March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

SERBIA

This text may be subject to editorial revision.

The following chapter concerns Serbia which ratified the Charter on 14 September 2009. The deadline for submitting the 7th report was 31 October 2017 and Serbia submitted it on 17 April 2018.

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

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

Serbia has accepted all provisions from the above-mentioned group except Article 2§4.

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

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

– 8 conclusions of conformity: Articles 2§2, 2§3, 2§5, 4§2, 6§1, 6§2, 6§3 and 28;

– 8 conclusions of non-conformity: Articles 2§1, 2§7, 4§1, 4§4, 4§5, 5, 6§4 and 22.

In respect of the 6 other situations related to Articles 2§6, 4§3, 21, 26§1, 26§2 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 Serbia 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 2§3

Under Article 68 of the amended Labour Code (came into force on 29 July 2014), employees are entitled to annual leave and cannot waive that right. Under Article 114, during annual leave employees are entitled to be paid at the rate of their average salary for the preceding twelve months.

Article 2§5

Under the amended Article 66 of the Labour Code, employees are entitled to a minimum of 12 hours of uninterrupted rest within each 24 hour period, unless otherwise specified in the Code. Employees who agree to flexible working time arrangements (Article 57) are entitled to a minimum of 11 hours' uninterrupted rest within each 24 hour period. Under Article 67, if employees are required to work on their weekly rest day their employer must grant them an uninterrupted rest period of at least 24 hours in the following week, before their next scheduled weekly rest period.

* * *

The next report will deal with the following provisions of the thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),

- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 October 2018.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with the Charter and asked what the absolute limit on daily working hours was under flexible working time arrangements and what rules applied to on-call service. The Committee will only consider recent changes and relevant additional information.

The Committee notes that under amended Article 50 of the Labour Code, working time is the period in which employees are required to work, or be available for work, in the place where the work is performed. Time spent off the job, when an employee is required to be on stand-by to perform work but not to be present in the workplace, is not considered to be working time. The conditions governing non-working time spent on-call and the level of payment for such periods are laid down in legislation, general rules and regulations, such as collective agreements and internal company rules, and employment contracts. The Committee understands that periods of time when employees are required to remain ready to perform tasks if so requested count as work time if they are spent in the workplace. Otherwise, such periods are not so counted.

The Committee finds that this situation is not in conformity with Article 2§1 of the Charter on the ground that on-call periods during which no effective work is undertaken are assimilated to rest periods.

As for overtime, the report states that under amended Article 51 of the Labour Code, full-time corresponds to 40 hours of work per week. If an undertaking sets the working week at between 36 and 40 hours, the employees concerned are entitled to all the employment rights accorded to full-time workers. The Committee notes that this situation is in conformity with Article 2§1 of the Charter.

The report also states that under Article 53 of the Labour Code, employees are required to work overtime, at their employers' request, in cases of *force majeure*, a sudden increase in the workload or the need to carry out unplanned work within a certain deadline. However, such overtime may not exceed eight hours per week and the working day may not exceed 12 hours. The Committee also notes from the report that employers may not ask employees working reduced hours to perform overtime (Article 52 of the Labour Code).

Turning to flexible working time arrangements, the report states that working hours must be apportioned to ensure that an employee's total working hours do not exceed those of a full-time employee over a six-month period. However, it is possible to reschedule work under a collective agreement so that the flexible arrangements are not associated with a calendar year or may last longer than six, though no more than nine, months. Where employees agree to flexible working time arrangements any time worked in excess of their average working hours must be recorded and paid as overtime. However, the time worked must not exceed 60 hours in a week. The Committee also notes that these arrangements are not applicable to persons working reduced hours (Article 52). The Committee finds that the situation is in conformity with the Charter.

Since there is no information in the report on any violations of working time regulations identified by the labour inspectorate, the Committee repeats its question. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Serbia is in conformity with Article 2§1 of the Charter.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 2§1 of the Charter on the ground that on-call periods during which no effective work is undertaken are assimilated to rest periods.

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 Serbia.

The Committee deferred its previous conclusion (Conclusions 2014) and asked whether there was an exhaustive list of criteria to identify the circumstances under which work was allowed on public holidays. In answer, the report states that under Articles 3§2 and 3§3 of the legislation on public and other holidays, this applies when a particular activity or service has to be performed or provided on a continuing basis and/or to avoid adverse consequences for citizens or the state.

The Committee also asked what compensation applied to work performed on public holidays, in terms of salary and/or compensatory time off, in addition to the normal public holiday pay. The Committee notes from the report that, under Article 114 of the amended Labour Code, employees are entitled to compensation equivalent to the average wage or salary for the previous 12 months for absence from work during, *inter alia,* public holidays. Under Article 108§1, sub-paragraph 1, employees working on public holidays are entitled to a minimum of 110% of the basic salary, as determined by normal company practice, or the relevant collective agreement or employment contract, for each hour worked. The Committee asks for clarification in the next report as to whether this means that the increased pay, which is not less than 110% of basic pay, is in addition to the remuneration normally payable for working on a public holiday. In the meantime, it reserves its position on the point.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

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

The Committee notes from the report that under Article 68 of the amended Labour Code (came into force on 29 July 2014), employees are entitled to annual leave and cannot waive that right. Under Article 114, during annual leave employees are entitled to be paid at the rate of their average salary for the preceding twelve months. Articles 69 and 70 of the Labour Code are unchanged (see Conclusions 2014, Article 2§3). The Committee therefore concludes that the situation is still in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Serbia 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 Serbia.

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 2§5 of the Charter. It will therefore only consider recent changes and relevant additional information.

Under the amended Article 66 of the Labour Code, employees are entitled to a minimum of 12 hours of uninterrupted rest within each 24 hour period, unless otherwise specified in the Code. Employees who agree to flexible working time arrangements (Article 57) are entitled to a minimum of 11 hours' uninterrupted rest within each 24 hour period.

