



January 2015

## **European Social Charter (revised)**

European Committee of Social Rights

Conclusions 2014

(RUSSIAN FEDERATION)

Articles 2, 4, 5, 6, 21, 22, 28 and 29  
of the Revised Charter

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns the Russian Federation, which ratified the Charter on 14 September 2000. The deadline for submitting the 3rd report was 31 October 2013 and the Russian Federation submitted it on 16 December 2013.

The report concerns the following provisions of the thematic group "Labour rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 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).

The Russian Federation has accepted all provisions from this group except Article 2§2, 4§1, 26§1 and 26§2.

The reference period was from 1 January 2009 to 31 December 2012.

The conclusions on the Russian Federation concern 19 situations and are as follows:

- 4 conclusions of conformity: Articles 2§1, 2§5, 2§6, 6§2.
- 4 conclusions of non-conformity: Articles 2§4, 4§2, 4§4, 4§5.

In respect of the other 11 situations related to Articles 2§3, 2§7, 4§3, 5, 6§1, 6§3, 6§4, 21, 22, 28, 29, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by the Russian Federation under the Charter. The Committee requests the Government to remedy that situation by providing this information in the next report.

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

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (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 opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 October 2014.  
Conclusions and reports are available at [www.coe.int/socialcharter](http://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 the Russian Federation.

Article 2§1 of the Charter guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime. The Charter does not explicitly define what constitutes reasonable working hours. The Committee therefore assesses the situations on a case by case basis. Extremely long working hours, which are those of up to 16 hours on any day or, under certain conditions, more than 60 hours in one week are unreasonable and therefore contrary to the Charter (Conclusions XIV-2 (1998), the Netherlands).

According to the report, Article 2 of the Labour Code establishes "the right of each employee to fair working conditions, the right to rest, limited working hours, weekly rest, holidays and non-working holidays, paid annual leave". Article 91 defines working hours as the time during which the employee shall perform his/her duties. Normal working hours may not exceed 40 hours per week.

The Committee recalls that working overtime must not simply be left to the discretion of the employer or the employee. The reasons for working overtime and its duration must be subject to regulation (Conclusions XIV-2, Statement of Interpretation on Article 2§1).

The Committee notes from the report that overtime is the work performed by the employee at the employer's initiative outside the working schedule established for him/her. Overtime is only allowed with the written consent of the employee in specific cases, such as when it is necessary to perform work due to unexpected delays caused by technical conditions, when it is necessary to ensure the continuity of operations, etc. Overtime may be requested without the employee's consent in case of emergency situations. In all other cases working overtime is only permitted with the written consent of the employee and taking into account the views of the elected representatives of the employees.

Article 99 of the Labour Code provides that overtime work cannot exceed four hours in two days and 120 hours in a year for each employee. The employer must precisely record all overtime work, performed by each employee.

The Committee considers that flexibility measures regarding working time are not as such in breach of the Charter. It recalls (*Confédération Française de l'Encadrement CFE-CGC v. France*, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§29-38) that in order to be found in conformity with the Charter, national laws or regulations must fulfill three criteria:

1. they must prevent unreasonable daily and weekly working time. The maximum daily and weekly working hours referred to above must not be exceeded in any case.
2. they must operate within a legal framework providing adequate guarantees. A flexible working time system must operate within a precise legal framework which clearly circumscribes the discretion left to employers and employees to vary, by means of a collective agreement, working time.
3. they must provide for reasonable reference periods for the calculation of average working time. The reference periods must not exceed six months. They may be extended to a maximum of one year in exceptional circumstances.

In this respect, the Committee notes from the report that when due to the production conditions it is impossible to respect daily or weekly working hours, it is allowed to introduce the summary accounting of working time, so that the overall working hours during the accounting period do

not exceed the normal regular number of working hours. The reference period may not exceed one year (Article 104 of the Labour Code).

The Committee observes that the flexible working time arrangements provided in Article 104 are in conformity with the Charter. It asks what the absolute limit to daily and weekly working time is for employees working under a flexible working time regime.

The Committee also takes note of the shift work method provided for by Article 300 of the Labour Code, which allows for rotational team work. This is a special form of labour process whereby employees live in the purpose-built camps constructed at the production site. During rotational work the summary accounting of the working hours is introduced for a month and it is the employer's duty to keep a record of working hours and rest periods for each employee.

The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France* (§§ 64-65), Complaint No 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined *a posteriori* for a period of time that the employee *a priori* did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee holds that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.

The Committee recalls under Article 2§1 of the Charter that an appropriate authority must supervise whether the limits are being respected (Conclusions I (1969), Statement of Interpretation on Article 2§1). The Committee asks the next report to provide information regarding any violations of working time regulations identified by the Labour Inspectorate.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Russian Federation is in conformity with Article 2§1 of the 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 the Russian Federation.

According to the report, under Article 114 of the Labour Code, employees are entitled to an annual paid leave of 28 calendar days, excluding public holidays. All workers without exceptions (including temporary, seasonal, part-time workers, distant workers etc.) enjoy this right to an annual leave and any agreement aimed at limiting it or replacing it by financial compensation is illegal. Seasonal and temporary workers are entitled to two days leave for each month of work. Certain categories of workers are entitled to additional days of paid annual leave: underage workers, workers with disabilities, pedagogical workers, workers employed in harmful or dangerous working conditions, employees with irregular working hours, employees working in the regions of the Far North and similar areas. The part of an annual paid leave that exceeds 28 calendar days may be replaced by a financial compensation, upon the written request of an employee. However, this is not allowed in respect of pregnant women, underage workers and workers employed in harmful or dangerous activities, except when the payment of financial compensation for the unspent holidays occurs at the dismissal.

The report indicates that during the first year of work the employee is entitled to take the annual leave after six months of continuous work with the employer, unless otherwise agreed. After the first year of work, the annual leave can be taken at any time of the year, according to the schedule of annual paid leaves established by the employer (Article 122 of the Labour Code). This schedule, which is obligatory, is determined every year by the employer, taking into account the views of the elected body of a primary trade union organisation. Employees must acknowledge in writing the notification of the schedule setting the date of their annual holidays, no later than two weeks in advance. Certain categories of workers are, however, granted an annual paid leave at their convenience, in accordance with the Labour Code and other Federal Laws.

Upon agreement between the employee and the employer, an annual paid leave may be divided into parts, one of which should be no shorter than 14 calendar days.

The report indicates that in case of temporary disability, including sickness, of an employee, the paid annual leave must be extended or moved to another date, as determined by the employer taking the employee's wishes into account.

In exceptional cases, when granting leave to the employee during the current year could have a negative impact on the normal work of the organisation or individual entrepreneur, it is allowed to postpone the leave to the next business year upon consent of the employee. In such cases, the leave must be taken no later than twelve months after the end of the year during which it was accrued. Failure to grant an annual paid leave to workers under 18 years old and workers employed in harmful or dangerous conditions for two years in a row is prohibited. Revoking an employee from his/her leave is allowed only upon his/her consent. An unused part of the leave must be granted at the employee's convenience during the year, or the following year. It is not allowed to revoke underage workers, pregnant women and people employed in harmful or dangerous activities from their respective leaves.

The Committee recalls that, under Article 2§3 of the Charter, an employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. In the light thereof, it asks

the next report to clarify what limits apply to the postponement of the annual leave, that is whether the whole annual leave can be postponed to the following year or whether a minimum number of days should be taken during the reference year without exceptions. In the meantime, it reserves its position on this issue.

*Conclusion*

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

## **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 the Russian Federation.

The Committee points out that the States Parties to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations and to apply compensatory measures to workers exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced, either in spite of the effective application of the preventive measures referred to above or because they have not yet been applied.

### ***Elimination or reduction of risks***

The Committee refers to its conclusion of conformity under Article 3§1 of the Charter (Conclusions 2013) for a description of dangerous activities and the preventive measures taken in their respect. It notes that a draft federal law "On special assessment of the working conditions" was expected to come into force in 2014, outside the reference period. The Committee asks the next report to provide comprehensive and updated information in this respect, in view of its examination during the Committee's next assessment of the Russian Federation's compliance with Article 2§4 of the Charter.

### ***Measures in response to residual risks***

The Committee notes from the report that harmful or dangerous activities are listed in the Decree of 25 October 1974, No. 298/p-22 and the Model provision on the assessment of working conditions and the application of industry-specific lists of works, which may entitle workers to additional payments as a remuneration for labour conditions, approved by the Decree of 3 October 1986, No. 387/22-78. Article 219 of the Labour Code, as amended in 2006, provides that compensation to workers employed in hard labour in harmful or dangerous conditions, and the conditions for receiving it, are established in the order of the Government of the Russian Federation, taking into account the views of the Russian Tripartite Commission on Regulation of Social and Labour Relations. The procedure of workplace certification was approved in 2011 (Ministry of Health and Social Development order of 26 April 2011, No. 342n).

The Committee recalls that, while States have a certain discretion to determine what activities are to be considered as inherently dangerous or unhealthy and what are the risks concerned, the Committee monitors their decisions. They must at least consider sectors and occupations that are manifestly dangerous or unhealthy, such as mining, quarrying, steel making and shipbuilding, and occupations exposing employees to ionising radiation, extreme temperatures and noise. The Committee asks the next report to specify whether these sectors and occupations are covered by the relevant legislation and what prevention and compensation measures apply to workers exposed to risks associated with such activities.

According to the report, workers involved in the activities listed in the abovementioned decree of 1974 are entitled to reduced working hours (Article 92 of the Labour Code) and to additional days of annual paid leave (Article 117 of the Labour Code, Government Decree of the Russian Federation of 20 November 2008, No. 870 "On establishing reduced working hours, additional annual paid leave, increased pay for workers employed in hard labour in harmful or hazardous and other special labour conditions"). The Committee notes, however, from the report that during the reference period no compensatory measures applied to workers involved in activities which were not included in the list, but whose harmful/dangerous character was established

through the abovementioned workplace certification. In addition, no regulatory act has been adopted yet, pursuant to paragraph 2 of the abovementioned Decree No. 870 of 2008, to establish different types and amounts of compensation depending on the degree of hazard class of working conditions. The report refers to some case-law changes occurred in this respect in 2013, out of the reference period (ruling No. 135-O of the Constitutional Court of 7 February 2013, ruling No. AKPI12-1570 of the Supreme Court of 14 January 2013). The Committee asks the next report to provide information on the impact of this case-law on the rules concerning compensatory measures for workers exposed to harmful or hazardous labour conditions.

The Committee also notes that, according to the statistical data provided, out of 48.7 million jobs employing 68 million workers, 26.6 million jobs involved dangerous work conditions. In particular, in the processing, transportation and mining industry, the proportion of workers employed under harmful labour conditions was, at the end of 2012, respectively 33.4%, 35.1% and 46.2% of the total number of workers. 41.8% of the total number of employees were entitled to at least one form of remuneration. In particular, 31.1% of the total number of employees was entitled to an additional leave and 3.7% of the total number of employees was entitled to reduced working hours. The other compensatory measures provided included free nutrition in view of medical prevention reasons (1.8%), free milk or other equivalent nutrition products (18.8%), a higher salary (27.5%), free protective clothing, special footwear and other means of personal protection (76.6%) and early retirement (18.9%).

The Committee points out that the aim of the compensation must be to offer those concerned sufficient and regular time to recover from the associated stress and fatigue, and thus to maintain their vigilance. Accordingly, Article 2§4 encompasses measures such as reduced working hours, additional paid holidays and other similar measures to comply with health and safety objectives. However, early retirement or financial compensation are not relevant and appropriate measures to achieve the aims of Article 2§4. The Committee notes from the information provided that the situation is not in conformity with Article 2§4 of the Charter, on the ground that not all workers who are in practice exposed to residual risks are entitled to appropriate compensation measures.

### *Conclusion*

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 2§4 of the Charter, on the ground that not all workers who are in practice exposed to residual risks are entitled to appropriate compensation measures.

## **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 the Russian Federation.

It notes from the report that all employees are entitled to a weekly rest period, usually on Sunday. The report states that the weekly rest period may not be less than 42 consecutive hours; two days off are granted to employees working five days per week, and one day to those employed in a six-day working week. Certain categories of employees are entitled to additional days off (such as, for example, workers taking care of children with disabilities or blood donors). If the day off coincides with a public holiday, the day off is reported to the first day after the holiday.

Working on weekends is prohibited, except for the cases indicated in the Labour Code. Working on weekends is allowed upon the employees' written consent, if it is necessary to perform unexpected urgent work, upon which the normal operation of the organisation as a whole, or of its separate structural divisions depends. Furthermore, work on weekends is allowed without the employees' consent in the following cases:

- in order to prevent a disaster, an industrial accident or to deal with their consequences;
- in order to prevent accidents, destruction of or damage to property of the employer, state or municipal property;
- to perform work of an urgent nature due to the enacting of the state of emergency or martial law, or emergency work in case of a disaster or threat of a disaster (fire, flood, famine, earthquake, epidemic or epizootic), and in other cases endangering the life or normal living conditions of the entire population or a part thereof.

Working on weekends is also allowed, as provided in a collective agreement, a local regulatory act or an employment contract, for employees of creative media, cinematography, television and camera crews, theatres, concert organisations, circuses and other people involved in the creation and/or performance/exposure of the works. In other cases, overtime work is permitted only with the written consent of the employee and taking into account the views of the elected body of the primary trade union organisation. People with disabilities and mothers of children below three years old can only work on weekends upon written consent.

If a weekend break cannot be taken due to technical and organisational circumstances, the days off are granted on different days of the week, alternating between the groups of workers according to internal labour schedule rules.

