December 2007

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2007 (BULGARIA)

Articles 1§4, 2, 3, 4, 21, 22, 24, 26, 28 and 29 of the Revised Charter

Introduction

The function of the European Committee of Social Rights is to judge the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as general comments formulated by the Committee figure in the General Introduction to the Conclusions[1].

The Revised European Social Charter was ratified by Bulgaria on 7 June 2000. The time limit for submitting the 5th report on the application of the Revised Charter to the Council of Europe was 31 March 2006 (reference period: 1 January 2001 to 31 December 2004) and Bulgaria submitted it on 28 September 2006.

This report concerned the following "non-hard core" provisions of the Revised Charter:

– right to just conditions of work (Article 2);
– right to safe and healthy working conditions (Article 3);
– right to a fair remuneration (Article 4);
– right of employed women to protection of maternity (Article 8);
– right to vocational guidance (Article 9);
– right to vocational training (Article 10);
– right to protection of health (Article 11);
– right to benefit from social welfare services (Article 14);
– right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15);
– right of children and young persons to social, legal and economic protection (Article 17);
– right to engage in a gainful occupation in the territory of other States Parties (Article 18);
– right of workers to be informed and consulted (Article 21);
– right of workers to take part in the determination and improvement of the working conditions and working environment (Article 22);
– right of elderly persons to social protection (Article 23);
– right to protection in cases of termination of employment (Article 24);
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25);
– right to dignity at work (Article 26);
– right of workers with family responsibilities to equal opportunities and treatment (Article 27);
– right of workers' representatives to protection in the undertaking (Article 28);
– right to information and consultation in collective redundancy procedures (Article 29);
– right to be protected against poverty and social exclusion (Article 30);
– right to housing (Article 31).

Bulgaria has accepted these articles with the exception of Articles 2§1, 2§3, 4§1, 9, 10, 15, 17§1, 18§1, 18§2, 18§3, 23, 27§1, 30 and 31.

The present chapter on Bulgaria contains 21 conclusions[1]:

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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) under Human Rights.

– 9 cases of conformity: Articles 2§1, 2§4, 2§6, 3§1, 3§2, 3§3, 4§3, 26§1 and 26§2;
– 3 cases of non-conformity: Articles 4§4, 24 and 28.

In respect of the 9 deferred conclusions, that is Articles 1§4, 2§5, 2§7, 3§4, 4§1, 4§5, 21, 22 and 29, the Committee needs further information in order to assess the situation.

The next Bulgarian report will be the first under the new system for the submission of reports adopted by the Committee of Ministers[2]. It concerns the accepted provisions of the following articles belonging to the thematic group "Employment, training and equal opportunities":

– the right to work (Article 1);
– the right to vocational guidance (Article 9);
– the right to vocational training (Article 10);
– the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15);
– the right to engage in a gainful occupation in the territory of other States Parties (Article 18);
– the right of men and women to equal opportunities (Article 20);
– the right to protection in cases of termination of employment (Article 24),right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

The report should be submitted to the Council of Europe before 31 October 2007.

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1. The 21 conclusions correspond to the paragraphs of the Articles which are part of the non-hard core and Article 1§4. This latter provision is usually examined together with Articles 9, 10 and 15 due to the links between these provisions. Since the right to equality under Article 20 covers remuneration, the Committee no longer examines the national situation in this respect under Article 4§3 (right to equal pay) as regards States which have accepted both provisions.

2. Decision adopted at the 963rd meeting of the Ministers' Deputies on 3 May 2006.

Article 1 – Right to work

Paragraph 4 – Vocational guidance, training and rehabilitation

Under Article 1§4 of the Revised Charter, the Committee considers vocational guidance, vocational training of adult workers and the rehabilitation of persons with disabilities (dealt with respectively under Articles 9, 10§3 and 15§1, none of which Bulgaria has accepted). Certain aspects of these issues will be considered here.

As the aim of Article 1 of the Charter is to ensure the effective exercise of the right to work, the Committee has stated that, to comply with Article 1§4, states must not only possess institutions providing vocational guidance, training and rehabilitation but must also secure access to these institutions for all the persons concerned, including foreign nationals of states party and persons with disabilities (Conclusions XII-1, statement of interpretation on Article 1§4, p. 67).

Article 1§4 is completed by Articles 9 (right to vocational guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with disabilities to vocational guidance, education and training), which contain more specific rights to vocational guidance and training.

The Committee considers the following points from the standpoint of Article 1§4, concerning respectively guidance, continuing training and guidance and training for disabled persons:

– whether the labour market offers vocational guidance and training services for employed and unemployed persons and guidance and training aimed specifically at persons with disabilities;
– access: how many people make use of these services;
– equal treatment of foreign nationals, nationals of other states party and persons with disabilities.

Vocational guidance

The Committee notes from another source[1] that vocational guidance is provided in the education system, particularly in secondary education and vocational institutions. It asks for the next report to clarify whether this concerns all students.

According to the report, the ministry of education and science has established a national pedagogical centre, which organises and co-ordinates student educational support, consultation and guidance and training for teaching and vocational guidance staff. The national centre also has regional branches across the country. They employ a total of 72 persons.

According to the report, vocational guidance is provided by employment office directorates and vocational guidance centres, which include vocational information centres, centres for vocational training and counselling and job clubs. The information and vocational training and counselling centres are aimed at employed persons, the jobless and students.

The report refers to an implementing order of the new employment promotion legislation that came into force in 2005. The reform would combine the information and vocational training and counselling centres and job clubs into specialist job centres under the employment office directorates. The Committee asks for information in the next report on the outcome of the reform.

The vocational counselling and guidance services comprise individual interviews, offering information on various occupations, associated skills and the labour market situation, and group sessions, offering information on occupations and the services offered by employment office directorates and helping unemployed persons to find work.

The staffing of these services includes four officials responsible for the central administration of the national employment agency, 52 persons, including 12 psychologists, in the various specialist job centres and so-called labour mediators in the employment office directorates. Training is also available for the staff concerned.

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1. European Training Foundation, Achieving the Lisbon Goals. The Contribution of Vocational Education and Training in Bulgaria, 2004, p. 6 (www.etf.eu.int).

According to the report, 154 218 unemployed persons received individual assistance in 2004, compared with 114 336 in 2003. However, the numbers of such persons taking part in group vocational guidance activities fell between the two years, from 46 006 to 40 190.

It also asks whether vocational guidance is provided free of charge.

Continuing vocational training

In answer to the Committee, the report says that employees' training costs are met by employers, who may apply for government support, subject to a maximum laid down in the Employment Promotion Act

The Committee notes from another source[1] that among the population aged 25 to 64, at 1.4 % participation in life-long education in Bulgaria[2] is much below the European average of 12.5 %. It asks what steps are planned to rectify this.

The Committee also asks approximately how many training placements or courses are on offer and how many people, particularly unemployed persons, take advantage of the training provided by associations, state vocational institutions and universities, so that it can assess more accurately whether the supply meets the demand for training.

Guidance, education and training for persons with disabilities

According to the report, the disabled persons' agency has primary responsibility for implementing the relevant legislation, particularly in the form of vocational guidance and training programmes for persons with disabilities and assistance with retraining, in co-operation with non-governmental organisations and specialist undertakings.

The report provides figures on the number of beneficiaries of these services, but these only cover part of the reference period. Between 2003 and 2005, 142 specialist enterprises received funding from the disabled persons' agency for social projects and over the same period 62 non-governmental organisations received funding for commercial projects. The Committee asks for the relevant statistics on the reference period in the next report.