In its previous conclusion, the Committee asked whether there were any exceptions to the rules governing weekly rest periods and, if so, under what circumstances employees were authorised to work for more than twelve days before being entitled to a day off. In reply, the report states that, under Article 67, if employees are required to work on their weekly rest day their employer must grant them an uninterrupted rest period of at least 24 hours in the following week, before their next scheduled weekly rest period.

Conclusion

The Committee concludes that the situation in Serbia 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 Serbia.

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 2§6 of the Charter and asked whether the amount of paid leave and the length of periods of notice when the contract or employment relationship was terminated were also specified in writing (in the contract or another document).

In reply, the report states that where rights and obligations are not specified in the employment contract, the relevant provisions of the law and other general rules and regulations apply. In particular, employment contracts do not have to include information on termination of contract or employment.

The report does not include all the information requested so the Committee repeats its question, particularly as to whether the length of paid leave is specified in writing (in the contract or some other document). It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Serbia is in conformity with Article 2§6 of the Charter.

Conclusion

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

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 Serbia.

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 2§7 of the Charter. It will therefore only consider recent changes and relevant additional information.

In its previous conclusion, the Committee asked whether medical check-ups were carried out before employees were assigned to night work and regularly thereafter. In reply, the report states that the Labour Code does not establish such a requirement with regard to night workers. The Committee therefore finds that the situation is not in conformity with the Charter on the ground that there is no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter.

The Committee also asked under what other circumstances than health grounds, if any, employers were consider and explore the possibilities of a transfer to daytime work. The report provides no information on this subject but does supply a list of certain categories of employee who are not authorised to work nights. The Committee repeats its question and therefore reserves its position on this point. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Serbia is in conformity with Article 2§7 of the Charter in this regard.

Furthermore, the Committee asked whether, in addition to the consultation to be held before introducing night work, there was regular consultation with workers' representatives on the use of night work, the conditions in which it was performed and measures taken to reconcile workers' needs and the special nature of night work. According to the report, there are no provisions of the Labour Code requiring regular consultations with employee representatives. The Committee asks whether another law, in particular the Occupational Health and Safety Law, provides for regular consultation of workers' representatives on the use of night work.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 2§7 of the Charter on the ground that there is no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

Previously the Committee deferred its conclusion (Conclusions 2014), pending receipt of the information requested.

According to Articles 111 and 112 of the Labour Code, employees are entitled to minimum wage, which is determined by the minimum hourly wage, as regulated by the Labour Code, the time spent at work and taxes and contributions paid from the remuneration. The grounds for the adoption of the minimum wage shall be explained in general rules, collective agreements, company's policy and the employment contract. The decision on the adoption on minimum wage can remain into force after a period of six months, upon notification of a representative trade union. According to Article 108 of the Labour Code, besides than the minimum wage, employees are entitled to additional earnings and to compensation for expenses. The hourly minimum wage (without taxes and contributions) is established for every calendar year by a decision issued by the National Social and Economic Council. The minimum hourly wage may not be lower than the one established for the previous year.

According to the report, the minimum wage from April 2012 to December 2014 amounted to RSD 115 (€ 0.99) per hour and to RSD 20 010 (€ 173.53) per month, while in 2015 and 2016 the minimum net wage amounted to RSD 121 (€ 0.98) per hour or RSD 21 054 (€ 172.75) per month. The Committee notes from the Statistical Office of the Republic of Serbia, that the average net salaries and wages per employee by activities (total) during the second half of 2016, amounted to RSD 47 009 (€ 381.33) and during the second half of 2015 to RSD 45 496 (€ 377.51). The Committee notes that the minimum net monthly wage was lower than 50% of the average net monthly wage during the second half of 2015 and 2016. According to EUROSTAT data, the monthly gross minimum wage as a proportion of the average gross monthly wage amounted to 45% in 2013, to 44% in 2014, to 44.8% in 2015 and to 42.7% 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.

According to the report, as of January 2017 (outside the reference period) the established minimum wage amounts to RSD 121 (€ 1.00) per hour and RSD 22 620 (€ 188.88) per month. The Committee takes note of the information provided in the report and it will examine the situation as regards the minimum wage as established as of January 2017 in the next reporting cycle of Article 4§1.

In its previous conclusion (Conclusions 2014) the Committee requested information on the standard of living of employees who earn the minimum wage and their dependants. It also asked for information on measures taken to guarantee that minimum wages are applied in low-pay regions and sectors.

In reply, the report states that there are no data available concerning employees who receive the minimum wage and living standards of employees. The Committee, therefore, reiterates its previous question.

Conclusion

The Committee concludes that the situation in Serbia 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 Serbia.

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 4§2 of the Charter. It will therefore only consider recent changes and relevant additional information.

The Committee noted previously that employers were required to keep records of employee attendance and overtime work and pay them for the latter at a higher rate (at least 26% more), as laid down in internal company rules and the relevant employment contract. In its previous conclusion, the Committee asked for examples of the increased rates of remuneration as negotiated in individual companies. In reply, the report states that collective agreements, internal company rules or employment contracts may specify a figure in excess of 26% for the higher rate of overtime pay. For example, the Committee notes from the report that the branch collective agreement for Serbia's electricity supply industry entitles employees to a 45% supplement to their basic wage for each hour of overtime worked.

Turning to public officials, the report states that entitlement to overtime pay is covered by two pieces of legislation, namely the "Public Authority Employees' Wages Law" (for civil servants) and the "State Authority and Public Services Employees' Wages Law" (under the responsibility of the Ministry of Public Administration and Local Self-Government). The Committee understands that, according to the report, for each hour of overtime ordered by their superior, employees can claim one and a half hours of free time as compensation, which must be taken within the following month. With the prior consent of the employee concerned, overtime may be worked for a period in excess of what is provided for in law, but may not exceed 20 hours per week. Nor may such overtime exceed 90 days per calendar year. If the nature of their work prevents public officials from using the free time they are due they are entitled to financial compensation at a rate of 126% of their basic salary. Such entitlement has to be approved by a senior official of the relevant authority, who must specify the reasons why the official concerned cannot use the free time owed.

