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European Social Charter (revised)

European Committee of Social Rights

Conclusions 2010
(LITHUANIA)

Articles 2, 4, 5, 6, 21, 22, 26, 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 Lithuania on 29 June 2001. The time limit for submitting the 7th report on the application of this treaty to the Council of Europe was 31 October 2009 and Lithuania submitted it on 6 November 2009. On 30 March 2010, a letter was addressed to the Government requesting supplementary information regarding Articles 4§2 and 4§4. The Government submitted its reply on 31 May 2010.

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).

Lithuania has accepted all these articles.

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

The present chapter on Lithuania concerns 22 situations and contains:

- 15 conclusions of conformity: Articles 2§§2, 3, 4, 5, 6, 7; 4§4; 6§§1, 3; 21, 22; 26§§1, 2; 28; 29.
- 5 conclusions of non-conformity: Articles 2§1; 4§§1, 5; 5; 6§2;

In respect of the other 2 situations concerning Articles 4§2 and 6§4, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the article in question.

The next Lithuanian 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 Lithuania.

According to Article 144§§1–3 of the Labour Code working time may not exceed 40 hours per week and the duration of daily working time must not exceed 8 working hours. Maximum working time, including overtime, must not exceed 48 hours per 7 working days. For employees employed in more than one workplace or having an additional job contract in the same workplace the daily working time (including breaks to rest and to eat) may not exceed 12 hours.

In its last conclusion, the Committee noted that the duration of working time of specific categories of employees - health care, care (custody), child care institutions, specialised communications services and specialised accident containment services, etc. - could go up to 24 hours per day, and found that the situation was not in conformity with the Charter (Conclusions 2007). The report indicates that such working shifts must be followed with an uninterrupted rest period which shall not be shorter than the actual working shift. The Committee also notes that working time of employees in these occupations must not exceed 48 hours per seven-day period.

The Committee nevertheless recalls that daily working time should in no circumstances exceed sixteen hours per day. This is a limit which cannot be exceeded even in the context of the above-mentioned occupations. The Committee therefore reiterates its conclusion of non-conformity on the ground that the Labour Code permits daily working time of up to 24 hours in various occupations.

The five-day working week with two rest days is the standard established under the law. The six-day working week with one rest day shall be set for employees in enterprises where a five-day working week is impossible due to the type of production and other conditions. It is prohibited to assign one employee to work two shifts in succession.

In its previous conclusion the Committee found a second ground of non-conformity on the ground that in the absence of absolute maximum limits on daily and weekly working hours under flexible working time arrangements the working week could be more than 60 hours (Conclusions 2007). Noting, however, that pursuant to Article 149§1 of the Labour Code the maximum average working time in a week must not exceed 48 hours (or 12 hours in a day) in the context of flexible working schemes, the Committee finds that the situation on this point is acceptable.

Finally, 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 Lithuania is not in conformity with Article 2§1 of the Revised Charter on the ground that for some categories of workers a working day may be allowed of up to 24 hours.

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 Lithuania.

Ordinance No. X-1538 of 13 May 2008 amended Article 162 of the Labour Code concerning public holidays and increased the number of public holidays from thirteen to fourteen.

The Committee asked for information on the rate of increase in pay for work performed on a public holiday. According to the report, during the period from 1 January 2003 to 31 December 2008, the rate of increase in pay for work performed on a public holiday remained unchanged (i.e. at least double the usual wage).

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.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

The Labour Code and the Law on Holidays provide for a minimum annual leave of 28 calendar days. According to the report, Law No. X-188 of 12 May 2005 amended Article 177 of the Labour Code. Under the new provision, annual leave may not be replaced by financial compensation. The only possible exception is financial compensation for unused leave upon termination of the employment contract.

Under Article 11 of the Law of 17 December 1991 on paid leave, the annual leave may, at the employee's request, be split, but employees are required to take at least two continuous weeks off.

Article 174 of the Labour Code and Article 12 of the law on paid leave lay down the rules on postponing annual leave. Postponement is possible only at the request or with the consent of the employee. Any leave that has not been taken during the year may be carried over to the following year. The Committee understands that only annual leave over and above 4 weeks may be postponed. It asks whether this interpretation is correct.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 2§3 of the Revised Charter.

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 Lithuania.

Elimination 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.

The Committee reminds that pursuant to the List of Hazardous Occupations, approved by Resolution No. 1386 (3 September 2002) a hazardous occupation means work related to higher occupational risk which increases the likeliness of injury or other damage to the health of the worker due to hazardous and/or dangerous factor(s) existing in the working environment.

As regards the implementation of measures to eliminate risks in dangerous or unhealthy occupations, Article 36§5 of the Labour Code states that employers who violate the occupational health and safety rules are liable to fines ranging from 500 to 5 000 litas (€145 to €1 457). Under

Article 6.1 of Law No. IX-1768 of 14 October 2003, the Labour Inspectorate is responsible for checking to ensure that employers comply with the occupational health and safety legislation (in particular where reducing the number of working hours and granting special leave are concerned) and for taking action where necessary. The report contains a table detailing the inspections carried out by the Labour Inspectorate during the reference period and the penalties imposed. The Committee notes that the number of inspections and penalties increased between 2005 and 2008.

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.

