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EUROPEAN SOCIAL CHARTER

11th National Report on the implementation
of the European Social Charter

submitted by

THE GOVERNMENT OF MONTENEGRO

Articles 2, 4, 5, 6, 26, 28 and 29

for the period 01/01/2017 – 31/12/2020

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Montenegro

Ministry of Labor and Social Welfare

Address: Rimski trg 46
81000 Podgorica Crna Gora

11th NATIONAL REPORT ON THE IMPLEMENTATION OF THE AMENDED EUROPEAN SOCIAL CHARTER FOR 2021

Conclusions 2018

MONTENEGRO

May, 2022.

RESC Part I – 2. All workers have the right to just conditions of work.

Amended European Social Charter
Article 2 – The right to just conditions of work
With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:
1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

a) Please provide updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods, …) and exceptions (including legal basis and justification). Please provide detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).

Answer:

In accordance with the Labor Law ("Official Gazette of Montenegro", No. 74/19, 8/21, 59/21, 68/21, 145/21) the employee has the right to: rest during work, rest during the day, weekly rest and annual vacation.

Rest during work (break) is realized within the daily working hours. The length of the daily rest depends on the working hours of the employee. Full-time employees are entitled to a 30-minute break. Employees who work longer than four and less than six hours are entitled to a break of 15 minutes. In this case, the exception is minors who have the right to a break of 30 minutes. In accordance with the principle of proportionality, employees who work longer than full time, ie at least 10 hours a day, have the right to rest during work for 45 minutes. The right to rest during work is included in full-time work (Article 73).

Holidays during the working day are organized in a way that ensures that work is not interrupted, if the nature of the work does not allow for interruption of work, as well as if you work with clients. The decision on the schedule and manner of using the leave during the working day is made by the competent body of the employer (Article 74).

Rest during the day, ie daily rest is used between two consecutive working days and amounts to at least 12 hours continuously.

The Labor Law stipulates that an employee is entitled to a weekly rest period of at least 24 hours, to which a daily rest period of at least 12 hours is added, and it is used continuously. The novelty of this law, which entered into force at the beginning of 2020, is that it is specified in paragraph 1 of Article 76, that a weekly vacation is added between two working days, lasting 12 hours, so that the total vacation time that the employer is obliged to provided to the employee on behalf of the weekly rest, continuously, amounts to 36 hours.

Weekly rest is used on Sundays and on the day before or following Sunday.

If the nature of work and the organization of work so require, the employer is obliged to determine other days for the use of weekly leave and in that case is obliged to determine the schedule of use of weekly leave and to inform the employee. (Article 76)

However, Article 78 provides for certain derogations from the rules relating to daily and weekly rest in the following cases:

1) in activities related to the protection of property and persons, if the performance of activities requires a permanent presence;

2) in activities in which it is necessary to ensure uninterrupted production or provision of services, as follows:

- production, transmission, distribution and supply of electricity;

- employees in ports and airports;

- postal and telecommunication traffic;

- public electronic communications, in accordance with the law;

- information programs of the public broadcasting service;

- public utility services / activities (production and supply of water, garbage collection, production, distribution and supply of heat, funeral services, etc.);

- production, distribution and supply of oil, coal and gas;

- fire protection;

- health protection;

- social and child protection;

- industrial activities in which work cannot be interrupted for technical reasons;

- institutions for the execution of criminal sanctions.

3) for employees in railway traffic:

- if they perform work intermittently;

- who spend working time on the train;

- whose working hours are related to the timetable and who take care that the traffic takes place continuously and regularly.

4) when an employee working in shifts changes shifts and cannot use the daily and / or weekly rest between the end of one and the beginning of the other shift.

In the case when the exercise of the right to daily and weekly rest is regulated differently, the daily rest of the employee in uninterrupted duration cannot be shorter than ten hours a day, and the weekly rest in uninterrupted duration cannot be shorter than 20 hours.

The employer is obliged to enable the employee to take alternative daily and weekly rest, after the expiration of the period of work in which he used a shorter daily or weekly rest.

In addition, the Labor Law contains a provision relating to adequate leave for mobile employees. Namely, in accordance with the provision of Article 2 of the Law, a mobile employee is an employee who is a member of staff traveling or flying, employed within a company that provides passenger or freight services, road or rail or air or inland waterways, in accordance with the law. Furthermore, the Labor Law provides a guiding norm regarding the regulation of the right to rest of mobile employees, setting out guidelines for regulation. Mobile employees are entitled to regular periods of rest, expressed in units of time and which are long and continuous enough so that employees do not injure themselves, their associates and others due to fatigue and improper work schedule and do not harm in the short and long term. their health, in accordance with a special regulation. Special regulations in this regard are: Law on working hours and breaks during working hours of mobile workers and recording devices in road traffic ("Official Gazette of Montenegro" No. 75/2010, 40/2011 and 17/2019), Law on Safety Maritime Shipping ("Official Gazette of Montenegro" No. 62/2013, 6/2014, 47/2015, 71/2017 and 34/19), Law on Safety, Organization and Efficiency of Railway Traffic "Official Gazette of Montenegro" No. 1/201 and 6/2014) and the Law on Air Traffic ("Official Gazette of Montenegro" No. 30/2012 and 30/2017).

Furthermore, the Law on Internal Trade ("Official Gazette of Montenegro", No. 49/08, 40/11 and 38/19), Article 35, stipulates that working hours and the schedule of daily and weekly working hours and working hours on public days holidays of shops and other points of sale, as well as working hours for markets, fairs, exhibitions and other occasional ways of conducting trade are prescribed by the competent body of local self-government. The provision of Article 35a stipulates that wholesale and retail trade may not be performed on Sundays and on public and other holidays determined by the law governing state and other holidays.

Exceptionally, on Sundays and on public and other holidays, wholesale and retail trade may be carried out in:

1) pharmacies;

2) specialized shops or kiosks for the sale of bread, bakery products and cakes, flowers, souvenirs, printing, plant protection products or funeral equipment;

3) petrol stations and retail shops within petrol stations;

4) markets;

5) stands - counters, display cases and vending machines outside markets and mobile shops;

6) shops, kiosks and vending machines located within the closed areas of bus and railway stations, airports and ports;

7) stands and kiosks where goods are sold during events, festivals and manifestations, fairs and during the public screening of cinematographic works;

8) warehouses for wholesale trade.

In addition, the Decree on the organization and manner of work of the state administration ("Official Gazette of Montenegro", No. 118/20, 121/20, 1/21, 2/21, 39/21, 34/21 and 41/21), Article 54, it is prescribed that the working days in the state administration bodies are: Monday, Tuesday, Wednesday, Thursday and Friday.

As part of its regular activities, but also on the basis of reports-initiatives of employees, citizens and other organizations and institutions, the Labor Inspectorate controls the provision of weekly leave to employees, in accordance with the provisions of Art. 76, 77 and 78 of the Labor Law.
Insight into the information system Labor Inspection provides data:
- In 2019, 532 inspections were carried out, 212 indications were issued to eliminate irregularities and 505 misdemeanor orders were issued for the collection of fines in the total amount of € 114,700.
- In 2020, 163 inspections were carried out, 16 indications were issued to eliminate irregularities and 6 misdemeanor orders were issued for the collection of fines in the total amount of € 3,300.
We do not have data on the number of inspections by activities related to weekly rest.
It should be noted that the focus of supervision was to enable employees to use weekly rest (usually on Sundays, but also on other days in the following week) by making an adequate decision of the employer on the schedule of weekly rest, which was often not respected, so labor inspectors issued instructions to eliminate irregularities and imposed sanctions. Respect for this right of employees was also contributed by the initiatives of employees (mostly anonymous) that they were denied the right to a weekly vacation, so labor inspectors targeted inspections at certain subjects of supervision. In 2019, 1,573 initiatives were submitted to the Labor Inspectorate (1,520 in the field of labor relations and 53 in the field of occupational health and safety), of which about 20% referred to weekly rest, and in 2020 1,569 initiatives were submitted in the field of labor protection. labor relations and 73 in the field of protection and health at work), of which about 10% referred to weekly rest, which is one of the indicators of improving the situation regarding the use of this right of employees, as well as the number of fines imposed in the respective years. We note that initiatives are often complex, because the same initiative indicates several irregularities in the same entity, so it is difficult to classify and statistically monitor them by labor law institutes, ie the rights of employees from work and on the basis of work.
In addition, it is certainly important to mention that a special law, ie Article 35a of the Law on Internal Trade stipulates that wholesale and retail trade is not performed on Sundays and public holidays (with certain exceptions), which has greatly contributed to really enable the employees in this activity to use the weekly vacation for all employees at the same time. Therefore, there is no doubt whether this right is used by employees, which made it easier for the Labor Inspectorate, because many entities and a huge number of employees in trade are excluded from controls on this basis.

b) **The Committee would welcome specific information on proactive action taken by the authorities (whether national, regional, local and sectoral, including national human rights institutions and equality bodies, as well as labour inspectorate activity, and on the outcomes of cases brought before the courts) to ensure the respect of reasonable working hours; please provide information on findings (e.g. results of labour inspection activities or determination of complaints by domestic tribunals and courts) and remedial action taken in respect of specific sectors of activity, such as the health sector, the catering industry, the hospitality industry, agriculture, domestic and care work.**

Answer:

Companies and entrepreneurs were obliged to comply with the Order of the Government of Montenegro and the Decisions of the then competent National Coordination Body for the Suppression of the New Virus COVID 19. Also, the Institute of Public Health and relevant Ministries without exception took appropriate measures advice as well as instructions on the conduct of the population, employees or persons who have performed activities in the field of health, public order and peace, defense, or public institutions, as well as performing activities of public interest in maintaining hygiene. Companies from several sectors were banned from working and were unable to organize and carry out their activities by the Order for Taking Interim Measures to Prevent the Introduction into the Country, Suppression and Prevention of Transmission of the New Crown Virus. Employers have made decisions on the introduction of a measure banning the performance of activities by order of a state body. The said order, when possible due to the nature of the work, called on employers to allow employees to perform work from home if such performance of work was feasible in relation to the manner of performing the employer's activities. According to the positive legal regulations, the rights of the employee were protected by the obligation to pay the salary compensation under the general collective agreement in the amount of 70% of the salary. During the pandemic, employees were guaranteed the right to respect for working hours, ie the total weekly fund of working hours of 40 hours. Other cases in which the fund of working hours increased are cases that are as such prescribed by the state through the application of the Labor Law - work longer than full time.