In its previous conclusion, the Committee asked whether Serbian legislation provided for exceptions to the right to an increased rate of remuneration for overtime work for categories such as senior public officials and private sector managers. It also asked whether employees were entitled to time off in lieu of financial remuneration for overtime work and, if so, whether it was of increased duration. In the absence of a response the Committee repeats its requests.

The Committee asks whether the labour inspectorate has identified cases of overtime worked without remuneration in the context of flexible working time arrangements.

Conclusion

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

Legal basis of equal pay

The Committee notes that under Article 104 of the Labour Code employees are guaranteed equal pay for equal work or work of equal value. This means that equal pay for equal work or work of equal value shall be guaranteed to all the employees working for the employer (man and women alike). Article 18 of the Labour Code prohibits both direct and indirect discrimination on the basis of various grounds including sex with regard to job-seekers and employees.

Moreover, Article 16 of the Anti-Discrimination Law bans labour discrimination, including unequal remuneration for work of equal value. Besides, Article 17 of the 2009 Serbian Gender Equality Law on equal remuneration for equal work or work of equal value stipulates that employees, regardless of their gender, are entitled to equal remuneration for equal work or work of identical value. Under Article 11 of the same law, employers are required to ensure that all employees enjoy equal opportunities and treatment regardless of gender. The Committee notes asks the next report to indicate what is the definition of equal work or work of equal value.

Guarantees of enforcement and judicial safeguards

In its previous conclusion on Article 20 (Conclusions 2016) the Committee concluded that the situation was not in conformity with the Charter as it had not been established that the right to equal treatment in employment without discrimination on grounds of sex was guaranteed in practice. In particular, the Committee wished to receive information as regards the following:

- information on the number and grounds of gender discrimination cases, including cases investigated or brought before the courts by the Commissioner for Equality;
- information on the procedure to be followed in cases alleging discrimination, for example whether there is a shift in the burden of proof;
- information on remedies i.e. reinstatement or damages that may be awarded to a victim of discrimination and information on any pre-defined limits to the amount of damages that may be awarded.

The Committee notes from the report in this regard that under Article 23 of the Labour Code in cases of discrimination within the meaning of Articles 18, a job-seeker and employed person may start proceedings for compensation claim by the employer before the competent court, pursuant to the law.

As regards the burden of proof, according to the report, if in the course of the proceedings, the claimant makes it probable that discrimination has occurred, the burden of proof that there was no conduct that constitutes discrimination shall be laid on the defendant.

As regards the right to compensation the report provides the information regarding the entitlement to and the amount of compensation granted in cases of unlawful termination of employment relationship.

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

proscribed. The Committee asks whether the legislation establishes any ceiling to compensation that may be awarded in pay discrimination cases (e.g. the maximum number of monthly wages of the employee). The Committee also asks for information regarding unequal pay cases decided by the courts. In the meantime, it reserves its position on this issue.

Methods of comparison

The Committee asks 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 also asks the next report to provide information concerning the criteria according to which equal value of different works is evaluated.

Statistics

The Committee notes from the report that in practice, women accept lower paid jobs more often than men, and thus as recorded in the statistical data, women's wages are lower than those of men's.

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

Policy and other measures

In its previous conclusion (Conclusions 2014) the Committee took note of the activities of the Gender Equality Directorate. It asks the next report to provide information on the measures implemented with a view to promoting gender equality and reducing the gender pay gap. In the meantime, the Committee reserves its position as regards measures taken to guarantee the right to equal pay in practice.

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 Serbia.

In its previous conclusion (Conclusions 2014), the Committee held that the situation in Serbia was not in conformity with Article 4§4 of the Charter on the ground that the notice period for dismissal for professional incompetence was not reasonable for employees with more than three years of service.

The report indicates that, according to Article 179§1 of the Labour Code, as amended, the employer may terminate the employment relationship on grounds of underperformance or lack of knowledge and skills; criminal offence committed by the employee in the workplace or in relation to work and failure of the employee to return to work within 15 days of a suspension of the employment, pursuant to Articles 79 and 100 Labour Code). The employer may also terminate the employment relationship in cases of a willful misconduct (Article 179§2 of the Labour Code) or professional misconduct of the employee (Article 179§3).)). In order to terminate the employment contract pursuant to Article 179§2 and 3, the employer should previously warn the employee in writing, providing to the employee a time period of at least eight days from the day of the delivery of the warning to comment on the grounds of the warning. The report indicates that this period does not constitute a notice period.

The employer may also terminate the employment relationship on grounds related to company's needs, including technological, economic or organizational changes and employee's refusal to accept an amendment to the employment contract (Article 179§5 of the Labour Code). The Committee notes that a notice period is prescribed by the Labour Code (Article 189) only for dismissals on grounds of underperformance (Article 179§1 point 1). This notice period, depending on the company policy and the employment contract may be at least of **8 days and of 30 days at maximum**. The Committee concludes that the situation is not in conformity with Article 4§4 of the Charter on the grounds that in general no notice periods are provided for by legislation and that the notice period provided for dismissal on grounds of underperformance, is not reasonable for employees with more than three months of service.

The Committee notes form OECD that as of 1st January 2015, in case of dismissal on grounds of technological, economic or organizational changes or decrease in workload, the employee is entitled to severance pay, pursuant to Article 158 of the Labour Code. The amount of severance pay is determined by a general act or by the employment contract. However, severance pay in this case cannot be lower than 1/3 of the employee's monthly wage for each full year of employment with the employer. The Committee asks the next report to provide information on the severance pay awarded pursuant to Article 158 of the Labour Code.

