December 2010

European Social Charter

European Committee of Social Rights

Conclusions XIX-3 (2010)
("THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA")

Articles 2, 5 and 6 of the 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 European Social Charter was ratified by "the former Yugoslav republic of Macedonia" on 31 March 2005. The time limit for submitting the 3rd report on the application of this treaty to the Council of Europe was 31 October 2009 and "the former Yugoslav republic of Macedonia" submitted it on 14 December 2009.

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 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

"The former Yugoslav republic of Macedonia" has accepted Articles 2, 5 and 6 from this group.

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

The present chapter on "the former Yugoslav republic of Macedonia" concerns 10 situations and contains:

- 2 conclusions of conformity: Article 2§4; 2§5;
- 1 conclusion of non-conformity: Articles 6§2.

In respect of the other 7 situations concerning Articles 2§§1, 2, 3; 5; 6§§1, 3, 4 the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next report from "the former Yugoslav republic of Macedonia" 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 deadline for the report was 31 October 2010.

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

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

The Committee takes note of the information contained in the report submitted by The former Yugoslav Republic of Macedonia.

Pursuant to Article 30 of the Labour Relations Law (Official Gazette No 80/93 - 2007) maximum working time per week is 40 hours. Employers may introduce shorter working weeks under conditions stipulated in the Law (work organised in shifts, employees exposed to exceptionally difficult or strenuous jobs or when required by the nature of the work).

Overtime work is regulated by Article 35 of the Law which sets out the circumstances - natural disasters, need to complete a working process, etc.- when the employer can request longer working hours, which should not exceed 10 hours a week. The report indicates that an amendment to the Labour Relations Law will decrease the maximum overtime limit to 8 hours a week, with a view to adjusting legislation to Directive 2003/88/EC concerning certain aspects of the organisation of working time.

Article 37 of the Law stipulates that working hours may be rearranged if required by the nature of the work. In such cases the total working hours of employees should not exceed 40 hours per week on average in the course of one year.

The Committee recalls that the existence of flexible working time arrangements are not *per se* contrary to the Charter. However, the reference period for the calculation of average working hours should not exceed four to six months, or 12 months in exceptional circumstances (General Introduction to Conclusions XIV-2). The extension of the reference period by collective agreement up to 12 months would also be acceptable, provided there were objective or technical reasons or reasons concerning the organisation of work justifying such an extension.

The Committee asks whether a collective agreement is required for the introduction of the 'rearrangement of working hours' schemes referred to in Article 37.

It also asks the next report to indicate whether there exist regulations on the question of on-call time spent at the workplace, in particular whether it is counted as working time.

According to the report, the Labor Inspectorate received 63 complaints from employees related to their working time in 2005 and 114 in 2008. The number of regular inspections carried out in 2005 were 11,758 and 19,477 in 2008, following which 484 decisions requesting the employer to adjust working time were taken in 2005 and 332 in 2008. Sanctions for violations of regulations on working time can include the suspension of work for 7 days or the starting of a misdemeanour procedure.

The Committee asks the next report to provide updated information on the supervision of working time regulations by the Labor Inspectorate, including the number of breaches identified and penalties imposed in this area.

Conclusion

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

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 The former Yugoslav Republic of Macedonia.

The rules on pay for work on public holidays are set out in the Holidays Act.Work is authorised exceptionally during public holidays where it is impossible to suspend a production line or for other technical reasons.

Employees who work on public holidays are paid their ordinary wage plus a “contribution to salary” and a “salary supplement”. The amount of the contribution and the supplement is determined by

collective agreement. Under the general collective agreements for the public sector and for the economy, work on public holidays is paid at a rate of 250% (100% salary, 100% contribution to salary and 50% salary supplement). The Committee asks if this rate applies to all sectors or if a lower rate is applied in other sectors and, if so, what it is.

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 a day off in lieu is awarded in addition to the remuneration.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

The Committee takes note of the information contained in the report submitted by The former Yugoslav Republic of Macedonia.

