January 2015

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2014

(SERBIA)

Articles 2, 4, 5, 6, 21, 22, 26, 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 Serbia, which ratified the Charter on 14 September 2009. The deadline for submitting the 3rd report was 31 October 2013 and Serbia submitted it on 25 November 2013. On 9 July 2014, a request for additional information regarding Article 4§3 was sent to the Government, which did not submit a reply.

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).

Serbia has accepted all provisions from this group except Article 2§4.

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

The conclusions on Serbia concern 22 situations and are as follows:

- 8 conclusions of conformity: Articles 2§1, 2§3, 2§5, 2§6, 2§7, 4§2, 26§2, 29.
- 3 conclusions of non-conformity: Articles 4§4, 5, 6§4.

In respect of the other 11 situations related to Articles 2§2, 4§1, 4§3, 4§5, 6§1, 6§2, 6§3, 21, 22, 26§1 and 28, 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 Serbia 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.

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 Serbia.

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 expressly define what constitutes reasonable working hours. The Committee therefore assesses the situations on a case by case basis: extremely long working hours such as 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).

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

According to the report, Article 50 of the Labour Law provides that full-time work entails 40 hours per week. If a company bylaw stipulates less than 40 hours, the employee in question shall still be entitled to all employment rights accorded to full-time workers.

According to Article 55 of the Labour Law, the working week consists of 5 working days and each working day consists of 8 working hours.

Article 53 regulates exceptional overtime work in the event of extraordinary situations in which the employee may be required to work additional hours, which cannot exceed 8 hours per week or 4 hours per day.

The Committee 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 under Article 2§1 of the Charter flexibility measures regarding working time are not as such in breach of the Charter. In order to be found in conformity with the Charter, national laws or regulations must fulfil three criteria:

1. they must prevent unreasonable daily and weekly working time. The maximum daily and weekly 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.

The Committee notes from the report that Articles 57-61 regulate flexible working time and provide that working hours must be redistributed in such a manner as to ensure that the total working hours of an employee, when averaged over the course of six months may not exceed full-time working hours. Working time in any individual working week may not exceed 60 hours. The Committee asks what the absolute limit **is** to the daily working hours in the flexible working time arrangements.

As regards the practical application of the legislative framework, the Committee notes from the report that the Labour Inspectorate under the Ministry of Labour, Employment and Social Policy, prepared a project aiming at improving occupational health and safety, which focused on the implementation of the EU occupational health and safety standards.

The Committee also notes that the Labour Inspectorate held meetings with trade unions and employers to ensure more efficient protection of the rights of all participants in the labour market.

The Committee recalls that under Article 2§1 of the Charter 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.

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.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

It notes that Article 114 of the Labour Law (Nos. 24/05, 61/05, 54/09 and 32/13) provides for public holidays with pay.

It notes from the ILO database (Serbia working time 2011) that the Law on State and Other Holidays provides for eleven public holidays (1 and 2 January; 7 January; 15 and 16 February; Orthodox Good Friday, Easter and Easter Monday, 1 and 2 May, and 11 November). According to the Law, work is in principle prohibited during public holidays but may be authorised when the discontinuation of work may result in adverse consequences for the citizens and for the State or in cases where the nature of work requires continuous operation. If a public holiday falls on Sunday, then the holiday is postponed to the next day.

Additional religious holidays are provided for members of the respective communities under Article 4 of the Law: orthodox workers are allowed not to work on the first day of the saint patron; catholics and members of other Christian communities are allowed not to work at Christmas (25 December) and from Good Friday to Easter Monday according to their calendar; members of the Islamic community are allowed not to work the first day of Ramadan and the first day of Eid Adha Kurbanskog; and the members of the Jewish community are allowed not to work the first day of Yom Kippur.

The Committee recalls that Article 2§2 guarantees the right to public holidays with pay, in addition to weekly rest periods and annual leave. Public holidays may be specified in law or in collective agreements. Work should be prohibited during public holidays. However, working on public holidays may be carried out in special situations. The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday. In this respect, in light of the information available, the Committee asks the next report to clarify whether an exhaustive list of criteria exist to identify the circumstances under which work is allowed during public holidays. It furthermore asks what compensation applies **to** work performed on public holidays (in terms of salary and/or of compensatory time off), in addition to the normal salary paid on account of the public holiday. It reserves in the meantime its conclusion.

Conclusion

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

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 Serbia.

Under Article 68 of the Labour Law, employees are entitled to annual holidays and cannot waive this right. The length of the annual holiday is determined by the employment contract but cannot be less than 20 working days (Article 69 of the Law). During the annual holiday, the employee is entitled to salary compensation amounting to their average salary during the preceding three months (Article 114 of the Law).

The Committee notes from the ILO database (Serbia working time 2011) that the annual leave may be used in two parts, the first part lasting no less than three working weeks in the course of the calendar year and the second part to be taken not later than 30 June of the following year.

The report indicates that when an employee becomes temporarily unable to work within the meaning of the health insurance legislation while on holiday, he or she is entitled to resume the holiday when he or she is no longer unable to work.

Conclusion

The Committee concludes that the situation in Serbia is in conformity with Article 2§3 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

It notes from the report that under Article 67 of the Labour Law, employees are entitled to weekly rest periods of at least 24 consecutive hours, usually on Sundays. Employers may designate other days for weekly rest if that is required by the nature or organisation of the work. If an employee is required to work on his/her weekly rest day, the employer is required to provide a rest period of at least 24 consecutive hours in the course of the following week.

The Committee asks whether any exceptions exist to these rules and, if so, under what circumstances it is authorised for employees to work for more than twelve days before being entitled to a day off. It recalls in this respect that, under Article 2§5 of the Charter, the rest period 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.

Conclusion

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

Article 2§6 guarantees the right of workers to written information when starting employment. This information must at least cover essential aspects of the employment relationship or contract, **namely the following:**

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;
- in the case of a temporary contract or employment relationship, the expected duration thereof;
- the amount of paid leave;
- the length of the period(s) of notice in case of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee's normal working day or week;
- where appropriate, a reference to the collective agreements governing the employee's conditions of work.

The Committee notes from the report that Article 32 of the Labour Law stipulates that employment contracts must be entered into in writing before the employee begins working and must contain the following information:

- the name and registered office address of the employer; the name, surname, residence or domicile of the employee as well as type and degree of his/her professional qualifications;
- the type and description of the job the employee is required to undertake and location at which the employee is to work;
- the date the employee is to start work;
- the type of employment (open-ended or short-term) and, in case of short-term employment contract, its duration;
- the base salary and criteria for establishing performance, salary compensation, increased salary and other emoluments due to the employee; deadlines for the payment of salary and other emoluments the employee is entitled to;
- the working hours (full-time, part-time, or reduced) and duration of daily and weekly working hours;
- reference to a current collective agreement or employment regulation.

The Committee takes note of this information and asks whether the amount of paid leave and the length of periods of notice in case of termination of the contract or employment relationship are also specified in writing (in the contract or another document).

Conclusion

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

It recalls that, under Article 2§7 of the Charter, the national law or practice must define what constitutes "night-work". The law should also provide measures taking into account the special nature of night work and including the following:

- regular medical examinations, including a check-up prior to employment on night work;
- the provision of possibilities for transfer to daytime work;
- continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

The Committee notes from the report that, under Article 62 of the Labour Law, work performed between 10 p.m. and 6 a.m. is deemed night work.

Under the same Law, where an employee works at night for at least three hours per day or one third of his/her full-time working hours over the course of one week, the employer must ensure that the employee can be transferred to day-time work if a competent health authority advises that night work might result in the deterioration of the employee's health.

Furthermore, before introducing night work, employers are required to solicit the opinion of the relevant trade union regarding health and safety measures applicable to employees working nights.

The Committee asks the next report to indicate whether a medical check-up is carried out before an employee is assigned to night work and regularly afterwards. Additionally, it asks under what other circumstances than health grounds, if any, employers should consider and explore the possibilities of a transfer to daytime work. It also asks whether, in addition to the consultation to be held before introducing night work, 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.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Serbia is in conformity with Article 2§7 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

It is the first time the Committee examines the features of remuneration that apply in Serbia.

In the private sector, remuneration is determined by law, company regulations and employment contracts (section 104 of the Labour Act of 15 March 2005 (No. 24/05), as amended). It is made up of a base salary, a performance-related amount and increased salary (section 106). The base salary is being determined in accordance with parameters set by the company regulations and the employment contract, which may provide for a higher salary (section 107). The Social and Economic Council, which is a body bringing together representatives of the Government, the Conference of Autonomous Trade Unions of Serbia (CATUS), the *Nezavisnost* Trade Union Confederation and the Serbian Employers' Association (SAE), establishes a minimum wage in accordance with parameters set by the law (such as cost of living, basic and social needs of employees and their families, and the unemployment rate). It may not be lower than the minimum wage in force in Serbia over the immediate preceding period (section 112). According to the Social and Economic Council (Report on the Work of the Social and Economic Council and the Secretariat in 2012, Belgrade: SECRS 2013, pp. 10-11), by decision of 12 March 2012, the monthly minimum wage was kept at RSD 17 748 (€149.08) net of social contributions and tax for the period from January to March 2012, and increased it to RSD 20 010 (€168.08) net for the period from April 2012 to February 2013.