In its previous conclusion (Conclusions 2014), the Committee asked for information on notice periods applicable during the probationary period; to civil servants and state employees; and to any other grounds for termination of employment referred to in Articles 175 and 176 of the Labour Code.

In reply, the report states that, according to Article 36§3 of the Labour Code, the notice period during the probationary period may not be shorter that five days. The Committee notes in this regards from OECD that, according to Article 36§1 and 2, the probationary period can last up to 6 months. The report does not provide information on notice periods applicable to civil servants and state employees and in case of termination of employment on grounds established in Articles 175 and 176 of the Labour Code. The Committee, therefore, reiterates its request for information. It also asks on information on notice period applicable in case of bankruptcy of the employer. Meanwhile, it considers that the situation is not in conformity with Article 4§4 of the Charter on the ground that notice period of 5 days

applicable during the probationary period, is not reasonable for employees with more than 3 months of service.

Conclusion

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

- in general no notice periods are provided for by legislation in case of dismissal;
- the notice period applicable to dismissal on grounds of underperformance, is not reasonable for employees with more than three months of service;
- the notice period applicable to dismissal during the probationary period is not reasonable for employees with more than three months of service.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

It has previously deferred its conclusion (Conclusions 2014), pending receipt of the information requested and asked the next report to provide information on:

(1) claims that are not covered by the Labour Code for which deductions from wages may be authorised (such as maintenance claims, tax debts, civil-law claims, trade union dues and fines),

(2) exceptions to the limitation of deductions to one third of the wage provided for by Article 123§2 of the Labour Code,

(3) level of protected wages,

(4) circumstances in which workers may waive the limitation on deductions from wages provided for by law.

The report states that according to Article 123 of the Labour Code, the employer may withhold the employee's salary in order to collect monetary claims upon decision of the relevant court, in cases provided for by law, or with the employee's consent. Deductions upon judicial decision must be limited to one third of the employee's wage, subject to the exceptions provided for by law. The Commitee considers that the absence of limit to deductions from wages upon the employee's consent is not in conformity with Article 4§5 of the Charter, since as a result such deductions may deprive employees and their dependants of their means of subsistence..

The report provides no information on points (1), (2) and (3). The Committee, therefore, reiterates its questions.

The Committee has also asked for information on whether establishing liability and quantifying damage require a court decision or whether this falls within the employer's powers. The report states that, according to Article 163 of the Labour Code, employee may be held liable for damaged caused to the employer intentionally or by gross negligence. In this context, establishing liability and quantifying damage is determined by the employer and according to general rules or regulations, such as the company's policy or a collective agreement and/or the employment contract. In case the compensation for damage is not determined, the competent court rules on the matter. The Committee asks the next report to provide information on limits on deductions from wages due to damage caused to the employer provided for by general rules, regulations, collective agreements and employment contracts.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 4§5 of the Charter on the ground that deductions from wages upon the employee's consent are not subject to a limit and as a result such deductions may deprive employees with lowest income and their dependants of their means of subsistence.

Article 5 - Right to organise

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

The Committee examined the situation with regard to trade union law in its previous conclusion (forming trade unions and employers' organisations, freedom to join or not to join a trade union, trade union activities and representativeness, personal scope, Conclusions 2014). It will therefore only consider recent developments and additional information.

Forming trade unions and employers' organisations

The Committee previously asked for information on the procedure for the registration of trade unions (Conclusions 2014).

According to the report the Trade Union Rules ("The Rules") provide that a trade union shall apply to the Ministry of Labour for registration, within 15 days from the establishment of the trade union. The application shall be submitted by a person authorized by the trade union.

Under Article 7 of the Rules, the Minister shall issue a decision on the registration of a trade union if all the requirements for its establishment are met under law. The Committee asks whether there have been cases where a trade union has been refused registration.

Under Article 9 of the Rules a trade union shall be deleted from the register if it has been dissolved or if it no longer meets the requirements for the establishment of a trade union as provided for by law or if it was registered on the basis of incorrect information.

According to the report a small fee is payable by the trade union upon registration.

The Committee previously noted that, in order to form an employers' organisation, the founding members must employ no less than 5% of the total number of employees in a given branch of industry, group, sub-group, or a line of business or in a territory of a given territorial unit (Section 216 of the Labour Law). The Committee considered that the condition established in Section 216 of the Labour Law constitutes an obstacle to the freedom to organise, notably in the case of very small, small and medium-sized undertakings, and was therefore not in conformity with Article 5 of the Charter (Conclusions 2014).

The Committee notes that there has been no change to this situation therefore it reiterates its previous conclusion of non-conformity.

Freedom to join or not to join a trade union

The report states that the Labour Code prohibits dismissal on grounds of trade union activity or any other form of discrimination based on trade union membership. However no information is provided on cases of anti union discrimination lodged with the competent authorities. The Committee repeats its request for this information. Further the Committee repeats its request for information on the right not to join a trade union (see Conclusions 2014).

Trade union activities

According to the report the Labour Code does not prescribe any restrictions or rules regarding the internal structure or functioning of a trade union. The matters in question are regulated by the trade union statue or other trade union policy documents.

Under Article 209 of the Labour Code, a trade union has the right to be informed by the employer of the economic and occupational-social issues relevant to the employees, or trade union members.

Under Article 210 of the Labour Code, an employer shall provide a trade union with the technical conditions and office space (taking into account the available space and financial capacities of the employer) and shall provide it with an access to data and information

required for the pursuance of trade union activities. The technical conditions and office space available to a trade union shall be set out in the collective agreement or agreement between the employer and trade union.

Representativeness

The Committee recalls that it had previously noted that a trade union or employers' organisation recognised as representative within the meaning of the Labour Code is entitled to: a) bargain collectively and enter into collective agreements at its respective level; b) participate in collective labour disputes; c) participate in tripartite and multipartite bodies at its respective level; and d) exercise other rights as provided for by law (Article 239 of the Labour Code).

Further the Minister for Labour and Social Policy established a representativeness committee for assessing the requirements for representativeness.

