March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"[1]

This text may be subject to editorial revision.

[1] As of 12 February 2019, the official name of the country changed to North Macedonia.

The following chapter concerns “the former Yugoslav Republic of Macedonia”[2] which ratified the Charter on 6 January 2012. The deadline for submitting the 5th report was 31 October 2017 and “the former Yugoslav Republic of Macedonia” submitted it on 17 January 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 former Yugoslav Republic of Macedonia” has accepted all provisions from the above-mentioned group except Articles 4§1, 4§4 and 22.

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

The conclusions relating to “the former Yugoslav Republic of Macedonia” concern 20 situations and are as follows:

– 9 conclusions of conformity: Articles 2§2, 2§3, 2§4, 2§6, 5, 6§1, 6§2, 6§3 and 26§1,

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

In respect of the 6 other situations related to Articles 2§1, 4§3, 6§4, 21, 26§2 and 29, 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 former Yugoslav Republic of Macedonia” 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

Preventive measures aimed at eliminating or reducing the risks related to work feature in the Occupational Safety and Health Act, which was amended in 2014. Article 11 requires employers to prepare a risk assessment statement for each workplace, with appropriate instructions and measures to be introduced. They are required, in particular, to conduct risk assessments for the entire workplace and eliminate all the risks and hazards identified, in accordance with an official rulebook on the preparation of safety statements, their contents, and the data on which risk assessments should be based.

Articles 26§1 and 26§2

Pursuant to Article 11 of the Law on Protection against Harassment at Workplace (PHW Law), adopted in 2013, the employer has the obligation to inform employees of their and the employer’s rights and obligations as regards harassment and of the relevant protective

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measures and procedures available. The respect of this obligation is monitored by the Labour Inspectorate.

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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 former Yugoslav Republic of Macedonia".

In its previous conclusion (Conclusions 2014), the Committee found that the situation was not in conformity with Article 2§1 of the Charter on the ground that the hours spent in preparedness for work of medical staff were regarded as a period of rest.

The Committee also noted that according to Article 124 of the Labour Relations Law, reorganisation of working time should be done when the nature of the activity is so requiring and the collective agreement is necessary to establish the conditions of flexible working time arrangement. In the absence of a collective agreement, the employer must regulate flexible arrangements with internal act and notify the worker one day before doing so. It asked whether there were limits to daily and weekly working time under flexible working arrangements, in which the hours concerned were restricted to specified maximum and minimum figures.

In reply, the report states that there are no provisions of the Labour Relations Law on flexible working time arrangements, or on the minimum and maximum lengths of daily and weekly working hours, but Article 116§1-2 specifies a weekly working week of 40 hours, generally spread over five working days. The Committee repeats its question. In particular, it asks for more evidence that in practice, the workers on flexible working time arrangements with long reference periods do not work unreasonable hours or an excessive number of long working weeks.

In answer to the Committee's question about statistics regarding the monitoring of overtime and the penalties imposed, the report states that the number of decisions concerned with eliminating irregularities in the use of overtime fell during the reference period from 365 in 2013 to 238 in 2016. In the case of penalties, under amended Article 265 of the Labour Relations Law, employers that order employees to work longer hours than those laid down in law, or do not keep or correctly maintain working hours and overtime registers, or have not informed the labour inspectorate of the introduction of overtime are liable to fines of € 3 000 in the case of an employing company, 30% of the relevant fine for a company official and € 300 to 450 for an individual employer.

The Committee notes from the report that in 2015 the Labour Relations Law has been amended with regard to overtime. Article 117§2 now stipulates that over a three-month period, overtime may not exceed eight hours per week on average. Nor may it be in excess of 190 hours per year. This excludes cases where the work cannot be interrupted or where it is not possible to organise the work on a shift basis. The Committee asks for information on the absolute limits to daily and weekly hours of work in such cases. In the meantime, it reserves its position on this point.

Regarding the reason for the finding of non-conformity, the report states that, under Article 218 of the Health Protection Law, stand-by time is defined as periods in which health professionals are not required to be present in their workplace but must be available to offer advice and, if necessary, go to the workplace to carry out urgent medical treatment. This concerns specialist doctors who are called out to respond to urgent and life-threatening situations. The Committee notes that, under the collective agreement for health-related activities, health professionals are entitled to an allowance for periods spent on stand-by, in particular 8% of the daily element of their monthly salary for periods when they are on call but not working and 113% of their hourly salary for periods in which they are actually called out. The Committee considers that this situation is in conformity with the Charter.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

In its last conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 2§2 of the Charter. Since the situation remains unchanged, it confirms its previous finding of conformity.