The Committee recalls that the right to weekly rest periods may not be renounced to or replaced by compensation. Although the rest period should be "weekly", it may be deferred to the following week, as long as no worker works more than twelve days consecutively before being granted a two-day rest period. In the light thereof, it asks the next report to clarify if there are circumstances under which an employee may work more than twelve days consecutively before being granted a rest period.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Russian Federation is in conformity with Article 2§5 of the 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 the Russian Federation.

It notes that, under Article 67 of the Labour Code, the employment contract must be concluded in a written form, drawn up in two copies, each signed by both parties. Even in the absence of a written contract, an employment contract shall be deemed concluded if the employee starts working after notification or receipt of instructions from an employer or his representative. Once an employee has actually started working, the employer has to conclude an employment contract in writing no later than three working days after the date of the actual admission of the employee to work.

According to the report, the following conditions are to be included into an employment contract on a compulsory basis:

- the place of employment specifying the particular structural unit and its location;
- working duties (job position according to the staff schedule, profession, skills with a specified qualification; a particular kind of delegated work);
- the employment commencement date, and, upon the conclusion of a fixed-term employment contract, its duration and the causes for concluding a fixed-term employment contract;
- payment conditions (including the size of the flat rate or salary (official rate of pay), benefits, bonuses and incentive payments);
- working hours and rest time (if it is different from the common regulations applied by the employer for this particular employee);
- remuneration for hard labour and work in harmful or dangerous conditions, while the features of working conditions are to be defined at the workplace;
- conditions defining the nature of the work (mobile, involving business trips, out-of-the-office, other kinds of work);
- condition on compulsory social insurance for workers;
- other conditions.

The omission of some information and/or terms in the employment contract, is not a sufficient ground for deeming it null and void or for terminating it. The missing information and/or terms are to be included into the employment contract then.

An employment contract may only contain supplementary terms which do not affect the employee's position against the legislation, collective agreement, other agreements or local regulatory acts, in particular:

- on clarifying the duty station (indicating the business unit and its location) and (or) the workplace;
- on trial (probatory) period;
- on non-disclosure of secrets (state, official, commercial or other);
- on the obligation of the employee to work no less than the contract stipulates upon the completion of a training period, if the training was carried out at the expense of the employer;
- on the kinds of and terms for additional insurance of the worker;
- on improvement of social and living conditions of the worker and his family;
- on clarification of the rights and responsibilities of employees and employers, established by labour legislation and other regulatory legal acts containing norms of labour law, in regard of the working conditions of this particular employee.

The Committee takes note of this information and asks the next report to clarify whether employees are informed in writing (whether in the employment contract or another document), when starting employment, on the amount of paid leave and the length of the periods of notice in case of termination of the contract or the employment relationship.

*Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in the Russian Federation is in conformity with Article 2§6 of the 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 the Russian Federation.

It notes that, according to Article 96 of the Labour Code, night time is the time from 10 pm to 6 am. The normal duration of work at night time (shifts) is reduced by one hour without subsequent paying off by work. This reduction of working times does not apply to workers who already have reduced working hours, nor to employees who are specifically hired for night work, unless provided otherwise by a collective agreement.

According to the Labour Code and the federal laws, the following categories of employees are excluded from night shifts: pregnant women, workers under the age of 18 (except those involved in the creation and/or performance of works of art) and certain other categories of workers, specified by the law. The following categories of employees may be allowed to do night shifts upon their written consent, as long as it is compatible with their health condition: women with children aged less than three years, people with disabilities, parents of children with disabilities, workers caring for sick family members, single parents and guardians of children under five. These categories of workers must be informed of their right to turn down night shifts in writing.

The schedule and procedure of the night shifts of employees of creative media, cinematography, television and camera crews, theatres, concert organisations, circuses and other persons involved in the creation and/or performance/exposure of the works may be established through a collective agreement, a local regulating act, or job contract.

The Committee recalls that Article 2§7 guarantees compensatory measures for persons performing night work. In the light of the Charter's requirements under this provision, the Committee asks the next report to clarify:

- who is considered to be a night worker;
- whether a medical check-up is carried out before an employee is assigned to night work and regularly thereafter;
- under what circumstances a night worker can be transferred to daytime work; and
- whether there is regular consultation with workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work.

In the meantime, it reserves its position on this issue.

### *Conclusion*

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

## **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 the Russian Federation.

The Committee recalls that Article 4§2 is inextricably linked to Article 2§1, which guarantees the right to reasonable daily and weekly working hours. Overtime includes work performed in addition to normal working hours. Employees working overtime must be paid at a higher rate than the normal wage rate (Conclusions I (1969), Statement of Interpretation of Article 4§2). This increase must apply in all cases, even if the compensation for overtime work is made on a flat-rate basis.

Article 149 of the Labour Code provides that when performing work under labour conditions that are different than normal (performing work of different qualifications, combining jobs, working beyond the normal length of working hours, working at night, working on non-working holidays, and other cases), the employee is paid extra allowances stipulated by collective agreement or labour contract. The amount of extra allowances cannot be lower than those established by law or other standard legal acts.

Furthermore, according to Article 152 the employer has the right to set a specific amount of overtime pay in a collective agreement or an employment contract. However, the minimum amount of overtime may not be less than 150% of the hourly rate for the first two hours and not less than 200% of the hourly rate afterwards. The Committee observes that this provision is in conformity with the Charter.

The Committee notes from the report that in their judgements regarding overtime remuneration, the courts have referred to Article 4§2 of the Charter and found that overtime must be remunerated at a higher rate.

The Committee further observes that according to Article 152 of the Labour Code, at the employee's request, instead of an increased remuneration, overtime work may be compensated by granting additional time off, the duration of which may not be less than the overtime worked.

In this respect, the Committee recalls (Conclusions XIV-2, Belgium) that granting leave to compensate for overtime is in conformity with Article 4§2, on the condition that this leave is longer than the overtime worked. It is not sufficient, therefore, to offer employees leave of equal length to the number of overtime hours worked. The time off granted in lieu of overtime remuneration should be of an increased duration. Therefore, the Committee considers that the situation is not in conformity with the Charter.

The Committee recalls that the right of workers to an increased rate of remuneration for overtime work allows for exceptions in certain specific cases. These "special cases" have been defined by the Committee as "senior state employees and management executives of the private sector" (Conclusions IX-2 (1986), Ireland). The Committee asks whether the legislation provides for such exceptions.

### *Conclusion*

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 4§2 of the Charter on the ground that an increased time off for overtime hours is not guaranteed.

## **Article 4 - Right to a fair remuneration**

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

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

### ***Legal basis of equal pay***

The Committee recalls that under Article 4§3 the right of women and men to equal pay for work of equal value must be expressly provided for in the legislation (Conclusions XV-2 (2001), Slovak Republic).

The Committee refers to its conclusion on Article 20 (Conclusions 2012) and further notes from the report that the Labour Code of the Russian Federation establishes the prohibition of employment discrimination and equality of rights and opportunities of workers (Article 2) as fundamental principles of employment relations.

According to the report, the Labour Code of the Russian Federation not only contains a general prohibition of discrimination, but also a special rule in relation to wages. The Committee notes that according to Article 22 (main rights and duties of the employer) the employer is obliged to ensure equal pay to workers performing work of equal value.

The Committee asks what the definition is of equal work or work of equal value.

### ***Guarantees of enforcement and judicial safeguards***

The Committee recalls that under Article 4§3 of the Charter domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court. Domestic law should provide for an alleviation of the burden of proof in favour of the plaintiff in discrimination cases.

Anyone who suffers wage discrimination on grounds of gender must be entitled to adequate compensation, which is compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay (Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol).

The Committee further recalls that when the dismissal is the consequence of a worker's reclamation about equal wages, the employee should be able to file a complaint for unfair dismissal. In this case, the employer must reintegrate him/her in the same or a similar post. If the reinstatement is not possible, he/she has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. Courts have the competence to determine the amount of this compensation, not the legislator (Conclusions XIX-3, Germany).

According to the report, the Labour Code of the Russian Federation entitles people, who consider themselves subjected to labour discrimination to appeal to the court claiming restoration of violated rights, reimbursement of material damage and compensation for moral damage.

The Russian legislation does not set specific criteria for determining compensation for wage discrimination. There are general recommendations for courts to determine the amount of compensation for moral damage, taking into account particular circumstances of each case, the nature and amount of moral and physical suffering caused to the employee, the degree of the

employer's fault, other important circumstances, as well as the requirements of reasonableness and fairness.

With regard to legal liability for the infringement of equal rights of men and women to receive equal pay for performing work of equal value, the Code of Administrative Offence sets the general rule that establishes administrative liability for violating the legislation on labour and labour protection, without explicitly referring to the principle of equal pay for performing work of equal value as an offence in itself.

The Committee asks what rules apply as regards the guarantees of enforcement of the equal pay principle, burden of proof, sanctions and reprisal dismissal following equal pay litigations. It also asks for examples of domestic case law.

### ***Methods of comparison and other measures***

The Committee takes note of the statistical information on the average accrued salary of men and women broken down by economic activity. It notes that in October 2011 the average salary of women for all types of activity represented 64.1% of that of men. According to the report, the salary differences between men and women is explained by objective reasons, in particular the fact that men receive compensation for working in harmful, dangerous and difficult working conditions, as well as for overtime work etc. The pay gap is also explained by the predominance of women in low-salary industries and the fact that women are not always able to work full time.

The Committee recalls that under Article 4§3, States must promote positive measures to narrow the pay gap, including:

- measures to improve the quality and coverage of wage statistics;
- steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment.

The Committee asks what measures are taken to narrow the gap.

The Committee asks the next report to provide information on the adjusted pay gap between women and men performing equal work or work of equal value.

### ***Conclusion***

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

## **Article 4 - Right to a fair remuneration**

### *Paragraph 4 - Reasonable notice of termination of employment*

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

It is the first time it examines the situation with regard to periods of notice in the Russian Federation.

### ***Reasonable period of notice***

The report states that the Labour Code of 30 December 2001, as updated by Federal Law No. 353-FZ of 30 November 2011, provides for the following periods of notice:

- Two months on dismissal following the dissolution of the organisation or reduction in staff numbers (grounds provided in Article 81, paragraph 1, Nos. 1 and 2 of the Code) (Article 180, paragraph 2 of the Code);
- Two weeks on dismissal of employees in additional employment upon reinstatement of the principal postholder (Article 288 of the Code);
- Seven days on the early termination of seasonal contracts on economic grounds (Article 296, paragraph 2 of the Code);
- Three days on the early termination of temporary contracts (Article 292, paragraph 2 of the Code);
- Three days on the termination of a fixed-term contract (Article 79, paragraph 1 of the Code);
- Three days on dismissal in a probationary period (Article 71, paragraph 1 of the Code).

The Committee notes that the Code provides for the payment of compensation of the following amounts:

- One month's salary on dismissal when an organisation is dissolved or staff numbers are reduced (grounds provided in Article 81, paragraph 1, Nos. 1 and 2 of the Code) and two or three months' salary, on the basis of a decision by the employment office, until the employee takes up a new job (Article 178, paragraphs 1 and 2 of the Code);
- Two weeks' salary on dismissal in the following circumstances: medical incapacity (ground provided in Article 81, paragraph 1, No. 3(a) of the Code); call-up for military service (ground provided in Article 83, paragraph 1, No. 1 of the Code); judicial or administrative reinstatement of the employee (ground provided in Article 83, paragraph 1, No. 2 of the Code) or refusal by the employee to accept a transfer when the employer relocates (ground provided in Article 72, paragraph 1 of the Code) (Article 178, paragraph 3 of the Code);
- Two weeks' salary on the early termination of seasonal contracts on economic grounds (Article 296, paragraph 3 of the Code).

The Committee also notes the existence of additional grounds for terminating employment, provided for in Article 77, paragraph 1 of the Code:

- Twelve grounds for dismissal other than dissolution of the organisation or reduction in staff numbers (grounds provided in Article 81, paragraph 1 of the Code);
- Refusal of employees to continue the employment relationship when the ownership of the organisation changes (ground provided in Article 75, paragraph 3 of the Code);

- Refusal of employees to accept significant changes in working conditions as a result of changes in organisation or technologies (ground provided in Article 73 of the Code);
- Refusal of employees to agree to a medical transfer (ground provided in Article 72, paragraph 2 of the Code);
- Seven grounds beyond the control of the parties (grounds provided in Article 83, paragraph 1 of the Code);
- Breaches of the rules on the negotiation of collective agreements (ground provided in Article 84 of the Code).

The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined in accordance with the length of service. While it is accepted that the notice period may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding notice period. The Committee considers that in the instant case, the notice period and any severance pay that applies to seasonal contracts (Article 296, paragraphs 2 and 3 of the Code) are reasonable within the meaning of Article 4§4 of the Charter. It also considers that the notice period and severance pay are reasonable within the meaning of Article 4§4 of the Charter in certain circumstances, but inadequate in the following circumstances:

- Dismissal of employees with more than 15 years of service when the organisation is dissolved or staff numbers are reduced (Article 178, paragraphs 1 and 2, and Article 180, paragraph 1 of the Code);
- Early termination of temporary contracts (Article 292, paragraph 2 of the Code);
- Dismissal of employees in additional employment with more than six months of service upon reinstatement of the principal postholder (Article 288 of the Code);
- Dismissal for medical incapacity, call-up for military service, judicial or administrative reinstatement of the employee or refusal by the employee to be transferred when the employer relocates, for employees with more than six months of service (Article 178, paragraph 3 of the Code).

The Committee notes that under Article 178, paragraph 4 of the Code, more favourable terms of notice and compensation may be provided for in collective agreements. It asks that the next report provide examples of such agreements.

### ***Application to all employees***

The Committee notes that notice periods for the dismissal of employees of self-employed persons (Article 307, paragraph 2 of the Code) and religious organisations (Article 347, paragraph 2 of the Code), as well as of home workers (Article 312 of the Code) are determined by the employment contracts.