The employment office directorates and job centres also provide vocational guidance services to registered persons with disabilities. The Oborishte directorate in Sofia has established opportunity development centres for persons with physical and sensorial disabilities. According to the report, the Oborishte office carried out 1 010 individual interviews in 2004, while 30 persons with disabilities took part in training courses and 66 found jobs.

The Committee also notes from the report that various programmes for persons with disabilities have been launched by the ministry of labour and social policy since 2003, particularly ones aimed at reintegrating jobless disabled persons through training, via a national programme for employment and vocational training of persons with permanent disabilities, and the development of social services for the mentally disabled, under the PHARE 2003 Programme.

The Committee asks for information on the number of disabled persons taking part in training or retraining programmes.

In answer to the Committee, the report says that nationals of other states party residing or working lawfully in Bulgaria enjoy equal treatment regarding all the aspects considered under Article 1§4, so long as they hold a permanent residence permit. The Committee asks what are the conditions governing the issuing of such permits.

Conclusion

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

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1. "Implementation of the Lisbon Objectives by the acceding and candidate countries: an evaluation of the state of lifelong education and training and lifelong learning strategies", article by Jean-Raymond Masson, European Journal of Vocational Training, No. 33, pp. 7-22 (www.etf.eu.int).

2. Based on the participation rate in training activities in the four weeks immediately preceding the survey, *ibid.,* p. 9.

Article 2 – Right to just conditions of work

Paragraph 2 – Public holidays with pay

The Committee notes the information provide in Bulgaria's report.

The Committee recalls from its previous conclusion that public holidays are paid and that where work is performed on a public holiday it is remuneration at least at double the usual remuneration.

The Committee had asked for further information on the circumstances under which work may be carried out on public holidays and whether an employee may be granted time off in lieu for work performed on a public holiday.

According to the report Article 144 of the Labour Code sets out the circumstances under which work may be performed on a public holiday, these relate to exceptional circumstances.

The report confirms that work on a public holiday may be compensated by time off in lieu. The Committee asks for information on wages paid to workers who work on a public holiday.

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

Paragraph 4 – Elimination of risks for workers in dangerous or unhealthy occupations

The Committee notes the information provide in Bulgaria's report.

The Committee recalls from its previous conclusion that, policy for labour health and safety focuses on risk prevention and assessment and control of risks where they cannot be eliminated (Conclusions 2003).

The Committee refers to its conclusion under Article 3 for further information on health and safety policy.

The Committee recalls that Article 137 of the Labour Code provides that reduced working hours may be provided for workers in unhealthy or 'difficult' occupations Cabinet of Ministers Decree No. 322 of

27 December 1994 sets out the conditions for reduced working hours and lists the occupations or work processes deemed dangerous or unhealthy.

Article 155 of the Labour Code provides that some categories of workers employed in dangerous or unhealthy occupations are entitled to additional holidays in addition to reduced working hours.

The Committee notes that the categories of workers entitled to additional leave was increased during the reference period.

The Committee asks for information on any other relevant measures taken to reduce exposure to risks.

The Committee deferred its previous conclusion pending information on the implementation of rules on special measures for those employed in dangerous and unhealthy occupations as it had received information that employers failed to observe the rules regarding elimination of risks, and special measure to reduce exposure to risks (Conclusions 2005). The Committee notes the information provided in the report on the activities of the Labour Inspectorate, in particular the information indicating that 72 % of all offences detected by the Labour Inspectorate concern occupational health and safety.

The Committee nevertheless asks whether the Labour Inspectorate monitors in particular whether the rules concerning dangerous and unhealthy occupations are respected.

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

Paragraph 5 – Weekly rest period

The Committee notes the information provided in Bulgaria's report.

The Committee previously noted that rules were introduced according to which the weekly rest period shall be at least 24 hours in continuous production processes where "summarised calculation of working hours" is concerned. The Committee asked that the next report explain the notion of summarised calculation of working hours.

The report clarifies that employees have the right to an uninterrupted period of 36 hours rest weekly, which may be reduced under certain circumstance to 24 hours, in such cases compensatory rest must be granted subsequently. The report explains the notion of summarized calculation of working hours, it is the average working time as calculated over a certain period.

The Committee requested clarification as to whether it is possible to postpone the weekly rest period, and if so, for how long. The report is unclear in this respect therefore the Committee requests information to be provided in the next report as to whether weekly rest periods may be deferred to the following week, or subsequent weeks, and what is the longest period a worker may work before being granted a weekly rest period etc.

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

Paragraph 6 – Information on employment contract

The Committee notes the information provided in Bulgaria's report.

The Committee previously asked that the next report contain more exhaustive details on all the essential aspects to be included in the written employment contract under Bulgarian law, including any documents specified by the Minister of Labour and Social Policy.

Article 66(1) of the Labour Code requires that an employment contract contain details of the parties, the place of work, the commencement of the employment, the date the contract was signed, the duration of the contract, the job title and nature of the work, the notice period in cases of termination of employment, the duration of annual and special leave, the duration of the working day or week, and the basic and additional remuneration as well as the regularity of the payment. The employment contract may also contain details of other terms and conditions for example those established by a collective agreement.

The Labour Code requires that an employer notify the relevant territorial branch of the National Social Security Institute of the employment contract.

The report provides information on the measures taken by the General Labour Inspectorate to ensure compliance with the legislation as well as information on the number of violations detected and the trends in violations.

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

Paragraph 7 – Night work

The Committee notes the information provided in Bulgaria's report.

The Committee previously noted that pursuant to Art. 140§2 of the Labour Code night work is work performed between 10 pm and 6 am. Under Art. 140§1 night working hours may not exceed 7 per 24 hour period and 35 per week. Art. 261 et seq. of the Labour Code provides for increased remuneration for night work.

In terms of other measures provided for to take account of the special nature of night work, the previous report stated that the employer shall provide employees with "hot food, refreshments and other facilities for the effectiveness of night work."

The current report provides information on the categories of workers prohibited from performing night work, such as those under 18 years of age, those with children under 6 years of age (except with their consent).

The Committee asks that the next report contain detailed information on measures such as periodical medical examinations, the possibilities for transfer to daytime work; and continuous consultation with workers' representatives on the introduction of night work, and on measures taken to reconcile the needs of workers with the special nature of night work.

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

Article 3 – Right to safe and healthy working conditions

Paragraph 1 – Health and safety and the working environment

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

General objective of national policy

The Minister of Labour and Social Policy is responsible for developing, co-ordinating and implementing state policy in the field of safety and health at work. The obligation to draw up and implement such a policy is laid down in the Constitution of the Republic of Bulgaria (Article 48, Paragraph 5). The protection of health, life and the working conditions of workers is therefore among the priorities of the Government of Bulgaria. The legal framework, in particular the Safety and Health at Work Act of 1997, contains the principles, requirements and measures which serve as a basis for the development and implementation of the national policy in this field.

The fundamental objective of national policy in this field is the safeguarding and prevention of the health and safety of workers through the implementation of preventive measures at the national level, with effect on every enterprise and workplace. A key instrument of prevention is the legal requirement and established practice of carrying out, in a written form, a risk assessment in each company, enterprise and workplace. The Committee wishes the next report to provide more details on how the employer assesses occupational risks and ensures that each worker receives adequate training in health and safety matters.

