January 2015

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2014

(ROMANIA)

Articles 2, 4, 5, 6, 21, 28 and 29
of the Revised Charter

This text may be subject to editorial revision.

The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Romania, which ratified the Charter on 7 May 1999. The deadline for submitting the 13th report was 31 October 2013 and Romania submitted it on 25 November 2013. On 9 July, a request for additional information regarding Article 4§3 was sent to the Government, which did not submit a reply.

The report concerns the following provisions of the thematic group "Labour rights":

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

Romania has accepted all provisions from this group except Article 2§3, 22, 26§1 and 26§2.

The reference period was from 1 January 2009 to 31 December 2012.

The conclusions on Romania concern 19 situations and are as follows:

- 10 conclusions of conformity: Articles 2§1, 2§4, 2§5, 2§6, 2§7, 4§2, 6§1, 6§3, 21, 29.
- 6 conclusions of non-conformity: Articles 4§1, 4§4, 4§5, 5, 6§4, 28.

In respect of the other 3 situations related to Articles 2§2, 4§3 and 6§2, 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 Romania under the Charter. The Committee requests the Government to remedy that situation by providing this information in the next report.

The upcoming 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 2014.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

The Committee notes from the report that Article 111 of the Labour Code was amended by Law No 40/2011. Following its republication, Article 111 became Article 114 and transposed the EU Working Time Directive (2003/88/EC) into national law.

The Committee notes that in principle the legal situation as regards working time has not changed. The maximum length of the weekly working time, including overtime is 48 hours, which can exceptionally be extended under flexible working time arrangements so that the average working time does not exceed 48 hours per week, over the reference period of 4 months. In this connection, the Committee has observed (Conclusions 2007) that as regards the maximum limits to individual working weeks, a 12-hour long working day is to be followed by a 24-hour rest period.

As regards the reference periods for averaging the weekly working time, the Committee notes from the report that they can exceptionally be extended to 12 months, subject to compliance with the regulations on protection of health and safety of employees at the workplace. Such an exception may be based on objective, technical or organisational reasons.

In reply to the Committee's question regarding the supervision of working time regulations by the Labour Inspectorate, the report states that following the amendments to the Labour Code by Law No 40/2011, the employer is obliged to keep a record of the night shifts performed by every employee. The non-compliance by the employer with this obligation is subject to a fine.

In the period of May to December 2011 the Labour Inspectorate has identified 494 cases of non-compliance. The Committee also takes note of the statistics relating to the numbers of employers fined for the infringement of legal provisions on overtime hours, work during rest days, work during legal holiday as well as night shifts.

The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France* (§§ 64-65), Complaint No 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined *a posteriori* for a period of time that the employee *a priori* did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee holds that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.

Conclusion

The Committee concludes that the situation in Romania 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 Romania.

Under Article 139, paragraph 1 of the Labour Code (Law No.53/2003) employees are entitled to public holidays, on which no work is performed (the 1st and 2nd of January; the first and second days of Easter; the 1st of May; the first and second day of Pentecost; the Assumption of the Virgin; the 1st of December; the first and second days of Christmas; 2 days for each of the 2 annual religious holidays, declared by the legal religious cults other than Christian ones, for persons belonging to such religions). The Committee asks the next report to clarify whether the regular salary is always paid during public holidays, even when the employee does not work.

It notes that the prohibition to work on public holidays does not apply to workplaces whose activity may not be interrupted due to the characteristics of the production process or typical features of activity. For such activities, as well as for companies and institutions ensuring medical assistance and the supply of essential foodstuffs, the law provides that employees working on public holidays are entitled to compensatory time off to be taken within the following 30 days, which can be replaced by a remuneration that is at least double when, due to justified reasons, the granting of compensatory time off is not possible (Article 142, paragraph 2).

The Committee asks what compensation applies, if any, to persons working, on an exceptional basis, on public holidays other than those targeted by Article 142 of the Labour Code (workplaces whose activity may not be interrupted due to the characteristics of the production process or typical features of activity as well as for companies and institutions ensuring medical assistance and the supply of essential foodstuffs) and whether, in all cases, the regular base salary is paid to persons working on public holidays in addition to the compensatory time off or the increased salary.

Conclusion

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

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 Romania.

The Committee points out that the States Parties to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations as well as 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 conclusion of conformity under Article 3§1 of the Charter (Conclusions 2013) for a description of dangerous activities and the preventive measures taken in their respect.

Measures in response to residual risks

The Committee notes from the report that Law No. 31/1991 provides for reduced working hours (less than 8 hours daily) for the employees working under special conditions – difficult, hard or dangerous conditions – and provides criteria and procedures for reducing the length of working hours so as to ensure for the employees the conditions for maintaining their health status and to restore their work capacity.

The categories of workers, activities and workplaces with reduced working hours are determined on the basis of the following criteria:

- type of dangerous factors present (physical, chemical or biological) and how they affect the organism;
- intensity of the dangerous factors or their association;
- lenght of exposure to dangerous factors;
- working conditions requiring greater physical effort (climate, noise, vibrations);
- working conditions under high stress (requiring very intense and multilateral attention or intense concentration and work);
- worker conditions under high stress because of incident or disease risks;
- structure and level of morbidity at the workplace;
- other harmful, hard or dangerous working conditions liable to cause premature wear of the organism.

The actual length of working time reduction will depend on the assessment of the impact of the above “risks factors” and of whether they can be reduced or eliminated by reducing exposure time.

The duration of reduced working hours and the staff categories that enjoy such schedule are established by the Collective Labour Agreement at sector, group of units and units level.

The Committee notes from the report the list of activities where the workers benefited from reduced working hours in compliance with the above-mentioned rules in the period 2009-2011, resulting from the verifications made by the labour inspectorates at local level. It furthermore notes the statistical data provided on the number of workers who enjoyed a reduced working schedule (under 8 hours a day) pursuant to these rules in 2009-2011 (their share of the total number of employees dropped from 0.73% in 2009 to 0.59% in 2011).

Conclusion

The Committee concludes that the situation in Romania 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 Romania.

