



December 2010

European Social Charter (revised)

European Committee of Social Rights
Conclusions 2010
(ROMANIA)

Articles 2, 4, 5, 6, 21, 28 and 29
of the Revised Charter

This text may be subject to editorial revision.

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts "conclusions" in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions¹.

The Revised European Social Charter was ratified by Romania on 7 May 1999. The time limit for submitting the 9th report on the application of this treaty to the Council of Europe was 31 October 2009 and Romania submitted it on 30 November 2009.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Labour rights":

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

Romania has accepted Articles 2§1, §2, §4, §5, §6 and §7; 4; 5; 6; 21; 28 and 29 from this group.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter on Romania concerns 18 situations and contains:

- 11 of conclusions of conformity: Articles 2§1, 2§4, 2§5, 2§6, 2§7, 6§1, 6§2, 6§3, 21, 28 and 29.
- 7 conclusions of non-conformity: Articles 2§2, 4§1, 4§2, 4§4, 4§5, 5 and 6§4.

The next Romanian report deals with the accepted provisions of the following articles belonging to the fourth thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),

- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

The deadline for the report was 31 October 2010.

¹ *The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int/socialcharter).*

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

The Committee recalls that the normal length of the working time for full-time employees is of eight hours per day and 40 hours per week. Pursuant to Article 111 of the Labour Code, the maximum legal length of the working time may not exceed 48 hours per week, including overtime. By way of exception, the length of the working time, including overtime, may be extended beyond 48 hours per week, provided that the average working hours, calculated over a reference period of three calendar months, do not exceed 48 hours per week (Conclusions 2007).

Article 111 also establishes that for certain economic sectors, organisations or professions listed in the national collective labour agreement, reference periods above three months, but not exceeding twelve months, may be negotiated in the applicable branch collective labour agreement. The Committee recalls in this respect that the reference periods for the averaging of working hours should not exceed four to six months, or 12 months in exceptional circumstances (General Introduction to Conclusions XIV-2). It asks in this respect which are the sectors of activity, organisations or professions where calculation of working time in reference periods of over three months are allowed.

In reply to the Committee's request for information on how time spent 'on-call' at the workplace was regulated, the report indicates that work 'on-call' may be assimilated to overtime work performed by employees upon the employers request, when it exceeds normal working time.

Article 116 of the Labour Code requires employers to record the working hours of each employee and subject the records to the control of the Labour Inspectorate, whenever this is requested. The Committee asks the next report to provide information on the supervision of working time regulations by the Labor Inspection, including the number of breaches identified and penalties imposed in this area.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 2§1 of the Revised Charter.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

The Committee noted previously that, according Article 137 of the Labour Code, public holidays are paid and that workers required to work on a public holiday, "due to the specificity of their activity", are entitled to equivalent compensatory time off during the following 30 days. If for justified reasons no day off in lieu are granted an employee shall benefit for the work performed on the public holiday an increase in remuneration of at least 100 %.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee notes that the compensatory time-off granted within 30 days of the work carried out on a public holiday is equivalent but not longer. It therefore considers that the situation is not in conformity in this respect.

If compensatory time-off is not granted, the Committee asks whether the base salary for the work carried out on a public holiday is maintained, in addition to the increased pay rate.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 2§2 of the Revised Charter on the ground that the right of workers to a longer rest period in compensation for work carried out on a public holiday is not guaranteed.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

ation or reduction of risks

The Committee would point out that the first part of Article 2§4 of the Revised Charter requires states to eliminate risks in inherently dangerous or unhealthy occupations. This part of Article 2§4 is closely linked to Article 3 of the Charter (right to safe and healthy working conditions, see below), under which the states undertake to pursue policies and take measures to improve occupational health and safety and prevent accidents and damage to health, particularly by minimising the causes of hazards inherent in the working environment.

Law No. 319/2006 on occupational health and safety requires employers to take the necessary measures to protect workers and to prevent accidents at work and hazardous situations. This law incorporates the prevention principles laid down in Directive 89/391/EEC of 12 June 1989.

The National Collective Labour Agreement for 2007-2010 provides for a reduction in working time for workers who are exposed to occupational risks which cannot be eliminated. The report provides a list of the occupations which are considered dangerous and which qualify for a reduction in working time. This list includes underground mining, jobs involving exposure to ionising radiation, chemicals, certain occupations in the metallurgical sector, industry, construction, etc.

The Committee refers to its conclusion under Article 3 of the Revised Charter (Conclusions 2009), which describes the dangerous occupations and the measures taken in this regard.

Measures in response to residual risks

When the risks have not been eliminated or sufficiently reduced despite the application of the measures described above, or if such measures have not been applied, the second part of Article 2§4 requires States to grant workers exposed to such risks one form or another of compensation. The aim of these compensatory measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk.

