



March 2019

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-3 (2018)

THE NETHERLANDS IN RESPECT OF CURAÇAO

This text may be subject to editorial revision.

The following chapter concerns the Netherlands in respect of Curaçao which ratified the 1961 Charter on 23 January 2004. The deadline for submitting the 6th report was 31 October 2017 and the Netherlands in respect of Curacao submitted it on 27 November 2017.

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

- 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 Curaçao 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 Curaçao concern 5 situations and are as follows:

- 1 conclusions of conformity: Article 6§1;
- 2 conclusions of non-conformity: Articles 6§2 and 6§4.

In respect of the other 2 situations related to Articles 5 and 6§3, 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 Curaçao 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 Curaçao.

The Committee previously asked (Conclusions XX-3 (2014)) that the next report provide a full and up-to-date description of the situation in law and in practice with regard to the right to organise in Curaçao.

The report fails to provide any information, therefore the Committee reiterates its request for information on the formation of trade unions, the right to join or not to join them, representativity criteria, autonomy and prerogatives of trade unions, as well as personal scope. If the next report does not provide the requisite information there will be nothing to demonstrate that the situation is in conformity with the Charter.

Conclusion

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

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 Curaçao.

According to the report in 2014 the social partners signed a protocol providing for a framework for a tripartite platform for social dialogue. 7 topics were identified for discussion in 2014, including labour law reform, and health and safety at work. In 2016 two committees were constituted by the platform one on Government owned enterprises and the other on labour law.

The social partners have also been involved in drafting the National Development Plan.

The platform has also played a role in conciliating and mediating to bring about the end to a strike.

The Committee notes that the report also refers to the Social and Economic Council, the Committee asks whether this body is still in existence and if so its current role.

Conclusion

The Committee concludes that the situation in the Netherlands in respect of Curaçao 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 Curaçao.

In its previous conclusion, the Committee deferred its conclusion pending information on the number of employees covered by collective agreements (Conclusions XX-3 (2014)).

The report provides little information in this respect, it simply states that 46 new or renewed collective agreements were registered with the Labour Mediation Bureau. Therefore the Committee concludes that the situation is not in conformity with the 1961 Charter on the grounds that it has not been established that collective bargaining is sufficiently promoted.

Conclusion

The Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 6§2 of the 1961 Charter on the ground that it has not been established that the promotion of collective bargaining is sufficient.

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 Curaçao.

The Committee previously asked if the Labour Mediation Bureau deals with the resolution of collective labour conflicts and not only with individual labour disputes. It asked if mediation and/or arbitration procedures are instituted in Curaçao for solving collective labour disputes and a description of such procedures. Pending receipt of the information requested, the Committee reserved its position on this point (Conclusions XX-3 (2014)).

According to the report the Labour Mediation Bureau intervened in 17 labour disputes, the Committee infers from the information available that the Bureau deals with the resolution of collective labour conflicts but repeats its request for information on the procedures for conciliation and mediation.

The Committee defers its conclusion once more, but highlights that if the requisite information is not provided in the next report there will be nothing to show that the situation is in conformity with the Charter.

Conclusion

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

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 Curaçao.

The Committee previously requested information on the situation on the right to strike in Curaçao. The Committee pointed out that if the next report fails to provide all the necessary information there will be nothing to show that the situation in Curaçao is in conformity with the 1961 Charter (Conclusions XX-3 (2014)).

The report provides little information on the right to strike, except in respect of public servants, therefore the Committee seeks updated and complete information on the definition of collective action and the circumstances under which it is lawful, entitlement to call collective action, specific restrictions on the right to strike procedural requirements and the consequences of a strike. Meanwhile the Committee concludes that the situation is not in conformity with the 1961 Charter on the grounds that it has not been established that the right to strike is not sufficiently guaranteed.

Specific restrictions to the right to strike and procedural requirements

According to the report all restrictions on the right of public servants to strike were repealed in 2017.

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

Conclusion

The Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 6§4 of the 1961 Charter on the ground that it has not been established that the right to strike is not sufficiently guaranteed.