March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

UKRAINE

This text may be subject to editorial revision.

The following chapter concerns Ukraine which ratified the Charter on 21 December 2006. The deadline for submitting the 10th report was 31 October 2017 and Ukraine submitted it on 26 July 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).

Ukraine has accepted all provisions from the above-mentioned group except Articles 2§3 and 4§1.

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

The conclusions relating to Ukraine concern 21 situations and are as follows:

– 9 conclusions of conformity: Articles 2§1, 2§2, 4§2, 6§1, 6§2, 6§3, 21, 22 and 29;

– 10 conclusions of non-conformity: Articles 2§5, 2§7, 4§3, 4§4, 4§5, 5, 6§4, 26§1, 26§2 and 28.

In respect of the 2 other situations related to Articles 2§4 and 2§6, 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 Ukraine 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 26§1

A publication-manual for employers "Adherence to the principle of equal treatment and non-discrimination in the work place in the public and private sectors of Ukraine" was developed and distributed. This manual contains in particular a section on "Sexual harassment" and covers a range of issues related to employer's policies and norms of conduct, as well as recommendations on how to act and respond to possible complaints, etc.

Article 29

The Law on Employment of Population, as amended, imposes on the employer an obligation to consult trade unions and to take measures to prevent collective redundancy or minimize the dismissals and / or their negative consequences. In this respect, the employer is required to submit information to the competent territorial bodies, two months in advance, about a planned redundancy of workers for reasons of economic, technological, structural or similar nature or because of liquidation, reorganisation, or change in the form of ownership of an enterprise, institution or organisation (Article 50).

* * *

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 Ukraine.

In its previous conclusion (Conclusions 2014), the Committee found the working time in Ukraine to be in conformity with Article 2§1 of the Charter.

Referring to its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France* (§§ 64-65), Complaint No 55/2009, the Committee asked whether an on-call period during which no effective work is undertaken was regarded a period of rest. In reply, the report confirms that there is no equivalisation of an on-call period to a rest period under the Ukrainian law. Employee involvement in a standby duty, which cannot exceed the normal working time, is undertaken by written order (regulation) by the employer and must include rest days equal to its duration granted in exchange. Standby duty/ on-call duty after the end of the working day, on weekends and public holidays may be introduced in exceptional cases and only with the consent of the trade union body. It is not allowed to involve employees in standby duty more than once a month. In any event, it should be defined in a collective agreement of the enterprise with observance of the norms and guarantees established by law and the Sectoral Agreement.

Conclusion

The Committee concludes that the situation in Ukraine is in conformity with Article 2§1 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

It notes that the legal framework, which it has previously found to be in conformity with the Charter, has not changed. The report confirms that guarantees for increase in pay for the work performed on a public holiday apply to both the public and the private sector and to all category of workers, including those not remunerated on a monthly basis or whose contract provides for the regular performance of work on public holidays. It also submits updated data from State Labour Inspectorate on detected violations and the number of orders issued to eliminate them.

Conclusion

The Committee concludes that the situation in Ukraine is in conformity with Article 2§2 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 Ukraine.

The Committee points out that the States party to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations and to apply compensatory measures to workers exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced, either in spite of the effective application of the preventive measures referred to above, or because they have not yet been applied.

Elimination or reduction of risks

The Committee refers to its conclusions on Article 3§1 (Conclusions 2017) for a description of dangerous activities and the preventive measures taken in their respect, as well as the questions raised, on account of which the Committee reserved its position. It recalls that it has found that the situation was not in conformity with Articles 3§2, 3§3 and 3§4 (Conclusions 2017). In particular, it has considered under Article 3§2 that the coverage of occupational hazards by specific occupational health and safety legislation and regulations is insufficient, as well as the level of protection against asbestos-related occupational hazards. It furthermore found shortcomings in the system of labour inspection.

In its previous conclusions (Conclusions 2014), the Committee asked for comprehensive and updated information on the effective implementation of measures aimed at eliminating or reducing occupational risks, in particular those related to inherently dangerous or unhealthy sectors and activities, such as mining, quarrying, steel making and shipbuilding and occupations exposing employees to ionising radiation, extreme temperatures and noise.

In this connection, the Committee takes note of the information provided on the regulatory measures taken on hygienic assessment of working conditions and nature of the work in the workplaces applicable both in public and private sectors by using indicators of harmful and dangerous actors for hygienic classification of labour (the Order of the Ministry of Health No248 of 8 April 2014). According to the Order No 248 hygenic assessment of the working conditions is prescribed. The Order of the Ministry of Energy and Coal Industry of Ukraine No 73 of 9 February 2015 provides for protection of the life, health and safety of workers (including temporary workers, contractors and other persons) by ensuring hazards identification and assessment of the risks, identification and implementation of necessary security measures to prevent potential incidents. The Order prescribes detailed mechanism for the implementation with reporting system in all inherently dangerous or unhealthy sectors and activities.

According to article 7 of the Law of Ukraine “on Labour Protection” the employer can, at his or her own expense, additionally establish under the collective contract benefits and compensation to the employee which are not stipulated by legislation.

In light of the provided information, the Committee reiterates its request for comprehensive and updated information on the effective implementation of measures aimed at eliminating or reducing occupational risks, in particular those related to inherently dangerous or unhealthy sectors and activities, such as mining, quarrying, steel making and shipbuilding and occupations exposing employees to ionising radiation, extreme temperatures and noise. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with Article 2§4 of the Charter in this respect.

Measures in response to residual risks

The Committee refers to its previous conclusions (Conclusions 2014), where it noted that, under Section 7 of the Occupational Safety Act, persons exposed to residual risks may be granted compensatory measures such as reductions in working hours, additional paid leave,

salary increases or other forms of compensation described in the relevant legislation. It requested further details on the type of compensatory measures applied, specifying wherever possible what measures apply to the different categories of workers exposed to residual risks, and what the percentage of such workers covered by these compensatory measures at issue.