The Committee previously considered that the situation was in conformity because provisions provides for reduced working hours or additional holidays in certain sectors. At the Committee's request, the report explains that where hazardous factors can be reduced, employers are bound to do so before introducing shorter working hours. A reduction in working hours is required if hazardous factors affect the working environment and exceed the acceptable limits (owing to chemical, biological, physical, manual, ergonomic and/or psychosocial factors) and if the work, by its nature, involves high levels of mental and emotional strain (in accordance with resolution no. 1193 of 30 September 2003 establishing the procedure for reducing working hours for activities of this kind). The Committee asks information as to precisely what sectors benefit from reduced working hours.

Law No. VIII-1019 of 12 January 1999 on protection against radiation and the applicable regulations in this area provide for the protection of workers and their environment against the harmful effects of ionising radiation. Article 10 of the law provides for the monitoring of exposure to radiation and its impact on the environment and also for the introduction of protection measures, medical examinations and special training for workers.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania 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 Lithuania.

Law No. I-188 of 12 May 2005 supplemented Article 149§1 of the Labour Code which provides that in undertakings, establishments and organisations operating continuously and in the case of work where, owing to technological processes, it is not possible to observe the daily or weekly working time in the case of a specific category of workers, the maximum average duration of the working time may not exceed 48 hours per week and 12 hours per day. These working hours must be approved by the staff representatives or be stipulated in the collective agreements. In the case of overtime, hours or days off in lieu are granted on other days of the week.

Conclusion

The Committee concludes that the situation in Lithuania 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 Lithuania.

The Committee previously noted (Conclusions 2005) that the essential aspects of the employment contract must be stated in writing. Law No. X-188 of 12 May 2005 amended Article 99§4 of the Labour Code and added that, when concluding the contract of employment, the employer must draw the employee's attention to the conditions of work, collective agreements, regulations and other laws that apply to the workplace.

In its previous conclusion (Conclusions 2007), the Committee asked for information on the activities of the Labour Inspectorate in monitoring compliance with the essential elements of the employment contract. According to the report, any employer who fails to conclude an employment contract is liable to an administrative penalty and may incur a fine ranging from 3 000 to 10 000 litas (€881 to €2 939) for employing a worker illegally. In 2006, the Labour Inspectorate investigated 171 cases involving changes made to the terms and conditions of employment contracts and imposed 104 penalties. It also investigated 373 cases involving other problems related to employment contracts and imposed 168 penalties.

Conclusion

The Committee concludes that the situation in Lithuania 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 Lithuania.

The Committee asked whether there are any circumstances besides health grounds that the employer is obliged to consider and explore possibilities of transfer to daytime work. The report indicates that transfers to daytime work are effected at the request of the employee, and not only on health grounds but also for family (child-rearing, child with a disability, single parent) and other reasons.

Conclusion

The Committee concludes that the situation in Lithuania 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 Lithuania.

In its previous conclusion (Conclusions XVIII-2) the Committee noted that the minimum statutory wage did not apply to certain categories of workers and asked for more information on these categories. It also asked under what circumstances would a full-time worker receive a wage that falls below the statutory minimum wage. It notes that the report does not contain this information. Therefore, the Committee holds that it has not been established that a decent wage is guaranteed to all workers.

The Committee notes from the report that between the years 2005 and 2008 the gross minimum wage was increased significantly, amounting to 550 litas (LTL; € 160) in 2005 and LTL 800 (€ 233) in 2008. The average wage also went up substantially due to economic growth. The gross average wage amounted to LTL 1276.2 (€ 371) in 2005 and rose to LTL 2,151.7 (€ 625) in 2008. As regards the net amounts, in 2008 the net minimum wage stood at LTL 663 (€ 193) while the net average wage at LTL 1650 (€ 480). The Committee notes that the former makes only 40,2% of the latter. The Committee also observes that this ratio has been decreasing since 2005 when it stood at 47.6%. Therefore, the Committee holds that the minimum wage is not fair.

The Committee recalls that under Article 4§1 the minimum wage must provide the worker with a decent standard of living and must in any event be above the poverty line in a given country. The Committee notes from the report that the poverty threshold in Lithuania, defined as 60% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value stood at LTL 355 (€103) in 2005 whereas the net minimum wage amounted to LTL 550 (€160). Thus the Committee observes that in 2005 the net minimum wage was higher than the poverty threshold value. According to the report in 2005 the minimum wage offered a worker receiving it more than the subsistence income. However, the Committee notes that in 2008 when the net minimum wage amounted to € 193, the poverty threshold value stood at € 208. The Committee holds that the minimum wage which falls even below the poverty line is not compatible with the Charter and is manifestly unfair.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§1 of the Revised Charter on the following grounds:

- it has not been established that a decent wage is guaranteed to all workers;
- the minimum net 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 Lithuania.

Pursuant to Article 150 of the Labour Code, time worked in excess of the standard 40 hours per week is classified as overtime, and is generally prohibited. Overtime work shall not exceed 4 hours for each employee during two consecutive days and 120 hours per year (Article 152).

As of 1 August 2008, remuneration for overtime shall be at least one and a half of the hourly pay (monthly wages) established for the employee (amendment to Articles 193 and 194 of the Labour Code by Law No. X-1712 of 15 July 2008). The Committee asks if the remuneration due for overtime can be replaced with compensatory leave.