National policy measures are planned and implemented at all levels – national, sectoral and entrepreneurial. At the national level, they predominantly take the form of strategies (guidelines). In 2002, the Council of Ministers adopted a Decree containing "Guidelines for the development of activities for health and safety at work for the period up until 2006", in line with the European Union strategy for safety and health at work. Emphasis was put on the provision of "welfare at work", taking into account changes in the field of labour and the appearance of new risks.

The report indicates that the amended Safety and Health at Work Act foresees the creation of a Working Conditions Fund, with the aim of financing actions and activities designed to improve working conditions. The Committee asks if the Fund is already operational, and the type of activities is has financed. Moreover, the Committee wishes the next report to provide details on the manner in which the State is involved in research and training in the area of health and safety.

Consultation with employers' and workers' organisations

The National Council on Working Conditions, a permanent tripartite body composed of state administration, organisations of workers and of employers, serves as a forum where national policy on health and safety is discussed, formulated and co-ordinated. The decisions of the National Council on Working Conditions are adopted on consensus.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Bulgaria is in conformity with Article 3§1 of the Revised Charter.

Paragraph 2 – Issue of safety and health regulations

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

Regulations on health and safety at work

The main pieces of legislation in this field are the Health and Safety at Work Act of 1997, the Labour Code and the Social Security Code.

The Committee notes from the report, as well as from another source[1], that Bulgaria has progressively transposed the European Union *acquis* in the field of health and safety at work. In 2002, new legislation was adopted on the protection of workers against risks arising from exposure to biological agents in the workplace, display screen equipment, exposure to asbestos, exposure to noise, temporary or mobile

1. Activities of the European Union, Summaries of legislation, on: http://europa.eu/scadplus/leg/en/lvb/e02101.htm.

construction sites, work equipment, the health and safety of workers in surface and underground mineral-extracting industries and medical assistance on board vessels. In 2004, legislation was adopted in order to transpose the *acquis* on carcinogenic and mutagenic substances, risks related to chemical agents, and minimum health and safety requirements on board fishing vessels. On the basis of this information, the Committee considers that the general obligation that rules on occupational health and safety must specifically cover a large majority of the risks listed in the General Introduction to Conclusions XIV-2 (pp. 39-40) is met.

The report supplies the information requested in the previous conclusion on some of the risks and categories of workers which the Committee has decided to pay particular attention to:

– Protection of workers against asbestos. Ordinance No. 1 of 2003 transposes European Union standards on the protection of workers against risks related to exposure to asbestos at work. Given that Council Directive 83/477/EEC of 19 September 1983 on the protection of workers against risks connected with exposure to asbestos during work[1] has been amended during the reference period, the Committee asks if the new exposure limit as well as the minimum health and safety measures introduced by Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003[2], have been taken into account in the above-mentioned Ordinance.

– Protection of temporary workers. The report indicates that legislation on health and safety is applied irrespective of the manner, duration and other terms and conditions of recruitment. An Ordinance for securing the health and safety of workers in a temporary employment relationship was adopted in 2006 – outside the reference period. The Committee asks the next report to provide more details on this text and to provide concrete examples on the modalities and type of training which temporary and agency workers receive when starting a job, especially if the latter involves dangerous tasks or takes place in a high risk sector.

Personal scope of the regulations

The report does not indicate any changes in the situation, which the Committee previously considered to be in conformity.

Consultation with employers' and workers' organisations

The National Council on Working Conditions, a permanent tripartite body composed of state administration, organisations of workers and of employers, is empowered to discuss and express its opinion on draft laws and regulations in the field of working conditions, as well as to make proposals for their amendment or supplement. The decisions of the National Council on Working Conditions are adopted on consensus.

As regards the statement of the Association of Democratic Trade Unions that the National Tripartite Co-operation Council, which is also consulted by the Government on all proposed health and safety legislation or regulations, was a sham body whose opinions carried no practical weight and only represented a fifth of the working population, the Government replies that the Association of Democratic Trade Unions does not meet the criteria of national representativeness. In addition, it indicates that the National Tripartite Co-operation Council, and the National Council on Working Conditions, both include participation of the Confederation of Independent Trade Unions in Bulgaria (CITUB) and the Confederation of Labour "Podkrepa", comprising more than 95 % of the members of trade union organisations in Bulgaria.

Conclusion

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

Paragraph 3 – Provision for the enforcement of safety and health regulations by measures of supervision

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

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1. Official Journal No. L 263 of 24/09/1983, pp. 0025-0032.

2. Official Journal No. L 097 of 15/04/2003.

Occupational accidents and diseases

The Committee notes from the report that the number of occupational accidents decreased from 5 778 in 2001 to 4 405 in 2004. This fall in the number of accidents at work between 2001 and 2004 is confirmed by Eurostat[1]. The number of work accidents in relation to the total number of insured persons in 2004[2] gives an accident rate of 0.2 accidents for every 100 workers. The number of fatal accidents fell from 138 in 2001 to 130 in 2004.

The Committee notes once again that both in absolute terms and in comparison with other Parties, the number and frequency of occupational accidents remains very low. The report indicates that in 2001 a new statistical system named "Work Accidents", based on the European System of Work Accidents (ESAW), was launched. Furthermore, the legal basis under which the notification of work accidents is regulated, Decree No. 263 of 1999, was amended in 2002 with a view to increasing the effectiveness in the registering of work accidents. The Committee asks to be kept informed on the reliability of the statistics on work accidents following the changes introduced, and whether there may be other reasons leading to an under-reporting of accidents.

The report indicates that occupational diseases increased from 660 in 2001 to 1 168 in 2004. Statistics on occupational diseases are kept by the National Register of Occupational Diseases. The Register, which is a permanent member of Eurostat, develops preventive activities in sectors characterised by high rates of occupational diseases, such as construction, mining (ore and coal extraction), energy production and the chemical industry, in collaboration with the respective Occupational Health Services.

Activities of the labour inspectorate

The Committee examined the General Labour Inspectorate Executive Agency's (GLIEA) scope in Conclusions 2003 (p. 34). The were around 700 000 enterprises during the reference period, but the report clarifies that not all of them fall under the inspectorate's control, since some of them do not perform the activities they are registered for, and others do not involve employed labour.

In reply to the Committee, the report describes the extent of inspectors' powers of investigation, which are quite broad, and include, for example, visiting premises at any time; demanding explanations and the presentation of necessary documents; direct questioning of workers or employees or taking trials, samples or other similar materials for laboratory examination.

The Committee notes from another source[3] that the 2005 Comprehensive monitoring report on the state of preparedness for EU membership of Bulgaria and Romania indicated that Bulgaria was meeting the commitments and requirements arising from the accession negotiations in the area of health and safety at work, but that implementing structures were to be further strengthened in this field. The Committee also notes from this same source that a plan to increase the administrative capacity of the General Labour Inspectorate for the period 2004-2007 was approved in April 2004. The Committee asks to be kept informed on the implementation of this plan and on the staffing resources of the labour inspectorate in general, given the importance of having a strong labour inspectorate capable of effectively supervising implementation of health and safety regulations.

In 2005, the number of inspections carried out was 35 111, during which 28 897 enterprises were visited (12.3 % of economic entities) and where 1 221 941 workers were employed. Given that the number of insured employees in Bulgaria was 2 179 180, the Committee notes that the proportion of workers covered by such inspections compared with the total workforce was around 56 %. The Committee asks the next report to confirm if such a proportion is correct, and if possible to provide the percentage of workers covered by inspections only in relation to occupational health and safety inspections.

