December 2010

European Social Charter (revised)

European Committee of Social Rights
Conclusions 2010
(UKRAINE)
Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29
of the Revised Charter

This text may be subject to editorial revision.

Introduction

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

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions[1].

The Revised European Social Charter was ratified by Ukraine on 21 December 2006. The time limit for submitting the second report on the application of this treaty to the Council of Europe was 31 October 2009 and Ukraine submitted it on 6 October 2009. On 30 March 2010, a letter was addressed to the Government requesting supplementary information regarding Articles 2 and 4. The Government submitted its reply on 30 May 2010.

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

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

Ukraine has accepted all of the Articles from this group with the exception of Article 2§3 and 4§1.

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

The present chapter on Ukraine concerns 20 situations and contains:

- 5 conclusions of conformity: Articles 2§1, 2§4, 2§5, 4§2 and 22;
- 4 conclusions of non-conformity: Articles 2§7, 4§4, 4§5 and 6§4;

In respect of the other 11 situations concerning Articles 2§2, 2§6, 5, 6§1, 6§2, 6§3, 21, 26§1, 26§2, 28 and 29, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

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

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),

- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

The deadline for the report was 31 October 2010.

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

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

The Labour Code stipulates that the regular work week is 40 hours. Any time worked in excess of 40 hours per week is classified as overtime, and may only be required in extraordinary circumstances (and subject to approval by the trade union representative of the enterprise or institution). The total amount of overtime that can be worked in one year is limited to 120 hours, and an employee may not be required to work more than four hours of overtime during two consecutive days. Minors, pregnant women, and women with children under the age of three, may not be required to work any overtime.

The regular working week is 5 days. Depending on the nature of the work, it is possible to provide for a 6-day working week in which case the duration of daily work should not exceed 7 hours (within the 40 hour maximum weekly limit).

The Committee asks if there are exceptions to the working time limits mentioned in the Labour Code for certain workers or occupations, for example, managers, junior hospital doctors, transport employees or seafarers. If the answer is affirmative, the next report should indicate the list of such workers and the regulations applicable to them.

The Committee asks what is the reference period over which average weekly working time is calculated either in the law or set out in collective agreements. It recalls in this respect that reference periods for the averaging of working hours should not exceed four to six months, or 12 months in exceptional circumstances (General Introduction to Conclusions XIV-2).

Finally, the Committee notes that supervision of rules on working time falls under the competence of the State Department for Supervision of Compliance with Labour Legislation. It asks the next report to provide information on the supervision of working time regulations by the latter, including the number of breaches identified and penalties imposed in this area.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

Under Article 73 of the Labour Code, there are eight public holidays. There are also three days off per year to mark religious festivals. Work is authorised exceptionally during public holidays where it is impossible to suspend a production line or for other technical reasons, where a public service has to be provided, or in special cases linked to natural disasters, epidemics, accidents or emergencies.

Work performed on a public holiday is paid at twice the standard rate. At the employee's request, the increased pay for the work performed on a public holiday may be replaced by a day off in lieu.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee asks whether the base salary for the work carried out on a public holiday is maintained, in addition to the increased pay rate.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

Elimination or reduction of risks

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

Occupational Safety Act No. 2694-XII of 14 October 1992 is the main legislation governing occupational health and safety issues in Ukraine. Its chief focus is prevention of accidents at work, occupational diseases and dangerous situations. It establishes the principle that employers are required to provide their employees with a safe workplace, safe working methods, materials and equipment and proper and effective training on occupational health and safety matters. Under these basic rules, it is also the employer's responsibility to identify and assess the risks connected with each post and introduce measures designed to reduce them to a minimum.

According to an addendum to the report, the Resolutions of the Cabinet of Ministers contain a list of activities posing a particular threat to employees' health and safety. These lists include coal industry, metallurgy, lead production, magnesium production, hydrometallurgy, chemical production, works with radioactive substances, etc.

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

Measures in response to residual risks

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

Article 2§4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter (Conclusions 2005, statement of interpretation of Article 2§4).

Under Section 7 of the Occupational Safety Act, persons exposed to residual risks may be granted compensatory measures such as reductions in working hours, additional paid leave, salary increases or other forms of compensation described in the relevant legislation.

Conclusion

The Committee concludes that the situation in Ukraine is in conformity with Article 2§4 of the Revised Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

Workers are entitled to two days off per week when working a five-day working week and one day off per week when working a six-day working week. The rest day is generally Sunday. For five-day working weeks, the day of the week on which the second day off is taken, if not specified in legislation, is established by the weekly work schedule of the company, institution or organisation for which the employee works and should in principle be directly before or after the general rest day.

If a holiday or non-working day coincides with a rest day, the rest day is carried over to the next day following the holiday. In companies, institutions and organisations in which work cannot be interrupted on the official rest day because they provide a service (shops, theatres, museums, etc.), rest days are decided on at local government level. Where work cannot be interrupted on the rest day because a production line cannot be suspended or for other technical reasons or because continuous services or transport facilities need to be provided for the public, rest days are granted to different groups of employees in turn, according to a schedule approved by the employer or by an authorised body.

The weekly uninterrupted rest period must last at least 42 hours. It is prohibited to perform work on a rest day, save in exceptional cases duly authorised by the trade unions or by legislation. Work is authorised exceptionally on rest days in circumstances linked to natural disasters, epidemics, accidents or emergencies.

Work performed on a rest day must be offset, with the consent of both parties, by time off in lieu or by financial compensation amounting to double the usual pay.