The above-mentioned Article 150 of the Labour Code also stipulates that work of administrative officials which exceed the set working time shall not be deemed overtime work. In a letter dated 30 March 2010 the Committee asked the Government for clarifications on which were the exact administrative officials which did not receive remuneration for overtime. In the supplementary

information received from the Government it is said that the notion of administration officers (sic) is prescribed under Article 24 of the Labour Code: "The administration shall be comprised of officers who are entitled according to their competence to give binding instructions to the employees subordinate to them. The officers of the administration shall carry out operational management of the enterprises, establishments and organisations in accordance with laws and documents of establishment of the respective enterprise, establishment and organisation". According to the Government, this means that the exception to the right to an increased remuneration for overtime work is only applicable to senior officials, such as directors, heads of division or deputy heads of division.

The Committee finds that the notion of "competence to give binding instructions to employees in a position of subordination" is much wider than that of senior officials, such as directors, heads of division or deputy heads of division. It is therefore unable, on the basis of the information provided, to assess whether the mentioned exceptions exceed or not those permitted under Article 4§2. It therefore asks the next report to duly complete the information on this question.

Finally, it asks the next report to provide information on the activities of the Labor Inspection in respect of any breaches related to the failure to pay overtime wages.

Conclusion

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

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 Lithuania 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 Lithuanian report.

It refers to its previous conclusion (Conclusions 2007), in which it asked for confirmation that severance pay, which is the equivalent of five months' wages, is paid in addition to the period of notice, which is two months for workers with between ten and twenty years of service. In view of the information provided in the report, the Committee concludes that employees who have been given notice in accordance with Article 130 of the Labour Code must also be granted the severance pay provided for in Article 140 of the Labour Code.

Article 129 of the Labour Code guarantee the right of all workers to absent themselves during the notice period in order to look for a new job. The length of time off for the employee shall not be less than ten percent of the rate of working time during the notice period. The employee shall retain his average wage for this time of absence." Nevertheless, in the case of settlement by the collective

agreement the mentioned wage cannot be less than minimal state wage per hour for each hour spent to seek for a new job.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

The Committee refers to its previous conclusion (Conclusions 2007), in which it found that statutory limitations on deductions from wages were not sufficient to safeguard the livelihoods of employees on the minimum monthly wage. From the report, the Committee notes that there has been no change in this situation. Under Article 225 of the Labour Code, total deductions from the minimum wage may not exceed 20%. Deductions of up to 50% may be made where, after a deliberate criminal act by the employee, compensation has to be paid for a decline in the state of health or the death of the victim or any other damage. Furthermore, unless a court sets a lower level, it is possible to deduce up to 70% of the share of the salary above the minimum monthly wage set by the Government.

The Committee would also 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, Norway). It asks for further information in the next report on the measures preventing workers from waiving this right.

Conclusion

The Committee concludes that the situation is not in conformity with Article 4§5 of the Revised Charter on the ground that, in some cases, salaries of workers after deductions will not ensure means of subsistence for themselves and their dependants.

Article 5 - Right to organise

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

The Committee has already examined the situation 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 2004 and 2006) and will therefore only consider recent developments and additional information in this conclusion.

Forming trade unions and employer associations

In its last conclusions (Conclusions 2004 and 2006) the Committee considered the conditions governing the registration of non-profit making organisations. It found that the requirement of thirty members to form a trade union was excessive and undermined the freedom to organise. The situation did not change during the reference period and the Committee considers that it remains incompatible with the Revised Charter. However, the report indicates that amendments to the Law on Trade Unions and the Civil Code were to be adopted. These amendments, if adopted, would reduce the minimum number of founders to twenty, or to 1/10 of all employees (instead of 1/5), but no less than three. The Committee notes the reduction of the threshold foreseen by the amendments for the minimum number of trade union founders, which would be in accordance with Article 5, and asks to be kept informed of these developments.

Freedom to join or not to join a trade union

In its previous conclusion (Conclusions 2006), the Committee held that privileges that unionised employees enjoyed under Article 21 of the Law on Trade Union constituted a form of pressure that infringed the freedom not belong to a trade union. The report however clarifies that the additional guarantees foreseen by Article 21 are only meant for those employees who have been elected to the governing body of a trade union and not to all trade union members.

Personal scope

As regards the equal enjoyment of the right to organise by foreigners, the report indicates that in 2003 the Parliament amended the Law on Trade Unions to the effect that any person lawfully employed in Lithuania, on the basis of a work contract or other grounds provided by law, has the right to freely join trade unions and take part in their activities.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 5 of the Revised Charter on the ground that the requirement of thirty members to form a trade union is excessive and undermines the freedom to organise.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee examined the mechanisms for joint consultation at the national and sectoral level in the private and the public sector in its previous conclusions on Article 6§1 of the Revised Charter and found the situation to be in conformity with the requirements of this provision (Conclusions 2004 and 2006).

The Committee notes from the report that in 2008-2009 social partners took initiatives to increase the significance of social dialogue at the national level and that the Lithuanian regions are implementing the measures of the Programme on Strengthening Social Dialogue in 2007-2011.

The Committee notes from another source¹ than the national report that despite the fact that the Tripartite Council reviews all draft legislation, the opinion of national social partners is often neglected at a later stage, notably when the drafts are being adopted by the Parliament. In this regard, it recalls that despite its broad scope, Article 6§1 cannot be regarded as requiring States to submit amendments tabled during parliamentary proceedings for consultation with trade unions. Article 6§1 cannot be regarded as permitting interference with the rules for drafting legislation as provided by constitutional provisions (*Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, decision on the merits of 9 May 2005, §§ 40-41).

