March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

RUSSIAN FEDERATION

This text may be subject to editorial revision.

The following chapter concerns the Russian Federation which ratified the Charter on 16 October 2009. The deadline for submitting the 7th report was 31 October 2017 and the Russian Federation submitted it on 19 January 2018 (An addendum to the report regarding Article 29 was submitted by the government of the Russian Federation on 12 April 2018).

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Labour Rights":

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

The Russian Federation has accepted all provisions from the above-mentioned group except Articles 2§2, 4§1 and 26.

The reference period was 1 January 2013 to 31 December 2016.

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

– 10 conclusions of conformity: Articles 2§1, 2§4, 2§6, 2§7, 4§2, 5, 6§1, 21, 22 and 29;

– 7 conclusions of non-conformity: Articles 2§3, 2§5, 4§3, 4§4, 4§5, 6§4 and 28.

In respect of the 2 other situations related to Articles 6§2 and 6§3, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by the Russian Federation under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

Article 2§4

The federal laws Nos. 426-FZ of 28 December 2013 on special assessment of working conditions and 421-FZ on amendments to certain legislative acts of the Russian Federation entered into force on 1 January 2014. As a result, the procedure for certifying workplaces based on working conditions has been replaced by a procedure governing the special assessment of working conditions ("SOUT"). This procedure applies to all workers irrespective of their official occupation and position except for homeworkers, teleworkers and employees working for a private individual.

Under Article 3 (1) and (2) of Federal Law No. 426-FZ, a SOUT is a set of sequentially implemented measures to identify harmful and dangerous factors related to the working environment and labour process, and the degree to which they affect the employees, taking into account the extent to which their actual values deviate from the norms established by the government regarding working conditions and the use of individual and collective protection for workers. Conditions in the workplace are divided into various classes and subclasses (optimal, acceptable, harmful – including 4 subclasses – and hazardous working conditions) according to the degree of harmfulness and hazard, based on the results of the SOUT (Article 14). The procedure for establishing which class working conditions fall into is

determined by the Methodology for assessing working conditions approved by the Ministry of Labour (Order No. 33 of 24 January 2014).

Federal Law No. 421-FZ amends certain articles of the Labour Code in order to ensure the implementation of a differentiated approach when providing workers with guarantees for working in harmful and hazardous working conditions, depending on how the conditions are classified following the special assessment. Workers employed in harmful and hazardous working conditions are entitled to a wage premium equivalent to at least 4% of the base wage rates established for various jobs with standard labour conditions (Article 147 of the Labour Code). Extra paid leave of at least 7 calendar days is granted to workers employed in working conditions classified as harmful (in at least the 2nd degree) or hazardous, based on the results of the SOUT (Article 117). The specific duration of this leave is determined in accordance with the industry agreement, collective agreement and labour contract, and there is no upper limit on the amount of additional paid leave which may be granted. A reduced working week (36 hours maximum) is granted to workers employed in working conditions which have been classified as harmful (in at least the 3rd degree) or hazardous (Article 92).

Article 21

In 2013, under Federal Law No. 95-FZ of 7 May 2013 amending Article 22 of the Labour Code, a new system for the consultation of employees on productivity and efficiency was set up. The law establishes the right of employers to set up “production councils” – advisory bodies formed on a voluntary basis by their employees to draft proposals to improve production activities and processes, increase workforce productivity and improve employees’ skills. The powers, membership and functioning of such councils and their interaction with employers are established by a local by-law.

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

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 October 2018.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

In reply to the Committee's first question, the report states that the number of working hours permitted during the reference period (which may not exceed one year) is determined on the basis of the weekly working hours scheduled for this category of employee. As to part-time employees, the number of working hours permitted during the reference period is reduced accordingly. The Committee takes note of the number of permissible working hours established for certain categories of worker (young workers, students, persons with disabilities, etc.) detailed in the report.

In its previous conclusion (Conclusions 2014), the Committee asked what rules applied to on-call service and whether inactive periods of on-call duty were considered or not as a rest period. As the report does not provide this information, the Committee repeats its request. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Russian Federation is in conformity with Article 2§1 of the Charter.

Since there is no information in the report on any infringements of the rules on working hours reported by the labour inspectorate, the Committee repeats its request.

According to the report, Russian legislation sets out arrangements for irregular working hours for certain categories of worker. In accordance with Article 101 of the Labour Code, this is a special working arrangement, under which workers may, where necessary, be called on by their employers from time to time to perform their work outside standard working hours. The list of posts which may be covered by such arrangements is laid down in a company agreement, a collective agreement or a local by-law, taking account of the view of the employees' representative body. The Committee understands that this working arrangement applies only occasionally and that standard working hours still may not exceed 40 hours per week, whatever the procedure. It asks for confirmation of this in the next report and, in the meantime, reserves its position on this issue.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

The Committee deferred its previous conclusion (Conclusions 2014) and asked what limits applied to the postponement of annual leave, and more specifically whether the whole annual leave could be postponed to the following year or whether a minimum number of days should be taken during the reference year without exceptions.

In response, the report notes that the Russian Federation has ratified ILO Convention No. 132 concerning Annual Holidays with Pay (Federal Law No. 139-FZ of 1 July 2010) and refers to Article 9 thereof which states that the uninterrupted part of the annual holiday with pay must be granted and taken no later than one year, and the remainder of the annual holiday with pay no later than eighteen months, from the end of the year in respect of which the holiday entitlement has arisen. The Committee notes that Chapter 19 of the Labour Code deals with the conditions and procedure for granting annual paid leave to employees under their labour contracts. In accordance with Article 124 (3), in exceptional circumstances, when granting leave to a worker in the current year may have an adverse effect on the normal operation of the organisation or individual entrepreneur, the leave may be carried over to the following year with the worker's consent. In such cases, the leave must be taken within 12 months from the end of the year in respect of which it is owed. However, the report adds that, in accordance with Article 125 of the Labour Code, leave may be cancelled only with the worker's consent. An unused part of the leave must be granted at the employee's convenience during the year, or the following year. The Committee notes that this situation is not in conformity with Article 2§3 of the Charter.

The Committee observes that the government's report essentially reproduces the information contained in the previous report. It notes that the Charter allows annual leave to be carried over to the following year under particular and justified circumstances provided that the worker takes at least two uninterrupted weeks of holiday during the current year. In other words, only the share of the annual leave entitlement over and above these two weeks may be carried over to the following year. Insofar as Russian law allows annual leave to be carried over entirely to the following year, therefore, the situation is not in conformity with Article 2§3 of the Charter.

Conclusion

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 2§3 of the Charter on the ground that, in certain circumstances, the law allows all annual leave to be carried over to the following year.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

Elimination or reduction of risks

The Committee refers to its finding of conformity in respect of Article 3§2 of the Charter (Conclusions 2017) for a description of dangerous activities and the preventive measures taken in this regard.

The report states that the federal laws Nos. 426-FZ of 28 December 2013 on special assessment of working conditions and 421-FZ on amendments to certain legislative acts of the Russian Federation entered into force on 1 January 2014. As a result, the procedure for certifying workplaces based on working conditions has been replaced by a procedure governing the special assessment of working conditions ("SOUT"). This procedure applies to all workers irrespective of their official occupation and position except for homeworkers, teleworkers and employees working for a private individual.

Under Article 3 (1) and (2) of Federal Law No. 426-FZ, a SOUT is a set of sequentially implemented measures to identify harmful and dangerous factors related to the working environment and labour process, and the degree to which they affect the employees, taking into account the extent to which their actual values deviate from the norms established by the government regarding working conditions and the use of individual and collective protection for workers. Conditions in the workplace are divided into various classes and subclasses (optimal, acceptable, harmful – including 4 subclasses – and hazardous working conditions) according to the degree of harmfulness and hazard, based on the results of the SOUT (Article 14). The procedure for establishing which class working conditions fall into is determined by the Methodology for assessing working conditions approved by the Ministry of Labour (Order No. 33 of 24 January 2014). The Committee also notes how the results of the SOUT are used (Article 7), as explained in detail in the report.