In its previous conclusion (Conclusions 2007), the Committee asked detailed information on the implementation of measures taken to eliminate risks in dangerous or unhealthy occupations where it has not yet been possible to eliminate or sufficiently reduce these risks. As well as the reduction in working time, Article 142 of Law No. 53/2003 on the Labour Code states that employees working in difficult, dangerous or harmful conditions are entitled to at least 3 days of additional annual leave. The Committee asks for the next report to state whether arrangements such as reduced working hours or other measures to shorten exposure to risk are provided for by national legislation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 2§4 of the Revised Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

The Committee recalls that according Article 132 of Law 53/2003 on the Labour Code, the weekly rest period shall usually be a two-day period on Saturday and Sunday.

The Committee previously noted that in exceptional cases the weekly rest days can be cumulated over longer periods on the basis of an agreement between the employer and the employee, the weekly rest can be granted cumulatively, after a period of continuous work that cannot be longer than fifteen calendar days and only subject to permission by the Territorial Labour Inspectorate and the agreement of the trade union (the employee representative, as the case may be). The Committee considers that twelve consecutive days of work before entitlement to a two-day rest period is a maximum, but before reaching a decision in this case and in order to assess whether the postponement of the weekly rest period for 15 days is truly exceptional, the Committee asked for information how frequently permission is granted by the Labour Inspectorate.

According to the report, in 2008, the Labour Inspectorate issued 19 permits, with the consent of the trade unions or employee representatives. The areas in which these permits were issued were artistic activities, metallurgy, navigation and fruit and vegetable processing. The permits were granted taking into account activities carried out abroad and the need to honour employment contracts in order to avoid unemployment. In the course of its inspections, the Labour Inspectorate found no instances of continuous work performed without prior authorisation.

The Committee notes that the number of permits issued by the Labour Inspectorate is low and that the postponement of the weekly rest period for 15 days is truly exceptional. It therefore considers that the situation is in conformity with Article 2§5.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 2§5 of the Revised Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

In its previous conclusion (Conclusions 2007), the Committee considered that the model contract of employment, which was approved by Government Order 64/2003, was in conformity with Article 2§6 of the Revised Charter. However it sought confirmation that this model contract is mandatory.

The report confirms that an individual contract of employment concluded between an employer and an employee must include the clauses stipulated in the model employment contract. By agreement between the parties, individual employment contracts may also include specific clauses, in accordance with the law.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 2§6 of the Revised Charter.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

In its previous conclusion (Conclusions 2007), the Committee asked information on periodical medical examinations (as opposed to information on medical examinations prior to the take up of night work). Under Article 124 of Law No. 53/2003 on the Labour Code, employees who are to perform night work must undergo a medical examination prior to taking up such work. The frequency of the periodical examinations is determined by regulations approved jointly by the Minister of Labour, Social Solidarity and Family Affairs and the Minister of Health. Under Government decision No.355/2007, night workers are to undergo annual medical examinations. The frequency of the examinations may be modified where necessary on the recommendation of the occupational health physician.

The Committee previously asked information on any procedures in place for consulting workers' representatives on the introduction of night work. Article 29 of Law No. 319/2006 on occupational health and safety provides for co-operation between occupational health physicians, occupational health and safety committee representatives and any other competent bodies. Under Article 179 of the law on the

Labour Code, companies with more than 50 employees may set up a company-wide occupational health and safety committee to ensure staff participation in such matters. Under Section 180 of the law on the Labour Code, in companies with less than 50 employees, staff participation is to be ensured through the staff representatives.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 2§7 of the Revised Charter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

According to the report the minimum gross basic wage at national level amounted to € 146,73 at the end of 2008. The Committee notes that in the course of 2005-2008 the minimum gross wage rose by around 70%. As regards the gross average wage, it amounted to € 473 in 2008 while the net stood at € 348. The Committee observes that in July 2008 a tripartite agreement was concluded between the Government, the trade union confederations and employers' confederations. The aim of this agreement was to encourage a rapid growth of the minimum wage over the period of 2008-2014 so that at the end of this period it amounts to 50% of the average wage. The Committee wishes to be kept informed about these developments.

In the absence of the information on the net minimum wage, the Committee observes that the gross minimum wage represents only 31% of the gross average wage and 42% of the net average wage. Therefore the Committee considers that the minimum wage is manifestly unfair as it falls too far below the average wage. The Committee however insists that the next report provide information on the net minimum wage as well.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage is manifestly unfair.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

Article 119 of the Labour Code states that workers are compensated for overtime with time off within the next 30 days after it has been performed. The Committee recalls that where remuneration for overtime is given in the form of time off, Article 4§2 requires that this time be longer than the additional hours worked (Conclusions XIV-2, Belgium). Given that Article 119 of the Labour Code makes no reference to the granting of a longer rest period in relation to the period of overtime worked (nor has the Committee received clarifications requested from the authorities), the Committee finds that the situation is not in conformity with the Revised Charter on this point.

When compensation by time-off is not possible within the abovementioned 30 days, the overtime shall be compensated with extra pay at a rate which shall not be lower than 75% of the basic pay. The Committee notes that a similar compensation scale applies to overtime work of civil servants and public sector contractual employees pursuant to Government Ordinances No. 2/2006 and 3/2006. The Committee finds that such increased rates of remuneration are in conformity with the Revised Charter.