The report contains detailed information on Law No. IX-2005 of 26 October 2004 on Work Councils and Law No. X-1534 of 13 May 2008 which supplements Article 47 of the Labour Code with regard to provision of information and consultation at the enterprise level. The Committee recalls that for States, like Lithuania, which have accepted both Article 6§1 and Article 21, the conformity of the situation of consultation at enterprise level is no longer examined within the framework of Article 6§1 as it is examined under Article 21 (Conclusions 2004, Ireland). It thus refers to its assessment of these legislative developments under that provision.

Conclusion

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

¹*European industrial relations observatory (eiroline) website.*

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

Legislative framework

The Committee refers to its previous conclusions (Conclusions 2004 and 2006) for a description of the rules governing collective bargaining in the private and in the public sector and recalls that it asked for further information with regard to the rules specifically governing collective bargaining of police officers.

In reply to this question, the report clarifies that the Law on the Approval of the Statute on Internal Service (No. IX-1538) of 29 April 2003, which the Committee previously examined (Conclusions 2006) also applies to police officers. The Committee observes that the restrictions foreseen by Article 44.2 of this law do not affect the officials' right to participate in the processes that result in the determination of the regulations applicable to them (Conclusions III, Germany and European Council of Police Trade Unions (CESP) v. Portugal, complaint No. 11/2001, Decision on the merits of 22 May 2002, § 58). Thus, the Committee holds that the situation in Lithuania respects the requirements of Article 6§2 of the Revised Charter in this regard.

Conclusion of collective agreements

The Committee notes from other sources² than the national report that collective bargaining is relatively rare in practice in Lithuania and that managers often determine wages without entering into bargaining with the unions, except in larger factories with well organised unions. The first national level bipartite agreement was only signed in 2005.

The Committee recalls that if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place are, collective bargaining should remain free and voluntary (Conclusions I, Statement of Interpretation on Article 6§2). The Committee notes that in March 2007 the Lithuanian Trade Union Confederation (LPSK, affiliated to the ITUC) and the Lithuanian Confederation of industrialists launched a joint project to improve sectoral level collective bargaining.³ It asks the next report to include details with regard to developments in this regard. It also requests the Government to indicate what measures it has taken to take to facilitate and encourage the conclusion of collective agreements.

Meanwhile, it notes that according to statistics from the European industrial relations observatory,⁴ less than 20% of workers are covered by collective agreements. The Committee considers this coverage to be too weak and thus not in conformity with Article 6§2 of the Revised Charter.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 6§2 of the Revised Charter on the ground that coverage of workers by collective agreements is weak.

¹Comment made at its 79th session in 2008 by the ILO Committee of Experts on the Application of Conventions and Recommendations concerning the Right to Organise and Collective Bargaining Convention No. 98 as well as ITUC, CSI, IGB 2007 Annual Survey of violations of trade union rights and the European industrial relations observatory on-line (eironline) website.

²See country profile on Lithuania on the eironline website.

³See country profile on Lithuania on the eironline website.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

The Committee takes note of the information provided in the Lithuanian report.

The Committee has examined the mechanisms of conciliation and arbitration in the private and the public sector as stipulated in Sections 68 et seq. of the Labour Code in its previous conclusions on Article 6§3 of the Revised Charter (Conclusions 2004, 2006).

The Labour Code has been amended and in addition to conciliation commissions, "labour arbitration", and "third party courts", provision is also made for mediators (intermediaries) to assist in resolving collective labour disputes. The role of a mediator is to coordinate the interests of both parties and reach an agreement that would be satisfactory to both parties. An mediator shall be chosen by a joint decision of the parties to a collective labour dispute from the list of mediators approved by the Minister of Social Security and Labour. If parties fail to agree on the appointment of mediator, the latter shall be chosen by the secretariat of the Tripartite Council by way of casting lots . An mediator must make a proposal for solving the dispute within ten days following his/her appointment. An agreement reached between the parties to the dispute through mediation shall be made in writing. It shall be binding for the parties to the dispute and they shall comply with deadlines and the procedure established in the agreement. If representatives of the parties to a collective labour dispute fail to reach an agreement through mediation, it shall be recorded in the minutes of disagreement.

The Committee understood from the information provided in previous reports that in principle conciliation commissions may refer a dispute to arbitration however recourse to arbitration may be made only in the event the parties have agreed in writing to do so and have determined the scope

and the subject of the collective dispute. The Committee asked for confirmation that this understanding was correct. (Conclusions 2006). It further sought confirmation that any decision of the conciliation commission are binding upon the parties only with their joint consent.

The report states that a collective dispute has to be taken before a conciliation commission, except the cases when one of the parties to the collective dispute request that a collective dispute shall be settled through mediation. Decisions at this stage are taken by mutual agreement and if it an agreement is reached the decision must be abided by.

If the conciliation commission fails to reach an agreement on all or part of the dispute, the commission may refer the dispute for hearing to the labour arbitration court, a third party court or wind up the conciliation procedure by drawing up the minutes on disagreement. Pursuant to Article 72 of the Labour Code, the conciliation commission is formed from the equal number representatives of the parties to the dispute therefore any decision of a conciliation commission concerning the transfer of the dispute for hearing by labour arbitration, a third party court or winding the conciliation procedure up by drawing up the minutes on disagreement will reflects the wish of the parties. An unsatisfied party who does not agree with the adoption of a joint decision may go on strike. The Committee notes from this explanation that arbitration cannot be considered as compulsory as the parties are always free to disagree and strike. The Committee asks the next report to confirm that it has correctly understood the situation.