The Committee points out that weekly rest periods may not be replaced by financial compensation and that employees may not forfeit their rest. Although the rest period must be weekly, it may be deferred until the following week provided that no-one is made to work more than twelve days in succession before being granted a two-day rest period. The Committee asks for additional information in the next report on exceptions to the rules on weekly rest periods.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in Ukraine is in conformity with Article 2§5 of the Revised Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

Under the relevant labour law, an employment contract must be concluded between an employer and an employee when an employee is taken on. The contract must mention the identity of the parties, the place of work, the occupation or position of the employee in the company, the conditions of work, the amount of pay and, if the employment contract or relationship is a temporary one, the length of the contract or the relationship. It is not always essential for the contract to be set down in writing. Where a written contract is compulsory, the same information must be included.

Employment contracts may also contain information on their period of validity, the parties' rights, duties and liabilities (including their financial ones), occupational safety, organisation of labour, any collective agreements governing the employee's conditions of work and the rules on termination of the contract, including early termination. The scope of contracts is determined by national legislation.

Article 2§6 guarantees the right of workers to written information upon commencement of their employment. Information that must be included in employment contracts also includes the length of paid leave, the standard daily and weekly working hours and information on any collective agreements governing the employee's conditions of work.

According to an addendum to the report, parliament is currently examining a draft amendment to Article 41 of the Labour Code on the "Form of the labour contract". The Committee asks for confirmation in the next report that all the aforementioned aspects of the employment contract or relationship are covered by the contract or another written document. The Committee asks whether, where employees do not have a written contract, there are other written sources containing information on the essential aspects of the employment relationship.

Conclusion

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

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 Ukraine.

The general rules on night work are set out in the Labour Code. The night is understood to be the hours between 10 p.m. and 6 p.m.

Night work is paid at an increased rate established in accordance with general, regional or collective agreements but necessarily at least 20% more than the standard wage. Under agreements between the government and employers' and workers' organisations for the periods 2004-2005 and 2008-2009, night work was to be paid at a rate of 35% more than the standard daytime wage.

The Committee recalls that the measures which take account of the special nature of the work must at least include the following:regular medical examinations, including a check prior to employment on night work. It is stated in an addendum to the report that under Article 169 of the Labour Code, employees working under dangerous conditions, taking part in a professional selection procedure or working under the age of 21 must undergo a medical examination. However, there is no provision in the legislation for a compulsory medical examination for persons about to take up night work. The Committee considers therefore that the situation is not in conformity.

The Committee asks whether it is possible for night workers to be transferred to day work. It also asks whether there is regular consultation with workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 2§7 of the Revised Charter on the ground that there is no provision in the legislation for a compulsory medical examination for persons about to take up night work.

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 Ukraine.

Pursuant to the Labour Code, workers are entitled to an increased rate of remuneration for overtime work. This rate is double that of the regular hourly rate. The law does not allow compensation of overtime work with time off. The Committee asks if the right to increased remuneration for overtime work is also guaranteed in collective agreements.

The Committee asks if the statutory provisions on payment of overtime apply to all types of work. The next report should indicate if there are any exceptions, namely as regards senior state officials or senior managers.

Finally, the Committee asks if the.State Department for Supervision of Compliance with Labour Legislation has detected any overtime work going unpaid in the context of flexible working time arrangements.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

Reasonable period of notice

Indefinite contracts

Under the Labour Code, an employer may terminate the employment relationship by giving two months' notice, irrespective of length of service. The Committee notes that in order to be in conformity with Article 4§4 of the Revised Charter, notice periods must take account of the worker's length of service. In its view, two months' notice is not reasonable in the case of workers with more than fifteen years of service (Conclusions, XIV-2, Ireland).

The Committee notes that the main purpose of Article 4§4 of the Revised Charter is to give the person concerned time to look for new employment before his or her employment ends, i.e. while he or she is still receiving a wage or salary. For that reason it is acceptable for an employee to be given financial compensation in lieu of notice.

Immediate dismissal and cessation of employment other than through dismissal

Article 4§4 applies not just to dismissal but to all cases of cessation of employment. The Committee asks that the next report provide information on immediate dismissal and other cases of cessation of employment, for example due to the death of the employer, bankruptcy or invalidity.

Employees leave of absence to seek new work

The Committee also wishes to know whether workers are entitled to absent themselves from work during their notice period to look for fresh employment.

Probationary period and part time employees

Lastly, the Committee points out that the right to reasonable notice of termination of employment applies to all categories of workers irrespective of their status, including those who are in atypical employment relationships. It likewise applies during the probation period, and to part-time workers or workers on fixed-term or piece-work contracts. The national legislation must cover all workers.

The Committee could not assess the situation because of the lake of information in the report. Accordingly, it asks that the next report provide information on all these points.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 4§4 of the Revised Charter because two months notice is insufficient for workers with ten or more years' service.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

Letter sent to Government

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

Under the Labour Code and the Collective Agreements Act, deductions may not exceed 20% of the employee's wage. However, in certain cases expressly provided for by law,

deductions of up to 50% of pay may be made. The report indicates that any deduction from wages pursuant to an attachment order must be made in such a way as to leave the worker with at least 50% of his or her income. This rule does not apply to deductions from wages in the case of correctional labour or recovery of alimony for under-age children. Such deductions may not exceed 70%.

The Committee notes that, in its 2007 report, the United Nations Committee on Economic, Social and Cultural Rights[1] expressed the view that the minimum wage in Ukraine was insufficient to secure a decent standard of living for workers and their families. It recalls that Article 4§5 of the Revised Charter requires that deductions from wages do not deprive the worker of his or her very means of subsistence. It notes as well that the national net minimum wage for the reference period was 605 UAH (60.2€) which can be submitted to deductions up to 70 % in the case of recovery of alimony for under-age children or correctional labour. The Committee considers these deductions unreasonable and therefore the remaining wage insufficient to ensure the very means of subsistence of the worker.