The Committee takes note of the information provided in the report in response to this question and considers that the situation complies with the requirements of Article 2§4 of the Charter in respect of measures in response to residual risks.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

The Committee refers to its previous conclusion (Conclusions 2014) for the detailed description of the legal framework rulling the weekly rest period. It has noted that workers were entitled to two days off per week when working a five-day working week and one day off per week when working a six-day working week and that the rest period generally includes Sunday. Work is in general not allowed on a rest day, save in exceptional cases duly authorised by trade unions or by legislation. Work performed on a rest day must be offset, with the consent of both parties, by the time off or by financial compensation amounting to double the usual pay.

The Committee has deferred its conclusion, pending receipt of information as to whether, when double compensation is granted, the workers forfeit their weekly rest. The report specifies that when compensation is granted, another day of rest is not provided. The Committee recalls that, in order to comply with Article 2§5 of the Charter, the relevant legislation must guarantee that workers cannot waive their right to a weekly rest period or accept that it be replaced by compensation. The situation is, accordingly, not in conformity with the Charter on this point.

The Committee has also previously asked whether there were circumstances under which a worker may be made to work more than twelve consecutive days before being granted a two day rest period, and what guarantees applied in this respect. No information was submitted in reply. The Committee recalls its question and underlines that should the next report not provide comprehensive information in this respect, there will be nothing to show that the situation is in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 2§5 of the Charter, on the ground that workers may give up their right to compensatory time off in exchange for a financial compensation.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

The Committee previously noted that the law provides for the establishment of an employment contract, mentioning the identity of the parties, the place of work, the occupation or position of the employee in the company, the conditions of work, the amount of pay and, in cases of temporary recruitment, the length of the contract or the relationship. Employment contracts may also contain information on their period of validity, the parties' rights, duties and liabilities (including from the financial point of view), occupational safety, organisation of labour, any collective agreements governing the employee's conditions of work and the rules on termination of the contract, including early termination**.**

The Committee noted however that, in Ukraine, it is not always mandatory for the contract to be set down in writing. When an employment contract is not concluded in writing, it is nevertheless formalised by an order or instruction of the employer upon hiring the employee. An integral part of the order on hiring an employee is a place of employment, profession or position to which the employee is assigned, working conditions, salary and duration of employment. The duration of the annual leave is in this case defined in the collective agreement or, if no collective agreement applies, in a separate order of the employer. Information on basic aspects of the labour relations, in the absence of a written employment contract, can nevertheless be found in other written documents such as the job descriptions, the internal labour regulations and the collective agreements (Conclusions 2014).

The report indicates that the relevant legal framework has not changed during the reference period. It does not provide any further information regarding the pending legislative amendment on mandatory written employment contract to the Labour Code, on mandatory written employment contracts.

The Committee recalls that, under Article 2§6, when starting employment, workers are entitled to written information covering at least the following elements:

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;
- in the case of a temporary contract or employment relationship, the expected duration thereof;
- the amount of paid leave;
- the length of the periods of notice in case of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee's normal working day or week.

In the light of the information provided, the Committee reiterates its request for the next report to confirm that all these elements of information, including the length of the periods of notice in case of termination of the contract or the employment relationship, are available in a written form to all workers entering an employment relationship, whether they are included in a written employment contract, in the pay statement, in the collective agreements or other documents effectively accessible to the worker before starting work.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

The Committee previously conclude that the situation was not in conformity with Article 2§7 of the Charter on the grounds that legislation did not provide for the possibility to transfer to daytime work, there is no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter; and that regular consultation is ensured with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work (Conclusions 2014, 2016 Ukraine).

The report provides no new information. It indicates that the relevant legal framework has not changed during the reference period. Moreover the report provides no information regarding the ratification of the ILO Convention 171 (Night Work), as requested by the Committee (Conclusions 2016, Ukraine).

Article 2§7 guarantees compensatory measures for persons performing night work. National law or practice must define "night" within the context of this provision. The measures which take account of the special nature of the work must at least include the following:

- regular medical examinations, including a check prior to employment on night work;
- the provision of possibilities for transfer to daytime work;
- regular consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

The Committee notes that the new Labour Code is currently pending adoption. Articles 137 and 285 of the draft Code address the definition of the "night workers" and provide for preliminary and periodic medical examination, respectively. At the same time, the report indicates, that the Directive 2003/88/EC as of 4 November 2013, concerning certain aspects of the organisation of working time is under consideration. The Committee wishes to be informed of all developments in this respect.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 2§7 of the Charter on the grounds that:

- possibilities of transfer to daytime work are not sufficiently provided for;
- laws and regulations do not provide for continuous consultation with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work;
- there is no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

It notes that the legislation which it previously (Conclusions 2010 and 2014) found to be in conformity with the Charter has not changed.

In reply to the Committee's question regarding exceptions to an increased rate of remuneration for overtime work, the report states that civil servants whose working time is not strictly defined may be obliged to work outside regular working hours to perform exigent or unforeseen tasks.

The Committee asks for more details on the application of this exceptional rule and for confirmation that it applies exclusively to a limited group of workers, such as high-ranking officials or managers.

Conclusion

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

Legal basis of equal pay

In its previous conclusion (Conclusions 2014 and Conclusions 2016 (Article 20) the Committee took note of Section 17 of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" which provides that the employer shall, in particular, ensure equal pay for women and men with the same qualification and working conditions. The Committee asks to this regard if the statutory provisions prohibit both direct and indirect discrimination.

Guarantees of enforcement and judicial safeguards

In its previous conclusion the Committee asked whether a victim may take his/her case before the courts in addition or alternatively to the Commissioner. It notes in this respect that Article 14 of the Law On Principles of Prevention and Combating Discrimination No. 5207 of 6 September 2012 stipulates that the person who thinks that there was a discrimination against him/her, has the right to submit a complaint to the state authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities and their officials, the Ukrainian Parliament Commissioner for Human Rights and/or to the court according to the procedure provided by law.