Before the Agency for peaceful resolution of labor disputes, in the period from 01.01.2017. until 31.12.2020, 941 Proposals were submitted for initiating the procedure of peaceful resolution of labor disputes related to Article 2 The right to fair working conditions - respect for reasonable working hours, with the subject of the dispute - overtime work.

Based on the data collected from the courts, it can be concluded that before some basic courts, in the period from 2017-2020, there were cases related to the application of Art. 2 of the Charter - the right to fair working conditions (reasonable working hours), mainly for the calculation of overtime hours, most often lawsuits filed by officials of the Government of Montenegro and the Ministry of Interior.

c) Please provide information on law and practice as regards on-call time and service (including as regards zero-hours contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration.

Answer:

The concept of working time is precisely defined in Article 60 of the Labor Law. For the purposes of paragraph 1 of this Article, working time is considered to be the time period in which the employee performs the duties and tasks of the job for which he established employment, as well as the time in which the employee is available to the employer, whether at his workplace or another place determined by the employer (on duty). This means that in that period of time the employee is at the disposal of the employer, ie that he is obliged to respect his instructions and perform work tasks while being at his workplace or in another place determined by the employer.

Also, it is prescribed that working time is not considered time in which the employee is ready to respond to the employer's call to perform work if such a need arises, and is not in the place where his work is performed, or in another place that is determined by the employer (standby). The time spent by the employee during standby time in the performance of work at the invitation of the employer is considered working time, including the time he needs to travel from place of residence to place of work.

The duration of readiness and the amount of salary increase on that basis is determined by the collective agreement.

Thus, the Branch Collective Agreement for Health (Official Gazette of Montenegro, No. 30/16, 09/20, 142/21) in Article 19 prescribes the obligation of the employer to increase the employee's salary by 10% for each hour of standby at home.

With special attention to the application of the Law on Protection of the Population from Infectious Diseases, intensified inspections were carried out by the competent state authorities, with the maximum goal and in order to suppress any inaction or endanger the public interest during the pandemic. Pursuant to valid orders and decisions (in one period) the work of all companies was prohibited except those engaged in trade (retail), the work of retail outlets and pharmacies, was under a special regime: a certain number of persons who can be in the facility at the same time , provided means for hand disinfection, inability to enter without protective masks, etc. Educational institutions did not perform activities, ie distance learning activities were organized for primary and secondary schools, so that a lecture was given via a television channel - presentation of the curriculum and program. Persons who worked in the field of health care, ie activities of public interest in accordance with the provisions of the Labor Law, had work longer than full time. The duration of such work and fair remuneration for such work are organized in accordance with applicable regulations.

d) Please provide information on the impact of the COVID-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. As regards more specifically

working time during the pandemic, please provide information on the enjoyment of the right to reasonable working time in the following sectors: health care and social work (nurses, doctors and other health workers, workers in residential care facilities and social workers, as well as support workers, such as laundry and cleaning staff); law enforcement, defence and other essential public services; education; transport (including long-haul, public transport and delivery services.

Answer:

During the pandemic of the new COVID 19 virus, it was possible to use certain types of work, such as working from home or part-time work. This way of organizing work could not have resulted in the employee in such a regime having a reduced salary in proportion to the time not spent at work, but he received the salary as if he worked a full fund of working hours, and part of that salary was refunded by the state. Paid leave of one of the parents who have children under the age of 11 was a full support to the family with children of that age because in that period preschool and school institutions did not work, and thus one of the parents could use that right without the obligations of the Labor Law did not apply to him, except in the case when such a person was employed in the health and social protection system, public administration or in a legal entity that performs activities or services of public interest. The prescribed financial support package, which reimburses part of the salaries of employees in economic and other entities, represented a significant part of the assistance due to non-performance or partial performance of activities in the conditions of a pandemic.

In order to ensure quality social protection of the citizens of Montenegro, 13 centers for social work have been organized, which together with regional units operate in all municipalities in Montenegro. The organization of working hours during the COVID 19 pandemic in 2021 in the centers for social work was realized within the regular working hours from 07:00 to 15:00, and in case of need and after regular working hours. A large number of employees were positive for COVID 19 and self-isolation measures were implemented against them, which posed a challenge in terms of work process organization and additional burden on other workers who took on the responsibilities of absent workers. Additional efforts were made and the good organization of work did not show any consequences in performing work duties.
Users were informed through electronic media, local radio and TV stations and bulletin boards about the need to reduce physical contact in order to prevent infection, which initially resulted in fewer visits to centers, but later returned to normal through masks, distance and disinfection measures.
The scope of field work has been reduced, especially in relation to elderly users and persons with disabilities, in order to prevent the possibility of infection. Communication with users by phone, e-mail and contact with relatives has increased.

Also, in Montenegro, 9 institutions have been organized to accommodate beneficiaries: Public Institution Home for the Elderly "Grabovac" in Risan, Public Institution Home for the Elderly "Bijelo Polje", Public Institution Home for the Elderly "Pljevlja", Public Institution Home for the Elderly

"Podgorica" (founded), PI Home for the Elderly "Nikšić" (founded) PI Institute "Komanski most" in Podgorica (for people with mental disabilities), PI Children's Home "Mladost" in Bijela (accommodation of children without parental care and children whose development is hampered by family circumstances), PI "Lovcen - Becici" in Cetinje (rest and recreation of children) and PI Center "Ljubovic" Podgorica (children with behavioral disorders).
Work in these institutions is organized 24 hours a day. During 2021, COVID 19 significantly influenced the organization of work, due to the large number of employees who had an infection and therefore were absent from work due to which changes were made in the organization of work. A number of employees did their jobs from home (who were allowed to do so). For these reasons, when it comes to homes for the elderly, some received assistance from employees of two homes (Nikšić and Podgorica) that are being established. The lack of employees in the technical service has been compensated by hiring through agencies. Duty and overtime work were organized.
A number of elderly people accommodated in old people's homes were infected. The institutions fully complied with the instructions of the Institute of Public Health on the application of all epidemiological measures regarding visits to users, protection of employees and users.

Health care institutions organize their work and determine the schedule of working hours in accordance with the act of the Ministry of Health. The health institution provides health care for at least 40 hours a week. The health care institution is obliged to, within the prescribed working hours, continuously provide health care, working in one, two or more shifts, double working hours, on duty or standby.
Duty is a special form of work when the employee must be present in the health institution, and it is introduced and organized in accordance with labor regulations.
Preparedness is a special form of work when the employee does not have to be present in the health institution but must be available to provide urgent medical assistance upon request.
The maximum duration of weekly working time, including overtime, may not exceed an average of 48 hours, over a period of four consecutive months.
Exceptionally, if the needs of the work process require it, the total duration of working hours during the week may be more than an average of 48 hours, not more than 50 hours, or not more than 55 hours in the Clinical Center of Montenegro, the Institute of Emergency Medicine and special hospitals, if there is the consent of the employee, which must be given in writing.
An employee who refuses to submit written consent cannot therefore suffer harmful consequences.
The health institution is obliged to keep records of employees who have given a written record and to submit them to the labor inspector.

Furthermore, Article 83 of the Law on Health Care ("Official Gazette of Montenegro, No. 3/16, 39/16, 2/17, 44/18, 24/19, 24/19 82/20 and 8/21) prescribes that in cases of extraordinary circumstances, natural disasters and large-scale epidemics, the Ministry may take measures and activities related to the schedule and organization of work and working hours, as well as changing the place and working conditions of employees in certain health care institutions and other entities. health activity.

During the epidemic of COVID 19, the health sector hired employees in the system in accordance with the said regulation.

During the COVID 19 epidemic, the working hours of employees in education did not exceed the legally defined framework of 40 hours per week. Classes are organized so that classes last 30 minutes and other obligations of teachers fit into the 40-hour working week.
If a larger number of sick students was recorded in a class, the online model of teaching was switched to.
There was no combined model that includes the realization of classes in school and online classes, so the employees were not overburdened, which the Ministry of Education, Science, Culture and Sports considered. Directors of educational constitutions were obliged to report every case of children suffering from COVID 19. According to the number of patients, either one or another model of teaching was approached.

e) The Committee would welcome additional general information on measures put in place in response to the COVID-19 pandemic intended to facilitate the enjoyment of the right to reasonable working time (e.g. flexible working hours, teleworking, other measures for working parents when schools and nurseries are closed, etc.). Please include information on the legal instruments used to establish them and the duration of such measures.

Answer:

The first case of COVID 19 in Montenegro was registered on March 17, 2020, after which the National Coordination Body for Infectious Diseases (NKT) was established, headed by the Deputy Prime Minister together with representatives of the Institute of Public Health and the Clinical Center of Montenegro. In response to the COVID-19 epidemic, Montenegro has taken decisive steps to combat and prevent the spread of the virus in the community and to produce a "mitigation". Necessary measures of physical distancing, self-isolation and quarantine were introduced, which led to a reduction in economic activities in the country, as companies in the hospitality and other sectors were closed. The educational process was interrupted for a week, after which the Ministry of Education launched a model of distance learning that enabled the end of the school year.
Since the beginning of the epidemic (during 2020), the government has taken a number of fiscal and macro-financial measures to mitigate the effects of the crisis on the population and the economy, including: the abolition of excise duties on medical alcohol sold in pharmacies; deferral of payment of taxes and contributions on earnings; introduction of new credit lines with the Investment and Development Fund (IRF) to improve the liquidity of entrepreneurs; deferral of lease payments for state-owned real estate; advance payment to capital project contractors; subsidies for affected economic entities; suspension of certain forced collections and other measures. The government also paid a one-time financial aid to pensioners who are entitled to a minimum pension and to the families of beneficiaries of basic material benefits from social protection in the amount of 50 euros per

individual (about 8,500 families and 11,900 pensioners). The central bank has announced a moratorium on loan repayments for up to 90 days.

The NCT recommended that state bodies, state administration bodies, local self-government bodies and local government bodies, companies, public institutions and other legal entities, entrepreneurs and natural persons performing a certain activity, enable work from home, then enable sliding working hours or otherwise reduce employee communication. This measure applies to jobs that the work process allows.