The Committee previously (Conclusions 2003) noted that exceptions to the rules on remuneration for overtime were made with regard to workers with managing responsibilities, whose wages were set to cover the possibility of overtime work, and

workers employed in undertakings where working time has been reduced to less than the eight-hour statutory limitation. It asks that the next report provide a full and up-to-date description of the situation concerning such workers.

As noted in the conclusion under Article 2§1, in the context of flexible working arrangements the length of the working time, including overtime, may be extended beyond 48 hours per week, provided that the average working hours, calculated over a reference period of three calendar months, do not exceed 48 hours per week. The performance of overtime work beyond these limits is prohibited, except for cases of *force majeure* or other urgent works intended to prevent or to eliminate the consequences of an accident (Article 118)

The Committee asks the next report to indicate whether the Labour Inspectorate has identified any breaches related to the failure to pay overtime wages.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 4§2 of the Revised Charter on the ground that the right of workers to a longer rest period in compensation for overtime work is not guaranteed.

Article 4 - Right to a fair remuneration

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

In the General Introduction to Conclusions 2002 on the Revised Charter, the Committee indicated that national situations in respect of Article 4§3 (right to equal pay) would be examined under Article 20 of the Revised Charter. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4§3.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4§3 and Article 20, thus every two years (under the thematic group 1 "Employment, training and equal opportunities", as well as thematic group 3 "Labour rights"). Henceforth, the Committee invites Romania to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

The Committee takes note of the information in the Romanian report.

Reasonable period of notice

Indefinite contracts

In its previous conclusion (Conclusions 2007), the Committee concluded that the situation in Romania was not in conformity with Article 4§4 of the revised Charter because fifteen days' notice was insufficient for employees with over six months' service. From the report, the Committee notes that no changes have been made to Article 73§1 of the Labour Code, under which fifteen days' notice of termination of employment must be given whatever the employee's length of service. The report also provides information on the collective labour agreement which applied at national level for 2007-2010, Article 74§2 of which provides for notice of twenty days in cases of dismissal for reasons outside the employee's control. National legislation provides for a flexible negotiation procedure between the social partners concerning notice periods but the Committee considers that scales of notice depending on length of service must be prescribed by the law. The Committee concludes therefore that the situation in Romania is not in conformity with Article 4§4 on the ground that neither 15 nor 20 days' notice is reasonable for employees with over six months' service.

Cessation of employment other than through dismissal

The Committee points out that the main aim of Article 4§4 of the Charter is to give employees the time to look for a new job before their current one ends, in other words while they are still earning a wage. This is why it is accepted that an employee may be awarded financial compensation instead of notice. Article 4§4 does not just apply to dismissal; it covers all cases of termination of employment. The Committee asks for information in the next report on immediate dismissal and other cases of termination of employment resulting, for example, from the employer's death or from disability.

Probation period, fixed-term contracts and part-time workers

The Committee also considers that the right to reasonable notice in the event of termination of employment applies to all categories of employee irrespective of their status, including those in unusual employment relationships. It applies during probationary periods and covers part-time workers and workers on fixed-term and piece-work contracts. National legislation must protect all employees.

Employees' leave of absence to seek new work

The Committee points out that under Article 4§4 workers must be entitled to take leave to look for a new job during notice periods. It asks whether all workers are guaranteed this right under the national legislation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is not in conformity with Article 4§4 of the Revised Charter on the ground that the notice period is too short for employees with over six months' service.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

In its previous conclusion, it asked for a description of the various statutory rules on the arrangements for and limits on deductions from wages. There is no new information on this point in the report. The legal basis for deductions from wages is still enshrined in Section 164 of Act No. 53/2003 on the Labour Code. As a general rule, deductions from wages may not exceed half of the net monthly wage. Although progress has been made in recent years in the attempt to increase minimum wages, the Committee concludes that it has not been established that wages after deductions are sufficient for workers to provide for themselves and their dependants with means of subsistence.

The Committee would point out that under Article 4§5, domestic law must contain guarantees to the effect that workers may not waive their right to limited deductions from wages (Conclusions 2005, Volume 2, Norway). It asks for further information in the next report on the measures preventing workers from waiving this right.

The Committee also requests further information on other forms of deduction such as trade union dues, fines and the reimbursement of advances on wages, and the limits applied in such cases.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation is not in conformity with Article 4§5 of the Revised Charter on the grounds that it has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

Article 5 - Right to organise

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

The Committee already examined the situation in Romania with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions (Conclusions 2006) and will therefore only consider recent developments and additional information in this conclusion.

Freedom to join or not to join a trade union

In reply to the Committee's query regarding the protection afforded to ordinary unionists against possible pressure from employers by reason of trade-union membership, the report states that Section 2§3 of Law No. 54/2003 on trade unions guarantees the general principle that no one can be forced to either join or not a trade union, and to leave or not a trade union. Furthermore, in accordance with Section 10§2 of Law No. 54/2003 it is prohibited to change or terminate work contracts not only of elected representatives of trade unions but also of trade union members on grounds of involvement in trade union activities. The same protection is foreseen by Section 10§4 for civil servants belonging to a trade union. Sanctions for hindering the right to organise range from 6 months to 2 years of imprisonment or a fine from 2 000 to 5 000 RON (approximately € 460 to € 1 160). However, according to another source than the national report¹, it is alleged that certain employers, notably foreign companies, make employment conditional on workers agreeing not to create or join a trade union. The Committee thus reiterates its request for examples of court rulings on the enforcement of the aforementioned legislative provisions.