The Committee finally asked whether the aforementioned rules on conciliation and arbitration procedures also apply in the public sector. The report confirms that they do.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in Lithuania 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 Lithuania.

The Committee previously the right to strike (Conclusions 2004 and 2006) and found the situation not to be in conformity on two grounds :

- trade unions may only initiate collective action if two-thirds of an undertaking's employees vote in favour of a strike (Article 77.1 of the Labour Code), which is an undue restriction on trade unions' right to collective action;
- strikes are totally forbidden in public electricity, district heating and gas supply enterprises (Article 78.1 of the Labour Code).

The report provides information on both these points.

Meaning of collective action, Permitted objectives of collective action

Law No. X-1534 of 13 May 2008 (which came into effect on 1 July 2008) provides for a new definition of a strike: "A strike means a temporary cessation of work by the employees or a group of employees of one or several enterprises when a collective dispute has not been settled or a decision adopted by the Conciliation Commission, Labour Arbitration or a Third Party Court, which is acceptable to the employees, is not executed or is execute improperly, or a collective dispute has not been settled with the help of an intermediary or when an agreement reached by way of intermediation is not performed."

Who is entitled to take collective action?

The Committee previously found that the situation was not in conformity with the Revised Charter on the grounds that Article 77.1 of the Labour Code granted trade unions the right to call strikes. Such decisions had to be taken by a two-thirds majority of an undertaking's employees or, in the

case of a “subdivision of an undertaking”, two-thirds of that subdivision's employees and half of the employees of the undertaking. Amendments to Article 77 of the Labour Code alter these requirements: the right to call a strike in an enterprise or a structural division thereof is vested in the trade union in compliance with the procedure laid down in its statutes. If an enterprise does not have a functioning trade union, and if an assembly of employees has not delegated the functions of employees representation and advocacy to a trade union of a relevant branch of economic activity, the right to adopt the decision to declare a strike in the enterprise or its structural unit shall be vested in the works council. Further “A strike shall be declared if a corresponding decision is approved by secret ballot, as follows:

- 1) more than half of the employees of the enterprise voting in favour of declaring a strike in the enterprise;
- 2) more than half of the employees of the structural division of the enterprise voting in favour of declaring a strike in the structural division of the enterprise.” (LC Article 77§1).

The Committee notes that this is an improvement in the situation, however it asks whether when a trade union calls a strike it must seek the approval of the works concerned. It also asks whether it is possible that there are enterprises where there is no trade union nor works council.

Specific restrictions to the right to strike

The Committee previously considered that the prohibition on strikes in electricity, district heating and gas supply enterprises was in breach of the Revised Charter . The most that could be considered consistent with Article 6§4 of the Revised Charter would be to establish a minimum service in these sectors. With regard to the strike ban in these sectors an amendment to the Labour Code, which came into effect on 1 July 2008, and Article 78§1 now provides that the prohibition on striking now applies only to employees of the emergency medical services. The Committee had previously found that the restrictions in this sector to be clearly within the scope of Article G. Therefore the Committee finds that the situation is now in conformity in this respect.

Restrictions related to essential services/sectors

The Labour Code provides an obligation to provide minimum services to meet the immediate needs of the community in the event of strikes in undertakings and sectors covered by Article 77.4 of the Labour Code. Such minimum services are determined either by the Government after consultation with the Tripartite Council or by the relevant municipal executive after consultations with the parties to the collective dispute. The undertakings and sectors concerned are the railways and public transport, civil aviation, communications and energy enterprises, health care and pharmaceutical institutions, food, water, sewage and waste disposal enterprises, oil refineries, enterprises with a continuous production cycle and other enterprises where work stoppages would result in grave and hazardous consequences for the community or human life and health.

In order to be able to assess the conformity of the restrictions with Article 6§4 of the Revised Charter with reference to Article G, the Committee asked for information in the next report on what criteria are used to determine whether a minimum service should be introduced. It repeats its request for this information.

Conclusion

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

Article 21 - Right of workers to be informed and consulted

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

Legal framework

During the reference period, the Act of 12 May 2005 on the participation of employees in the decision-making processes of European companies was amended by an act of 1 July 2008, and the provisions of the Labour Code of 2002 on information and consultation were amended by an act of 13 May 2008. On 14 June 2005, the government, the trade unions and the employers' organisations signed a tripartite co-operation agreement which encourages the exchange of information and consultation between employers and workers on all matters relating to companies' economic and financial situations and the employment situation, as well as the conveyance of information to works councils.

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 (**Error! Hyperlink reference not valid.**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 Lithuania's legislation, particularly as regards the calculation of these minimum thresholds.

Personal scope

The Committee points out that under the appendix to Article 21 of the Revised Charter, states may exclude from the Article's scope undertakings employing less than a certain number of workers, to be determined by national legislation or practice (Conclusions XIII-3, Finland).

In reply to the Committee, the report sets out the rules and procedures governing the appointment of trade union representatives and the election of works council members under the Act of 26 October 2004 on works councils and their internal regulations. It also states that works councils must be set up in all undertakings with at least 20 employees. In smaller undertakings the tasks of the works council are carried out by a workers' representative elected at a general staff meeting.