It previously noted that under the Labour Code, Article 137 (Law No. 53/2003), the weekly rest period shall be taken in two consecutive days, usually Saturday and Sunday.

The Committee recalls that, under Article 2§5 of the Charter, the rest period can be taken on a different day, either when the type of activity requires it, or for reasons of an economic nature, as long as the worker is entitled to another day of rest and does not work more than twelve consecutive days before being granted a two–day rest period.

The Committee notes that the Labour Code provides that the weekly rest period be postponed when it cannot take place during the weekend and that, in exceptional cases, the weekly rest period may be taken on a cumulative basis, after a continuous activity that may not exceed 14 calendar days, with the authorisation of the territorial labour inspectorate and with the agreement of the trade union or, as the case may be, the representatives of the employees. In this respect, the Committee previously noted (Conclusion 2010) the practice of the Labour Inspectorate and, considering that the number of permits issued by the Labour Inspectorate was low and the fact that the postponement of the weekly rest period over than twelve days was truly exceptional, it considered that the situation was in conformity with Article 2§5. It notes that the report does not contain any information concerning the reference period, it accordingly asks the next report to provide updated information on the cases where the Labour Inspectorate issued permits to postpone the weekly rest period.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 2§5 of the Charter.

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 Romania.

It previously held (Conclusion 2007) that the model contract of employment approved by Government Order No. 64/2003 was in conformity with Article 2§6 of the Charter. The model contract contains in fact clauses with regard to the parties to the contract, the place of work, the type of work, the working conditions including leave, wages, safety and health measures, rest periods as well as the duration of the contract, notice periods, trial periods and other general obligations. It furthermore noted that this model contract is mandatory for all employees performing their activity under an individual labour agreement. The report confirms that this is still the case.

Conclusion

The Committee concludes that the situation in Romania 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 Romania.

It notes that Article 125 of the Labour Code defines night work as the work performed between 22:00 and 06:00 hours and considers a night worker to be an employee performing night work at least three hours of his/her daily working time or an employee performing night work amounting to at least 30% of his/her monthly working time. An employer frequently using night work shall notify the territorial labour inspectorate thereof.

Article 127 of the Labour Code provides that employees performing night work shall be subject to a free medical examination before starting to work and regularly thereafter. It previously noted in this respect (Conclusion 2010) that under Government decision No. 355/2007, night workers are to undergo annual medical examinations, but the frequency of the examinations may be modified where necessary on the recommendation of the occupational health physician.

The Labour Code furthermore provides that employees performing night work and having problems acknowledged to be connected to it shall be transferred to day work they are suitable for.

As regards the procedures in place for consulting workers' representatives on the introduction of night work, the Committee previously noted that Article 29 of Law No. 319/2006 on occupational health and safety provides for co-operation between occupational health physicians, occupational health and safety committee representatives and any other competent bodies. Under Article 179 of the Labour Code, companies with more than 50 employees may set up a company-wide occupational health and safety committee to ensure staff participation in such matters. Under Section 180 of the Labour Code, in companies with less than 50 employees, staff participation is to be ensured through the staff representatives.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 2§7 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

It previously concluded (Conclusions 2010) that the situation in Romania was not in conformity with Article 4§1 of the Charter on the ground that the national minimum wage was manifestly unfair. It asked for information on the progress of the tripartite negotiations that were under way and on the net amount of the national minimum wage.

The report states that Article 164, paragraph 2 of the Labour Code (2003), which prohibits agreement on wages below the national minimum wage, applies both to the private and the public sector. Article 160 of the Code also authorises the award of benefits in kind under collective agreements or employment contracts, although any amount paid in cash may not be lower than the national minimum wage. The report does not provide any information on the progress of the tripartite negotiations. According to the European Industrial Relations Observatory (EiRO) (*Constantin Ciutacu*, Tripartite agreement on minimum wage rises for 2008-2014, online), they resulted in the signature, on 25 July 2008, of the tripartite agreement on minimum wage growth for 2008-2014, which provides for the progressive increase of the minimum wage up to 50% of the average wage by 2014.

The report indicates a monthly national minimum wage set by Government decision No. 1225/2011 for 2012 (for a single person without dependants) at RON 700 (€157.30) gross and at RON 531 (€119.30) net of social contributions and tax deductions. For 2012, the average monthly income was estimated at RON 2 137 (€479.55) gross and at RON 1 547 (€347.64) net, meaning that the gross national minimum wage as a proportion of the gross average income was 32.80%.

According to EUROSTAT data for 2012 (table "earn_nt_net"), the annual average wage of single workers without children (100% of an average worker) was €5 634.97 (€469.58 per month) gross and €4 004.03 per year (€333.67 per month) net of social contributions and tax deductions. The national minimum wage as a proportion of gross average earnings (table "earn_mw_avgr2") was 34.20%.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be above the minimum threshold, which is set at 50% of the average net wage. This is the case when the net minimum wage is more than 60% of the net national average wage. When the net minimum wage lies between 50 and 60% of the net national average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee takes note of the efforts made to improve the pay situation in the long term. It notes, however, that the net national minimum wage is 34.32% of the net average wage, which is below than the minimum threshold, and can therefore not be regarded as a decent wage within the meaning of Article 4§1 of the Charter. It asks for information in the next report on any social transfers or benefits awarded to workers earning the national minimum wage and their families.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 4§1 of the Charter on the ground that the national minimum wage is not sufficient to ensure a decent standard of living.

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 Romania.

The Committee takes note of Articles 122 and 123 of the Labour Code, as republished in 2011.

It notes that overtime work is compensated by a time off of the same duration, which should be taken within 60 days, plus 100% of the hourly wage. If the time off cannot be granted/taken in the following 60 days, then the employer shall at least pay an additional 75% of wage.

The Committee considers that the compensation for overtime that involves both, the normal pay and the corresponding time off is in conformity with the Charter. Moreover, the compensation that involves no time off but a normal pay, plus at least an additional 75% of the pay, corresponds to an increased remuneration for the overtime hours worked and is in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Romania 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 Romania.