Personal scope

In response to the Committee's conclusion that restrictions on the right to organise of high ranking civil servants were too general, the report indicates that Law No. 188/1999 on the status of public servants has been amended in 2006 and 2008 to the effect that all civil servants, including high ranking civil servants, are entitled to the right to establish or join trade unions. There remains a restriction on public servants holding the quality of authorising officers (i.e. management position) who cannot hold a position of elected representative in a trade union's governing body and their post in the civil service at the same time. If they choose the former, they are suspended from their post in the civil service during the duration of their term of office as member of the trade union's governing body. This restriction is justified by the possible conflict of interests that could result in the event of negotiations between the trade union and the authorities. The Committee considers that the situation is now in conformity with Article 5.

Insofar as judges, public prosecutors and members of staff of the Ministry of Justice, the Committee asked for explanations on why these categories of workers are denied the right to form or join trade unions and how their right to organise in order to defend their economic and social interests is protected. The report states that according to Section 2§1 of Law No. 54/2003 other staff than magistrates enjoy the right to organise or join trade unions. Magistrates on the other hand cannot join trade unions but have the right to organise in professional associations and other organisations aiming at representing their interests, promoting training and protecting their status. The Committee has already considered that this restriction is in conformity with the Charter because some restrictions may be imposed on certain categories of civil servants with reference to

Article 31 (Conclusions XVIII-1, Spain). The situation of magistrates in Romania is therefore in conformity with Article 5.

As regards the situation of police members, the report states that there is no obligation for police members to stay affiliated to the National Police Staff Corps, an organisation promoting the interests of the police staff and defending their rights. Furthermore, they may join trade unions whether they are members of the National Police Staff Corps or not. Since 2004, several police trade unions have been set up and are affiliated to national confederations as well as an international confederation, EURO COP (European Confederation of Police). The Committee thus considers that the situation of police members is now in conformity with Article 5.

In its last conclusion (Conclusions 2006), the Committee asked for information on the Romanian Intelligence Service, the Protection and Guard Service, the Foreign Intelligence Service, the Special Telecommunications Service and their subordinate bodies in order to assess whether the situation is in conformity with Article 5. Section 4 of Law No. 54/2003 on trade unions provides for restrictions on the enjoyment of the right to join trade unions for military staff of all these bodies, no mention being made of civilian staff. However, the report implies that staff of these bodies are allowed to join other types of organisations to defend their economic and social rights. The Committee asks for confirmation of that information and its basis in domestic law.

- Romanian Intelligence Service (RIS): According to Law No. 14/1992 on the organisation and functioning of the RIS, the RIS plans and conducts activities of collection, verification and valuation of information necessary to prevent and react to any threat to national security. According to the Constitution, it is part of the national defence system and is organised and coordinated by the Supreme Council for National Defence. The staff of the RIS consists of military and civilian personnel. The RIS deals with classified information, and military and civilian personnel alike are sworn to secrecy. The military personnel has the same rights and obligations as members of the armed forces, including the prohibition of establishing or joining trade unions.
- Protection and Guard Service (PGS): According to Law No. 191/1998 on the organisation and functioning of the PGS, the PGS is responsible for ensuring the protection of Romanian officials, foreign officials and their families during their stay in Romania as well as guarding diplomatic premises and residences in accordance with the decisions of the Supreme Council for National Defence. The PGS has a military structure and is part of the national defence system. The staff of the PGS is composed of military and civilian personnel. The military personnel has the same rights and obligations as members of the armed forces, including the prohibition of establishing or joining trade unions.
- Foreign Intelligence Service (FIS): According to Law No. 1/1998 on the organisation and functioning of the FIS, the FIS deals with foreign intelligence for the national security and defence of Romania, and is part of the national defence system and its activities are organised and coordinated by the Supreme Council for National Defence. It is composed of both military and civilian staff. The military personnel has the same rights and obligations as members of the armed forces, including the prohibition of establishing or joining trade unions.
- Special Telecommunications Service (STS): According to Law No. 92/1996 on the organisation and functioning of the STS, the STS is the central specialised

body which organises, leads, conducts, controls and coordinates the activities in telecommunications for public authorities and other users. It has a military structure and is part of the national defence system. The staff is composed of military personnel and civilians who are sworn to secrecy. The military personnel has the same rights and obligations as members of the armed forces, including the prohibition of establishing or joining trade unions.

The Committee asks for confirmation that, contrary to military staff, civilian employees of these bodies are not prohibited from establishing or joining trade unions. Meanwhile, it reserves its position in this respect.