The Committee points out that protection by means of notice and/or compensation must cover all workers regardless of whether they have a fixed-term or a permanent employment contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). This protection covers probationary periods (General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). The Committee therefore considers that the notice period of three days which applies to dismissal during probationary

periods (Article 71, paragraph 1 of the Code) is insufficient in the light of Article 4§4 of the Charter.

The Committee considers that the following grounds amount to a serious offence, which is the sole exception justifying immediate dismissal without notice or severance pay (Conclusions 2010, Albania): repeated or serious professional misconduct; accounting errors leading the employer to lose trust; immoral acts making it impossible for employees to be kept in teaching posts; or the use of forged documents or false information for the negotiation of employment contracts (grounds provided in Article 81, paragraph 1, numbers 5, 7, 8 and 11 of the Code). The same does however not apply to duly confirmed insufficient qualifications for the post; changes in the ownership of the organisation; single breaches of professional duties; single breaches of professional duties by senior management; withdrawal of access to top-secret information; cases specified in the contracts of senior management or board members; and cases provided for by federal legislation (grounds given in Article 81, paragraph 1, numbers 3 (b), 4, 9, 9 to 12 and 14 of the Code). It asks for information in the next report on the notice periods and/or compensation that apply to these cases. It also asks for information on the notice and/or compensation that applies to termination of employment under Article 77, paragraph 1 of the Code under the following circumstances: refusal of the employee to continue the employment relationship when there is a change in ownership of the organisation (ground provided in Article 75, paragraph 3 of the Code); refusal of the employee to accept significant changes in working conditions as a result of changes in organisation or technologies (ground provided in Article 73 of the Code); refusal of the employee to agree to a medical transfer (ground provided in Article 72, paragraph 2 of the Code); reasons beyond the control of the parties (grounds provided in Article 83, paragraph 1 of the Code); and breaches of the rules on the negotiation of collective agreements (ground provided in Article 84 of the Code). It also notes that the cumulative duration of successive fixed-term contracts is limited to five years (Article 58, paragraph 1 of the Code) and asks for information on the notice and/or compensation applicable in the event of early termination of such contracts.

The Committee considers that in order to ensure that the protection granted by Article 4§4 of the Charter is effective, the notice and/or compensation should not be left to the discretion of the parties to the employment contract, but should be governed by legal instruments such as legislation, case law, regulations or collective agreements. In the instant case, the rule that notice periods for the dismissal of employees of self-employed persons (Article 307, paragraph 2 of the Code) and of religious organisations (Article 347, paragraph 2 of the Code), as well as of home workers (Article 312 of the Code) are determined by the employment contracts, is not in conformity with Article 4§4 of the Charter.

The Committee notes from another source (ILO-NATLEX) that the Code has been amended many times since the reference period, particularly by Federal Acts No. 55-FZ of 2 April 2014 amending Article 10 of the law on state guarantees and compensation for persons working and living in the Far North and similar localities as well as the Labour Code, and No. 56-FZ of 2 April 2014 amending the provisions of the Labour Code. It asks that the information provided in the next report be updated in light of these amendments.

### *Conclusion*

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 4§4 of the Charter on the grounds that:

- The notice period is not reasonable in the following cases:
  - dismissal of employees with more than fifteen years of service following the dissolution of the organisation or reduction in staff numbers;

- dismissal of employees with more than six months of service for medical incapacity, call-up for military service, judicial or administrative reinstatement of the employee or refusal to be transferred when an employer relocates;
  - dismissal during probationary periods;
  - dismissal of employees in additional employment with more than six months of service upon reinstatement of the principal postholder;
  - early termination of temporary contracts;
- Notice periods applicable to employees of self-employed persons or religious organisations or to home workers are left to the discretion of the parties to the employment contract.

## **Article 4 - Right to a fair remuneration**

### *Paragraph 5 - Limits to wage deductions*

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

It is the first time it examines the situation with regard to the protection of wages in the Russian Federation.

According to the report, Article 137, paragraph 2 of the Labour Code of 30 December 2001, as amended by Federal Law No. 353-FZ of 30 November 2011, authorises certain grounds for deductions from wages. Federal laws provide for additional grounds for deductions:

- Income tax;
- Debts to the employer confirmed by a writ of execution;
- Maintenance debts certified by a notarised agreement or a writ of execution;
- Compensation debts and detention costs owed by employees sentenced to corrective labour;
- Detention costs of employees sentenced to imprisonment;
- Reimbursement of family allowances unduly paid;
- Trade union dues provided for by collective agreements.

Article 137, paragraph 4 of the Code excludes the reclaim of wages that are unduly paid owing to a legal error by the employer.

Article 138, paragraph 1 of the Code limits deductions to 20% of the salary net of tax deductions or to 50% of the salary net of tax deductions in certain cases prescribed by federal law (execution of court decisions, notarially recorded instruments and administrative orders), a limit which is absolute and applicable in the event of simultaneous deductions (Article 176, paragraph 2 of the Code). That limit is increased to 70% of salaries for the recovery of the compensation and detention costs owed by employees sentenced to corrective labour, maintenance debts for minor children and compensation for bodily harm, the death of a breadwinner or damage caused by criminal acts (section 99 of Federal Law No. 229-FZ of 3 October 2007 on enforcement procedures).

According to the report, wage deductions should be distinguished from recovery of compensation for damage to employers or third parties caused by employees, which is governed by Articles 232 and further of the Code. Whereas in principle the employee's liability is limited to the amount of the average monthly salary (Article 241 of the Code), limited exceptions (Article 243, paragraph 1 of the Code) and agreements on individual or collective liability (Article 244, paragraph 1 of the Code) may extend to the entire damage caused. Following the investigation provided for in Article 247, paragraph 1 of the Code, the employer determines what deductions are to be applied where the amount of the damage is lower than the average monthly wage, under court supervision (Article 248, paragraphs 1 and 2 of the Code). Where the amount of the damage exceeds the monthly wage, unless the employee agrees to pay, it is for the courts to determine any deductions (Article 248, paragraph 2 of the Code).

Observing that the Russian Federation has not ratified Article 4§1 of the Charter, the Committee notes the concern expressed by the UN Committee on Economic, Social and Cultural Rights (Concluding Observations of 1 June 2011, §18) about the low level of the minimum wage, which is said to be insufficient to provide workers with a decent living for themselves and their families, a problem aggravated in practice by considerable wage arrears.

The Committee points out that the goal of Article 4§5 of the Charter is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2

(2007), Poland). It notes that in the instant case circumstances authorising deductions from wages are defined clearly and precisely by the law. It considers, however, that the limits of 20%, 50% and 70% of salary net of tax deductions provided for by Articles 176, paragraph 2 of the Code and section 99 of Federal Law No. 299-FZ still allow situations to subsist in which employees are left with only 50% or even 30% of the minimum wage, an amount that does not allow them to provide for themselves or their dependants. It asks for the the next report to state to what extent the deductions applied for the compensation of damage to employers or third parties caused by employees are subject to the limits of 20%, 50% or 70% of salary net of tax deductions.

The Committee also points out that, under Article 4§5 of the Charter, employees may not waive their right to limited deductions from wages and the way in which deductions from wages are determined should not be left to the discretion of the parties to the employment contract (Conclusions 2005, Norway). In this connection, it asks for the next report to state whether Article 136, paragraph 5 of the Code in practice allows employees to agree to the assignment of their wages to employers or third parties.

The Committee asks for information in the next report on any other grounds for deductions from wages provided for by federal laws (such as social contributions, fines, or attachment). It asks in particular for details concerning any deductions in connection with reductions in activity imputable to employees pursuant to Article 157 of the Code or with full liability agreements signed with religious organisations under Article 346 of the Code. It also asks for information on the limits to deductions from wages applicable to employees governed by Federal Law No. 79-FZ of 27 July 2004 on the state public service, the Merchant Shipping Code of 30 April 1999 and Law No. 2395-I of 21 February 1992 on mining resources. The Committee asks that the information provided in the next report be updated in light of the many and recent amendments made to the Code.

### *Conclusion*

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 4§5 of the Charter on the ground that, following all authorised deductions, the wages of employees with the lowest pay do not enable them to provide for themselves or their dependants.

## **Article 5 - Right to organise**

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

At federal level, the right to organise is governed by Article 30 of the Constitution (adopted on 12 December 1993) and the following laws: Federal Act "On Trade Unions, their rights and guarantees of their activity" (No. 10-FZ, of 12 January 1996); Federal Acts "On public associations" (No. 82-FZ, of 19 May 1995) and "On non-profit organizations" (No. 7-FZ, of Jan 12, 1996). Other statutory provisions, contained in the Labour Code, the Code of Civil Procedure, the Code of Administrative Offences and the Criminal Code are also applicable to trade unions related issues. The establishment and activities of associations of employers are regulated by the Federal Act "On employers' associations" (No. 156-FZ of 27 November 2002).

The report points out that the legislation of the Subjects of the Russian Federation cannot restrict the rights of trade unions nor the guarantees of their activity provided by federal acts. It is also indicated that if the international treaties accepted by the Federation establish other rules than the ones stipulated by federal law, the provisions of the international agreements and conventions override the federal law.

### ***Forming trade unions and employers' organisations***

Article 30 of the Constitution provides that: "1. Everyone shall have the right of association, including the right to establish trade unions for the protection of his/her interests".

According to Section 2§1 of the Trade Union Act "[a] trade union is a voluntary association of citizens bound by common trade or professional interests due to their occupation, which is created to represent and protect their social and labour rights and interest". Section 2§2 of the same Act provides that "every person attaining the age of 14 years and engaged in labour (professional) activity shall have the right to set up, at his/her discretion, trade unions for the protection of his/her interests, to join these, to engage in trade union activity and to withdraw from trade unions. This right shall be exercised freely, without preliminary permission".

The report points out that according to the Trade Union Act a trade union member is "a person with membership in a trade union organisation." In this context, it is underlined that unemployed persons, pensioners and foreign citizens can also be members of a trade union. The Committee wishes to have confirmation that unemployed persons, pensioners and foreign citizens have the right to form a trade union. The Committee recalls that the prohibition to form trade unions for unemployed and retired workers is not contrary to Article 5, only if they are entitled to form organisations which can take part in consultation processes connected with their rights and interests (Conclusions 2010, Statement of Interpretation on Article 5).

The report states that a trade union, as any other public association, can be created at the initiative of at least three individuals (Section 18 of the Federal Act "On public associations"). The report points out that as any other public association, a trade union is considered to be created after its founders decide on its establishment and approve its charter, including provisions on administrative and supervisory bodies. Since then, the trade union may carry out its statutory activities, acquire rights (except the rights of a legal entity) and assume the obligations established by the above mentioned Act. It is specified in the report that a non-registered trade union has, *inter alia*, the right to promote the interest of affiliated workers before employers and governmental authorities, engage in collective bargaining, as well as organise meetings, rallies and demonstrations.

The report indicates that when a trade union freely decides to register and acquire legal personality, it will be asked to present (within one month from the date of its creation) the approved charter and related documents to the competent office of the Federal Ministry of Justice and/or its regional branches (Decree of the President of the Russian Federation "Matters of the Ministry of Justice of the Russian Federation" No. 1313, of October 13, 2004). It is pointed out that these authorities do not have the right to control the activity of the trade union or to deny registration (Section 8 of the Trade Union Act and Federal Act "On the state registration of legal entities and individual entrepreneurs", No. 129-FZ of 8 August 2001). If there are provisions which, according to the Ministry of Justice, or its regional branches, do not comply with the applicable legislation, the relevant documents are passed to the Prosecutor's Office. In case of discrepancies, the Prosecutor asks the trade union to eliminate them. If the trade union disagrees with the prosecutor's request, the prosecutor files a claim before the competent court (Article 45 of the Civil Procedure Code). The report points out that the State fee for registration of a trade union as a legal entity is 4 000 rubles.

From the ITUC Survey of violation of trade unions rights on the Russian Federation (2009), the Committee notes the following information: "Under the Federal Law on Trade Unions, Their Rights and Guarantees of their Activities, trade unions are registered as legal entities upon notification, and it is prohibited to deny registration. However, in practice the registrars often deny registration or require the unions to make changes to their statutes. For example, the registrars may view the requirement in the law to specify the geographical scope of the union's activities as an obligation to provide a list of all the territories where affiliates exist, thus making it difficult for affiliates from other territories to join the union. The registrars can also require that regional unions specify all sectors where an affiliate can be created, although the law provides for no such requirements" (2011); "Registration rules give law enforcement bodies extensive control over the content of trade union constitutions. Registrars often interpret the law in a manner that unions perceive as inappropriate, but failure to comply with the registrar's comments will likely mean that the registration is delayed or denied. The law also requires the unions to specify the geographic scope of its activities. The registrars view this as an obligation to provide a list of all territories where the affiliates are active, and accepting affiliates from other regions would call for amendments to the union constitution". The Committee invites the Government to comment on these statements.

The report states that the legislation contains no provisions which restrict the right of trade unions to hold election and choose their representatives, including restrictions based on national grounds, professions, working experience, etc. In this regard, the Trade Union Act provides that the following aspects are exclusively governed by the charter of the trade union concerned: title, objectives and tasks, categories and professional groups of member-citizens, conditions and rules for admission and withdrawal, rights and duties of members, territory within which the trade union conducts its activity, organisational structure, competence of trade union bodies, terms of reference of these bodies, procedure for the amendment of the statutory charter, membership fees, sources of income and other property, procedure of management of property, location, premises, procedure concerning the termination of the statutory activities and liquidation, use of property in these cases, etc. (sections 7 and 24). The legislation does not limit the grounds for a trade union to undertake disciplinary measures against its members.