The Committee also notes that under section 3 of the Works Councils Act of 26 October 2004, a works council must be set up when no trade union is represented in the undertaking and the staff meeting has not entrusted a trade union that is active in the undertaking's sector of economic activity with the task of representing its workers. Under section 27 of this act, however, if a trade union is represented within an undertaking or the staff has selected an appropriate trade union to represent its workers before the works council's term of office has expired, the council will continue its activities and collective bargaining will be conducted jointly by the union and the works council. If the latter cannot agree on the formation of a joint representative body, a decision on the matter will be taken at a meeting of staff.

Material scope

Under the new act of 1 July 2008 cited above workers must be informed and consulted not only about the economic and financial situation of the undertaking but also about changes to its structural units. Under the Information and Consultation Act of 13 May 2008, employers are required to report in writing to workers' representatives on these subjects at least once a year. These rules may be included in a collective agreement.

Where there are no workers' representatives within an undertaking, Article 47§10 of the Labour Code stipulates that employers are required to keep their employees informed directly, immediately or at a regular meeting, about the planned timeframes, reasons and consequences of any specific decisions likely to undermine their legitimate interests.

Workers' representatives may have access to confidential information if this is necessary for them to perform their functions properly, except where the employer considers that divulging such information may be detrimental to the undertaking or its activities.

Remedies

Workers and workers' representatives may file complaints where their right to information has been infringed in order to force their employers to provide them with information or to begin consultation with workers' representatives.

In 2008, the finding in seven of the twelve complaints filed was that the employer had failed to comply with an information and consultation procedure provided for by a collective agreement.

Supervision

The Committee again asks for further details on how the Labour Inspectorate supervises and enforces observance of the employees' representatives right to information and obligation. It also asks one more time for information on fines imposed on employers during the reference period for violation of this right.

Conclusion

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

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

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

Working conditions, work organisation and working environment

There has been no change in the legal framework governing the right of workers to take part in the determination and improvement of working conditions and the work environment. The Committee previously (Conclusions 2007) noted that the determination of the fields in which employees' representatives may contribute to the employer's decisions, other than those relating to health and safety, is provided either by specific legal provisions or by collective agreements.

The Committee previously (Conclusions 2007) noted from the previous report that the legal provisions governing the participation of workers in the determination and improvement of the working conditions also apply to undertakings controlled by public authorities.

The Committee previously (Conclusions 2007) asked whether collective agreements themselves contain rules on the participation of employees in the determination and improvement of the working conditions and working environment. The report states that only rules relating to the employees' health and safety and other social and economic conditions affecting the parties, as well as the rules on the collective agreements themselves are included in collective agreements.

In reply to the Committee's question on the proportion of workers out of the total workforce covered by such collective agreements, the report states that data on the proportion of workers covered by collective agreements are not recorded.

Protection of health and safety

Under section 13 of the Health and Safety at Work Act, workers or their representatives are entitled to play an effective part in determining working conditions and the work environment within an undertaking outside the scope of collective bargaining.

Representatives appointed by employers must consult employees on all occupational health and safety issues and on the establishment, implementation and monitoring of an appropriate occupational safety management system within the undertaking. They must also allow workers to participate in all discussions on the subject. Appropriate committees, run according to rules approved by the employer in co-ordination with employers' representatives, must be set up within all undertakings.

Staff also elect workers' representatives on health and safety issues, whose main tasks are to represent undertakings' employees on occupational health and safety committees, to help to ensure that employees are protected in this sphere and to inform employees about any risks inherent in their work to which they may be exposed. Where such risks exist or there are no appropriate training or protection measures to counter them, employees have the right to refuse to work. Workers' health and safety representatives may also make proposals on the subject, which must be taken into account by the employer's representative when the employer takes decisions on occupational health and safety matters. If there is no reaction to their proposals, workers' health and safety representatives may take the case to the Labour Inspectorate.

Organisation of social and socio-cultural services and facilities

The report confirms that in undertakings where social and cultural services or facilities are already established, employees may take part in setting them up. The Committee asks what the legal basis for this participation is. It also asks what the decision-making arrangements are for access to social and cultural facilities and if employers are required to fund such activities.

Enforcement

Employees' representatives are entitled to appeal to the relevant courts in respect of alleged breaches of their right to take part in the determination and improvement of working conditions.

Workers and their representatives are entitled to damages where their right to take part in the determination and improvement of working conditions and the work environment has been breached. They may also claim compensation if they suffer physical injury as a result of dangerous or unhealthy working conditions.

The report describes the tasks of the Labour Inspectorate and its inspectors in detail. Their main task is to supervise compliance with all the regulations concerning participation in the determination and improvement of working conditions. They also check that committees have been set up to deal with occupational health and safety issues within the undertaking, as well as internal occupational safety management systems. It also examines all complaints filed with regard to participation in the determination and improvement of working conditions.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 22 of the Revised Charter.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

The Committee takes note of the replies to the questions posed in its last conclusion.

Liability of employers and means and redress

In its last conclusion, the Committee asked whether employers could be held liable towards persons working for them who were not their employees (sub-contractors, self-employed persons, etc.) and had suffered sexual harassment on their business premises or from employees under their responsibility. It also asked whether the liability of employers toward workers also applied in cases of sexual harassment suffered by persons not working for them (such as self-employed entrepreneurs, self-employed workers, visitors, customers, etc.)

The report states in answer to the question that in cases of criminal liability, the prohibition of sexual harassment covers not only direct relations between an employer and an employee, but also persons working under authorship agreements, self-employed persons, costumers, visitors and guests.

The Committee takes note of the information submitted in the report regarding different forms of legal liability for sexual harassment: administrative, disciplinary and criminal.