Under the Labour Code, employees are entitled to at least 20 days of annual leave.

Paid leave is compulsory and employees may not waive their right to it. Only where their employment contract has been terminated do employees have the right to financial compensation for unused leave.

Paid leave may be divided up. However, one of the periods of leave must be at least 12 days and to be used until the end of the calendar year. The Committee recalls that an employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due. The Committee asks whether the 12-day minimum leave period corresponds to 12 consecutive days or whether only working days are taken into account, meaning that in reality the period amounts to a little over two weeks.

According to the report, the unused part of annual leave must be used until the end of the month of June the following year.

The Committee asks whether employees who fall ill during periods of annual leave may take their leave at a later date.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Reduced working hours or additional holidays in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by The former Yugoslav Republic of Macedonia.

The Committee refers to the statement of interpretation it made on Article 2§4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2§4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protection measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these 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. Under no circumstances, however, can financial compensation be considered appropriate under Article 2§4 (Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2§4).

The Labour Act and collective agreements set out special measures for the protection of workers engaged in dangerous or unhealthy activities. Section 116§4 of the Labour Act provides for a reduction in weekly working hours. The report contains lists of activities considered to pose a threat to employees' health and of sectors in which working hours are reduced. The labour inspectorate is responsible for seeing to it that this legislation is applied. The Committee asks if measures other than reduced working hours have been introduced to limit exposure to residual risks in some occupations, despite the risk elimination policy.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in The former Yugoslav Republic of Macedonia is in conformity with Article 2§4 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee takes note of the information contained in the report submitted by The former Yugoslav Republic of Macedonia.

According to this information, the weekly uninterrupted rest period must last at least 24 hours. The weekly rest day is usually Sunday. Work is authorised exceptionally on rest days in the cases where the working process evolves continuously and where the employees work in three shifts. Workers are not permitted to give up weekly rest period. Work performed on a rest day must be offset by time off in lieu or by financial compensation.

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 "the former Yugoslav Republic of Macedonia" is in conformity with Article 2§5 of the Charter.

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Forming trade unions and employers' associations

Freedom to form trade unions and employers' associations is guaranteed through the freedom of association enshrined in Article 22 of the Constitution. Article 37 also specifically secures the right to establish trade unions to further social and economic rights.

Trade unions and employers' associations can be founded without prior authorisation. They obtain legal personality upon registration. The registers of trade unions and employers' associations are kept by the Ministry of Labour and Social Policy. Applications for registration must include: the decision to establish the organisation; the minutes from the founding meeting; the statute, name of founders and members of the executive body; the name of the person entitled to represent the organisation; data on the number of members of the trade union based on paid membership.

The Committee underlines that if fees are charged for the registration or establishment of an organisation, they must be reasonable and designed only to cover strictly necessary administrative costs, and that the 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. It therefore asks for the next report to specify what the situation is in domestic law in respect of registration fees and the required number of founding members.

The Labour Relations Law (Official Gazette No. 62/2005 and 130/2009) guarantees the autonomy and independence of trade unions by prohibiting interference by employers or employers' associations with the establishing and functioning of trade unions.

According to Article 37 of the Constitution trade unions can constitute confederations and become members of international trade union organisations. The Committee asks whether this provision also applies to employers associations.

The Committee emphasises that domestic law must provide for a right to appeal to a court to ensure that the right to form trade unions and employers association is upheld. It therefore asks that the next report give further information in this regard.

Freedom to join or not to join a trade union

According to the Labour Relations Law employees are free to join trade unions. The Committee underlines that workers must also be free not to join a trade union or not remain member of a union. Any form of compulsory trade unionism is incompatible with Article 5. The freedom guaranteed by Article 5 is the result of a choice and such decisions must not be taken under the influence of constraints that rule out the exercise of this freedom. To secure this freedom, domestic law must clearly prohibit all pre-entry or post-entry closed shop clauses and all union security clauses (automatic deductions from the wages of all workers, whether union members or not, to finance the trade union acting within the company). Consequently, clauses in collective agreements or legally authorised arrangements whereby jobs are reserved in practice for members of a specific trade union are in breach of the freedom guaranteed by Article 5. The same principle also applies to employers' freedom to organise. Therefore the Committee asks that the next report indicate whether the right not to join a trade union is protected by law. Should the next report not give this information, there will be nothing to establish that the situation is in conformity.