The Committee wished to be informed of any developments concerning the conditions and mechanisms for establishing the representativeness of trade unions and employers' organisations (Conclusions 2014).

Further it recalled inter alia that fields of action reserved for representative trade unions alone must not concern essential trade union prerogatives (see Conclusions XV-1 (2000), Belgium) and the representativeness criteria applied must be reasonable, clear, pre-established, objective, imposed by law and permit judicial review (see Conclusions XV-1 (2000), France).

According to the report representativeness is not a requirement for the establishment of a trade union, but in order to establish the representativeness of a trade union, it needs to be established and registered as provided for under the Labour Code. The size of membership is not a condition or requirement for the establishment of a trade union.

Under Article 224 of the Labour Code a trade union shall be deemed representative by the Minister of Labour upon a recommendation of the Representativeness Committee.

Under Article 225 of the Labour Code, the Representativeness Committee shall be composed of three representatives each of the Government, trade union and association of employer appointed for a four-year term.

Representativeness criteria for trade unions are laid down in Article 218 of the Labour Code. A trade union shall be regarded of as a representative if it is registered and is active if it is independent from state authorities and employers, if funded predominantly from membership fees and other own resources, if it has necessary number of members based on registration forms under Article 219 and 220 of theCode.

Under Article 219 of the Labour Code, a company-level trade union shall be deemed representative if it meets the requirements if it has a minimum of 15% of members out of the total number of the company staff.

Under Article 220 of the Labour Code, a trade union at the level of a territorial autonomy/local government unit, and/or for a branch, group, sub-group or line of economic activity a shall be deemed representative if it has a minimum membership of 10% of the total number of employees in the branch, group, subgroup or line of economic activity, and/or territory of a relevant territorial unit.

The Committee takes note of the information on the procedure for reviewing or reexamining decision on representativeness, however it seeks clarification of the procedure and in particular asks whether trade unions and employers association may only seek review of a decision not to be deemed representative after the expiry of three years following the original decision.

The report suggests that when employers' or workers' organisations do not fulfil the representativeness requirements, they can conclude an association agreement with another organization which does and thereby become party to a collective agreement and that this possibility is not restricted to company level trade unions and collective agreements, the Committee seeks clarification that this is the case.

Further the Committee seeks information again that minority trade unions i.e. those not deemed representative, may still exercise fundamental trade union prerogatives. Meanwhile it reserves its position in this issue.

Personal scope

According to the report there is no prohibition in the Labour Code on members of the police, military personnel or any other groups from forming or joining trade unions.

Under Article 14, paragraph 3 of the Serbian Armed Forces Law, when participating in associations which have the character of a trade union, the professional military personnel of the Serbian Armed Forces shall do so as provided for in the rules and regulations of military service. According to the report *"professional military personnel shall be entitled to the right to trade union organization in accordance with the Government regulations.* The Committee asks for further information on any such rules. The Committee refers to its general question on the right of members of the armed forces to organise.

Under Article 169 of the Police Law, police officers and other staff shall be entitled to form and join trade unions, occupational or any other organization as provided for by law. The Committee asks for further information on any restrictions in practice.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 5 of the Charter on the ground that the conditions imposed by legislation in order to form an employers organisation constitutes an obstacle to the freedom to organise.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee recalls that the Labour Code requires employers to consult workers' representatives on decisions affecting their employees' economic and social rights, be it of an individual or collective nature. Therefore, employees have the right, either directly or through their representatives, to be consulted and informed, to express their views on important questions relating to their employment,

Further consultations with workers' representatives take place through the Social and Economic Council and local social and economic councils.

The Committee previously sought confirmation that the social partners are represented and take part in discussions in the social and economic councils on an equal footing. It additionally asked for confirmation that the social and economic councils also contribute to social dialogue in the public sector, including the civil service, as well as information as to whether consultation is restricted to the most representative trade uions and employers associations.

The report confirms that employees' and employers' organisations, are represented and take part in discussions in the social and economic councils on an equal footing and that consultation also takes place in the public sector. It further states that consultation within the economic and social councils is restricted to organisations deemed representative by law.

Conclusion

The Committee concludes that the situation in Serbia 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 Serbia.

According to the report amendments to the Labour Code seek to encourage collective bargaining by providing that employers are bound to regulate employment relations under a collective agreement and only otherwise (by Law) in exceptional cases where there is no trade union at the company level in place or no trade union meets the criteria for recognition or no agreement on association has been concluded under law, if none of the parties to the collective agreement initiates bargaining.

The Committee recalls that it had previously noted that collective bargaining coverage amounted to approximately 54%.

The Committee previously noted that legislation stipulated a maximum duration of 3 years for collective agreements covering the public administration. According to the report all collective agreements shall be concluded for a three-year term. Upon expiry of the term, a collective agreement becomes invalid unless the parties to the collective agreement agree otherwise 30 days before expiry of such collective agreement at the latest .

As regards representativeness the Committee refers to its conclusion under Article 5 of the Charter.

Conclusion

The Committee concludes that the situation in Serbia 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 Serbia.

The report provides updated information on arbitration and conciliation procedures. However the Committee seeks confirmation that arbitration is always voluntary, that both sides must agree to arbitration and agree to be bound by the decision of the arbitration body.

The Committee considers that if such information is not provided in the next report there will be nothing to demonstrate that the situation is in conformity with the Charter.

Conclusion

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

Collective action: definition and permitted objectives

There has been no change to the situation in this respect.

Entitlement to call a collective action

The Committee previously requested information on who was entitled to call a strike, it notes that the report under Article 5 and 6§2 of the Charter seems to suggest that the right to call for collective action is restricted to the most representative trade unions and employers associations. However the information provided under Article 6§4 is unclear in this respect. The Committee recalls again its case law on the issue: limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4 (Conclusions 2000 France).