Measures in response to residual risks

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 2§4 of the Charter on the ground that not all workers who were in practice exposed to residual risks were entitled to appropriate compensation measures.

The report states that Federal Law No. 421-FZ amends certain articles of the Labour Code in order to ensure the implementation of a differentiated approach when providing workers with guarantees for working in harmful and hazardous working conditions, depending on how the conditions are classified following the special assessment. Workers employed in harmful and hazardous working conditions are entitled to a wage premium equivalent to at least 4% of the base wage rates established for various jobs with standard labour conditions (Article 147 of the Labour Code). The specific amount of the premium is determined having regard to the opinion of the workers' representation body and in accordance with the industry agreement, collective agreement and labour contract. There is no upper limit on the wage premium.

In addition, extra paid leave of at least 7 calendar days is granted to workers employed in working conditions classified as harmful (in at least the 2nd degree) or hazardous, based on the results of the SOUT (Article 117). The specific duration of this leave is determined in accordance with the industry agreement, collective agreement and labour contract, and there is no upper limit on the amount of additional paid leave which may be granted. A reduced working week (36 hours maximum) is granted to workers employed in working conditions which have been classified as harmful (in at least the 3rd degree) or hazardous (Article 92). The specific duration of the working week is determined in accordance with the

industry agreement, collective agreement and labour contract and there is no minimum number of hours which must be worked per week.

Under Article 350 of the Labour Code, the number of working hours for medical workers is limited to 39 hours per week even if they work in optimal or acceptable working conditions.

The Committee also notes from the report that, thanks to the adoption of the said federal laws, a system for excluding or minimising the residual risks facing workers employed in harmful and hazardous working conditions has been enshrined in the country's employment legislation.

The Committee, however, asks what proportion of workers benefit from the compensation measures in question and whether any other measures are in place besides additional holidays or reduced working hours, in order to reduce exposure to residual risks in certain occupations. It also asks for information on the activities of the labour inspectorate in supervising compliance with the rules on reduced working hours, additional paid holidays or other relevant measures.

Conclusion

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

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was in conformity with Article 2§5 of the Charter and asked the next report to clarify if there were circumstances under which an employee might work more than twelve days consecutively before being granted a rest period.

In response, the report points out that all employees are entitled to a weekly rest period, usually Sundays, and that the length of the weekly continuous rest may not be less than 42 hours. According to the report, the possibility of transferring the day off to a later period is not provided for by law.

The Committee notes that as a general rule, working on weekends and on public holidays is prohibited, although the Labour Code makes some exceptions. Article 113 specifies the circumstances in which it is permitted to employ workers on their weekly rest days without their consent (Article 113§3), with their written consent (113§2), and with their written consent, having regard to the opinion of the primary trade union organisation, where applicable (113§5) (see Articles 2§5, Conclusions 2014, for further details). The legislation guarantees that workers receive extra pay for work performed on days off or public holidays. The Committee asks the next report to provide information on restrictions on the frequency with which employees may be required to work on weekly rest days. It also asks for confirmation that employees cannot forfeit their weekly rest period or have it replaced by financial compensation.

The Committee notes from the report that in the above-mentioned cases, an employee may be required to work for more than twelve consecutive days without a weekly rest period. It therefore concludes that the situation is not in conformity with Article 2§5 on the ground that the weekly rest period may be postponed over a period exceeding twelve successive working days.

Conclusion

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 2§5 of the Charter on the ground that weekly rest days may be postponed over a period exceeding twelve successive working days.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was in conformity with Article 2§6 of the Charter and asked whether employees were informed in writing (whether in the employment contract or another document), when starting employment, on the amount of paid leave and the length of the periods of notice in case of termination of the contract or the employment relationship.

In response, the report states that under Article 57§2 of the Labour Code, the date of commencement of work must be included in the labour contract. Workers must also be informed of the terms governing the remuneration of labour; according to the law, holiday pay is based on worker's average earnings. In addition, when signing labour contracts, employees have an opportunity to familiarise themselves with the collective agreement and the local regulatory instruments that apply to the employer. The amount of paid leave does not have to be specified in the labour contract. According to the report, however, the list of items of information that must be included in the labour contract is not exhaustive (see Conclusion 2014, Article 2§6) so information on the amount of paid leave could be incorporated as well. The Committee understands that the information on the amount of paid leave does not have to be included in the employment contract and asks the next report to indicate which other written document provides that kind of information.

According to Article 58 of the Labor Code, employment contracts may be concluded for an indefinite period or for a fixed period not exceeding five years (CDD), unless otherwise provided by the Labor Code or other federal laws. If the employment contract does not specify the duration of its validity, the contract is considered concluded for an indefinite period. If the employee works for a private individual, the terms and conditions governing termination of contract must be specified in the labour contract (Article 307). The Committee asks whether public sector employees are also informed in writing, when starting employment, on the length of the periods of notice in case of termination of the contract or the employment relationship.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

It deferred its previous conclusion (Conclusions 2014) and requested clarification on various points.

In reply to the question as to who is considered to be a night worker, the report states that workers can be employed specifically for night work, although the legislation does not provide any name for this category of workers. The labour contracts of such workers, however, must indicate that the work to be performed is night work (Article 57 of the Labour Code). The Committee accordingly notes that although the legislation has defined "night" as the period from 10 pm to 6 am, there is no specific definition of "night worker".

In response to the Committee's second question, the report indicates the circumstances under which a night worker may be transferred to daytime work, provided that night work is specified in his or her labour contract, including:

- by agreement between the parties; in that case, an addendum to the labour contract must be concluded.
- In accordance with a medical report (Article 224 of the Labour Code) – the employer is bound to observe the restrictions imposed on certain categories of employees regarding their ability to undertake night work, and to transfer workers for health reasons to another post in accordance with a medical certificate.
- the labour contract may be amended by the parties, at the instigation of the employer, for reasons related to a change in the organisational or technical working conditions (Article 74 of the Labour Code).
  In this case, the employer must notify the worker in writing of any change to the terms of the labour contract agreed by the parties, and also of the reasons for such change at least two months in advance. If the worker does not agree to the new conditions, the employer shall offer him or her, in writing, another job suited to his or her state of health. If no such job is available or if the worker refuses to accept it, the labour contract will be terminated (Article 77§1(7) of the Labour Code).
  The Committee considers the situation to be in conformity with Article 2§7 in this respect.

As to the Committee's third question, which asked whether a medical check-up is carried out before an employee is assigned to night work and regularly thereafter, the Committee notes that under Article 5.27.1 (3)) of the Code of Administrative Offenses, the assignment of an employee to a position without passing mandatory preliminary medical examinations (upon admission to work) and periodic, mandatory medical examinations at the beginning of the working day (shift), compulsory psychiatric examinations or medical contraindications imply the imposition of a high fine. The Committee refers to its conclusion on Article 3§4 (Conclusions 2013 and 2017) in which it noted that preliminary and regular medical examinations are mandatory only for workers employed in strenuous work and work under harmful and/or dangerous conditions. However, the Committee asks whether this rule applies expressly to night workers.

The report does not make it clear either whether workers' representatives are regularly consulted on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work. The Committee does nevertheless note that the Labour Code contains a number of articles requiring employers to consult workers' representatives on issues related to the organisation of work. The Committee therefore requests confirmation that such consultation also covers issues related to night work.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

The Committee notes from the report that Article 97 of the Labour Code provides for two forms of organisation of labour outside standard working hours, namely overtime (Article 99) and irregular working hours.

