



March 2019

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-3 (2018)

LUXEMBOURG

This text may be subject to editorial revision.

The following chapter concerns Luxembourg which ratified the 1961 Charter on 10 October 1991. The deadline for submitting the 21st report was 31 October 2017 and Luxembourg submitted it on 31 December 2018. The information on Article 6 was submitted too late for examination and the Committee will examine it together with Luxembourg's next report on this provision.

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" :

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

Luxembourg has accepted all provisions from the above-mentioned group except Articles 4§4, 6§4 and Articles 2 and 3 of the Additional Protocol.

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

The conclusions relating to Luxembourg concern 10 situations and are as follows:

- 5 conclusions of conformity: Articles 2§1, 2§2, 4§1, 4§5 and 5 ;
- 4 conclusions of non-conformity: Articles 2§3, 2§4, 4§2 and 4§3.

In respect of the situation related to Article 2§5, 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 Luxembourg under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 5

The Committee previously found the situation not to be in conformity with Article 5 of the 1961 Charter, on the ground that the national legislation does not enable trade unions to choose their candidates for joint works council elections freely, regardless of nationality, i.e. candidates for joint works councils had to be an EU national. According to the report, the Law of 23 July 2015 amended the situation and candidates no longer have to be EU nationals.

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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 of maternity (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 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 Luxembourg.

In its previous conclusion (Conclusions XX-3 (2014)), the Committee noted that the situation was in conformity with Article 2§1 and asked what rules applied to on-call service and whether inactive periods of on-call duty were considered to be rest periods or not. The report states that there was no change in the situation during the reference period.

In view of the above, the Committee understands that in Luxembourg on-call time refers to periods during which a workers are obliged to stay at work or in another place designated by the employer, ready to accomplish the tasks asked of them. According to the Court judgments presented in the report, on-call periods must be counted entirely as working hours, and this applies both to periods during which workers are called out and to rest periods pending a call, as long as they remain at work. The Committee asks whether inactive periods of on-call duty during which workers are not at the workplace are regarded as rest periods.

The Committee would point out that in its decision of 23 June 2010 on the merits of Complaint No. 55/2009, *Confédération générale du travail (CGT) v. France* (paragraphs 64 and 65), it found that equating on-call periods during which the employee had not been required to perform actual work to rest periods constituted a violation of Article 2§1 of the Charter. It held that where employees do not actually work during a period of time which they initially believed not to be at their disposal, this could not constitute an adequate criterion for regarding such a period as a rest period.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 2§1 of the 1961 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 Luxembourg.

It notes that the situation which it previously found to be in conformity with the Charter (Conclusions XX-3 (2014)) remained the same during the reference period, and therefore reiterates its finding of conformity.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 2§2 of the 1961 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 Luxembourg.

In its previous conclusion (Conclusions XX-3 (2014)), the Committee found that the situation was in conformity with Article 2§3. It considered that leave had to be granted and taken during the calendar year, and exceptionally, could be carried over until 31 March of the following year.

The Committee therefore asked whether workers could defer their entire period of leave until the following year or whether they were required in all cases to use a certain amount of their annual leave during the year in which it was due. In reply to this question, the report indicates that in theory, workers may defer their entire period of leave until the following year.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 2§3 of the 1961 Charter on the ground not all employees have the right to take at least two weeks of uninterrupted holiday during the year.

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 Luxembourg.

Elimination or reduction of risks

As regards the aspect of progressive elimination of the inherent risks in dangerous or unhealthy occupations, the Committee refers to its findings of conformity in the conclusion under Article 3§1 of the 1961 Charter (Conclusions XX-2(2013) and XXI-2(2017)) for a description of dangerous activities and the preventive measures taken in their respect. In the reference period, the relevant legal framework was further strengthened, in particular as regards specific risks of exposure of pregnant or breastfeeding women to risks related to chemical, carcinogenic or mutagenic substances at work, the minimum requirements regarding health and safety signs at work, and the control of major accidents involving dangerous substances. The Committee considers that the situation is in conformity with the 1961 Charter on this point.

Measures in response to residual risks

The Committee recalls that to assess comprehensively the situation under the 1961 Charter, it needs to know what compensatory measures are applied to workers exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced. Article 2§4 of the 1961 Charter is, namely, focused on measures taken in response to residual risks and explicitly requires the State Parties to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations.