According to section 2§5 of the Trade Union Act, trade unions shall have the right to set up their own associations, based on sectoral, territorial or other industry-specific grounds. Moreover, trade unions and their associations have the right to co-operate with trade unions of other States, to be part of international trade unions and other amalgamations and organisations, and to conclude treaties and agreements with them.

The report underlines that section 29 of the Trade Union Act guarantees judicial protection of trade union rights. This section provides that cases of violation of trade unions' rights are considered by courts following an appeal by the Prosecutor (at the request of the trade union or at its own initiative) or a claim directly lodged by the trade union concerned. The report points out that according to the norms of the Code of Civil Procedure (Articles 36 and 46) and the Federal Act "On public associations" (Section 27), trade unions that are not registered as a legal entity may also apply to the court to protect their rights. In this regard, from the above-mentioned source, the Committee notes the following statement: "Defending trade union rights and stopping discrimination can be a gruelling experience. Trade unions' appeals to prosecutors' offices may not only go unanswered, but may even result in increased pressure on the unions. Going to court is only possible in cases of specific violations, and the procedure is both complicated and costly. Furthermore, even when a court rules in favour of the union, that does not alleviate the general situation, as trade union rights are constantly violated. Neither the Criminal Code nor the Code of Administrative Offences contains any special provisions on liability for violations of union rights" (ITUC Survey of violation of trade unions rights on the Russian Federation, (2011)). The Committee invites the Government to comment on these statements.

The report states that employers have the right, without requesting prior permission of public authorities, to establish employers' associations to represent the legitimate interests and rights of their members within the framework of social and labour relations and their economic relations with the trade unions and their associations, State authorities, and bodies of local self-government. The Employers Association Act provides for the establishment of associations of a territorial (regional and inter-regional), industry-specific, cross-industry, and combined territorial and industry-specific character. Employers' associations are established by a decision of its founders. Both employers and employers' associations may act as founders. Two founders are enough for establishment of an association. The structure, procedure of establishment, mandate of employers' organisation leadership, and decision-making process are established by the employers' associations and are reflected in their charters. The capacity of an employers' association as a legal entity emerges at the moment of its official registration.

The report does not refer to the implementation of the legal framework relating to the formation of trade unions and employers' organisations. In this respect, the Committee asks that the next report provide information on any possible complaints concerning the formation of trade unions or employers associations, lodged with the competent authorities (labour inspectorate and/or judicial bodies). Pending receipt of the requested information, it reserves its position on this point.

### ***Freedom to join or not to join a trade union***

The general principle of freedom to join or not to join a trade union is enshrined in Article 30 of the Constitution which provides that: "Nobody may be compelled to join any association or to stay there". The report states that the Trade Union Act and other laws do not impose legal restrictions on the right to free decisions on workers' membership in trade unions. It is specified that "closed-shop" agreements are not common in Russian; and practical examples of that have not been encountered. The report also indicates that the Labour Code contains provisions on the deduction of membership fees from the salaries and the transfer of it to trade unions (Article 377§§5 and 6). However, it is pointed out that the transfer procedure is determined by collective agreements and the written consent of the employee is required.

The Committee recalls that to secure the freedom to join or not to join a trade union, domestic law must clearly prohibit all pre-entry or post-entry closed shop clauses and all union security clauses (automatic deductions from the wages of all workers, whether union members or not, to finance the trade union acting within the company) (Conclusions VIII (1984), Statement of Interpretation on Article 5; Conclusions XIX-3 (2010), Iceland).

More generally, the Committee recalls that the freedom guaranteed by Article 5 of the Charter implies that the exercise of a worker's right to join a trade union is the result of a choice and that, consequently, it is not to be decided by the worker under the influence of constraints that rule out the exercise of this freedom (*Confederation of Swedish Enterprise v. Sweden*, complaint No. 12/2002, Decision on the merits of 15 May 2003, §29). Therefore, domestic law must guarantee the right of workers to join a trade union and include effective punishments and remedies where this right is not respected. Trade union members must be protected from any harmful consequence that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities (Conclusions 2010, Republic of Moldova). Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim (Conclusions 2004, Bulgaria).

In this respect, the report states that, according to the Labour Code, the prohibition of employment discrimination is one of the fundamental principles of legal regulation of labour relations and other relevant relations (Article 2). The prohibition of discrimination due to membership of public associations is established in Article 3, Article 64 establishes the prohibition of discrimination when setting up an employment contract, and Article 132 prohibits salary discrimination. It is pointed out that these provisions prohibit discrimination on any grounds, including the ones related to membership of trade unions or engagement in trade union activities. The report underlines that Article 5§62 of the Code of Administrative Offences and Article 136 of the Criminal Code also contain anti-discrimination rules. As regard the Trade Union Act, the report refers to section 9 which explicitly provides that: "1. Affiliation or non-affiliation with trade unions shall not entail any restriction of social-and-labour, political or other rights or freedoms of citizens guaranteed by the Russian Federation Constitutions, by Federal laws and by the laws of Russian Federation subjects. 2. Making a person's admittance to employment, promotion at work, and also dismissal from work conditional on his trade union affiliation or non-affiliation shall be prohibited".

The report does not refer to the implementation of the provisions relating to anti-discrimination mentioned in the paragraph above. In this respect, the Committee notes the following observations from the ITUC Survey of violation of trade unions rights on the Russian Federation (2009): "Attacks on trade union leaders, government interference and persecution, denial of registration and recognition, anti-union harassment in the workplaces and lack of effort in investigating the violations of trade union rights are not isolated cases, but an everyday reality. This has prompted two national trade union centres, All-Russian Confederation of Labour (VKT) and Confederation of Labour of Russia (KTR) to prepare a comprehensive complaint to the ILO Committee on Freedom of Association. By the time of writing, the complaint has been submitted and then endorsed by the Federation of Independent Trade Unions of Russia (FNPR), the ITUC and the global union federations IMF, ITF and IUF. Workers who join trade unions or engage in union activities are often mistreated by employers and authorities alike. While union members suffer from anti-union discrimination and pressure to relinquish their trade union membership, the leaders of grass-root organisations are subject to intimidation, harassment and even physical attacks. Since there are no special laws to protect freedom of association and the right

to organise, trade unionists must make use of general legal procedures to protect their rights and liberties. Even though there have been some success stories of a conflict being settled or a wrongly dismissed leader reinstated, the existing mechanisms are considered ineffective. National legislation is also being interpreted in a way that all cases of anti-union discrimination have to be reviewed by courts. Therefore, labour inspectorates, who are in principle entrusted with the task of overseeing compliance with the labour law, routinely dismiss complaints against anti-union behaviour, and appeals to the prosecutor's offices have so far not been effective. Trade unions report that the existing system fuels a climate of impunity in the workplaces. Moreover, appeals to the prosecutor's offices often do more harm than good, as prosecutors tend to side with the employers against the unions, and, after the investigation is concluded, anti-union pressure increases". The Committee invites the Government to comment on these statements.

The Committee notes the information contained in the report of the ILO Mission which visited the country in October 2011 in order to discuss a complaint pending before the ILO Committee on Freedom of Association (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013) – Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Russian Federation (Ratification: 1956)). The Committee notes that according to the Russian Labour Confederation (KTR) "despite the fact that the law provides for the prohibition of discrimination, protection, especially against acts of anti-union discrimination, is virtually non-existent in practice and that the bodies whose roles should be to protect trade union rights are not effective". From the same source, the Committee notes that "the representatives of the State Labour Inspectorate (*Rostrud*), competent to deal with violations of labour legislation, including alleged cases of discrimination, in general, and anti-union discrimination, in particular, confirmed that it is extremely difficult to prove cases of discrimination in court". These representatives added that "trade unions therefore most often file complaints with *Rostrud*; however, employers, having sufficient means and resources to appeal the decisions of labour inspectors in court do not hesitate to do so". They confirmed that, "in practice, if a complaint is lodged with the court, the labour inspection cannot intervene". With regard to the application of penalties, *Rostrud* officials considered that "in general, the fines are very small, to the point that some enterprises preferred to pay fines than to comply with the labour legislation". The Committee notes the concluding remarks of the above-mentioned Mission, which considered that "further action is needed to strengthen the protection against violations of freedom of association both in law, and in practice, and that better knowledge of available procedures and further clarification of the practices would help both the social partners and the different state bodies to navigate in a context where responsibilities are not always clear. This applies in particular to the relationship between *Rostrud*, the Prosecutor's Office and the courts".

The Committee requests the Government's comments on the information obtained from the above mentioned source and asks that the next report provide detailed information on any complaints relating to anti-union discrimination lodged with the competent authorities (labour inspectorate and/or judicial bodies). Pending receipt of the requested information, the Committee reserves its position on this point.

The Committee notes that in *Danilenkov and Others v. Russia*, judgment of 30 July 2009, the European Court of Human Rights ruled that "the State had failed to fulfil its positive obligations to afford effective and clear judicial protection against discrimination on the ground of trade-union membership" (Information Note on the Court's case law No. 121).

According to the report, the activities of employers' associations are carried out according to the principle of voluntary accession and withdrawal of employers and/or their associations (section 5 of the Act "On employers' associations"). Employers' associations are independent in

determining the objectives and direction of its activity. Employers' organisations operate independently from public authorities, trade unions and their associations, political parties and movements, or other public organisations. In order to ensure such independence the legislation prohibits State authorities, bodies of local self-government and their officials to interfere in the activities of employers' organisations, since that may entail a restriction of their rights.

### ***Trade union activities***

Article 30 of the Constitution provides that: "The freedom of activity of public associations shall be guaranteed." The report states trade unions are independent in their activities from public authorities, employers, their affiliations (unions, associations), political parties and other public associations; they are not accountable to or controlled by them. Interference of State authorities, local self-government bodies and their officials in the activities of trade unions, which may entail a restriction of trade union rights or impede the lawful exercise of their statutory activities, is prohibited.

The report indicates that on the basis of the Trade Union Act, trade union representatives have the right to visit workplaces where members of the relevant trade unions work, for implementing statutory tasks and exercising trade unions rights (section 11§5). From the ITUC Survey of violation of trade unions rights on the Russian Federation (2010) the Committee notes the following statement: "The law grants external trade union representatives and inspectors the right to access workplaces, but this right is often ignored in practice. Some employers refer to governmental instructions regulating access to enterprises in their sectors to refuse to issue workplace passes, and when issued the trade unionists have to pay for them. Attempts to enlist the help of the public authorities have yielded little result. In 2009 the Federation of Independent Trade Unions of Russia (FNPR) addressed a request to the Prime Minister of Russia, Vladimir Putin, to draft a Federal Act providing for a procedure for access to workplaces. This petition was redirected to the Ministry of Health and Social Development, which eventually replied that the question requires additional discussions. An act has yet to be adopted". The Committee invites the Government to comment on these statements.

The report points out that suspending or prohibiting the activities of trade unions by administrative order by any kind of authority is not allowed. Trade union activities may be suspended for up to six months, or prohibited by a decision of the Supreme Court or of the Court of Justice upon the request of the Prosecutor General or public prosecutor of a constituent entity of the Russian Federation, only when it runs counter to the Constitution, constitutions (charters) of constituent entities of the Russian Federation or federal laws (section 10§3). The report does not refer to the implementation of the legal framework relating to trade union activities.

The Committee asks that the next report provide information on any complaints regarding possible interference in the activities of trade unions lodged with the competent authorities (labour inspectorate and/or judicial bodies).

### ***Representativeness***

As regards representativeness, the report merely indicates that the legislation contains requirements according to which trade unions and their associations are recognised as "Russian national", "inter-regional" or "regional", in terms of territorial scope of their activities. Section 3 of the Trade Union Act provides a definition of "trade unions of Russian national level, associations of trade unions, inter-regional trade unions, inter-regional associations of trade unions, regional associations of trade unions and territorial structure of trade unions". According

to the report, the status gives trade unions and their associations the right to participate in social relations of partnership at the respective level and to conclude agreements.

In this framework, it is also indicated that Section 2 of the Trade Union Act provides that all trade unions enjoy equal rights. However, the report states that equality of rights is restricted, for example, when it concerns collective bargaining or the conclusion of a collective treaty or agreement. In these and certain other situations trade union organizations that unite the majority of workers, or are mandated to represent the interests of the organisation at a general meeting (conference), have more extensive rights to represent the interests of workers.

The Committee asks that the next report provide a detailed description of the legal framework allowing restrictions of the rights of trade unions based on representativeness criteria, as well as on their implementation, including any relevant judicial decisions taken in the reference period. More particularly, it wishes to be informed on the criteria used to determine the representativeness of trade unions, as well as on the areas of activity reserved to representative unions. In this respect, the Committee recalls that domestic law may restrict participation in various consultation and collective bargaining procedures to representative trade unions alone. For the situation to comply with Article 5, the following conditions must be met: a) decisions on representativeness must not present a direct or indirect obstacle to the founding of trade unions; b) areas of activity restricted to representative unions should not include key trade union prerogatives (Conclusions XV-1 (2000), Belgium); c) criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review (Conclusions XV-1 (2000), France). The Committee asks whether the above mentioned conditions are fulfilled.

The Committee asks that the next report provide detailed information on the legal framework governing the representativeness of employers' organisations and its implementation.

### ***Personal scope***

The report states that the provisions related to the rights of associations refer to both public and private sectors. More specifically, the Trade Union Act applies to all organisations within the territory of the Federation. In this context, the report indicates that representatives of armed forces can become members of trade unions only after the end of their military service and police staff can join trade unions in accordance with the Federal Act "Concerning the Police". The Committee asks that the next report provides detailed information on the latter Act and its implementation.