During the interruption of educational work in public and private educational institutions of this work, one of the parents / guardians / foster parents / adoptive parents or single parents of a child not older than 11 years of age is provided with the right to paid leave, except for health employees, Ministry of Defense, National Security Agency, Ministry of Interior, Police Administration, Customs Administration, Inspection Administration, Food Safety, Veterinary and Phytosanitary Administration, Accommodation Institutions for Social and Child Protection, Criminal Sanctions Administration , protection and rescue services as well as in other bodies and services for which the National Coordination Body for Infectious Diseases deems that their activity is necessary during the duration of the mentioned measures.

After the introduction of this measure, subsidies were provided for the salaries of employees who used the right to paid leave in the amount of 70% of the minimum gross salary. In addition, subsidies are provided for: prohibited activities (100% of the minimum gross wage), tourism sector (100% of the minimum gross wage), vulnerable activities (50% of the minimum gross wage), new employment (70% of the minimum gross wage), employee wages in quarantine or isolation (70% of the minimum gross salary), etc.

f) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Answer:

Until the requested information was received, the Committee had previously postponed its conclusion. The Committee requested information on whether or not inactive on-call periods were considered rest periods, especially in relation to employees in areas not mentioned in the previous report.

The concept of working time is precisely defined in Article 60 of the Labor Law. For the purposes of paragraph 1 of this Article, working time is considered to be the time period in which the employee performs the duties and tasks of the job for which he established employment, as well as the time in which the employee is available to the employer, whether at his workplace or another place determined by the employer (on duty). This means that in that period of time the employee is at the disposal of the employer, ie that he is obliged to follow his instructions and perform work tasks while being at his workplace or in another place determined by the employer. The working hours defined in this way imply that the time spent by the employee on duty is taken into account, and it does not

matter whether the employee was permanently engaged during the duty or had the opportunity to rest.

The period in which the employee is on standby should be distinguished from the time spent at work. Preparedness means the period of time in which the employee is obliged to respond to the call of the employer, due to the need of the work process, and in that period he is not at his workplace or in another place determined by the employer. If the employee in the time period in which he was ready is hired at the invitation of the employer, due to the needs of the work process, that period will be counted as working time. In this case, the period required by the employee for the journey from the place of residence to the place of work is also counted during working hours.
The duration of readiness and the amount of salary increase on that basis is determined by the collective agreement. As stated in the previous report, in activities where, by the nature of the organization of work, there was a need to introduce the institute of readiness, the branch collective agreements stipulate that the basic hourly wage is increased from 10% to 15%. However, as there are certain branches of activity in Montenegro where we have not concluded collective agreements, during the negotiations for the conclusion of the General Collective Agreement, negotiations are underway to introduce a provision on increasing wages per standby hour. The provisions of the General Collective Agreement apply to all employees in the country and it should be concluded by the end of the current year.

to provide for public holidays with pay; to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship.

a) No information is requested on these provisions, except insofar as they concern special arrangements related to the pandemic or changes to work arrangements following the pandemic: public holidays (Article 2§2), annual holiday (2§3), reduced working time in inherently dangerous or unhealthy occupations, in particular health assessments, including mental health impact (2§4), weekly rest period (2§5), written information or worktime arrangements (2§6), measures relating to night work and in particular health assessments, including mental health impact (2§7).

Answer:

During the pandemic, there were no special arrangements related to paid public holidays or written information to employees about the most important aspects of the employment contract or relationship.
According to the Government's work program for 2022, amendments to the Labor Law are planned for the third quarter. One of the reasons for the amendments to this law is the harmonization with

the Directive 2019/1152 on transparent and predictable working conditions in the EU. The purpose of this Directive is to improve working conditions by promoting more transparent and predictable forms of employment and ensuring labor market flexibility. This Directive lays down minimum rights relating to any worker in the Union who has an employment contract or is employed in accordance with the law, collective agreements or practice applicable in each Member State, taking into account the case law of the Court of Justice.

b) However, if the previous conclusion concerning provisions in Article 2, paragraphs 2 through to 7, was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Answer:

The Committee has previously concluded that the situation in Montenegro is in accordance with article 2, paragraph 2, of the Charter.

Pending receipt of the requested information in connection with article 2, paragraph 6, the Committee has previously deferred its conclusion.

The Committee requested information on a written document (contract or other document) stating the notice period, ie the notice periods for termination of the contract or termination of employment. The Committee considers that, if the requested information is not provided in the next report, there will be nothing to establish that the situation in Montenegro is in accordance with article 2, paragraph 6, of the Charter.

The Labor Law ("Official Gazette of Montenegro", No. 74/19, 59/21 and 68/21), which entered into force at the beginning of 2020, prescribes the content of the employment contract. Namely, the provision of paragraph 1, Article 21 stipulates that the employment contract contains the length of the notice period in case of termination of the employment contract. If he does not conclude an employment contract in accordance with Article 31 of this Law, the legal entity will be fined in the amount of 2,000 to 20,000 euros.

In addition to the above, the employment contract contains, inter alia: job title and job description that the employee should perform, place of work, time for which the employment contract is concluded, duration of the fixed-term employment contract and the basis for concluding the employment contract certain time, day of starting work, working hours, length of paid leave and annual leave, names of collective agreements with the employer, amount of coefficients and amount of salary, bases for salary increase as well as rights, obligations and responsibilities of employees and employers regarding protection and health at work. A novelty in the Law is the introduction of the obligation for the employer to hand over one copy of the employment contract to the employee on the day of starting work (Article 29, paragraph 4).

RESC Part I – 4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

a) Please provide up to date information on the rules applied to on-call service, zero-hour contracts, including on whether inactive periods of on-call duty are considered as time worked or as a period of rest and how these periods are remunerated.

Answer:

Working time is considered to be the time period in which the employee performs the tasks and duties of the job for which he established employment, as well as the time in which the employee is available to the employer, whether at his workplace or other place determined by the employer.). This means that in that period of time the employee is at the disposal of the employer, ie that he is obliged to respect his instructions and perform work tasks while being at his workplace or in another place determined by the employer.

Inactive periods during on-call time are considered working hours and for that period the employee is entitled to compensation as if he were active because he is available to the employer or at his workplace or in another place determined by the employer.

When it comes to contracts without fixed working hours (zero-hour contracts), the labor legislation of Montenegro does not recognize such an institute. Namely, the Labor Law prescribes in Article 31 the obligatory content of the employment contract, ie that the employment contract of the employee must contain working hours that can be full, part-time or shortened. Full-time work is 40 hours per week, while the collective agreement with the employer can determine less than 40 hours per week. Part-time work may not be shorter than ¼ full-time or 10 hours per week. A part-time employment contract may be concluded for a workplace where, with the application of occupational safety and health measures, it is not possible to protect the employee from harmful influences. In this way, working hours can be shortened in proportion to the harmful impact of working conditions on the health and working ability of the employee, up to 36 hours per working week.

b) Please explain the impact of the COVID-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. Please include specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and

working hours was addressed in respect of teleworking (regulation, monitoring, remuneration, increased compensation).

Answer:

The Labor Law stipulates that the employee's working hours may last longer than the agreed working hours (overtime work), in case of a sudden increase in the volume of work, as well as in case of force majeure, and in other exceptional cases.
Overtime work is introduced by a written decision of the employer before the start of that work.
If due to the urgency of the job it is not possible to determine overtime work by written decision, the employer shall inform the employees orally, stating that he is obliged to deliver the written decision to the employee later, and no later than three working days after the cessation of circumstances. overtime. This decision, ie the notice contains: the reason for the introduction of overtime work, the list of employees engaged in overtime work and the time of the beginning of overtime work.
The employer is obliged to inform the labor inspector about the introduction of overtime work within three days from the day of making the decision on the introduction of overtime work.
Overtime work may last only as long as is necessary to eliminate the causes for which it was introduced, provided that working time may not exceed 48 hours per week on average, within a period of four months, while the maximum duration of weekly working time does not can be longer than 50 hours. Exceptionally, the collective agreement may provide for a maximum duration of 250 hours per year.
During the negotiations on the conclusion of the General Collective Agreement, which are still ongoing, it is expected that the social partners will agree on a provision that would limit the maximum duration of overtime work to 250 hours per year.
We note that the institute of overtime work is harmonized with the legislation of the European Union, ie the provisions of the Directive on certain types of organization of working time 2003/88.
The COVID 19 crisis did not affect the legislative framework governing the rights of employees during overtime work. This means that the competence of the Labor Inspectorate regarding the supervision over the application of the Labor Law, ie the organization of overtime work in a legal manner, remained unchanged during the pandemic.
During the pandemic, it turned out that the legislative framework regulating teleworking and working from home was not sufficiently regulated. For this reason, one of the main reasons for the amendments to the Labor Law is the precise definition of the rights and obligations of employers and employees during the organization of such work. To this end, a working group was formed with the task of amending the Labor Law in this regard.
The Law on Health Care ("Official Gazette of Montenegro, No. 3/16, 39/16, 2/17, 44/18, 24/19, 24/19 82/20 and 8/21) Article 82 prescribes that the beginning, schedule and end of working hours in a health institution are determined depending on the type of health institution, ie the level at which the institution provides health care, as well as waiting times for health services, in accordance with the law governing compulsory health insurance.

The health institution organizes its work and determines the schedule of working hours referred to in paragraph 1 of this Article, in accordance with the act of the Ministry.
The health institution provides health care for at least 40 hours a week and is obliged to, within the prescribed working hours, continuously provide health care, working in one, two or more shifts, double working hours, on duty or standby.
Duty is a special form of work when the employee must be present in the health institution, and it is introduced and organized in accordance with labor regulations.
Preparedness is a special form of work when the employee does not have to be present in the health institution, but must be available to provide urgent medical assistance upon request.
The decision on the introduction, scope of duty and readiness at the level of the health institution as well as per employee is made by the director of the health institution in accordance with the labor regulations.
The maximum duration of weekly working time, including overtime, may not exceed an average of 48 hours, over a period of four consecutive months.
Notwithstanding paragraph 8 of this Article, if the needs of the work process so require, the total duration of working hours during the week may be more than an average of 48 hours, not more than 50 hours or not more than 55 hours at the Clinical Center of Montenegro, Institute for emergency medical care and special hospitals, if there is the consent of the employee, which must be given in writing.
An employee who refuses to submit the written consent referred to in paragraph 9 of this Article may not suffer harmful consequences as a result.
The health institution is obliged to keep records of employees who have given written consent referred to in paragraph 9 of this Article and to submit them to the labor inspector.
Employees cannot leave their jobs until they receive a replacement, even though their working hours have expired.
The health care institution is obliged to display the schedule of working hours in a visible place of the institution, as well as on the organizational parts of that institution, on the website and in Braille.