The Committee has repeatedly found it non-established that workers exposed to occupational risks were entitled to appropriate compensation and concluded that the situation was not in conformity with Article 2§4 of the 1961 Charter on this point (Conclusions XIV-2 (1999), XVI-2 (2003), XVIII-2 (2007), XX-3 (2014), XXI-1 (2016)). Already back in 1995 (Conclusions XIII-3) the Committee drew attention to its established case-law, namely that while the aim pursued was to eliminate all hazards in the workplace, reduced working hours or increased annual leave as required by this provision of the Charter were, until that aim was achieved, crucial factors in reducing the number of accidents and cases of illness.

The report states that Luxembourg pursues its policy to prevent the risks and thus compensatory measures for residual risks are not foreseen. Solely miners are entitled to three additional days of holidays per year. In the light of the above, the Committee considers that Luxembourg did not fulfil the requirements of the 1961 Charter in this respect.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual occupational health risks, despite the existing risk elimination policy, are not entitled to appropriate compensatory measures.

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 Luxembourg.

In its previous conclusion (Conclusions 2014), the Committee positively assessed that all workers were entitled, during each seven-day period, to a minimum of 44 hours uninterrupted rest which should, insofar as possible, include Sundays. Employees whose duties do not allow for an uninterrupted 44-hour period of rest per week, as confirmed by the Labour and Mines Inspectorate, are entitled to six extra days of holiday per year. The Committee requested the next report to confirm the existence of guarantees ensuring that workers are entitled to a weekly rest period of at least 24 hours, that they may not waive this right, and that if a weekly rest period is deferred, it should not be deferred for more than twelve consecutive days.

The report fails to provide the requested information. The Committee thus reiterates its questions and meanwhile defers its conclusion.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

In the previous conclusion (Conclusions XX-3(2014)) the Committee found that the minimum wage could not be regarded as decent remuneration within the meaning of Article 4§1 of the 1961 Charter, as it fell below the minimum threshold set at 50% of the net average wage. The Committee asked whether all sectors, including a public sector, and branches employing seasonal workers were covered by the provisions on minimum wage and in which circumstances employers could request authorisation of the Minister of Labour to apply provisionally its reduced rate.

In reply, the report states that the minimum wage is of general application and the law does not retain any derogation, irrespectively from the sector or economic branch.

Following indexations during the reference period, the minimum wage amounted in 2016 to €1 922.96; that is 61% of the net average wage, which, according to Eurostat data, stood at €3,149 in this period. In addition, employees who receive the minimum wage are entitled to a number of benefits:

- cost-of-living allowance (AVC), which amounts to €110.00 per month for a single person-household and up to €220 for a multi-person household. Most municipalities in the Grand-Ducal double this amount;
- If their earnings do not offer a decent standard of living, the minimum wage earners are also entitled to the guaranteed minimum income (RMG) set at €2 628.96. While households made up of one person without a dependent receiving the minimum wage are not entitled to RMG, those made up of two persons receiving the minimum wage are entitled to a monthly amount of €775.17;
- As of 2016, a rent benefit between €124 and 273€ is afforded to tenants on a private market, who do not obtain subsidised or social housing;
- Where appropriate, family allowances for any dependent children (€265 per month) may complement these cash benefits, together with a yearly school allowance;
- Tax credits of €25.00 per month and per person plus a bonus for each child (€77 per month) are allocated or paid in cash if the household is not taxable. Minimum wage earners are not subjected to taxes.
- Low rent housing, free public transport, free or subsidised child care and service vouchers are available benefits in kind.

The Committee considers that the minimum wage afforded workers a decent standard of living. It asks the next report to provide a comprehensive update of the situation, together with detailed calculations of available income including applicable benefits for minimum wage earners.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 4§1 of the 1961 Charter.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

The Committee deferred its conclusion at its previous examination (Conclusions XX-3 (2014)), requesting information essential for the evaluation of the compliance of the legal system and practice in Luxembourg with the requirements of Article 4§2 of the 1961 Charter.

The Committee notes that the report does not reply to the questions raised, concerning principles adhered to in relation to overtime remuneration for teachers and police officers, both when it takes a form of an additional pay as well as when it is granted as compensatory time off. Furthermore, the report fails to explain whether the legislation provides for exceptions to an increased rate of remuneration for overtime work in certain specific cases.

The Committee thus maintains its questions. In the meantime, in the reiterated absence of information on these issues, the Committee finds that it has not been established that the right to an increased remuneration for overtime work is sufficiently secured.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 4§2 of the 1961 Charter on the ground that it has not been established that the right to increased remuneration for overtime work is sufficiently guaranteed.