In the public sector, remuneration is determined partly by the Salaries in Government Bodies and Public Services Act (No. 34/01) and by Order No. 44/01 on coefficients for the calculation and payment of salaries of staff of public services; and partly by the Salaries of Civil Servants and Support Staff Act of 14 July 2006 (No. 62/06). According to the report, when the application of the method provided for by the Salaries in Government Bodies and Public Services Act results in a wage that is lower than the minimum wage, the amount is corrected to bring it up to the level of the minimum wage, so as to ensure that the basic needs of employees and their family are met. According to the ILO (Global Wage Report 2012/13: Wages and equitable growth, Geneva: ILO 2013, p. 19), the Government made a commitment to the IMF to keep public sector wages and pensions frozen in 2009 and 2010. Law No. 99/10 of 22 December 2010 to amend and supplement the Salaries in Government Bodies and Public Services Act altered the grade scales and the rules on the calculation of salaries and supplements.

According to Statistical Office figures for September 2012 (Statistical Office of the Republic of Serbia: Statistical Yearbook 2013, Belgrade: PBC 2013, pp. 64-68), the average gross monthly wage, which was RSD 60 080 (€504.67) for the whole country, varied significantly according to regions, ranging from RSD 72 188 in the Belgrade region to RSD 51 833 in the Southern region (table 3.15). The average monthly wage by activity was RSD 57 430 (€482.41) gross and RSD 41 377 (€347.57) net. The wage was the lowest in wood product manufacturing (RSD 29 444 gross and RSD 21 520 net); catering (RSD 29 655 gross and RSD 21 702 net); picture and sound production (RSD 25 671 gross and RSD 18 807 net); activities connected with financial and insurance services (RSD 31 279 gross and RSD 22 889 net); and security and investigation activities (RSD 29 148 gross and RSD 21 275 net) (table 3.18).

ILOSTAT data for September 2012 (table "mean nominal earnings of employees") confirms the average gross monthly wage (which includes part-time work except in some regions) of RSD 60 080 (€504.67) and identify agriculture (RSD 48 270), construction (RSD 49 197) and manufacturing (RSD 51 553) as low-pay sectors.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the average net wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage lies between 50% and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee determines, in view of the report and the other information cited, that the minimum wage amounts to 52.69% of the average wage, net of social contributions and tax. Hence, in order to assess whether this wage makes it possible to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, the Committee asks that the next report provide information on the standard of living of workers who earn the minimum wage and their dependants. It also asks for information on measures taken to guarantee that minimum wages are applied in low-pay regions and sectors.

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 Serbia.

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 a higher wage 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.

The Committee notes from the report that remuneration for overtime hours is regulated by Article 108 (1) 3) of the Labour Law, which states that an employee is entitled to a salary increase of at least 26% of their base salary as established by company bylaws and the employment contract for overtime work.

Employers are required to keep records of employee attendance and overtime work, and remunerate employees at an increased rate as established under company bylaws and employment contracts. The Committee asks for examples of the increased rates of remuneration as negotiated in company bylaws.

The Committee recalls that the right of workers to an increased rate of remuneration for overtime work is subject to 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.

The Committee further 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 Committee asks whether the employees are entitled to a time off in lieu as remuneration for overtime work and if so, whether it is of an increased duration.

Conclusion

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

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 Serbia.

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 legislation (Conclusions XV-2 (2001), Slovak Republic).

According to the report Article 104 (2)/(3) of the Labour Law guarantees equal salary for identical work or work of identical value performed for the employer. Work of identical value is defined as work requiring the same educational level, working ability, responsibility and amount of physical and intellectual labour.

Moreover, Article 16 of the Anti-Discrimination Law bans labour discrimination, including unequal remuneration for work of identical value. Besides, Article 17 of the 2009 Serbian Gender Equality Law on equal remuneration for identical work or work of identical value stipulates that employees, regardless of their gender, are entitled to equal remuneration for identical work or work of identical value. Under Article 11 of the same law, employers are required to ensure that all employees enjoy equal opportunities and treatment regardless of gender.

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 a shift 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).

According to the report, the Labour Law makes it a misdemeanour for an employer to engage in any discrimination, as well as not paying the same salary for identical work or work of identical value (Article 273 (1) (4)). If a monetary claim arising from employment results in the establishment of the employer's accountability, the misdemeanour fine payable by the perpetrator ranges from RSD 800,000 to RSD 1 million (€8 650).

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 the employee in the same or a similar post. If this reinstatement is not possible, he 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).

The Committee asks what rules apply in cases of retaliatory dismissal.

Methods of comparison and other measures

The Committee notes from the report that in 2010 the Ministry of Labour, Employment and Social Policy adopted the Regulation regarding the content and submission of Plans of Measures to Eliminate or Alleviate Unequal Gender Representation and the Annual Report regarding its implementation. Employers with more than 50 staff members are required to provide such plans and the Gender Equality Directorate is responsible for receiving these plans and keeping records of them.

In the period from January to December 2012 labour inspectors made 4 264 visits focusing on the implementation of the Gender Equality Law and issued 72 orders to remedy deficiencies. Employers were ordered to adopt plans of measures to eliminate unequal gender representation. In 2012, labour inspectors issued 70 orders under Article 269 of the Labour Law regarding infringements of anti-discrimination provisions of the law.

According to the report, differences in the position of men and women in the labour market and their earnings are reflected in the gender pay gap, which reached 17% in 2011, as reported by the Statistical Office.

In its Conclusions XX-1 (2012) the Committee adopted the following Statement of interpretation on Article 20 (Article 1 of the Additional Protocol of 1988):

"Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

• cases in which statutory rules apply to the working and pay conditions in more than one company;

• cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;

• cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.

The Committee holds that this interpretation applies, *mutatis mutandis* to Article 4§3."

The Committee asks whether in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned.

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 Serbia.

The notice periods that apply in Serbia have not previously been examined by the Committee.

Under section 179, paragraph 1 of the Labour Act of 15 March 2005 (No. 24/05), as amended, employees may be dismissed based on the following grounds

1. Professional incompetence;
2. Breaches of the obligations laid down by company regulations or the employment contract;
3. Failure to comply with the disciplinary rules laid down by company regulations or the employment contract;
4. Committing a criminal offence related to the work;
5. Failure to return to work within 15 days of a suspension of the employment relationship;
6. Abuse of the right to leave;
7. Refusal to accept an amendment to the employment contract covered by section 171, paragraph 1 of the Act (transfer to an equivalent post, needs of the service, or organisational changes);
8. Refusal to accept an amendment to the employment contract covered by section 33, paragraph 1, sub-paragraph 10 of the Act (pay conditions);
9. Technological, economic or organisational change.

A notice period of one month (for up to ten years of service) to three months (for over 20 years of service) is applied to the cases of dismissal for professional incompetence covered by section 179, paragraph 1, sub-paragraph 1 of the Act (section 189, paragraph 1 of the Act). Where employees are allowed not to work during a notice period, they must be awarded severance pay in accordance with the company regulations or the employment contract (section 189, paragraph 3 of the Act). In the event of unfair dismissal, courts may order, apart from the reinstatement of the employee, severance pay up to a maximum of 18 months' salary or, in some circumstances, 36 months' salary (section 191, paragraphs 1 to 5 of the Act).

The Committee notes from the Comments by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) (Convention No. 158 on Termination of Employment (1982): Direct request, adopted in 2011, published at the 101st ILC session (2012); Direct request, adopted in 2013, published at the 103rd ILC session (2013)) that, except in cases of collective dismissal, the law fails to provide for a reasonable period of notice (or compensation in lieu thereof) in respect of all terminations of employment at the initiative of the employer, as required by Article 11 of the Convention.

The Committee recalls 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 period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. Protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the grounds for the termination of employment (Conclusions XIV-2 (1998), Spain). The Committee considers that in the present case, except for serious misconduct provided for in section 179, paragraph 1, sub-paragraphs 3 and 4 of the Act, which is the only circumstance in

which immediate dismissal is authorised (Conclusions 2010, Armenia), the notice period for dismissal for professional incompetence is only reasonable for employees with less than three years of service. Furthermore, since the severance pay awarded for unfair dismissal is not mandatory, it may not replace the notice period required under Article 4§4 of the Charter.

The Committee asks that the next report indicate whether the period of five days set out in section 180, paragraph 1 of the Act in the cases of dismissal covered by section 179, paragraph 1, sub-paragraph 1 to 6 of the Act is a notice period. It also asks for information in the next report on the amounts of severance pay awarded in practice when employees are not allowed to work during notice periods pursuant to section 189, paragraph 3 of the Act. It also asks for information on the notice periods that are applied during probationary periods; to atypical employment relationships referred to in sections 197 to 202 of the Act; to civil servants and state employees; and to any other grounds for termination of employment referred to in sections 175 and 176 of the Act.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 4§4 of the Charter, on the ground that the notice period for dismissal for professional incompetence is not reasonable for employees with more than three years of service.