With regard to penalties, the Committee notes from the report that under amended Article 265 of the Labour Relations Law, employers that fail to grant employees compensatory leave for public holidays worked, or have not informed the labour inspectorate of the introduction of public holidays are liable to fines of € 3 000 in the case of an employing company, 30% of the relevant fine for a company official and € 300 to 450 for an individual employer.

Conclusion

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is in conformity with Article 2§2 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 former Yugoslav Republic of Macedonia”.

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 2§3 of the Charter. It will therefore only consider recent changes and relevant additional information.

The report states that under amended Article 141§2 of the Labour Relations Law, with the employer’s agreement, annual holidays may now be divided into separate parts, one part of which must last at least two continuous weeks. Article 144§2 authorises employees to use two days of annual leave whenever they wish, so long as this does not pose a serious threat to the work process. In such cases, the employer must be informed three days in advance.

Conclusion

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is in conformity with Article 2§3 of the Charter.

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 former Yugoslav Republic of Macedonia”.

Elimination or reduction of risks

In its previous conclusion (Conclusions 2014), the Committee reserved its position on this point and asked for information on preventive measures aimed at eliminating or reducing the risks related to work. In reply, the report states that such preventive measures feature in the Occupational Safety and Health Act, which was amended in 2014. Article 11 requires employers to prepare a risk assessment statement for each workplace, with appropriate instructions and measures to be introduced. They are required, in particular, to conduct risk assessments for the entire workplace and eliminate all the risks and hazards identified, in accordance with an official rulebook on the preparation of safety statements, their contents, and the data on which risk assessments should be based.

The Committee also refers to its conclusion on Article 3§2 of the Charter (Conclusions 2017) for a description of the dangerous activities concerned and measures taken in response.

The report also states that labour inspectors concerned with occupational safety and health monitor the risk assessment statements for each workplace. The Committee notes that the number of inpsections decreased from 16 593 in 2013 to 11 713 in 2016.

In the light of the foregoing, the Committee finds that the situation is in conformity on this point.

Measures in response to residual risks

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with the Charter on this point. Since the situation remained unchanged during the reference period, the Committee confirms its finding of conformity.

It asks for up-to-date information in the next report on any changes to the legislation and regulations on the elimination of risks in inherently dangerous or unhealthy occupations.

It notes from the report that the labour ministry received and approved four requests for reduced working hours during the reference period.

Conclusion

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is in conformity with Article 2§4 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in compliance with Article 2§5 of the Charter and asked whether, when the minimum legal duration of the weekly rest was calculated as an average over a period of up to six months, this implied that a worker might have to work more than twelve consecutive days before being granted a two-day rest period.

In reply, the report states that in cases where the legal minimum duration of the weekly rest period can be expressed as an average over a relatively long period, though not exceeding six months, the legislation does not specify a maximum number of days that can be worked continuously, with no weekly rest for the employee. This applies where the nature of the activity entails a constant presence in the workplace, where work has to be carried out or services provided on a continuing basis or where there is an unequal or increased workload. The Committee notes that in such cases, employees may be required to work 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 weekly rest days may be postponed over a period exceeding twelve successive working days.

The Committee notes from the report that there was a decline in the number of complaints lodged during the reference period concerning the right to a weekly rest period (from 28 in 2013 to 19 in 2016), while the number of decisions adopted to eliminate irregularities rose (from 43 in 2013 to 62 in 2016).

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" 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 former Yugoslav Republic of Macedonia”.

It notes from the report that the situation, which it has previously found to be in conformity with the Charter (Conclusions 2014), remains unaltered, and therefore reiterates its finding of conformity.

Conclusion

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” 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 former Yugoslav Republic of Macedonia”.

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 2§7 of the Charter and asked whether, in addition to the initial consultation, there was regular consultation with workers’ representatives on the use of night work, the conditions in which it was performed and measures taken to reconcile employees’ needs and the special nature of night work.

In reply, the report states that there is no legal requirement to consult worker representatives on such matters on a regular basis but, where necessary, such consultations can be launched at any time on the initiative of both parties. The Committee considers that the situation is not in conformity with Article 2§7 of the Charter on the ground that employee representatives are not consulted regularly on the conditions relating to night work and on measures taken to reconcile employees’ needs and the special nature of night work.