The report states that, according to law, employers should not rely on membership of a trade union or participation in a union's activities when deciding to employ someone, move an employee from one post to another, grant promotion, and terminate a work contract.

The Committee underlines that trade union members must be protected from any harmful consequence that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities. Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim. The Committee therefore asks for information in

the next report on this point. Should this information not be provided, there would be nothing to establish that the situation is in conformity.

Trade union activities

The report indicates that the Labour Relations Law stipulates that employers must facilitate the activities of a trade union which protects the rights of its employees. However, the Committee notes from another source that employers are expected to do so only in respect of the predominant union.[1] The Committee emphasises that 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. The report indicates that further details are provided in the General Collective Agreement for Economy and the General Collective Agreement on the Public Sector. The Committee therefore asks for more information in the next report regarding access to workplaces of officials of all trade unions.

The Labour Relations Law governs the cases where a union or employers association should terminate their activities, namely: if, without serious and justified reasons, it did not hold a meeting of its highest executive body for a period exceeding twice the period provided in its statute; the number of members of the organisation have gone below the minimum number of founding members provided for by law. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) criticised the first possibility of dissolution considering that not holding a meeting of the highest executive body for two consecutive times is not a sufficient ground for terminating the activities of a trade union or an employer association. The Committee concurs and finds termination of activities an excessive step in such cases. The CEACR also noted in respect of the minimum number of founding members not being attained that no section in the Labour Relations Law fixes such a minimum. The Committee did not find in the report any information concerning such a minimum. As a consequence it asks for clarification in the next report on this point. Should no information be provided in the next report, there will be nothing to establish that the situation is in conformity with Article 5.

The report also states that trade union representatives are offered protection under the Labour Relations Law: they are protected from dismissal, and their salaries cannot be decreased. The protection against dismissal lasts for two after leaving the functions of union representative. The General Collective Agreement also states that union representatives should be entitled to undergo training in order to carry out their union functions. In addition, the report indicates that members of a trade union or employers association can ask for court protection. A trade union or employers association can ask courts to prohibit an activity that run counter the right of employees to engage in union activities.

Representativeness

Representativeness is determined on the basis of the registry of trade unions or employers' associations held by the Ministry of Labour and Social Policy and the number of members. Section 212 of the Labour Relations Law stipulates that for a trade union to be considered representative in order to sign collective agreements with an employer must reach at least 33% of employees of the enterprise concerned or must be member of a representative trade union on higher level of organisation. In order to sign a collective agreement at branch or state level a trade union must have a membership comprising at least 33% of the total number of employees in a given branch or the area for the agreement is signed, or be a member of a representative trade union. The Labour Relations Law also states that employer associations to be representative must gather 33% of the employers of the branch or area in which the collective agreement is being concluded.

The report indicates that this high threshold was criticised notably by the ILO and the European Commission, which led to the Labour Relations Law being amended in 2009. At the outset, the Committee observes this is beyond the reference period here at issue. For collective agreements at state level, new conditions for representativeness have been laid down. To be representative, trade union need: to be registered; to have at least 10% members from the total number of employees in the sector for which the collective agreement is signed; to count as members at least three unions at national level; to act at national level and to have registered members in at least 1/5 of the municipalities of the country; to act in accordance with its statute and democratic

principles; to count as members trade unions that have signed or joined at least three collective agreements at branch level.