The report states that no deductions may be made from severance pay or compensation.

The Committee notes other types of deductions made in relation to the return of advance payments on the wages, or sums given for a transfer into other territory or for economic reasons. The deductions from the salary in these cases should not exceed 20% of the salary. The Committee also takes note that the trade union membership fees are deducted from the salary and it consist, in most case of 1% from the wage.

The Committee further notes that under Article 4§5, national law should contain safeguards to prevent employees from waiving their rights to limited deductions from wages. It accordingly asks that the next report provide further information on the safeguards that prevent workers from waiving their rights to limited deductions from wages.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 4§5 of the Revised Charter on the ground that deductions from wages are not reasonable and may deprive workers and their dependents of their very means of subsistence.

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[1] *http://www.universalhumanrightsindex.org/documents/827/1279/document/fr/doc/text.doc*

Article 5 - Right to organise

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

A reform of the relevant legislation on trade unions and employers' organisations, affecting notably registration, is underway with a view to bringing the national situation in line with ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise. The Committee asks that the next report provides all relevant information in the light of the explanations given below and specific questions raised. It underlines that should the next report not provide the requested information there will be nothing to establish that the situation in Ukraine is in conformity with Article 5.

Forming trade unions and employer associations

According to Article 36 of the Constitution, citizens have the right to take part in trade unions and employers' organisations to protect their labour and socio-economic rights and interests. Trade unions are formed without prior authorisation on the basis of the free choice of their members. Restrictions on membership of trade unions are established exclusively by the Constitution and the laws of Ukraine. The Committee asks for more specific information on restrictions existing in domestic law.

Registration of trade unions (known as legalisation in domestic law) is described under Section 16 of the Law on Trade Unions, their Rights and Guarantees of Activity (hereafter, LTU). Legalisation is dealt with by the Ministry of Justice if trade unions operate throughout the country or by the departments of justice of local authorities when their activities are restricted to a specific part of Ukraine. For the purposes of legalisation, trade unions must submit their statutes to the competent authorities. However, they already acquire legal personality upon adoption of their statutes. On the basis of the documents provided, the legalising authorities will confirm within a month their legal status, as well as include them on the register of associations, and deliver a legalisation certificate. They may ask for additional documents necessary for confirming a trade union's status. They may also ask that statutes be brought in line with legal requirements contained in the LTU and the Resolution of the Cabinet of Ministers on the Approval of the Regulations on the Procedure of Legalisation of Citizens' Associations No. 140 of 26/02/1993. The Committee asks for more information on legalisation requirements, such as documents to be produced, under domestic law. As to employers' organisations, they are required to register with the same authorities as trade unions and acquire legal personality upon registration. Pursuant to Section 16 of the Law on Citizens' Associations registration of trade unions and employers' organisations can be denied if the name, statutory documents, or other documents submitted for legalisation or - in the case of employers' organisation - registration are not in conformity with domestic law. The Committee asks whether refusals are subject to appeal before domestic courts.

Trade unions are exempt from paying any registration fees. By contrast, employers' organisations have to pay registration fees amounting to between 2.5 and 10 times the non-taxable minimum personal income. The Committee recalls that registration fees must be reasonable and designed only to cover strictly necessary administrative costs (Conclusions XV-1 and XVI-1, United Kingdom), and asks whether this is the case with regard to employers' organisation's fees. The Committee also recalls that requirements as to minimum numbers of members comply with Article 5 if the number is reasonable and presents no obstacle to the founding of organisations (Conclusions XIII-5, Portugal).

It asks that the next report indicate expressly whether such requirements exist or not in Ukraine.

According to the report, trade unions are independent in their functioning from public authorities, local governments, employers, other organisations, and political parties. Any interference of public authorities and local governments – including their officials – or employers is prohibited. Similarly employers' organisation are independent from public authorities, trade unions, political parties and other associations. The report further states that trade unions and organisations have the right to join international trade union or employers organisations and take part in their activities. Trade unions and organisations are free to form associations, including federations in order to further their statutory objectives. They are also free to join or leave such associations.

The Committee stresses that domestic law must guarantee a right of appeal to courts to ensure that all the aforementioned rights are upheld, and therefore asks that next report indicates whether such a right is guaranteed in domestic law.

As of 1 January 2009, 137 trade unions and trade unions associations have been legalised by the Ministry of Justice, and 1 056 by the competent local authorities. As for employers' organisations, 18 have been registered by the Ministry of Justice and 539 by the competent local authorities.

The Committee notes that cases are pending before the ILO Committee of Freedom of Association. One of them concerns allegations of interference by the authorities with trade union internal affairs, trade union harassment and anti-union discrimination activities by different employers. According to information provided by the authorities to the ILO Committee, a number of independent enquiries into these allegations have been launched, some of which have led to the situation being redressed or declared unfounded while others are still pending.[2] The Committee also notes that, in 2008, the Parliament's Committee on Social Policy and Labour recommended that the Parliament hold hearings on observance of the rights of trade unions, including on the right to organise and implementation of above-mentioned ILO Convention No. 87. The rapporteur of the Parliamentary Committee claimed that there were instances of unsubstantiated refusals to register trade unions, dismissal of trade unions, persecution of trade union leaders, dismissal and oppression of the employees owing to their membership in the trade unions, interference of administration and public bodies into internal affairs of the trade unions.[3] The Committee further notes from another source[4] allegations that the current registration system is in practice complex and cumbersome. It recalls that initial formalities such as declaration and registration must be simple and easy to apply. The report indicates that the Parliamentary Committee on Social Policy and Labour is currently examining draft laws which tackle notably registration, making it impossible for the competent authorities to refuse registration. According to the report, the Ministry of Justice's review of the legislation in force is ongoing with a view to bringing it in conformity with ILO Convention No. 87. This process has included consultations with trade unions. Considering the seriousness of the above-mentioned allegations, the Committee asks that the next report provide detailed information on concrete steps that have been taken, notably as part of the ongoing reform.