The Committee considers that if the situation is not clarified in the next report there will be nothing to demonstrate that the situation is in conformity with the Charter.

Specific restrictions to the right to strike and procedural requirements

The Committee recalls that the Law on Strikes restricts strike action in a wide number of sectors, namely those of “public interest” or those in which a strike “could jeopardise the lives or health of the population or cause extensive damage”. In these sectors, strikes are allowed only under certain conditions stipulated by the law. According to the law, these sectors are: the electricity-generating industry; water management; transport, media (radio and television); postal services; public and municipal services; production of staple foodstuffs; healthcare and veterinary services; education; childcare; social security and social protection; essential activities for national defence and security; the performance of Serbia’s international obligations and activities; or activities of which the interruption may, bearing in mind the very nature of the activity, jeopardise people’s lives or health or cause extensive damage (for example, in the chemical, steel, ferrous or non-ferrous metallurgy industries). The report also states that employees in the sectors referred to above must give notice at least fifteen days before engaging in strike action and provide a “minimum service” (Conclusions 2014).

The Committee noted in this respect that the range of sectors where strike action was restricted was extensive and considered that as regards the sectors such as the postal services, education and childcare sectors there was no information enabling the Committee to conclude that these services, or the other “general interest” services referred to in the law, may be regarded as “essential services” in the strictest sense of the term. In accordance with Article G of the Charter, essential services are activities that are necessary in a democratic society in order to protect the rights and freedoms of others or to protect the public interest, national security, public health, or morals. The Committee requested further information on the reasons for restrictions in these sectors.

The Committee notes the report provides no new information in this regard, and therefore concludes that the situation is not in conformity with Article 6§4 on the grounds that the sectors in which the right to strike may be restricted is overly extensive and it has not been demonstrated that the restrictions satisfy the conditions laid down in Article G of the Charter.

The Committee previously found the situation in Serbia not to be in conformity with the Charter on the grounds that when establishing a minimum service to be provided during a strike workers (and or their organisations) are not involved on an equal footing with employers on the nature or degree of the minimum service to be provided. It had noted that employers had the power to unilaterally determine the minimum service required after only

consulting the trade union. The Committee notes that there been no change to this situation. Therefore it reiterates its previous conclusion of non-conformity.

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

Consequences of a strike

The report confirms that striking workers may not be dismissed.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 6§4 of the Charter on the grounds that:

- Restrictions on the right to strike in certain sectors are too extensive and go beyond the limits permitted by Article G;
- when establishing a minimum service to be provided during a strike workers (nor their organisations) are not involved on an equal footing with employers when deciding on the nature or degree of the minimum service to be provided;
- employers have the power to unilaterally determine the minimum service required during a strike.

Article 21 - Right of workers to be informed and consulted

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

Legal framework

The Committee notes that there have been no relevant changes in the legal framework during the reporting period.

Personal scope

In its previous conclusions (Conclusions 2014), the Committee reserved its position on this point and asked whether the Labour Law's provisions relating to the right of workers to be informed and consulted apply to all undertakings, both in the private and public sector. It also asked whether there are any thresholds, established by national legislation or practice, in order to exclude undertakings that employ less than a certain number of workers.

In reply, the report states that there are no restriction regarding the enforcement and application of the provisions. According to Article 13 of the Labour Code, every employee is directly or indirectly entitled to information on essential labour issues.

Material scope

In its previous conclusions (Conclusions 2014), the Committee reserved its position on this point and asked for detailed information on the matters which are subject to the right to be informed and on the decisions which are subject to the right of workers and/or their representatives to be consulted within the undertaking.

In reply, the report states that, according to Article 16 of the Labour Code, the employer shall inform the employee on working conditions, rules thereof and rights and obligations arising from labour regulations and safety and health at work regulations. The employer shall seek the opinion of the company-level trade union in the cases as provided for under law, and when there is no company-level trade union in place, the opinion shall be sought from a representative delegated by the employees. Also according to Articles 154 and 180 of the Labour Code workers' representatives must be informed in case of redundancy programmes and termination of employment.

Remedies

In its previous conclusions (Conclusions 2014), the Committee reserved its position on this point. According to the report, the penalties amount to between RSD 400,000 (€ 3384) to RSD 1,000,000 (€ 8459) for an employer with the capacity of a corporate person, to between RSD 100,000 (€ 846) to RSD 300,000 (€ 2538) for a sole proprietor and to between RSD 20,000 (€ 169) and RSD 40,000 (€ 338) for a responsible person of a corporate entity if calling to account the workers' representative who abides by law and collective bargaining agreement. The Committee asks for clarification that these fines apply in case when the employer did not respect the right of workers to be informed and consulted.

Furthermore the report contains no information concerning the administrative and/or judicial procedures available to employees or their representatives who consider that their right to information and consultation within the undertaking has not been respected.

Supervision

In its previous conclusions (Conclusions 2014) the Committee asked for information on the body that is responsible for monitoring compliance with the right of the worker to be informed and consulted within the undertaking. It notes that according to Article 268 of the Labour Code, labour inspection is in charge of supervision and control of compliance with the

Labour Code and other employment regulations, company policy and employment contracts setting out employees' rights, obligations and responsibilities.

Conclusion

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

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

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

The Committee recalls that it deferred its previous conclusions (Conclusions 2014) pending receipt of essential information on the determination and the improvement of the working conditions, work organisation and working environment within the undertaking, the organisation of social and socio-cultural services and facilities within the undertaking, and the supervision of the observance of regulations on these matters. It also stated that, if the requested information were not provided in the next report, there would be nothing to establish that the situation in Serbia was in conformity with Article 22 of the Charter.

Once again the report does not contain information on the above mentioned issues covered by Article 22. The Committee therefore concludes that the situation is not in conformity with the Charter on the grounds that employees are not granted an effective right to participate in the decision-making process within the undertaking with regard to working conditions, work organization and working environment and that the right of workers and/or their representatives to participate in the organization of social and socio-cultural services within an undertaking is not guaranteed.