Legal basis of equal pay

The Committee refers to its conclusion on Article 4§3 (Conclusions 2003) where it examined the legislative basis for equal pay. It notes that this right is enshrined in the Constitution, the Labour Code and the Ordinance No 130/2000 on the prevention and prohibition of all forms of discrimination.

According to the report, within the framework of the employment relationship the principle of equal treatment is observed by virtue of Article 6 (3) of the Labour Code (Law No 53/2003), which provides that any discrimination based on gender, including unequal pay for work of equal value, is prohibited.

Guarantees of enforcement and judicial safeguards

The Committee recalls that anyone who suffers discrimination on grounds of gender must be entitled to adequate compensation, that is compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay (Conclusions XVI-2, (2003) Malta)). The Committee asks what rules apply in this regard.

The Committee refers to its conclusion on Article 4§3 (Conclusions 2003) in which it noted that dismissal as a retaliatory measure for excercising the right to equal pay does not appear to be explicitly forbidden, but can be challenged in court. The Committee recalls in this connection that when the dismissal is the consequence of a worker's reclamation about equal wages, the employee should be able to file a complaint for unfair dismissal. In this case, the employer must reintegrate him in the same or a similar post. If the reinstatement is not possible, he/she has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. Courts have the competence to determine the amount of this compensation, not the legislator (Conclusions XIX-3 (2010), Germany). The Committee asks what rules apply in this regard.

As regards the burden of proof, the Committee refers to its conclusion on Article 1§2 (Conclusions 2008) and conclusion on Article 20 (Conclusions 2006), in which it noted that under Act No. 324 of 2006 complainants must prove the facts of the case from which it can be presumed that there was discrimination. It is then for the defendant to prove that these facts did not constitute discrimination.

Methods of comparison and other measures

In reply to the Committee's question on whether in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned, it notes from the supplementary information provided by the Committee that the normative acts establish a unitary pay system for the public sector, while in the competitive sector, salary rights and other rights are covered by individual employment contracts and/ or collective labour agreements concluded at the unit level.

As for the individual employment contracts, according to Law no. 53/2003 on the Labor Code, republished, the salary rights and other rights are negotiated between employers and employees. In the case of labour contracts at unit level, the aforementioned rights are

negotiated between the employer and the representative trade union at unit level or, where appropriate, between the employer and the representatives of the employees.

According to the supplementary information provided by the Government, the current provisions do not impose obligations for employers' and employees' organisations to set up clauses within the collective agreements aimed directly or indirectly at applying the principles of equality of pay. Currently there are no levers for data collection to enable comparison of wages within a company or between wages and jobs outside the company.

Under Article 20 of the Charter (Article 1 of the Additional Protocol of 1988), equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.

The Committee holds that this interpretation applies, *mutatis mutandis* to Article 4§3.

The Committee considers in this respect that the approach of EU law allows for a proper implementation of Article 4§3.

The Committee refers to the judgment of the European Court of Justice of 17 September 2002 on the A.G. Lawrence and Others v. Regent office Care Ltd (case C 320/00), in which the Court held that there is nothing in the wording of Article 141(1) EC to suggest that the applicability of the provision of equal pay is limited to situations in which men and women work for the same employer. However, where the differences identified in the pay conditions of workers performing equal work or work of equal value cannot be attributed to a single source, there is nobody who is responsible for the inequality and who could restore equal treatment. Such a situation does not come within the scope of Article 141(1) EC. Therefore, the work and the pay of those workers cannot be compared on the basis of that provision.

The Committee asks whether pay comparisons outside the company are possible in equal pay litigation cases, when the differences identified in the pay conditions of female and male workers performing work of equal value are attributable to a single source.This could signify employees working for the same legal person or group of legal persons, employees of several undertakings or establishments covered by the same collective works agreement or regulations. In such cases, regulation of the terms and conditions of employment actually applied is traceable to one source, whether it be the legislature, the parties to a collective works agreement or the management of a corporate group (Opinion of Advocate General Geelhoed of 14 March 2002 regarding the ECJ Case C-320/00).

In its Statement of Interpretation of 2012 (XIX-1) the Committee held that Article 20 (Article 1 of the Additional Protocol of 1988) requires that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation in the Netherlands complied with this principle, because in equal pay cases in the Netherlands comparison can be made with a typical worker (someone in a comparable job) in another

company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands).

The Committee asks the next report to provide information in the light of the above clarifications.

The Committee notes from Eurostat that the unadjusted pay gap in 2011 was 11%.The Committee asks for information concerning the measures taken to reduce the pay gap between men and women.

Conclusion

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

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 Romania.

It previously concluded (Conclusions 2003, 2007 and 2010) that the situation in Romania was not in conformity with Article 4§4 of the Charter on the ground that the notice period was insufficient for employees with over six months of service. It asked for information on the circumstances in which immediate dismissal was authorised and on causes of termination of employment other than dismissal. It also asked whether the legislation made provision for periods of absence during notice periods to look for new employment.

The report does not provide this information. According to another source (ILO-EPLEX), the Labour Code was republished by Law No. 40/2011 of 31 March 2011, which came into force on 1 May 2011. Article 61 of the Code authorises dismissal for reasons relating to the individual circumstances of the employee:

a. Disciplinary offences ascertained in accordance with the procedure set out in Articles 261 to 265 of the Code;
b. Pre-trial detention of more than 30 days;
c. Duly established physical or mental incapacity;
d. Duly established professional inadequacy;
e. Retirement.

Article 65 of the Code also authorises dismissal for reasons not connected with the individual circumstances of the employee (abolition of posts).

Under Article 75, paragraph 1 of the Code, employees dismissed for mental or physical incapacity, professional inadequacy or as a result of the abolition of posts are entitled to a standard notice period, which has now been extended to 20 days. According to another source (ILO-EPLEX), in the event of dismissal owing to the abolition of posts, the national collective agreement for 2007-2010 provided for a notice period of 20 days and the payment of severance pay of at least one month's wages. However, as the Social Dialogue Act of 10 May 2011 (No. 62/2011) abolished collective bargaining, this collective agreement came to an end on 31 December 2010. By derogation, Article 75, paragraph 2 of the Code rules out notice during probationary periods, during which contracts end immediately (Article 31, paragraph 3 of the Code). Article 80, paragraph 1 of the Code makes no provision for notice or severance pay in the event of unfair dismissal other than compensation for the damage suffered by the employee.