Freedom to join or not to join a trade union

Pursuant to Article 36 of the Constitution, workers are free to join the trade union of their own choosing and cannot see their rights restricted on grounds of belonging to a trade union. The report states that any restrictions to the workers' rights or interests imposed

when concluding, amending or terminating an employment contract which results from their belonging or not belonging to a trade union is prohibited. Moreover, those who interfere with the enjoyment of the right to organise in trade unions, including state officials, will be held disciplinarily, administratively or criminally responsible in accordance with law. The Committee recalls in this respect that domestic law must include effective sanctions and remedies where the right to join a trade union is not respected. Where discrimination or reprisals occur with respect to recruitment, dismissal or promotion, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim (Conclusions 2004, Bulgaria). The Committee asks for more details on sanctions foreseen by law against those who hamper the right to join or not to join trade unions and, in the light of the explanations given above, what compensation is offered to victims.

Article 36 of the Constitution also states that no one may be forced to join any trade union or be restricted in his or her rights for not belonging to one. The Committee nonetheless asks for further information on any specific legislation or regulations in this area and on the situation in practice.

Trade union activities

The Committee already referred to the brief information provided by the report on the independence of trade unions and employers' organisation in the first section. As regards their activities, it riterates that independence of labour organisations takes various forms: (a) Trade unions are entitled to choose their own members and representatives; (b) Excessive limits on the reasons for which a trade union may take disciplinary action against a member constitute an unwarranted interference in the autonomy of trade unions inherent in Article 5 (Conclusions Conclusions XVII, United Kingdom); (c) Trade union officials must have access to the workplace and union members must be able to hold meetings at work in so far as employers' interests and company requirements permit (Conclusions XV-1, France). The Committee asks that the next report provide information on this point.

Representativeness

The Committee has found that while domestic law may restrict participation in various consultation and collective bargaining procedures to representative trade unions alone, the following conditions must be met for the situation to comply with Article 5: (a) decisions on representativeness must not present a direct or indirect obstacle to the founding of trade unions; (b) areas of activity restricted to representative unions should not include key trade union prerogatives (Conclusions XV-1, France); (c) criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review (Conclusions XV-1, Belgium). The Committee asks whether any form of representativeness exists and, if so, that the next report provide information on this point. It draws attention to the fact that other aspects of representativeness are also tackled under Article 6§2.

Personal scope

The Committee underlines that Article 5 applies both to the public and to the private sector (Conclusions I, Statement of interpretation on Article 5). Under Article 19§4b of the Charter, states party must secure for nationals of other parties treatment not less favourable than that of their own nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining (Conclusions XIII-3, Article 19§4b, Turkey). The Committee asks information in the next report on this point. As to members

of the armed forces and the police, the report states that they are entitled to belong to a trade union.

Conclusion

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

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[1] *ILO Committee of Freedom of Association, case No. 2388, International Confederation of Free Trade Unions (ICFTU), the Confederation of Free Trade Unions of Ukraine (CFTUU) and the Federation of Trade Unions of Ukraine (FPU) v. Ukraine.*

[2] *Ukraine Parliament's website: http://portal.rada.gov.ua/rada/control/en/publish/article/info_left?art_id=122839&cat_id=105995*

[3] *International Trade Union Conference (ITUC) annual survey 2009: http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=UKR&Lang=EN*

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee asks that the next report provide all relevant information on joint consultation in the light of the explanations given below and questions raised.

Levels of joint consultation

The Committee notes that by Decree of the President of Ukraine of 29 December 2005 on the Development of Social Dialogue, a National Tripartite Socio-Economic Council (NTSEC) was established. According to Section 1§1 of the Decree the NTSEC is a consultative and advisory body whose main tasks are:

- to promote consultation between the social partners on the ways to further develop socio-economic and labour relations and to conclude collective agreements on the regulation of such relations;
- to put forward proposals on the shaping and implementation of state economic policy and submit them to the President of Ukraine.

The Committee asks for information on the composition and functioning of the NTSEC and in what way public authorities encourage the consultations or participate in them. It recalls that within the meaning of Article 6§1, joint consultation is consultation between employees and employers or the organisations that represent them (Conclusions I, Statement of Interpretation on Article 6§1). Such consultation can take place within tripartite bodies provided that the social partners are represented in these bodies on an equal footing (Conclusions V, Statement of Interpretation on Article 6§1).

The Committee notes that the report only refers to consultation at the national level. It recalls that under Article 6§1 consultation must take place on several levels: national, regional/sectoral and enterprise (Conclusions III, Denmark, Germany, Norway, Sweden). For States, like Ukraine which have ratified both Article 6§1 and Article 21, the conformity of the situation of consultation at enterprise level is no longer examined within the framework of Article 6§1 as it is examined under Article 21 (Conclusions 2004, Ireland). The Committee therefore requests the next report to provide further information on the possibilities of joint consultation at national, regional and sectoral level as far as Article 6§1 is concerned.

Moreover, it asks whether employers' and employees' organisations have themselves the opportunity for joint consultation on a bi-partite basis. In this framework, the Committee notes from ILO[5] that the NTSEC has prepared a draft law on fundamental principles of social dialogue in Ukraine. It requests that the next report provide up to date information on the content and outcome of such initiative.