The Committee asked for information on the existence of means to appeal where the right of workers to take part in the determination and improvement of working conditions and the working environment has been breached as well as on the penalties that can be imposed on employers if they have failed to respect this right. It also asked if workers or their representatives are entitled to compensation in case of violation of this right. The report does not provide any information on these points. The Committee therefore concludes that legal remedies are not available to workers in the event of infringement of their right to take part in the determination and improvement of working conditions and the working environment.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 22 of the Charter on the grounds that:

- the right to participate in the decision-making process within undertakings with regard to working conditions, work organization and working environment, is not effectively guaranteed;
- the right of workers and/or their representatives to participate in the organization of social and socio-cultural services within an undertaking is not guaranteed and
- legal remedies are not available to workers in the event of infringement of their right to take part in the determination and improvement of working conditions and the working environment.

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 Serbia.

Prevention

In its previous conclusion (Conclusions 2014), the Committee asked for information on preventive measures taken to raise awareness about the problem of sexual harassment in the workplace and 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 indicates that the Law Prohibiting Bullying in the Workplace of 2010 also covers sexual harassment and provides for the employer's obligation to take measures to prevent and minimise the incidence of harassment in the workplace, inter alia by training employees and their representatives to recognise the causes, forms, and consequences of harassment, with the aim of identifying and preventing such behaviour. The report does not provide specific information on measures adopted by the state during the reference period concerning awareness-raising, nor does it provide information on 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. The Committee, therefore, reiterates its previous question and asks the next report to provide information on awareness-raising measures regarding sexual harassment, in particular as regards public education programmes, campaigns, cooperation with NGO's and employers' organisations, provision of online sources of information on sexual harassment, etc., and on the extent to which employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace**.** 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 .

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 (Article 21), the Gender Equality Law (Articles 10 and 18), the Criminal Code (Article 181) and the Code of Conduct for Employers and Employees Regarding the Prevention of and Protection from Bullying in the Workplace (No. 62/10).

It noted that the law sets up procedures aimed at ensuring friendly settlement of disputes through mediation and, where mediation fails, procedures establishing the responsibility of the perpetrator of harassment. In addition, it noted that victims of harassment and whistle-blowers were protected against retaliation.

As regards the Committee's question concerning the employers' liability in case of harassment at work involving third persons, the report states that the law does not specifically establish liability of the employer where the perpetrator of sexual harassment is not an employee. However, under the Labour Code, the employer can be held liable for not providing appropriate protection for employees and persons seeking employment. In addition, the Anti Workplace Bullying Law applies not only to employees but also to persons employed under non-standard employment forms (casual and temporary employees, employees on service contact), to persons seeking additional work, trainees, apprentices, volunteers and more generally to persons involved to the work of the undertaking, thus providing protection to independent contractors and non-salaried workers. It does not, however,provide protection to visitors, customers and clients. The Committee asks whether any other legal instrument deals with harassment involving visitors, customers and clients in relation to work.

Burden of proof

In reply to the Committee's question concerning the burden of proof in harassment cases under civil law, the report confirms that in discrimination cases (Articles 18-21 of the Labour Code), where an employee or a person seeking employment claims compensation before the competent court and establishes that it is likely that discrimination took place, the burden of proof is borne by the defendant. The same applies under Anti Workplace Bullying Law, according to which the burden of proof is borne by the employer (Article 31). In addition, the Gender Equality Act (Article 49§2), provides a shift in the burden of proof when it is made probable by the claimant that an act of gender–based discrimination was committed.

Damages

In its previous conclusion (Conclusions 2014), the Committee noted that the victim of harassment could seek remedial actions, including compensation of material and moral damage, and asked the next report to provide information on any 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, pursuant to Article 191 of the Labour Code, where during the course of proceedings the court establishes that there are no legal grounds for the termination of employment, and the employee requests reinstatement, it will decide to reinstate the wronged employee. If the employee does not request to be reinstated, a compensation may be awarded, amounting up to 18 months wages, depending on several factors (period of employee's service in the undertaking, employee's age and number of dependant family members) (see also Conclusions 2016, Article 24).

The report does not provide information on rules and examples of case law regarding compensation in case of sexual harassment. The Committee, therefore, reiterates its question and points out that in the absence of information in the next report there will be nothing to establish that appropriate and effective redress (compensation and reinstatement) is available in cases of sexual harassment. It also asks the next report to provide information on additional legal grounds for compensation, if any, and in particular whether victims of sexual harassment are entitled to compensation, other than in relation to instances of unfair dismissal (Article 191 of the Labour Code), notably in respect of non pecuniary damage.

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 Serbia.

Prevention

The Committee previously noted that the Law Prohibiting Bullying in the Workplace of 2010 provides for the employer's obligation to take measures to prevent and minimise the incidence of harassment in the workplace, inter alia by training employees and their representatives to recognise the causes, forms, and consequences of harassment, with the aim of identifying and preventing such behaviour (see Conclusions 2014 for details). It also noted the adoption of a Code of Conduct for Employers and Employees Regarding the Prevention of and Protection from Bullying in the Workplace (No. 62/10). Under these instruments, the employer shall notify employees in writing of the rights, obligations and responsibilities of both the employee and the employer in relation with the ban on harassment and can request the trade union's opinion regarding the designation of a support person who informs, guide, supports and advises the complainant employee.

The Committee asks the next report to provide information on how the respect of the employer's obligation to take harassment prevention measures is monitored and what specific measures – if any – have been adopted by the state to raise awareness about harassment in the workplace (public education programmes, campaigns, cooperation with NGO's and employers' organisations, provision of online sources of information on harassment, etc.). It also reiterates its question as to what extent employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of harassment in the workplace, apart from the involvement of trade unions in the designation of support persons.