As to overtime work, the report states that Article 99 of the Labour Code gives the definition of overtime and establishes the circumstances in which employers may ask employees to work overtime.

In its previous conclusion (Conclusions 2014), the Committee found that the situation was not in conformity with Article 4§2 of the Charter on the ground that increased time off for overtime hours was not guaranteed. It asked whether Russian legislation provided for exceptions to the right to increased remuneration for overtime in particular situations for certain categories of senior state employees and private-sector management executives. The Committee understands from the report that the legislation does not provide for any exceptions. It asks for confirmation of this in the next report.

The Committee notes, that apart from increased pay, under Article 152 of the Labour Code, overtime may also be compensated for by additional time off work, which may not be shorter than the number of hours worked, instead of increased pay. In such cases, remuneration for overtime will not be increased (the standard pay rate applies).The Committee considers that the combination of equivalent time off and an allowance for overtime corresponds to an increased remuneration for overtime hours and is therefore, in conformity with the Charter. It asks, however, whether the length of time off which may be awarded to replace increased remuneration is itself also increased. It also asks whether the labour inspectorate has detected overtime carried out without remuneration in the context of flexible working time arrangements.

As to irregular working hours, the Committee notes from the report that Russian legislation allows this working arrangement for certain categories of worker as an alternative to overtime (Article 101 of the Labour Code). It must figure in the employment contract. The list of posts which may be covered by such arrangements is laid down in a company agreement, a collective agreement or a local by-law, taking account of the view of the employees' representative body. According to the report, if the employment contract contains a reference to this working arrangement, the hours concerned are not regarded as overtime. However, employees with irregular working hours are entitled to additional paid annual leave of a length given in the collective agreement, internal staff regulations or another agreement, which may not be shorter than three calendar days (Article 119 of the Labour Code). The Committee reserves its position on this issue pending its assessment under Article 2§1 of the Charter and asks for additional information which would clarify the situation as regards irregular working hours and payment of overtime work.

Under Article 95 of the Labour Code, for companies running continuous processes or in certain types of occupation where a reduction in working hours on the eve of a public holiday is not possible, the additional hours are offset for workers through the allocation of additional rest periods or, subject to consent, by a payment prescribed by law.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

Legal basis of equal pay

In its previous conclusion (Conclusions 2014) the Committee noted that the Labour Code not only contains a general prohibition of discrimination, but also a special rule in relation to wages. According to Article 22 (main rights and duties of the employer) an employer is obliged to ensure equal pay for workers performing work of equal value. According to Article 132 of the Labour Code each worker's wage shall depend on his/her skill, the complexity of the performed work and shall not be limited by a maximum amount. Any discrimination when setting or modifying terms of labour compensation shall be prohibited. The payment of an unequal wage to a woman (e.g. in a smaller amount compared to what is paid to a man in a similar job or position with similar complexity) is a violation of the labour legislation.

According to the report, the wages of worker are set by a labour contract in accordance with the systems practiced by the given employer. Systems of remuneration for labour, including basic rates of wages and salaries and well as any extra payments shall be established by collective agreements and local normative acts in accordance with the labour legislation and other normative legal acts containing norms of labour law. At the same time, systems of remuneration should ensure that labour is remunerated at a different rate on the basis of different complexity as well as the quality of the work performed. The Committee asks the next report to clarify whether the law prohibits both direct and indirect discrimination.

Guarantees of enforcement and judicial safeguards

In its previous conclusion the Committee asked what rules applied as regards the guarantees of enforcement of the equal pay principle, burden of proof and sanctions.

According to Article 3 of the Labour Code, persons considering themselves to be discriminated against shall be entitled to address the federal labour inspectorate bodies and/or courts for restoration of their violated rights, compensation of the material loss and redress of the moral damage.

As regards the burden of proof, the Committee notes that according to Article 56 of the Civil Procedure Code, each party shall prove the facts to which it refers as to the grounds for its claims and objections. The Labour Code and Civil Procedure Code do not provide for exceptions to this rule in relation to discrimination. Not only the worker must prove the fact of discrimination, but also the employer – the absence of discrimination against this worker. In this respect, the Committee refers to its conclusions on Article 1§2 and 20 (Conclusions 2016) and considers that the situation as regards the burden of proof has not changed. Therefore, it reiterates its finding of non-conformity on the ground that the legislation does not provide for the shift in the burden of proof in discrimination cases.

According to the report, the legislation does not establish special criteria for determining the amount of compensation for discrimination in labour remuneration. There are only general requirements for courts to determine compensation for moral damage based on the specific circumstances of each case taking into account the scope and nature of the moral and physical suffering caused to the worker, extent of the employer's fault, and requirements of reasonableness and fairness. The Committee recalls that remedy in case of unequal pay must be such as to bring discrimination to an end and award compensation proportionate to the pecuniary and non-pecuniary damage suffered (Conclusions XVII-2, Finland, Article 1 of the Additional Protocol, pp.249-250).

The Committee also notes from the report that the law does not establish special measures of legal liability for violating the principle of equal pay for the work of equal value. The Code

of Administrative Offences contains only a general rule that establishes administrative liability for violation of labour legislation and labour protection laws, without identifying such an offence as a violation of the principle of equal payment for work of equal value.

Methods of comparison

The report argues that since it is forbidden to pay unequal wages for equal work or work of equal value, the difference in wages for men and women is not due to gender, but to complexity and working conditions. The report refers to the education sector, where there is practically no difference in the level of wages for men and women in the same jobs and positions. The Committee asks whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as whether the pay comparison is possible outside one company, for example, where such company is a part of a holding and the remuneration is set centrally. The Committee also asks the next report to provide information concerning the criteria according to which equal value of different works is assessed.

Statistics

The Committee takes note of the official pay gap statistics for 2016. In the sample survey of organisations in October 2016, data were collected on the average wages of men and women by economic activity. The average wage of women as a whole for the surveyed types of economic activity was 72.6% of the average wage of men. By types of economic activity, this ratio ranged from 73.7% to 93.9%. According to the report, this is explained by the prevalence of women's employment in low-paid types of economic activity. The report further explains that there are objective reasons for the pay gap, such as, the fact that men receive compensatory payments for work in harmful, dangerous and hard working conditions, where it is forbidden to use female labour, women work part-time to fulfil their 'functions' in the household etc.

Policy and other measures

Taking into account the information provided by the report regarding gender stereotypes and the restriction of the employment of women in certain occupations, the Committee asks what measures are taken to raise awareness about gender equality and fight stereotypes, including review of proportionality and objective justification of the national legal regulation excluding women from certain types of employment.

Conclusion

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 4§3 of the Charter on the ground that the legislation does not provide for the shift in the burden of proof in discrimination cases.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was not in conformity with the Charter on the grounds that the notice period was not reasonable in some cases including during the probationary period, and that the notice periods applicable to employees of self-employed persons or religious organisations or to home workers were left to the discretion of the parties to the employment contact. The report does not indicate any change as regards notice periods and/or severance pay during the reference period. The Committee, therefore, reiterates its previous conclusion of non-conformity.

In its previous conclusion, the Committee asked for information on the notice and/or severance pay applicable to the following cases: duly confirmed insufficient qualifications for the post; changes in the ownership of the organisation; single breaches of professional duties and single breaches of professional duties by senior management. The report indicates that the employer may terminate employment in the event of a disciplinary infringement at work and offences being committed. However, the Committee asks clarifications and reiterates its question, in particular it asks to indicate the period of notice and/or compensation applicable to the aforementioned cases. In the meantime, the Committee reserves its position on this point.