While referring to the questions raised in its assessment under Article 5, the Committee recalls that with respect to Article 6§1, any requirement of representativeness of trade unions must not excessively limit the possibility of trade unions to participate effectively in consultation. In order to be in conformity with Article 6§1, representativity criteria should be prescribed by law, should be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusals (Conclusions 2006, Albania).

Matters for joint consultation

The Committee observes that the information on joint consultation provided in the report refers mainly to dialogue between the social partners within the scope of collective negotiations with a view to concluding a collective agreement. It recalls that under Article 6§1 consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.) (Conclusions I, Statement of Interpretation on Article 6§1 and Conclusions V, Ireland). It thus requests the next report to provide information on joint consultation between employees and employers also outside the negotiation of collective agreements, on all the matters of mutual interest mentioned above.

The Committee also asks the next report to clarify whether issues of interpretation of collective agreements are dealt within the framework of joint consultation or within other specific mechanisms.

Public Sector

Finally, the Committee highlights that consultation should take place also in the public sector, including the civil service (Conclusions III, Denmark, Germany, Norway, Sweden and *Centrale générale des services publics, CGSP* v. Belgium, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41). It therefore also wishes to know whether there are specific consultative bodies in the public sector and if so what their structure is and how they operate.

Conclusion

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

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[1] *Individual Observation (of 2008) concerning Tripartite Consultation, ILO Convention No. 144 (ratified by Ukraine in 1994), document No. (ilolex): 062008UKR144.*

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

Legislative framework

During the reference period, collective bargaining procedures were governed by the Labour Code of Ukraine (No. 322-VIII of 10 December 1971), the Law on Collective Agreements (No. 3356-XII of 1 July 1993) and the Law on Employers' Organisations (No. 246-III of 24 May 2001). Moreover, Ukraine ratified ratified ILO Convention No. 154 on Collective Bargaining in 1994 and ILO Convention No. 98 on the Right to Organise and carry out Collective Bargaining in 1956.

According to Section 4 of the Law on Collective Agreements "trade unions, associations of trade unions in the form of their elected bodies or other representative bodies of workers accordingly authorized by work collectives are entitled to engage in bargaining and conclude collective contracts or agreements on behalf of employed workers". The Committee asks the next report to clarify who are the "work collectives". It further asks

for clarification of the various options foreseen by Article 4 of the said law in the event that in the entreprise or at the State, sectoral or territorial level, there are several actors entitled to bargain.

According to Section 10 of the Law on Collective Agreements, to conduct bargaining and prepare draft texts of a collective agreement the parties establish a working commission that includes their representatives. If during the negotiations the working commission fails to reach an agreement, a statement of disagreement has to be drawn up. Within three days from the adoption of this statement, the parties have to conduct consultations, form a conciliatory commission from among their members to reach an agreement. In case of failure they have to approach a mediator of their choice. In this regard, the Committee refers to its assessment under Article 6§3 for more details.

While referring to the questions raised in its assessment under Article 5, the Committee recalls that with respect to Article 6§2 of the Revised Charter, any requirement of representativeness must not excessively limit the possibility of trade unions to participate effectively in collective bargaining. Moreover, in order to be in conformity with Article 6§2, the criteria of representativeness should be prescribed by law, should be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusals (Conclusions 2006, Albania). The Committee wants to receive further information on how representativeness of a single trade union or in the event several trade unions are represented together, a group of trade unions, is determined. It wishes in particular to know what are the applicable rules and which trade union prevails if several trade unions submit a request to bargain collectively but do not act jointly.

The Committee notes from ILO[6]**Error! Hyperlink reference not valid.** that on 20 May 2008, the Supreme Council of Ukraine adopted in the first reading, the draft Labour Code submitted by the People's Deputies and that the Confederation of Free Trade Unions of Ukraine (KSPU), in a communication dated 4 June 2008, alleged that such draft, would have a negative impact on trade union activities. The Committee asks that the next report provide all relevant information on the legislative framework in the light of the explanations given below and questions raised.

Conclusion of collective agreements

The report provides data concerning collective agreements concluded during the reference period in the private and public sector as well as their coverage level within the sector concerned. According to the State Statistics Committee of Ukraine the number of concluded collective agreements increased between 2005 and 2008. As of 31 December 2008, more than 95.600 collective agreements covering 83.4% of workers were registered.

The Committee asks the next report to provide updated information on collective agreements concluded in the private and public sector at enterprise, sectoral and national level and on the number of employers and employees covered by these agreements.

The Committee also asks the next report to provide information on the procedures governing the possible extension of collective agreements. In this regard, as the ILO Committee of Freedom of Association,[7] the Committee holds 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.

Public sector

Finally, the Committee requests the next report to clarify whether the abovementioned rules on collective bargaining procedures also apply to the public sector or what other regulations allow a participation of employees in the public sector in the determination of their working conditions. In this regard, the Committee points out that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them (Conclusions III, Germany).

Conclusion

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

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[1] *Individual Observation (of 2009) concerning Right to Organise and Collective Bargaining, ILO Convention 98 (ratified by Ukraine in 1956), document No. (ilolex): 062009UKR098.*
[2] *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (revised) edition, 2006, para 1051.*

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Law on the Procedure of Settlement of Collective Disputes provides for conciliation and mediation procedures in cases of conflicts. In the event of a collective labour dispute a conciliatory commission is established upon the initiative of one of the parties within a time frame stipulated by the law. The parties to the conflict determine the composition of the conciliation commission. They may seek assistance from the National Service of Mediation and Conciliation.