As regards the burden of proof, according to Article 16 of the Law of Ukraine No. 5207-VI and Article 24 of the Law On Ensuring Equal Rights and Opportunities persons guilty of violation of the requirements of the law on preventing and combating discrimination shall bear civil, administrative and criminal responsibility. According to Article 81 of the Civil Procedure Code of Ukraine, in discrimination cases, the claimant shall provide reliable facts which confirm that discrimination took place. If there are such facts, a defendant has to prove their absence. The Committee refers to its Conclusion under Article 20 (Conclusions 2016) where it took note of the Civil Procedure Code according to which the claimant has to prove that the discrimination took place. The Committee considers that there is no change to this situation and therefore, it concludes that the situation in Ukraine is not in conformity with Article 4§3 of the Charter on the ground that legislation does not provide for a shift in the burden of proof in gender discrimination cases.

The Committee also asks if the law provides for the right to the compensation for pecuniary and non-pecuniary damage and if there is any limit on such compensation. The Committee also reiterates the question on on the level of compensation granted by the court in practice.

Methods of comparison

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. The Committee also asks the next report to provide information concerning the criteria according to which equal value of different works is evaluated.

The Committee asks the next report to indicate what is the definition of equal work or work of equal value. It also asks what is understood by 'the same qualification and working conditions', what methods are used to evaluate work and whether these are gender neutral and exclude the discriminatory undervaluation of jobs traditionally performed by women.

Statistics

As regards the gender pay gap, the Committee notes from the report that in 2013 the average monthly wages and salaries of women made 77,2% of that of men in all types of activity. This indicator has declined to 74,7% in 2016. The Committee thus estimates that the gender pay gap stood at 22,8% in 2016.

Policy and other measures

In its previous conclusion the Committee also asked what measures were taken to reduce the equal pay gap. The report states in this respect that within the framework of the implementation of the Association Agreement between Ukraine and the EU, it is envisaged to transpose the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) in the domestic law. The Committee asks the next report to indicate what legislative amendments were made in this process and what policy measures were implemented to promote gender equality at the workplace.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 4§3 of the Charter on the ground that there is no shift in the burden of proof in gender 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 Ukraine.

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§4 of the Charter, on the grounds that notice periods were not reasonable in the following circumstances: dismissal as a result of changes in the organisation of production or labour or a reduction in staff numbers; dismissal for unfitness for medical reasons, lack of qualification or the reinstatement of the previous post holder, for employees with more than seven years of service; termination of employment or dismissal on all other grounds beyond five years of service and that no notice is required for dismissal during the probationary period.

The Committee notes from the report that there has been no changes to the situation except as regards probationary periods.

The Committee notes from the report that, during the reference period, the Law “On amendments to the Code of Labour Law concerning the Probationary Period” came into force. According to the aforementioned Act, the employee may be dismissed during the probationary period due to inconsistency with the requirements of the position that the latter holds. The notice period during the probationary period is 3 days. The Committee asks the next report to indicate the statutory maximum duration of the probationary period after the Law “On amendments to the Code of Labour Law concerning the Probationary Period”.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 4§4 of the Charter on the grounds that notice periods are not reasonable in the following circumstances:

- dismissal as a result of changes in the organisation of production or labour or a reduction in staff numbers; dismissal for unfitness for medical reasons, lack of qualifications or the reinstatement of the previous post holder, for workers with more than seven years of service;
    - termination of employment or dismissal on all other grounds, beyond five years of service.

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 Ukraine.

It previously concluded (Conclusions 2014) that the situation in Ukraine was not in conformity with Article 4§5 on the ground that following all authorised deductions, the wages of workers with the lowest pay were not sufficient to enable them to provide for themselves or their dependants.

The report does not indicate any changes regarding the limits of 50% and 70% applicable to wage deductions, which were previously found to be not in conformity with Article 4§5 of the Charter (Conclusions 2014 and 2010). The Committee, therefore, reiterates its previous conclusion. The Committee asks the next report to indicate whether the new Law of Ukraine "On Enforcement Proceedings" (No. 1404-VIII of 2 June 2016) had an impact on limits applicable to wage deductions.

In its previous conclusion (Conclusions 2014), the Committee asked whether the law allows workers to agree to forfeit or assign wages to employers or third parties. The report states that, in accordance to the Civil Code and to Article 25 of the Law "On Remuneration for Work", it is at the discretion of the employee to order that his/her wage must be paid, partially or fully, to a third party. The Committee considers that the situation is not in conformity with Article 4§5 of the Charter, on the ground that guarantees in place to prevent workers from waiving their right to limited deductions from wages are insufficient.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 4§5 of the Charter on the grounds that:

- following all authorised deductions, the wages of workers with the lowest pay are not sufficient to enable them to provide for themselves or their dependants;
- guarantees in place to prevent workers from waiving their right to limited deductions of wages are insufficient.

Article 5 - Right to organise

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

It already examined the situation with regard to the right to organise (forming trade unions and employer associations, freedom to join or not to join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information.

Forming trade unions and employers' organisations

The Committee previously noted a contradiction between Section 87 of the Civil Code (2003), according to which an organisation acquires its rights of legal personality from the moment of its registration, and Section 16 of the Trade Unions Act which provides that a trade union acquires the rights of a legal person from the moment of the approval of its statute and the relevant authority confirms its status as a trade union. The Government had indicated it was examining the situation. The Committee asked to receive information on any new developments in this regard (Conclusions 2014).

The report states that Article 16 of the Law of Ukraine No. 1045-XIV establishes provides that a trade union acquires civil legal capacity from the moment of approval of its statute, and not from the moment of state registration.

The Committee asked if appeals against the authorities' refusals to register a trade union or an employers' organisation have occurred in practice, and requests information on such cases.

The report states that it is not possible to refuse to register a trade union and that according to the Federation of Trade Unions of Ukraine, there were no complaints from member organizations of trade unions of Ukraine regarding refusals to register a trade union.

Freedom to join or not to join a trade union

In its previous conclusions (Conclusions 2014, 2016), the Committee considered that the situation was not in conformity with the Charter as it has not been established that domestic law provides effective sanctions and remedies in case of discrimination and reprisals based on trade union membership and activities and it has not been established that domestic law provides for compensation that is adequate and proportionate to the harm suffered by the victim.