Article 56, paragraph 1 of the Code makes no provision for notice applying to legally automatic causes of termination of employment, such as death of employers who are natural persons; winding up of employers which are legal persons; and withdrawal of permits, authorisations or certificates required to perform work.

The Committee points out that in accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. Protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain).

The Committee considers that in the instant case the notice period of 20 days provided for by Article 75, paragraph 1 of the Code is not reasonable within the meaning of Article 4§4 of the Charter, except in the case of disciplinary offences provided for by Article 61(a) of the Code, which is the only situation in which immediate dismissal is authorised (Conclusions 2010, Armenia). Furthermore, the ruling out of notice during probationary periods, provided for by Article 75, paragraph 2 of the Code, is not in conformity with Article 4§4 of the Charter (General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, Decision on the merits of 23 May 2012, §§26 and 28). The same applies to the ruling out of any notice period in the event of legally automatic termination of employment provided for by Article 56, paragraph 1 of the Code.

The Committee notes that in the event of dismissal for physical or mental incapacity (Article 64, paragraph 5 of the Code) or as a result of the abolition of posts (Article 67 of the Code), employees may take the severance pay provided for by law, collective agreement or employment contract. It asks for information in the next report on the award of such pay. It also asks for information on whether the compensation for damage provided for by Article 80, paragraph 1 of the Code in the event of unlawful dismissal is compulsory or optional. It further asks for information on the causes and periods of notice for early termination of fixed-term contracts. It repeats its request for information on whether provision is made for periods of absence during notice periods to look for new employment. In order to examine whether the protection afforded covers all workers, the Committee asks for information on the notice periods and/or severance pay which are applied to workers governed by: Law No. 128/1997 setting out the regulations for teachers; Law No. 188/1999 setting out the regulations for civil servants; Decree No. 361/1976 setting out the regulations for employees of post offices and telecommunications companies; and Law No. 303/2004 setting out the regulations for judges and public prosecutors.

Conclusion

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

- the notice period for dismissal for physical or mental incapacity or for professional inadequacy or as a result of the abolition of posts is insufficient;
- the legislation makes no provision for notice periods during probationary periods and in the event of legally automatic termination of employment.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to wage deductions

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

It previously concluded (Conclusions 2007 and 2010) that the situation in Romania was not in conformity with Article 4§5 of the Charter on the ground that it had not been established that deductions from wages would not deprive workers and their dependents of their means of subsistence. It asked for information on the measures preventing workers from waiving their right to limited deductions from wages, on the other grounds for deduction authorised (such as trade union dues, fines and reimbursement of advances on wages), and the limits applied in such cases.

Article 169, paragraph 4 of the Labour Code, as amended by Law No. 40/2011 of 31 March 2011, retains the previous provisions according to which the combined amount of deductions from wages may not exceed 50% of wages net of social contributions and tax deductions. Furthermore, Article 257, paragraph 2 of the Code limits the monthly amounts that can be deducted for the purposes of compensation for damage caused to an employer in the performance of work to one third of net wages, within the limit of the combined amount of deductions of 50% of net wages.

The Committee notes that there has been practically no change in the situation since the previous reference period. It points out that the goal of Article 4§5 of the Charter is to guarantee that workers who are protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland). It reiterates in the instant case that the general limit imposed by Article 169, paragraph 4 of the Code allows cases to persist in which workers have only 50% of the minimum wage, net of social contributions and tax deductions, which is an amount that does not enable them to provide for themselves and their dependants.

The Committee also notes that under Article 170 of the Code, the workers' approval of payslips may not be considered equivalent to them waiving their rights under the law or the employment contract. It asks for clarification in the next report on whether this provision effectively prevents, in law or in practice, workers from waiving the general prohibition of deductions from wages established by Article 169, paragraph 1 of the Code.

The Committee notes the following authorised grounds for deductions: maintenance claims; contributions and taxes owed to the state; damage caused to public property by unlawful acts; coverage of other debts (Article 169, paragraph 3 of the Code); return to employers of amounts not due to employees (Article 256, paragraph 1 of the Code); and damage caused to employers by employees when performing their work (Article 257, paragraph 2 of the Code). Pointing out that under Article 4§5 of the Charter, the circumstances that authorise deductions from wages should be defined clearly and precisely, the Committee asks the next report to indicate any "other debts" referred to in Article 169, paragraph 3 of the Code, and whether the "amounts not due" referred to in Article 256, paragraph 1 of the Code are subject to the limit on the combined amount of deductions of 50% of net wages, set by Article 169, paragraph 4 of the Code. The Committee reiterates its request for information on the circumstances (such as civil claims, fines, trade union dues) and/or the operations (attachment) liable to result in deductions from wages not provided for by the Code.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 4§5 of the Charter on the ground that, after the subtraction of the combined amount of all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

Article 5 - Right to organise

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

The Committee has examined the situation with respect to the right to organise (forming trade unions and employers' organisations, 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 in this conclusion.

The report indicates that during the reference period the Law no. 62/2011 on social dialogue (Law on Social Dialogue) was adopted, which contains provisions with regard to trade unions, employers' organisations, collective labour disputes, collective negotiation, institutionalised tripartite consultation, and the Economic and Social Council. The report further indicates that the Law on Social Dialogue was amended in July 2013 in the sense that a separate law on the operation and organisation of the Economic and Social Council was adopted (Law no. 248/2013). The Committee will consider this latter amendment in a future conclusion as the change has been made outside the reference period. It requests the Government to provide updated information on the organisation and operation of the Economic and Social Council in the next report.

Forming trade unions and employers' organisations

The report indicates that according to the Law on Social Dialogue all persons employed with an individual labour agreement, the public servants, the public servants with special statute, cooperative members and employed farmers have the right, without any restriction or prior authorisation, to form and/or to join a trade union.

