



March 2019

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-3 (2018)

THE NETHERLANDS IN RESPECT OF ARUBA

This text may be subject to editorial revision.

The following chapter concerns the Netherlands in respect of Aruba which ratified the 1961 Charter on 23 January 2004. The deadline for submitting the 11th report was 31 October 2017 and the Netherlands in respect of Aruba submitted it on 5 March 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" :

- 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).

The Netherlands in respect of Aruba has accepted all provisions from the above-mentioned group except Articles 2, 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 the Netherlands in respect of Aruba concern 5 situations and are as follows :

- 3 conclusions of conformity : Articles 5, 6§1 and 6§3 ;
- 0 conclusions of non-conformity.

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

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

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection 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 5 - Right to organise

The Committee takes note of the information contained in the report submitted by the Netherlands in respect of Aruba.

The Committee examined the situation with respect to the right to organise (forming trade unions and employers' organisations, trade union activities, representativeness, and personal scope) in its previous conclusion (Conclusions XX-3 (2014)) and found that the situation was in conformity with Article 5 of the 1961 Charter. It will therefore only consider recent developments and additional information in this conclusion.

According to the report since its last report in 2010 there have not been any changes as it regards the rights of workers and employers to organise. Workers continue to enjoy the same rights as in previous years.

Freedom to join or not to join a trade union

The Committee noted previously that the tripartite committee for the modernisation of labour legislation (CMLL) recommended that the relevant legislation should be amended to include an express ban on employers dismissing employees because they belong to a trade union or take part in trade union activities (Conclusions XX-3, 2014). It asked information on progress in the legal situation in response to that recommendation.

According to the report the Civil Code was amended in 2013 and includes two new provisions article 1614za, which prohibits the employer from any action that may restrict a worker from exercising his right to join a union to retain or advance his rights, and article 1615h§3, explicitly prohibiting the termination of the contract of employment due to a worker's membership in a trade union. However the Committee understands that the amendments have not yet entered into force. Therefore it requests to be kept informed of all developments in this respect.

Personal scope

The Committee requests updated information in the next report on the right of the **police** to organise.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

The Committee takes note of the information contained in the report submitted by the Netherlands in respect of Aruba.

In its previous conclusions (Conclusions XVIII-1, 2006), the Committee found the situation in conformity with the 1961 Charter but asked for information on joint consultation between employers and employees or the organizations representing them at sectoral and enterprise level on matters of mutual interest such as, *inter alia*, productivity, efficiency, industrial health, safety and welfare, working conditions, economic problems and social matters.

According to the report while there are no formal consultations on specific topics, there are various committees that attend to broad topics. Tripartite and bipartite joint consultation occurs at the sectoral and enterprise level and within the Social Economic Council.

As regards consultation on health and safety, welfare and working conditions the report states that new legislation is currently being prepared and once drafted the social partners will be consulted.

Conclusion

The Committee concludes that the situation in the Netherlands in respect of Aruba is in conformity with Article 6§1 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by the Netherlands in respect of Aruba.

The Committee previously considered to be in conformity with Article 6§2 of the Charter (Conclusions 2006).

The Committee asked the next report to provide updated information on collective bargaining at the enterprise level as well the number of collective agreements concluded and as information on the percentage of workers covered by them.

According to the report between 2013 and 2016 there were 36 Collective Working Agreements (CWA), covering 3566 workers. The Committee considers this figure to be low. It therefore requests the next report to provide further information on the total number of collective agreements at every level and most importantly the proportion of workers covered by a collective agreement. Meanwhile it defers its conclusion.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

The Committee takes note of the information contained in the report submitted by the Netherlands in respect of Aruba.

The previously considered to be in conformity with Article 6§3 of the Charter (Conclusions XX-3 (2014)). It asked that the next report contain a full and up-to-date description of the situation.

The report states that since its last report in 2010 there has been no change to the situation whatsoever. Nevertheless the Committee requests the next report to provide an updated description of the situation.

Conclusion

The Committee concludes that the situation in the Netherlands in respect of Aruba is in conformity with Article 6§3 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

The Committee takes note of the information contained in the report submitted by the Netherlands in respect of Aruba.

Collective action: definition and permitted objectives

The Committee requests updated information to be provided on the definition of collective action and the circumstances under which it is lawful.

Entitlement to call a collective action

The Committee asks who is entitled to call a strike.

Specific restrictions to the right to strike and procedural requirements

The Committee noted previously (Conclusions XX-3 (2014)) that under Section 3b (2) of the State Ordinance Labour Disputes (1989, GT 65), in the event a strike occurs or is threatened in enterprises as specified in a particular State Decree, the Government may prohibit such a strike for a period as stipulated in the decree but not exceeding ninety days.

The Committee asks for further information on this procedure and asks whether and in what sectors it has been used, it also asks more generally under what circumstances a strike maybe restricted, and whether a minimum service may be imposed in certain sectors.

The Committee observed in its previous Conclusions (Conclusions XX-3 (2014)) that decisions of the Netherlands Supreme Court are applicable to the entire kingdom. The Committee asked in this context for clarification whether the principle that a judge may decide on whether collective action is premature applied in Aruba. The report states that a judge can indeed decide that the collective action is premature and decide on the lawfulness of the collective action. The Committee refers to its conclusion under Article 6.4 in respect of the Netherlands Kingdom of Europe.

It also refers to its general question on the right of the police to strike.

Consequences of a strike

The Committee asks for updated information on the consequences of a strike on those taking part in it.

Conclusion

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