. It had noted that only representative trade unions had access to premises and facilities within the undertaking and had the right to participate in board meetings of the company.

The report states that non representative trade unions do in fact have the right represent their members, and have access to the premises of the undertaking, further they have the right to participate in collective negotiations conciliation and mediation procedures etc.

The Committee therefore considers that the situation is in conformity with the Charter in this respect.

Personal scope

The Committee previously found the situation to be in conformity in this respect (Conclusions 2014). The Committee refers to its question on the right of members of the armed forces to organise.

Conclusion

The Committee concludes that the situation in Romania 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 Romania.

The Committee previously found the situation to be in conformity with the Charter but requested further information on the right of non representative trade unions to engage in joint consultation.

As regards the right of non representative trade unions, the report confirms that they do in fact have the right to engage in joint consultation.

Conclusion

The Committee concludes that the situation in Romania 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 Romania.

The Committee refers to its previous conclusion for a description of the situation (Conclusions 2014).

The Committee previously noted from other sources that after the adoption of the law on Social Dialogue, collective bargaining at sectoral level became so difficult that no collective agreement has been concluded at sectoral level yet. Further it had noted that the collective bargaining at company level has dropped significantly (Conclusions 2014).

The Committee asked what was the impact of the new rules on the collective bargaining at company and sectoral level. It invited the Government to provide information on the number of collective agreements that were concluded at sectoral, and company level and the number of employers and employees covered by these agreements. Meanwhile, it reserved its position on this point.

According to the report in 2013, 8,367 collective agreements at enterprise level were registered, while, in 2016, 9,366 collective agreements at enterprise level were registered, covering approximately 33% of employees.

In 2013 12 agreements were registered at the level of groups of entities covering 4,605 employees while in 2016 7 were registered covering 26, 180 employees.

As regards sectoral level in 2014 3 were registered but in 2016 none were registered. The Committee notes that this number is still low.

The report states that the above mentioned figures do not include "voluntary agreements" concluded pursuant to Article 153 of the Social Dialogue Law. The Committee asks for further information on such "voluntary agreements".

The Committee asks the next report to provide information on the total proportion of employees at every level, covered by a collective agreement.

Given the low level of collective bargaining coverage at the enterprise level and the very few sectoral level agreements, the Committee asks whether the Government has taken any measures to promote collective bargaining.

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 Romania.

The Committee refers to its previous conclusion for a description of the situation (Conclusions 2014).

The Committee previously found the situation in conformity but requested information on the situation in practice and about conciliation in the public sector.

The report provides information on conciliation procedures initiated during the reference period. It further states that the conciliation and mediation procedures provided for by the Social Dialogue Law also apply to workers in the public sector.

Conclusion

The Committee concludes that the situation in Romania 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 Romania.

The Committee has examined the situation with respect to the right to collective action (definition, permitted objectives, entitlement to call a collective action, restrictions and procedural requirements and consequences of a strike in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion.

Entitlement to call a collective action

The Committee found in its previous conclusions (Conclusions 2002, 2004, 2006, 2010, 2014) that the situation was not in conformity with Article 6§4 of the Charter, on the grounds that a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union's members.

The Committee observes that the situation has not changed. Therefore, the situation remains to be not in conformity with the Charter on this point.

Specific restrictions to the right to strike and procedural requirements

The Committee previously requested further information on the categories of persons whose right to strike is restricted.

In addition to the categories described in the previous report (judges, prosecutors, military staff with special status in the Ministry of Defence, Intelligence Service etc.), the report states that persons employed in air, road or water transport cannot strike whilst on duty. The Committee asks for clarification of what in fact this means. Meanwhile it reserves its position on this issue. The Committee asks whether members of the prison service have the right to strike.

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

As regards the provision of a minimum service during a strike, the Committee asks whether there are sectors where the provision of a minimum service is required and if so whether the social partners are involved in the discussions on the minimum service to be provided on an equal footing.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 6§4 of the Charter on the ground that a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union's members.

Article 21 - Right of workers to be informed and consulted

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

The report indicates that no changes have been made to the situation with respect to the right of workers to be informed and consulted, which the Committee has previously found to be in conformity with Article 21 (Conclusions 2014). It will therefore only consider additional information provided by the Government in this conclusion.