Conclusion

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 2§7 of the Charter on the ground that employee representatives are not consulted regularly on the conditions relating to night work and on measures taken to reconcile employees’ needs and the special nature of night work.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia". It also takes note of the observations of the country's trade union federation, included in the report.

The Committee deferred its previous conclusion (Conclusions 2014) and asked what percentage of the normal wage the overtime bonus amounted to. In reply, the report states that, under the Labour Relations Law or the relevant collective agreement, employees working overtime are all entitled to a monthly supplement, irrespective of position or place of work. The Committee notes in particular that the Labour Relations Law provides for the remuneration of overtime, in the form of a bonus. It also notes from the report that Article 24 of the general collective agreement for private sector employees stipulates that overtime must be remunerated at a rate at least 35% higher than the individual's basic monthly pay. Under Article 17 of the general collective agreement applicable to the public sector the bonus must be at least 29% higher than the basic pay. The Committee asks for information on the number of employees covered by these collective agreements and on the situation of those who are not covered. It also asks for the next report to specify the period in which the collective agreements are applicable. In the meantime, it reserves its position on this point.

In its previous conclusion, the Committee also asked whether employees were entitled to time off in lieu of remuneration for overtime work and, if so, whether it was of an increased duration. In reply, the report states that public officials' overtime rights are governed by the legislation on public employees. The Committee understands from the report that for each hour of overtime, employees can recover one hour of free time as compensation, which they must use during the following month. Public officials who are not able to benefit from free time from work are entitled to payment at a rate 35% higher than their basic hourly salary. The Committee recalls that where remuneration for overtime is given entirely in the form of time off, Article 4§2 requires that this time be longer than the additional hours worked (Conclusions XIV-2, Belgium). It therefore concludes that the situation is not in conformity with Article 4§2 of the Charter on the ground that the legislation does not guarantee public officials an increased time off in lieu of remuneration for overtime.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 4§2 of the Charter on the ground that the legislation does not guarantee public officials an increased time off in lieu of remuneration for overtime.

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 former Yugoslav Republic of Macedonia".

Legal basis of equal pay

In reply to the Committee's question, the report states that the law does not define equal work or work of equal value, but it arises from Article 108 of the Law on Labour Relations, that the employer shall be obliged to pay equal remuneration to workers for equal work with equal requirements at the workplace regardless of gender. The provisions of the employment contract, the collective agreement, or the general act of the employer, which are contrary to this Article, shall be null and void. The Committee asks how equal work or work of equal value are defined, what methods are used to evaluate work and whether these are gender neutral and exclude discriminatory undervaluation of jobs traditionally performed by women. It also ask to provide if both direct and indirect discrimination is prohibited. In the meantime, it reserves its position on this issue.

Guarantees of enforcement and judicial safeguards

In reply to the Committee's question as to which rules apply with regard to the guarantees of implementation of the principle of equal remuneration, the burden of proof and sanctions, and the request for information on domestic case-law on equal remuneration, the report states that the persons who consider themselves discriminated shall provide facts that make their claim likely. The proof that there was no discrimination is borne by the defendant (Section 11 of the Labour Relations). The Committee notes that in the implementation of the Law on Labour Relations, according to the report, no cases of violation of the principle of equal treatment have been observed. Through inspection supervision, the inspection services represent a guarantee for exercising the legally provided right. The report further states that there have been no requests or information about unequal remuneration submitted by employees.

As regards the compensation granted to victims of discrimination, the report indicates that there is no upper limit in the Labour Relations Act and compensation shall be determined for each case individually in accordance with the provisions of the Law on Obligations. The Committee asks what rules apply (as regards reinstatement, compensation for pecuniary and moral damages) to the cases of unlawful dismissal following the equal pay claim.

Methods of comparison

According to the report, there have not been any court cases concerning unequal pay, involving outside company comparisons. The report states that this could be due to the insufficient awareness of the rights of women in the matter but it is also due to the lack of awareness about the fact that the right to equal remuneration for equally valued work is regulated by law. The Committee asks whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as if the pay comparison is possible outside one company, for example, if such company is a part of a holding company and the remuneration is set centrally by such holding company.

Statistics

The report states that the gender gap in the monthly wages between women and men (assuming they have the same level of education, same work experience, working in the same sector, occupation, etc.) is 17.5%. The gap is largest in the industry and traditional services.

Policy and other measures

According to the report, the Ministry of Labour and Social Policy, in cooperation with the office of the ILO, has developed a Minimum Wage Policy Guide that explains the concepts that form the basis for equal incomes for work of equal value and provides guidance for its practical application. The guide is intended for government officials, workers' organisations and employers, policy makers, practitioners, trainers, and other stakeholders in this dynamic area and the same can help to raise the awareness and understand the principle of equal remuneration for work of equal value.