The Law on Social Dialogue lays down the procedures for constituting and the registration of trade unions (Articles 5-20) and employers' organisations (Articles 54-60), which are carried out with the court of first instance within strict deadlines. After examining all the documentation submitted and if the organisations' statutes are in conformity with the statutory provisions, the court renders a decision confirming or rejecting the registration which is subject to appeal. Trade unions and employers' organisations obtain legal personality on the date of the final judgment of the court admitting their registration.

An important amendment introduced by the Law on Social Dialogue is that a minimum number of 15 employees of the same company is required to form a trade union (compared to 15 members of the same profession, who could be the employees of different entities in the previous legislation). The European Trade Union Institute (The crisis and national labour law reforms: a mapping exercise (2012) indicates that 90% of the Romanian companies have only nine workers or fewer. The Committee recalls that the requirement as to minimum numbers of members comply with Article 5 if the number is reasonable and presents no obstacle to the founding of organisations (Conclusions XIII-5 (1997) Portugal). Therefore, the Committee requests more information on how this rule is implemented into practice. Additionally, in order to assess the conformity of this situation with the Charter, the Committee would like to know the number of employees in most of the companies registered in Romania.

Freedom to join or not to join a trade union

The report indicates that the Law on Social Dialogue guarantees the general principle that no person can be forced to either join or not to join a trade union, or to leave or not to leave a trade union (Article 3). Moreover, according to the new Law, it is forbidden to amend and/or to terminate individual labour agreements of trade union members based on their membership and

trade union activities. The same protection is granted to civil servants and civil servants with special statute (Article 10 of the Law on Social Dialogue).

In its previous conclusion (Conclusions 2010), the Committee has asked for the Government's comments on the allegation that certain employers, notably foreign companies, make employment conditional on workers agreeing to create or join a or no trade union. The Government answers that they do not have genuine information on the above mentioned practice. The Committee reiterates its question.

Furthermore, the report indicates that the cases related to trade union discrimination may be subject to the Labour Inspectorate, courts or the National Council for Combating Discrimination. However, the Government does not have information on such cases reported by the Labour Inspectorate or on any court's decisions. The Committee requests the Government to provide examples of cases related to trade union discrimination. It also asks whether compensation is provided to the victims of discrimination based on trade union membership or activities.

Trade union activities

The Committee notes that the Law on Social Dialogue provides that trade unions are independent of interference of any public authorities, political parties and employers' organisations (Article 2). The same Article also provides that trade unions cannot perform activities of a political nature.

Moreover, the report indicates that according to the provisions of Article 7 of the Law on Social Dialogue, trade unions have the right to elaborate their own regulations, to freely elect their representatives, to organise their management and activities and to lay down their own action programmes, in compliance with the law. Any intervention from the public authorities, from the employers and from their organisations which aims to restrict or obstruct the exercise of the above mentioned rights is forbidden. The Labour Inspectorate may impose a fine of 15 000 Lei to 20 000 Lei in case of violation of these rights (Article 217).

Representativeness

The report indicates that the new Law on Social Dialogue establishes representativeness criteria for social partners at all levels (company, group of companies, sectoral and national). As regards the trade unions, the report states that the new provisions do not amend the old legislation related to representativeness at national and sector levels, but only provide new rules for representativeness at company level.

At company level, the new Law recognises the right of a trade union to bargain and sign a collective agreement only if its members represent at least half plus one of the company's total number of employees (compared with one-third in the previous legislation). This amendment's consequence is that only one trade union can be representative in a company, compared to up to three under the old legislation.

The Committee notes that under the new Law on Social Dialogue, the representative trade unions are entitled to bargain collectively (Article 134 of Law on Social Dialogue) and they have the right to negotiate through the collective agreement at company level to have access to premises and facilities for their activities (Article 22 Law on Social Dialogue). Additionally, the new Law provides that the representative trade unions may participate in board meetings of the company to discuss matters of professional, economic and social interest and may receive from the employers or their organisations the necessary information for conducting collective bargaining (Article 30 of the Law on Social Dialogue). The Committee understands that all the

above mentioned attributes belong to the representative trade unions only and that non-representative trade unions do not enjoy any of these rights.

In this respect, the Committee recalls that areas of activity that are restricted to representative unions should not include key trade union prerogatives. In this context, "a trade union that is not representative should enjoy certain prerogatives, for example, they may approach the authorities in the individual interest of an employee, they may assist an employee who is required to justify his or her action to the administrative authority; they may display notices on the premises of services and they receive documentation of a general nature concerning the management of the staff they represent" (Conclusions XV-1 (2000), Belgium). Therefore, the Committee considers that the situation is not in conformity with Article 5 of the Charter on the ground that the right of the non-representative trade unions to exercise key trade union prerogatives is restricted.

According to the new Law on Social Dialogue, in companies with no representative trade unions, the collective bargaining shall be done as follows: (i) if there is a trade union at the company level, affiliated to a representative sectoral federation, the negotiations will be carried out by the federation to which the existing trade union belongs, together with the elected representatives of the employees; (ii) if there is no trade union, or the trade union is not affiliated to a representative federation, the collective bargaining and the workers' representation are carried out by the representatives of the employees (Article 135 Law on Social Dialogue). The representatives of the employees are elected during the general assembly of the employees, and require the vote of at least half the number of employees.

Also, according to the Law on Social Dialogue, trade union federations and confederations must re-apply for representativeness, by submitting documents proving that they can stand for the workers' rights at sector and national levels. The report illustrates that from the moment the Law on Social Dialogue has entered into force until 2012, 54 trade union federations at sector level and 5 trade union confederations at national level obtained representativeness on the basis of the new law. The fulfilment of the representativeness requirements in case of trade unions is decided by the same court which granted their legal personality. The court decision on representativeness is subject to appeal.