As regards the number of contraventions, the report indicates that in 2005 there were 196 067 infringements, of which 142 371 were related to a breach of health and safety regulations. The principal measure of compulsion applied was a recommendation/warning (in 190 799 cases). There was a suspension of activities or closure in 1 828 cases, and 202 persons were suspended from work. The type of measure which significantly increased during the reference period was that of statements

1. With 1998=100, the index values for subsequent years were as follows: 2001: 90; 2002: 84; 2003: 65; and 2004: 58 (Eurostat, Population and Social conditions, in http://epp.eurostat.ec.europa.eu/portal/).

2. The report indicates that there were 2 179 180 insured persons in 2004.

3. Activities of the European Union, Summaries of legislation, on: http://europa.eu/scadplus/leg/en/lvb/e02101.htm.

establishing penal-administrative liability, from 4 164 in 2001 to 9 757 in 2005 (out of which, 5 606 statements related to a breach of occupational health and safety regulations). On the basis of these statements, 8 144 penal enactments were served. This type of measure is used when persons fail to fulfill in due time recommendations, repeat the same violations, deliberately deviate from the legal provisions or place obstacles before the inspectors in the fulfillment of the their statutory powers. The report confirms that when inspectors find infringements with evidence of a crime, they shall inform the competent prosecution authorities who hold the powers to initiate criminal proceedings.

Conclusion

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

Paragraph 4 – Occupational health services

The obligation of employers to provide employees with occupational health services is laid down in the Health and Safety at Work Act, and applies to all economic sectors (including institutions). The Committee examined the main functions and duties of these services, as laid down in Order No. 14 of 8 August 1988, in Conclusions 2003 (p. 37).

The report states that all large enterprises and the majority of medium-sized enterprises have established occupational health services (although some still have recourse to external services). The number of registered external occupational health services is around 650.
As regards small enterprises, supervisory activity by the labour inspectorate has revealed that most of these companies do not meet the legislative requirements on occupational health services. The Committee asks how many workers are employed in such companies, and therefore estimated to not have occupational health services at their disposal.

The Committee notes that problems continue to exist in implementing this provision. Whilst the report indicates that a number of information and administrative measures have been put in place to improve the situation, it does not specify what these measures are. The Committee therefore asks the next report to provide more detailed information on such measures.

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

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased rate of remuneration for overtime work

The Committee takes note of the information contained in the Bulgarian report.

The Committee notes that Paragraph 2 of Article 150 of the Labour Code concerning the prohibition of compensation for overtime work with a rest period was repealed. In this connection the Committee would like to ask whether the compensatory rest period granted is longer than the overtime worked.

In its previous conclusion the Committee asked about civil servants whose compensatory leave cannot be more than twelve days per year. In particular it asked how many hours of overtime work a one-day compensatory leave was meant to compensate. In this connection the Committee notes from the report that in pursuance to Section 50 of the Civil Service Act the terms and conditions of additional leave to compensate overtime are defined by the employment body. The Committee notes that it is not clear from the report whether the right to an increased compensatory time off is guaranteed to workers in civil service, therefore it repeats its question.

The Committee also asked what was the impact of working time flexibility measures on compensation for overtime work. In this respect the report states that by virtue of Article 263 of the Labour Code no additional labour remuneration shall be paid for overtime work to employees with open-ended working time. By virtue of Article 139§4 of the Labour Code the overtime in such cases will be compensated by additional annual paid leave. The Committee also notes that according to Article 136.*a* of the Labour Code the employer may extend the working hours during a period of up to 60 working days in one calendar year but for not more than 20 consecutive working days. The employer shall compensate the extension of working hours with respective reduction of working hours within 4 months. The Committee notes that flexible arrangements where working hours are averaged on a certain reference period do not constitute a violation of Article 4§2 provided that they prevent unreasonable daily and weekly working time (up to 16 hours on any single day or more than 60 hours

in any single week) and that they operate within a legal framework providing adequate guarantees for workers. The Committee asks if this is the case.

The Committee notes that if necessary information is not provided in the next report, there will be nothing to show that the situation in Bulgaria is in compliance with Article 4§2 of the Revised Charter.

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

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

In the General Introduction to Conclusions 2002 on the Revised Charter, the Committee indicated that "since the right to equality under Article 20 of the Revised Charter covers remuneration, the Committee will no longer examine the national situation in this respect under Article 4§3 (right to equal pay). Consequently, States which have accepted both provisions, are no longer required to submit a report on the application of Article 4§3".

Therefore, the Committee decides to adopt the same conclusion under both provisions in respect of equal pay. Consequently, as it did under Article 20 (Conclusions 2006, pp. 133-135), it concludes that the situation in Bulgaria is in conformity with Article 4§3 of the Revised Charter.

Paragraph 4 – Reasonable notice of termination of employment

The Committee notes the information in Bulgaria's report.

In its last conclusion (Conclusions 2003, p. 41), it found that the situation was not in conformity with Article 4§4 because employees on indefinite contracts with five or more years' service were not granted a reasonable period of notice for termination of employment. It notes from the report that the situation remains unchanged.

It also notes that under Article 334 of the Labour Code, employers may terminate contracts for work in addition to the principal work with fifteen days' notice. There is no reference to employees' length of service. The Committee has ruled that a two-week termination notice for workers with a period of service of more than 6 months is not reasonable (Conclusions XVI-2, Poland, p. 616).

The Committee concludes that the situation in Bulgaria is not in conformity with Article 4§4 of the Revised Charter because:

– thirty days is not a reasonable period of notice for employees with five or more years' service;
– fifteen days' notice is not a reasonable period of notice for employees with six or more months' service under contract for an additional work.

Paragraph 5 – Limitation of deduction from wages

The Committee takes note of the information in the Bulgarian report, according to which the relevant laws are as described in the last report.

In the previous cycle (Conclusions 2003, p. 42), the Committee deferred its conclusion pending receipt of information indicating:

– whether the system limiting wage deductions ensured that workers would earn at least a minimum subsistence income under all circumstances;
– what procedures applied in the event of wage deductions.

With regard to the first question, the Committee points out that, after deductions, salaries must still be high enough for workers to provide for themselves and their dependants (Conclusions XI-1, Greece, p. 76). It notes that the report states only that wage deductions may never exceed the amounts set by the Code of Civil Procedure, as listed in the previous conclusions. The Committee notes therefore that the report does not reply in sufficient detail to the question put in the previous conclusions.

With regard to the second question, the only procedures described in the report are those relating to distraint, whereas Article 4§5 covers all forms of wage deductions, including maintenance payments, reimbursements of advances and advances on pay.

The Committee stresses how much importance it attaches to this information. If it is not included in the next report, there will be nothing to indicate that the situation in Bulgaria is in conformity with Article 4§5 of the Revised Charter.

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

Article 21 – Right of workers to be informed and consulted

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

Legal framework

The Committee assessed the provisions of the Labour Code and related Government regulations governing the right to information and consultation of workers within the undertaking through the employees' general assembly or representatives elected by the assembly in its previous conclusion on Article 21 of the Revised Charter (Conclusions 2003, Bulgaria).

The Committee notes from another source[1] that on 1 July 2006, i.e. outside the reference period, a bill amending the Labour Code concerning the regulation of employment relations with respect to information and consultation came into effect which is, *inter alia,* supposed to implement Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community[2] and the Committee asks the next report what are the relevant rules stipulated by the new legislation in this respect.