Furthermore, Article 83 of the said law stipulates that in cases of extraordinary circumstances, natural disasters and large-scale epidemics, the Ministry may take measures and activities related to the schedule and organization of work and working hours, as well as changing the place and working conditions of employees in certain health care institutions and other entities performing health care activities.

During the epidemic of COVID 19, the health sector hired employees in the system in accordance with the above regulations.

c) The Committee would welcome information on any other measures put in place intended to have effects after the pandemic which affect overtime regulation and its remuneration/compensation. Provide information on their intended duration and the time frame for them to be lifted.

Answer:

During the Covid 19 pandemic, no measures were introduced that would affect the different standardization and application of the rights and obligations of employees and employers prescribed by the Labor Law when introducing work longer than full time. Through negotiations for the conclusion of a new General Collective Agreement, which should be concluded by the end of the year, it is expected that the social partners will agree on a provision that would limit the maximum duration of overtime to 250 hours per year.

d) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Answer:

The Committee had previously reached a conclusion on compliance.

3. to recognise the right of men and women workers to equal pay for work of equal value

a) Please provide information on the impact of COVID-19 and the pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.

Answer:

The Labor Law stipulates that an employee has the right to a salary that is determined in accordance with the law, the collective agreement and the employment contract. The salary earned by the employee for the work performed and the time spent at work, salary compensation and other income determined by the collective agreement and the employment contract constitutes the gross salary in the sense of this Law. Gross salary of an employee for work performed and time spent at work consists of: basic salary, special part of salary, salary increase and part of salary based on work performance, if realized.

Basic salary is the salary that employees earn for full-time work, ie time that is equal to full-time work and standard work performance, in the prescribed working conditions.

The basic salary is obtained by multiplying the calculated value of the coefficient and the coefficient of job complexity, unless otherwise provided by a special law.

The General Collective Agreement determines the basic groups of jobs with coefficients for determining earnings based on the complexity of the achieved learning outcomes and their range is

from 1.03 for the qualification acquired by completing part of the primary education program (completed at least the first cycle of primary education or functional literacy program) to 4. 12 for higher education qualification - Doctor of Science (volume 300 + 180 CSPK credits);
Also, the agreement on determining the calculated value of the coefficient concluded by the social partners and the General Collective Agreement determined the calculated value of the coefficient in the gross amount of 90 euros.

The special part of the salary is the part of the salary that the employee earns based on the allowance for food during work and 1/12 of the recourse for the use of annual leave and is an integral part of the minimum salary. A special part of the salary is determined by the collective agreement and cannot be less than 70% of the calculated value of the coefficient determined at the level of Montenegro.

The employee's work performance is determined based on the quality and scope of work performed, as well as the employee's commitment and attitude towards work obligations. Criteria and norms for the evaluation of the achieved work performance on jobs whose nature enables it and the incentives for achieving greater work results are determined by the collective agreement with the employer or the general act of the employer.

The basic salary of the employee is increased, in accordance with the collective agreement and the employment contract, on the basis of: year of work experience (past work), work at night, work on a state or religious holiday, overtime work.
In this way, the method of calculating the salaries of employees is precisely defined, which does not leave room for discrimination in terms of gender. The application of the above provisions of the Labor Law and the General Collective Agreement ensures the application of the principle of equal pay for all employees, both men and women. In practice, the difference in earnings between men and women can be caused by the calculation of an unequal number of hours of overtime work, night work, temporary incapacity for work, etc. In addition to the above, the Labor Law additionally guarantees equality of wages for the same work or work of the same value, where work of the same value means work for which the same level of education qualification is required, ie professional qualifications, responsibility, skills, working conditions and work results. In relation to the previous legal solution, this provision guarantees the right to equal pay for the same work or work of equal value to employed men and women, but also to all employees regardless of gender or any other characteristic. If the employee is not guaranteed equal pay for work of equal value, the employee is entitled to compensation in the amount of the unpaid part of the salary.
The decision of the employer or the agreement with the employee that is not in accordance with the above are null and void. These provisions were in force at the time of the pandemic and applied as such.
In relation to the previous legal solution, this provision guarantees the right to equal pay for the same work or work of equal value to all employees, regardless of gender or any other characteristic.
If the employee is not guaranteed equal pay for work of equal value, the employee is entitled to compensation in the amount of the unpaid part of the salary.

The decision of the employer or the agreement with the employee that is not in accordance with the above are null and void.

An employee is entitled to a minimum wage for standard work performance and full-time work, ie working time that is equated with full-time work in accordance with this law, the collective agreement and the employment contract.
At the end of 2021, in response to the COVID crisis and in order to raise the living standards of citizens and ensure decent work, the Labor Law was amended and the minimum wage was increased from 222 euros to 450 euros.

During the pandemic, during the ban on performing certain activities, employers, according to the Labor Law, introduced termination of work without the fault of employees. The employee is entitled to compensation of salary during the absence from work due to interruption of work that occurred through no fault of the employee in the amount of 70% of the basis for compensation, which is his average salary earned in the previous half of the year and cannot be lower than the minimum salary in Montenegro. This institute could have been introduced at the employer under equal conditions for both employed women and employed men at that employer because the same applies to termination of employment and all employees have equal rights.
During the interruption of educational work in public and private educational institutions, one of the parents / guardians / foster parents / adoptive parents or a single parent of a child not older than 11 years of age is provided with the right to paid leave from work. This order applied equally to the employed parent of the father or mother and thus did not affect the right to equal pay between men and women.

b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Answer:

Earlier, the Committee postponed the conclusion
The Committee requests that the next report provide information on the progress made in developing a new gender equality index and indicate what measures are being taken or envisaged to reduce the pay gap between men and women, especially in sectors where women are predominantly employed. to ensure that their work is not underestimated.

In the part of available data related to the difference in earnings between men and women, the Gender Equality Index in Montenegro from 2020, contains key indicators. In the field of money, an indicator showing earnings based on paid work, as well as pensions, investments and other sources of income, using as a source the Survey on Income and Living Conditions - EU SILC, conducted by the Statistical Office of Montenegro 2017 and Eurostat Survey on the structure of wages in Montenegro

in 2014, indicates a difference in wages in Montenegro of 13.9%, and that women earn only 86.1% of the average wage of men in Montenegro.

The Gender Equality Index for Montenegro was developed on the basis of the budget of the Statistical Office - Monstat, and in cooperation with the European Institute for Gender Equality (EIGE) and the UNDP Program in Montenegro, within the Project "Support to Anti-Discrimination and Gender Equality Policies" funded E U. The Gender Equality Index consists of six basic domains and measures equality in: work, money, knowledge, time, power and health.

The Statistical Office published the Gender Equality Index in January 2020. More information and information about it can be found at the following link: https://www.monstat.org/eng/page.php?id=1592&pageid=55

The Action Plan of the National Strategy for Gender Equality 2021-2025 envisages the activity of developing an index in 2022 that would be promoted in 2023.

The Montenegrin government is taking measures to empower women economically and reduce the pay gap between men and women. Thus, within the Program for Improving the Competitiveness of the Economy implemented by the Ministry of Economic Development in 2020, 100 micro, small and medium enterprises owned by women were supported with a total amount of about € 350,000.

At the end of 2021, the Government of Montenegro adopted the Strategy for the Development of Women's Entrepreneurship in Montenegro 2021-2024 with the Action Plan for Implementation. The implementation of the Strategy aims to influence: economic empowerment of women, strengthening the competitiveness of women's entrepreneurship and effective public policy that promotes and supports women's entrepreneurship.

Implemented measures and activities in the implementation of the previous Strategy have contributed to significant progress in the development of women's entrepreneurship in Montenegro in recent times. Today, according to the Tax Administration, approximately 23% of companies are owned by women. Data from 2011 show that in Montenegro only 3,021 companies were predominantly female-owned, while in 2020 the number was 7,584, which is a result of the implementation of women's entrepreneurship policy and specific program support in the previous period.

The Supreme Court of Montenegro, as the highest court in the country, requested information from the competent courts regarding the application of the provisions of the European Social Charter, members belonging to the thematic group called "Labor Rights" and Article 4 paragraph 3. Regarding the right to fair compensation, there were cases related to the payment of the difference in salaries due to informal assignment to another job, ie. requests for payment of the difference in salary due to unequal salary of persons assigned to the same jobs. There were no cases of gender pay discrimination. However, we would like to inform you that the courts do not keep records of cases in accordance with the application of the provisions of the European Social Charter, but only the European Convention for the Protection of Human Rights and Freedoms.

We also note that intensive activities are currently being undertaken to improve the judicial information system, so we expect that the future report on the implementation of the European Social Charter will be based on exact data from the information system.

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

a) No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non- conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.

Answer:

The Committee has previously postponed its conclusion (Conclusions for 2014), pending the receipt of requested information on claims (such as tax debts, civil law claims, union dues or fines) that may result in salary reductions in circumstances not covered by the Law on on exemptions from the limit of reduction of one third of wages, prescribed by Article 85, paragraph 2 of the Labor Law and the level of protected wages, as well as the circumstances in which workers may waive the limit of reduction of wages provided by law.

The Labor Law, which entered into force at the beginning of 2020, stipulates that Article 106 stipulates that an employer may collect a claim against an employee by denying wages and part thereof, ie by denying payment of wages or part thereof only in accordance with the procedure established by law. final court decisions or with the consent of the employee. This means that the employer's monetary claim against the employee can be collected by suspending his salary only in the following cases:

- if the procedure is conducted in cases determined by law: in this case it means a disciplinary procedure, in which a fine can be imposed as one of the disciplinary sanctions (Article 146) or a procedure for determining the material responsibility of the employee (Article 158) ;

- on the basis of a final court judgment;

- with the consent of the employee: where the consent should be given in writing (eg union membership fee).