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 Serbia.

It is the first time the Committee examines the protection of wages that applies in Serbia.

Under the Labour Act of 15 March 2005 (No. 24/05), as amended, payslips must indicate for every month, even when no payment is due, how salaries, emoluments and allowances are calculated, and state the reasons when no payment has been made (section 121, paragraphs 1 to 4). They must in particular include gross salary and net salary after deduction of social and tax contributions (section 122, paragraph 2). Employers may only recover debts by making deductions from wages following a decision of the relevant court, in cases provided for by the law or with the employee's consent. Such deductions must be limited to one third of the total salaries, emoluments and allowances, subject to the exceptions provided for by the law (section 123, paragraphs 1 and 2).

The Committee notes that the Act authorises the deduction of social contributions and income tax. In order to assess the situation of Serbia in relation to the aim of Article 4§5 of the Charter, which is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland), the Committee asks the next report to include information on the following:

- Any claims that are not covered by the Act for which deductions from wages may be authorised (such as maintenance claims, tax debts, civil-law claims, trade union dues, and fines);
- Any exceptions to the limitation of deductions to one third of pay provided for by section 123, paragraph 2 of the Act and the level of protected wages;
- Any circumstances in which workers can waive the limitation on deductions from wages provided for by the law.

The Committee notes that damage caused intentionally or by serious negligence to employers or third parties by the employee may give rise to compensation by way of deductions from wages pursuant to section 163, paragraphs 1 to 7 of the Act. It asks for information in the next report on whether establishing liability and quantifying damage in this context require a court decision, or whether this falls within the employer's powers.

Conclusion

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

Article 5 - Right to organise

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

The report refers to Article 55 of the Constitution, which provides: "Freedom of political union or any other form of association shall be guaranteed, as well as the right to stay out of any association. Associations shall be formed without prior authorisation and entered in the register kept by a state body in accordance with law. Secret and paramilitary associations shall be prohibited. The Constitutional Court may ban only those associations whose action is aimed at overthrowing the constitutional order through violence, violating guaranteed human or minority rights or inciting racial, national or religious hatred."

The Committee notes that specific references to trade unions and employers are contained in other constitutional provisions. These are: Article 82, providing that the impact of the market economy on the social and economic status of workers shall be regulated through social dialogue between trade unions and employers; Article 195, providing that the general rules of trade unions and collective agreements must be in compliance with the law; and Article 167, providing that the Constitutional Court shall rule on the compliance of trade union laws and collective agreements with the Constitution and law, and on the banning of trade unions. With regard to the latter, the Committee wishes to receive information on any instance where the Constitutional Court exercised its power to ban trade unions.

Forming trade unions and employers' organisations

The Labour Law guarantees workers' freedom to organise and to carry on trade union activities, which is conditional on the registration of the trade union concerned (Section 206). Trade unions and employers' organisations must be registered in accordance with the law and the applicable regulations. The relevant minister determines the registration conditions (Section 217). The report states that the minister in charge of labour affairs is responsible for determining the registration arrangements and, in this context, specific regulations have been adopted by this minister.

The Committee notes from another source that "the registration procedure is very complicated, and the ministry must also give its consent" (International Trade Union Confederation (ITUC), Survey of violations of trade union rights). It also notes that, in response to a Direct Request concerning Serbia, the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (ILO-CEACR) noted that "under section 49 of the Act on Associations, an association is erased from the register if a competent authority makes a decision on the termination of its work"; that "according to the CATUS, the Act on Associations is in practice applied to unions"; and that "the TUC "*Nezavisnost*" alleges that, one of its affiliates, the Branch Trade Union of the Federation of Musical Artists of Serbia, has been deleted from the register by the Minister of Labour and Social Policy" (see Direct Request (CEACR) – adopted 2012, published at the 102nd ILC session in 2013, Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organise – Serbia (ratification: 2000)). The Committee wishes to obtain the Government's comments on the information obtained from these sources.

The Committee asks that the next report stipulate: a) the conditions that may have been laid down for registering a trade union or an employers' organisation and the cases in which registration may be refused or cancelled; b) which – political or administrative – authority takes decisions relating to registration; c) which criteria are applied in the decision-making process and what margin of discretion is left to the authority in question; and d) which administrative

and/or legal remedies are available to challenge decisions concerning registration. The Committee also wishes to be informed on the grounds for refusals or cancellations of registrations in practice and of any legal decisions in this matter. At the same time, the Committee wishes to know whether registration fees are charged. In this regard, it recalls that if fees are required, they must be reasonable and calculated solely to cover strictly necessary administrative costs (Conclusions XV-1 (2001) XVI-1 (2003), United Kingdom). Pending the receipt of this information, the Committee decides to reserve its position on this point.

The Committee notes that, in order to form an employers' organisation, the founding members must employ no less than 5% of the total number of employees in a given branch of industry, group, sub-group, or a line of business or in a territory of a given territorial unit (Section 216 of the Labour Law). The Committee reiterates that "when the legislation sets a minimum number of members required to form a trade union which may be considered to be manifestly excessive, this could constitute an obstacle to founding trade unions and, as such, infringe freedom of association." The Committee considers that the minimum threshold established in Section 216 of the Labour Law constitutes an obstacle to the freedom to organise, notably in the case of very small, small and medium-sized undertakings, and is therefore not in conformity with Article 5 of the Charter.

The Committee did not find any information on union membership levels or the trend in union presence in the private and public sectors in the report. The Committee asks that the next report provide information in this regard, including if possible estimates and/or statistics.

Freedom to join or not to join a trade union

The report refers to Article 55 of the Constitution, which guarantees the freedom of political union and any other form of association, including the right not to join an association. At the legislative level, the Labour Law provides that: a) a trade union is defined as an independent, democratic and autonomous organisation of employees who join it voluntarily for the purpose of advocacy, representation, promotion and protection of their professional, labour-related, economic, social and other individual and collective interests (Section 6); b) an association of employers is defined as an independent, democratic and autonomous organisation of employers who join it voluntarily for the purposes of advocacy, promotion and protection of their business interests (Section 7).

The Committee notes from another source that "workers who wish to form a trade union are often obliged to take the employer's "advice" not to unionise, or else face persecution" (ITUC, Survey of violations of trade union rights). The same source indicates that "the Confederation of Autonomous Trade Unions (CATUS) has reported numerous examples of anti-union tactics" and that "labour inspectorates do not always make an effort to stop anti-union behaviour". The Committee wishes to obtain the Government's comments on the information obtained from this source and asks that the next report provide statistics on the number of complaints of anti-union discrimination lodged with the competent authorities (labour inspectorate and judicial bodies), the results of any investigation or legal proceedings, and their average duration.

Concerning the freedom to join or not to join a trade union, the Committee recalls that: a) workers must be free not only to join, but also not to join trade unions (see Conclusions I (1969), Statement of Interpretation on Article 5); b) 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 (see Confederation of Swedish Enterprise against Sweden, complaint No. 12/2002, decision on the merits of 15 May 2003); c) national law must guarantee

the right of workers to join a trade union and provide effective sanctions and remedies for failure to respect this right; d) trade union members must be protected by law from any detrimental consequences 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 (see Conclusions 2010, Republic of Moldova); e) where discrimination has occurred, national law must provide for adequate compensation proportionate to the damage suffered by the victim (see Conclusions 2004, Bulgaria); f) no worker may be forced to join a trade union or to remain a union member. Any form of compulsory trade union membership imposed by national law is contrary to Article 5 (see Conclusions III (1973), Statement of Interpretation on Article 5); g) to enforce respect for this freedom, national law must clearly prohibit any closed shop practices (whether pre- or post-entry) or security clauses (automatic deductions from the wages of all workers, whether or not union members, intended to finance a trade union present within the undertaking) (see Conclusions VIII (1984), Statement of Interpretation on Article 5); h) consequently, the existence of priority clauses in collective agreements or authorised by law, which in practice give priority to members of certain trade unions in matters of recruitment and termination of employment, infringes the freedom guaranteed by Article 5 (see Conclusions XIX-3 (2010), Iceland). Lastly, the Committee recalls that the same rules apply to employers' freedom of association.

The Committee asks that the next report provide detailed information on compliance with the above rules.

Trade union activities

The report contains no information on this point. The Committee notes from another source that for trade unions "restrictions on the right to elect representatives and self-administer in full freedom" exist and that "leaders of company-level trade unions must be full-time employees at the time of registration and provide a certificate issued by their employer" (see ITUC – Survey of violations of trade union rights, ibid.). The Committee wishes to obtain the Government's comments on the information obtained from this source.