The National Service of Mediation and Conciliation's competence includes registration of conflicts, training of mediators and mediation itself.

The conciliatory commission makes its recommendations to the parties within a time frame provided by law.

If conciliation commission fails to settle the dispute the matter may be referred by an independent mediator or by one of the parties to a labour arbitration court. The composition of the labour arbitration court is determined by the parties. The labour arbitration court's decision is taken by a majority vote. The report states that its decision is binding if the parties agree in advance that it will be so.

The Committee recalls that any form of compulsory recourse to arbitration is a violation of this provision, 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. However it notes that in the case of Ukraine although one party may refer a conflict to the labour arbitration court, the decision of the court is only binding on the parties if they agree in advance that it will be so. The Committee is inclined to take the view that arbitration in such conditions cannot be considered as being compulsory, however it

wishes to receive further information on how the system works in practice, in particular if available examples of cases taken arbitration and the outcomes.

The Committee asks for information on conciliation, mediation and arbitration facilities for the public sector.

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 Ukraine.

Article 44 of the Constitution guarantees workers the right to strike to protect their economic and social interests.

In addition Section27 of the Law on Trade Unions guarantees the right of trade unions to, inter alia, organise and stage strikes in order to protect workers labour and socio-economic rights. The Law on the Procedure of settlement of collective disputes contains provisions on the right to strike. Including the procedure to be followed prior to exercising the right to strike etc.

No one may be forced to participate in a strike.

Group entitled to call a collective action

The Committee requests information on who has the right to call a strike, in particular it wishes to know whether this is reserved to a trade union. In this context it recalls that **t**he decision to call a strike may be reserved to a trade union provided that forming a trade union is not subject to excessive formalities and that once a strike has been called, any employee concerned, irrespective of whether he is a member of the trade union having called the strike or not, has the right to participate in the strike.

Specific restrictions to the right to strike

Under Article 6§4 the right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter that are prescribed by law, serve a legitimate purpose 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.

Restrictions related to essential service/sectors

The Committee notes that there are restrictions on the right to strike for workers in the emergency and rescue services, workers at nuclear facilities, workers in underground undertakings as well as workers at electric power engineering enterprises. The Committee recalls that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, is not deemed proportionate to the specific requirements of each sector, but providing for the

introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4.

Therefore the Committee asks for further information on the extent of the restrictions on the right to strike in these sectors,in particular as regards “underground undertakings”.

In addition the Committee notes that according to the report strikes in the transport sector may be prohibited, inter alia, if the transportation of passengers is affected. The Committee seeks confirmation that this interpretation is correct, in this respect it refers above to its case law mentioned above.

Restrictions related to public officials

The report states that civil servants are prohibited from striking. The Committee recalls that public officials enjoy the right to strike under Article 6§4. Therefore prohibiting all public officials from exercising the right to strike is not in conformity with Article 6§4.

The right to strike of certain categories of public officials may be restricted; under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc.

Procedural requirements

The Committee notes that the Law on the Procedure of Settlement of Collective disputes requires the exhaustion of conciliation and mediation procedures before strike action (it refers to Article 6§3 in this respect). A strike is used as a measure of last resort. According to legislation even during a strike the parties must continue to seek a resolution of the dispute.

The Committee asks for information on any other procedural requirements that must be fullfilled before a strike takes place in this respect it refers to the case of Trofimchuk v. Ukraine jugment of the European Court of Human Rights of 28 October 2010

Consequences of a strike

The Committee seeks information on the consequences of a strike for individual workers. It recalls that under Article 6§4 a strike should not be considered a violation of the contractual obligations of the striking employees entailing a breach of their employment contract. It 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 (e.g. concerning pensions, holidays and seniority) are not affected, then formal termination of the employment contract does not violate Article 6§4.

Further any deduction from strikers’ wages should correspond exactly to the duration of the strike. Workers participating in a strike, who are not members of the trade union having called the strike, are entitled to the same protection as trade union members. Therefore the Committee asks for further information on these issues.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 6§4 on the ground that all civil servants are denied the right to strike.

Article 21 - Right of workers to be informed and consulted

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

Legal framework

Law No. 905-IV of 5 June 2003 on trade unions, their rights and their activities grants employees the right to information and consultation, which is implemented through collective agreements.

New legislation on employee consultation was enacted in 2008. This amends the arrangements for employee representative participation in connection with major operations affecting the relevant undertaking or its employees. In particular, these representatives will be included in enterprise committees on such matters as the privatisation, restructuring and liquidation of economic entities, and in connection with economic partnerships and the distribution of profits. In these cases, trade union representatives can submit their proposals.

The report also refers to draft legislation on the right to information, one of whose purposes is to define what information is confidential. The Committee asks for the next report to present these reforms and the outcome of their application.

Scope

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

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

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

Personal scope

Employees' right to information and consultation is mainly exercised through their enterprise-based trade union representatives. In the absence of trade union representatives, employees may elect persons to represent them. The Committee asks

what are the rules and procedures governing the activities of trade union representatives in connection with Article 21 of the Revised Charter.

The Committee considers that this provision must apply to all undertakings, public or private. States may exclude from its scope undertakings employing fewer than a certain number of employees, to be determined by national legislation or practice. It is not applicable to public servants (Conclusions XIII-3, Finland). The Committee asks what the situation is in Ukraine and whether there is a minimum number of employees to which this provision applies.

It also asks what proportion of the total number of private and public sector employees benefit in practice from the right of trade unions or elected representatives to receive such information and be consulted.