As regards the representativeness criteria in respect of employers' organisations, the report indicates that the Law on Social Dialogue has abrogated the Law on the Employers' Organisations no. 356/2001. The new Law on Social Dialogue recognises at company level the employer as a rightful company representative. For sectoral representativeness, an employers' organisation must represent employers who employ at least 10% of the total number of employees in the sector concerned. Also, one of the conditions to be met for an employer's organisation seeking national representativeness is to have among its members entities that cover at least 7% of all employees in the national economy (minus the budgetary employees). In order to acquire representativeness at sectoral and national levels, the employers' organisations must file an application with the Bucharest Court (*Tribunalul Bucuresti*). The decision on representativeness rendered by the court may be apealed. The report illustrates that from the entry into force of the Law on Social Dialogue until 2012, 8 private employers' federations at local level, 7 private employers' federations at activity sector level and 9 private employers' confederations at national level obtained representativity on the basis of the new law.

Personal scope

As regards the personal scope, the report indicates that the Law on Social Dialogue provides the right to form and/or join a trade union without any restrictions or prior approval for those

persons employed under an individual labour agreement, civil servants and the civil servants with special statute, cooperative members and employed farmers (Article 3).

However, the Law on Social Dialogue provides that the following categories of employees are subject to restrictions on their enjoyment of the right to form and/or to join a trade union: persons holding public offices; magistrates; military staff of the Ministry of National Defence; employees of the Ministry of Administration and Interior, Romanian Intelligence Service, Protection and Guard Service, Foreign Intelligence Service, Special Telecomunications Service; as well as employees of their units/subunits under their coordination. In its previous conclusion, the Committee asked for information with regard to the right of civilian staff of all the above mentioned bodies to form and/or to join trade unions. The report indicates that the restrictions on the right to form and/or to join trade unions concern only the military personnel or those with military status and do not apply to civilian staff. The report also emphasises that in the defence, public order and national security sectors, the right to form trade unions is restricted for the soldiers only. The other staff categories may organise themselves according to the law. Civilian staff members are guaranteed the right to form trade unions in accordance with Article 29 of the Law no. 188/1999 on the status of civil servants. The civil servants may freely set up and join trade unions, exercise any mandate within such organisations, as well as associate in professional organisations or in other types of organisation aiming to protect their professional interests.

The report illustrates through specific normative acts the situation of the civilian staff belonging to the following structures:

- Ministry of National Defence: Article 11 (1) letter m) of the Order of National Defence Ministry no. M 17/2012 on the approval of the Internal Regulation applied to the civilian personnel from the Ministry of National Defence provides that the civilian personnel is entitled to "set up or join a trade union or a social-professional organisation according to the law."
- Ministry of Interior: the statutory provisions of the staff categories – civil servants, civil servants with special statute, and contract staff do not restrict the freedom of association, including exercising trade union rights. Article 4 of the Law on Social Dialogue restrict the right to form and join trade unions only in respect of the military staff of the Ministry of Interior.
- Romanian Intelligence Service: the Internal Regulation for civilian employees of the Romanian Intelligence Service provides the right of civilian employees to form trade unions, without any restrictions/constraints in the exercise of this right. Also, the internal regulation provides that the heads/commanders of units should ensure that this right is properly exercised, without influence being exerted on the decision of the civilian employee to join or not to join the trade union concerned. The report also indicates that in the event that within some units trade unions have been formed, the head/commanders of units must ensure that the employees who did not join the trade unions are not discriminated in relation to staff-related rights (such as rank-promotion or professional steps or non-granting of pay rise).
- Security Service: the report indicates that the civilian personnel within the Security Service enjoy all the rights provided for by the legislation in force, including the freedom of association for promoting their professional, economic and social interests.
- Foreign Intelligence Service: according to Law no. 51/1991 on the national security of Romania and Law no. 1/1998 on the organisation and functioning of the Foreign Intelligence Service, civilian employees are subject to both the provisions of the Labour Code as to those of the specific regulations of the Service.

The Committee observes that civilian employees of the above mentioned bodies are not prohibited to form or join trade unions. It therefore considers the situation to be in conformity with the Charter on this point. Furthermore, the Committee has previously analysed the situation with regard to magistrates and police members and has found it in conformity with the Charter (Conclusions 2010).

In its previous conclusion (Conclusions 2010), the Committee concluded that the situation was not in conformity with Article 5 of the Charter on the ground that the requirement of Romanian nationality for the representation of the two sides of industry at the Economic and Social Council is excessive. The report indicates that through the Law on Social Dialogue, which amended and supplemented the provisions on the operation and organisation of the Economic and Social Council, the requirement of the Romanian citizenship for the representation within the Council was removed (Article 94). The Committee considers that the situation is now in conformity with Article 5 of the Charter on this point.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 5 of the Charter on the ground that the right of the non-representative trade unions to exercise key trade union prerogatives 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 Romania.

The Committee notes from the report that the legal framework that lays down the mechanisms for joint consultation, which it found to be in conformity with the requirements of Article 6§1 in its previous conclusion (Conclusions 2010), was amended during the reference period through the Law no. 62/2011 on Social Dialogue (Law on Social Dialogue).

The report indicates that through the Law on Social Dialogue, the National Tripartite Council for Social Dialogue (*Consiliul National Tripartit de Dialog Social, CNTDS*) was established as a functional structure at government level, to function as a consultant on the minimum wage policy, the national strategies and programmes, in the negotiation of social agreements and in the analysis and approval of the extension of collective labour agreements concluded at sectoral level. The CNTDS is chaired by the prime minister and among its members are presidents of the national trade unions and employer confederations, government representatives from each ministry (holding the position of at least secretary of state), the representative of the National Bank of Romania, the president of the Economic and Social Council, as well as other members who are jointly agreed upon with the social partners.

Furthermore, the Committee notes from the report that the provisions on the composition and the operation of the Economic and Social Council (*Consiliul Economic si Social, CES*) were amended in the sense that the Council is now formed of 15 members appointed by the representative employers' confederations at national level, 15 members appointed by the representative trade union confederations at national level and 15 members representing the civil society (while previously the latter 15 members were appointed by the Government). Therefore the CES plays an important role in the tripartite negotiation at national level between the trade unions, the employers' organisations and the civil society. The report also indicates that the CES is an advisory body for the Government and the Parliament, and its advisory opinion remains mandatory within the legislative process. The Committee asks how the members representing the civil society are appointed.