According to the report the Law of Ukraine No. 1045-XIV prohibits discrimination based on trade union membership.

Section III of the Law of Ukraine "On Principles of Prevention and Combating of Discrimination in Ukraine" provides for liability for the violation of the law on preventing and combating of discrimination.

A person who believes that they have been discriminated against him has the right to submit a complaint to the state authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities and their officials, the Ukrainian Parliament Commissioner for Human Rights and/or to the court according to the procedure provided by law. A person has the right to compensation for material damage and moral damage caused to him\her as a result of discrimination.

The Committee notes from the information provided in the report that there are no limits to the amount of compensation that may be awarded in such cases.

The Committee noted in its previous conclusion (Conclusions 2014) that Article 36 of the Constitution states that no one may be forced to join any trade union or be restricted in his or her rights for not belonging to one, and asked for further information on any specific legislation or regulations in this area and on the situation in practice. The report states simply

that the Laws of Ukraine No. 4572 and No. 5026-VI regulate this issue. The Committee again asks for further information, in particular as to whether closed shop clauses are prohibited.

Trade union activities

The Committee previously noted that from the International Trade Union Confederation (ITUC) (Survey of violations of trade union rights), employers used various tactics to discriminate and harass trade union activists in 2010). It asked for the Governments comments on these allegations.

According to the report in 2016, the new General Agreement between All Ukrainian associations of employers, All Ukrainian associations of trade unions for the period 2016 – 2017 was signed. The General Agreement provides for an exchange of information on non-compliance with ILO Conventions, other international agreements to which Ukraine is a party, and national legislation on ensuring rights and guarantees for trade unions and organizations of employers. The Ministry of Social Policy annually monitors the violations of trade union rights detected by the Federation of Trade Unions of Ukraine.

During the reference period the Ministry of Social Policy considered 22 complaints received from the International Labor Organization and the Secretary-General of the International Confederation of Trade Unions. The Committee asks to be kept informed about any current complaints and their outcomes.

Representativeness

The Committee previously noted the criteria that trade unions need to fulfill in order to be deemed representative (Conclusions 2014).

However it found the situation not to be in conformity with the Charter on the grounds that it had not been established that the criteria used to determine representativeness are open to judicial review (Conclusions 2014,2016). The report states that the decision of the head of the National Mediation and Conciliation Service regarding representativeness may be appealed to the courts.

Personal scope

In its previous conclusion (Conclusions 2014), Committee asked whether judges have the right to join professional associations in order to be able to defend and protect their interests. The Committee recalls that it has previously considered restrictions on the right to organise for judges may be in conformity with the Charter, as long as judges have the right to join professional associations (Conclusions XVI-1 volume 2 (2003) Poland and Conclusions XVIII-1 Volume 2 (2006) Spain). Pending receipt of the information requested, the Committee reserved its position on this point.

According to the report Article 56 of the Law No.1402-VIII judges may create public associations and participate in them for the purpose of protection their rights and interests and improving their professional level. A judge may be a member of national and international associations and other organizations aimed at protecting interests of judges, strengthening the authority of the judiciary and professional development.

The Committee previously concluded that the situation in Ukraine was not in conformity with the Charter on this point as the right of nationals of other Contracting Parties to the Charter to form trade unions is restricted (Conclusions 2014). It recalls that according to Article 6 of the "Law on Trade Unions, Rights and Guarantees of their activity" foreign citizens and stateless persons cannot form trade unions but may join them, if it is provided for in their charters.

There has been no change to this situation therefore the Committee reiterates its previous conclusion.

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

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 5 of the Charter on the ground that right of nationals of other Contracting Parties to the Charter to form trade unions is restricted.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee refers to its previous conclusion for a description of the situation. The situation was previously found to be in conformity with the Charter pending information on bipartite consultations particularly in the private sector (Conclusions 2014).

The report confirms that consultations on a bipartite basis take place between the parties to social dialogue at all levels in both the private and public sectors, and states that this is evidenced by the high number of collective agreements in force.

Conclusion

The Committee concludes that the situation in Ukraine 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 Ukraine.

The Committee refers to its previous conclusion for a description of the situation, which was found to be in conformity with the Charter. It will therefore only consider recent developments and additional information.

In response to a question posed by the Committee previously the report states that legislation does not contain any special procedures for the extension the scope of collective agreements.

However the tripartite working group established in accordance with the decision of the Presidium of the National Tripartite Social and Economic Council of 31 May 2016, has prepared a new version of the draft law on collective agreements and treaties, that, among a number of other innovations, contains provisions on the possibility of extending the provisions of the sectoral (inter-sectoral) agreement to all subjects of sector, as well as the possibility of joining other parties to a party of collective agreement/treaty. The Committee asks to be kept informed of all developments in this respect.

The report states that as of the end 2016, 94 sectoral agreements were in force. Most of these agreements were concluded in the public sector. According to data of the State Statistic Service of Ukraine, 64158 collective agreements concluded on bipartite basis at enterprises, institutions and organisations were registered. The Committee asks what proportion of workers are covered by a collective agreement.

Conclusion

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

The Committee refers to its previous conclusion for a description of the situation, which was found to be in conformity with the Charter. It will therefore only consider recent developments and additional information (Conclusions 2014).

The Committee previously asked if conciliation and arbitration procedures/machinery are provided for the public service, in particular for civil servants (Conclusions 2014).

According to the report Ukrainian law does not prohibit or provide for any special procedures/ machinery for conciliation and arbitration for civil servants. The Committee seeks confirmation that the usual conciliation and arbitration procedures apply to civil servants.

However for persons who are prohibited from participating in a strike, (for example employees in the state prosecutor's office, members of the judiciary, Armed Forces and security services) there is a possibility in the case of a collective labour dispute to have recourse to the courts.

In order to exercise this right, use must firstly be made of the conciliation procedure, where a settlement is not been reached, the head of the National Mediation and Conciliation Service shall make a decision as to whether or not to refer the collective labor dispute to the relevant court.