. To be representative employers associations need: to be registered; to have members of at least 5% of the total number of employers or members who employ at least 5% of the total number of employees in the country; to have members who are employers in at 3 branches; to have members in at least 1/5 of the municipalities in the country; to have signed or joined at least three collective agreements at branch level; to act in accordance with its statute and domestic principles. A Commission composed of nine members of the Ministry of Labour and Social Policy, Ministry of Justice and the Ministry of Economy decides on whether the requirements are met. Registered trade unions and employers associations can send a representative to participate in the work of this Commission to ensure transparency of the procedure. The Committee asks what appeals are available to contest a decision not to grant representative status. The Committee reserves its position as to the conformity of the representativeness procedure as the reform described was made outside the reference period.

Personal scope

According to Article 22 of the Constitution the law may restrict the conditions for the exercise of the right to form or join trade union organisations in the armed forces, the police and administrative bodies. There are currently no statutes restricting the right to organise of members of the police and administrative bodies. The Committee asks to be kept informed of any changes in this respect.

The Committee underlines that 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. Therefore, it asks for information on this question in the next report. Should this information not be provided, there will be nothing to establish that the situation is in conformity in this regard.

According to the Law on Defence, trade union rights are removed in the armed forces only in case of military and state emergency.

Conclusion

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

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[1] *International Trade Union Confederation (ITUC) Annual Survey of violations of trade union rights 2009: http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=MKD&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 "the former Yugoslav Republic of Macedonia".

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

Section 21 of the Labour Code of "the former Yugoslav Republic of Macedonia" provides for the establishment of a national tripartite body, the Economic and Scocial Council (ESC). The report informs that this body was set up and serves as a forum for consultations and exchanges of information among the social partners and the Government.

The Committee notes from the report that the ESC is chaired by a representative of the Ministry of Labour and Social Policy assisted by a secretary from the same Ministry. Other members of the body are representatives of the Ministry of Finance and of the Ministry of Economy and three representatives selected by the Federation of Trade Unions of Macedonia and three representatives of the Organisation of Empolyers. The agenda of the sessions of the ESC is determined by the Chairperson but any other member may request that other items be added to the agenda. The ESC sessions are convened by its Chairperson. They must take place at least four times a year. The sessions of the ESC are public and announcements are made on the results of the consultations after each session.

The Committee highlights that under Article 6§1 consultation must take place on several levels: national, regional/sectoral and enterprise (Conclusions III, Denmark, Germany, Norway, Sweden). It notes from the report that tripartite structures such as the ESC also exist at the local level to prepare local action plans in the conomic and social areas. It asks the next report to provide more information in this regard as well as with reference to possibilities for consultation at the sectoral and entreprise levels.

The Committee moreover asks whether employers' and employees' organisations also have the opportunity for joint consultation on a bi-partite basis.

The Committee 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).

While referring to the questions raised in its assessment under Article 5 as regards the reform of the criteria to determine representativeness, 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). The Committee asks the next report to provide details about the impact of the new requirements for representativeness (in force after the reference period) on consultation procedures. Meanwhile, it reserves its position in this regard.

Matters for joint consultation

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). Fom the report the Committee understands that the above national tripartite body does discuss all such matters.

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 asks whether there are specific consultative bodies in the public sector and if so what their structure is and how they operate. Meanwhile, it reserves its position in this regard.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Legislative framework

"The former Yugoslav Republic of Macedonia" ratified ILO Convention No. 98 on the Right to Organise and carry out Collective Bargaining in 1991. It has not yet ratified ILO Convention no. 154 on Collective Bargaining.

Collective bargaining procedures are governed by the Labour Relations Act (No. 62/2005), which provides that negotiations have to be held in good faith, collective agreements are valid two years and their duration may be prolonged if the parties agree. The Act also stipulates that any eligible party may join a collective agreement after it has been signed by submitting a Statement of accession to the agreement.

As regards the requirements to be an eligible party to a collective agreement, the Committee understands from the report and from other sources[2] that during the reference period collective bargaining was restricted to trade unions representing at least 33% of the employees at the level at which the agreement was concluded (company, sector or country). The report acknowledges that this restriction created problems in practice and thus the representativeness requirements were modified in 2009 (outside the reference period). While referring to its questions and remarks in this regard under Article 5 and 6§1, the Committee holds that during the reference period the requirements to be met to be entitled to enter negociations were excessive and therefore such as to infringe the right to bargain collectively.