When it comes to the amount of salary, ie salary compensation that can be forcibly suspended, paragraph 2 of this Article prescribes a protective norm, ie the upper limit beyond which the salary cannot be suspended. If it is a court judgment that refers to mandatory maintenance, then the suspension can be done up to one half of the salary, ie salary compensation, and in all other cases the suspension cannot exceed 1/3 of the salary, ie employee salary compensation. In this article, the Labor Law defines situations in which the employer directly collects the receivable from the employee by denying the salary or part of the salary.

RESC Part I

5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.

6. All workers and employers have the right to bargain collectively

Article 5 – The right to organise
With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

a) Please provide data on trade union membership prevalence across the country and across sectors of activity, as well as information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations. Also provide information on recent legal developments in these respects and measures taken to promote unionisation and membership (with specific reference to areas of activity with low level of unionisation, such as knowledge workers, agricultural and seasonal workers, domestic workers, catering industry and workers employed through service outsourcing, including cross border service contracts).

Answer:

Trade union pluralism at all levels (national, branch, employer) was enabled by the adoption of the Law on Trade Union Representativeness in 2010. Since its adoption, the law has been changed several times, and on March 3, 2018. The new Law on Trade Union Representativeness came into force in 2010, which eliminated some of the shortcomings identified in order to make the process of determining trade union representativeness more efficient.

At the national level, there are two representative trade union headquarters (Union of Free Trade Unions of Montenegro and the Federation of Trade Unions of Montenegro), which are currently the only trade union headquarters registered for trade union activities in the country. Also, there are numerous unions registered for trade union activities at the level of activities and with the employer. A total of 1,909 trade unions are registered with the Ministry of Economic Development. During 2020 and 2021, 38 new trade union organizations were registered. A total of 559 were registered in the Register of Representative Trade Unions, and during 2020 and 2021, 24 new representative trade unions were registered. No statistics are kept on the number of trade unions by sectors of activity.

Collective bargaining is represented at all levels. At the national level, a tripartite social dialogue concluded a General Collective Agreement that applies to all employees. Branch collective agreements as a result of bipartite social dialogue have been concluded in most activities (administration and judiciary; utilities; forestry and wood processing; telecommunications; tourism and catering; health care; construction and construction machinery industry; education; social work; university; culture; energy, agriculture, food and tobacco industry and water management, road transport). The positive regulations do not prescribe measures to encourage employers and employees to social dialogue and collective bargaining. However, there are initiatives by unions to prescribe such measures that are currently under consideration for possible implementation.

The new Labor Law, which entered into force in January 2020, stipulates that in addition to the General Collective Agreement and branch collective agreements, collective agreements with employers must be registered with the Ministry in charge of labor affairs. Since the introduction of prescribing the obligation to register collective agreements with the employer, 17 newly concluded collective agreements with the employer have been entered in the Register kept by the Ministry of Economic Development.

According to the data from the Register of Collective Agreements, the number of valid branch collective agreements is 22.

Data on the level of trade union organization are not available because there are no records on the number of trade union members in relation to the number of employees. Freedom of trade union organization and action is guaranteed by the Constitution and the Labor Law, and there is no activity or sector in which employees are prohibited from organizing trade unions. However, the fact is that in some activities such as trade, tourism and catering and construction we have a very low rate of trade union organization of employees.

The Ministry of Economic Development does not have data on cases of collective violations of employees' rights to organize and act with the employer. There are a number of cases in which some employees - union activists reported employers discriminating against them for union activities or attempts to organize unions. Such cases are subject to review and are pending before the competent institutions.

b) Also provide information on measures taken or considered to proactively promote or ensure social dialogue, with participation of trade unions and workers organisations, in order to take stock of the COVID-19 crisis and pandemic and their fallout, and with a view to preserving or, as the case may be, restoring the rights protected under the Charter after the crisis is over.

Answer:

The Covid 19 pandemic is the most serious and severe public health phenomenon that the modern world has faced during 2020. Montenegro, like any other country, was not spared, but as a result of strong and efficient public health management and general population response, Montenegro was

one of the few countries to record a weaker first wave of pandemics in the spring of 2020. In the second half of the year, Montenegro faced a second wave, more serious in number and duration.

In the course of 2020, the Government of Montenegro, in support of citizens and the economy, adopted three packages of economic measures adopted in order to support and recover the Montenegrin economy.

***The first package of economic measures**, adopted in March 2020, was aimed at delaying the repayment of loans to citizens and businesses (all types of loans) with all banks, microcredit institutions and the IRF for 90 days. A new IRF credit line has been created to improve the liquidity of entrepreneurs, micro, small, medium and large companies operating in the areas of procurement of medicines, medical equipment and vehicles, tourism and catering, transport, services, food production and processing.*

***The second package of economic measures**, adopted in April 2020, included measures aimed at entrepreneurs, micro, small and medium enterprises employing up to 250 employees, in activities whose work is prohibited, as well as those whose work is not prohibited, but to a significant extent reduced scope of activities as a result of orders of the Ministry of Health to combat the epidemic, new employment measures for businesses employing up to 250 employees, which record new employees and relief to improve the liquidity of the economy by reducing VAT refunds and extending the limit of customs exposure guarantees for deferred payment of customs debt. The most important measure is the Wage Subsidy Program in order to mitigate the negative effects of the new corona virus.*

***The third package of economic measures**, presented in July 2020, focused on sustainable development and valorization of domestic resources, through defined short-term and long-term measures, was to contribute to the growth and development of existing SMEs and the establishment of new ones.*

***The social partners** were not involved in the adoption of the First and Third Aid Packages, while in the Second Package they were consulted at the level of the former Ministry of Labor and Social Welfare. Despite the lack of a more serious process of tripartite consultations, the social partners, with their analyzes, suggestions and proposals, sought to assist the Government in the process of drafting the second and third packages of economic measures.*

***The union's suggestions and proposals** were aimed at preserving as many jobs as possible, determining incentives for employers who undertake not to lay off employees during the epidemic, protection of the rights of employees infected with COVID-19 through 100% of the basis for compensation for time of temporary incapacity for work, special reference to employees in closed activities and the amount of subsidies for their salaries, introduction of a type of compensation for unemployed persons, increase in salaries for employees in health care but also for employees in: education, university, inspection bodies, To the army, police, communal, fire and other services during the epidemic, one-time assistance for the beneficiaries of disability and proportional family pension, whose pension is less than € 128.28.*

One of the demands of the union was the adoption, by urgent procedure and through social dialogue, of the Law on Intervention Measures in the Field of Wages and Contributions during the Epidemic of the COVID-19 Virus.

Suggestions and proposals of employers *included measures intended for employers defined through urgent and measures to be taken in the short term. Emergency measures, according to employers, should be aimed at establishing a guarantee fund in the amount of 100 million euros, in order to provide state guarantees of at least 70% of loans to businesses that have had a decline in income due to the epidemic and the introduction of temporary measures. greater than 30%, which would create conditions for commercial banks to create more favorable credit lines, with easier access to credit and lower interest rates; Entrepreneurs and companies whose income has decreased compared to 2019 by 30% or more, provide a subsidy of 100% of the minimum wage of employees in a certain period, provide subsidies for the purchase of fiscal devices and equipment, provide deferred payment of customs duties and VAT on imports 90 days, make urgent amendments to the Value Added Tax Act. Measures to be taken in the short term would include reduction and adjustment of interest rates for existing IRF loans, postponement of deadlines for payment of due tax liabilities on the basis of all types of taxes and for 2021, adjustment of local utility fees and exemption from membership fees tourist organizations - for 2020, with a reduction for 2021, to suspend the execution of forced collection until the end of 2021 for local utility taxes, fees and utilities and review labor costs and individual items related to wage costs (related contributions) reduced by the end of 2021.*

Employers especially insisted on amendments to the Labor Law or the adoption of a special law on the regulation of labor relations in the circumstances caused by the epidemic COVID-19, which would specifically address certain issues that stood out as controversial during business in the circumstances (specific proposals with explanations are given below the document).

The constant joint demands *of the social partners were to enable their direct involvement in the creation of measures of a socio-economic nature and directly related to employees and employers, as required by the legal standards of the International Labor Organization and national legislation, to ensure that all state bodies, with the greatest attention and available capacities, focus on taking concrete measures and activities to combat the gray economy, because the scale of this negative phenomenon is unacceptably high, and official data from the authorities show that it has a growing trend. Tolerance of unregistered work by the competent authorities and institutions has its impact on both employees and employers who operate in accordance with regulations and definitely on the state budget.*

During the fourth quarter of 2021, the Government of Montenegro proposed an economic program - "Europe now!" whose main goals are: increasing the living standard of citizens, increasing employment, reducing the "gray economy" in the labor market, improving the business and investment environment. The set of proposed measures, primarily in the area of tax policy, is as follows:

- increase of the minimum wage;
- reduction of costs for employers through lower tax burden on labor;

- introduction of progressive taxation as a more efficient model of taxation.

The program was presented at the Social Council in October 2021, where it received strong support from the social partners.

The starting point for the preparation of the program was the work within the Working Group for the analysis of all fiscalities and parafiscalities to work, formed by the Ministry of Economic Development, and coordinated by the Ministry of Finance and Social Welfare. The working group considered the proposals of all social partners and other stakeholders in order to reach a joint optimal proposal that will be the basis for decision-making, starting from labor market trends, the minimum wage, the current level of workload and improving living standards. In addition to the representatives of the ministries, representatives of the Union of Employers of Montenegro, the Union of Free Trade Unions of Montenegro and the Federation of Trade Unions of Montenegro also took part in the work of the Working Group.

The program includes the following changes in the tax burden on labor: - increase the minimum wage to € 450 in net amount; - introduction of the non-taxable part of the salary of € 700 on the gross basis (income tax rate of 0% on the gross basis of up to € 700); - introduction of an increased income tax rate of 15% on a gross basis above € 1,000; - abolition of the obligation to pay contributions for compulsory health insurance (abolition of the contribution rate at the expense of both the employee and the employer).

The proposed reform reduces the tax burden on labor in Montenegro from the current 39%, for all income levels, to 20.4% for the new minimum wage (€ 450), and then progressively increases with wage growth to 31 , 3% for a net salary level of € 2,000 and further depending on the salary level. The implementation of the Europe Program will now begin on January 1, 2022.

c) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Answer:

The Committee had previously reached a conclusion on compliance.