With regard to the police, the Committee recalls that "it is clear, in fact, from the second sentence of Article 5 and from the "travaux préparatoires" on this clause, that while a state may be permitted to limit the freedom of organisation of the members of the police, it is not justified in depriving them of all the guarantees provided for in the article" (Conclusions I (1969), Statement of Interpretation on Article 5). In other words, police officers must enjoy the main trade union rights, which are the rights to negotiate their salaries and working conditions, and freedom of association (European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2001, Decision on the merits of 22 May 2002, §§25-26). Compulsory membership of organisations also constitutes a breach of Article 5 (Conclusions I (1969), Statement of Interpretation on Article 5). The Committee asks whether the the above mentioned conditions are fulfilled.

More generally, the Committee recalls that the implementation of the Charter requires the States Parties to take not merely legal action, but also practical action to give full effect to the

rights recognised in the Charter (International Association Autism-Europe v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §53). It asks that the next report provide information on the implementation of the legal framework, including possible judicial decisions, as well as any concrete measures taken to ensure or promote the freedom guaranteed by Article 5 of the Charter.

*Conclusion*

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

## **Article 6 - Right to bargain collectively**

### *Paragraph 1 - Joint consultation*

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

The report states that the legislation of the Subjects of the Russian Federation cannot restrict the rights of trade unions and the guarantees of their activity provided by federal acts. It is also indicated that if the international treaties accepted by the Federation establish other rules than the ones stipulated by the federal laws, the provisions of the international agreements and conventions override the federal law.

According to the report, "social partnership" represents a system of relations between workers (or their representatives), employers (or their representatives), the State and local self-government authorities. The aim of social partnership is to balance the interests of employers and employees within the framework of labour relations management and other directly linked relations. In this framework, social partnership is, *inter alia*, aimed at promoting collective bargaining towards the conclusion of collective contracts and agreements. Article 24 of the Labour Code (Federal Act No. 197-FZ of 2001, as amended) sets forth the principles of social partnership, which are: equality of the parties; respect of the interests of the parties involved; intention of the parties involved to build contractual relations; State assistance for strengthening and developing social partnership in a democratic manner; mandate of the representatives of the parties; freedom of choice while discussing labour matters; voluntary commitments made by the parties; feasibility of the obligations assumed by the parties; mandatory implementation of collective agreements; monitoring the implementation of collective contracts and agreements; and responsibility of the parties and their representatives for failure to comply with the collective agreements at their own fault.

Consultations take place within the framework of the Commissions on regulation of social and labour relations. These bodies are composed of representatives of the social partnership parties. Their goal is to regulate social and labour relations, to deal with collective bargaining, and to draft collective agreements, conclude them and monitor their implementation. These commissions may be established at any level of social partnership, be it bipartite or tripartite. They may act on a permanent basis or serve temporary purposes and they may be created as a general authority body (multi-functional) or as a specialised (purpose-built) one. They consist of representatives entrusted with appropriate mandates from each side.

In this framework, according to Article 26 of the Labour Code, social partnership is carried out at the federal, inter-regional, regional, industry-specific, territorial and local levels. The report specifies that the following commissions are established: 1) at the federal level – the Russian Tripartite Commission on Regulation of Social and Labour Relations; 2) at the regional level – regional tripartite commissions on regulation of social and labour relations; 3) at the industry-specific (cross-industry) level – industry-specific (cross-industry) commission on regulation of social and labour relations; 4) at the territorial level – regional tripartite commissions on regulation of social and labour relations; and 5) at the local level – commissions for collective bargaining, for drafting and the conclusion of collective agreements.

The Russian Tripartite Commission (RTC) is established under the Federal Act "On Russian Tripartite Commission for regulation of social and labour relations" (No. 92-FZ of 1 May 1999). RTC consists of representatives of the all-Russian associations of trade unions, the all-Russian employers' associations, and the Government of the Russian Federation. Each duly registered all-Russian association of trade unions or employers' associations, has the right to send representatives in the relevant part of the RTC. Under certain conditions, All-Russian

employers' and trade unions' associations have the right to increase the number of their representatives within the RTC. However, the number of members from each of the parties should not exceed 30 people.

There are seven working groups within the RTC. These include representatives of each party and experts that are nominated by each of the parties. These working groups are: 1) Working group for economic policy; 2) Working group for incomes, salaries and living standards of the population; 3) Working group for labour market development and employment safeguards; 4) Working group for social insurance, social protection and social industry; 5) Working party for labour rights protection, occupational safety, environmental, and industrial safety protection; 6) Working group for dealing with socio-economic problems of the northern regions of Russia; and 7) Working group for social partnership and coordination between parties to the agreement. Meetings of the working groups and the Commission itself are held on a monthly basis.

According to the report, the main activities carried out by the RTC contribute to the following goals: a) harmonisation of the interests of national associations of trade unions, employers' associations and federal executive authorities while drafting general agreements; b) collaboration with industry-specific (cross-industry), regional and other commissions on regulation of social and labour relations during the collective bargaining process, and the drafting of general agreements and other agreements governing social and labour relations; c) request for information on contracts and agreements governing labour relations and collective agreements from the public executive authorities, employers and trade unions in order to formulate recommendations for the development of collective-contractual regulation of social and labour relations; d) the organisation of activities of industry-specific (cross-industry), regional and other commissions on regulation of social and labour relations; e) discussion on the socio-economic situation in the Federation and in the Subjects of the Federation from the federal authorities, in accordance with the procedure established by the Government for the sake of collective bargaining and drafting of general agreements; f) monitoring of the implementation of concluded collective agreements; g) devising regulatory acts of the Russian Federation, as well as the projects of federal laws and other regulatory acts of the Russian Federation in the field of social and labour relations. The RTC's operation is secured by the Staff of the Government of the Russian Federation. The procedure of RTC operation is regulated by the Government Decree "On support of Russian Tripartite Commission (RTC) activities on regulation of social and labour relations" (No. 1229 of Nov. 5, 1999 (rev. June 22, 2004)).

The report also refers to Regional tripartite commissions on regulation of social and labour relations. These commissions are governed by rules and principles similar to those applicable to the RTC, based on the legislation on social partnership of the Subjects of the Federation. Territorial commissions act within municipalities, while industry-specific commissions act in certain spheres of economic activities, at various levels. Bipartite commissions for collective bargaining and the drafting collective agreements towards the conclusion of collective agreements, are established at the local level. The procedure of their establishment and operation are defined by the parties themselves. They are free to form any other kind of specialised commission to address more specific issues. Currently, such authorities are established due to the development of supranational levels of social partnership.

Bearing in mind the information provided by the Government, the Committee recalls the following principles:

- Consultation can take place within tripartite bodies provided that the social partners are represented in these bodies on an equal footing (Conclusions V (1977), Statement of Interpretation on Article 6§1). However, if adequate consultation

already exists, there is no need for the State to intervene. If no adequate joint consultation is in place, the State must take positive steps to encourage it (cf. *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41).

- Consultation should take place in the private and public sector, including in the civil service (*Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41).
- It is open to States Parties to require trade unions to meet representativeness criteria subject to certain general conditions. With respect to Article 6§1, such a requirement must not excessively limit the possibility of trade unions to participate effectively in consultation. In order to be in conformity with Article 6§1, representativeness criteria should be prescribed by law, objective, reasonable and subject to judicial review, which offers appropriate protection against arbitrary refusals (Conclusions 2006, Albania).

The Committee asks that the next report provide information on the implementation of the above mentioned principles. It recalls that consultation at the enterprise level is dealt with under Article 6§1 and Article 21. For the States which have ratified both provisions, consultation at enterprise level is examined under Article 21 (Conclusions 2004, Ireland).

The report does not contain information on the implementation of the legal framework regarding joint consultation. The Committee recalls that the implementation of the Charter requires that States Parties not merely take legal action, but also practical action to give full effect to the rights recognised in the Charter (*International Association Autism-Europe v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §53). It asks that the next report provide information on the implementation of the legal framework, including possible judicial decisions, as well as on concrete steps taken to encourage joint consultation.

#### *Conclusion*

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

## **Article 6 - Right to bargain collectively**

### *Paragraph 2 - Negotiation procedures*

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

The report states that the legislation of the Subjects of the Russian Federation cannot restrict the rights of trade unions and the guarantees of their activity provided by federal acts. It is also indicated that if the international treaties accepted by the Federation establish other rules than the ones stipulated by federal laws, the provisions of the international agreements and conventions override the federal law.

Collective bargaining is governed by the Labour Code (Federal Act No. 197-FZ of 2001, as amended) and Federal Act "On amendments to the Labour Code of the Russian Federation, recognition of certain USSR regulations as inapplicable at the territory of the Russian Federation and the renunciation of certain legislative acts (provisions of legislative acts) of the Russian Federation" (No. 90-FZ of 30 June 2006). According to the report, collective bargaining aimed at the conclusion of collective agreements is the most important expression of social partnership in Russia.

The Labour Code provides that representatives of employees and employers have the right to participate in collective bargaining for preparing, concluding and amending collective agreements and are entitled to take initiative to engage in such bargaining. The law does not require the employer and the employees to conclude a collective agreement. If neither the employer nor the employees (or their representatives) initiate collective bargaining, a collective agreement is not concluded. However, if either the employer or the employees initiate such negotiations, the party that has received an offer to start collective bargaining must enter into negotiations within seven calendar days. The failure to perform duties to enter the collective bargaining processes entails administrative responsibility. According to the report, in practice, in most cases, the initiative to start a bargaining process comes from the workers side. The Committee asks what consequences will the party face who does not accept the proposal to enter into negotiations or does accept the proposal but after the fixed deadline.

Participants in collective bargaining procedures are free to determine the issues of the negotiation, as well as the applicable procedure, the representatives to the bargaining commission, the frequency and location of the commission meetings, the distribution of the working responsibilities during the negotiations, the procedure of signing, etc. In this respect, the report underlines that the the legislation supports the idea of free and voluntary collective bargaining.

The Labour Code establishes the procedures for determining the representatives responsible for collective bargaining, which are:

- At the undertaking level, the "primary trade union" (which is the union that is a structural unit of a higher-level trade union organisation) is entitled to represent employees in negotiations with the employer and to initiate the collective bargaining process in order to enter into a collective bargaining agreement with the employer. However, only trade unions that represent more than 50% of the employees are entitled to do so. If there are several trade unions in the company that jointly represent more than 50% of the employees, they are entitled to establish a joint body to represent the employees in the collective bargaining process. This body is established on the basis of the principle of proportional representation, depending on the number of trade union members. The joint body must include representatives from each of the trade unions concerned. The joint body has the right to send the

employer (or his/her representatives) a proposal to start collective bargaining for the preparation, conclusion, or amendment to a collective agreement on behalf of all employees. If none of the company's trade unions or all the company's trade unions combined do not represent more than a half of the workers, the employee representative is determined through a general meeting of workers. During the general meeting members can determine the trade union through a secret ballot, for that trade union to propose the employer to begin collective bargaining on behalf of all employees. If the trade union is not determined or the workers are not united into a trade union, the general meeting of employees may elect another representative body existing of employees, through a secret ballot and give him/her the appropriate mandate to start the collective bargaining process.

- The rights to collective bargaining and to conclude agreements at higher levels are granted to trade unions and trade union associations at the national, inter-regional, and regional levels. If several trade unions or trade union associations exist at the level concerned, each of them is granted representation within a single representative body, established in accordance with the number of trade union members they represent. However, in contrast to the procedure in force at the level of the undertaking, in the absence of an agreement on the creation of a joint representative body, the right to negotiate is granted to the trade union (association), with the highest number of members.

The legislation restricts the terms of collective bargaining. Within three months from the date of the beginning of negotiations, the parties should sign a collective agreement on the agreed terms (six month in case of the negotiation of a general agreement). Collective agreements are legal acts that lay down general principles regulating socio-labour and economic relations concluded between representatives of the employees and employers at the federal, regional, industry (inter-industry) and territorial levels, within the limits of their competence. According to the Labour Code, mutual obligations of the parties can be included in the agreements on the following issues: wages and salaries; working conditions and occupational safety; work, rest and leisure routines; development of the social partnership; and other matters as determined by the parties. According to the report, collective agreements usually provide for certain labour and social benefits for employees which exceed the minimum benefits guaranteed by the applicable legislation.

Collective agreements are concluded for a fixed term of no longer than three years. The report states that in practice collective agreements are concluded for a term of one to three years, the average term of the collective agreement being two years. Parties have the right to extend a collective agreement for a term of no more than three years, although the law does not limit the number of extensions. The Labour Code explicitly refers to the following types of collective agreements: general (federal level), inter-regional (level of two or more Subjects of the Federation), regional (level of a Subject of the Federation); industry-specific, cross-sectoral (at the federal, inter-regional, regional and territorial levels) and territorial (local level). The report points out that it is possible to conclude other arrangements that are not stipulated explicitly in the Labour Code.

Based on the Labour Code, a collective agreement enters into force on the day it is signed by the parties, or on the date specified in the collective agreement. However, within seven days from the date the collective agreement is signed, the collective agreement is sent by the employer to the competent labour authority for registration. While registering a collective agreement, the labour authority checks whether the agreement contains conditions which adversely affect the situation of employees in comparison with labour laws and other legal

regulatory acts and notifies the representatives of the signatories and the responsible State labour inspection. The report underlines that the terms of the collective treaty or agreement that adversely affect the situation of employees are invalid and will not come into effect. The Committee asks that the next report provide information on cases in which the labour authorities identified conditions which adversely affected the situation of employees in comparison with legal provisions or regulations. It asks whether in this context the decisions of the labour authorities can be appealed by the parties concerned.