Concerning trade union activities the Committee recalls that unions and employers' organisations must have broad autonomy regarding their internal structure or functioning. They must be entitled to perform their activities effectively and devise a work programme (see Conclusions XII-2 (1992), Germany). Consequently, excessive State interference constitutes a violation of Article 5. Such autonomy has different facets: a) trade unions are entitled to choose their own members and representatives; b) severely restricting the grounds on which a trade union can lawfully discipline members constitutes an unjustified incursion into the autonomy of trade unions inherent in Article 5 (see Conclusions XVII (2004), United Kingdom); c) union leaders must have the right to access the workplace and union members must be able to hold meetings there, within limits linked to the interests of the employer and business needs (see Conclusions XV-1 (2000), France).

The Committee asks that the next report provide detailed information on implementation of the above rules.

Representativeness

The report confines itself to stating that a trade union or employers' organisation recognised as representative within the meaning of the Labour Law is entitled to: a) bargain collectively and enter into collective agreements at its respective level; b) participate in collective labour

disputes; c) participate in tripartite and multipartite bodies at its respective level; and d) exercise other rights as provided for by law (Section 239 of the Labour Law).

The committee notes that, in an observation concerning Serbia, the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) took note of the information provided by the Government to the effect that: "the conditions and mechanism for the establishment of the representativeness of trade unions and employers' organisations: (a) are decided by the Minister of Labour upon a proposal by a specific tripartite committee; and (b) will be subject to amendments in the process of the current revision of the Labour Law, in consultation with the social partners". In this regard, the ILO-CEACR also took note of a comment by the Union of Employers of Serbia indicating that "despite the existing Panel for Establishment of Representativeness of Trade Unions and Employers' Associations (tripartite body), the Minister for Labour and Social Policy established the so-called "Independent Committee" for assessing the requirements for representativeness, which is not independent at all and interferes in social dialogue and collective bargaining; and that on the basis of one recommendation of this "Independent Committee", the Ministry of Labour and Social Policy established, on 3 May 2012, the representativeness of the Confederation of Free Trade Unions, a matter which had been previously examined by the abovementioned panel which had requested additional supportive documents." In this context, the Committee noted from the Government's reply to the ITUC comments that "(i) due to its method of decision-making (consensus), the panel was not operational and is currently not able to examine all pending applications nor to adopt new rules of procedure; (ii) the Ministry attempted to find a way out of this situation by establishing an independent committee; (iii) in view of the huge discontent of the panel members, the Ministry dismissed this method of determining representativeness; and (iv) the Ministry is aware that the current issue may be addressed by the adoption of the amendments to the Labour Law or of a separate law" (see Observation (CEACR) – adopted 2012, published at the 102nd ILC session in 2013, Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organise – Serbia (ratification: 2000)).

The Committee wishes to obtain the Government's comments on the information contained in the ILO-CEACR's observation, as set out above. More generally, it wishes to be informed of any developments affecting the legislative or regulatory provisions concerning the conditions and mechanisms for establishing the representativeness of trade unions and employers' organisations.

In this connection, it recalls the following rules: domestic law may restrict participation in various consultation and collective bargaining procedures only to representative trade unions. For the situation to be in conformity with Article 5: a) a representativeness condition must not constitute a direct or indirect obstacle to forming trade unions; b) fields of action reserved for representative trade unions alone must not concern essential trade union prerogatives (see Conclusions XV-1 (2000), Belgium); c) the representativeness criteria applied must be reasonable, clear, pre-established, objective, imposed by law and permit judicial review (see Conclusions XV-1 (2000), France). The Committee requests confirmation that the above-mentioned provisions comply with these rules.

The Committee notes from another source that "Section 233 of the Labour Law imposes a time period of three years before a new organisation, or an organisation which previously failed to obtain recognition as most representative, may seek a decision on the issue of representativeness" (International Trade Union Confederation (ITUC), Survey of Violations of Trade Union Rights). The Committee notes that in an Observation by the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (ILO/CEACR), the Government stated that "the legislation establishes that every

trade union or employers' association whose representativeness has not been established may at any moment, when it has fulfilled requirements for representativeness, apply for establishment of representativeness" and that "the legislation allows the review of collective agreements under certain circumstances, when the representativeness of a non-signatory trade union or employers' association of the agreement is established" (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Serbia (ratification: 2000)). In view of this information, the Committee asks for more details in the next report on the implementation of Section 233 of the Labour Law. Pending receipt of this information, it reserves its position on this point.

Personal scope

The report indicates that the ban preventing police officers and members of the armed forces from carrying on trade union activities is governed by different pieces of legislation. The Committee wishes to receive detailed information on this legislation and its implementation.

It recalls that, under Article 5, States Parties are entitled to restrict or withdraw the right to organise in the case of members of the armed forces (see European Federation of Employees in Public Services v. France, Italy and Portugal, complaints nos. 2/1999, 4/1999 and 5/1999, decisions on the merits of 4 December 2000). The Committee nonetheless assesses whether bodies that are defined by a State Party's domestic law as belonging to the armed forces indeed perform military tasks (see Conclusions XVIII-1, Poland).

In the case of the police, the Committee has stated "it is clear from the second sentence of Article 5 and the preparatory work concerning this provision that, while a State may be permitted to limit the freedom of organisation of members of the police, it is not justified in depriving them of all the guarantees provided for in the article" (Conclusions I, Statement of Interpretation on Article 5). In other words, police officers must be free to exercise essential trade union prerogatives, namely the right to negotiate their conditions of service and remuneration, and the right to assembly (European Council of Police Trade Unions, complaint no. 11/2001, decision on the merits of 22 May 2002). In addition, compulsory membership of organisations is incompatible with Article 5 (Conclusions I, Statement of Interpretation on Article 5).

At a more general level, the Committee reiterates that: "All classes of employers and workers, including public servants, subject to the exceptions mentioned below, are fully entitled to the right to organise in accordance with the Charter." (Conclusions I (1969), Statement of Interpretation on Article 5). The Committee also reiterates that, apart from the restrictions permissible in respect of police officers and members of the armed forces, any restriction of a right recognised in the Charter must respect the conditions laid down in Article G. That article provides that a restriction must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society for the achievement of that aim. In the case under consideration here, this means that there must be a reasonable relationship of proportionality between the restrictions imposed on the freedom to organise and the legitimate aim of protecting the rights and freedoms of others. The Committee accordingly wishes to know whether the right to form and join a trade union is also guaranteed for domestic workers, pensioners, the unemployed and, more generally, any person enjoying rights obtained through work.

The Committee requests confirmation that the legislation referred to above respects all of these rules.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 5 of the Charter on the ground that the miminum threshold imposed by legislation in order to form an employer's organisation constitutes an obstacle to the freedom to organise.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Labour Law requires employers to consult workers' representatives on decisions affecting their employees' economic and social rights, be it of an individual or collective nature. Therefore, employees have the right, either directly or through their representatives, to be consulted and informed, to express their views on important questions relating to their employment, to participate in collective bargaining and to take part in the friendly settlement of labour conflicts. The report states that the most important form of employee consultation is the collective bargaining procedure, which involves negotiating collective agreements. This aspect is considered by the Committee in its conclusion under Article 6§2.

The report states that consultations with workers' representatives take place through the Social and Economic Council and local social and economic councils. These bodies are established for the purpose of facilitating and promoting social dialogue on the following issues: the exercise of social and economic freedoms and human rights; the financial, social, and economic situation of employees and employers; and their living and working conditions. The report states that these councils also help to develop a culture of negotiation, promote the friendly settlement of collective disputes and, more generally, strengthen democracy. Within this framework and on the basis of the aforementioned law, the Social and Economic Council considers questions relating to the establishment and enhancement of collective bargaining procedures; the impact of economic policy on social development; employment policy; wage and price policy; competitiveness and productivity; protection of the living and working environment; apprenticeship and vocational training; and healthcare and social protection. The Council adopts formal unanimous positions on these questions and notifies the Government thereof. It also adopts opinions on draft laws and regulations relating to the economic and social situation of employees and employers. These opinions are forwarded to the relevant ministries, which are expected to return comments before a given deadline. If a ministry does not accept the Council's opinion, it may approach the Government directly.

The Committee understands that the social partners, being the employees' and employers' organisations, are represented and take part in discussions in the social and economic councils on an equal footing. It asks for confirmation of this and wishes to know if the Government is also represented in these councils and, if so, at what level. The Committee asks for information in the next report on the rules of procedure of social and economic councils at local and national level. It additionally asks for confirmation that the latter also contribute to social dialogue in the public sector, including the civil service.

The Committee points out that within the meaning of Article 6§1, joint consultation takes place between workers and employers, or their organisations (see Conclusions I (1969), statement of interpretation on Article 6§1). This consultation may take place within tripartite bodies, provided that the social partners are placed on an equal footing (Conclusions V (1977), Statement of Interpretation of Article 6§1). If consultation functions properly, there is no reason for the state to intervene. If this is not the case, the state must take positive steps to encourage consultation (*Centrale Générale des Services Publics* v. Belgium, Complaint No. 25/2004, decision on the merits of 27 May 2005, §41). The Committee wishes to know whether these principles are applied at both national and local level.