In reply to the Committe's question regarding information on the notice and/or severance pay applicable to termination of employment under reasons beyond the control of the parties and breaches of the rules on the negotiation of collective agreements, the report indicates that Russian labour legislation does not provide for an obligation of the employer to give notice of termination of employment for these reasons.

In this respect, the Committee notes that, under Article 83 of the Labour Code, Russian labor legislation does not require an employer to give notice of the termination of employment for reasons beyond the control of the parties, including (1)the call up of the worker for military service, (2) reinstatement of an employee who previously performed the job o by the decision of State Labour Inspection or the court, (3) conviction, (4) duly certified unfitness for work, (5) death of an employer if an employer is a physical entity, (6) disqualification or other administrative punishment, preventing the employee from performing duties under the employment contract.

The Committee also notes that compensation equivalent to two weeks' salary is paid to an employee following termination of employment in relation to the employee's refusal to accept significant changes in working conditions as a result of changes in organisation or technologies (ground provided for in Article 73 of the Labour Code) or following dismissal for medical incapacity, call-up for military service, judicial or administrative reinstatement of the previous post-holder or refusal by the employee to be transferred when the employer relocates (Article 178§3 of the Labour Code). The Committee reiterates its previous conclusion on this point, according to which severance pay equal to two weeks' salary provided for in cases of termination of employment due to medical incapacity, call-up for military service, judicial or administrative reinstatement of a previous employee is not reasonable for employees with more than six months of service (Conclusions 2014). It also considers that the situation is not in conformity with Article 4§4 of the Charter, on the ground that no notice period is applicable where the dismissal is due to the death of the employer who is a natural person.

With regard to the notice and/or compensation applicable to the early termination of fixed-term contracts, the report states that the grounds of termination of employment are the same as those applied to contacts of indefinite duration (Article 77§1 of the Labour

Code). However the Committee asks for information on notice periods or severance pay where a fixed term contract is terminated early.

Conclusion

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

- severance pay of two weeks' salary applicable to termination of employment on the grounds of medical incapacity, call-up for military service, judicial or administrative reinstatement of the previous post-holder, is not reasonable for employees with more than six months of service;
- notice period of three days applicable to dismissal during probationary period is not reasonable;
- no notice period is provided where the dismissal is due to the death of the employer who is a natural person.
- notice periods are applicable to employees of self-employed persons or religious organisations or to home workers are left to the discretion of the parties to the employment contact.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation in the Russian Federation was not in conformity with Article 4§5 of the Charter on the ground that, after all authorised deductions, the wages of employees with the lowest pay do not enable them to provide for themselves or their dependants.

The Committee asked to what extent the deductions applied for the compensation of damage to employers or third parties caused by employees are subject to the limits of 20%, 50% or 70% of net salary. In particular, it asked for details concerning any deductions in connection with reductions in activity imputable to employees or with full liability agreements signed with religious organisations . As the report fails to answer these questions, the Committee reiterates them.

In reply to the Committee's question on the limits to deductions from wages applicable to employees governed by certain federal laws, the report provides general information on the scope of federal laws but no specific information on the limits to deductions from wages applicable to employees under those laws. The Committee accordingly reiterates its question on this issue.

The Committee points out once again that the aim of Article 4§5 of the Charter is to guarantee that employees protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It considers that the limits of 20%, 50% and 70% of salary net of tax deductions provided for by Article 138 of the Labour Code and Article 99 of Federal Law no. 299-FZ of 3 October 2007 on enforcement procedures still allow situations to subsist in which employees are left with only 50% or even 30% of the minimum wage, an amount that does not allow them to provide for themselves or their dependants.

Conclusion

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

Article 5 - Right to organise

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

The Committee examined the situation with regard to trade union law in its previous conclusion (forming trade unions and employers' organisations, freedom to join or not to join a trade union, trade union activities and representativeness, personal scope, Conclusions 2014). It will therefore only consider recent developments and additional information.

Forming trade unions and employers' organisations

In its previous conclusion (Conclusions 2014), the Committee reserved its position on this issue and asked for confirmation that unemployed persons, pensioners and foreign citizens have the right to form a trade union. The report states that Article 3 of the federal law on trade unions (FZ No. 10) defines a trade union member as a person (whether employed, unemployed or retired) who belongs to a primary trade union organisation. According to Article 2 of the law, Russian nationals residing outside the Russian Federation may be members of Russian trade unions. The same applies to foreign nationals residing in the Russian Federation, save as otherwise provided in domestic law and/or international treaties to which the Russian Federation is a party.

In response to the Committee's request for comments on the ITUC Survey of violation of trade unions rights on the Russian Federation (2009), the report states that in decree No. 22-P of 24 October 2014 "on verification of the constitutionality of paragraphs 1-8 of Article 3 of Federal Law No. 10-FZ of 12 January 1996, the Constitutional Court ruled that the provisions of Article 3, within the meaning assigned to them by case law, were considered by the authorities responsible for registration as establishing an exhaustive list of the different types of trade union organisations and their subdivisions; in practice, therefore, trade unions were unable to determine their internal structure themselves. Pursuant to this decree, Federal Law No. 444-FZ amending the law on trade unions was adopted on 22 December 2014 and entered into force on 3 January 2015. As a result, Article 3 (as amended) now contains an open-ended list of the different subdivisions that exist within the trade union hierarchy, thereby affording trade unions the opportunity to determine their organisational structures as they see fit.

The report further notes that participation in the social partnership in a particular geographical area without documentary confirmation of an organisation's authority to act as representative within the territory in question would be contrary to the principle set forth in Article 24 of the Labour Code on the basic principles of the social partnership (see Conclusion 2014, Article 6§1).

The Committee notes from the report that since the adoption of the Constitutional Court decree and the entry into force of Law No. 444-FZ, the Ministry of Labour has received no reports concerning refusals to register trade unions or the requirement to amend the statutes.

In response to the Committee's request for comments on the **aforementioned** ITUC Survey concerning the lack of special provisions on liability for violations of trade union rights, the report states that Article 30 of the law on trade unions provides for disciplinary, administrative and criminal liability for violations of trade union rights. In addition, Articles 5.27 to 5.34 of the Code of Administrative Offences establishes administrative liability for violations related to the prohibition of trade union activities with regard to collective bargaining and oversight of compliance with collective agreements. In some cases, these articles provide for the imposition of administrative fines of up to RUB 200 000 (≈ €3 000), and the disqualification of officials for up to three years. In addition, Article 136 of the Criminal Code defines discrimination as a violation of a person's rights, freedoms and lawful interests based, *inter alia*, on his or her membership of particular associations or social

groups and committed by a person through the use of his or her official position. It establishes liability for such violations. Lastly, Article 286 of the Criminal Code establishes liability for the abuse of power by an official, including notably in the case of actions which clearly exceed his or her powers and involve a violation of the rights and lawful interests of individuals or organisations or of the interests of society or the state.

In addition to the information provided previously, the Committee notes from the report that Federal Law No. 162-FZ adopted on 2 July 2013 introduces standards aimed at improving protection against discrimination in employment. In this connection, it is expressly prohibited for employers to disseminate information about vacancies which carry restrictions based on, *inter alia*, membership or non-membership of particular associations or social groups. Legal entities and individuals which fail to comply with this prohibition are liable to a fine.

Freedom to join or not to join a trade union

The Committee notes information provided by the report in response to its request for comments on the aforementioned ITUC's Annual survey on the complaint to the ILO Committee on freedom of association. The Committee refers to the national report for a full description on this point and also to report No. 376 of the Freedom of Association Committee (Effect given to the recommendations of the committee and the Governing Body – Report No 376, October 2015).

According to the report, complaints about discrimination against trade union members are examined by the Russian Ministry of Labour (*Rostrud*) and its local and regional bodies in accordance with the procedure prescribed by law. The Committee notes the detailed information on the complaint concerning the detention of 15 activists from the primary trade union organisation (2015).