In January 2013, the Government adopted its first National Strategy on Gender Equality. The Strategy shall be implemented by 2020 and it prioritises the promotion of equal wages for women and men, and the fight against discrimination on the grounds of gender. The report acknowledges that although the legislation provides for equal remuneration for equal or same work, the principle of equal pay for work of equal value is not fully implemented in practice.

The Committee takes note of the measures implemented by the Government to address the persistent gender pay gap. These measures are aimed at reducing discrimination based on the segregation of women in "female" occupations that normally pay lower salaries and developing clear procedures and an institutional framework for resolving disputes regarding wage equality.

The Committee asks the next report to provide information on the impact of these measures on reducing the gender pay gap.

Conclusion

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

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 former Yugoslav Republic of Macedonia" as well as by the Federation of Trade Unions of "the former Yugoslav Republic of Macedonia" (SSM).

has previously deferred its conclusion (Conclusions 2014), pending receipt of the information requested and asked the next report to provide information on:

(1) claims that are not covered by the Labour Code for which deductions from wages may be authorised (such as maintenance claims, tax debts, civil-law claims, trade union dues and fines),

(2) exceptions to the limitation of deductions to one third of the wage provided for by Article 123§2 of the Labour Code,

(3) level of protected wages,

(4) circumstances in which workers may waive the limitation on deductions from wages provided for by law.

In reply, the report states that, according to Article 111 of the Law on Labour Relations, the employer may withhold the wage of the employee in cases provided for by Law, with no possibility of a different agreement between the parties. Furthermore, according to the General Collective Agreement applicable to the private sector, employers that face difficulties in the work, upon the approval of the trade union and on the basis of a program to overcome problems, may determine the lowest salary. The decrease may not exceed 20% and may not be applied for more than six months. As regards limits applicable to authorized deductions, claims based on legal support, on compensation due to health damage or reduction/loss of working ability and on compensation due to loss of support because of the death of the provider, may be enforced up to the 1/2 of the wage, while claims based on different grounds may be enforced up to the 1/3 of the wage. The Committee considers that the situation is not in conformity with the Charter on the ground that the attachable amount of wages leaves workers who are paid the lowest wages and their dependents insufficient means of subsistence.

The employer may offset his/her obligation to wage payment with the employee's liabilities only upon written consent of the employee, which is given after the employer's claim occurs. The report does not provide any information on limits applicable in this case. The Committee, therefore, reiterates its previous question in this respect.

In its previous conclusion (Conclusions 2014), the Committee requested information about the limitation on deductions from wages applicable to the public sector. In the absence of a reply, the Committee reiterates its question.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 4§5 of the Charter on the ground that the attachable amount of wages leaves workers who are paid the lowest wages and their dependents insufficient means of subsistence.

Article 5 - Right to organise

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

The Committee has already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. Therefore it will only consider recent developments and additional information in this conclusion.

Forming trade unions and employers' organisations

In its previous conclusion (Conclusions XIX-3 (2014)), the Committee noted that the legislation in force does not require a certain number of founding members for the formation of a trade union. The Committee asked whether this is also the case for employers' organisations. The report confirms that this is the case.

Freedom to join or not to join a trade union

The Committee previously asked that the next report indicate whether the legislation clearly prohibits all pre-entry or post-entry closed shop clauses and all union security clauses . The report states that any such clauses would be contrary to the Law on Labour Relations.

Representativeness

The Committee previously took note of the criteria set for trade unions to be deemed representative at different levels. However it requested information on the rights of minority unions. The report states that unions that are not representative enjoy certain prerogatives such as the right to represent individual employees, post notices on the employer's on premises and to receive documents of a general nature relating to the management of the staff they represent and access the workplace.

Personal scope

The Committee previously asked about restrictions on the right to organise for members of national administrative bodies. According to the report members of administrative bodies, the police and armed forces have the right to form and join trade unions. The Committee asks whether there are any specific restrictions on the right to organize for members of the police and armed forces and refers to its general question on the right of members of the armed forces to organise.

The report confirms that foreign workers are entitled to establish or join a trade union.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" 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 former Yugoslav Republic of Macedonia”.