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;

No information requested. If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Answer:

The Committee had previously reached a conclusion on compliance.

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

Please provide information on specific measures taken during the pandemic to ensure the respect of the right to bargain collectively. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

Answer:

During 2020 and 2021, 22 new collective agreements were entered into the Register of Collective Agreements maintained by the Ministry of Economic Development, which were concluded at the branch level and with the employer.

In accordance with the provisions of the new Labor Law, which entered into force at the beginning of 2020, which stipulates that the new General Collective Agreement will be concluded by the end of 2020, in March 2020 the working group for drafting a new General Collective Agreement which, in addition to the representatives of the Ministry of Labor and Social Welfare and the Ministry of Finance, also includes representatives of the social partners (Union of Employers of Montenegro, Union of Free Trade Unions of Montenegro and Federation of Trade Unions of Montenegro). The deadline for the adoption of this collective agreement in accordance with the Labor Law was January 7, 2021. However, in the parliamentary procedure, amendments to the Labor Law were adopted, which extended the validity of the General Collective Agreement until December 31, 2021.
In March 2021, due to the formation of the new Ministry (new Government), a new working group was formed which continued the work on drafting the General Collective Agreement. Amendments to the Labor Law, which entered into force on January 1, 2022, extended the validity of the General Collective Agreement until the end of 2022. Negotiations are underway to conclude a new General Collective Agreement.

In the sectors of activities most affected by the pandemic, we point out that the branch collective agreement for health was amended at the end of 2021, signed by the Government of Montenegro and representative unions at the branch level. The Ghana Collective Agreement amending the Branch

Collective Agreement for Health Care ("Official Gazette of Montenegro", No. 142/21), among other things, increased the salaries of medical staff by 30 to 40%, depending on the complexity of the work.

3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

No information requested. If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Answer:

The Committee had previously reached a conclusion on compliance.

and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

a) Please provide information on specific measures taken during the pandemic to ensure the right to strike (Article 6§4). As regards minimum or essential services, please provide information on any measures introduced in connection with the COVID-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.

Answer:

Regarding the right to strike, there were no changes in legislation during the Covid 19 pandemic to limit or reduce the enjoyment of the right to collective action or strike. According to the Labor Inspectorate, there were no strikes during the pandemic. The state did not introduce direct or indirect measures to reduce the rights guaranteed by the Labor Law during the COVID-19 crisis or the pandemic. All rights from work and based on work, and especially the right to strike, could be applied in accordance with the valid Law. All these protests were peaceful and did not react to the actions of the competent state authorities. There were no organized strikes during this period. It should also be borne in mind that the Labor Inspectorate was not reported by employees' representatives or trade union activists who used the situation with the COVID-19 pandemic by employers-entrepreneurs to suppress or prevent the exercise of the right to trade union engagement.

b) If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Answer:

The Committee has previously concluded that the situation in Montenegro is not in line with article 6, paragraph 4, of the Charter, on the grounds that the sectors in which the right to strike can be restricted are excessive, and that the restrictions have not been exceeded. limits allowed by Article G of the Charter.

The Law on Strike, which was adopted in 2015, defines that a strike is an interruption of work organized by employees in order to protect their professional, economic and social interests on the basis of work. Therefore, a strike can be organized in order to protect the interests of employees, regardless of whether they are in the process of amending or concluding a new collective agreement, or regardless of the framework of collective bargaining.

In accordance with Article 13 of the Law on Strike, the decision to enter a branch or general strike is made by the competent body of the representative trade union, which is organized at the branch level, ie at the state level.

The decision on joining a branch or general strike shall be submitted to the competent representative association of employers, founder and state administration body in the area where the strike is organized, no later than ten days before the day set for the start of the strike.

Employees of the Army of Montenegro, police, state bodies and public service in order to protect the public interest may organize a strike in a way that will not endanger national security, security of persons and property, general interest of citizens and the functioning of government bodies, in accordance with law. In this regard, the state body in charge of national security, in accordance with Article 18, assesses whether organizing a strike of these employees endangers national security, security of persons and property, general interest of citizens, as well as the functioning of government.

Employees in the Army of Montenegro, police, state bodies and public service, in activities of public interest, in activities of secondary and higher education and in activities of special technological process can organize a strike if the minimum work process is determined in advance. The act on the minimum work process shall be determined by agreement between the competent state administration body, the representative association of employers and the representative trade union, within 90 days from the day this law enters into force. If the minimum work process is not determined within the specified deadline, the competent state administration body is obliged to inform the Agency for the Peaceful Settlement of Labor Disputes without delay. The Director of the Agency is obliged to form an Arbitration Council within 15 days of receiving the notification. The arbitral tribunal shall consist of one representative of each of the parties to the dispute and one member of the experts in the field for which the minimum work process is determined. The parties to the dispute shall designate their representatives as members of the Arbitration Council, and a member from among the experts shall be nominated by the competent state administration body in the field for which the

minimum work process is determined. The decision on the formation of the Arbitration Council is made by the Director of the Agency, at the proposal of the Management Board of the Agency. The manner of work and decision-making of the Arbitration Council shall be regulated by an act of the Agency. The arbitral tribunal shall decide on the minimum work process, within 30 days from the date of formation. Therefore, the representatives of the employees are involved in the adoption of the act on the minimum work process, either as representatives of the representative trade union or as members of the Arbitration Council.

The Law on Strike ("Official Gazette of Montenegro", No. 11/15) stipulates in Article 7 that termination of work that is not organized in accordance with the provisions of this law is considered an illegal strike. Also, Article 31 stipulates that the procedure for determining the illegality of a strike, ie illegal dismissal, may be initiated by the employer, ie the representative association of employers, the representative trade union or the strike committee. The competent court shall decide on the request for determining the illegality of the strike, ie illegal dismissal, within five days from the day of submitting the request. This provision applies to any organized strike regardless of the type and manner of organization or the area of activity in which the strike is organized.

Therefore, when it comes to the right to strike, ie interruption of work organized by employees to protect their professional, economic and social interests based on work, where interruption of work is defined as organized and continuous refusal of employees to perform their work tasks, there are certain restrictions. In addition to the general conditions for organizing a strike in these activities, it is necessary to meet special conditions in order to organize a legal strike. In that sense, according to the provision of Article 66 paragraph 2 of the Constitution of Montenegro, the right to strike may be limited to employees in the Army, police, state bodies and public service in order to protect the public interest.

In this regard, Article 18 of the Law on Strike stipulates that employees in the Army of Montenegro, police, state bodies and public service in order to protect the public interest may organize a strike in a way that will not endanger national security, security of persons and property, general interest, as well as the functioning of government bodies, in accordance with the law.

In relation to the above, it is concluded that the provisions of the Constitution and the Law clearly and unequivocally state that the right to strike employees of the Army of Montenegro, police, state bodies and public service in order to protect the public interest is not denied but limited.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

a) Please provide information on the regulatory framework and any recent changes to combat harassment and sexual abuse in the framework of work or employment relations. The Committee would welcome information on awareness raising and prevention campaigns as well as on action to ensure that the right to dignity at work is fully respected in practice.

Answer:

The Work Program of the Government of Montenegro for 2021 plans to determine the Bill on Ratification of the International Labor Organization Convention on the Elimination of Violence and Harassment in the World of Work No. 190, for the fourth quarter.
Tripartite consultations in Montenegro on ratification of the Convention on the Elimination of Violence and Harassment in the World of Work No. 190 were held within the Social Council of Montenegro at a session held in March 2021, which passed a Recommendation on considering ratification of Convention 190. economic development.
The International Labor Organization has prepared an Analysis of the compliance of the legislative and strategic framework in Montenegro with the requirements set out in the Convention, with recommendations for amending regulations in this area in order to bring them into line with this international standard.
The results of the Analysis were presented at a round table about which the public was informed through the communication channel of the Ministry of Economic Development. The event was attended by representatives of the Government of Montenegro, representative unions, representative organizations of employers and representatives of the economy.

There were no disputes before the Peaceful Settlement Agency regarding the application of Article 26 of the IESP.
The Supreme Court of Montenegro, as the highest court in the country, requested information from the competent courts regarding the application of the provisions of the European Social Charter,

members belonging to the thematic group entitled "Labor Rights" or Article 28. there were no basic courts.

At its 34th session held on July 30, 2021, the Government of Montenegro adopted a new National Strategy for Gender Equality 2021-2025 with an Action Plan for 2021-2022. and the Final Report on the Implementation of the Action Plan for Achieving Gender Equality 2017-2021. The National Strategy for Gender Equality envisages a series of activities aimed at establishing a better framework for achieving gender equality in Montenegro. Through Operational Objective 3, Measure 3.3, this Strategy intends to prevent discrimination based on sex and gender, as well as to prevent sexual harassment in the workplace. One of the planned activities that will be implemented by the end of 2022 is the adoption of the Recommendation for private companies to adopt protocols for protection against gender-based discrimination and sexual harassment in the workplace of the company.
Also, the Strategy for the Development of Women's Entrepreneurship (2021-2024) aims to increase the participation of women in entrepreneurship in Montenegro by addressing obstacles that include structural and long-term barriers, empowerment and the fight against discrimination and harassment.

The new Labor Law introduced several novelties when it comes to the prohibition of discrimination. Discrimination based on gender, gender reassignment, gender identity and sexual orientation was defined. Also, the provision on the prohibition of harassment and sexual harassment has been greatly improved, where alignment with the Directive on the Implementation of the Principles of Equal Opportunities and Equal Treatment of Men and Women in Employment and Occupational Affairs 2006/54 has been harmonized and comments from International Labor Organization experts have been accepted. to which the draft law was submitted for opinion.
The previously valid law contained a ban on harassment and sexual harassment at work and in connection with work. The new Labor Law also introduced a ban on harassment and sexual harassment in relation to training, education and training, job advancement, employment conditions, termination of employment or other issues arising from employment.
Harassment, within the meaning of this law, is any unwanted behavior caused by any of the grounds for discrimination under this law, as well as harassment through audio and video surveillance, mobile devices, social networks and the Internet, which aims at or results in violation of personal dignity who seeks employment, as well as an employee, who causes or intends to cause fear, feelings of humiliation or insult, or creates or intends to create a hostile, humiliating or offensive environment.
Sexual harassment, within the meaning of this law, is any unwanted verbal, non-verbal or physical behavior of a sexual nature, which aims at or violates the dignity of the person seeking employment, as well as the employee, especially when such behavior causes fear or creates hostile, degrading, intimidating, degrading or offensive environment.
The employee may not suffer harmful consequences in the case of reporting or testifying due to harassment and sexual harassment at work and in connection with work in this regard.