Conclusion

The Committee concludes that the situation in Ukraine 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 Ukraine.

Collective action: definition and permitted objectives

The Committee previously examined the situation and found it to be in conformity with the Charter (Conclusions 2014).

Entitlement to call a collective action

The Committee previously noted that Article 19 of the Law on the Procedure for Settlement of Collective Labour Disputes, provides that a decision to call a strike has to be supported by a majority of the workers or two-thirds of the delegates at the conference vote in its favour. The Committee asks for explanations as to how this procedure operates.

It had further noted that the Government indicated that the draft Labour Code would lower this requirement so as to set it at the majority of workers (delegates) present at the meeting (conference). The Committee asks for information on what is meant by a conference and how many workers are required to attend.

According to the report the draft Labour Code has not yet been formally adopted but the Committee on Social Policy, Employment and Pension Security supported the draft Labour Code and recommended that the Parliament adopt it. The Committee wishes to be kept informed of all developments in this regard. Meanwhile, it reserves its position on this point.

Specific restrictions to the right to strike and procedural requirements

In its previous conclusion the committee found the situation not to be in conformity with the Charter on the grounds that the restrictions on the right to strike for employees working in the emergency and rescue services, at nuclear facilities, in underground undertakings as well as at electric power engineering enterprises do not comply with the conditions established by Article G of the Charter nor did the restrictions on the right to strike for employees working in the transport sector do not comply with the conditions established by Article G of the Charter (Conclusions 2014).

The report states that persons of the ordinary and commanding staff of the civil protection service, staff of professional rescue services are prohibited from organising or taking part in strikes.

Article 29 of the Mining Law of Ukraine stipulates that state paramilitary emergency rescue services shall be established for dealing with emergencies in the coal and mining industries. This category of staff are also prohibited from striking. The Committee asks whether strikes by other workers in undergrounds mines continue to be prohibited.

Article 22 of the Law of Ukraine “On Electricity Market” No. 2019-VI of 13 April 2017 stipulates that strikes at electric power plants are prohibited where they can lead to a “breach of the of the constancy of the united power system of Ukraine”. The Committee asks whether this amounts to a total ban in this sector or whether under certain circumstances strikes are permitted. Meanwhile it reserves its position in this respect.

There has been no change to the situation regards the prohibition of strikes in the nuclear industry.

As regards the transport sector, the report states that workers in this sector may strike under certain conditions. The Committee asks for further information on the situation.

Further the report states that draft legislation is pending before parliament which proposes to amend Article 18 of the Law of Ukraine “On Transport” in order to implement the judgment of the European Court of Human Rights in the case of “Veniamin Tymoshenko and others v.

Ukraine". The Court found that the ban on a strike by AeroSvit Airlines cabin crew constituted a violation of the applicants' right under Article 11 of the European Convention on Human Rights. The Committee asks to be kept informed of all developments in this respect. Meanwhile it concludes that the situation is still not in conformity.

The Committee again recalls that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health (Conclusions I (1969), Statement of Interpretation on Article 6§4). 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. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4 (Conclusions XVII-1 (2004), Czech Republic). As there is no provision for the introduction of a minimum service, and strikes are simply prohibited for certain categories of employees, the Committee finds that the situation is not in conformity with the Charter as regards the emergency and rescue services, nuclear facilities and the transport sector.

With regard to the public servants, in its previous conclusion (Conclusions 2010) the Committee found the situation in Ukraine not to be in conformity with Article 6§4 of the Charter on the ground that all civil servants are denied the right to strike.

The report indicates that the legislation has not changed during the reference period. It states however that the National Civil Service Agency of Ukraine is currently considering the possibility of ratification of the ILO Convention No. 151 on the Protection of the Right to Organize and the Procedure for Determining the Conditions of Work in the Civil Service. The Committee asks to be kept informed of all developments, meanwhile it reiterates its previous finding of non conformity.

As to the procedural requirements, the Committee noted that according to Article 19 of the Law on the Procedure for Settlement of Collective Labour Disputes, "the body or person leading a strike shall inform the employer or its authorised representative in writing no later than seven days before the commencement of a strike, or no later than fifteen days if the decision to strike concerns a continuous production plant". Also, "the body or person leading a strike shall determine the location of the strike in agreement with the employer or his representative". Finally, "in the event of gatherings, meetings or picketing held outside the boundaries of an enterprise, the body or person leading the strike must advise the local executive authority or the body of local self-government of the event planned no later than three days in advance" (Conclusions 2014).

The Committee recalled that the requirement to notify the duration of the strike to the employer prior to strike action is contrary to the Article 6§4 of the Charter, even for essential public services. The Committee asked if the law or the practice requires that the above mentioned prior notice addressed to the employer must contain an indication of the planned duration of the strike. The report states that the law does not provide for any requirement to notify the duration of a strike to the employer prior strike. The duration of the strike is not limited by law.

Consequences of a strike

The report states that according to Article 27 of the Law of Ukraine "On the Procedure for Settlement of Collective Labor Disputes (Conflicts)" the participation of employees in a strike, except for strikes declared illegal by the court, shall not be considered a violation of labour discipline and cannot be the grounds for disciplinary action.

The Committee reiterates its request for information on the sanctions that may be imposed on workers who participate in illegal strikes, particularly those in sectors where the right to strike is prohibited.

Conclusion

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

- civil servants are denied the right to strike,
- the restrictions on the right to strike for employees working in the emergency and rescue facilities, nuclear facilities and in the transport sector go beyond the limits permitted by Article G of the Charter.

Article 21 - Right of workers to be informed and consulted

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

The Committee previously examined the situation in Ukraine and found it in conformity with the Charter subject to information being provided on certain issues.

The report indicates that the relevant legal framework has not changed during the reference period.

Legal framework

The Committee has previously analysed the legal framework of the right of workers to be informed and consulted (Conclusions 2014) and found it in conformity with the Charter.