Legal framework

The Committee notes that the Law no. 467/2006 regarding the general framework of information and consultation of employees transposes in full the Directive 2002/14/EC, which aims at information and consultation of employees through their representatives (collective information).

Personal scope

The Committee finds the personal scope to be in conformity with Article 21 of the Charter.

In its previous conclusions (2014) the Committee asked how the employees are informed and consulted and what the procedure is in case there are no representative trade unions or elected representatives in the undertaking. The report confirms that the employer has the obligation to inform the employees as regards matters related to working conditions and to labour organization, according to the dispositions of the Law no.53/2003.

Material scope

The Committee refers to its previous conclusion (Conclusions 2010) as regards the material scope of the right to information and consultation which it found to be in conformity with Article 21 of the Charter.

Remedies

The report does not indicate any change to the situation as regards remedies available to workers, which the Committee has previously found to be in conformity.

Supervision

The Committee refers to its previous conclusion (Conclusions 2010) where it has examined the situation with respect to the sanctions applicable to employers who fail to meet the obligation to inform and consult their employees, which it found to be in conformity with Article 21 of the Charter.

Conclusion

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

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

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

Types of workers' representatives

Workers' interests are represented in Romania by trade unions or, in companies with less than 20 employees and where no trade union representation exists, employees' representatives elected by the employees' general assembly. Furthermore, there exist employees' representatives with specific responsibilities, such as in the field of health and safety, or for the purposes of informing and consulting employees in Community-scale undertakings.

Protection granted to workers' representatives

In its previous conclusion (Conclusions 2014) the Committee found that the situation in Romania was not in conformity with the Charter, since the protection against dismissal offered to workers' representatives did not extend beyond the duration of their mandate.

The legal framework has not changed in the reference period. During the term of their mandate, the employees' representatives are protected by law against any forms of conditioning and constraint or limitation to exercising their duties and cannot be discharged for reasons related to their fulfilment. Under the previous regulation, this protection extended for trade union representatives for 2 years after the termination of their mandate. However, by a decision rendered during the reference period, the Constitutional Court found unconstitutional the protection against dismissal of a trade union representative after the expiry of the mandate, as establishing a privilege comparing to employees in an analogous situation who did not hold union positions. The same principle applies to other elected employees' representatives. Additional protection may, however, be subject to collective negotiation with the employer and the report provides one example of such solution.

The Committee recalls that the rights must be effectively guaranteed and that, to this end, the protection against dismissal related to the exercise of duties by workers' representatives shall be extended for a reasonable time after the effective end of period of their office (Conclusions 2010, statement of interpretation of Article 28). Therefore the Committee finds that the situation remains in non-conformity with the Charter in this respect.

Facilities granted to workers' representatives

The Committee has previously requested (Conclusions 2007, 2010) information on facilities afforded by the employer in order to enable the workers' representatives to carry out their functions efficiently and promptly, specifying that this information should cover means such as premises, materials, technical support or financial contributions, if any. In its previous conclusion (Conclusions 2014) the Committee noted that the Law on Social Dialogue provided that representative trade unions may negotiate, through the collective agreement at company level, to have access to the premises and other facilities necessary for carrying out their activities and that the labour legislation left the collective negotiation with the employer to establish the facilities for workers' representatives. The Committee asked if other workers' representatives, such as the elected employees' representatives, have the right to use the premises, means of communication and other facilities in order to perform their duties. The report does not provide any information on this point.

In the light of the above, the Committee considers that it has not been established that the situation is in conformity with the Charter in this respect.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 28 of the Charter on the ground that:

- the protection against dismissal granted to trade union representatives and other elected workers' representatives does not extend beyond the end of their mandate,
- it has not been established that facilities afforded to workers' representatives are adequate.

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 Romania.

In its previous conclusions (Conclusions 2014 and 2010), the Committee considered the situation regarding the right to information and consultation in collective redundancy procedures and found that it was in conformity with Article 29 of the Charter. It will therefore only consider recent changes and relevant additional information.

In the previous conclusion, the Committee asked what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has been fulfilled. In reply, the report indicates that according to Article 78 of the Labour Code, redundancies not complying with the procedure prescribed by law are subject to absolute nullity.

Conclusion

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