Conclusion of collective agreements

The Committee recalls that according to Article 6§2, if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place are, collective bargaining should remain free and voluntary (Conclusions I, Statement of Interpretation on Article 6§2). The Committee thus requests the Government to indicate what measures it has taken or plans to take to facilitate and encourage the conclusion of collective agreements.

The report informs that during the reference period two general collective agreements were signed at the national level: one for the private sector (Agreement No. 76/2006) and one for the public sector (Agreement No. 10/2008). The report also indicates that 11 collective agreements were signed at the branch level.

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

As the ILO Committee of Freedom of Association,[3] 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. The Committee asks the next report to provide information

on the procedures governing the possible extension of collective agreements and refers in this regard to its statement of interpretation and general question under Article 6§2 in the General Introduction to these Conclusions.

Public sector

The report informs that a collective agreement signed in 2008 regulates collective labour relations in the public sector. The Committee asks the next report to provide details on the parties to this agreement as well as on its content.

The Committee recalls that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them (Conclusions III, Germany). It therefore asks the next report to indicate whether the above mentioned collective agreement, and if relevent other regulations, allow a participation of employees in the public sector in the determination of their working conditions. In the absence of such a right, the situation will be deemed not to be in conformity with the requirements of Article 6§2 of the Charter.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 6§2 of the Charter as during the reference period the requirements to enter negociations infringed the right to bargain collectively.

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[1] *2009 ITUC Survey of violations of trade union rights available at: http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=MKD&Lang=EN*

[2] *Digest of the Freedom of Association Committee of the Governing Body of the ILO, 5th (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 "the former Yugoslav Republic of Macedonia".

Mediation and conciliation in the private sector

The Committee recalls that Article 6§3 applies to conflicts of interest, i.e. generally conflicts which concern the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement. It concerns neither conflicts of rights, i.e. conflicts related to the application and implementation of a collective agreement, nor political disputes.

The “Law on Peaceful Solving Labour Relations” no 8/2007 sets out the procedure for resolving inter alia collective labour disputes. The law provides for the establishment of a “council” whose role is to train mediators and arbitrators and provide the parties to a dispute with a list of mediators. The Committee notes from the information provided under both Article 6§3 and 6§4 that recourse to mediation/conciliation is compulsory prior to resorting to industrial action, but no solution may be imposed on the parties. The parties to the dispute must agree on the choice of mediator and if they cannot do so a mediator will be appointed by the Director of the above mentioned council. The Committee asks what the time frame is for mediation.

According to the report general collective agreements provide that labour disputes which have not been solved through mediation will be resolved by arbitration. They must be submitted to arbitration within 5 days of cessation of mediation proceedings. The parties to the dispute select the arbitrator from a list, the arbitrator must then initiate discussions within 5 days of being seized by the dispute and a reach a decision within 15 days.The Committee considers that this cannot be deemed to be compulsory arbitration as the parties have agreed in the collective agreement to have recourse to abitration and be bound by it.

The Committee asks for further information on which collective agreements make provision for arbitration.

Mediation and conciliation in the public sector

The Committee asks for information to be provided on mediation and conciliation procedures in 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 The former Yugoslav Republic of Macedonia.

The Committee highlights that should all the information requested in the current conclusion not be submitted in the next report there will be nothing to show that the situation is in conformity.

Meaning of collective action

Article 38 of the Constitution guarantees the right to strike, and the right is regulated in further detail by Chapter XX of the Labour Law ("Official Gazette of the Republic of Macedonia" Nos. 62/2005, 106/2008 and 161/2008).

The Committee asks for information on the permitted objectives of collective action, the Committee recalls that under Article 6§4 the right to strike should be guaranteed in the context of any negotiation between employers and employees in order to settle an industrial dispute.