The report does not contain any information on representativeness requirements with an impact on the right of workers' organisations to take part in consultation procedures. The Committee asks the next report to provide detailed information on this. States Parties may impose a

representativeness requirement on trade unions, subject to certain general conditions. Under Article 6§1, a representativeness requirement must not excessively restrict the possibility for trade unions to effectively take part in consultations. In order to be in conformity with Article 6§1, representativeness criteria must be prescribed by law, objective, reasonable and subject to judicial review, which offers appropriate protection from arbitrary refusal (Conclusions 2006, Albania).

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 Serbia.

Sections 240 to 267 of the Labour Law refer to collective agreements. Under the Law, collective agreements regulate the rights, duties and responsibilities deriving from labour relations. They may be general, sectoral or individual and refer to a specific branch, group, sub-group, type of activity, or to a particular part of the country. Collective agreements are negotiated by employers' and workers' organisations in both the private and the public sectors. The report provides a detailed list of the agreements that are in force. According to the statistics of the European Industrial Relations Observatory (EIRO), about 55% of the workforce is covered by collective agreements (EIRO, Serbia: Industrial relations profile).

According to the ITUC's Survey of Violations of Trade Union Rights in Serbia , "the law stipulates a maximum duration of three years for collective agreements covering the public administration". The Committee asks the Government to comment on the information contained in this survey and, more generally, for detailed information in the next report on the duration of collective agreements and any limits set by the law or specific regulations.

The Committee notes that under Section 222 of the Labour Law, employers' organisations must represent 10% of the total number of employers and these employers must employ 15% of the employees in a sector to be able to exercise their collective bargaining powers. In this connection, in an Observation by the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (ILO/CEACR) (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Serbia (ratification: 2000)), the Committee of Experts notes that, according to the Government, "when employers' or workers' organisations do not fulfil the representativeness requirements, they can conclude an association agreement with another organisation in order to fulfil the abovementioned requirement". In the same Observation, it notes that according to the Confederation of Free Trade Unions "an agreement on association to achieve representativeness may only be signed by two or more unrepresentative trade unions at company level in order to be able to be party in collective bargaining; nevertheless, this is not possible for trade unions and employers associations at higher levels". On this subject, having considered that "the abovementioned percentages are very high and thus difficult to reach", the ILO/CEACR points out that it "had taken note of the fact that the amendments to the Labour Law that were under way also addressed the representativeness of trade unions and employers' organizations" and therefore asks the Government "to take the necessary measures so as to lower the abovementioned percentages". Bearing in mind this information, the Committee asks the Government whether, as regards representativeness of employers organisations, measures have ultimately been adopted to reduce the aforementioned percentages.

From another source, the Committee notes that "a company-level trade union needs to comprise 15% of the workforce in order to be recognised as a representative bargaining agent" (ITUC, Survey of Violations of Trade Union Rights – Serbia). The Committee invites the Government to comment on this.

In more general terms, the Committee points out that States Parties may impose a representativeness requirement on trade unions, subject to certain general conditions. Under Article 6§2, a representativeness requirement must not excessively restrict the possibility for trade unions to effectively take part in consultations. In order to be in conformity with Article 6§2, representativeness criteria must be prescribed by law, objective, reasonable, and subject to

judicial review, which offers appropriate protection from arbitrary refusal (Conclusions 2006, Albania). Pending receipt of the information requested, the Committee reserves its position on the matter of the representativeness of trade union and employers organisations.

The report states that under Section 257 of the Labour Law, the Minister of Labour may decide that a collective agreement, or some of its provisions apply to employers who are not members of the employers' association which signed the agreement. Such decisions may be taken if there is a justified public interest for them and, in particular: (a) when implementing social and economic policy, in order to establish uniform working conditions; (b) to reduce differences in salary in a particular branch, group, sub-group or sector of activity, which affect the social and economic situation of employees because they result in unfair competition, provided that the collective agreement in question is binding on employers who employ no less than 30% of the employees in the branch, group, sub-group or sector of activity referred to above. The minister may extend a collective agreement at the request of one of the parties to a collective agreement, subject to the opinion of the Social and Economic Council. The Committee points out that the extension of collective agreements "should take place subject to tripartite analysis of the consequences it would have on the sector to which it is applied" (Conclusions 2010, Statement of Interpretation on Article 6§2). Therefore, it asks whether such analyses are carried out in this context and, if so, by what means. More generally, it asks for up-to-date information in the next report on any ministerial decision concerning the extension of collective agreements.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

Under section 254§2 of the Labour Law, the parties to a collective agreement may resort to arbitration where consent for a collective agreement has not been reached after 45 days from the start date of the collective bargaining process. Section 255 states that the composition and rules of procedure of the arbitration panel and the effects of its decisions must be agreed on by the parties to the collective agreement. Under the same section, where parties agree to undergo arbitration and nominate one or more arbitrators, the final decision must be delivered within 15 days from the date on which the arbitration panel was appointed. Arbitration decisions are seen as a part of the collective agreement and are binding on all parties. The report states that unless a decision has been taken as part of such an arbitration procedure, the Law on the Peaceful Settlement of Labour Disputes of 15 November 2004 (Official Gazette No. 125/04 and No. 104/09) sets out the rules on collective and individual labour disputes. The Committee asks for a detailed description in the next report of the procedures provided for by this law.

From another source, the Committee notes that the aforementioned law establishes a National Mediation Agency whose tasks include settling disputes pertaining to the exercise of the right to strike and that, where public interest activities are concerned (namely the electricity-generating industry, water supply, transport, state-sponsored radio and television companies, autonomous provinces or local self-government bodies, postal, telegraph and telecommunication services, utilities, production of basic foodstuffs, medical and veterinary care, education, child welfare services and social protection, and activities of special importance for the defence and security of the state), the parties are required to bring disputes before the agency for conciliation purposes (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Serbia (ratification: 2000)).

From the same source, the Committee notes that, having asserted that the decisions taken by the National Mediation Agency are not binding on the parties, the Government states: “(1) there is no compulsory arbitration in the sense that there is no prohibition from going on strike prior to the completion of arbitration; (2) according to the amendments made to the Act on Peaceful Settlement of Labour Disputes dated 24 December 2009, in case of disputes in activities of general interest, the parties are bound to initiate conciliation proceedings before the Conciliation Committee; (3) the Conciliation Committee is composed of the parties to the dispute and of a conciliator selected by the parties from the list kept by the National Mediation Agency; (4) it may only issue a non-binding recommendation on how to resolve the dispute; (5) the conciliation proceedings may not take place during the strike; and (6) the proceedings neither prevent a strike to be commenced nor to be continued afterwards”. The Committee asks for a detailed description in the next report of the conciliation and arbitration procedures provided for by the law and/or the relevant administrative instruments. It recalls that conciliation is a process aimed at peaceful settlement of a labour conflict, while arbitration can resolve the conflict outside the court on the basis of a judgement taken by one or more individuals selected by the parties. Bearing this in mind, the Committee reserves its position on this point.

The Committee reiterates that, under Article 6§3 of the Charter, conciliation, mediation and/or arbitration procedures must be introduced to facilitate the settlement of collective labour disputes. These procedures may be established by legislation, collective agreements or industrial practice (Conclusions I (1969), Statement of Interpretation on Article 6§3). Such procedures must also exist to settle disputes that are likely to arise between the public

administration and its officials (Conclusions III (1973), Denmark, Germany, Norway, Sweden, Article 6§1). Article 6§3 applies to conflicts of interests, which are generally disputes concerning the conclusion of a collective agreement or the amendment of the provisions of a collective agreement. It confers no rights in respect of legal disputes (generally disputes concerning the application or interpretation of an agreement) or those of a political nature (Conclusions V (1977), and Statement of Interpretation on Article 6§3, Conclusions V (1977), Italy). All systems of arbitration must be independent and the outcome of arbitration must not be predetermined by legislative criteria (Conclusions XIV-1 (1998), Iceland). Any form of compulsory recourse to arbitration constitutes a violation of Article 6§3, whether domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both (Conclusions 2006, Portugal).

The Committee asks for detailed information in the next report on the implementation of the principles outlined above.

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 Serbia.

Collective action: definition and permitted objectives

Under Article 61 of the Constitution “employees have the right to strike, in accordance with the law and collective agreements. The right to strike may be restricted only by the law, in accordance with the nature or type of business activity”. The report contains a description of the main provisions of the Law on Strike Action (Official Gazette, No. 29/96). This law stipulates that a strike is a work stoppage organised by employees in defence of their employment-related professional and economic interests.

Entitlement to call a collective action

The report states that a strike may be organised within a company or any other legal entity or a part thereof, at cross-industry level, in a specific sector of activity, or in the form of a general strike. Employees are free to decide whether or not to take part in a strike. The Committee wishes to know which persons or entities are entitled to initiate a strike and whether there are legislative or regulatory provisions that establish restrictions in this respect.