Representativeness

In response to the Committee's question concerning the criteria used to determine representativeness (Conclusions 2014), the report states that the main criterion of trade union representativeness at all levels of the social partnership is whether the union covers more than half of the workforce. According to the report, collective bargaining with the various trade unions, irrespective of the proportion of the workforce that they represent, can place the employer in a situation where he/she will have different obligations to individual groups of workers.

In response to the Committee's question, the report states that the legal framework relating to the representativeness of employers' organisations is governed by the provisions of the Labour Code. The Committee notes that, under Article 30, primary trade union organisations represent at local level the interests of the workers who are members of the relevant trade unions, and in the cases established by law, the interests of all the workers, regardless of their trade union membership, in collective bargaining, the conclusion or amendment of a collective agreement and in the consideration and settlement of collective labour disputes. Workers who are not members of a trade union may delegate to a primary trade union organisation the right to represent their interests in dealings with the employer where individual labour relations are concerned.

Under Article 31, where workers do not belong to a primary trade union or if no enterprise-level trade union represents more than half of the workers in that enterprise, other, non-trade union, persons may represent the interests of the workers. The existence of another representative, however, cannot prevent primary trade unions from exercising their powers. In order to assess the conformity of the situation with Article 5 of the Charter, the Committee asks what are the rights granted to the non-representative and **minority** trade unions, and if they enjoy key trade union prerogatives in practice.

As regards the legal framework allowing restrictions of the rights of trade unions based on representativeness criteria, as well as on their implementation, the report states that there is trade union pluralism in the Russian Federation and that the state does not interfere in their decisions. Under Article 2 of the law on trade unions, all trade unions enjoy equal rights. When it comes to collective bargaining and concluding collective contracts and agreements, however, the trade union organisations that represent the majority of workers or which have been entrusted with representing the interests of workers in the organisation at the organisation's general assembly/conference have more extensive rights to represent the interests of workers. The Committee asks what are the rights of minority trade unions in these matters. In the meantime, it reserves its position on this point.

The Committee asks that the next report provide information on the procedure and the mandate of the administrative body in charge of establishing representativeness of trade unions and employers' associations, and if the decision on representativeness is open to judicial review. The Committee recalls that criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review (Conclusions XV-1 (2000) France).

Personal scope

In response to the Committee's question, the report notes that the provisions of the law on trade unions apply to the public and private sectors alike. Article 4 defines the scope of the legislation which applies to all organisations situated within the territory of the Russian Federation, to Russian organisations abroad and to other organisations in accordance with international treaties. The law provides that the specific rules regarding the setting-up and operation of certain types of trade unions (military personnel and Ministry of Internal Affairs staff, persons employed in the State Fire Service under the Ministry for Civil Defence, Emergencies and Disaster Relief; the federal security bodies; the customs authorities of the Russian Federation and the federal service for drug control; judges and prosecutors) are to be determined by federal legislation.

The report states in particular that, in accordance with Article 31 of federal law No. 3-FZ of 7 February 2011 on the police, police officers have the right to form or join trade unions according to the procedure provided for by law. The Committee notes that, as a general rule, public servants, at every level, join the trade unions for employees of state institutions and municipal public services whereas civilian staff in the armed forces join the federation of trade unions of the Russian armed forces.

The Committee refers to its general question on the right of members of the armed forces to organise.

The Committee asks whether the right to form and join a trade union is also guaranteed to domestic workers.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

In its previous conclusion (Concisions 2014), the Committee examined the joint consultation mechanisms under Article 6§1 of the Charter. It will therefore consider only recent developments and additional information.

The Committee refers to its previous conclusion (Conclusions 2014) for a description of the social partnership – a system of relations between workers (or their representatives), employers (or their representatives), state and local self-government authorities – which operates at federal, inter-regional, regional, industry-specific, territorial and local levels. The Committee notes from the report that, in accordance with Article 25 of the Labour Code, public authorities and local governments are social partners in cases where they act as employers, and in other cases provided for in the labour legislation.

According to the report, Article 27 of the Labour Code establishes various forms of social partnership: collective negotiations to prepare draft collective contracts and agreements and the conclusion of collective contracts and agreements; mutual consultations on issues relating to the regulation of labour relations and other relations directly associated with them, securing the labour rights of workers and improvement of the labour legislation and other regulatory instruments containing labour law norms; participation of workers and their representatives in the management of the organisation; and participation of workers' and employers' representatives in the resolution of labour disputes. The Committee notes that this list is not exhaustive and that the parties can decide for themselves which forms of interaction are appropriate to their needs.

The Committee notes from the report that Article 372 of the Labour Code establishes the procedure for consulting the primary trade union organisation when adopting local regulatory instruments. In particular, in the cases provided for in the Labour Code, other federal laws and other regulatory and legal instruments, the collective contracts or agreements, before taking a decision, the employer must submit a draft local regulatory instrument, together with a statement of the reasons therefor, to the primary trade union organisation representing the interests of all or the majority of the employees. The primary trade union organisation must send the employer a reasoned opinion on the draft within five working days. The Committee asks whether there are any forms of consultations with the minority trade unions.

The report notes that where employers refuse to sign up to industry agreements concluded at federal level, they are required to hold consultations with the workers' representatives.

In addition to the information provided previously, the report states that the Labour Code contains a number of articles requiring employers to consult workers' representatives on key issues (Articles 99 on overtime; 101 on the list of positions of workers with irregular working hours; 103 on shift schedules; 116 on annual paid leave; 123 on the order in which annual paid leave is to be granted; 135 on systems of remuneration; 190 on introduction of internal rules, etc.).

The report further states that more than 40 articles of the Labour Code and also the federal legislation on trade unions and employers' associations have been amended to improve and implement the social partnership at all levels. In particular, Federal Law No. 142-FZ of 23 May 2016 amended the federal law on the Russian Tripartite Commission for the Regulation of Social and Labour Relations (No. 92-FZ of 1 May 1999) in order to strengthen the Commission's role in developing and adopting regulatory instruments in the field of social, labour and economic relations. Various governmental regulations have been amended pursuant to this law.

As regards the criteria used to determine representativeness, the Committee refers to its conclusion under Article 5 of the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Russian Federation is in conformity with Article 6§1 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The Committee examined the situation with respect to collective bargaining in its previous conclusion (Concisions 2014) and found it to be in conformity. It will therefore consider only recent developments and additional information.

In response to the Committee's question, the report states that Article 5.28 of the Code of Administrative Offences provides for a caution or the imposition of an administrative fine ranging from RUB 1 000 (≈ €17) to RUB 3 000 (≈ €54) in cases where employers and their representatives fail to participate in negotiations concerning the conclusion or amendment of a collective contract or agreement, or fail to comply with the time-limits for negotiations or fail to arrange for a commission to conclude a collective contract or agreement.

The Committee also asked to provide information on cases in which the labour authorities identified conditions which adversely affected the situation of workers in comparison with legal provisions or regulations, and inquired whether in this context the decisions of the labour authorities could be appealed by the parties concerned. In response, the report states that in collective bargaining, the parties also hold consultations with authorised bodies regarding the content of draft agreements in the field of social partnership. In this connection, such cases are rarely revealed at the time of registering an collective contract or agreement. The Committee takes note of the cases outlined in the report when the Federal Labour and Employment Service authorised to register industry agreements concluded at the federal level of social partnership found evidence of such conditions. According to the report, everyone has the right to apply to the courts for protection of their rights, in accordance with the procedure prescribed by the Code of Civil Procedure.

The Committee notes from the report that 12 066 000 agreements were concluded at all levels of the social partnership in 2016 (see the report for further details).