The Committee previously found the situation to be in conformity with Article 6§1 of the Charter. It noted that that tripartite consultations take place in the public sector through the Economic and Social Council. Further bilateral consultation between representatives from the Ministries of Labour and Social Policy and two representative trade unions takes place prior to negotiations for renewing the General Collective Agreement for the public sector. The Committee asked whether this consultation is institutionalized. As the report provides no information on this point, the Committee repeats its request for this information.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is in conformity with Article 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 former Yugoslav Republic of Macedonia”.

According to the report during the reference period there were no changes to the legal situation.

The Committee previously noted the high coverage rate of collective agreements.

In respect to the Committee’s question as to whether trade unions and employers’ associations can participate in joint consultations and collective bargaining even if they do not have a representative status, the report states that according to the Law on Labour Relations there is no legal obstacle, trade unions and employers’ organizations with no representative status from participating in the process of consultations and negotiations for concluding collective agreements, but they cannot be signatory to the collective agreement.

In the event no the trade unions fulfills the conditions for representativeness, the union with the largest number of members will be deemed representative temporarily and permitted to participate in the negotiations and conclusion of a collective agreement, until the conditions are fulfilled.

During the reference period 2 collective agreements in the public sector, 11 collective agreements at branch or industry level and 50 collective agreements at the company level were registered.

The report states that the law provides no possibility for the extension of collective agreements however the issue is to be discussed under Tripartite Action Plan for the Promotion of the Collective Bargaining.

Conclusion

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is in conformity with Article 6§2 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee previously found the situation to be in conformity with the Charter but requested information on conciliation procedures in the public sector. The Committee notes that the report provides little information on the issue. Therefore it repeats its request for this information.

Regarding the procedure for mediation and conciliation in the public sector, according to the report amendments to the Law on the Peaceful Resolution of Labour Disputes, reduced the conciliation period to 20 days, after which the conciliation procedure is terminated, if the parties to the dispute do not conclude an agreement.

According to the report during the reference period following the amendments to the Law on Peaceful Resolution of Labour Disputes, 59 persons were registered as licensed conciliators and arbitrators.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is in conformity with Article 6§3 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

Collective action: definition and permitted objectives

The Committee notes that there have been no changes to the situation under this heading which it previously found to be in conformity with the Charter.

Entitlement to call a collective action

The Committee notes that there have been no changes to the situation under this heading which it previously found to be in conformity with the Charter.

Specific restrictions to the right to strike and procedural requirements

The Committee previously noted that minimum service requirements are applicable in most of the public sector (Conclusions 2014). However it requested information on the role of trade unions in determining the minimum service to be provided.

The Committee notes that the sectors in which the right to strike may be restricted are extensive and asks the next report to demonstrate that the restrictions satisfy the conditions laid down in Article G of the Charter. Meanwhile it reserves its position on this issue.

Article 238 of the Labour Relations Law provides that the trade union and the employer shall prepare and adopt rules by mutual consent on the maintenance and indispensable works which must not be interrupted during the strike. However the requirement for a minimum service must not deny or substantially restrict the right to strike. If the trade union and the employer do not reach agreement within 15 days the employer or the trade union may demand that arbitration makes decision within the following 15 days.

The Committee asked for information on the procedure for determining a minimum service in the civil service and more particularly whether trade unions were involved. The report suggests that this matter is settled by collective agreement. The Committee asks whether in practice trade unions are consulted by the relevant Minister before determining the minimum service to be provided.

The Committee refers to its general question regarding the right of members of the police force to strike.

Consequences of a strike

The Committee notes that there have been no changes to the situation under this heading which it previously found to be in conformity with the Charter.

Conclusion

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

Article 21 - Right of workers to be informed and consulted

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

Personal scope

According to the Labour Relations Law, the employer has an obligation to inform and consult workers' representatives:

- in private undertakings, which have at least 50 employees;
- in public enterprises, which have at least 20 employees.

Material scope

In its previous conclusion (Conclusions 2014), the Committee asked for detailed information on the matters which are subject to the right to be informed, and the decisions which are subject to the right of workers and other representatives to be consulted within the undertaking.

In reply, the report indicates that in case of transferring a undertaking or part of a undertaking all parties involved have to inform the trade union organizations about the transfer and consult them in order to reach an agreement on transfer details, especially the legal, economic and social implications for the workers. The obligation to inform also extends to individual workers where a union organization is not established. The Committee asks if workers have a right to be informed and consulted outside the scope of a transfer of undertaking.

Since the report only partially answers its questions, the Committee reiterates all the specific questions concerning the material scope of the right to information and consultation (Conclusions 2014). It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 21 of the Charter. In the meantime, the Committee reserves its position on this point.