With regard to the representation of labour and management on the Economic and Social Council, the report states that Section 14a of Law No. 109/1997 requiring that representatives on this body be Romanian nationals has still not been repealed, but that this matter will be considered when the said Act will next be revised. Given that no indication is given as to when that will be, the Committee asks to be informed about any developments in this regard. In the meantime, it considers that the situation is still not in conformity with the Revised Charter on this point.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 5 of the Revised Charter on the ground that the requirement of Romanian nationality for the representation of the two sides of industry at the Economic and Social Council is excessive.

¹ *International Confederation of Trade Unions 2009 Annual Survey on Violations of Trade Union Rights: <http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=ROU&Lang=EN>*

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

Levels of joint consultation

The Committee notes from the report that the mechanisms for joint consultation at the national, sectoral and enterprise level that it described and held to be in conformity with the requirements of Article 6§1 in its previous conclusion (Conclusions 2006) were amended during the reference period. The Committee understands from the report that the amendments did not concern the obligation to consult the Economic and Social Council in its field of competence nor did they modify the social dialogue committees' consultative role (see Conclusions 2006). The amendments rather concerned the composition of the mechanisms for joint consultation.

The Committee thus notes that in compliance with Government Emergency Ordinance No. 41/2006, the composition of the Economic and Social Council, has become as follows:

- 15 members appointed jointly by the employers' confederations representative at national level,
- 15 members appointed by common agreement by the trade union confederations representative at national level,
- 15 members appointed by the Government.

As to the committees for social dialogue in the public administration, at central and local level, inside the ministries and other public institutions, as well as at county level and at the level of Bucharest Municipality, in compliance with Government Decree No. 369 of March 2009 (adopted after the reference period), they will be made up of representatives of central and local government, representatives of employers' organizations representative at national level and representatives of trade unions representative at national level.

In its previous conclusion (Conclusions 2006), the Committee asked for clarification as to representativeness requirements to which participation in the various procedures of joint consultation is subject.

In reply, the report indicates that criteria for representativeness in respect of trade unions and employers' organisations are set out in Law No. 130/1996, republished.

The report clarifies that as regards trade unions all of the following conditions must be met:

- at national level:
 - to have legal status of trade unions confederation;
 - to have organizational and economic independence;
 - to have own union structures in at least half of the counties, including Bucharest;

- to have in their structure trade union federations representative in at least 25% of the branches of activity;
- the constitutive trade unions have cumulatively an amount of members that is at least equal to 5% of the total number of employees in the national economy
- at branch level:
 - to have legal status of trade unions federation;
 - to have organizational and economic independence;
 - the constitutive trade unions have cumulatively an amount of members that is at least equal to 7% of the total number of employees in that respective branch.
- at enterprise level:
 - to have legal status of trade union organization;
 - the members of that union represent at least one third of the total number of employees in the unit.

The report also indicates that as regards representativeness of employers' organisations all of the following conditions must be met:

- At national level:
 - to have organizational and patrimonial independence;
 - to represent employers whose units operate in at least half of the counties, including Bucharest;
 - to represent employers whose units operate in at least 25% of the branches of activity;
 - to represent employers whose comprise at least 7% of the total number of employees in the national economy.
- at branch level:
 - to have organizational and patrimonial independence;
 - to represent employers whose units comprise at least 10% of the total number of employees in that branch.

The report however also indicates that the Ministry of Labour, Family and Social Protection has been entrusted to amend the above mentioned law with a view to establishing clearer criteria for representativeness and a more rigorous assessment to verify whether the criteria are fulfilled. The Committee also notes that the same Ministry intends to amend the Laws No.54/2003 on trade unions and No. 356/2001 on employers' organisations. The Committee therefore request the Government to keep it informed of any developments which would affect the mechanisms of joint consultation.

Matters for joint consultation

The Committee has previously considered that joint consultation covers all matters of mutual interest (Conclusions 2006).

Public sector

In its previous conclusion (Conclusions 2006), the Committee asked what are the measures to promote joint consultation in the public sector including the civil service.

The Committee notes that the collective agreement concluded at the national level for 2007-2010 is applicable also to the public sector. This agreement provides that consultation should take place in the public sector, including the civil service. The Committee asks that the next report include further details as to the practical implementation of such consultation.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 6§1 of the Revised Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

Legislative framework

The Committee refers to its Conclusions 2002 for a description of the rules governing collective bargaining in the private and in the public sector and recalls that in its previous conclusion (Conclusions 2006), it noted that the Ministry of Labour, Social Solidarity and Family proposed substantial amendments to the Labour Code in 2005 and asked that the next report specify whether and how the provisions pertaining to collective negotiation procedures were amended following such proposal.

In reply the report confirms that the Labour Code was amended by Law No. 55/2006. It is not clear however from the information in the report whether and how the provisions pertaining to collective negotiation procedures were amended. The Committee therefore asks the next report to clarify this.

Meanwhile, the Committee notes from ILO² that the social partners that are representative at the national level in Romania, as well as representatives of the Romanian Government, signed a memorandum in which they agreed to improve the legal framework on labour and social dialogue and to request specialized ILO technical assistance on the legislative texts concerning, *inter alia* collective agreements (Law No. 130/1996). A tripartite working group has been set up in order to examine amendments to this Law. The Committee requests that the next report contain up-dated information with respect to developments in this regard.