The Committee would like to know whether employers' and employees' organisations have the opportunity of joint consultation on a bi-partite basis. In this respect, it recalls that if adequate consultation exists, there is no need for the State to intervene. If no adequate joint consultation is in place, the State must take positive steps to encourage it (*Centrale générale des services publics* (CGSP) v. Belgium, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41). It also reiterates its question on whether issues of interpretation of collective agreements are dealt within the framework of joint consultation or within other specific mechanisms. The Committee asks if the non-representative trade unions are allowed to take part in joint consultation.

As regards consultation in the public sector, it is reported that in March 2012 an agreement (No. 4257/12th March 2012) has been concluded at the Ministry of Interior/trade unions level, according to which the Ministry of Interior recognises the free exercise of trade union rights, in compliance with the regulations in force. The same agreement also provides rules concerning matters such as: the setting up and using of funds designed to improve working conditions; occupational health and safety; daily work time; vocational training; other protection measures than those stipulated by law concerning the protection of elected governing bodies of trade unions or of designated representatives of civil servants.

The report mentions that at the Ministry of Interior level social dialogue is conducted for the purpose of information, consultation and collective negotiation with the representative trade

unions. Moreover, the report indicates that a Social Dialogue Committee at the Ministry of Interior level was set up. The Committee has an advisory role and focuses on the following issues related to the Ministry of Interior: (i) ensuring some social partnership relations between the administration, the employers and the trade unions, which allows for a permanent mutual exchange of information on the problems of the administration or the social partners; (ii) providing advice to the social partners on the legislative or other type of initiatives with an economic-social character; and (iii) other issues which concern the ministry's field of activity. The report illustrates that from 1 January 2011 to 1 January 2012, 7 meetings at the Social Dialogue Committee level and 6 meetings at the Social Dialogue Sub-committee in the field of Order and Public Security level were organised. Also, with the purpose of ensuring the social dialogue, a Joint Committee was set up which was formed by the representatives of the Ministry of Interior and of the representative trade unions. Between 1 January 2011 and 1 January 2012 a meeting of the Joint Committee was organised during which an agreement was signed between the Ministry of Interior and certain trade unions.

Lastly, the report illustrates that a collective labour agreement at the group of units level of the Ministry of Interior was concluded in 2012, which applies to approximately 7 400 contracted staff members. Additionally, the collective agreement regarding the labour agreements of civil servants with special statute – policemen – of the Ministry of Interior was concluded, which applies to approximately 75 000 policemen.

Conclusion

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

The report emphasises that following the amendments of the Law on Social Dialogue (Law 62/2011), collective bargaining is now carried out at sectoral, group of units and company level (Article 128).

The Committee notes that collective bargaining at the national level is no longer provided for. The report indicates that the unique collective agreement at the national level expired in 2010 according to the legal provisions in force. According to the new Law on Social Dialogue, the sectoral level replaced what was previously an industrial branch of the national economy and therefore the designated level of collective bargaining.

The Law on Social Dialogue states that a collective agreement is mandatory only at company level, except for companies with fewer than 21 employees. The negotiation initiative belongs to the employer or to the employer's organisation which starts the collective negotiation, at least 45 calendar days before the expiry date of the collective agreements or before the expiry date of the applicability period of the provisions laid down in the addenda attached to the collective agreement. Should the employer or the employer's organisation not start the negotiation, such negotiation shall begin upon the written request of the representative trade union or the employee's representatives within 10 calendar days from the request. The duration of the collective negotiation may exceed 60 calendar days, only with the consent of the parties. The collective agreements may provide the regular renegotiation of any clause agreed between the parties.

The Committee refers to its conclusion on Article 5 with regard to the representativeness criteria, where it noted that the new Law recognises at company level the right of a trade union to bargain and sign a collective agreement, only if its members represent at least half plus one of the company's total number of employees. It also noted that in companies with no representative trade unions, the collective bargaining shall be done as follows: (i) if there is a union at the company level, affiliated to a representative sectoral federation, the negotiations will be carried out by the federation to which the existing union belongs, together with the elected representatives of the employees; (ii) if there is no trade union, or the trade union is not affiliated to a representative federation, the collective bargaining and the workers' representation are carried out only by the representatives of the employees (Article 135 Law on Social Dialogue).

The Committee observes that the Law on Social Dialogue provides that the provisions of collective agreements shall apply to: (i) all employees of the company, in case of collective agreements concluded at the company level; (ii) all employees performing their activity within the group of units for which the collective agreement has been concluded; (iii) all employees performing their activity in the units of the sector for which the collective agreement has been concluded and which are part of the employers' organisation who sign the agreement. The Committee notes that according to the new rule, the sectoral collective agreements should only affect companies affiliated to signatory employer organisations.

The Committee takes note of an article published by the International Trade Union Confederation (ITUC – IMF and EC Apply Behind-the-Scenes Pressure on Romania to Halt the Restoration of Core Labour Rights) in November 2012 declaring that after the adoption of the law on Social Dialogue, the collective bargaining at sectoral level became so difficult that no collective agreement has been concluded at sectoral level yet. The same source indicates that the collective bargaining at company level has dropped significantly. The Committee invites the Government to provide information on the practical implementation of the new rules of the Law

on Social Dialogue. In particular, it asks what was the impact of the new rules on the collective bargaining at company and sectoral level. It invites the Government to provide the number of collective agreements that were concluded at sectoral, group of units and company level and the number of employers and employees covered by these agreements. The Committee recalls that in order to ensure the effective exercise of the right to bargain collectively, the Government shall promote machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee underlines that should the next report not provide the requested information, there will be nothing to establish that the situation in Romania is in conformity with Article 6§2 of the Charter. Meanwhile, it reserves its position on this point.

The report also indicates that the Law on Social Dialogue does not allow collective agreements at company level to stipulate fewer rights than those recognised under the group of units or sectoral collective agreements. Also, individual employment contracts may not provide for rights that are inferior to those granted under the applicable collective agreements.