Scope

Personal scope

The Committee noted from the previous report that legal provisions governing the information and consultation of workers apply to any category of workers. In reply to the Committee, the report clarifies that this includes employees of undertakings managed by public authorities and the Committee considers the situation to be in conformity with the requirements of the Revised Charter in this respect.

Material scope

The Committee noted in its previous conclusion that Article 7 of the Labour Code provides that employees shall participate, through their representatives, in the discussion and assessment of management issues where provided by law. The provision further requires that employee's representatives be consulted on issues relating to labour and social security. In addition, Article 37 of the Labour Code requires that trade unions represented within the undertaking participate in the drafting of internal regulations with regard to labour relations.

The Committee noted that these provisions do not specify what are the decisions on which employees' representatives must be consulted, nor do they state whether the consultation must be done in good time and requested that the next report provide all relevant information with regard to these two particular issues. The report states in this context that within the scope of collective bargaining as well as during the preparation of collective agreements the employers must provide information regarding the economic and financial situation of the enterprise in good time to the employees' representatives.

The Committee again recalls that, under Article 21 of the Revised Charter, workers or their representatives shall be consulted in good time on proposed decisions that could substantially affect their interests, particularly on those decisions that could have an important impact on the employment situation in the undertaking. The Committee asks the next report to specify whether such consultation takes place with respect to such decisions which are taken outside the scope of collective bargaining. It asks whether rules on information and consultation are contained in collective agreements themselves and if so it wishes to receive information on their content and on what is the proportion of employees covered by such collective agreements.

It asks in particular what are the corresponding rules pursuant to the aforementioned amendments to the Labour Code.

Rules and procedures

The Committee observed in its previous conclusion that the workers' right to information and consultation is vested in the "personnel assembly" (PA), which pursuant to Art. 6 of the Labour Code, is composed of all employees in the undertaking. Pursuant to Art. 6§2 of the Labour Code, an assembly of workers' delegates (DA) may be elected by the PA to act in its stead. Pursuant to Art. 6.*a*

1. Website of the European Foundation for the Improvement of Living and Working Conditions (www.eiro.eurofound.eu.int).

2. Official Journal L 80, 23.3.2002, pp. 29-34.

of the Labour Code, the PA, or DA, shall be convened by the employer, by a trade union, or by one-tenth of the employees (or their elected delegates, as the case may be). The PA (DA) may take decisions by a simple majority vote, provided it is attended by more than half of the employees (delegates).

The Committee understands from the information provided in the report in reply to its corresponding question that also non-unionised members of the PA may nominate candidates or be elected as workers' delegates and that employees who are nationals of States Parties to the Revised Charter or the Charter of 1961 may participate in the votes and be elected as workers' delegates. It asks the next report to confirm that this understanding is correct.

Enforcement

The Committee noted that employers who infringe their obligations under the above-mentioned provisions may incur criminal sanctions. The report specifies that trade unions may lodge a complaint with the competent court in the event of a violation of their right to be informed and consulted within the scope of collective bargaining. The report further refers to Article 414 of the Labour Code stating that an employer who violates provisions of the Labour Codes may be subject to a fine between 250 to 1 000 Leva (128 to 510 Euro). The Committee also asks whether employees' representatives other than trade union representatives have a similar right to complain and whether similar sanctions are applicable.

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 the working conditions and working environment

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

Legal framework

The Committee assessed the provisions of the Labour Code as regards the right of workers to take part in the determination and improvement of the working conditions and working environment as well as the provisions on bodies for workers' participation in matters of health and safety in its previous conclusion on Article 22 of the Revised Charter (Conclusions 2003, Bulgaria).

Scope

Personal scope

The Committee noted from the previous report that the legal provisions governing the participation of workers in the determination and improvement of their working conditions, work organisation and working environment, the protection of their health and safety and the organisation of social and socio-cultural services and facilities apply to any category of workers with no exceptions and to all undertakings regardless of the number of workers employed. In reply to the Committee, the report confirms that these provisions also apply to workers employed in undertakings managed by public authorities.

Material scope

– Working conditions, work organisation and working environment

The Committee observed in its previous conclusion that the right to participation of workers in the determination and improvement of their working conditions, work organisation and working environment is vested in the "personnel assembly" (PA), which pursuant to Art. 6 of the Labour Code, is composed of all employees in the undertaking. Pursuant to Art. 6§2 of the Labour Code, an assembly of workers' delegates (DA) may be elected by the PA to act in its stead.

The Committee understands from the information provided in the report in response to its corresponding question that also non-unionised members of the PA may nominate candidates or be elected as workers' delegates and that employees who are nationals of States Parties to the Revised Charter or the Charter of 1961 may participate in the votes and be elected as workers' delegates. It asks the next report to confirm that this understanding is correct.

The Committee asked for information what are the matters covered by Article 22 of the Revised Charter that are subject to participation of the PA. The Committee understands from the information provided in the report that participation in the determination of working conditions through the PA is limited to cases where matters are not already covered by participation of trade union representatives. The Committee already noted in its conclusion under Article 21 that such participation mainly takes place within the scope of collective bargaining. Noting that the worker's right to take part in the determination and improvement of the working conditions and working environment seems to be mainly implemented through trade union representatives, the Committee asks whether workers or their representatives have an effective right to take part in the determination of working conditions and working environment in the undertaking also outside the scope of collective bargaining. In this context it wishes e.g. to know whether collective agreements themselves contain rules on the participation of employees in the determination and improvement of the working conditions and working environment and what is the proportion of workers out of the total workforce covered by such collective agreements.

– Protection of health and safety

Pursuant to Section 26 of the Safe and Healthy Working Conditions Act employers shall enable employees or their representatives to participate in the determination of all measures related to the safety and health of employees at work.

Sections 27 et seq. of the Safe and Healthy Working Conditions Act stipulate that in undertakings with more than fifty employees "working conditions committee" (CWC) composed of an equal number of representatives of the workers and of the employer, with a maximum of up to ten members shall be established. In smaller undertakings, there shall be a "working conditions group" (GWC) composed of

the employer, or one employer representative, and of one workers' representative. Workers' representatives to the CWC shall be elected by the PA of the respective undertaking for a four-year term. In reply to the Committee, the report specifies that non-unionised workers may nominate candidates to the election, and may be elected as representatives to CWCs and GWCs.

The CWCs and GWCs are involved in the discussions on the results of occupational risk assessment analysis, on the planning and implementation of measures to ensure the safety and health of employees at the workplace and do also carry out inspections on the status of implementation of occupational health and safety provisions. Employees' representatives elected to the CWCs and GWCs are granted access to the information necessary for the carrying out of their function such as analysis of work accidents etc, require the employer to implement appropriate measures to mitigate occupational hazards, apply to the control authorities if they consider that the measures undertaken by the employer are insufficient and participate in inspection visits carried out by the control authorities.

The Committee had found in its previous conclusion that in practice a large proportion of the workforce is in fact not covered by CWCs and GWCs and that some of the bodies that are established have been found to not function adequately. It therefore requested more detailed information on the proportion of workers actually covered by CWCs and GWCs bodies that are established. It notes from the report that over the reference period the number of enterprises having established CWCs or GWCs has increased and that in 2004, 47.2 % of enterprises disposed of such bodies. However, the Committee notes that still less than half of the total number of enterprises are comprised in this development and further notes from the report that many of the existing CWCs and GWCs are not functioning in practice. The report explains that this is mainly related to a lack of interest by the social partners to make the existing bodies operative or to establish new ones. The Committee reiterates its question as to what are the measures envisaged by the Bulgarian Government to counteract this situation.