Control over the implementation of a collective agreement is performed by the social partnership parties, their representatives and relevant labour authorities. Specific forms, mechanisms and terms for the implementation of control activities are often defined in the collective agreements

The report provides detailed information on the following. The number of collective agreements that were in force were 192 779 in 2011 and 179 000 in 2007. The average number of employees covered by collective agreements in 2011 in Russia were 23 127 744, which corresponds to 54.24% of the total number of employees. The number of collective agreements concluded in the republics, territories, regions and autonomous entities of the Federation were 11 500 in 2011 and 9 500 in 2007, including 110 regional (tripartite agreements between administrations of the regions, trade unions and employers' associations), 3 565 industry-specific agreements (1 038 concluded at the regional level, 2 527 and at the territorial level), 1 529 territorial and 6 351 other agreements. Lastly, tripartite agreements were concluded in a number of regions, which, in some cases, determined the minimum wage in the region, exceeding the minimum wage established by federal legislation.

#### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in the Russian Federation is in conformity with Article 6§2 of the Charter.

## **Article 6 - Right to bargain collectively**

### *Paragraph 3 - Conciliation and arbitration*

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

The report states that the legislation of the Subjects of the Russian Federation cannot restrict the rights of trade unions and the guarantees of their activity provided by federal acts. It is also indicated that if international treaties accepted by the Federation establish other rules than the ones stipulated by the federal laws, the provisions of the international agreements and conventions override the federal law.

Based on Article 398 of the Labour Code (Federal Act No. 197-FZ of 2001, as amended), a collective labour dispute is “an unresolved disagreement between employees (or their representatives) and employers (or their representatives) concerning the introduction of and changes to working conditions (including wages), conclusion, amendment and implementation of collective contracts and agreements, as well as the employer’s refusal to take into account the views of the elected representative body of employees when adopting local regulatory acts”.

The Committee recalls that Article 6§3 applies to conflicts of interest, which are general conflicts which concern the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement. It does not concern conflicts of rights, which are conflicts related to the application and implementation of a collective agreement, or to political disputes (Conclusions V, Statement of Interpretation on Article 6§3 and Conclusions V (1977), Italy). The report points out that the provisions of the Labour Code on conciliation procedures are applied regardless of the form of ownership of the employer (public, private, or mixed).

The Labour Code establishes a procedure for the review of collective labour disputes (conciliation procedure). Under Article 401 of the Code, a collective labour dispute should be considered by a conciliation commission first, and then it may be considered by a conciliation commission with the participation of a mediator and/or by the labour arbitrator. Consideration of a collective labour dispute through the conciliation commission is a mandatory step. The conciliation commission is composed of the representatives of the parties to the dispute, who act on an equal footing. The employer should issue an order to form a conciliation commission, and the employees’ representative body should issue a resolution to the same effect. A conciliation commission must consider a collective labour dispute within five business days from the date of the employer’s order and employees’ resolution. This period may be extended by the mutual consent of the parties. The decision of the conciliation commission, through an agreement of the parties, is binding. If an agreement is not reached through the conciliation commission, the employer and employees should start negotiations in order to involve a mediator. The mediator is an independent person, to whom the parties ask assistance to resolve their dispute. The mediator must review the collective labour dispute within seven business days from the day he or she was invited/appointed. The decision adopted by the parties in a dispute involving a mediator is mandatory for the parties. If no agreement is reached, or the parties cannot agree on the mediator, they prepare a denunciation protocol, expressing their refusal to settle the issue through the conciliation procedure.

If no agreement is reached in the framework of the conciliation procedure, the parties may refer the situation to labour arbitration. In this respect, the report states that “according to a general rule, labour arbitration is a voluntary procedure that can be carried out only if the parties to a labour dispute have signed an agreement on the binding nature of the decision based on a labour arbitration”. However, it is pointed out that “when workers do not have the right to strike,

the labour arbitration may be binding". The Committee asks that the next report provide detailed information on the rules that impose compulsory arbitration and their concrete implementation. The report also states that the composition of the labour arbitration committee and the rules of procedure for temporary employment arbitration are established by a decision of the parties to the dispute, and the Federal Labour and Employment Service (*Rostrud*). In this framework, Federal Act No. 334- FZ142 of 22 November 2011 provides the right of tripartite commissions to regulate social and labour relations to establish permanent labour arbitration. *Rostrud* also provides training of labour arbitrators, organises and conducts workshops for them, and maintains a database on labour arbitrators intended for use by the parties of a collective labour dispute. The report also indicates that when a compulsory labour arbitration is established, the composition of the arbitration committee and the rules of procedure, as well as the decision to refer the dispute to the permanent labour tribunal, is directly adopted by *Rostrud*.

The Committee recalls that any form of compulsory recourse to arbitration is a violation of Article 6§3 of the Charter, be it domestic law that allows one of the parties to defer the dispute to arbitration without the consent of the other party or domestic law that allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both. Such a restriction is only allowed within the limits prescribed by Article G (Conclusions 2006, Portugal). Consequently, the Committee asks the Government to state in which cases and to what extent voluntary recourse to labour arbitration would undermine the respect for the rights and freedoms of others or threaten the public interest, national security, public health, or morals. In this respect, it also wishes to know if the imposition of a compulsory recourse to labour arbitration is, in all the above-mentioned cases, proportionate to the protection of the interests mentioned by Article G of the Charter.

#### *Conclusion*

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

## **Article 6 - Right to bargain collectively**

### *Paragraph 4 - Collective action*

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

The report states that the legislation of the Subjects of the Russian Federation cannot restrict the rights of trade unions and the guarantees of their activity provided by federal acts. It is also indicated that if the international treaties accepted by the Federation establish other rules than the ones stipulated by the federal laws, the provisions of the international agreements and conventions override the federal law.

The report refers to the right to strike. However, it does not contain information on lockouts. The Committee recalls that it is clear from the text that Article 6§4 of the Charter relates to both strikes and lockouts, even though the latter are not explicitly mentioned in the text, or in the gloss to this provision in the Appendix. The Committee came to this conclusion because the lockout is the principal, if not the only, form of collective action which employers can take in defence of their interests (Conclusions I (1969), Statement of Interpretation on Article 6§4). The Committee asks that the next report provides detailed information on the legal framework relating to lockouts and the situation in practice.

### ***Collective action: definition and permitted objectives***

Article 37§4 of the Constitution (adopted on 12 December 1993) provides that "the right of individual and collective labour disputes with the use of the methods for their resolution, which are provided for by federal law, including the right to strike, shall be recognized". The report points out that the constitutional right to strike is not absolute, but rather depends on the mechanism of its incorporation into federal legislation. The Labour Code (Federal Act No. 197-FZ of 2001, as amended) provides that "strike is a temporary voluntary refusal of employees to perform their labour duties (entirely or partially) with a view to resolve a collective labour dispute".

Given the mandatory nature of conciliation procedures (Article 401 of the Labour Code), the Committee understands that employees may organise a strike if: a) conciliation procedures have failed to end a labour dispute; b) the employer refuses to take part in a conciliation procedure; c) the employer does not fulfil the agreement reached (if any) in the course of the settlement of a collective labour dispute; or d) the employer fails to implement a labour arbitration decision. The Committee wishes to receive confirmation of this framework and asks if workers can lawfully organise a strike outside conciliation procedures.

From the ITUC Survey of violation of trade unions rights on the Russian Federation the Committee notes that "a strike can be held only to resolve a collective labour dispute. The law does not recognise the right to conduct solidarity strikes or strikes on issues related to state policies." The Committee invites the Government to comment on this statement. The Committee recalls that the requirement concerning the exhaustion of conciliation/mediation procedures before strike is in conformity with Article 6§4 – given Article 6§3 – as long as such machinery is not so slow that the deterrent effect of a strike is affected (Conclusions XVII-1 (2004), Czech Republic).

### ***Entitlement to call a collective action***

The report indicates that a primary trade union (which is a union that is a structural unit of a higher-level trade union organisation) that is authorised to resolve a collective labour dispute,

may suggest calling a strike. However, an order to begin a strike must be approved by an all-employee meeting (or an employees' delegates conference). The meeting is considered to have a *quorum* if at least 50% of the company's employees (75% of delegates of a conference) have participated in it. A decision to call a strike is considered to be adopted if at least 50% of the employees participating in the meeting voted in favour of it. However, if it is impossible to hold an employee meeting, the employees' representatives may approve a decision to call a strike by collecting the signatures of more than half of the employees in support of the strike.

The report states that "no one can be compelled to participate or refrain from participating in a strike. The Code of administrative offences establishes criminal liability for coercion to participate in, or to abstain from, the strike through use of violence or threats of violence, or taking advantage of the dependent status of the coerced, in the form of an administrative fine (500 to 1.000 rubles for citizens; 1.000 to 2.000 rubles for officials)". The Committee asks that the next report provides information on possible decisions taken by courts in this respect during the reference period. The report points out that trade union membership is irrelevant from the point of view of the employee's opportunity to participate in a strike.

### ***Specific restrictions to the right to strike and procedural requirements***

Article 55§3 of the Constitution provides that "human and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State".

On this basis, a number of federal acts impose direct restrictions on the right to strike. In this framework, the report indicates that: a) it is prohibited for military personnel to participate in strikes and any other kind of "failure to perform the duties of military service, as means of resolving issues related to military service"; b) all State civil servants and municipal employees are forbidden to stop the execution of their official duties in order to settle their dispute; c) strikes are also banned for heads of public and municipal unitary enterprises, certain categories of railway workers, federal courier workers, certain categories of civil aviation workers, workers of nuclear installations and storage facilities (in some circumstances).

In addition, the Labour Code provides that the following is unlawful and not permissible: a) strikes organised during emergency situations or special procedures in accordance with the legislation on emergency situations (in connection, inter alia, to the following sectors/activities: defence, safety, repair-rescuing, search-rescuing, anti-fire operations, law enforcement, highly hazardous facilities or machinery, ambulance stations; first medical aid; and b) the strikes which pose a threat to national defence and security, as well as the life and health of people within organisations that are directly engaged in providing essential services to the population (electricity, heating and heat supply, water supply, gas supply, aviation, rail and water transport, communications, and hospitals).

According to the report, in a number of industrial sectors a "minimum amount of necessary work" (services) is to be provided during the strike on the basis of an agreement between the employer (the employer's representative), the representative body of the employees and the local government. The decision on the minimum service to be provided must be taken within 3 days after the date of the strike's declaration. If during the 3-day period the agreement is not reached, the minimum service is established by the competent authority of the Subject of the Federation concerned. The inclusion of a service into the list of "minimum amount of necessary work" must be motivated by the "probability of causing harm or threatening lives of citizens". The list of industrial sectors concerned is determined by a federal executive body

following a procedure established by the Government. According to the report, the lists are adopted in consultation with the all-Russian trade unions concerned. The lists in force refer to the following industrial sectors: shipbuilding; conventional arms; munitions and special chemicals; light industry; medical and biotechnology; engineering; chemical and petrochemical industry; electric power; coal; wood; hydro meteorology; oil, oil-refining, gas, and oil products; transports; steel; and rocket and space. Other lists refer to federal State institutions and federal State enterprises subordinate to the Ministry of Culture; the organisations subordinate to the Ministry of Natural Resources; agriculture and fishery organisations; the organisations, branches and representative offices operating in the field of education; the gas and distribution companies; and the health care organisations. For some industries there are separate regional sub-lists.

From the ITUC Survey of violation of trade unions rights on the Russian Federation the Committee notes that "for several years, the ILO has requested the Government to amend Section 412 of the Labour Code, so as to ensure that any disagreement concerning minimum services is settled by an independent body having the confidence of all parties to the dispute and not the executive body". The Committee invites the Government to comment on this statement. The Committee recalls that establishing a "minimum service" in essential sectors may be considered to be in conformity with Article 6§4 of the Charter (Conclusions XVII-1 (2004), Czech Republic). However, in order to follow correct procedures, it is essential that, even if the final decision is based on objective criteria prescribed by law (such as the nature of the activity, the extent to which people's lives and health are endangered and other circumstances such as the time of year, the tourist season or the academic year), workers, or their representative bodies, are regularly involved in determining, on an equal footing with employers, the nature of the "minimum service". The Committee considers that in the report there is no evidence that the workers concerned are involved in determining, on an equal footing with employers, the nature of "minimum service". The Committee asks that the next report provide the above mentioned evidence. Pending receipt of the requested information, it reserves its position on this point.

The Committee notes that the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (ILO/CEACR), has requested the Government "to ensure that workers of postal services, municipal services and railways can exercise the right to strike and, to that effect, amend section 9 of the 1994 Federal Postal Service Act, section 11(1)(10) of the 1998 Federal Municipal Services Act and section 26 of the 2003 Federal Rail Transport Act". Furthermore, noting that the 2004 Law on State Civil Service prohibits civil servants from stopping their duties to solve a labour dispute, it also "requested the Government to amend the relevant legislative provisions so as to ensure that public servants who do not exercise authority in the name of the State could exercise the right to strike". (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013) – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Russian Federation (Ratification: 1956)).

More generally, the Committee underlines that the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests. It recalls that under Article G of the Charter restrictions on the right to strike are acceptable only if they are prescribed by law, pursue a legitimate aim and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals (Conclusions X-1 (1987), Norway (under Article 31 of the Charter). In other words, the Committee considers that a ban on strikes in sectors that are deemed essential to the life of the community are presumed to pursue a

legitimate aim if a work stoppage could threaten the public interest, national security and/or public health (Conclusions I (1969), Statement of Interpretation on Article 6§4 and Confederation of Independent Trade Unions in Bulgaria, Confederation of Labour “*Podkrepa*” and European Trade Union Confederation v. Bulgaria, Complaint No. 32/2005, decision on the merits of 16 October 2006, §24). However, simply banning strikes even in essential sectors – particularly when they are defined in broad terms – is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4 (Conclusions XVII-1 (2004), Czech Republic).