Liability of employers and remedies

The Committee refers to its previous conclusion (Conclusions 2014) as regards the definition of harassment and its prohibition under the Law Prohibiting Bullying in the Workplace. It noted that the law sets up procedures aimed at ensuring friendly settlement of disputes through mediation and, where mediation fails, procedures establishing the responsibility of the perpetrator of harassment. It also noted that procedures could be started pursuant to the Labour law (Articles 180 and 181) the Law on Civil Servants (Articles 112 to 114) and the Law on Employment with Public Administration Bodies (Articles 62 and 63) (see details in Conclusions 2014). In addition, it noted that victims of harassment and whistle-blowers were protected against retaliation.

As regards the Committee's question concerning the employers' liability in case of harassment at work involving third persons, the report states that the law does not specifically establish liability of the employer where the perpetrator of harassment is not an employee. However, under the Labour Code, the employer can be held liable for not providing appropriate protection for employees and persons seeking employment. In addition, the Anti Workplace Bullying Law applies not only to employees but also to persons employed under non-standard employment forms (casual and temporary employees, employees on service contact), to persons seeking additional work, trainees, apprentices, volunteers and more generally to persons involved to the work of the undertaking, thus providing protection to independent contractors and non-salaried workers. It does not, however,provide protection to visitors, customers and clients. The Committee asks whether any other legal instrument deals with harassment involving visitors, customers and clients in relation to work.

Burden of proof

In reply to the Committee's question concerning the burden of proof in harassment cases under civil law, the report confirms that in discrimination cases (Articles 18-21 of the Labour Code), where an employee or a person seeking employment claims compensation before the competent court and establishes that it is likely that discrimination took place, the burden of proof is borne by the defendant. The same applies under Anti Workplace Bullying Law, according to which the burden of proof is borne by the employer (Article 31).

Damages

In its previous conclusion (Conclusions 2014), the Committee noted that the victim of harassment could seek remedial actions, including compensation of material and moral damage, and asked the next report to provide information on any example of case law regarding moral (psychological) harassment, in particular regarding compensation. It also asked whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to moral (psychological) harassment is guaranteed.

In reply, the report states that, pursuant to Article 191 of the Labour Code, where during the course of proceedings the court establishes that there are no legal grounds for the termination of employment, and the employee requests reinstatement, it will decide to reinstate the wronged employee. If the employee does not request to be reinstated, a compensation may be awarded, amounting up to 18 months wages, depending on several factors (period of employee's service in the undertaking, employee's age and number of dependant family members) (see also Conclusions 2016, Article 24).

The report does not provide information on rules and examples of case law regarding compensation in case of moral (psychological) harassment. The Committee, therefore, reiterates its question and points out that in the absence of information in the next report there will be nothing to establish that appropriate and effective redress (compensation and reinstatement) is available in cases of moral (psychological) harassment. It also asks the next report to provide information on additional legal grounds for compensation, if any, and in particular whether victims of moral (psychological) harassment are entitled to compensation, other than in relation to instances of unfair dismissal (Article 191 of the Labour Code), notably in respect of non pecuniary damage.

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 Serbia.

Types of workers' representatives

Employees may be represented in Serbia by trade unions, representatives within the employer's managing or supervisory boards, or other elected or appointed representatives.

Protection granted to workers' representatives

The Committee has already noted (Conclusions 2014) that workers' representatives enjoy protection against dismissal, which extends for one year after expiry of their term of office.

The report further explains that, according to Article 13 of the Labour Code, workers' representatives may not be called into account or put into less favourable position, as far as the working conditions are concerned, due to their status or activity, if they comply with the law or a collective agreement.

In case of a dispute, workers' representatives may avail themselves of a judicial remedy. The burden of proof before a court that the termination of employment contract or placement in less favourable position has not resulted from the status or activity as the workers' representative, lies with the employer.

Facilities granted to workers' representatives

In its previous conclusions (Conclusions 2014), the Committee noted that the Labour Code obliged an employer to provide trade unions with necessary technical support, office space and paid time off to carry out their activities. It requested more detailed information in this respect. In reply, the report points out to various provisions of collective bargaining agreements, quoting an example of Branch Collective Bargaining Agreement for Health Care Institutions which specifies that the employer shall ensure to a trade union free of charge and through the institution's administrative and technical service all technical equipment necessary for administrative activities, adequately equipped office space, means for dissemination of and access to information, a car / paid costs of transport to and from meetings or seminars and collection of the membership fee.

The Committee would like to know whether the provisions on afforded facilities apply to all types of workers' representatives.

Implementation of the legal framework in practice

The Committee notes from the outside sources (NGO reports, such as Balkan Insight, ITUC, and scholar articles) tha concerns have been raised about a marginalisation of trade unions, accompanied by the tarnishing of their public confidence and deterioration of their relations with the government since the 2008 economic crisis. In the light of these warning signals, the Committee would like the next report to provide the Government's view on the matter, together with explaination on any measures planned or adopted to raise awareness about the trade unions' rights and their importance. Furthermore, it asks for information on how the supervision of the implementation of the legal framework in practice is conducted; what actions are taken in case of discerned irregularities and whether any reporting in this respect is carried out by governmental bodies.

Conclusion

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

In its previous conclusion (Conclusions 2014), 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 its previous conclusion, the Committee asked what sanctions existed when employers failed to notify employee representatives about planned redundancies. In reply, the report states that under Article 273 of the Labour Code, breaches of the employment legislation, and specifically failure to submit a collective redundancy plan, carry fines of RSD 800 000 to 2 000 000 (€ 6785 to 16 976) in the case of employing companies, RSD 300 000 to 500 000 (€ 2 545 to 4 241) in the case of individual employers, and RSD 50 000 to 150 000 (€ 423 to 1 472) in the case of other responsible persons and/or company officials.

It also asked about preventive measures to ensure that redundancies did not take effect before employers had met their obligation to inform and consult employee representatives.

In the absence of a reply, the Committee repeats its question.

Conclusion

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