Personal scope

In its previous conclusions (Conclusions 2014) the Committee has asked to confirm that all undertakings are considered (no matter of the number of employees) when calculating the number of employees who benefit from the right to information and consultation. The report indicates that the right to information and consultation to the employees is guaranteed by the law, regardless of the number of employees at the enterprise.

In its previous conclusions (Conclusions 2014) the Committee has asked what categories of workers are taken into account when calculating the number of employees who enjoy the right to information and consultation. The report indicates that all categories of workers, without exceptions, have granted the right to information and consultation by law (Code of Labour Laws of Ukraine as well as by the laws “On Information”, “On Access to Public Information”, “On Trade Unions, their Rights and Guarantees for their Activities”, “On Social Dialogue” provisions that were provided in the previous reports.

In its previous conclusions (Conclusions 2014) the Committee has asked what proportion of the total number of private and public sector employees benefit in practice from the right of trade unions or elected representatives to receive such information and be consulted. The report indicates that according to the data of the State Statistics Service of Ukraine in 2016 the average number of full-time employees was 7.868 of which 3.3% in state enterprises. The Committee finds these figures very low and asks that the next report reconfirms these figures and request again to provide updated statistics on the total number of private and public sector employees benefiting in practice from the right of trade unions or elected representatives to receive information and consultation.

Material scope

In its previous conclusions (Conclusions 2014) the Committee has asked how employers’ obligations to inform workers are put into effect, and in particular whether they are required to reply in writing. The Committee also asked, if the employer has the obligation to regularly inform the employees in the absence of the prior request of the trade union representatives in this sense. The report indicates that the employer is obliged by law to reply in the same form, upon request submitted orally, written or other form (by mail, fax, telephone, e-mail) as chosen by the requester. The report indicates also that by law representatives of trade unions or associations of trade unions, have the right to ask or receive information or be consulted by the employer on matters of general interest. Collective agreements and treaties may contain certain arrangements between their parties on the procedure and terms for providing information and consultation.

Supervision

In its previous conclusions (Conclusions 2014) the Committee has requested more detailed and specific information on penalties, in particular on whether they can be imposed on

employers who fail to fulfill their obligation regarding the implementation of the right to information and consultation within the undertaking. The report indicates that there are several penalties of different entities according to the gravity of the violation. Articles 41 of the Code of Ukraine On Administrative Offences envisage the responsibility for breach of labour legislation and occupational safety legislation, breach or non-fulfillment of collective agreements, failure to provide information for collective bargaining and monitoring the implementation of collective agreements. As also indicated in the national report of 2014, the responsibility of the owner for failing to provide information or consultation is provided only upon the inclusion of these provisions in the relevant collective agreements. In the case of exercising control of execution of collective agreements the parties are obliged to provide the necessary available information. Failing to provide the necessary information on the collective agreements shall be subject to disciplinary action or a fine.

In its previous conclusions (Conclusions 2014) the Committee has requested, also, that the next report contain information on the administrative body responsible for monitoring the respect of the right of workers to be informed and consulted within the undertaking. In particular, it wished to know what are the powers and operational means of this body, as well as receive updated information on its decisions. In previous national report (2014) it is indicated that the Compliance Division of the Ministry of Labour and Social Policy monitors compliance with labour legislation, including employees' right to information and consultation, and carries out inspections in undertakings. The report provides statistics on the number of detected violations to the Code of Ukraine on Administrative Offences on Articles 41 during the reference period.

Remedies

In its previous conclusions (Conclusions 2014) the Committee has requested that the next report contain detailed information on the administrative and/or judicial procedures available to employees, or their representatives, who consider that their right to information and consultation within the undertaking has not been respected. In this framework, the Committee wished to be informed whether the employees, or their representatives, are entitled to claims. The report contains a description of the administrative and/or judicial procedures available to employees, or their representatives, when the right to information and consultation within the undertaking has not been respected. The report indicates that workers or their organisations are protected by law in case of failure by the employer to comply with the relevant legislation, which implies also the application of certain sanctions.

In its previous conclusions (Conclusions 2014) the Committee has requested that the next report should also contain updated information on decisions taken by competent judicial bodies with respect to the implementation of the right to information and consultation. The report does not reply to this question and therefore the Committee reiterates its request.

Conclusion

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

The Committee notes from the report that the relevant legal framework has not changed during the reference period.

Working conditions, work organisation and working environment

The Committee notes that that the Labour Code of Ukraine entitle employees to participate in determining and improving their working conditions and environment. This right is applied through collective agreements and enforced by the trade union representatives or elected representatives. The representatives of trade unions are entitled to request from employers any relevant documentation, data or explanations about working conditions or the application of collective agreements. In its previous conclusions (2014), the Committee asked how the employees take part in the determination and improvement of working conditions and working environment, if there are no trade union representatives or elected representatives whatsoever in the undertaking. The report has no information to this question and therefore the Committee reserves its position on this point.

Protection of health and safety

In its previous conclusions (2014) asked if the workers or their representatives are involved or take part in the activity of the Labour Protection Service at the enterprise. The report indicates that Article 25 of the Law of Ukraine "On Occupational Safety", states that employees can be encouraged for active participation and initiative in the implementation of measures to improve the level of safety and improve working conditions. Types of incentives are defined by a collective agreement.

Organisation of social and socio-cultural services and facilities

In its previous conclusions (2014), the Committee asked how employees are involved in the organisation of social and socio-cultural services and, more specifically, how decisions are taken and who should have access to such facilities and services. In this respect the Committee reiterates its request.