Conclusion of collective agreements

The Committee notes that the report does not provide any details on collective agreements concluded during the reference period other than those relating to the agreement referred to under Article 4§1. It therefore requests such information as well as details on whether the agreements were concluded in the private or in the public sector and it also needs information on the number of employers and employees covered by these agreements. It thus asks that the next report contain updated information on collective agreements concluded in the private and public sector at

enterprise, sectoral and national level and on the number of employers and employees covered by these agreements.

The Committee asks the next report to provide information on the procedures governing the possible extension of collective agreements.

Public sector

The report states that Government Decision No. 833/2007 on rules for the organisation and functioning of parity commissions and the conclusion of collective agreements was adopted in 2007. Section 22, par.(1) of this Government Decision defines collective agreements as conventions concluded in a written form, between the public authority or institution, represented by its management, and the civil servants of the public authority or institution, through the unions representing them or through elected representatives. According to the same provision, collective agreements can be concluded on:

- setting up and using of funds designed to improve working conditions;
- health and safety at work;
- daily work programme;
- vocational training;
- other measures than those stipulated by law, concerning the protection of the elected governing bodies of trade unions or of the designated representatives of civil servants.

As regards the subject matters of collective bargaining with civil servants not engaged in the administration of the State (e.g. school teachers), the Committee notes from ILO³ that the following are excluded: base salaries, pay increases, allowances, bonuses and other staff entitlements which are fixed by law. The Committee further notes that the ILO Committee on Freedom of Association examined complaints (Cases Nos 2611 and 2632 submitted by the National Education Federation, FEN and the union LEGIS-CCR) complaining about, *inter alia*, such restrictions. In the context of these complaints, the Government of Romania was recommended⁴ to take the necessary measures to amend Section 12(1) of Law No. 130/1996 so that it no longer excludes from the scope of collective negotiations the above mentioned subjects and to amend Law No. 188/1999 so that it does not restrict the range of matters that can be negotiated in the public administration, in particular those that normally pertain to conditions of work and employment. The Government was encouraged to rectify this situation by drawing up with the social partners guidelines on collective negotiations bearing in mind that if legislation requires that agreements concluded be subject to a budgetary decision by Parliament, the system should in practise ensure full respect for provisions that have been negotiated freely.

The Committee notes that following the conclusion of the collective agreement at the national level for 2007-2010, Article 11 of Law No. 130/1996 clarifies that the provisions of collective agreements create effects for:

- all workers of the enterprise or public institution for agreements concluded at this level;
- all workers of the sector for agreements concluded at this level;
- all workers of the country for agreements concluded at the national level.

Moreover, the Committee notes that Section 12 of the above mentioned Law, which foresees that civil servants may conclude collective agreements but cannot do so in areas which are regulated by law, has been complemented by the collective agreement of 2007-2010. Section 9 in fact provides that as regards remuneration of civil servants, trade unions and administration negotiate with the Government the amount of resources needed before the Financial Law is adopted to ensure that the level of wages agreed upon between the social partners is guaranteed. Social partners therefore negotiate to have their rights included in normative acts which concern them bearing in mind the Financial Law. On the basis of the resources indicated in the Financial Act, trade unions and administration conclude collective agreements on wages.

In the light of the above, the Committee observes that Romanian legislation admits, under certain conditions, that collective negotiations take place in the public sector even on wages. The situation is therefore in conformity with the requirements of Article 6§2 of the Revised Charter in this regard.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 6§2 of the Revised Charter.

¹*Individual Observation made by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) concerning the Right to Organise and Collective Bargaining, Convention No. 98 (ratified by Romania in 1958, Document No. (ilolex): 062009ROM098).*

²*CEACR, Individual Observation quoted above.*

³*Report No. 351 on Cases No. 2611 and No. 2632, Complaint against the Government of Romania presented by the National Education Federation (FEN) and the union LEGIS-CCR .*

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee has previously examined the mechanisms of conciliation and arbitration in the private and the public sector and found them to be in conformity with the requirements of Article 6§3 of the Revised Charter (Conclusions 2002, 2004 and 2006).

The report provides no new information. Therefore the Committee reiterates its previous conclusion. It asks the next report to provide updated information.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 6§3 of the Revised Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

Meaning of collective action, Permitted objectives of collective action

The Committee previously found the situation to be in conformity in this respect (Conclusions 2006). There is no change to this situation.

Who is entitled to take collective action?

The Committee held in its previous Conclusions (Conclusions 2002, 2004, 2006) that the situation was not in conformity with Article 6§4 of the Revised Charter since according to Article 42 of the Law No. 168/1999 a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union's members. The Committee notes that the situation has not changed in this respect and it has held consistently that limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4.

Where there is no representative trade union the decision to strike may be taken by workers themselves if more than one quarter of the workforce concerned agrees to do so through secret ballot.