Therefore, in Montenegro, there is a set of legal regulations that protect the employee or his person from any form of harassment and especially from sexual harassment and abuse within the employment relationship. Law on Prohibition of Harassment at Work, LawLaw on Prohibition of

Discrimination, the Law on Prohibition of Discrimination against Persons with Disabilities, as well as activities through various forms of social action by line ministries and the non-governmental sector through campaigns, seminars and other forms of organized familiarization with the application of anti-harassment regulations. sexual abuse in the framework of labor relations, has influenced the raising of awareness about this phenomenon in the framework of labor income. In the stated period of the pandemic, the number of reported cases of harassment at work in which the Labor Inspection acted did not exceed the recorded cases in the period before the pandemic.
By years, the number of reported cases of mobbing:
In 2015, 8 reported cases, of which in 5 cases were women
In 2016, 4 reported cases, of which 1 was a case of women
In 2017, 21 reported cases, of which 6 were women
In 2018, 14 reported cases, of which 5 were women
In 2019, 13 reported cases, of which 6 were women
In 2020, 8 reported cases, of which 4 were women
In 2021, 17 reported cases, of which 14 were women

b) Please provide information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards sexual, and moral harassment. The Committee would welcome specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

Answer:

Although the Montenegrin government used a number of measures to mitigate the impact of the COVID 19 pandemic on the labor market, the pandemic hit women and men hard, highlighting existing vulnerabilities and inequalities in work and directly affecting the economy, employment and working conditions. The Government of Montenegro has adopted three packages of support to the economy and employees in order to mitigate the negative effects of COVID 19 through subsidies for entrepreneurs and companies whose work was banned by orders of the Ministry of Health or who significantly reduced their activities; and through subsidies for the salaries of employees on paid leave, as well as for employees in quarantine and isolation.
Also, a measure has been introduced that allows one parent, guardian, foster parent, adoptive parent or single parent of a child under eleven (11) years and a child with special educational needs or disability under eleven (11) years, paid leave from work, during the period when educational institutions were closed. At the same time, this measure enabled the subsidy to employers to pay the employee's salary during the period of absence. Several groups of employees were not entitled to this paid leave, including employees in the health sector and certain government and social services whose employees were vital in providing efforts to respond to the crisis. The only exceptions were if both parents were employed by excluded employers in this area.

Since the declaration of the epidemic, the competent authorities have appealed to the employers to organize, within their possibilities, work from home where possible. This recommendation was extremely important in order to protect the lives and health of employees, but it did not leave room for assessing the impact of work from home on the work and social position. This is especially true for employed women in terms of reconciling their professional and family responsibilities. No concrete measures to protect against sexual and psychological harassment have been adopted. During the pandemic, all legislative and judicial measures in this area were in force in order to protect employees.

c) Please explain whether any limits apply to the compensation that might be awarded to the victim of sexual and moral (or psychological) harassment for moral and material damages.

Answer:

The Labor Law prohibits harassment and sexual harassment at work and in connection with work, as well as in relation to training, education and training, promotion at work, employment conditions, termination of employment or other issues arising from employment.
Harassment, in the sense of this law, is any unwanted behavior caused by any of the grounds from Art. 7 and 8 of this Law, as well as harassment through audio and video surveillance, mobile devices, social networks and the Internet, which aims or results in violation of the personal dignity of the person seeking employment, as well as the employee, which causes or intends to provokes fear, feelings of humiliation or resentment, or creates or intends to create a hostile, degrading or offensive environment.
Sexual harassment, within the meaning of this law, is any unwanted verbal, non-verbal or physical behavior of a sexual nature, which aims at or violates the dignity of the person seeking employment, as well as the employee, especially when such behavior causes fear or creates hostile, degrading, intimidating, degrading or offensive environment.
An employee cannot suffer harmful consequences in the case of reporting or testifying due to harassment and sexual harassment at work and in connection with work.

In cases of such prohibited conduct, the employee is obliged to initiate proceedings before the Agency for peaceful settlement of labor disputes or before the Center for Alternative Dispute Resolution, before initiating proceedings before the competent court in accordance with the law.
A person seeking employment has the right to initiate proceedings before the competent court in accordance with the law in the case of prohibited conduct in this regard.
An employee whose employment has been terminated is also entitled to initiate this procedure.

In conducting these proceedings, the burden of proof is on the employer and not on the employee. Article 140 paragraph 2 of the Labor Law stipulates that if a party who is considered injured due to unequal treatment within the meaning of this Law, before a court or other competent body presents facts from which it can be assumed that there was direct or indirect discrimination, the burden of

proving non-violation the principles of equal treatment are transferred to the defendant, ie the legal or natural person against whom the procedure has been initiated before the competent authority.
The Law on Prohibition of Discrimination ("Official Gazette of Montenegro", No. 46/10, 40/11, 18/14, 42/17) stipulates that a fine in the amount of EUR 1,000 to EUR 20,000 shall be imposed on a legal entity for a misdemeanor. , if:

1) commits any unwanted conduct, including harassment through audio and video surveillance, mobile devices, social networks and the Internet, aimed at or resulting in violation of personal dignity, causing fear, feelings of humiliation or insult or creating hostile, degrading or offensive environments (Article 7 paragraph 1);

2) commits any unwanted, verbal, non-verbal or physical conduct of a sexual nature which seeks to violate the dignity of a person or group of persons, or which achieves such an effect, especially when such conduct causes fear or creates hostile, degrading, intimidating, degrading or offensive environment (Article 7 paragraph 2).

The Law on Gender Equality prescribes a misdemeanor penalty in the amount of € 1,000 to € 10,000 per legal entity if it puts a woman at a disadvantage due to pregnancy or motherhood, as well as another person due to gender reassignment compared to other persons, in case of employment, self-employment, exercising rights from social security and other rights. For the same offense, the responsible person at the legal entity, state body, state administration and local self-government will be fined in the amount of 150 € to 2,000 €

d) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Answer:

Pending receipt of the requested information, the Committee deferred its conclusion.
The committee requested that the next report provide information on the employer's responsibility in cases where the perpetrator of sexual harassment is a person not employed by him, such as independent contractors, self-employed workers, visitors, clients, etc.
As already stated in the previous report, the Law on Prohibition of Harassment at Work also applies to cases of harassment and sexual harassment, in accordance with the regulations governing work. The perpetrator of mobbing in the sense of this law is considered to be an employer with the status of a natural person, a responsible person with an employer with the status of a legal entity, an employee or group of employees with the employer or a third person with whom an employee or employer comes into contact. Furthermore, this law applies to employers and employees, in accordance with the regulations governing work, as well as to persons engaged outside the employment relationship, such as: persons in vocational training and development; pupils and students undergoing practical training; volunteers; persons who perform certain tasks while serving a prison sentence or educational measures; persons on voluntary and public works, works organized in the general interest, work actions and competitions and any other person who on any basis participates in the work with the employer.

In accordance with the Law on Prohibition of Harassment at Work, the employer is obliged to provide the employee with work at the workplace and the working environment under conditions that ensure respect for his dignity, integrity and health, as well as to take necessary measures to protect employees from mobbing. by law. A fine of 500 euros to 10,000 euros will be imposed on a legal entity for a misdemeanor if it does not provide the aforementioned preventive measures for employees.
The amendments to the Law on Prohibition of Harassment at Work from 2016 aimed to harmonize with the Law on Administrative Procedure. There were no changes that would be relevant to Article 26 paragraph 1 of the Charter.

Article 28 – The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:
a. they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;
b. they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

a) With the objective of keeping this reporting exercise focussed, the Committee asks for no specific information in respect of Article 28. Nonetheless, it would welcome information about the situation in practice concerning this right during the pandemic and about measures taken to ensure that the COVID-19 crisis was not used as an excuse to abuse or circumvent the right of workers' representatives to protection, especially protection against dismissal.

Answer:

During 2021, the Ministry of Economic Development, as a second instance body in dealing with administrative matters, resolved one case related to the right of a trade union representative to protection against dismissal. Namely, the employee in the field of education, who is the authorized trade union representative of the trade union organized by the employer, lost her job due to the amendments to the Act on Systematization. As the Labor Law stipulates in Article 196 that the authorized trade union representative with the employer, during trade union activities and six months after the cessation of trade union activities, cannot be called to account, declared as an employee whose work is no longer needed, assigned to another job. place with the same or another employer or otherwise disadvantaged, if he acts in accordance with the law, collective agreement and employment contract, in this case, acting on the application, the Labor Inspectorate issued a decision ordering the employer to eliminate irregularities in in terms of re-employment status of the trade union representative. In the second-instance administrative procedure, the Ministry of Economic

Development, acting on the employer's complaint, confirmed the decision of the Labor Inspection ordering the employer to eliminate the irregularities. In this case, a lawsuit is pending before the Administrative Court of Montenegro.
The Supreme Court of Montenegro, as the highest court in the country, requested information from the competent courts regarding the application of the provisions of the European Social Charter, members belonging to the thematic group entitled "Labor Rights" or Article 28. During the Covid 19 pandemic, cases The IESP was not before the basic courts.
Also, according to the data submitted by the Agency for the Peaceful Settlement of Labor Disputes, there were no cases that were conducted due to the violation of the rights prescribed by Article 28 of the IESP.

According to the Labor Inspectorate, during the pandemic, workers 'or union representatives did not submit initiatives that were motivated by abuse by employers-entrepreneurs to reduce workers' rights during such a situation or prevent union representatives from performing their union activities. The only reports submitted to the labor inspection were only individual in nature and related to the rights of the employee (who is also a trade union representative) whose employment was terminated based on the expiration of the fixed-term employment contract. Furthermore, in the mentioned period there were no cases in which the application of the annex to the employment contract put pressure on some employees to be punished or attempted abuse by the employer due to their activities to protect workers' rights or trade union activities. In all cases where there was an offer to conclude an annex to the contract to transfer an employee from one job to another, inspectors acting in such cases, strictly applying the provisions of labor law, always and unequivocally determined that such a procedure was conducted in accordance with by law, without a revanchist motive on the part of the employer.

b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Answer:

Until the requested information was received, the Committee postponed its conclusion. The committee requested that the next report provide more details on additional forms of employee representatives and explain the benefits that could be given to non-union workers' representatives.