Enforcement

In its previous conclusions (2014), the Committee asked more specifically whether employees or employees' representatives may challenge any violation of the workers' right to take part in the determination and improvement of working conditions and working environment before competent courts or administrative bodies (for example the Labour Inspectorate), what are the competent courts or administrative bodies in this respect, which is the procedure and what are the remedies available. The report mentions in broad terms that in accordance with Article 124 of the Constitution the jurisdiction of the courts shall extend to all legal dispute and criminal charge that arise in the state and that any employee is entitled to apply to the court in the manner prescribed by the Code for the protection of their rights, freedoms and legitimate interests if there is a violation of the right to participate in the management of the enterprise. In this respect the Committee reiterates its request and wishes to know what is the procedure and what are the remedies available in case of violation of the workers' right to take part in the determination and improvement of working conditions and working environment.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

Prevention

The report states that, in the framework of the implementation of the EU/ILO joint project "Equality of Women and Men in the World of Work" (see Conclusions 2014), a publication-manual for employers "Adherence to the principle of equal treatment and non-discrimination in the work place in the public and private sectors of Ukraine" was developed and distributed. This manual contains in particular a section on "Sexual harassment" and covers a range of issues related to employer's policies and norms of conduct, as well as recommendations on how to act and respond to possible complaints, etc.

The Committee takes note of the information provided and asks that the next report include updated information on broader preventive measures taken during the reference period (information, awareness-raising and prevention campaigns in the workplace or in relation to work), including those directed at actors other than employers. It also asks if, and to what extent, the social partners are consulted on measures to promote awareness, knowledge and prevention measures vis-à-vis sexual harassment in the workplace.

Liability of employers and remedies

The Committee refers to its previous conclusions (Conclusions 2010, 2014 and 2016) as regards the relevant legislative framework which, according to the report, has not changed. It recalls that the Law on Securing Equal Rights and Opportunities for Women and Men No 2866-IV of 08 September 2005 prohibits sexual harassment (Article 17) and provides that "persons guilty of violating the requirements of legislation on ensuring equal rights and opportunities of women and men shall bear civil, administrative and criminal liability according to the law" (Article 24). The Committee previously noted that, under the abovementioned Law, a person may file a complaint with the Commissioner for Human Rights of the Verkhovna Rada of Ukraine (Article 22). Similar provisions are contained in the Law "On the Prevention and Combating of Discrimination" (Article 16) It notes however that, according to the report, no appeals concerning sexual harassment were filed during the reference period.

The Committee recalls that it must be possible for employers to be held liable in cases of sexual harassment involving their staff or occurring on premises under their responsibilities, also when such cases concern people not employed by them, either as victims or perpetrators (independent contractors, self-employed workers, visitors, clients, etc.). In this respect, the Committee reiterates its question as to whether the employer's liability applies in cases not falling under the Criminal Code, for example if the employer fails to take adequate measures to prevent sexual harassment from occurring or to bring it to an end. It 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.

Burden of proof

In response to the Committee's question, the report indicates that a shift in the burden of proof applies under the Code of Administrative Procedure No. 2747-IV of 6 July 2005 (Article 77) in administrative cases concerning the unlawfulness of decisions, actions or inactions of administrative authorities. The claimant must however also provide evidence to support the circumstances in which, in his/her opinion, there has been a violation of his/her rights, freedoms or interests. According to Article 81 of the Civil Procedure Code of Ukraine No. 1618-IV of 18 March 2004 each party must prove the circumstances referred to as the ground of their claims and objections, except as prescribed in this Code. In cases of discrimination, a claimant shall provide factual evidence that discrimination has taken place

and the respondent must prove the contrary. The Committee asks the next report to clarify how these provisions are applied in practice.

Damages

The Committee previously noted that victims of sexual harassment were entitled to compensation for financial loss and moral damage, the latter being compensated irrespective of financial loss. The Committee asked (Conclusions 2010, 2014, 2016) whether there was a right to reinstatement for employees unfairly dismissed or pressured to resign for reasons related to sexual harassment. It also asked for information on the kinds and amount of compensation provided in cases of sexual harassment and requested examples of case law and awards of damages under civil, administrative or labour law.

The report does not provide any new information in this respect and indicates that no examples of case law are available about sexual harassment in the workplace resolved by a court. The Committee reiterates therefore its questions and, in view of the lack of information, considers that it has not been established that the redress granted in practice is adequate and effective. It accordingly considers that the situation is not in conformity with Article 26§1 of the Charter on this point.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment.

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 Ukraine.

Prevention

The report indicates that the enterprises and institutions in public and private sectors apply corporate Codes of Ethics, which, among other things, contain provisions on the prevention of sexual harassment, persecution or any other harassment during the performance of the functional duties by an employee. The Committee recalls that States parties are required to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral (psychological) harassment. It asks what broader information or awareness-raising measures have been taken during the reference period in this respect.

It also asks the next report to explain in more detail whether and to what extent social partners are involved in the drafting of the Code of Ethics, as regards prevention of harassment.

Liability of employers and remedies

The Committee refers to its previous conclusions (Conclusions 2010, 2014 and 2016) as regards the relevant legislative framework which, according to the report, has not changed. It notes from the report that the Law “On Principals of Prevention and Combating of Discrimination" defines harassment as an undesired behaviour for an individual or a group of persons, the purpose or consequence of which behaviour is the humiliation of their human dignity because of specific features or creation for such person or group of persons of tense, hostile, abusive or humiliating environment". Article 16 of the same Law provides that "persons guilty of violation of the requirements of the law on preventing and combating discrimination shall bear civil, administrative and criminal responsibility".

The report does not provide, however, any of the information requested as regards the right to appeal to an independent body in the event of harassment and the right not to be retaliated against for upholding these rights. It also does not indicate whether employers can be held liable towards persons employed or not employed by them who have suffered harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. The Committee accordingly reiterates its request for information on these points and, in light of the lack of information, it considers that it has not been established that there are sufficient and effective remedies against moral (psychological) harassment at work. It therefore considers that the situation is not in conformity with Article 26§2 of the Charter on this point.

Burden of proof

In response to the Committee’s question, the report indicates that a shift in the burden of proof applies under the Code of Administrative Procedure No. 2747-IV of 6 July 2005 (Article 77) in administrative cases concerning the unlawfulness of decisions, actions or inactions of administrative authorities. The claimant must however also provide evidence to support the circumstances in which, in his/her opinion, there has been a violation of his/her rights, freedoms or interests. According to Article 81 of the Civil Procedure Code of Ukraine No. 1618-IV of 18 March 2004 each party must prove the circumstances referred to as the ground of their claims and objections, except as prescribed in this Code. In cases of discrimination, a claimant shall provide factual evidence that discrimination has taken place and the respondent must prove the contrary.The Committee asks the next report to clarify how these provisions are applied in practice.