– Organisation of social and socio-cultural services and facilities

The Committee noted in its previous conclusion that the Labour Code enumerates a series of social and socio-cultural services and facilities that may be set up within the undertaking. It reiterates its question as to how workers' representatives participate in the organisation of these services.

Enforcement

The Committee noted in its previous conclusion that employers who infringe the employees' representatives right to take part in the determination and improvement of the working conditions and working environment under the Labour Code may incur criminal sanctions. The report further refers to Article 414 of the Labour Code stating that an employer who violates provisions of the Labour Code may be subject to a fine between 250 to 1 000 Leva (128 to 510 Euro).

As regards the participation in the protection of health and safety at the workplace as provided under the Safe and Healthy Working Conditions Act, the Committee notes from information provided under Article 21 of the Revised Charter that pursuant to Section 54 of the said Act the overall control over its implementation lies with the Ministry of Labour and Social Policy and that such control shall be carried out by the General Labour Inspectorate, the competencies of which shall be defined by the Council of Ministers. A violation of the provisions of the Safe and Healthy Working Conditions Act makes the employer subject to the imposition of fines under Article 414 of the Labour Code (see above).

The report specifies that trade unions may lodge a complaint with the competent court in the event of a violation of their right to participate within the scope of collective bargaining. The Committee asks whether employees' representatives other than trade union representatives have a similar right to complain and what are the sanctions that may be imposed by the courts.

Conclusion

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

Article 24 – Right to protection in cases of termination of employment

The Committee notes the information in Bulgaria's report.

Scope

The Committee had previously asked whether employees on fixed term contracts had equal rights concerning protection against dismissal and whether in general a trial period or a minimum period of employment must be completed before protection against dismissal becomes applicable. The report is unclear in this respect and in light of the information available to the Committee, it assumes that workers on fixed term contracts have the same rights to protection against dismissal, similarly it assumes that there is no minimum period of employment required before the guarantees in the Labour Code concerning dismissal apply. However it asks for confirmation that this understanding is correct.

Obligation to provide a valid reason for termination of employment

The termination of employment is regulated by the Labour Code, which provides an exhaustive list of grounds on which a contract of employment maybe terminated either with or without notice. The Committee examined these grounds in Conclusions 2003. The report provides information on amendments to the relevant provisions of the Labour Code carried out during the reference period, as well as providing answers to the questions asked by the Committee.

The Committee asked whether immediate dismissal requires there to be an element of fault on the part of the employee. The report refers to the provisions of the Labour Code, which permit dismissal without notice, the Committee notes that in this respect all cases provided for imply an element of fault on the part of the employee. It further notes that in case of disciplinary dismissal the employer is obliged to hear the employee and that prior authorization is required from the Labour Inspectorate in cases of disciplinary dismissal involving certain categories of employees such as women with small children, employee with recognized health problems etc.

The Labour Code provides that the imprisonment of an employee following a sentence by a court is a ground for immediate dismissal; The Committee had asked whether this was possible even where the sentence was not concerned with facts related to the employment. The report states that the length of imprisonment is immaterial; the mere fact an employee is sentenced to a term of imprisonment is sufficient. The Committee recalls its case law in this regard; "A prison sentence delivered in court for employment-related offences can be considered a valid reason for dismissal. This is not the case with prison sentences for offences unrelated with the person's employment, which cannot be considered valid reasons unless the length of the custodial sentence prevents the person from carrying out their work (Conclusions 2005, Estonia, pp. 205-210)". The Committee asks for further information on the situation.

As regards economic reasons for dismissal the Committee had asked for further information on dismissal on the grounds of reduction of staffing or volume of work (section 328 of the Labour Code). According to the report dismissal on these grounds is subject to judicial supervision, dismissal on these grounds must be in response to an objective and real economic necessity to reduce staff or where the volume of work is such that a reduction in staff is economically necessary. The Committee notes that collective agreements often require that in such cases prior consent must be obtained from the trade union in the enterprise, however it also notes that in such cases involving certain employees (such as women with young children persons suffering from certain recognized diseases) prior authorization is required from the Labour Inspectorate. The Committee seeks confirmation that the requirement to seek prior authorization is limited to when the dismissal concerns a particular category of employee.

Section 328 of the Labour Code also permits dismissals where there has been a "work stoppage for more than 15 days". According to the report this situation arises where the enterprise has been closed down or part of it temporarily due to economic reasons.

The Committee also previously requested further information on transfers to other parts of an enterprise as an employee may be dismissed where he/she refuses to be relocated.

According to the report an employee is expected to follow an enterprise where it or part of it is relocated, if not he may be dismissed. A worker who refuses to relocate may be dismissed (Section 328§7). Employees who do transfer are entitled to compensation. The Committee asks whether where

an employee's refusal to relocate with the enterprise is based on reasonable grounds what provision is the employee entitled to compensation?

The Committee notes that an employee may be dismissed on the grounds he/she has reached the retirement age (Section 328§10). The Committee considers that dismissal on grounds of age will not constitute a valid reason for termination of employment except in accordance with a valid retirement age justified by the operational requirements of the undertaking, establishment or service.

States should take adequate measures to ensure protection for all workers against dismissal on grounds of age. In order to assess the conformity of the ground relating to retirement age, the Committee asks the next report to provide the following information:

– is it for contracts of employment, collective agreements and/or legislation to fix the retirement age mentioned by this provision?
– is the employee automatically retired once he or she has reached the retirement age? If not, are there additional conditions to fulfill or specific procedures to follow?

The report confirms that termination of employment must always be done in writing however the Committee asks again whether the employer is obliged to state the reasons for the dismissal.

Prohibited dismissals

The Committee previously highlighted that it would concentrate under Article 24 on particular protection against dismissal on grounds of:

– "the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities"; and
– "temporary absence from work due to illness or injury".

Section 325 of the Labour Code permits the dismissal of an employee on the grounds the employee is suffering from a disability which prevents him/her from carrying out the job and where the employer cannot offer alternative suitable employment. The Committee had asked whether this was regardless of the origin of the injury (i.e. was this also the case for injuries/disabilities resulting from accidents in the workplace) and whether compensation was payable in such circumstances. The report states that dismissal on this ground is only permitted in strict circumstances; where a territorial Expert Medical Commission has certified that the employee has a disability of at least 50 % which prevents him/her from carrying out his assigned occupation and where the employer is unable to offer an alternative job. It further states that the case law of the Supreme Court of Cassation applies these requirements strictly.

However, the report provides no information on the protection of workers who are temporarily absent due to illness. The Committee notes that temporary absence from work due to illness is not a permitted ground for termination in the Labour Code, but again seeks further information on the protection against dismissal on grounds of illness, in particular employees not suffering from a long-term condition but who have been absent from work due to illness. For example is there a time limit placed on protection in such cases? The Committee notes that the report states elsewhere that it is legal to dismiss an employee where the employee is suffering from a temporary disability for a period of a year and the employer is unable to find a suitable alternative occupation for him/her. The implication is that temporary illness/ disability lasting under a year would not be a lawful ground of dismissal. The Committee seeks confirmation that this is correct.

As regards reprisals the Committee refers to its previous statements on the issue (Conclusion 2003) and asks whether there is any case law of the courts clearly demonstrating that reprisal dismissals are unlawful?