The new Labor Law in Montenegro entered into force on January 7, 2020. This Law stipulates that employees and employers have the right to freely establish, without prior approval, their organizations and to join them, under the conditions determined by the statute and rules of those organizations.

Article 194 of the Labor Law stipulates that the trade union independently decides on the manner of its representation with the employer. The union may appoint or elect one authorized union

representative to represent it. The employer is obliged to enable the authorized trade union representative to exercise the right of representation in a timely manner. The trade union is obliged to inform the employer about the appointment of the authorized trade union representative within 15 days from the day of entry in the register kept by the Ministry, in accordance with the law.

The authorized trade union representative is obliged to perform trade union activities in a way that will not affect the efficiency of the employer's business.

Article 5 of the Labor Law stipulates that an authorized trade union representative is an employee who is entered in the register of trade unions as an authorized person for representation and representation.

***Therefore, the new labor law guarantees only** the authorized trade union representative with the employer, during trade union activities and six months after the cessation of trade union activities, that he cannot be called to account, declared an employee whose work is no longer needed, assigned to another job. a place with the same or another employer or otherwise disadvantaged, if he acts in accordance with the law, the collective agreement and the employment contract. The aim of this provision is the intention to encourage trade union organization of employees and influence the promotion of trade unionism.*

In the case of employers where no trade union has been established, in precisely specified cases, certain rights are given to employees through employee representatives.

In that sense, it is the obligation of the employer of the predecessor and the employer of the successor to inform the trade union with the employer, ie the employee representative, about:

1) the date of the change of employer;

2) reasons for changing employer;

3) legal, economic and social consequences of the change of employer for employees; i

4) all envisaged measures regarding employees whose employment contracts are transferred.

If there is no trade union with the predecessor's employer or the successor's employer, the employer is obliged to inform the employees, ie the employees' representatives, about these circumstances. (Article 110)

Also, if the employer intends to carry out collective dismissal for at least 20 employees within a period of 90 days, he is obliged to start consultations, request and consider the opinion and proposals of the trade union, ie employees or employee representatives in case the employer does not organize a trade union. on the cessation of the need for work of employees in order to reach an agreement, in order to eliminate or reduce the need for cessation of work of employees. (Article 167)

Also, the obligation of the employer to inform the union, ie employee representatives at least once a year about:

1) development plans, their impact on the position of employees and planned changes in wage policy;

2) business results;

3) the list of employees, their working status, working hours for which the employment contract has been concluded and the qualification structure;

4) total calculated gross and paid net salaries, including contributions for compulsory social insurance and the amount of average salary with the employer;

5) realized overtime work;

6) recorded injuries at work and measures taken to improve working conditions;

7) other issues important for the material and social position of employees; i

8) other relevant information.

The employer informs the union, ie employee representatives about:

1) general acts of the employer;

2) measures of protection and health at work;

3) introduction of new technology and organizational changes;

4) schedule of working hours, night work and overtime work;

5) adoption of measures taken by him for the purpose of taking care of employees whose work might cease to be necessary, and

6) time and manner of payment of salaries.

A trade union representative, ie an employee or an employee representative if there is no organized trade union with the employer, has the right to participate in the discussion before the competent bodies of the employer, when the above issues are considered (Article 192).

It should be emphasized that these cases refer to situations when there is no organized trade union with the employer, where without a defined procedure, ad hoc, to achieve a specific goal, from among employees without prescribed and foreseen criteria, one employee will be appointed to represent them. It is also important to point out that in accordance with Article 173, the justified reason for termination of the employment contract is not considered to be acting as an employee representative in accordance with the law.

Namely, the provisions of the previously valid Labor Law, which in this sense equated the employee representative and the authorized trade union representative, were changed due to ambiguity and inadequate application. The status of an authorized trade union representative of employees is proven by a decision on entry in the Register of Trade Union Organizations, which designates the said person as an authorized person for representation and representation.

The procedures for founding and registering a trade union in the Register of Trade Unions, after which the trade union acquires the status of a legal entity and the trade union representative acquires the status of authorized trade union representative with all rights and obligations, are simple, do not require financial investments and are completed within 30 days. Specifically, the entry in the Register is made on the basis of the application for entry with which the trade union organization submits:

1) act on the establishment of a trade union organization issued by the competent body of the trade union organization;

2) the decision on the election of the trade union representative made by the competent body of the trade union organization;

3) authorization for a trade union representative issued by the competent body of the trade union organization;

4) statute or rules of organization and mannerin the work of the trade union organization.

The state administration body responsible for labor affairs is obliged to register the trade union organization in the Register and make a decision on registration within 30 days from the day of receipt of the application and the necessary documentation. An integral part of the decision on the registration of a trade union organization in the Register are the data relating to the authorized trade union representative who, on the basis of the above, exercises all rights and obligations provided by the Labor Law.

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

a) With the objective of keeping this reporting exercise focussed, the Committee asks for no specific information in respect of Article 29. Nonetheless, it requests information about the situation in practice as regards the right to information and consultation in collective redundancy procedures during the pandemic, and about any changes introduced in law modifying or reducing its scope during the COVID-19 crisis.

Answer:

During the COVID 19 pandemic, there were no amendments to laws and other regulations that reduce or change the scope of protection of the right to information and consultation in collective dismissal proceedings.

b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Answer:

Until the requested information was received, the Committee postponed its conclusion. The Committee sought information on sanctions available if the employer does not inform workers 'representatives of planned redundancies and what preventive measures are in place to ensure that redundancies do not take effect before employers have fulfilled their obligation to inform and consult workers' representatives.

In this regard, we emphasize that the provisions of the Labor Law, which entered into force in early 2020, regarding issues related to the right to information and consultation in collective dismissal proceedings, are in line with ILO Convention No. 158 on Termination of Employment. the initiative of the employer and the accompanying Recommendation No. 166, as well as with EU Directive 98/59 on the harmonization of the laws of the Member States relating to collective redundancies.

Article 167 of the Labor Law stipulates that if an employer intends to carry out collective redundancies for at least 20 employees within 90 days, it is obliged to start consultations, request and consider the opinion and proposals of trade unions, ie employees or employees' representatives. organized trade union, before making a decision on the termination of the need for work of employees in order to reach an agreement, in order to eliminate or reduce the need for termination of work of employees.

The employer is obliged to provide the trade union, ie employees or employee representatives, in writing, with the following information:

1) reasons for termination of the need for work of employees;

2) number of total employees;

3) criteria for determining employees whose work may cease to be necessary;

4) the number of employees whose work may cease to be needed, as well as data on their workplace and the jobs they perform;

5) criteria for calculating the amount of severance pay;

6) measures taken by him for the purpose of taking care of employees whose work might cease to be necessary: assignment to other jobs with the same employer in the level of education of the employee; schedule with another employer in the qualification of education level or professional qualification of the employee's education, with his consent; professional training, retraining or additional qualification for work in another job with the same or another employer and other measures in accordance with the collective agreement or employment contract.

During the procedure of consulting with the union, ie employees or employee representatives, the employer is obliged to consider all proposals aimed at preventing the cessation of the need for work or to mitigate its consequences, as well as to give a written explanation for each submitted proposal. The aim of the consultation is to reach an agreement between the employer and the union, ie employees and employee representatives.

This consultation cannot last less than 30 days. The employer is obliged to inform the Employment Bureau in writing about the conducted consultation, as well as to provide him with information already submitted to the union, ie employees or employee representatives before the consultation process, information on the duration of the consultation period, consultation results and written statement of the union. if delivered.

The employer is obliged to submit a copy of this notice to the union.

The trade union, ie employees or employees' representatives may submit their remarks and proposals to the Employment Bureau and the employer regarding the information provided by the employer before the consultation procedure and the information about the results of the consultation provided by the employer to the Employment Bureau.

Informing the Employment Service about the results of the consultation process must precede the decision to end the need for work of employees. Thus, paragraph 1 of Article 168 stipulates that the employer may not make a decision on termination of employment before the expiration of 30 days from the date of submission of the notification to the Employment Bureau on the results of the consultation. Within this period, the Employment Service will try to provide some of the measures for the care of employees whose work is no longer needed, such as: assignment to other jobs with the same employer, assignment to another employer, vocational training, retraining or additional training to work at another random place of code of the same or another employer or other measures in accordance with a collective agreement or employment contract. Paragraph 2 of the same article stipulates that the Employment Service may order the employer in writing to postpone the procedure of terminating the employment contract of all or individual employees whose work is no longer needed, for a maximum of 30 days, if it can provide them with continued employment.

Paragraph 3 of this article provides for an exception to the obligation to conduct a consultation procedure in the event that the need for work for less than 20 employees of employers has ceased. In this case, the employer is obliged to write about it bothnews of that employee and the union with the employer, no later than five days before the decision to terminate the employment. This applies to any trade union organized by an employer, regardless of whether the employee whose employment will be terminated is a member of that trade union and regardless of the status in terms of representativeness. This notice contains:

1) reasons for termination of the need for work of employees;

2) the number and structure of employees whose work is no longer needed in that position; and

3) criteria for determining employees whose work is no longer needed.

The existence of criteria for determining the employees whose work has ceased to be important is important in order to prevent discrimination against employees and to ensure objectivity in the decision-making of the employer.

The employer may not, within six months, establish an employment relationship with other employees in jobs where, in terms of paragraph 1 of this Article, the need for work of employees has ceased.

Article 209 of the Labor Law stipulates that a fine in the amount of EUR 1,000 to EUR 10,000 shall be imposed on a legal entity for a misdemeanor if it fails to conduct information and consultations in accordance with Article 167 of this Law. The same penalty is also envisaged if the employer does not carry out the procedure of termination of the employment contract due to the cessation of the need for work in accordance with Article 168 of this Law. The responsible person in the legal entity will also be fined in the amount of EUR 100 to EUR 1,000 and the entrepreneur in the amount of EUR 500 to EUR 5,000.