Remedies

The Committee notes from the report that no complaints have been filed with the State Labour Inspectorate.

In reply to the Committee's question on the penalties which can be imposed on employers if they fail to meet their obligations, the report states that, pursuant to the amended section 265 of the Labor Relations Law, a fine is to be imposed on an employer – a legal entity (€ 3 000), a responsible person in the legal entity (30% of the imposed fine for the legal entity) or an employer – a natural person (300 to 450 €) if they do not introduce the employee to the safety and health measures at work, do not train them for their application and do provide protection of rights in case of transfer of a company or parts of a company.

In its previous conclusions, the Committee asked whether there is a judicial procedure available to employees, or their representatives, who consider that their right to information and consultation within the undertaking has not been respected. In reply, the report states that as long as the right to information and consultation is considered as an obligation for the employer by law, a violation of said right can be the basis for initiating a dispute before a competent court.

Since the report only partially answers its questions, the Committee reiterates all the specific questions (Conclusions 2014). It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 21 of the Charter. In the meantime, the Committee reserves its position on this point.

Supervision

In reply to the Committee's question about the powers and operational means of the State Labour Inspectorate, the report indicates that the State Labour Inspectorate is mandated to ensure the implementation of the laws and regulations concerning the rights and obligations of workers and employers through regular and extraordinary inspections.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

Prevention

In response to the Committee's question (Conclusions 2014) concerning the preventive measures taken during the reference period with the aim of raising awareness of the problem of sexual harassment in the workplace, the report states that pursuant to Article 11 of the Law on Protection against Harassment at Workplace (PHW Law), adopted in 2013, the employer has the obligation to inform employees of their and the employer's rights and obligations as regards harassment and of the relevant protective measures and procedures available. The respect of this obligation is monitored by the Labour Inspectorate.

As regards social partners' involvement in the adoption and implementation of measures against harassment, the report states (information provided under Article 26§2) that the Ministry of Labour and Social Policy informs the social partners about the findings of the State Labour Inspectorate in order to raise awareness of the need to prevent recurring wrongful or particularly negative and offensive activities.

Furthermore, according to the report, the Sector for Equal Opportunities conducts trainings and seminars on psychological and sexual harassment at the workplace at an annual level with the participation and support of the national trade unions, as well as the relevant international organisations.

Liability of employers and remedies

In its previous conclusion (Conclusions 2014), the Committee took note of the definition and prohibition of sexual harassment under the Labour Relations Act (Section 9), the Law on Prevention of and Protection from Discrimination (Section 7§2) and the Gender Equality Law. It asked the next report to provide comprehensive information on all procedures and remedies available to persons who consider themselves to be victims of sexual harassment, to clarify whether and to what extent employers can be held responsible for cases of sexual harassment involving their staff – either as victims or perpetrators – or occurring on premises under their responsibility, and to indicate how the right not to be retaliated is guaranteed.

The report indicates, as regards the employer's responsibility, that the PHW Law covers employees or persons *"under contract that participate in the work with the employer"*. When third persons are involved, as victim or perpetrator of harassment, employers can be subject to criminal proceedings, if the requirements of the Criminal Code are met. The Committee asks the next report to provide further information on the relevant provisions which would apply in such cases.

As regards the procedures and remedies available, the Committee notes that, pursuant to the PHW Law, persons covered by the law who witness behaviour which can be qualified as harassment have the obligation to inform the employer (Article 14) and are entitled to protection (Article 15). In particular, a person who believes that he/she is exposed to harassment is entitled to ask in writing the person they consider as a perpetrator of harassment to put an end to it, or they will initiate legal proceedings (article 17); he/she is also entitled to file a written request for protection to the employer (Article 18) or another person authorised by them (Article 19). Within eight days, the employer shall be obliged to propose a mediation by a neutral person. To this effect, employers with 50 or more employees are obliged to produce a list of mediators (Article 12). If the person is not satisfied of the measures taken to put an end to harassment, he/she is entitled to seise the competent court of a labour procedure (Article 31). In case the perpetrator of the harassment is the

employer or an executive body in a legal entity, the victim is entitled to lodge a complaint before the court (Article 18).

As regards the right not to be retaliated against, the report confirms that according to Article 30 of the PHW Law, employees who initiate procedures against harassment at the workplace or participate in them as witnesses, are protected from retaliation for two years.