The Committee refers to its conclusion on Article 5 (Conclusions 2018) in which it noted that, pursuant to Article 31 of the Labour Code, when an enterprise trade union represents less than half of the workers in that enterprise, other non-unionized representatives could represent workers' interests. The Committee notes that, according to the information from the comments and direct request raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2018 (107th ILC session) on Right to Organise and Collective Bargaining Convention 98 (1949), in these circumstances, direct negotiation between the undertaking and its employees, bypassing sufficiently representative organizations where these existed, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted. The Committee recalls that in order to ensure the effective exercise of the right to bargain collectively, the Government shall promote machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements. It asks for information in the next report on any developments in this respect, including information on the steps taken to promote machinery for voluntary negotiations. In the meantime, the Committee reserves its position on this issue.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

In its previous conclusion (Concisions 2014), the Committee examined the conciliation and arbitration procedures under Article 6§3 of the Charter. It will therefore consider only recent developments and additional information.

The report states that the quality of conciliation procedures, in particular the length of the procedures and the procedure for declaring workers' demands, affects the number of collective labor disputes registered and, consequently, the ability of workers and employers to take collective action. In this connection, negotiations between the various social partners and experts have led to some simplification of the conciliation procedures in the form of amendments to the Labour Code introduced in 2011.

The Committee notes from the report that in comparison with 2015, the role and activities of state and regional government agencies in the resolution of social and labour disputes have increased (94% of social and labour disputes resulted in full or partial satisfaction of workers' demands).

In its previous conclusion (Conclusions 2014), the Committee asked in which cases and to what extent voluntary recourse to labour arbitration would undermine respect for the rights and freedoms of others or threaten the public interest, national security, public health, or morals, and whether the imposition of compulsory recourse to labour arbitration was proportionate to the protection of the interests mentioned by Article G of the Charter. In response, the report states that, in accordance with Article 404 of the Labour Code, in cases where a strike cannot be called in order to resolve a collective dispute, recourse to arbitration is mandatory and the outcome is binding for the parties. In such cases, if the parties fail to reach an agreement on the establishment of a temporary arbitration body, its composition, rules of procedure or the referral of the dispute to a permanent labour arbitration body, the agency responsible for the settlement of collective labour disputes (*Rostrud*) shall decide these matters. It also refers to Article 55 of the Constitution, in particular paragraph 3 which states that human and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the state. The Committee recalls that any form of compulsory recourse to arbitration is a violation of this provision, whether domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both. Such a restriction is only allowed within the limits prescribed by Article G (Conclusions (2006), Portugal). The limits set by Article G are: if it is prescribed by law and is necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals. The Committee therefore asks how this provision is applied in practice.

The report notes that under Chapter 61 of the Labour Code, the provisions on conciliation procedures apply regardless of the form of ownership of the employer (public, private or mixed). Public servants covered by Federal Law No. 79-FZ of 27 July 2004 (as amended on 2 July 2013) on the state civil service are not permitted to relieve themselves of their official duties for the purpose of settling industrial disputes, however.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

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

The Committee recalls that the Charter does not necessarily imply that legislation and case-law should establish full legal equality between the right to strike – which the Charter indeed mentions explicitly and which is recognised as a fundamental right by the Constitution of several member States – and the right to call a lock-out. Consequently, the committee thought, in the first place, that a State party to the Charter cannot be found at fault for not having passed legislation regulating the exercise of lock-out and, in the second place, that the competent tribunals were entitled to place certain restrictions on the exercise of lock-out in specific cases where it would in particular constitute an abuse of right or where it would be devoid of justification on the ground of "force majeure" or of the disorganisation of the enterprise caused by the workers' collective action (Conclusions VIII (1984), Statement of Interpretation on Article 6§4).

Collective action: definition and permitted objectives

In reply to the Committee's second question, the report confirms that, under Article 401(2) of the Labour Code, review of a collective labour dispute by a conciliation committee is a mandatory step in the conciliation procedure. The Committee refers to its conclusion on Article 6§3 (Conclusions 2014).

In reply to the Committee's request for comments on the ITUC Survey of violation of trade union rights on the Russian Federation (2009), the report states that there is no provision in Russian legislation for solidarity strikes or strikes on issues related to government policy. However, under Article 31 of the Russian Federation Constitution, everyone has the right to assemble peacefully, without weapons, hold rallies, mass meetings and demonstrations, marches and pickets. The implementation of this constitutional right is ensured *inter alia* by Article 2§1 of Federal Law no. 54-FZ of 19 June 1994. The Committee recalls that while the rights at stake may overlap, the obligations on the State under the Charter extend further in their protection of the right to strike, which includes the right to participate in secondary action (Conclusions XX-3 (2014), United Kingdom). It asks that the next report confirm that Russian legislation are in line with the Charter on this point.

Entitlement to call a collective action

The Committee notes from the report that at local level, under Article 410(2) of the Labour Code, a decision on the participation of employees in a strike must be taken by a general assembly of staff (or a meeting of employees' delegates), without prior conciliation proceedings. To be deemed legitimate, such a general assembly must be attended by over half the total number of employees, or in the case of a meeting of employees' delegates by at least two-thirds of the delegates. However, if such a decision is not possible, the primary (shop-floor level) trade union organisation must implement conciliation proceedings. The Committee asks how this is applied in practice. It considers that the situation is not in conformity with the Charter, on the ground that the required majority to call a strike is too high.

Specific restrictions to the right to strike and procedural requirements

In its previous conclusion (Conclusions 2014), the Committee noted that the restrictions imposed on the right to strike applied to a large number of economic activities in the private and public sectors and therefore asked the Government to state, in relation to every service subject to restrictions with regard to the right to strike, if and to what extent work stoppages may undermine respect for the rights and freedoms of others or threaten the public interest, national security, public health or morals. The Committee also asked whether these restrictions were in all cases proportionate to achieve the objective of ensuring, in a democratic society, respect for the rights and freedoms of others or the public interest, national security, public health or morals. In reply, the report points out that Article 37§4 of the Constitution recognizes the right to individual and collective labour disputes and the use of the procedures established by federal law to settle them, including the right to strike. Under Article 17§3 of the Constitution, the exercise of human and civil rights and freedoms must not violate the rights and freedoms of other people. Corresponding norms are also established by the Labour Code. The Committee asks how these provisions are applied in practice.

In addition, the Committee notes from the report that, according to Article 52§1 of the Federal Law N°60-FZ on Aviation Code of the Russian Federation of 19 March 1997, in order to protect the rights and legitimate interests of citizens, ensure the defense and security of the state, strikes or other termination of work (as a means of resolving collective and individual labour conflicts and other conflict situations) are not allowed to civil aviation personnel engaged in air traffic management (control). It also notes that, according to Article 26§2 of the Federal Law N°17-FZ on Railway Transport of 10 January 2003, strike as a means to settle collective labour disputes by public railway transport workers whose activities are related to trains traffic, shunting, as well as to the services of passengers, consignors and consignees on the public railway transport, the list of occupations is determined by federal law, is illegal and not allowed. Under Article 6§4 the right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter that are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.

The Committee recalls also that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, is not deemed proportionate to the specific requirements of each sector, but providing for the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4.

The Committee considers that even if the restriction to the right to strike is prescribed by law (in this case the Labour Code) and serves a legitimate purpose, namely public health and safety, it considers that a total ban on the right to strike in the above mentioned sectors is not proportionate to the aim pursued by the law and therefore necessary in a democratic society. It holds however that the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4. As there is no provision for the introduction of a minimum service, and strikes are simply prohibited for the abovementioned categories of employees, the Committee finds that the situation is not in conformity with the Charter.