In this respect, the Committee recalls that, in both the public and the private sector, reserving the decision to initiate a strike to representative trade unions alone, or to the most representative one, is a restriction that is incompatible with Article 6§4 (Conclusions XV-1 (2000), France). The reference to "workers" in Article 6§4 concerns the holders of the right to collective action and the Article says nothing about the nature of a group entitled to call a strike. It follows that this Article does not require States to authorise all groups of workers to decide on strike action, but offers States the possibility of making a choice as to the groups who are entitled to call a strike and hence of restricting this right to trade unions. However, a restrictive choice is consistent with Article 6§4 only if the establishment of a trade union is not subject to formalities, such as to hamper the sometimes speedy decision-making that is necessary when calling a strike. The restriction on the power to initiate collective action which may be imposed on certain trade unions, applies even when workers may legally stop working in response to an appeal by a trade union of which they are not members. The Committee also points out that the principle of recognition of workers’ right to take collective action in cases of conflict of interests, including the right to strike established by Article 6§4, should under no circumstances be subordinate to the State’s interest in fostering relations with trade union organisations that in the event of a dispute, can legitimately negotiate on behalf of the largest possible number of employees concerned.

The Committee asks that the next report contain details on the implementation of the above-mentioned principles.

Specific restrictions to the right to strike and procedural requirements

The report states that the Law on Strike Action limits strike action in a number of sectors, namely those of “public interest” or those in which a strike “could jeopardise the lives or health of the population or cause extensive damage”. In these sectors, strikes are allowed only under certain conditions stipulated by the law. According to the law, these sectors are: the electricity-generating industry; water management; transport, media (radio and television); postal services; public and municipal services; production of staple foodstuffs; healthcare and veterinary

services; education; childcare; social security and social protection; essential activities for national defence and security; the performance of Serbia's international obligations and activities; or activities of which the interruption may, bearing in mind the very nature of the activity, jeopardise people's lives or health or cause extensive damage (for example, in the chemical, steel, ferrous or non-ferrous metallurgy industries). The report also states that employees in the sectors referred to above must give notice at least fifteen days before engaging in strike action and provide a "minimum service". The Committee asks for clarification in the next report on whether restrictions on the right to strike are also prescribed by law with regard to civil servants in areas other than "public interest" sectors.

The Committee 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).

The Committee notes that the restrictions imposed on the right to strike by the Law on Strike Action apply to the postal services, education and childcare. The report does not contain any information enabling the Committee to conclude that these services, or the other "general interest" services referred to in the law, may be regarded as "essential services" in the strictest sense of the term. In accordance with Article G of the Charter, essential services are activities that are necessary in a democratic society in order 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 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 in a democratic society to achieve the aim of ensuring respect for the rights and freedoms of others or preventing threats to the public interest, national security, public health, or morals.

From a "Direct Request" drawn up by the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (ILO/CEACR), the Committee notes that under Section 10 of the Law on Strike Action, in the case of strikes involving activities "in the general interest", employers have the power to unilaterally determine the minimum services required after having consulted the trade union. If such services are not determined within the five-day period before a strike, the competent public or local authority takes the necessary decisions. The same source indicates that the International Trade Union Confederation (ITUC) states that "the notion of "essential services" is very broad, and that the procedures for determining the minimum service are set out in Government regulations and can even lead to a total ban on strike action." It furthermore indicates that the Confederation of Autonomous Trade Unions of Serbia (CATUS) considers that "decisions on minimum services are made in practice without taking the trade union's opinion into account" (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Serbia (Ratification: 2000)).

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, 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 "minimum service". The Committee notes that in Serbia, there is no guarantee that workers will be involved in such procedures.

Furthermore, the Committee notes that in the ITUC's 2009 Annual Survey of Violations of Trade Union Rights is stated that in Serbia, "strike action cannot be undertaken if parties to a collective agreement do not reach an agreement. The dispute is then subject to compulsory arbitration". The Committee invites the Government to comment on this statement.

Consequences of a strike

The report does not contain any information on the consequences of a strike. The ITUC's Survey of Violations of Trade Union Rights states: "the law on strikes states that participation in a strike can lead to suspension not only of wages, but also of social security rights". The Committee invites the Government to comment on this statement.

From another source the Committee notes that under Article 167 of the Criminal Code, "whoever organizes or leads a strike in a way which is contrary to the law or regulations and thereby endangers human life and health or property to a considerable extent, or if grave consequences result there from, shall be punished with imprisonment of up to three years unless other criminal offences prevail" (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Serbia (Ratification: 2000)). The Committee asks the Government to confirm whether such a provision exists and, if so, to provide information on its practical application, including details of the decisions taken by the courts concerned.

In general, the Committee recalls that a strike should not be considered a violation of the contractual obligations of the striking employees entailing a breach of their employment contract. A strike should be accompanied by a prohibition of dismissal. If however, in practice, strikers are fully reinstated when the strike has ended and their previously acquired entitlements (for example concerning pensions, holidays and seniority) are not affected, then formal termination of the employment contract does not violate Article 6§4 (Conclusions 1 (1969), Statement of Interpretation on Article 6§4)). Any deduction 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). Workers participating in a strike who are not members of the trade union that called the strike are entitled to the same protection as trade union members (Conclusions XVIII-1 (2006), Denmark). The Committee asks for information in the next report on the way in which the principles referred to above are respected.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 6§4 of the Charter, on the ground that workers are not involved on the same footing as employers during the procedures that are conducted to determine the "minimum service" required in connection with the restrictions on the right to strike with regard to some "general interest" services.

Article 21 - Right of workers to be informed and consulted

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

Legal framework

The report indicates that the Labour Law on the one hand provides that employees are entitled, directly or via their representatives, to be informed and consulted, as well as to express their opinion on important issues in the field of labour (section 13). On the other hand, the law provides that trade unions must be informed by the employer on economic and occupational-social issues that are relevant for the situation of employees or trade unions (cf. Section 209).

It is pointed out that the right to be informed constitutes a right of officers of representative trade unions, who are entitled to participate, according to relevant laws, in tripartite and multipartite entities, such as the Social and Economic Councils and its working bodies, as well as in ad hoc groups tasked with amending the legislation, or drafting new laws, or other documents referring, *inter alia*, to economic, occupational and social issues relevant for the situation of employees.

Personal scope

The report does not provide specific information on the personal scope of the Labour Law's provisions relating to the right of workers to be informed and consulted. The Committee wishes to know whether these provisions apply 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". States may exclude from the scope of Article 21 those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. For example, the thresholds established by Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, of undertakings with at least 50 employees or establishments with at least 20 employees in any EU member state are in conformity with this provision (Conclusions XIX-3 (2010), Croatia). As regard the implementation of the right of workers to be informed and consulted, the Committee wishes to be informed on the existence of any thresholds, established by national legislation or practice, in order to exclude undertakings that employ less than a certain number of workers.

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

Material scope

The report does not provide details on the material scope of the above-mentioned provisions. The Committee recalls that workers and/or their representatives must be informed on all matters relevant to their working environment (Conclusions 2010, Belgium), except when 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.

The Committee asks whether these principles are implemented in practice. It asks that the next report provides detailed information on the matters which are subject to the right to be informed, and the decisions which are subject to the right of workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils, etc.) to be consulted within the undertaking.

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

Remedies

The report does not contain information on remedies. The Committee recalls that the right to information and consultation must be effectively guaranteed. In particular, workers must have legal remedies when these rights are not respected (Conclusions 2003, Romania). There must also be sanctions for employers who fail to fulfil their obligations under this Article (Conclusions 2005, Lithuania).

The Committee asks that the next report contain detailed information on the administrative and/or judicial procedures available to employees or their representatives who consider that their right to information and consultation within the undertaking has not been respected. In this framework, the Committee wihses to be informed on the penalties that can be imposed on employers if they fail to meet their obligations and whether employees, or their representatives, are entitled to damages. The next report should also contain updated information on decisions taken by the competent judicial bodies with respect to the implementation of the right to information and consultation.

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

Supervision

The report does not contain information on supervision. The Committee asks that the next report contain information on the body that is responsible for monitoring compliance with the right of workers to be informed and consulted within the undertaking. In particular, it wishes to know what the powers and operational means of this body are, as well as receive updated information on its decisions.

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 Serbia.

It notes the extensive information provided with respect to sections 45, 46, and 48 of the Occupational Health and Safety Act (Official Gazette of the Republic of Serbia, No. 101/05), which governs the entitlement of employee representatives to be informed and take part in the deliberation of any and all issues related to occupational health and safety, covered by Article 22(b) of the Charter. The Committee asks that the next report provides detailed information on the implementation of the above-mentioned provisions in practice. In this framework, it recalls that according to the Appendix, Article 22 "affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of bodies in charge of monitoring their application" and that the right of workers' representatives to consultation at the enterprise level in matters of health and safety at the workplace is equally dealt with by Article 3 of the Charter. For the States who have accepted Articles 3 and 22, this issue is examined only under Article 22.