The Committee takes note of the statistical data presented in the report concerning the decisions of the Labour Inspectorate demanding employers to act in accordance with the PHW Law (362 decisions in 2013, 385 in 2014, 256 in 2015 and 316 in 2016) as well as of the number of cases concerning harassment in the workplace which were brought before the Basic Court and were dealt with according to the Law on Labour Relations. It asks the next report to contain updated data on cases specifically concerning sexual harassment, in the light of the available examples of case-law.

Burden of proof

In response to the Committee's request of information (Conclusions 2014), the report states that, pursuant to Article 33 of the PHW Law, a shift in the burden of proof applies in cases of sexual harassment.

Damages

As regards the right to compensation, the report provides no information in response to the Committee's question (Conclusions 2014) on the scale of the pecuniary and non-pecuniary damages which are available and those which are effectively awarded to victims of sexual harassment, in the light of the relevant case-law. The Committee, therefore, reiterates its request for information and points out that in the absence of information in the next report there will be nothing to establish that the situation is in conformity with the Charter in this respect.

The Committee previously asked whether the right to reinstatement is available to all victims of sexual harassment, including when the employee has been pressured to resign for reasons related to sexual harassment. In reply, the report confirms that this is the case, also for employees pressured to resign, under the protection for unfair dismissal (see also Conclusions 2016, Article 24).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 26§1 of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

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

Prevention

In response to the Committee's question (Conclusions 2014) concerning the preventive measures taken during the reference period with the aim of raising awareness of the problem of moral (psychological) harassment in the workplace, the report states that pursuant to Article 11 of the Law on Protection against Harassment at Workplace (PHW Law), adopted in 2013, the employer has the obligation to inform employees of their and the employer's rights and obligations as regards harassment and of the relevant protective measures and procedures available. The respect of this obligation is monitored by the Labour Inspectorate.

As regards social partners' involvement in the adoption and implementation of measures against harassment, the report states that the Ministry of Labour and Social Policy informs the social partners about the findings of the State Labour Inspectorate in order to raise awareness of the need to prevent recurring wrongful or particularly negative and offensive activities.

Furthermore, according to the report, the Sector for Equal Opportunities conducts trainings and seminars on psychological and sexual harassment at the workplace at an annual level with the participation and support of the national trade unions, as well as the relevant international organisations.

Liability of employers and remedies

In its previous conclusion (Conclusions 2014), the Committee took note of the definition and prohibition of moral (psychological) harassment under the Labour Relations Act (Section 9) and the Law on Prevention of and Protection from Discrimination (Section 9.a.2). It asked the next report to provide comprehensive information on all procedures and remedies available to persons who consider to be victims of moral (psychological) harassment, to clarify whether and to what extent employers can be held responsible for cases of moral (psychological) harassment involving their staff – either as victims or perpetrators – or occurring on premises under their responsibility, and to indicate how the right not to be retaliated is guaranteed.

The report indicates, as regards the employer's responsibility, that the PHW Law covers employees or persons *"under contract that participate in the work with the employer"*. When third persons are involved, as victim or perpetrator of harassment, employers can be subject to criminal proceedings, if the requirements of the Criminal Code are met. The Committee asks the next report to clarify this point (legal basis and examples of case-law, if any).

As regards the procedures and remedies available, the Committee notes that, pursuant to the PHW Law, persons covered by the law who witness behaviour which can be qualified as harassment have the obligation to inform the employer (Article 14) and are entitled to protection (Article 15). In particular, a person who believes that he/she is exposed to harassment is entitled to ask in writing the person they consider as a perpetrator of harassment to put an end to it, or they will initiate legal proceedings (article 17); he/she is also entitled to file a written request for protection to the employer (Article 18) or another person authorised by them (Article 19). Within eight days, the employer shall be obliged to propose a mediation by a neutral person. To this effect, employers with 50 or more employees are obliged to produce a list of mediators (Article 12). If the person is not satisfied of the measures taken to put an end to harassment, he/she is entitled to seise the competent court of a labour procedure (Article 31). In case the perpetrator of the harassment is the

employer or an executive body in a legal entity, the victim is entitled to lodge a complaint before the court (Article 18).

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The Committee takes note of the statistical data presented in the report concerning the decisions of the Labour Inspectorate demanding employers to act in accordance with the PHW Law (362 decisions in 2013, 385 in 2014, 256 in 2015 and 316 in 2016) as well as of the number of cases concerning harassment in the workplace which were brought before the Basic Court and were dealt with according to the Law on Labour Relations. The Committee asks the next report to contain updated data on cases specifically concerning moral (psychological) harassment, in the light of the available examples of case-law.