Damages

The Committee previously noted that victims of moral (psychological) harassment were entitled to compensation for financial loss and moral damage, the latter being compensated irrespective of financial loss. The Committee asked (Conclusions 2010, 2014, 2016) whether there was a right to reinstatement for employees unfairly dismissed or pressured to resign for reasons related to moral (psychological) harassment. It also asked for information on the kinds and amount of compensation provided in cases of moral (psychological) harassment and requested examples of case law and awards of damages under civil, administrative or labour law.

The report does not provide any new information in this respect and indicates that no examples of case law are available about moral (psychological) harassment in the workplace resolved by a court. The Committee reiterates therefore its questions and, in view of the lack of information, considers that it has not been established that the redress granted in practice is adequate and effective. It accordingly considers that the situation is not in conformity with Article 26§2 of the Charter on this point.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 26§2 of the Charter on the grounds that:

•it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work;

•it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.

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

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

Types of workers' representatives

Employees are represented in Ukraine by trade unions or representatives freely elected at general meetings of employees or their authorized bodies.

Protection granted to workers' representatives

The Committee noted previously (Conclusions 2010) that trade union representatives were protected against dismissal during the period of their mandate and for one year until it ends. It asks the next report to confirm that this rule continues to apply. In reply to the Committee's question whether the protection against dismissal was granted also to other types of workers' representatives, the report clarifies that protection of elected representatives is covered by general rules of the Labour Code. The Committee notes that Article 28 gurantees the right of workers' representatives to protection in the undertaking, recognising that all forms of employee representation, not exclusively trade unions, should benefit from it. Accordingly, the Committee considers the fact that elected workers' representatives are not granted an extended protection against dismissal not to be in conformity with the Charter.

In its previous conclusions (Conclusions 2014 and 2016), the Committee referred to its statement of interpretation on Article 28 (Conclusions 2010) and asked how workers' representatives were protected against any prejudicial acts other than dismissal. It has noted that some not clearly defined guarantees were afforded solely during the period of collective bargaining. As the report fails to provide any information on this aspect, the Committee thus concludes that the situation is not in conformity with the Charter in this respect.

As regards the remedies and compensation available to workers' representatives in case of a dispute over a dismissal or other detrimental treatment, the Committee noted (Conclusions 2016) that new legislation was being adopted. As no further details have been provided, the Committee reiterates its questions on this aspect.

Facilities granted to workers' representatives

The Committee has previously found (Conclusions 2014 and 2016) that it had not been established that appropriate facilities were granted to workers' representatives. In reply, the report explains that trade union members are afforded paid time off to perfom their activities, not less than two hours per week and an additional leave of up to six days per year. The Law on Trade Unions, their Rights and Guarantees for their Activities obliges an employer to create appropriate conditions for a trade union activity, including, i.e, provision of premises, equipment, communication and transport. State Labour Inspectorate is tasked with supervision of the law in this respect.

The Committee asks whether other types of workers' representatives, in the undertakings in which no trade union is active, are guaranteed the same facilities under the law. Pending receipt of this information, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 28 of the Charter on the ground that:

- workers' representatives other than trade union members are not granted sufficient protection against dismissal;
- It has not been established that workers' representatives are effectively protected against prejudicial acts other than dismissal.

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

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

It notes that law Law on Employment of Population was adopted in 2012 but entered into force in 2013, that is in the reference period.

Definition and scope

The report states that the notion of collective redundancy (under Article 48 of the Law on Employment of Population) covers situations in which an employer plans to dismiss, respectively:

- within one month, 10 or more employees, in an enterprise employing between 20 and 100 workers, or 10% or more employees in an enterprise employing between 101 and 300 workers,
- within three months 20% or more employees regardless the total number of employees.

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

Prior information and consultation

In the previous conclusion (Conclusions 2014), the Committee asked whether the domestic law guaranteed the right to information and consultation, including provision of relevant documents before and during the consultations. It also asked whether employers cooperated with public authorities responsible for the policy counteracting unemployment.

In response to this question, the report states that the Law on Employment of Population, as amended, imposes on the employer an obligation to consult the trade unions and to take measures to prevent collective redundancy or minimize the dismissals and / or their negative consequences. In this respect, the employer is required to submit information to the competent territorial bodies, two months in advance, about a planned redundancy of workers for reasons of economic, technological, structural or similar nature or because of liquidation, reorganisation, or change in the form of ownership of an enterprise, institution or organisation (Article 50). Furthermore, according to Article 22 of the Law on Trade Unions, their Rights and Guarantees for their Activities, an employer is oblidged to submit to the trade union three months before the planned dismissal information about its reasons, date, number and categories of employees to be dismissed. Also, the Law on Employers' Organisations, their Associations, Rights and Guarantees for their Activities foresees the cooperation of the employer in this respect with relevant state executive authorities and local authorities responsible for regional employement and labour policy, as well as for collection and dissemination of statistics.

The Committee assumes that the effective dissemination of the above listed information includes provision of all relevant documents necessary to hold joint consultations and asks the next report to confirm this assumption. Meanwhile, it considers that the situation is in conformity with the Charter on this point.

Preventive measures and sanctions

As regards specific preventive measures, the report indicates that special commissions may be established in accordance with the procedure prescribed by the Cabinet of Ministers, to develop the appropriate set of measures for the enterprise and proposals for territorial and local employement programmes. The Committee takes note of the example privided by the report in this respect.

Infringment of law relating to information entails disciplinary, civil and administrative liabilities, as well as criminal prosecution. Moreover, a lack of timely and appropriate information and consultation with the trade union prior to planned dismissal, may be a reason for the trade union to refuse it. Courts consider disputes in this respect. The Committee asks the next report to explicity confirm that, in line with its statement of interpretation on Article 29 (Conclusions 2003), there exists a possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met.

Conclusion

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