In its previous conclusion, the Committee considered that there was no evidence in the report that employees were involved in determining the nature of "minimum service", on an equal footing with employers. In reply, the report states that, under Article 412 (2) of the Labour Code, the lists of sectors of activity are drawn up after consultation with the

competent Russian trade union. Where there are several unions operating in the same branch of the economy, the list must be approved in consultation with all the trade unions active in that branch. Furthermore, the question might be dealt with by a tripartite commission responsible for regulating social and labour relations. In order to coordinate the interests of employees (or their representatives), employers (or their representatives) and the State on issues concerning the regulation of social and labour relations, such a commission (or, if the commission has not been set up at the appropriate level of social partnership, the relevant unions and employers' associations) would participate in the drawing up of draft legislative acts and other documents (Article 35.1 of the Labour Code). The Committee notes that there is a Russian tripartite commission at federal level; at regional level, regional tripartite commissions for regulating social and labour relations exist in 84 of the 85 constituent entities of the Russian Federation.

Where prior notification to the employer of the duration of a strike is concerned, the report states that Federal Law no. 334-FZ of 22 November 2011 amending the Labour Code with a view to improving the procedure for examining and resolving collective labour disputes repealed that obligation in paragraph 10 (d). The Committee notes that this situation is in conformity with the Charter on this point.

The Committee takes note of the detailed information on court decisions declaring strikes illegal.

The Committee takes note, from the report, of the measures taken following the recommendations of the Governing Body of the ILO concerning the complaints lodged with the ILO's Committee on Freedom of Association, in particular No. 2216 of 12 August 2002 (closed), No. 2251 of 3 February 2003 (closed) and No. 2758 of 20 January 2010.

Consequences of a strike

In reply to the Committee's question, the report states that, in accordance with Article 415 of the Labour Code, in the course of the settlement of a collective labour dispute, including a strike, that termination of employees' employment at the employer's initiative owing to their participation in a collective labour dispute or strike is prohibited. The Committee also notes that, under Article 409(5) of the Labour Code, an employer's representatives are not entitled to organise or take part in a strike.

Conclusion

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 6§4 of the Charter on the grounds that:

- the restrictions on the right to strike for civil aviation personnel engaged in air traffic management and for public railway transport workers do not comply with the conditions established by Article G of the Charter, and
- the percentage of workers required to call a strike is too high.

Article 21 - Right of workers to be informed and consulted

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

It examined the situation with regard to right of workers to be informed and consulted in its previous conclusion (Conclusions 2014). It will therefore only consider recent developments and additional information.

The report states that in 2013, under Federal Law No. 95-FZ of 7 May 2013 amending Article 22 of the Labour Code, a new system for the consultation of employees on productivity and efficiency was set up. The law establishes the right of employers to set up "production councils" – advisory bodies formed on a voluntary basis by their employees to draft proposals to improve production activities and processes, increase workforce productivity and improve employees' skills. The powers, membership and functioning of such councils and their interaction with employers are established by a local by-law. The Committee asks whether the workers have the right to establish such a council.

Legal framework

In its previous conclusion (Conclusions 2014), the Committee asked whether the legal framework applies to all undertakings. In reply, the report states that Article 53 of the Labour Code, which governs the right of workers' representatives to obtain information from the employer on issues that directly affect their interests within the undertaking, applies to all public and private undertakings.

Personal scope

In its previous conclusion (Conclusions 2014), the Committee also asked on the existence of any thresholds, established by national legislation or practice, in order to exclude undertakings which employ less than a certain number of workers. In reply, the report states that the right of workers to receive information and to be consulted in accordance with labour law does not depend on the number of workers employed by the undertaking.

Material scope

In reply to the Committee's third question, the report adds to the information in the previous report by highlighting other provisions of the Labour Code governing the right of workers to receive information on various issues and to carry out consultations, particularly Articles 21, 370 and 411 (see the report for more details).

Remedies

In reply to another question from the Committee, the report states that employees and their representatives are entitled to bring proceedings against their employers in the administrative courts. Proceedings relating to administrative offences may be initiated by the official authorised to daw up records of administrative offences only if one of the grounds provided by the law obtains (see report for more details) and if there are sufficient indications that such an offence has occurred (Article 28.1, paragraph 3, of the Administrative Offences Code).

Article 3, paragraph 1, of the Code of Civil Procedure contains a general rule under which every individual has the right to appeal to a court for protection of violated or disputed rights, freedoms or lawful interests. The Committee notes from the report that the Labour Code contains rules providing for compensation for workers where their rights are violated, Furthermore, workers are entitled to claim compensation for non-pecuniary damage if their rights have been violated.

Supervision

In its previous conclusion (Conclusions 2014), the Committee noted that the legislation did not establish any mechanisms for implementation of the rights to information and consultation but they could be regulated by collective contracts or agreements. Consequently it asked for information on and examples of the supervisory mechanisms provided for by collective contracts and agreements, and how they functioned in practice.

The Committee notes from the report that over 200 000 collective agreements have been registered in Russia, while 53 sectoral agreements and 2 interoccupational agreements have been negotiated between the social partners at federal level, along with an interregional sectoral agreement. Under Articles 41 and 46 of the Labour Code, the content and structure of collective contracts or agreements are determined by agreement between employees' and employers' representatives, who are free to choose matters to be discussed and included in the documents. The Committee notes that under Article 46 of the Labour Code, agreements must include provisions on the procedure to supervise their implementation. The Committee takes note of the examples given of supervisory measures included in collective contracts and agreements and how they function in practice.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Russian Federation is in conformity with Article 21 of the Charter.

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

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

It has already examined the situation in this sphere so it will consider only recent developments and additional information.

The Committee notes that Article 22 applies both to public and to private undertakings. It also notes that there are no thresholds, established by the national legislation or practice, in order to exclude undertakings which employ less than a certain number of workers.

Working conditions, work organisation and working environment

In reply to the Committee's request, in addition to the information passed on previously, the report states that employees and their representatives exercise their right to participate in the determination and improvement of working conditions and the work environment at various levels of social partnership (Article 35 of the Labour Code).

The Committee notes from the report that, under Article 9 of Federal Law No. 426-FZ of 28 December 2013, in order to conduct special assessment of working conditions ("SOUT"), the employer establishes a commission to conduct special assessment of working conditions, it shall necessarily include a representative of the primary trade union organization or other representative body of workers, if the employer has the representative body of workers. Moreover, Article 15 of the said law and Order No. 33 of the Ministry of Labor of 24 January 2014 approved the form of a report on the results of the SOUT of the employer.

Protection of health and safety

In addition to information provided previously, workers have the right to participate, directly or through their representatives, in the investigation of an accident of any severity (Article 229 of the Labour Code). The Committee notes from the report that wide participation of trade unions and other representative bodies of workers in ensuring the safe work organization and working environment is realized through the mechanism of collective bargaining provided for by the Labor Code, it results in a collective agreement. One section of the agreement is necessarily devoted to the improvement of safety and labor conditions in order to ensure compliance with health and safety requirements. The Committee asks, taking into account its examination under Articles 5 and 6§2 of the Charter, what is the role of minority trade unions in the protection of health and safety at work.

Organisation of social and socio-cultural services and facilities

The Committee notes from the report that trade unions and other worker representation bodies take part in the organisation of social and socio-cultural services within undertakings and they supervise compliance with the regulations on these matters through collective negotiation at various levels. This may result in a sectoral agreement covering the economic activity in question or a collective agreement at the level of the undertaking. Both types of agreement cover social and socio-cultural services, the mechanisms to supervise their implementation and the standard-setting instruments to ensure compliance with the measures announced.

The Committee asks for examples to be provided in the next report of the types of socio-cultural services and facilities covered by collective agreements along with explanations of how workers take part in their organisation.

Enforcement

The Committee repeats its request for a description in the next report of the monitoring and supervision activities carried out by representatives referred to in its previous conclusion (Conclusions 2014). It also asked again whether these activities, further to health and safety issues, also refer to other matters linked to the implementation of Article 22.