Burden of proof

In response to the Committee's request of information (Conclusions 2014), the report states that, pursuant to Article 33 of the PHW Law, a shift in the burden of proof applies in cases of moral (psychological) harassment.

Damages

As regards the right to compensation, the report provides no information in response to the Committee's question (Conclusions 2014) on the scale of the pecuniary and non-pecuniary damages which are available and those which are effectively awarded to victims of moral (psychological) harassment, in the light of the relevant case-law. The Committee, therefore, reiterates its request for information and points out that in the absence of information in the next report there will be nothing to establish that the situation is in conformity with the Charter in this respect.

The Committee previously asked whether the right to reinstatement is available to all victims of moral (psychological) harassment, including when the employee has been pressured to resign for reasons related to moral (psychological) harassment. In reply, the report confirms that this is the case, also for employees pressured to resign, under the protection for unfair dismissal (see also Conclusions 2016, Article 24).

Conclusion

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

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

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

Types of workers’ representatives

The Committee understands that trade union is a main form of employee representation in the FYRoM. The Committee recalls that according to the Appendix of Article 28, the term "workers’ representatives" means persons who are recognised as such under national legislation or practice. Article 28 is not intended to impose an obligation to introduce any specific types of workers’ representatives but to ensure that adequate forms of representation are available to all employees, both within and outside the scope of collective bargaining with the employer.

The Committee has previously asked for information concerning the recognition in law and in practice of other forms of workers’ representatives. Since such information has not been provided, the Committee reiterates its question.

Protection granted to workers’ representatives

The Committee noted in its previous conclusion (Conclusions 2014) that trade union representatives are protected against dismissal based on their membership or participation in trade union activities. Referring to its statement of interpretation on Article 28, the Committee asked whether: (i) this protection is extended for a reasonable period after the termination of the mandate, (ii) it covers prejudicial acts other than dismissal and (iii) if it is equally afforded to other forms of workers’ representatives.

In reply, the report submits that workers’ representatives other than trade union members enjoy the same protection as regular employees. No information was provided as to the other important aspects of the protection of workers’ representatives. Accordinlgy, the Committee considers that it has not been demonstrated that the situation is in conformity with the Charter in this respect.

Remedies

The report explains that if a court finds that an employment contract was illegally terminated, the employee shall be entitled to reinstatetment to work and compensation in the amount of the lost salary. According to Article 77 of the Law on Labour Relations, membership of a trade union or participation in its activities are considered unfounded reasons for dismissal of an employee. The Committee asks whether the protection extends to all workers’ representatives.

Facilities granted to workers’ representatives

In its previous conclusion (Conclusions 2014), the Committee referred to the R143 Recommendation concerning Protection and Facilities to be Afforded to Workers Representatives in the Undertaking, adopted by the ILO General Conference of 23 June 1971 and to its statement of interpretation on Article 28 and asked to what extent have they been enshrined in the domestic legal framework and, in particular, whether they applied to all existing types of workers representatives.

The report provides no relevant new information in this respect. The Committee therefore considers that it has not been established that the facilities afforded to workers’ representatives meet the requirements of Article 28.

Conclusion

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 28 of the Charter on the ground that it has not been established that:

- protection of trade union representatives against dismissal extends for a reasonable period after the expiry of their mandate,
- workers’ representatives enjoy protection from prejudicial acts short of dismissal,
- facilities afforded to workers’ representatives are adequate.

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 former Yugoslav Republic of Macedonia”.

Prior information and consultation

In reply to the Committee’s question and further to the information previously provided, the report states that amendments to the Labour Relations Law provide for fines designed to guarantee employee representatives’ right to obtain all necessary information throughout the consultation process.

Preventive measures and sanctions

In its previous conclusion, the Committee asked what sanctions existed if the employer failed to notify workers’ representatives about the planned redundancies, and what preventive measures existed to ensure that redundancies did not take effect before the obligation of the employer to inform and consult the workers’ representatives had been fulfilled..

In reply, the report states that, under amended Article 265 of the Labour Relations Law, employers that fail to inform and consult employees about collective layoffs are liable to fines of € 3 000 for an employing company, 30% of the relevant fine for a company official and € 300 to 450 for an individual employer.

The Committee notes that the report only partly replies to the questions raised and therefore again asks what preventive measures have been introduced to ensure that redundancies do not take effect until employers have met their obligation to inform and consult employee representatives.

Conclusion

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