It notes that a labour dispute on sexual harassment may be brought before the labour disputes commissions, Equal Opportunities Ombudsman or the court.

The Committee takes note of the answer to its questions on the labour disputes commissions. It notes that labour disputes on sexual harassment can be settled by the labour disputes commissions which have the prerogative of taking decisions and imposing sanctions. The decisions of the commissions are executed by the defendant party and in case of failure, the decision is enforced according to the procedure established for the execution of court judgements. The report states that in practice the commissions do not decide on sexual harassment cases.

The persons who claim to have suffered sexual harassment may lodge a complaint with the Equal Opportunities Ombudsman. The report states that the Office of Equal Opportunities Ombudsman has received 3 complaints on sexual harassment in 2005, 2 in 2006, 1 in 2007 and 1 in 2008. The Committee asks for information regarding number of cases lodged with the courts.

Burden of proof

The Committee takes note of the explanation on the burden of proof as regulated by the Labour Code and the Code of Civil Procedures.

Damages

The amount of compensation is decided by the court in each specific case.

The Committee recalls that victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage (Conclusions 2005, Moldova). These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer (Conclusions 2005, Lithuania).

The Committee asks that the next report provides information on the kinds and amount of compensation. It also asks whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to sexual harassment is guaranteed.

Prevention

In its last conclusion, the Committee asked how far the social partners are consulted on measures to promote knowledge and awareness of, and prevent sexual harassment in the workplace and whether there were any other measures planned to improve the situation. The report informs that in the framework of the National Programme of Equal Opportunities for Women and Men 2005-

2009, three round tables per year were organised in the counties. The discussions covered the topic of the role of social partners in implementing equal opportunities for women and men in the labour market, including sexual harassment.

The Committee notes what the report states concerning the difficulties of practical implementation of the Law on Equal Opportunities for Women and Men as concerns sexual harassment. It takes note of the proposals of the Office of Equal Opportunities Ombudsman for legal amendments to improve the law. The Committee asks that the next report informs whether the proposed amendments have been incorporated in the law and notes the Lithuanian Government intention to make the necessary legal and institutional improvements which will allow for a better protection against sexual harassment in the workplace.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 26§1 of the Revised Charter.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

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

The Committee takes note of the replies to the questions posed in its last conclusion.

Liability and means of redress

The report states that harassment is regulated by the amended Law on Equal Treatment according to which harassment is defined as "unwanted conduct, whereby on the grounds of sex, race, nationality, language, origin, social status, religion, convictions or beliefs, age, sexual orientation, disability, ethnic group, a person seeks to offend or offends human dignity and attempts to create or creates an intimidating, hostile, humiliating or abusive environment".

It also states that while the labour law does not provide liability for harassment, violations are subject to administrative, civil and criminal liability. Therefore, such cases are not brought against the Labour Disputes Commission. A worker may defend violated human rights in courts according to the civil, criminal or administrative proceedings. Article 12 of the Republic of Lithuania Law on Equal Treatment sets forth that any person claiming violation of equal treatment is entitled to address the Equal Opportunities Ombudsman. Applying to the Equal Opportunities Ombudsman does not preclude the defence of rights in court.

In its last conclusion, the Committee asked whether employers could be held liable towards persons working for them who were not their employees (sub-contractors, self-employed persons, etc.) and had suffered harassment on their business premises or from employees under their responsibility. It also asked whether the liability of employers toward workers also applied in cases of harassment suffered by persons not working for them (such as self-employed entrepreneurs, self-employed workers, visitors, customers, etc.)

The report states in answer to the question that in cases of criminal liability, the prohibition of moral harassment covers not only direct relations between an employer and an employee, but also persons working under authorship agreements, self-employed persons, costumers, visitors and guests.

Burden of proof

The Committee takes note of the explanation on the burden of proof as regulated by the Labour Code and the Code of Civil Procedures.

The law provides for the shift of the burden of proof to the defendant in discrimination cases. When examining natural persons' or legal entities' complaints, applications, requests, reports or claims of discrimination on the grounds of age, sexual orientation, social status, disability, race or ethnic

group, religion, convictions or beliefs in courts or other competent bodies, the defendant has to prove that the principle of equal treatment has not been violated.

Damages

The report states that with a view to ensuring provision of compensation for the violation of equal opportunities in accordance with the law, the person who has suffered from discrimination on the grounds of age, sexual orientation, social status, disability, race or ethnic origin, religion, convictions or beliefs has the right to claim pecuniary and non-pecuniary damage from guilty persons in compliance with the procedure established by law.

In its last conclusion the Committee previously asked in connection with disputes between employers and employees in the labour disputes commissions whether the commissions could award victims adequate compensation. In answer, the report states that the labour disputes commissions do not deal with disputes concerning harassment. Article 12 of the Republic of Lithuania Law on Equal Treatment sets forth that any person who thinks that his equal opportunities have been violated is entitled to address the Equal Opportunities Ombudsman. Applying to the Equal Opportunities Ombudsman does not preclude the defence of rights in court.

The Committee recalls that victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage (Conclusions 2005, Moldova). These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer (Conclusions 2005, Lithuania).

The Committee asks that the next report provides information on the kinds and amount of compensation. It also asks whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to sexual harassment is guaranteed.

Prevention

The Committee notes the activities carried out in the framework of the National Programme for Anti-Discrimination 2006-2008.