The Committee asks more precisely whether employees' representatives may appeal to the relevant administrative courts or bodies (such as the labour inspectorate) in the event that the right of workers to take part in the determination and improvement of the working conditions and working environment has been breached. It also asks which administrative courts or bodies have jurisdiction on these matters, what procedure must be followed and what remedies are available.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Russian Federation is in conformity with Article 22 of the 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 contained in the report submitted by the Russian Federation.

In accordance with Article 28 of the Charter, all representatives, whether trade union representatives or representatives elected by the workers, must enjoy protection.

The Committee recalls that Article 28 of the Charter guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises, *inter alia*, a similar right in respect of trade union representatives (Conclusions 2003, Bulgaria). Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal. The protection afforded to worker representatives should extend for a period beyond the mandate. To this end, the protection afforded to workers shall be extended for a reasonable period after the effective end of period of their office.

The Committee notes from the report that, according to Article 29 of the Labour Code, on workers' representatives, the workers' representatives included in social partnerships are (1) trade unions and their associations; (2) other trade union organisations established by Russian federal or inter-regional trade union statutes; and (3) other representatives elected by the workers in cases provided for in the Labour Code.

The report contains no information regarding elected representatives.

According to the report and further to information previously provided (see Conclusions 2014), under Article 375 of the Labour Code, on the guarantees enjoyed by full-time trade union officials, full-time trade union officials have the same labour rights, guarantees and privileges under collective contracts as the employees of the relevant enterprise or individual entrepreneur. The Committee considers that the situation in the Russian Federation is not in conformity with Article 28 of the Charter on this point, because the protection afforded to some workers' representatives does not extend beyond the end of their mandate.

In its previous conclusions (Conclusions 2014), the Committee posed several questions concerning the right of other representatives elected by workers in accordance with the Labour Code to protection in the undertaking and the facilities to be accorded to them. According to the report, under Article 31 of the Labour Code, if workers are not affiliated to a primary trade union or if an organisation's trade union represents less than half of its workers and, consequently, is not authorised to represent the interests of the workers in a social partnership at the local level, another representative (or representative body) may be elected by secret ballot at a general meeting (conference) of the workers from within their ranks to represent their interests. The Committee understands that representatives so elected have limited prerogatives. In fact, according to the law, the existence of elected representatives cannot prevent primary trade union organisations from exercising their powers. The Committee points out that, even if the role of any existing elected representatives is somewhat limited, they have a right to the guarantees established under Article 28 of the Charter. Consequently, the Committee considers that adequate protection and appropriate facilities are not afforded to workers' representatives other than trade union representatives.

The Committee asks whether the employees elected to the "production councils" have special legal protection or they can afford similar protection like any other employees.

Conclusion

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 28 on the grounds that:

- the protection afforded to some workers' representatives does not extend beyond the end of their mandate,
- adequate protection and appropriate facilities are not afforded to workers' representatives other than trade union representatives.

Article 29 - Right to information and consultation in procedures of collective redundancy

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

Definition and scope

The Committee notes that the Labour Code does not contain specific criteria relating to collective redundancy. Such criteria may, however, be determined by industry-specific agreements (Article 82 (1)). When establishing such criteria, with due regard for the territorial and industry-specific characteristics of economic development and the regional unemployment rate, the criteria established in Government Decree No. 99 of 5 February 1993 on the organisation of work in the event of a large-scale reduction in staff (as amended by Decree No. 1469 of 24 December 2014) may be taken into account. The Decree is applicable insofar as it does not contradict the Labour Code.

According to Decree No. 99, the principal criteria defining collective redundancy are indicators of the number of workers made redundant in connection with the liquidation of an enterprise and the number of workers made redundant in connection with an overall reduction in an organisation's staff over a given period. Those indicators are as follows:

- (a) The liquidation of an enterprise of any organisational or legal form with a staff of 15 or more persons.
- (b) A reduction in an enterprise's total number of staff, for example:
  - 50 or more persons over 30 calendar days
  - 200 or more persons over 60 calendar days
  - 500 or more persons over 90 calendar days.
- (c) The redundancy of over 1% of workers in connection with the liquidation of the enterprise or with an overall reduction in staff over 30 calendar days in regions where the active population is under 5 000.

  The Committee asks again whether all workers are covered by social partnership agreements.

Prior information and consultation

In its previous conclusion (Conclusions 2014), the Committee reiterated that all documents relevant to a particular consultation must be supplied before it starts (reasons for redundancies, planned social measures, the criteria for being made redundant and information on the order of the redundancies) and asked what the applicable regulations were. The Committee also asked whether domestic law guaranteed the right to information for workers' representatives during the consultation process.

The report states that, according to Article 25 para. 2 of Law No. 1032-1 of 19 April 1991, on employment in the Russian Federation, following a decision to liquidate a firm or, in the case of an individual entrepreneur, to cease operations, or a decision to reduce the number of staff and, potentially, make workers redundant, the employing firm or entrepreneur must notify the employment authorities accordingly in writing, at least two months before the redundancy procedure begins for the former and at least two weeks before the redundancy procedure begins for the latter, indicating the position, occupation, required qualifications and the terms of payment of each worker. If a decision concerning redundancy could lead to collective redundancies, notification must be provided no later than three months in advance of the beginning of the redundancy procedure.

Additionally, under Article 82 of the Labour Code, employers are obliged to notify the elected body of the relevant primary trade union organisation of any decisions relating to a reduction in the number of employees likely to cause collective redundancies at least three months before beginning the redundancy procedure.

Moreover, further to the information previously provided, proposals by trade unions or any other bodies empowered by the workers to represent them must be considered by state institutions or the executive authorities and the employer.

According to Decree No. 99, during a large-scale reduction in an enterprise's staff, the regional executive authorities may suspend a decision to bring about collective redundancies (for a maximum period of 6 months, depending on the regional unemployment rate) or have a staggered redundancy procedure implemented (for up to 12 months, depending on the number of dismissals). The regional executive authorities may also arrange a review of the enterprise's financial situation and establish measures to reduce the number of workers to be made redundant.

Industry-specific and/or territorial agreements define the criteria for redundancies and provide for the establishment of workers' protection mechanisms in the event of collective redundancies (Conclusions 2014).

The Committee notes from the report that if changes in organisational or technological working conditions risk causing collective redundancies, employers are entitled to put part-time working arrangements in place, in consultation with the relevant primary trade union organisation and for a maximum period of six months, for the purpose of protecting the employment of staff members (Article 74 of the Labour Code).

Preventive measures and sanctions

The Committee notes that, according to Article 54 (2) of the Labour Code, persons who fail to provide the necessary information for collective negotiation or the monitoring of the implementation of a collective contract or agreement are liable to be fined a sum set in accordance with federal law. Additionally, under Article 419 of the Labour Code, persons who have violated labour legislation and other normative acts containing labour law provisions are held responsible according to the disciplinary provisions contained in the Code, as well as in accordance to the relevant provisions of the civil, administrative and criminal legislation. Under Article 5.27 of the Code of Administrative Offences, the violation of the labour legislation and other normative legal acts containing the norms of the labour legislation entails a warning or the imposition of administrative fine to officials of an amount of RUB 1 000 (≈ €17) to 5 000 (≈ € 85); to persons engaged in entrepreneurial activities without forming a legal person – RUB 1 000 to 5 000; for legal persons – from RUB 30 000 (≈ €627) to 50 000 (≈ €1 045).

The Committee asks again what preventive measures exist to ensure that redundancies do not take effect before the employer has fulfilled its obligation to inform and consult the workers' representatives.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Russian Federation is in conformity with Article 29 of the Charter.