Article 4 - Right to a fair remuneration

Paragraph 3 - Non-discrimination between and women men with respect to remuneration

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

Legal basis of equal pay

The Committee recalls that under Article 4§3 the right of women and men to equal pay for work of equal value must be expressly provided for in legislation (Conclusions XV-2 (2001), Slovak Republic). The Government submits that Article 225-1 of the Labour Code establish equality of wages between women and men and Article 241-1 refer to the equality of treatment between women and men. The Committee had asked how the notions of indirect discrimination had been interpreted by the courts (Conclusions XX-1) and reiterated its request for information regarding case-law on discrimination in employment (Conclusions XXI-1(2016)). There is no information on this point and the Committee requests to be informed about the case-law on sex discrimination and equal pay in the next report, including the notion of indirect discrimination.

Guarantees of enforcement and judicial safeguards

The Committee recalls that under Article 4§3 of the Charter domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court. Domestic law should provide for a shift of the burden of proof in favour of the plaintiff in discrimination cases. Anyone who suffers wage discrimination on grounds of gender must be entitled to adequate compensation, which is compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. In cases of unequal pay, the victim must be entitled to the compensation for pecuniary and non-pecuniary damage.

In its previous conclusion (Conclusions XX-3 (2014)), the Committee asked whether the legislation complies with these standards and an overview. The Committee reiterates this question and requests to provide information on the case-law on compensation cases for discrimination and considers that it is not demonstrated whether the principle of equal pay is protected in practice, including on the existence of case-law in compensation and on sex discrimination.

Methods of comparison

The Committee also requested whether in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned. The Government submitted that it has created a new software, called LOGIB-LUX which allows those companies of over 50 employees willing to use it to identify the reasons for possible wage gap. The Committee reiterates its former question and also requests to provide information on job comparisons systems and the practice to correct possible differences in wages. In the light of the lack of information on the questions previously submitted and in the present report, the Committee considers that it is not demonstrated the collection of data.

Statistics

In its previous conclusion (Conclusions XX-3 (2014)), the Committee asked for statistical data concerning the pay gap of men and women in all sectors of activity (unadjusted gap) as well as for work of equal value. There is none produced in the report presented. According to Eurostat, the gender pay gap in Luxembourg was 8.6% in 2012. In 2016, the gender pay gap is 5.5%, which shows a positive trend.

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 adjusted gender pay gap in all occupations.

Policy and other measures

The report does not provide answers to the questions previously asked by the Committee on measures taken to promote and ensure gender equality. Therefore, the Committee reiterates this question and 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 all entities.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 4§3 of the 1961 Charter on the ground that it has not been established that the principle of equal pay is ensured in practice.

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 Luxembourg.

In Conclusions 2014, the Committee concluded that the situation in Luxembourg was not in conformity with Article 4§5 of the 1961 Charter on the ground that after authorised deductions, the wages of workers with the lowest pay did not enable them to provide for themselves or their dependants.

The report states that as of 1 December 2016, the rates of attachability of monthly remuneration for work, pensions and annuities were reset in the system of tranches, from unattachable for wages below €722 to attachable in full for earners of €2 297 and over. To determine the available portions, the law allows tax and social contributions to be deducted.

Employers must bear any risks connected with the company's activities while workers are responsible for damage resulting from wilful conduct or gross negligence. The Labour Law therefore concerns the general liability of workers towards their employer for any damage caused to the latter's company while performing their employment contract. It establishes a system that derogates from ordinary law. Employees can only be held liable for pecuniary damages in the cases exhaustively set out in Article L.121-9 of the Labour Law.

Regarding the manner in which employers' compensatory claims are established, it is up to them to prove the existence of damage caused to them intentionally, and the amount thereof. Where employees challenge this claim, the labour court will examine the employer's application and fix the amount of compensation, if any, on the basis of the report by the court-appointed expert.

The Committee considers that in the present case, the limitation of deductions on the grounds indicated is in conformity with Article 4§5 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 4§5 of the Charter.

Article 5 - Right to organise

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

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

Trade union activities

The Law of 23 July 2015 on the reform of social dialogue within enterprises makes provision for increased protection of worker representatives, notably strengthening their protection from dismissal.

Personal scope

The Committee previously found the situation not to be in conformity with Article 5 of the 1961 Charter, on the ground that the national legislation does not enable trade unions to choose their candidates for joint works council elections freely, regardless of nationality. i.e. candidates for joint works councils had to be an EU national. According to the report, the Law of 23 July 2015 amended the situation and candidates no longer have to be EU nationals.

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

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 5 of the 1961 Charter.