Remedies and sanctions

The Committee had previously noted that under section 344 of the Labour Code employees can challenge the legality of their dismissal before the courts, however it had noted form another source that the courts could not review economic grounds for dismissal and asked for further information. The current report simple states that the Labour Code lists exhaustively the grounds for dismissal and the courts review the lawfulness of a dismissal based on these grounds. Therefore the Committee asks for more precise information on the powers of the courts when reviewing the legality of an employee

dismissed on economic grounds; are their powers limited to reviewing the procedural rules or may they examine the facts underlying the economic reasons put forward by the employer.

The report confirms that if an employer has not sought to consent of or consulted the Labour Inspectorate and/or relevant medical commission where require to do so prior to dismissing an individual the courts will declare the dismissal illegal.

The Committee previously found that the situation was not in conformity with Article 24 of the Revised Charter on the grounds that the compensatory payment for unlawful termination of employment is subject to a maximum of six months' wages. The report provides no information that the situation has changed in this respect, therefore the Committee again finds the situation not to be in conformity with Article 24 of the Revised Charter.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 24 of the Revised Charter on the grounds that the compensation for unlawful termination of employment is subject to a maximum of six months' wages.

Article 26 – Right to dignity at work

Paragraph 1 – Sexual harassment

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

Legislation fighting sexual harassment was enhanced during the reference period. In the 2003 Protection against discrimination Act, the definition of sexual harassment was widened to encompass any unwanted conduct of a sexual nature and brought under the general heading of discrimination.

The Protection against Discrimination Act also makes provision for disciplinary sanctions against perpetrators of sexual harassment. It is also stipulated that employers must treat all employees equally when applying such sanctions where they are not the perpetrators of the sexual harassment themselves.

Liability of employers and means of redress

Under the new Act, employers who learn of a case of sexual harassment in the workplace committed by one of their employees or workers are required immediately to open an inquiry, take all the necessary measures to bring a halt to these acts and impose disciplinary sanctions on the offender or offenders. In this connection, the Commission for protection against discrimination, which is a new institution established by the aforementioned act, is also entitled to take coercive administrative measures to prevent and halt sexual harassment and its consequences including instructions for employers to stop carrying out decisions or implementing regulations on such acts. Employers also have a legal duty to inform all persons of their rights.

In reply to the Committee, the report states that under the Protection against Discrimination Act, persons who aid and abet perpetrators of acts of sexual harassment are civilly liable whether or not they are employees (they may also be sub-contractors, self-employed workers, customers, visitors, etc.).

The report states that the Criminal Code does not class sexual harassment as a crime *per se*. Under certain circumstances, however, it can be considered as such. For example, Article 143 of the Penal Code provides for up to six years' imprisonment if sexual harassment is used by force, threat or abuse of authority. There are *de facto* criminal sanctions covering sexual harassment, for persons who fail to comply with the Protection against Discrimination Act, or a judicial decision, or a decision of the Commission for protection against discrimination, or for persons who hinder investigative measures called for by the Commission. These sanctions are imposed by the Commission for protection against discrimination itself and are open to appeal before the Supreme Administrative Court.

The Commission can impose fines of up to 2 000 Bulgarian BGN (about € 1 000), or BGN 10 000 (€ 5 113) if the person concerned has failed to comply with a judicial decision. If an infringement is not rectified within three months of the entry into force of the sanctions, the fine may be as much as BGN 20 000 (€ 10 226). Fines of up to BGN 2 500 (€ 1 278) may be imposed on corporate entities involved in a sexual harassment case.

The Commission for protection against discrimination, which was established by the Protection against Discrimination Act, is an independent body responsible for registering and investigating complaints, reviewing the compliance of administrative measures with the Act and imposing sanctions on perpetrators of sexual harassment, but also for making proposals and recommendations to the authorities with a view to ending cases of ongoing discrimination or situations at variance with the new Act.

A three-year extinctive time-limit applies to all complaints of sexual harassment. If an offence is established, the Commission refers the case to the public prosecutor's department, whereas the rapporteur proposes a friendly settlement to the parties. After this, the Commission gives its decision, which is open to appeal before the Supreme Administrative Court within 14 days.

The Protection against Discrimination Act has also introduced a new means of obtaining redress, before the regional courts. Any private person victim of sexual harassment or trade union or non-governmental organisation acting on behalf of her may use this remedy against any administrative measure that contravenes the Protection against Discrimination Act or any other law relating to discrimination.

In reply to the Committee, the report states that it is for individual courts to assess whether a dismissal has been lawful. There are no specific provisions on the subject in Bulgarian law. Under the Protection against Discrimination Act, employers who unilaterally decide to terminate an employment contract in connection with a sexual harassment case, in accordance with the Labour Code, must apply equal criteria when exercising this right.

In its previous conclusion, the Committee asked for information about well-established case-law in the field of sexual harassment. In the absence of any such information, the Committee reiterates its question, including that of the Commission for protection against discrimination.

Burden of proof

As to the burden of proof, the Protection against Discrimination Act has shifted this somewhat, with the result that civil liability is now shared between the parties. Persons who consider themselves to have been victims of sexual harassment must adduce sufficient evidence to establish a presumption of harassment whereas employers or employees accused of harassment must show that their conduct did not constitute harassment and that the relevant actions or decisions could be objectively justified.

Damages

All victims applying to the Commission for protection against discrimination or the regional courts may also claim damages. The Committee points out that compensation must be sufficient to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In the absence of any information on the subject in the report, it asks whether these damages are an adequate deterrent to the employer, particularly in cases of complaints of unlawful dismissal.

Prevention

The Protection against Discrimination Act stipulates that employers have a duty to publicise the content of the Act and all the administrative rules and clauses deriving from collective agreements within their company and take effective measures to prevent any form of sexual harassment in the workplace in co-operation with trade unions and employers' organisations.

The Committee asked previously what action, if any, the government had taken in terms of preventive measures. In the absence of any information on the subject, the Committee repeats its question and asks to be systematically informed of any new preventive measures taken during the reference period to make the public more aware of the problem of sexual harassment, including efforts to consult employers' and workers' representatives.

Conclusion

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

Paragraph 2 – Moral harassment

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 behaviours are acts of discrimination, except when this is presumed by law.

The Committee considers that there is no requirement for a state's legislation to make express reference to harassment where that state's law encompasses measures making it possible to afford employees effective protection against these phenomena. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights. It further considers that, from the procedural standpoint, effective protection of employees may require a shift in the burden of proof to a certain extent, making it possible for a court to find in favour of the victim on the basis of sufficient prima facie evidence and the conviction of the judge or judges.

The Committee therefore asks to receive precise information on laws, administrative acts or case laws' motivations to implement these two aims, independently from the facts being or not held to be discriminatory.

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

It notes that the legislation to combat harassment was enhanced during the reference period, particularly through the adoption of an Act on protection against discrimination on 16 September 2003, which made it possible to broaden the definition of harassment, placing it under the heading of discrimination. Harassment cases are therefore repressed in the same way as acts of discrimination. Under this new Act, harassment is defined as "any unwanted conduct on the grounds referred to [elsewhere in the Act], expressed in a physical, verbal or any other manner, which has the purpose or effect of violating the person's dignity or creating a hostile, degrading, humiliating or intimidating environment, attitude or practice".

Liability of employers and means of redress

Under the new Act, employers who learn of a case of harassment in the workplace committed by one of their employees or workers are required immediately to open an inquiry, take all the necessary measures to bring a halt to these acts and impose disciplinary sanctions on the offender or offenders. Employers also have a legal duty to inform all persons of their rights.