The Committee notes that the restrictions imposed on the right to strike apply to an important number of economic activities in the private and public sectors. The report does not contain any information which enables the Committee to conclude that the services concerned may all be regarded as “essential services” in the strictest sense of the term, that is to say activities which are necessary in a democratic society in order, in accordance with Article G of the Charter, to protect the rights and freedoms of others or to protect the public interest, national security, public health, or morals. Consequently, the Committee asks the Government to state, in relation to every service subject to restrictions with regard to the right to strike, if and to what extent work stoppages may undermine the respect for the rights and freedoms of others or threaten the public interest, national security, public health, or morals. In this context, it also asks whether such restrictions are in all cases proportionate to achieve the objective of ensuring, in a democratic society, the respect for the rights and freedoms of others or the public interest, national security, public health, or morals. Pending receipt of the requested information, it reserves its position on this point.

More particularly, the Committee recalls that restrictions to the right to strike of certain categories of civil servants, for example those whose duties and functions, given their nature or level of responsibility are directly affecting the rights of others, national security or public interest may serve a legitimate purpose in the meaning of Article G (Conclusions I, Statement of Interpretation, pp. 38-39). However, it considers that there is no reasonable relationship of proportionality between prohibiting all civil servants from exercising the right to strike, irrespective of their duties and function, and the legitimate aims pursued. Such restriction can therefore not be considered as being necessary in a democratic society in the meaning of Article G (Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour “*Podkrepa*” and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §§44-46). In this respect, the Committee recalls that the right to strike of certain categories of public servants may be restricted, in particular members of the police and armed forces, judges and senior civil servants. However, the denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter (Conclusions I (1969), Statement of Interpretation on Article 6§4). The Committee underlines that in the case of civil servants who are not exercising public authority, only a restriction can be justified, not an absolute ban (Conclusions XVII-1 (2005) Germany). According to these principles, all public servants who do not exercise authority in the name of the State should have recourse to strike in defence of their professional interests.

As regards procedural requirements, the Committee notes from the ITUC Survey of violation of trade unions rights on the Russian Federation that “the duration of a strike has to be communicated beforehand”. The Committee invites the Government to comment on this statement. In this respect, it recalls that the requirement to notify the duration of the strike to the employer prior to the strike is contrary to Article 6§4 of the Charter, even for essential public services (Conclusions 2006, Italy).

The report specifies that the decision to declare a strike illegal is taken by domestic courts on the basis of an appeal by the employer or the competent Prosecutor's Office. The court decision to declare the strike illegal, once entered into legal force, is subject to immediate execution. If an imminent threat to the life and health of people occurs, domestic courts have the right to postpone the scheduled strike for up to 15 days, and to suspend the one that had already started for the same period. In cases of particular importance to the protection of fundamental interests of Russia or its territories, the Government has the right to suspend the strike pending the trial, but for no more than ten calendar days. The report points out that by the time of writing the report, there were no cases in which the Government suspended strikes pending court decision on its legality or suspension.

The Committee asks that the next report provide detailed information on courts' decisions declaring strikes illegal. In this respect, the Committee recalls that its task is to verify whether the courts rule in a reasonable manner and in particular whether their intervention does not reduce the substance of the right to strike so as to render it ineffective (Conclusions I (1969), Statement of Interpretation on Article 6§4).

### ***Consequences of a strike***

The report describes that in principle an employee's participation in a (legal) strike does not constitute a violation of the working discipline and does not constitute a reason for dismissal or disciplinary measures. An employer has the right not to pay salaries to employees during their participation in the strike, with the exception of the employees who provide the "mandatory minimum work (services)". The Committee recalls that any deductions from strikers' wages should not exceed the proportion of their wage that would be attributable to the duration of their participation in the strike (Conclusions XIII-1 (1993), France and *Confédération française de l'Encadrement* –(CFE-CGC) v. France, Complaint No. 16/2003, Decision on the merits of 12 October 2004, §63).

### ***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 the Russian Federation.

The report states that the legislation of the Subjects of the Russian Federation cannot restrict the rights of trade unions and the guarantees of their activity provided by federal acts. It is also indicated that if the international treaties accepted by the Federation establish other rules than the ones stipulated by the federal laws, the provisions of the international agreements and conventions override the federal law.

The Committee recalls that consultation at the enterprise level is dealt with by Article 6§1 and Article 21. For the States which have ratified both provisions, consultation at enterprise level is examined under Article 21 (Conclusions 2004, Ireland).

The report states that bilateral consultations can be carried out within the undertaking on any subject the parties deem appropriate. Such cases may be determined through collective agreements, contracts, or other agreements. Consultations can also take place in the framework of permanent work councils. The report points out that a compulsory consultation procedure is implemented when new internal regulations are adopted within the undertaking, as well as when the labour contract of a trade union member is being terminated (on legally established grounds).

The Committee notes the information provided in the report with respect to the establishment of a new mechanism for consultation with employees about productivity and efficiency based on "production boards" in 2013 (Federal Act "On introducing changes to article 22 of the Labour Code of the Russian Federation" No. 95-FZ of 7 May 2013). The Committee considers that this information falls outside the reference period. It will examine it in the framework of its next conclusion on the implementation of Article 21 by the Russian Federation.

### ***Legal framework***

The report indicates that the right of workers' representatives to obtain information on issues that directly affect their interests from the employer within the undertaking is governed by the Labour Code (Article 53). The Committee asks whether this legal framework applies to all undertakings, both in the private and public sector. It recalls that according to the Appendix, for the purpose of the application of Article 21, "the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy".

### ***Personal scope***

The report indicates that the right to obtain information is guaranteed to employees' representatives, which are both trade unions and other employees' representatives. In this context, these representatives have the right to introduce proposals to the management bodies of the undertaking and participate in their consideration.

The Committee underlines 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 (Conclusions XIX-3 (2010), Croatia). Article 21 applies to all undertakings, whether private or public. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by

national legislation or practice. However, Article 21 is not applicable to public servants (Conclusions XIII-3 (1995), Finland; European Council of Police Trade Unions (CESP) v. Portugal, complaint No. 40/2007, decision on the merits of 23 September 2008, § 42). The Committee recalls that the minimum framework which it has adopted for Article 2 of the Additional Protocol of the 1961 Charter – which is also applicable to Article 21 of the Charter – is 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 and Joint declaration of the European Parliament, the Council and the Commission on employee representation (Official Journal L 080 , 23/03/2002 P. 0029 – 0034) It stipulates that the scope 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 EU member state (Conclusions XIX-3 (2010), Croatia).

The Committee wishes to be informed on the existence of any thresholds, established by national legislation or practice, in order to exclude undertakings which employ less than a certain number of workers.

### ***Material scope***

According to Article 53 of the Labour Code workers' representatives have the right to obtain information on the following issues from an employer: a) restructuring or liquidation of an undertaking; b) introduction of technological changes that entail a change of the working conditions of employees; c) vocational training, retraining, and improvement of professional skills of employees; and d) on other issues stipulated by the Labour Code, other federal laws, the constituent documents of an undertaking, collective bargaining, and agreements. According to the same provision, workers' representatives have the right to hold consultations on organisational issues and social and economic development plans.

The Committee recalls that workers and/or their representatives must be informed on all matters relevant to their working environment (Conclusions 2010, Belgium), except where the conduct of the business requires that some confidential information not be disclosed. Furthermore, they must be consulted in good time with respect to proposed decisions that could substantially affect the workers' interests, in particular those which may have an impact on their employment status.

More particularly, the Committee recalls that works councils have to be provided with economic and financial information comprising all aspects of the functioning of the undertaking such as, *inter alia*, the development of sales activities, customers' orders, productivity, costs and employment. Works councils also have the right to be informed and consulted in due course on the employment policy of the enterprise and may submit questions and express opinions on decisions and proposals envisaged by the employer in this respect prior to their implementation. The employer is obliged to provide information on the employment structures of the undertaking and on envisaged changes of these structures such as planned dismissals on economic grounds etc. Consultations further take place with respect to, *inter alia*, measures that might change the organisation of work or the working conditions within the undertaking, as well as on measures regarding the training of employees, on collective redundancies, etc. (Conclusions 2010, Belgium).

The Committee asks whether these principles are fulfilled.

### ***Remedies***

The report states that according to article 29§5 of the Code of Administrative Offences, in case of failure to provide the information required with respect to collective negotiation and monitoring compliance with the collective agreement within the established time-limit, an employer or his representative may be brought to justice and receive a warning or a fine of 1 000 up to 3 000 rubles.

Further to the procedure mentioned in the paragraph above, the Committee asks whether in case of alleged violation of the right to consultation and information within the undertaking employees or their representatives: a) have the general capacity to trigger an administrative action against their employer; b) enjoy a subsequent right of appeal before a court. The Committee also asks whether there are other kinds of sanctions and whether workers or their representatives are entitled to some kind of compensation in case of a violation.

### ***Supervision***

The report points out that the legislation does not provide for mechanisms for implementation of the rights to information and consultation. However, they may be regulated by collective contracts or agreements.

The Committee asks that the next report provide information and examples on the mechanisms of supervision provided by collective contracts and agreements, and of their concrete implementation.

### ***Conclusion***

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

## **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 the Russian Federation.

The report states that the legislation of the Subjects of the Russian Federation cannot restrict the rights of trade unions and the guarantees of their activity provided by federal acts. It is also indicated that if the international treaties accepted by the Federation establish other rules than the ones stipulated by the federal laws, the provisions of the international agreements and conventions override the federal law.

The report indicates that the right of workers and their representatives to take part in the evaluation and improvement of working conditions and working environment is implemented at different levels of social partnership. In this framework, the report refers to the relevant provisions of the Labour Code (Federal Act No. 197-FZ of 2001, as amended) relating to the right of the "Russian Tripartite Commission" to participate in the preparation of legal acts and to directly affect the most important regulatory decisions of the Government on the management of employees. The Committee notes that most of the above-mentioned provisions notably refer to health and safety issues (Articles 92, 211, 222, 225, 253).

The Committee recalls that with a view to ensuring the implementation of Article 22 of the Charter, workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, and works councils) must be granted an effective right to participate and contribute in the decision-making process and the supervision of the observance of local regulations within the undertaking. It also recalls that Article 22 applies to all undertakings, whether private or public. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice (Conclusions 2005, Estonia) and tendency undertakings.

The Committee wishes to receive confirmation that Article 22 is applied to both private and public undertakings. It also wishes to be informed on the existence of any thresholds, established by the national legislation or practice, in order to exclude undertakings which employ less than a certain number of workers.

As regard the scope of Article 22, the Committee underlines that workers and/or their representatives must be granted an effective right to participate and contribute in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision.

### ***Working conditions, work organisation and working environment***

The report does not provide specific information on the implementation of Article 22(a). The Committee asks that the next report provide specific information on the measures adopted or encouraged by competent authorities in order to enable workers, or their representatives, to contribute to the determination and improvement of the working conditions, work organisation and working environment within the undertaking (further to the information provided with respect to Article 22(b)).

Pending receipt of the requested information, the Committee reserves its position on this matter.

### ***Protection of health and safety***

The report indicates that according to the Labour Code, labour safety regulations refer to the participation of workers and their representatives in the organisation's management, as well as to the participation of social partnership bodies in the development and/or discussion of draft legislative and other regulatory acts, socio-economic development programmes, and other labour-related acts issued by State bodies and bodies of local self-government.

Article 219 of the Labour Code provides that workers have the right to participate, directly or through their representatives, in the consideration of issues related to safe working conditions at the workplace, as well as in the investigation concerning accidents at work and occupational diseases.

Article 218 of the Labour Code provides that at the initiative of the employer and/or employees, or their representative bodies, occupational safety commissions can be established. Being established on an equal basis, these commissions include representatives of both the employer and employees. The commissions' status and activities are governed by the "Model Provisions on committee (commission) for labour protection", approved by an order of the Ministry of Health and Social Development (No. 413249, of 29 May 2006), as well as by regulations adopted at the enterprise level. The above-mentioned commissions organise joint actions of the employer and employees to meet the occupational safety requirements, prevent accidents at work and occupational diseases. They also organise inspections of the working conditions and occupational safety. The report points out that these commissions "inform employees of the results of these inspections and collect proposals with respect to the possible amendment of the relevant parts of the collective occupational safety agreement".

The Committee asks that the next report provide information on the implementation of the above-mentioned provisions in practice.

### ***Organisation of social and socio-cultural services and facilities***

The report does not provide specific information on the implementation of Article 22(c). The Committee asks that the next report provides specific information on the measures adopted or encouraged by Russian authorities in order to enable workers, or their representatives, to contribute to the organisation of social and socio-cultural services within the undertakings concerned (further to the information provided with respect to Article 22(b)).

The Committee points out that the right to take part in the organisation of social and socio-cultural services and facilities only applies in undertakings where such services and facilities are planned or have already been established. Article 22 of the Charter does not require that employers offer social and socio-cultural services and facilities to their employees, but requires that workers may participate in their organisation, where such services and facilities have been established (Conclusions 2007, Italy and Conclusions 2007, Armenia).

Pending receipt of the requested information, the Committee reserves its position on this matter.

### ***Enforcement***

The report refers to the legal provisions relating to health monitoring within the undertaking, implemented by trade unions (at all levels); other representative bodies; labour inspection authorities; technical labour inspection of trade unions; committees (commissions) for labour protection, pertaining to organisations, enterprises and institutions; authorised persons in charge of occupational safety and health, who are members of trade unions; and other authorised employees' representative bodies. It is pointed out that these representatives have the right to check to what extent the situation complies with the health and safety requirements

within the undertaking, to introduce proposals to eliminate violations, which are mandatory to consider by officials (Article 370 of the Labour Code, Federal Act “On trade unions, their rights and operating guarantees” of 12 January 1996 No. 10-FZ). The Committee asks that the next report provide a description of the monitoring activities carried out by the above mentioned representatives in practice. It also asks whether these activities, further to health and safety issues, also refer to other matters linked to the implementation of Article 22.