Material scope

As a general rule, trade union representatives may ask employers for any information relating to working conditions and employees' pay, work or other legitimate interests, the enterprise's economic development and the application of collective agreements. The latter are required to answer within a week in connection with working conditions, pay, employees' legitimate interests and the enterprise's economic development, and five days in connection with the application of collective agreements.

Apart from the obligation set up in the Section 5 of the Law on security at the workplace, the Committee asks how employers' obligations in this regard are put into effect, and in particular whether they are required to reply in writing. It also asks for information on the frequency with which such information must be provided.

Since employees' right to information and consultation is applied through collective agreements, the Committee asks for more detailed information on the relevant collective agreements, and in particular on the parties to these agreements.

Rules and procedure

The right to information and consultation must be effectively guaranteed. In particular, employees must have legal remedies when these rights are not respected (Conclusions 2003, Romania).

The Committee consequently asks whether employees' representatives are empowered to appeal to the relevant courts in respect of alleged breaches of the rights covered by Article 21 of the Revised Charter and whether employees or their representatives are possibly entitled to claim damages.

Supervision

The Committee recalls that there must also be sanctions for employers who fail to fulfil their obligations under this article (Conclusions 2005, Lithuania).

The Compliance Division of the Ministry of Labour and Social Policy monitors compliance with labour legislation, including employees' right to information and consultation, and carries out inspections in undertakings. In 2008, 52 breaches of the legislation were identified.

Most of these offences apparently concerned delays in the payment of wages. The Committee asks what penalties may be imposed on employers.

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 Ukraine.

It underlines that Article 22 of the Revised Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be involved in decision making on and securing compliance with all the regulations in the areas covered by this provision. Article 22 applies to all undertakings, public or private. States may exclude from its scope undertakings employing less than a certain number of employees, to be determined by national legislation or practice (Conclusions 2005, Estonia). Employees are entitled to appeal to the courts where their rights have been infringed (Conclusions 2003, Bulgaria). Employers who fail to fulfil their obligations in this respect must be liable to penalties (Conclusions 2003, Slovenia). Should the next report not provide the relevant information, there will be nothing to establish that the situation is in conformity with Article 22 regarding these different points.

Working conditions, work organisation and working environment

The Labour Code and Act 905-IV of 5 June 2003 entitle employees to participate in determining and improving their working conditions and environment. This right is applied through collective agreements and enforced by the trade union representatives or elected representatives. Representative trade unions are entitled to request from employers any relevant documentation, data or explanations about working conditions or the application of collective agreements.

Protection of health and safety

The Committee notes that the report provides for information which is linked to Article 3 of the Revised Charter (right to safe and healthy working conditions).

The Occupational Health and Safety Act, No 2694-XII of 14 October 1992, entitles employees to be consulted about the health and safety conditions in their place of work.

Section 13 requires employers, irrespective of branch of the economy, to set up appropriate systems for managing occupational health and safety. Under section 16, specialist committees may be established in undertakings with at least 50 employees. The Committee notes on the contrary that Section 15 of the same Act requires undertakings with at least 50 employees to establish specialist committees. It asks the next report to confirm whether this is an requirement or a simple possibility.

Employee representatives may also propose appropriate measures when they think that health and safety conditions could be improved. They may consult experts on health and safety matters and ask employers to cease operations in a particular department or even in the undertaking as a whole if this is necessary to avoid a threat to employees' health. They may also take part in and contribute to inquiries into occupational accidents or diseases occurring or contracted in the work place and publish the conclusions of such inquiries.

Organisation of social and socio-cultural services and facilities

The organisation of social and socio-cultural services and facilities is covered by collective agreements. Employers are required to finance such activities.

The Committee asks how employees are involved in the organisation of social and socio-cultural services and facilities and, more specifically, how decisions are taken on who should have access to such facilities and services.

Enforcement

The Committee asks whether employees or employees' representatives are entitled to appeal to the relevant courts in respect of alleged breaches of their right to take part in the determination and improvement of working conditions. It also asks therefore what penalties employers are liable to if they fail to fulfil their obligations as regards the right of workers to take part in the determination and improvement of working conditions and the work environment.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

Liability of employers and means of redress

According to Section 17 of the Law of Ukraine on Securing Equal Rights and Opportunities for Women and Men No 2866-IV of 08.09.2005, an employer must take measures "to make impossible" any cases of sexual harassment, i.e. harassment of sexual nature expressed verbally or physically that humiliates or offends persons being in relations of labour, official, financial or other subordination.

The Committee recalls that it must be possible for employers to 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 (Conclusions 2003, Italy). It therefore asks whether the employer can be held liable towards the above-mentioned categories of persons and asks for a detailed description of the liability of employers in the above-mentioned cases.

According to the above-mentioned law a person may file a complaint with the Commissioner for Human Rights of the Verkhovna Rada of Ukraine as the authority whose function is to secure equal rights and opportunities for women or men in executive authorities and local governments, state law-enforcement bodies or courts. The Committee asks whether there exists a right of appeal against the decision of the Commissioner. Also it notes that the jurisdiction of this body is restricted and does not comprise all employing sectors. The Committee asks whether there exist means of redress for persons belonging to other employing sectors.

The Compliance Division of the Ministry of Labour and Social Policy exercises control over compliance with labour legislation by means of conducting inspections in economic entities of all form of ownership. The report informs that there have been no complaints concerning sexual harassment at the workplace received by the Compliance Division.

Burden of proof

The report contains no information regarding the burden of proof.

The Committee has ruled that effective protection of employees requires a shift in the burden of proof. In particular, courts should be able to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges (Conclusions 2003, Slovenia). The Committee asks what is the situation as regards burden of proof.