The report does not contain information on the other issues covered by Article 22, which is the determination and the improvement of the working conditions, work organisation and working environment within the undertaking; the organisation of social and socio-cultural services and facilities within the undertaking; and the supervision of the observance of regulations on these matters. In this respect, the Committee recalls that according to the Appendix, the terms social and socio-cultural services and facilities in Article 22 are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

More generally, the Committee underlines 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 be informed on the existence of any thresholds, established by national legislation or practice, in order to exclude undertakings that employ less than a certain number of workers. Workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision, including: the determination and improvement of the working conditions, work organisation and working environment; and the organisation of social and socio-cultural services within the undertaking. In this regard, 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 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).

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

The Committee asks for detailed information in the next report with respect to the above-mentioned issues. More particularly, it asks for information on the existence of means to appeal where the right of workers to take part in the determination and improvement of working

conditions and the working environment has been breached, as well as on the penalties that can be imposed on employers if they have failed to respect this right. Finally, the Committee wishes to know if workers or their representatives are entitled to compensation in case of violation of this right.

Pending receipt of the requested information, the Committee reserves its position on these issues. It underlines that should the next report not provide the requested information, there will be nothing to establish that the situation in Serbia is in conformity with Article 22.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

Prevention

The Committee notes from the report that prevention of sexual harassment is set out in Article 16 (1), (2) and (3) of the Labour Law. This Article requires employers to provide appropriate working conditions for employees and **to** make sure that work is organised in such a manner as to ensure that the safety, lives, and health of employees are protected, as provided for by law and other regulations. Employers must also inform employees of working conditions, how work is organised, and their rights and obligations stemming from labour, health and safety regulation.

The report also indicates that the systematic collection of data on harassment, sexual harassment, and discrimination, to assist in the development by the Labour Inspectorate of measures to prevent such behaviour, is scheduled to be completed by the end of 2015. A research in 2012 revealed that cases of 'sexual violence against women in the workplace' are the second most common form of discrimination against women in the workplace (22.1%).

The Committee takes note of this information and asks to be informed **on** the preventive measures taken to raise awareness about the problem of sexual harassment in the workplace and asks whether and to what extent employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace.

Liability of employers and remedies

Article 21 of the Labour Law bans sexual harassment, defined as any verbal, non-verbal, or physical action with a sexual or gender connotation and aimed at or representing a violation of the dignity of a job seeker or employee that causes fear or engenders a hostile, abusive, or offensive environment.

In addition, Article 18 of the Gender Equality Law stipulates that harassment, sexual harassment, and sexual blackmail in the workplace or related to work that is perpetrated by an employee against another employee is a violation of discipline in the workplace, which constitutes grounds for termination, punitive dismissal, or suspension. An employee who is the victim of harassment, sexual harassment, or sexual blackmail should report the circumstances indicating such behaviour to the employer in writing and should request effective protection. Article 10(7) of the same Law defines sexual harassment as any unwanted sexual action of a verbal, non-verbal, or physical nature based on gender and aimed at or representing a violation of personal dignity that causes fear or engenders a hostile, abusive, or offensive environment. Sexual blackmail is defined as any behaviour on the part of a superior officer who attempts to blackmail another person into providing sexual favours by threatening to damage his or her reputation in the event that such person refuses such favours to the blackmailer or a person associated with the blackmailer (Article 10(8)).

The Criminal Code (Nos. 85/05, 88/05, as amended) states that "whoever, by abuse of position, induces a person in a subordinate or dependant position to sexual intercourse or an equal act, shall be punished with a term of imprisonment of between three months and five years" (Article 181).

Furthermore, the Ministry of Labour and Social Policy has adopted the Code of Conduct for Employers and Employees Regarding the Prevention of and Protection from Bullying in the Workplace (No. 62/10). This document describes six groups of behaviours that constitute abuse in the workplace, including sexual harassment. Behaviours that can be deemed sexual harassment are: 1) degrading and inappropriate comments and actions of a sexual nature; 2) attempted or actual indecent and unwanted physical contact; and 3) inducement to accept behaviour of a sexual nature through the promise of reward, threat, or blackmail. Article 17 of the Code stipulates that protection from abuse is exercised through: 1) mediation, within the framework of the employer; 2) establishment of accountability of an employee charged with abuse, within the framework of the employer; and 3) a procedure before an appropriate court.

Under the Gender Equality Law, no court action brought by an employee for gender-based discrimination, harassment, sexual harassment, or sexual blackmail may constitute justified grounds for termination or rescission of any other type of employment contract, nor may such action constitute justified grounds for declaring an employee redundant within the meaning of labour legislation.

The Committee asks whether employers can be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.

Burden of proof

The Committee recalls that, in order to allow for the effective protection of victims, civil law procedures require a shift in the burden of proof, making it possible for a court to rule in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges. It accordingly asks the next report to indicate what the situation in Serbia is as regards the burden of proof in sexual harassment cases.

Redress

Under the Labour Law, in the event of sexual harassment, the job seeker or employee affected may seek compensation before an appropriate court.

In particular, in case of sexual harassment, under Article 21 of the Labour Law, the employer as a legal entity is liable to pay a fine ranging from RSD 800 000 to one million. In addition, the employer will be fined between RSD 10 000 and RSD 100 000 for a misdemeanour in violation of Article 54(1)(7) of the Gender Equality Law, if the employer fails to protect a person from harassment, sexual harassment, or sexual blackmail.

The Committee notes that neither the Ombudsman's regular Annual Report for 2012 or the 2012 Report from the Gender Equality Commissioner explicitly mention complaints of sexual harassment in the workplace. However, they both refer to complaints related to violations of gender-equality.

The Committee recalls that victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or pressured to resign for reasons related to sexual harassment. In the light thereof, the Committee asks the next report to provide information on any example of case-law regarding

compensation. It also asks whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to sexual harassment is guaranteed.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

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

Prevention

The Committee notes from the report that, under the Law Prohibiting Bullying in the Workplace (No. 36/2010), employers are required to make sure that work is organised in such a manner as to minimise the incidence of harassment in the workplace or in relation with work, as well as to provide appropriate working conditions for employees in which they will not be exposed to harassment at work from the employer, officers of the employer, or other employees.

Article 7 of this Law requires employers to notify employees in writing of the ban on harassment in the workplace and the rights, obligations and responsibilities of both the employee and the employer in relation with the ban. Furthermore, the employer is required to train employees and their representatives to recognise the causes, forms, and consequences of harassment, with the aim of recognising and preventing such behaviour. The employer may offer education or training to an employee or multiple employees in mediation, as a form of resolution of disputes connected with harassment.

Pursuant to Article 28 of the Law Prohibiting Bullying in the Workplace, the Minister of Labour has adopted the Code of Conduct for Employers and Employees Regarding the Prevention of and Protection from Bullying in the Workplace (No. 62/10). The Code governs the conduct of employers, employees, and other persons performing work in respect to the prevention of and the protection from harassment and sexual harassment in the workplace. The Code specifies types of behaviour that should be avoided, including: inappropriate communication; causing friction with co-workers; injuring the personal reputation of an employee; injuring the professional integrity and performance of an employee; injuring the health of an employee; and behaviour that could be construed as sexual harassment. The existence of harassment must be established in each particular case. The Code also describes behaviour not deemed harassment, as well as the concept of abuse of the right to protection from harassment. To ensure that employees are able to avail themselves of protection from harassment, the Code prescribes that the employer must make information available regarding persons whom employees can approach for advice and support (support persons); persons authorised to initiate procedures for protection from harassment (union representative, occupational health and safety representative); persons within the employer's organisation who can be seised with requests for protection from harassment; and lists of mediators maintained by employers. Where an employer employs trained mediators, the employer may make information thereon available to employees. To ensure that harassment is prevented and recognised, an employer may designate a support person whom employees can approach for advice and support when they believe they are exposed to harassment. The employer may ask for the trade union's opinion regarding the designation of such support person. The support person should hear out the employee, provide advice, direction, information, and support aimed at resolving any outstanding dispute.

The Committee takes note of this information and asks to be kept informed of the preventive measures taken to raise awareness of the problem of harassment in the workplace. It also asks whether and to what extent employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of harassment in the workplace.

Liability of employers and remedies

The Law Prohibiting Bullying in the Workplace bans harassment in the workplace and in relation with work; it institutes measures to prevent harassment and improve interpersonal relations in the workplace; it governs the procedure of protecting persons exposed to harassment in the workplace and in relation with work; it prescribes misdemeanour penalties for infractions and it governs oversight of implementation.

The report explains that the Law applies to all employers as defined in the Labour Law (namely, any legal entity and individual employing or engaging one or multiple persons) and to all employees, including those not covered by a formal employment contract.

Within the meaning of the Law, the following is considered to be harassment: any active or passive behaviour repeatedly directed against an employee or group of employees and aimed at or representing a violation of the dignity, reputation, personal or professional integrity, health, or position of such employee that causes fear or engenders a hostile, abusive, or offensive environment, or leads to the isolation of such employee or induces such employee to rescind his or her employment contract or resign his or her employment. The participation, incitement, or inducement of others to harassment is also considered as harassment. Any individual employer, or authorised officer of an employer that is a legal entity, or an employee or group of employees, who engage in harassment are deemed a perpetrator of harassment.