The Committee recalls that workers must have legal remedies when these rights are not respected (Conclusions 2003, Bulgaria). There must be sanctions for employers who fail to fulfil their obligations under this Article (Conclusions 2003, Slovenia). The Committee asks whether these requirements are fulfilled.

*Conclusion*

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

## **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 the Russian Federation.

The report states that the legislation of the Subjects of the Russian Federation cannot restrict the rights of trade unions and the guarantees of their activity provided by federal acts. It is also indicated that if the international treaties accepted by the Federation establish other rules than the ones stipulated by the federal laws, the provisions of the international agreements and conventions override the federal law.

The Committee recalls that Article 28 guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises a similar right in respect of trade union representatives (Conclusions 2003, Bulgaria). According to the Appendix of Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice. States may therefore establish different kinds of workers' representatives, be it trade union representatives, other types of representatives or both. Representation may be exercised, for example, through workers' commissioners, workers' councils or workers' representatives on the enterprise's supervisory board (Conclusions 2003, Bulgaria).

### ***Protection granted to workers' representatives***

The report mainly refers to the legal framework established for the protection of persons involved in collective bargaining, including procedures for the settlement of labour disputes (Article 39 of the Labour Code – Federal Act No. 197-FZ of 2001, as amended). In this framework, as regards collective bargaining procedures, the report points out that the above mentioned persons are exempt from work, while retaining the average salary for a period determined by an agreement between the parties, but for no longer than three months. Workers' representatives who participate in collective bargaining cannot be subject to disciplinary punishments, transferred or dismissed at the initiative of the employer during the negotiations, unless prior consent was obtained of the authority body that delegated the workers' representatives the right of representation. The Committee asks that the next report provides more information on this particular situation. As regards labour disputes, it is specified that members of conciliation commissions and labour arbitrators are exempt from work while retaining average salary for a period not exceeding three months within one year. Workers' representatives and their organisations participating in the settlement of a collective labour dispute cannot be subject to disciplinary punishments, transferred or dismissed by the employer during the settlement of a collective labour dispute without prior consent of a body that delegated them their mandate as representatives. The Committee asks that the next report provide more information on this particular situation.

The Committee notes that further to the procedures related to collective bargaining, the Labour Code contains a number of relevant provisions:

- Article 374, on "Guarantees to workers who belong to collective elective bodies of trade union organisations and have not been released from their primary job", which provides that the termination of employment, at the employer's initiative, of the leader (or deputy) of the collective elected bodies of primary trade union organisations, the elected collective bodies of trade union organisations, the structural units of organisations (no lower than shop-level and equivalent subdivisions) who has not been released from his primary job under Article 81 Part

1, items 2 – redundancy or staff cuts at the organisation, individual entrepreneur, 3 – employee's failure to meet the requirements associated with his position or job due to insufficient qualifications as confirmed by the results of an attestation, or 5 – numerous failures by the employee to fulfil labour duties without justifiable reasons if he has been reprimanded, of this Code, shall be allowed, aside from general termination procedures, only upon the consent of the corresponding superior elective trade union body. In the absence of a superior elective trade union body, the termination of the indicated workers shall be carried out in observance of the procedures established by Article 373 of this Code.

- Article 375, on "Guarantees for full-time trade unionist officials" which provides that an employee who has been released from his job with an organisation or with an individual entrepreneur to fill an elected position with an elected body of a primary trade union organisation (hereinafter also referred to as a "full-time trade union official" shall be reinstated in the previous job (position) upon the expiry of his/her term of office, or if the job is not available then another job (position) of equal value on his/her consent in writing with the same employer. If the said job (position) cannot be provided due to the winding up of the organisation or to the termination of activity by the individual entrepreneur or to the organisation's/individual entrepreneur's lacking a relevant job (position) the all-Russia (inter-regional) trade union shall preserve the employer's average earnings for the period of his/her looking for a job not exceeding six months, or in the case of training or upgrading, for a term of up to one year. If the employee refuses to take a relevant job (position) offered thereto he/she shall not retain the average earnings for the job-seeking period, except as otherwise established by a decision of the all-Russia (inter-regional) trade union. The term of office of an elected trade union official in an elected position with an elected body of a primary trade union organisation is included in his/her general and special record of service. Full-time trade union officials have the same labour rights, guarantees and privileges as the employers of the organisation or individual entrepreneur in accordance with the collective agreement.
- Article 376, on "Guarantees of the right to work for workers who are members of an elective trade union body" which provides that the termination of a labour contract with the leader or deputy of an elective body of the primary trade union organisation within two years following the end of their terms in office, at the employer's initiative under Items 2, 3, or 5 of Part one of Article 81 of this Code, shall be allowed only with adherence to the procedures established in Article 374 of this Code.

The Committee notes that the legal framework described in the report exclusively refers to the protection of trade union representatives or persons involved in collective bargaining procedures. The Committee asks that the next report contains specific information on the legal framework relating to the right of workers' representatives to protection in the undertaking and its implementation.

The Committee underlines that under Article 28(a) the Parties must ensure that in the undertaking protection covers the prohibition of dismissal of any workers' representative on the ground of being a workers' representative, as well as the protection of the above-mentioned representative against detriment in employment other than dismissal (Conclusions 2003, France). The protection afforded to workers' representatives should apply for a period beyond the mandate. To this end, the protection afforded to workers shall be extended for a reasonable period after the effective end of period of their office (Conclusions 2010, Statement of

Interpretation on Article 28). The Committee asks whether these principles are fulfilled by the applicable legislation and in practice.

The Committee recalls that as stated in its decision related to Complaint No. 1/1998 (International Commission of Jurist v. Portugal, §32) "the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter". In this context, it also wishes to be informed on the concrete remedies made available to workers' representatives to allow them to contest their possible dismissal. The Committee also recalls that where a dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. The compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court's decision or reinstatement (Conclusions 2007, Bulgaria).

### ***Facilities granted to workers' representatives***

The Committee notes that Article 374 of the Labour Code provides that "members of elective collective bodies of trade union organisations who have not been released from their primary job shall be released from it in order to participate as delegates in the work of conferences convened by trade unions, to participate in the work of the elected collective bodies of trade unions, and if there is a provision to this effect in the collective agreement, also for the period of short-term trade union training. The conditions of the release from job duties and procedures for compensating time spent participating in the indicated events shall be defined by collective negotiations or other agreements".

Moreover, the Committee notes that Article 377 of the Labour Code on "Employer's obligation to create conditions for the activities of an elective body of the primary trade union organisation" provides that "an employer shall be required to offer the following, free of charge, to elective bodies of primary trade union organisations which unite its employees: space in which to hold sessions and store documents and the opportunity to place information in a place (places) accessible to all workers. An employer having over 100 employees shall offer the following, free of charge, for use by the elected bodies of primary trade union organisations: at least one furnished, heated area, with electricity supply, as well as office machinery, means of communication, and necessary legal regulatory documents. Other improvements to support the activity of the indicated trade union bodies may be stipulated in collective negotiations agreements. In accordance with a collective negotiations agreement, the employer may offer the following for free use by an elective body of the primary trade union organisation: buildings, structures, building space, and other sites belonging to or leased by the employer, and also recreation centres and sports and health centres needed to organise recreation and conduct group cultural and physical education/health activities with workers and their family members. At the same time, trade unions shall not be entitled to charge fees for the use of these sites by workers who are not members of the given trade union. In instances stipulated by a collective negotiations agreement, the employer shall deduct funds for group cultural and physical education/health activities to the primary trade union organisation. Upon written petitions from workers belonging to the trade union, an employer shall deduct monthly trade union membership contributions from workers' wages to the benefit of the trade union organisation. Procedures for transferring these contributions shall be defined by a collective negotiations agreement. The employer shall not be entitled to delay the transfer of the indicated resources. Employers that have concluded collective negotiations agreements or at which branch (inter-branch) agreements are in force, shall, upon receiving a written petition from their workers who are not trade union members, effect monthly transfers of funds from the indicated workers'

wages to the trade union organisation's accounts under the terms and procedures established by collective negotiations agreements or branch (inter-branch) agreements. Payment of the wages of the leader of an elective body of the primary trade union organisation may be made using the funds of the employer, in amounts established by a collective negotiations agreement".

The Committee notes that the legal framework described in the report exclusively refers to the protection of trade union representatives or persons involved in collective bargaining procedures. The Committee asks that the next report contains specific information on the legal framework relating to the facilities accorded to workers' representatives within the undertaking and its implementation.

In this framework, the Committee recalls that the facilities may include those mentioned in the R143 Recommendation concerning Protection and Facilities to be Afforded to Workers Representatives in the Undertaking, adopted by the ILO General Conference of 23 June 1971. These include: support in terms of benefits and other welfare benefits because of the time off to perform their functions; access for workers representatives or other elected representatives to all premises, where necessary; the access without any delay to the undertaking's management board if necessary; the authorisation to regularly collect subscriptions in the undertaking; the authorisation to post bills or notices in one or several places to be determined with the management board; and the authorisation to distribute information sheets, factsheets and other documents on general trade unions' activities. Other facilities may also be established, such as financial contribution to the workers' council and the use of premises and materials for the operation of the workers' council (Conclusions 2010, Statement of Interpretation on Article 28 and Conclusions 2003, Slovenia). The Committee also recalls that the participation in training courses on economic, social and union issues should not result in a loss of pay. Training costs should not be borne by the workers' representatives (Conclusions 2010, Statement of Interpretation on Article 28).

#### *Conclusion*

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

## **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 the Russian Federation.

The Committee refers to its Statement of Interpretation of Article 29 (2003) and recalls that this provision of the Charter provides for the employer's duty to consult (and not only to inform) with workers' representative, as well as the purpose of such consultation. The Committee has held that the obligation to inform and consult is not just an obligation to inform unilaterally, but implies that a process (of consultation) is set in motion, meaning that there is sufficient dialogue between the employer and the worker's representatives on ways of avoiding redundancies or limiting their number and mitigating their effects. The consultation procedure must cover:

- the redundancies themselves, including the ways and means of avoiding them or limiting their occurrence; and
- support measures, such as social measures to facilitate the redeployment or retraining of the workers concerned and the redundancy package.

### ***Definition and scope***

The Committee recalls that the collective redundancies referred to in Article 29 are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity (Conclusions 2003, Statement of Interpretation on Article 29).

The Committee takes note of the definition of collective redundancies in different social partnership agreements, such as industry-specific (for example on agriculture, medical organisations, education, fishing or energy) or in territorial agreements.

The Committee asks whether there is a definition of collective redundancies in the national law and if not, whether all workers are covered by social partnership agreements.

### ***Prior information and consultation***

According to Article 82 of the Labour Code, the decision to reduce the number of employees which may lead to collective redundancies, should be notified to the elected body of a primary trade union organisation, no later than three months prior to the commencement of the relevant procedures. The criteria for layoffs are defined in industry specific and/or territorial agreements. These agreements also establish additional mechanisms for workers' protection in case of collective redundancies.

The Decree of the Government of the Russian Federation dated 5 February, 1993 No. 99 "On the organisation of work in conditions of massive release of workforce" lays down the mechanisms for workers' protection in collective redundancy situations. In accordance with this decree, executive bodies and employers carry out mutual consultations on employment of dismissed workers upon the proposal of trade unions, or other authorised workers' representative bodies. Following these consultations, a programme of activities is prepared, aiming at promoting employment and providing social guarantees for workers concerned.

The measures aimed at alleviating the consequences of collective redundancies, as provided for in collective agreements, include, *inter alia*, benefits and compensation to dismissed employees to be provided by an employer as well as procedure of organising training, retraining and continuous professional development of the workers concerned before the termination of the employment contract.

If no measures aimed at the promotion of employment of released workers are foreseen during the conclusion of collective agreements, enterprises may, through a mutual agreement of the parties and in accordance with the established procedures, establish commissions representing the administration, trade unions and other authorised workers' representative bodies, to conduct negotiations with a view to introducing amendments to a collective agreement.

Measures to promote employment, such as professional retraining and the creation of new jobs, implemented along with collective redundancies that might affect the overall unemployment rate in the industry or the region, can be included in sectoral industry-specific agreements that are concluded between trade unions, other authorised representative bodies of workers and employers (associations of employers), the Ministry of Labour, or included in territorial agreements between relevant trade unions, other authorised representative bodies of workers and employers (associations of employers), and bodies of executive power.

Moreover, according to the report, funding of activities included in industry-specific and territorial agreements, is determined through decisions of parties to a negotiation process during the conclusion of these agreements. The Federal Service of Labour and Employment (*Rostrud*) carries out the regional programmes aimed at reducing tensions at the labour market due to collective redundancies.

The Committee recalls that under Article 29 of the Charter, with a view to fostering dialogue, all relevant documents must be supplied before consultation starts, including the reasons for redundancies, planned social measures, the criteria for being made redundant and information on the order of the redundancies.

The Committee considers that (Statement of Interpretation on Article 29, General Introduction) in principle, all relevant information should be delivered prior to the consultation, but also during the consultation at the request of workers, but also when workers do not specifically ask for it. The domestic law must guarantee the right to information for employees' representatives also during the consultation process.

The Committee asks whether these requirements are met in law and in practice.

### ***Preventive measures and sanctions***

The Committee recalls that consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must at least be the possibility of recourse to administrative or judicial proceedings before the redundancies are made, to ensure that they are not put into effect before the consultation requirement is met. Provision must be made for sanctions after the event, and these must be effective, which is sufficiently deterrent for employers (Statement of Interpretation on Article 29, Conclusions 2003).

The Committee asks what sanctions exist if the employer fails to notify the workers' representatives about the planned redundancies. It also asks what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has been fulfilled.

### ***Conclusion***

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