Restrictions on the right to take collective action

Restrictions related to essential services/sectors

Section 62 of Law No. 168/1999 on the settlement of labour disputes allows an employer to refer a dispute to arbitration if a strike has lasted for more than 20 days, no agreement has been reached with the employees and the continuation of the strike would affect "humanitarian interests". It is for the firm's management to decide whether such threat to "humanitarian interests" exists. The competent arbitration commission is made up of one representative of each of the firm's management, the representative trade unions, or as the case may be the employee representative, and the Ministry of Labour and Social Solidarity. The said provision is applicable to sanitary units, social assistance, telecommunications, public radio and television, railways, public transport and gas supply, electricity, heating and water supply, employees in the operative units of nuclear sectors and units with 24 hours activity.

The Committee asked whether the mere fact that a strike takes place within one of these sectors allows a referral to compulsory arbitration even, e.g. in the event basic needs are secured by the provisions of minimum services during strike action or whether further conditions have to be met to qualify such referral as being necessary for "humanitarian interests" and what would be these conditions.

The report states that in order for an employer to have recourse to arbitration in the specified sectors the strike must have lasted over 20 days, and humanitarian interests must risk being affected. The Committee asks how the notion "humanitarian interests" is interpreted in practice, and whether and how a decision to refer a dispute to arbitration on the grounds that it threatens humanitarian interests may be challenged. The Committee considers that the latitude afforded to employers to resort to compulsory arbitration goes beyond that permitted by Article 6§4 and Article G of the Revised Charter.

The Committee previously asked for confirmation that the requisitioning of striking workers to provide minimum services is not provided for under Romanian law. It repeats its request for this information.

The Committee also noted in its previous Conclusions that Section 55 of the Law No. 168/1999 allows employers to seek a court order to postpone or suspend strikes by up to a maximum of 30 days. Such a request for suspension may only be made in the event the calling or continuation of a strike endangers the life or health of people. A binding decision on the suspension of the strike must be rendered by the competent court within seven days following registration of the corresponding request. The court assesses whether an interruption of the activity concerned by the strike would create a danger to people's lives and health.

In order to be able to assess whether court intervention on the basis of Sections 55 and 58 of the Law No. 168/1999 falls within the limits of Article G of the Revised Charter, the Committee asked for detailed information on any corresponding decisions restricting the right to strike during the reference period. The Committee repeats its request for this information.

Restrictions related to public officials

Following the adoption of legislation in 2007 Law no 261/2007 the only personnel from the Ministry of Defence and Ministry of Administration and Interior prohibited from striking are policemen and members of the armed forces.

Conclusion

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

- a trade union may take collective action only if it fulfils representativeness criteria which unduly restricts the right of trade unions to take collective action;
- employers may have recourse to compulsory arbitration in circumstances which go beyond those permitted by Article G of the Revised Charter.

Article 21 - Right of workers to be informed and consulted

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

Legal framework

The Committee notes, in particular, that Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community has been transposed into domestic law through the adoption of Law No. 467/2006 of 18 December 2006.

Scope

Article 21 of the revised Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.

As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 21 of the revised Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 21 of the revised Charter, the Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (Judgment of the European Court of Justice of 18 January 2007 (*Confédération générale du travail (CGT) and Others*, Case C-385/05)).

Consequently, the Committee asks whether this is the scope of Romania's legislation, particularly as regards the calculation of these minimum thresholds.

Personal scope

The Committee noted in its previous conclusion (Conclusions 2007) that the right of workers to be informed and consulted is mainly exercised by the trade unions represented within undertakings. In undertakings with over 20 employees in which no trade union is present, representatives elected by the general meeting of staff may ensure that this right is observed. However, elected representatives may not continue their activities if trade union representation is established subsequently.

The report confirms that under Trade Unions Law No. 54/2003, trade union representatives do not have to be Romanian nationals to be elected and participate in the meetings of managing bodies.

In reply to the Committee, the report confirms that Decree No. 187/2007 on the right to information and consultation of workers employed in specific fields applies to all undertakings, regardless of whether they are public or private. In this connection, the report states that over 80% of the total workforce in the private and public sector have a

right to information and consultation within their undertaking, which is exercised by trade unions or elected representatives.

With regard to Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, as described above, the Committee asks whether the minimum thresholds on the number of workers have been set by Law No. 467/2006.

Material scope

Under the new Law No. 467/2006, employers are required to inform and regularly consult workers' representatives on any matter linked to the undertaking's economic situation and its development, the development of employment within the undertaking and any planned measures likely to have an impact on employees' jobs, along with any decision giving rise to significant changes in the organisation of work or contractual relations. Under the act the purpose of consultation is to enable workers' representatives to obtain a reasoned response and reach agreement on decisions within the employer's remit. Time limits must be respected and sufficient information must be provided by the employer. Under a further provision of the act, the practical arrangements for informing and consulting workers may be established freely through collective agreements.

Employers are not obliged to consult employees' representatives or pass information on to them which they consider to be confidential where disclosure would be detrimental to the undertaking's activities or interests. In such cases, they are nonetheless required to give reasons for their decision. Employees' representatives may appeal to the relevant judicial authorities against such decisions if they consider them unjustified.