Damages

The report explains that a person has the right to be compensated for financial loss and moral damage caused due to sexual harassment. Moral damage is compensated irrespective of financial loss and it is not related to the amount of the financial loss. The Committee asks whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to sexual harassment is guaranteed.

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

Prevention

Article 26§1 also requires States Parties to take adequate preventive measures against sexual harassment. In particular, they should inform workers about the nature of the behaviour in question and the available remedies. As this information is not included in the report, the Committee asks for it to appear in the next one. It particularly asks for information on any preventive measures to raise awareness about the problem of sexual harassment in the workplace.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

Ukraine has submitted no information on Article 26§2 in its report.

The Committee recalls that, irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination. And this independently from the fact that not all harassment behaviors are acts of discrimination, except when this is presumed by law.

The Committee asks for precise information on laws, administrative acts or case law which guarantee the right of persons to effective protection against moral harassment in the workplace or in relation to work.

Liability of employers and means of redress

The report contains no information in this regard.

The Committee recalls that it must be possible for employers to be held liable towards persons employed or not employed by them who have suffered moral 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 (Conclusions 2003, Italy). It therefore asks whether the employer can be held liable towards the above-mentioned categories of persons and asks for a detailed description of the liability of employers in the above-mentioned cases.

The protection against moral harassment in the workplace or in relation to work, must include effective judicial remedies, comprising the right to appeal to an independent body in the event of harassment. The Committee asks that next report contains information on the means of redress in case of moral harasment in the workplace.

Burden of proof

The report contains no information in this regard.

The Committee has ruled that effective protection of employees requires a shift in the burden of proof. In particular, courts should be able to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges (Conclusions 2003, Slovenia). The Committee asks what is the situation as regards burden of proof.

Damages

The report contains no information in this regard.

The protection against moral harassment includes the right to obtain adequate compensation and the right and not to be retaliated against for upholding these rights.

The Committee asks for information on how the right of persons to effective reparation for pecuniary and non pecuniary damage is guaranteed.

Conclusion

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

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

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

This article entitles workers' representatives to protection in the undertaking and certain facilities. It complements Article 5, which grants a similar right to trade union representatives (Conclusions 2003, Bulgaria).

According to the appendix to Article 28, the term workers' representatives means persons who are recognised as such under national legislation or practice. States may therefore institute various categories of workers' representatives other than trade union representatives, or both. Representation may be exercised, for example, through workers' commissioners, workers' councils or workers' representatives on an enterprise's supervisory board (Conclusions 2003, Bulgaria).

Protection of workers' representatives

The main form of employee representation in Ukraine is trade union representation. The Committee asks for information on any workers representatives other than trade union representatives.

The Committee notes that protection should include prohibition of dismissal on the ground of being a workers' representative and of any detriment in employment other than dismissal (Conclusions 2003, France).

According to the report if dismissal proceedings are started against a trade union representative, the employer must consult and seek the consent of the relevant trade union**.** This protection is granted for the entire period of office and for one year after it ends.

Employee representatives who are unlawfully dismissed are entitled to reinstatement and to return to their previous post or job at the end of their period of office. .

The Committee further asks what protection is available to elected representatives not trade union representatives.

The report provides statistics which reveal an increase of violations of the provisions of the Labour Code regarding protection of worker representatives.The Committee asks whether the Government intends to take any measures to ensure the protection of worker representatives is respected in practice.

Facilities granted to workers' representatives

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

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 Ukraine.

Definitions and scope

The report states that the notion of collective redundancy covers situations (bases its explanation upon the situation) in which "an employer plans redundancy of workers for reasons of economic, technological, structural or similar nature or because of liquidation, reorganisation, or change in the form of ownership of an enterprise, institution or organisation". (Section 22 of LTU)

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

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

Prior information and consultation

According to Article 22 of LTU, if an employer plans redundancy of workers for reasons of economic, technological, structural or similar nature or because of liquidation, reorganisation, or change in the form of ownership of an enterprise, institution or organisation, the employer must provide, in advance and no later than three months prior to the planned redundancy, information to primary trade union organisations concerning these measures, including information on reasons for the redundancy, quantity and categories of workers that may be affected, terms of redundancy, and must hold consultations with the trade unions concerning measures to prevent or minimise dismissals or mitigate the adverse effects of any dismissal.

Trade unions have the right to submit proposals to public authorities, local governments, employers and associations thereof on postponement of terms, temporary suspension or cancellation of measures related to staff redundancy, the proposals being mandatory for consideration.

According to Article 49§2 of the Labour Code of Ukraine, workers shall be notified personally on their forthcoming redundancy no later than two months prior thereto.

The Committee recalls that Article 29 provides for the employer's duty to consult with workers' representatives and the purpose of such consultation. The Committee has stated that "this obligation is not just an obligation to inform unilaterally, but implies that a process will be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers' representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached" (Conclusions 2003, Statement of Interpretation on Article 29).

As to the content of prior information, with a view to fostering dialogue, the Committee has ruled 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.

The Committee asks whether the obligation for employers to supply all relevant documents is stipulated in the Ukrainian legislation.

Sanctions and preventive measures

The Compliance Division of the Ministry of Labour and Social Policy carries out inspections of economic entities of all forms of ownership and supervises the observance of labour rights by the employers. It also carries out activities of preventive nature. However the report does not give any information on the existence and nature of possible sanctions.

The Committee recalls that consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfill their obligations, there must be at least 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, i.e. sufficiently deterrent for employers (Conclusions 2003, Statement of Interpretation on Article 29). The Committee asks that the next report provides information on the sanctions applied.

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

Conclusion

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