The Committee notes what the report states concerning the difficulties of practical implementation of the Law on Equal Opportuninities for Women and Men as concerns harassment. It takes note of the proposals of the Office of Equal Opportunities Ombudsman for legal amendments to improve the law. The Committee asks that the next report informs whether the proposed amendments have been incorporated in the law and notes the Lithuanian Government intention to make the necessary legal and institutional improvements which will allow for a better protection against moral harassment in the workplace.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 26§2 of the Revised Charter.

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

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

Protection of workers' representatives

In reply to the Committee, the report states that under the Code of Civil Procedure, the burden of proof on workers' representatives is alleviated under certain circumstances.

Workers who have been unlawfully dismissed are entitled to reinstatement or, if they do not wish so, the award of compensation.

The Committee notes that the protection afforded to workers' representatives covers both dismissal and any other prejudicial act such as transfer from one job to another.

The Committee refers to its interpretative statement in the General Introduction on the duration of protection for workers' representatives and wishes to be informed as to how long the protection for worker representatives lasts after the cessation of their functions.

Facilities granted to workers' representatives

According to the report, when workers' representatives are required to travel because of their duties, they may be awarded financial compensation or time off in lieu. Employers also have the duty to fund training for workers' representatives to perform their duties. No fewer than three days per year must be set aside for training unless stated otherwise in collective agreements. 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 Lithuania 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 Lithuania.

The Committee takes note of the replies to the questions posed in its last conclusion.

Definitions and scope

The report informs that the Law No. X-1534, dated 13 May 2008, amended Article 130 of the Labour Code, which governs collective redundancies. According to this article, collective redundancy shall mean termination of employment contracts when, due to economic or technological reasons, restructuring or other reasons, not related to a single worker, there are plans, within 30 calendar days, to dismiss:

- 10 or more workers in undertakings employing 20 to 99 workers;
- not less than 10% of workers in undertakings employing 100 to 299 workers;
- 30 and more workers in undertakings employing 300 and more workers.

The Committee asks whether the Lithuanian law provides for any exceptions for certain categories of workers or enterprises as to the procedures applied in the case of collective redundancies.

Prior information and consultation

In its last conclusion, the Committee asked the next report to provide more precise information on the exact content of the information the employer is obliged to provide prior to collective redundancies.

In reply, the report states that according to Article 47 of the Labour Code, governing information and consultation, prior to making a decision on collective redundancy, the employer must inform and consult workers' representatives. Information must include the following:

- reasons for planned redundancies;
- total number of workers and the number of workers to be made redundant, by their categories;
- the period, during which employment contracts will be terminated;
- the selection criteria for workers to be made redundant;
- the conditions of terminating employment contracts;
- other relevant information.

The employer shall inform a territorial labour exchange of the planned collective redundancy in writing at the procedure established by the Government after consultations with workers' representatives and prior to giving notices of termination of employment contracts. The employment contract cannot be terminated in breach of the obligation to inform a territorial labour exchange of the planned collective redundancy or the obligation to consult workers' representatives.

The report explains the role of the territorial labour exchanges, which upon receipt of notification for a planned collective redundancy shall:

- evaluate the impact of redundancy on the local labour market;
- provide for the opportunities to mitigate the consequences of redundancy through active labour market policy measures (vocational training, supported employment, support for job creation, etc.);
- organise meetings with workers to inform them about the situation of the labour market, and the workers' rights and obligations;

- develop an action plan to mitigate the consequences of redundancy and discuss the plan with the administration of the undertaking, which has notified of a collective redundancy, and members of the Tripartite Commission under the territorial labour exchange.

Under Article 29, consultation procedures must take place in good time, before the redundancies, in other words as soon as the employer contemplates making collective redundancies. The report mentions a 30 days period between plans of the employer for collective redundancies and the dismissal of the employees. The Committee asks if the Lithuanian legislation provides for periods of time between the consultation procedures and the redundancies.

Sanctions and preventive measures

Violation of Article 47§3 of the Labour Code, i.e. when prior to making a decision on a collective redundancy the employer does not inform or consult workers' representatives, shall be considered an administrative offence which, pursuant to Article 41 of the Code of Administrative Violations of the Law, imposes a fine of LTL 500 to 5,000 on the employer or a person authorised by him.

In its last conclusion, the Committee asked who may apply for postponement of dismissals when consultation with trade unions representatives have not happened within the required period of time and whether the postponement is ordered by Labour Inspectorate, courts, etc.

The report states that pursuant to Article 130 of the Labour Code, the employment contract cannot be terminated in breach of the obligation to inform a territorial labour exchange of the planned collective redundancy or the obligation to consult workers' representatives. Therefore, violation of Article 47§3 and Article 130 of the Labour Code to inform a territorial labour exchange of the planned collective redundancy could constitute the grounds for a judicial dispute over the legality of dismissal. Article 297§3 of the Labour Code establishes that, in case if a worker has been dismissed from work without legal grounds or in violation of the procedure established by laws, the court restores the worker to his job and awards payment of the average pay for the entire period of forced absence from work from the date of dismissal until the date of execution of the court decision.

The Committee takes note of the statistics concerning the number of notifications of collective redundancies and the number of workers who received dismissal notices during the reporting period as well as the efforts of the Government through the territorial labour exchanges to mitigate the consequences of collective redundancies.

The right of individual employees to contest the lawfulness of their dismissal falls within the ambit of Article 24 of the Revised Charter.

Conclusion

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