Remedies

Like trade union and elected representatives, workers have legal authorisation to initiate administrative proceedings against their employers where their right to be informed and consulted at work is being infringed and are subsequently entitled to take their case to the courts. Both elected staff representatives and workers have the right to notify the Labour Inspectorate where legislation and collective agreements are not observed and also have the right in such cases to initiate judicial proceedings.

Supervision

Under Law No. 467/2006 cited above, employers who fail to meet the obligation to inform and consult their employees are liable to a fine of 1 000 to 20 000 Romanian lei (RON) (about € 245 to 4 907), while offenders who have failed to meet the requirement to establish consultation procedures with workers' representatives are liable to a fine of RON 2 500 to 25 000 (about € 613 to 6 133). Lastly, in the event that the information provided by employers is incomplete or incorrect and hence prevents workers' representatives from adopting an informed opinion with a view to future consultation, the statutory fines range from RON 5 000 to 50 000 (about € 1 227 to 12 267).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 21 of the Revised Charter.

Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them

The Committee notes the information in the Romanian report.

The Committee has previously noted (Conclusions 2007) that there are two main forms of employee representation in Romania, namely trade union representatives and, in companies with no trade union representation, employee representatives elected by the general meeting of employees.

Protection of workers' representatives

The Committee has previously noted (Conclusions 2007) that trade union representatives cannot be dismissed for the duration of their mandate and for a period of two years following its expiration for reasons connected with their mandate. **The Committee asks again whether elected representatives enjoy the same protection.** The dismissal of a trade union representative requires the prior written consent of his or her parent body.

The Committee asks again whether worker representatives are protected against detriment short of dismissal.

Employee representatives who have been unlawfully dismissed are entitled to reinstatement in their previous job or, if they do not want this, the award of compensation.

In legal proceedings concerning the dismissal of an employee representative, the burden of proof rests with the employer.

Under Law 319/2006, in addition to trade union and other elected employee representatives, there are also representatives with specific responsibilities for health and safety who sit on the enterprise health and safety committee. They are elected for a two-year term of office. The Committee asks whether they have the same protection as trade union and elected employee representatives.

The Committee notes that Law 217/2005 on European Works Councils, which transposes Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, provides that the members of these representative bodies are appointed by the representatives of employees in Community-scale companies or groups of companies, or otherwise by the majority or employees in such companies or groups of companies. The members of these representative bodies are accorded the same protection against dismissal for reasons connected with their duties as trade union and other elected employee representatives.

Facilities granted to workers' representatives

Trade union representatives and elected employee representatives are entitled to up to five days' paid free time to carry out their duties. The amount of paid time off is established by collective agreement.

The Committee refers to its interpretative statement on the facilities to be granted to workers' representatives in the general introduction as well as to its question on travelling expenses and asks the next report to provide all the necessary information.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 28 of the Revised Charter.

Article 29 - Right to information and consultation in procedures of collective redundancy

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

Definitions and scope

The report states that, in accordance with Article 68 of the Labour Code, collective redundancy means the dismissal in a period of 30 calendar days, arranged in one or more of the grounds referred to in Article 65§1, a number of:

- at least 10 employees if the employer has more than 20 and less than 100 employees;
- at least 10% of employees, if the employer has more than 100 and less than 300 employees;
- at least 30 employees if the employer has at least 300 employees.

In determining the actual number of the employees collectively made redundant, are taken into account also those employees whose individual employment contracts have been terminated at the employer's initiative, for one or more reasons not related to the individual employee, provided there are at least 5 redundancies.

Prior information and consultation

The Committee takes note of the information regarding the rules on prior information and consultation between the employer and employees' representatives as well as the notification procedure between the employer, the Labour Inspectorate, the territorial employment agency and the trade unions.

Based on the information in the report, the Committee finds that the content of prior information to be provided before consultation starts, is sufficient and the purpose of the consultation is in line with what Committee considers as requirements under Article 29 (Conclusions 2003, Statement of Interpretation on Article 29).

The report states that the Labour Inspectorate, based on the reasoned request of either party and having been notified by the territorial employment agency, may decide the reduction of the period of 30 days notice, without bringing any prejudice to the individual rights, as regards the notification period. The Committee asks what is understood by "individual rights" in this case. In the meantime, the Committee reserves its position on the issue of appropriate length of time for prior information and consultation.

Sanctions and preventive measures

In accordance with Article 76 of the Labour Code, a dismissal in breach of the procedure prescribed by law is absolutely invalid. According to Article 77, in case of labour disputes, the employer cannot plead in court for other reasons than those specified in the decision of dismissal. According to Article 78§1 of the Labour Code, if the dismissal is ruled as unjustified or unlawful, the court shall order its cancellation and will require the employer to pay compensation equal to wages indexed, increased and updated and other rights which would have benefited the employee. Article 78§2 stipulates that at the employee's request the court that ordered the cancellation of dismissal shall restore the parties in the situation that existed prior to the issuing of notice of dismissal.

The Committee asks whether there are any preventive measures in place to ensure that the employer does not fail in his duty to consult the employers' representatives before making employees redundant.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 29 of the Revised Charter.