With a view to end harassment in the workplace, the law sets up procedures aimed at ensuring friendly settlement of disputes through mediation and, where mediation fails, procedures establishing the responsibility of the perpetrator of harassment. In particular, where the mediation has failed and there are reasons to suspect that an amployee is responsible for harassment or for abusing the right from protection from harassment, in breach of the professional duty, the employer is required to start procedures, pursuant to the law (Articles 180 and 181 of the Labour Law, Articles 112 to 114 of the Law on Civil Servants, and Articles 62 and 63 of the Law on Employment with Public Administration Bodies). If an employee is found to be accountable for harassment in the workplace, the employer has at its disposal not only the measures prescribed in the laws referred to above, but also those provided for under the Law Prohibiting Bullying in the Workplace, which are reprimand; suspension without pay for a period of between four and 30 working days; and permanent reassignment to another physical location.

When an employee who believes to be exposed to harassment is in immediate danger of injury to his/her health, death (according to the findings of an occupational doctor), or when the employee may suffer irreparable damage (according to a reasoned proposal made in writing by the mediator), the employer is required to undertake measures to prevent harassment by transferring the alleged perpetrator of harassment to another physical location or suspending them (as provided for under legislation governing suspension) pending the procedure. In such cases, if the employer fails to take appropriate measures, the alleged victim of harassment is entitled under the law to abstain from work, while still getting salary compensation, until the procedure is completed, but will have to resume work as soon as the employer takes the appropriate interim measures.

The initiation of a procedure to ensure protection from harassment and participation in such procedure may not constitute justified grounds for discriminating against or terminating the contract of an employee, nor may such action constitute justified grounds for declaring an employee redundant. This protection extends to whistle-blower employees.

In addition to these internal procedures, employees are entitled to judicial protection, which they may invoke by bringing a labour dispute before a court. Any employee who deems to be harassed in the workplace by an individual employer or by an authorised officer of an employer who is a legal entity (for example the managing director) may bring such a dispute before a court, even without previously having undergone the mediation procedure within the employer's framework. This can be done for example when the employee is dissatisfied with the internal procedure because the mediation procedure fails, the employer has not initiated the procedure to establish the accountability of a person accused of harassment, the employer has imposed inadequate measures against the alleged perpetrator, etc. A labour dispute has to be initiated within 15 days from the date at which the alleged victim is given notification or served a formal decision.

The Committee asks whether employers can be held liable towards persons employed or not employed by them who have suffered harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.

Burden of proof

The Committee notes from the report that a shift in the burden of proof applies in the labour procedures, when the plaintiff establishes reasonable grounds to believe that harassment has been perpetrated. It asks for confirmation that there are no other civil procedures applicable to this sort of cases which are subject to a different system in respect of the burden of proof.

Redress

By seising the labour court, which will handle the case through a fast-track procedure, the plaintiff can seek the establishment of the fact that (s)he has been harassed; seek the prohibition of the behaviour that constitutes harassment, the prohibition of continuing harassment, or the prohibition of repeated harassment; seek remedial actions in respect of the consequences of harassment; seek compensation of material and moral damage, as provided for by law**;** and seek the publication of the ruling(s) adopted in the case.

The Committee recalls that victims of moral harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or pressured to resign for reasons related to moral harassment. In the light thereof, the Committee asks the next report to provide information on any example of relevant case-law, in particular regarding compensation. It also asks whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to moral harassment is guaranteed.

Conclusion

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

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

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

In broad terms, the report indicates that section 13 of the Labour Law provides that employees are entitled, either directly or via their representatives, to associate, participate in collective bargaining, take part in the amicable resolution of collective and individual labour disputes and to be consulted, receive information and express their positions on important labour issues.

Protection granted to workers' representatives

According to the report, section 188 of the Labour Law provides that an employer can not terminate a labour contract, or put in less favourable position any of the following employees' representatives during their term of office and one year after the expiry of such term, under the condition that these representatives comply with the law, the bylaws, and the labour contract: members of employees' councils or employees' representative within the employer's managing boards and supervisory boards; presidents of a trade union established within the undertaking; and appointed or elected trade union representatives.

The report does not provide information on the implementation of the above-mentioned provisions in practice. In this respect, 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 States Parties to take not merely legal action, but also practical action to give full effect to the rights recognised in the Charter". It also recalls that remedies must be available to workers' representatives to allow them to contest their dismissal (Conclusions 2010, Norway).

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

Facilities granted to workers' representatives

The report indicates that the legal provisions relating to facilities granted to workers' representatives are contained in the Labour Law. In this respect, it refers to sections 210 to 214.

According to section 210, an employer must provide trade unions with technical conditions and office space, as well as access to the data and information necessary to carry out their activities. Technical conditions and office space are specified in the collective agreement or in the agreement between the trade union and the employer. According to Section 211, the authorised representative of a trade union is entitled to paid leave of absence for his/her trade union activities, pursuant to the collective agreement or the agreement between the trade union and the employer, based on the number of members in the trade union concerned. If the absence of an agreement, the authorised representative of the trade union shall be entitled to 40 paid working hours per month, where the trade union has no less than 200 members, one hour per month for each additional 100 members, and less paid working hours, in proportion, where the trade union has less than 200 members. These agreements may stipulate that an authorised trade union representative can be completely relieved of his/her duties under his/her employment contract. In the absence of an agreement, the head of the trade union division and the member of a trade union body are entitled to 50 percent of the paid hours referred to above.

Section 212 provides that a trade union representative authorised for collective bargaining or appointed to a collective bargaining team is entitled to paid leave during the bargaining process. Section 213 provides that a trade union representative who is authorised to represent an

employee who is involved in a labour dispute with the employer before an arbitrator or court is entitled to paid leave for the duration of such representation. According to Article 214, a trade union representative absent from work pursuant to sections 212 and 213 is entitled to salary compensation amounting to at least his/her base salary, pursuant to company bylaws and his or her employment contract. The salary compensation referred to above must be paid by the employer. The report does not provide information on the implementation of the above-mentioned legal provisions.

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 on 23 June 1971, which are: 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 included, 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 on a loss of pay. Training costs should not be borne by the workers' representatives (Conclusions 2010, Statement of Interpretation on Article 28).

The Committee asks that the next report indicate whether the facilities that are accorded on the basis of the Labour Law include those mentioned in the paragraph above. It also wishes to be informed on any measures taken by the Government (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework concerning the facilities to be accorded to workers' representatives.

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

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 Serbia.

The Committee refers to its Statement of Interpretation of Article 29 (2003) and recalls that this provision of the Charter provides 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 following:

-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.

Moreover, with a view to fostering dialogue, all relevant documents must be supplied before consultation starts, including the reasons for the redundancies, planned social measures, the criteria for being made redundant and information on the order of the redundancies.

Definition and scope

The Committee observes that redundancy is defined and regulated in Articles 153-156 of the Labour Law. Article 153 defines redundancy as termination of employment due to technological, economic or organisational changes. Redundancy of employees employed for an indefinite term will ensue within the 30 day term for the minimum of:

- 10 employees for employers who have more than 20 and less than 100 staff members employed for an indefinite term;
- 10% employees for employers who have at least 100 and less than 300 staff members employed for an indefinite term;
- 30 employees for employers who have more than 300 staff members employed for an indefinite term.

According to Article 154, the employer shall, before enacting such **a** programme, in collaboration with the representative trade union of the employer and national agency in charge of employment, undertake relevant measures for new employment of the redundant employees.

Furthermore, Article 155 provides that such a programme shall particularly feature:

1. reasons for redundancy;
2. total number of employees found redundant working for that employer;
3. number, educational structure, age and duration of service of employees found redundant and jobs they perform;
4. criteria for establishing the redundancy;
5. employment measures, transfer to other jobs, work with other employers, retraining, additional training, part-time work (but not less than half-time) and other measures;
6. means for managing the social and economic position of the redundant staff.

Prior information and consultation

With a view to fostering dialogue, the Committee has held that all relevant documents must be supplied before consultation starts, including the reasons for the redundancies, planned social

measures, the criteria for being made redundant and information on the order of the redundancies.

Article 16 (1) (5) of the Labour Law requires employers to consult trade unions in situations defined by law. Where no trade union exists, employers must consult the representatives designated by employees. According to the report, particularly important areas in which the employer must consult and notify employee representatives are the adoption of redundancy programmes and termination of employment of employees who are trade union members, as provided for under Articles 180 and 181 of the Law.

Article 154 of the Labour Law requires that the employer collaborates with the representative trade union and the National Employment Service in the formulation of measures designed to ensure that the redundant employees are able to find new employment before the employer adopts a redundancy programme. In addition, the employer is required to provide the representative trade union and the National Employment Service with a proposed redundancy programme, at the latest eight days after drafting such programme, for these bodies to be able to comment on it. Article 156(3) of the Labour Law requires the employer to take into consideration any proposals made by the National Employment Service and the opinions of the trade unions, and to provide feedback to these organisations within eight days.

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 some 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 in case 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 concludes that the situation in Serbia is in conformity with Article 29 of the Charter.