The Committee notes that, under the Protection against Discrimination Act, persons who aid and abet perpetrators of acts of harassment are civilly liable, as with cases of sexual harassment, whether or not they are employees (they may also be sub-contractors, self-employed workers, customers, visitors, etc.).

The Act also offers new legal remedies for victims of harassment through the establishment of a Commission for protection against discrimination and the right to seek redress before the regional courts. As the procedures for seeking redress, including the burden of proof, are identical to those that apply in cases of sexual harassment, the Committee refers to its conclusion under Article 26§1.

Similarly, with regard to the procedure before the Commission for protection against discrimination and the sanctions applied, the Committee refers to its conclusion under Article 26§1.

In its previous conclusion, the Committee asked for conclusive information about well-established case-law in the field of harassment. In the absence of any such information, the Committee reiterates its question, including concerning the Commission for protection against discrimination. It also wishes to know how harassment cases and acts of discrimination are respectively analysed.

Damages

All victims applying to the Commission for protection against discrimination may also claim damages. The Committee recalls that compensation must be sufficient to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In the absence of any information on the subject in the report, it asks whether these damages are an adequate deterrent to the employer.

Prevention

Employers have the same duties as with sexual harassment, and so the Committee refers to its conclusion under Article 26§1.

The Committee asked previously what action, if any, the government had taken in terms of preventive measures. In the absence of any information on the subject, the Committee repeats its question and asks to be systematically informed of any new preventive measures taken during the reference period to make the public more aware of the problem of sexual harassment, including efforts to consult employers' and workers' representatives.

Conclusion

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

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

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

Protection of worker representatives

Article 333§3 in connection with Articles 328 and 330 of the Labour Code enumerates a number of particular cases in which trade union representatives may be dismissed subject to prior approval of the relevant trade union organisation like in the event of termination of the employer's business etc. The Committee understands that in all other cases dismissal of trade union representatives related to their mandate is unlawful and that protection against dismissal continues to apply for a period of six months following expiry of the trade union representative's mandate and asks the next report to confirm that this is actually the case.

Pursuant to Article 344 of the Labour Code, an employee may lodge a complaint with the competent court alleging that a dismissal was unlawful and may request reinstatement and compensation for the period he or she was not employed due to the unfair dismissal. According to Article 225§1 of the Labour Code, the compensation is calculated on the basis of the individual's gross income and is limited to a maximum of six months' earnings. The Committee considered in its previous conclusions on Article 5 of the Revised Charter (Conclusions 2004 and 2006, Bulgaria) that where an unfair dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. In the particular case of termination of employment on the ground of trade union activities, it considered that the compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement. Since this is not the case in Bulgarian law, the Committee held that the situation is not in conformity with Article 5 of the Revised Charter and thus also finds the situation not to be in conformity with Article 28 of the Revised Charter.

The Safe and Healthy Working Conditions Act provides for the participation of workers' representatives in working conditions committees or working conditions groups (see the conclusion under Article 22 of the Revised Charter). In reply to the Committee's question what protection is afforded to these representatives, the report refers to Section 30 of the said Act stipulating that they shall not have disadvantages because of their function or the actions carried out in their capacity as workers' representatives. The Committee asks for further information whether this includes protection against dismissal on the grounds of their capacity as workers' representatives and what are the applicable rules in this respect.

The Committee notes from another source[1] that on 1 July 2006, i.e. outside the reference period, a bill amending the Labour Code came into effect and it appears from the information provided in the report that the new legislation also includes rules on the protection of employee representatives elected by the general assembly of employees (see also the Committee's conclusion under Article 21 of the Revised Charter). The Committee asks the next report to provide information on the rules regarding the protection of employees' representatives under the new legislation.

The Committee also observes that the aforementioned bill amending the Labour Code was, *inter alia,* supposed to implement Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees[2] and the Committee asks the next report to specify what are the relevant rules on the protection of such representatives and the facilities accorded to them under the new legislation.

Furthermore, the Committee asks for information on protection of employee representatives against prejudicial acts short of dismissal.

Facilities for worker representatives

The Committee noted in its previous conclusion on Article 5 of the Revised Charter *(ibid.)* that trade union representatives were granted paid time off to enable them to pursue their union activities and undergo any associated training and found the situation to be in conformity with the Revised Charter.

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1. Website of the European Foundation for the Improvement of Living and Working Conditions (www.eiro.eurofound.eu.int).

2. Official Journal L254 of 30 September 1994, pp. 64-72.

As regards the facilities granted to trade union representatives with a view to enabling them to carry out their functions, the Committee noted from the comments submitted by the Confederation of Independent Trade Unions (CITUB) with respect to the previous report on Article 5 of the Revised Charter that in practice in companies where there are representative trade unions, they are not always able to hold meetings on company premises, or have only restricted access. The Committee reiterates its question whether access to the workplace and meetings on the premises are authorised in practice for all unions in all companies.

As far as the working conditions committees or working conditions groups established in accordance with the provisions of the Safe and Healthy Working Conditions Act are concerned, the said Act stipulates that an employer shall provide the necessary conditions and means for the workers' representatives to exercise their rights and functions as well as paid time off from work for the related training and the Committee again asks how the said provisions are implemented in practice.

The Committee asks what are the facilities accorded to workers' representatives other than trade union representatives.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 28 of the Revised Charter on the ground that the legislation applicable during the reference period does not provide for adequate protection in the event of an unlawful dismissal based on the employee's status or activities as a trade union representative.

Article 29 – Right to information and consultation in collective redundancy procedures

The Committee notes the information provided in Bulgaria's report.

The Committee previously deferred its conclusion under Article 29 of the Revised Charter pending information on new legislation (Conclusions 2003).

Definition and Scope

According to the most recent amendments to the Labour Code where an employer intends to implement collective redundancies he is obliged to inform and start negotiations with representatives of the respective trade unions at least 45 days prior to implementing the dismissals. The Committee asks how "collective redundancies" are defined in Bulgarian law.

Information and Consultation

The employer is obliged to make efforts to reach an agreement with the trade unions in order to avoid or limit the extend of the redundancies and their consequences. The employer must provide in writing information regarding the reasons for the redundancies, the number of workers to be dismissed, the main activities, occupations concerned, the criteria to be followed in selecting those to be made redundant, the period during which the redundancies are to be made and the compensation to be made to the workers (section 130 of the Labour Code)

The employer is also obliged to provide the above-mentioned information to the National Employment Agency at least 30 days prior to the proposed dismissals (section 24 of the Employment Protection Act), which then notified the Labour Inspectorate. Subsequently the National Employment Agency unit concerned, the employer, employee representatives as well as representatives from the local municipality form a task force in order to draft measures in order to seek alternative employment for the workers concerned. These drafts are then presented to the regional employment commission (section 25 of the Employment Promotion Act).

Sanctions and preventative measures

Where an employer fails to properly discharge his obligations under Section 130 of the Labour Code, the trade union and worker representatives concerned may complain to the Labour Inspectorate. The Committee asks in this respect what sanctions the Labour Inspectorate may impose. It recalls its case law in this respect: "Consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil 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. The right of individual employees to contest the lawfulness of their dismissal is examined under Article 24 of the Charter"[17].

It asks that the next report provide full information on the consequences of an employer failing to fulfill his obligations

Conclusion

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

17. Conclusions 2003 and 2005, Statement of Interpretation on Article 29.