Who is entitled to call collective action?

According to the report trade unions have the right to call and lead a strike. The Committee recalls its case law in this respect; when the decision to call a strike can be taken only by a trade union, the forming of a trade union must not be subject to excessive formalities. It recalls from its conclusion under Article 5 that trade unions and employers' associations can be founded without prior authorisation. They obtain legal personality upon registration. The registers of trade unions and employers' associations are kept by the Ministry of Labour and Social Policy. Applications for registration must include: the decision to establish the organisation; the minutes from the founding meeting; the statute, name of founders and members of the executive body; the name of the person entitled to represent the organisation; data on the number of members of the trade union based on paid membership. The Committee asks how long it takes to register a trade union.

The Committee seeks confirmation that non union members may participate in a strike.

Restrictions on collective action

The Constitution provides that the law may restrict the right to strike for the armed forces, police and authorities of the state administration, strikes in the armed forces, police, civil administration , public enterprises and public institutions are regulated by special laws.

Pursuant to Article 121 of the Law on Interior Affairs ("Official Gazette of the Republic of Macedonia" No. 92/2009), strikes are prohibited in the Ministry of Interior in a military, emergency and crises situations. In the case of a complex security situation, large scale disturbance of the public law and order, natural disasters and epidemics or large scale endangerment of the life and health of people and properties, not more than 10% of the workers in the Ministry may participate in a strike, and it cannot last more than three days. Similar conditions and restrictions apply to the police.

For the employees in public enterprises, the conditions under which a strike may be organised are prescribed the Law on Public Enterprises (Official Gazette of the Republic of Macedonia" nos. 38/1996, 40/2003, 49/2006, 22/2007 and 83/2009). A trade union, should it decide to exercise the right to strike, should deliver a letter of warning to the director at the latest 7 days before their intention to call for a strike, wherefore they must specify the reasons and the intentions for the strike. After delivery of the warning, representatives of the board of managers and the director are

obliged to make a proposal to resolve the dispute and to inform the workers and the public of the proposal. If no agreement is reached within 15 days the trade union, may call a strike. The Committee asks whether is any requirement that public enterprises providing essential services must maintain minimum services during a strike.

The Law on Civil Servants (“Official Gazette of the Republic of Macedonia” Nos. 59/2000 and 34/2001) stipulates that, when exercising their right to strike, civil servants are obliged to ensure "undisturbed operation of the functions of the authority/body". The Committeee asks for information on what this in fact means and how it is organised.

The report also states that not every type of 'work process' can be halted during a strike. Therefore the employer, and the trade union must prepare and adopt rules for the maintenance of a minimum service in "necessary work processes" that cannot be interrupted during a strike. These rules shall in particular contain the number of employees and the "work processes" that must be maintained during the strike, with a view to enabling the resumption of work after the strike’s completion (manufacturing sustainability work processes), or rather with the aim of ensuring work that is necessarily essential with a view to protecting the lives, personal security or the health of the citizens (i.e. necessary job/work processes). Nevertheless, according to the report the right to strike cannot in any way be prevented or seriously restricted by requiring minimum services.

Should the trade union and the employer fail to reach a settlement within 15 days from the date of the employer’s proposal to the trade union on the minimum services to be guaranteed, the employer or the trade union may request arbitration to make a decision within the subsequent 15 days.

The Committee asks for information on what sectors may be required to introduce a minimum service, as described above.

Procedural requirements pertaining to collective action

The trade union which has called the strike must notify the employer against whom it is directed, specifying the reasons for the strike, the place where it is to be held, and the date and time of the strike’s commencement.

A strike cannot take place before the completion of the conciliation/mediation procedures.

The Committee asks whether there are any other procedural requirements that must be fulfilled before a lawful strike can take place, such as ballot requirements.

Consequences of collective action

Participation in a law strike does not entail a breach of the employment contract and therefore striking workers may not be dismissed. Further the report states that workers who participated in a strike may suffer no detriment on their return to work.

Conclusion

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