The Committee has previously asked for information on the procedures governing the possible extension of collective agreements. The report indicates that it is the prerogative of the National Tripartite Council for Social Dialogue to examine and approve (if the case may be) requests for an extension of sectoral collective agreement to all entities in the respective sector.

As regards the public sector, the report indicates that the negotiation of collective agreements for the civil servants is performed in accordance with the specific legal provisions (Law no. 188/1999 on the status of civil servants). Moreover, the Law on Social Dialogue provides that any clause related to cash or in-kind rights other than those provided by the applicable legislation for the respective category of personnel cannot form the object of negotiation in the public sector.

The report indicates that the wage rights from the budgetary sector are laid down by law within the precise limits which cannot form the object of the negotiation and may not be amended by collective agreement. Should the wage rights be laid down by special laws within the minimum and maximum limits, the concrete wage rights are established by collective negotiation, but only within the legal limits (Law no. 62/2011, Article 138 paragraphs (1) and (3)). The report also indicates that with the observance of the minimum and maximum legal limits, other wage rights, pay rises, bonuses and funds may also be negotiated according to the legal provisions and the special laws, within the limit of the institution's budget and together with the representative trade union federations.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee notes from the report that Law no. 168/1999 on Labour Dispute Resolution was repealed by the Law no. 62/2011 on Social Dialogue (Law on Social Dialogue). The new law provides in Title VIII Articles 166-180 the rules governing conciliation, mediation and arbitration procedures in the event of labour disputes.

As a general rule, the Law guarantees the right of employees to initiate collective labour conflicts in relation to the conclusion, performance or termination of collective agreements. Collective labour conflicts may be initiated in the following situations: (i) the employer or the employers' organisation refuses to proceed with the negotiation of the collective agreement, when there is no such collective agreement or when the former collective agreement has expired; (ii) the employer or the employers' organisation refuses to accept the employees' claims; or (iii) the parties do not reach an agreement on the conclusion of a collective agreement until the date, which has been mutually agreed by the parties, for completing the negotiations. The Law on Social Dialogue also stipulates that the employees may not initiate a collective labour conflict while a collective agreement is still valid (Article 164).

According to the Law, the conciliation procedure is mandatory. The representative trade union or the employees' representatives (in case of collective conflicts at company level) will notify the employer or the employer's organisation on the initiation of the collective labour conflict and will notify in writing the territorial labour inspectorate (in case of collective labour conflicts at company level), or the Ministry of Labour, Family and Social Protection (in case of collective labour conflicts at groups of units or sectoral level) in view of conciliation.

Within 3 working days from the registration of the above mentioned notification, the Ministry of Labour, Family and Social Protection (in case of collective labour conflicts at groups of units or sectoral level), or the territorial labor inspectorate (in case of collective labour conflicts at company level) will appoint their delegates who will participate in the collective labour conflict conciliation. The Ministry of Labour, Family and Social Protection, or the territorial labour inspectorate, will summon the parties to the conciliation procedure, within a period that cannot exceed 7 working days from the appointment of their delegate. If further to the conciliation the parties reach an agreement, the collective labour conflict will be considered as solved.

If the collective work conflict cannot be settled as a result of the conciliation procedure organised by the Ministry of Labour, Family and Social Protection, or the territorial labour inspectorate, the parties may mutually agree to initiate a mediation procedure. The Law on Social Dialogue provides that the Office for Mediation and Arbitration of Collective Labour Conflicts attached to the Ministry of Labour, Family and Social Protection is established in order to handle the settlement of collective labour disputes. Within the Office, a body of mediators and a body of arbitrators were set up.

Anytime during a collective labour conflict, the parties involved in the conflict may mutually decide to subject their claims to arbitration by the Office for Mediation and Arbitration of Collective Labour Conflicts attached to the Ministry of Labor, Family and Social Protection. The decisions rendered by the Office for Mediation and Arbitration are binding on the parties, complete the collective agreements and become enforceable as of the decision date.

The Law on Social Dialogue also provides that the mediation or arbitration of a collective labour dispute is mandatory if the parties have mutually agreed so, prior to the strike initiation or during the strike (Article 180).

The Committee notes that conciliation, mediation and arbitration procedures are instituted through the Law on Social Dialogue. It observes that while the conciliation procedure is mandatory, the mediation and arbitration procedures are subject to the will of the parties. Therefore, it concludes that the situation is in conformity with the Charter on this point. The Committee requests to be informed on the practical implementation of the new legislation.

The Committee recalls that procedures of conciliation, mediation and/or arbitration should also exist for resolving conflicts which may arise between the public administration and its employees (Conclusions III (1973), Denmark, Germany, Norway, Sweden, Article 6(1)). The Commitee asks if such procedures are in place within the public sector and how they function in practice.

Conclusion

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

The report indicates that during the reference period the Law on Social Dialogue (Law No. 62/2011) was adopted which regulates collective actions. The Law on Social Dialogue repealed Law No. 168/1999 on labour dispute resolution.

Collective action: definition and permitted objectives

The report indicates that according to the new Law on Social Dialogue, a strike is defined as any form of collective and voluntary cessation of work within an undertaking. Collective actions may be initiated for the protection of professional, economic and social interests of the employees and cannot have a political purpose.

The Law on Social Dialogue provides that a strike can only be initiated if previously (i) all the possibilities to solve the collective labour conflict through the mandatory procedures provided by Law have been exhausted; (ii) the warning strike has taken place; and (iii) the employer has been informed of the date of the strike at least two working days in advance.

The Committee recalls that the exhaustion of conciliation/mediation procedures requirement before striking is in conformity with Article 6§4 as long as such machinery is not so slow that the deterrent effect of a strike is affected (Conclusions XVII-1 (2004), Czech Republic). In respect of the mandatory procedures provided by Law to solve collective labour conflicts, the Committee refers to its examination of the applicable rules and procedures in its conclusion on Article 6§3. The Committee observes that Law on Social Dialogue provides strict deadlines for the conciliation procedure. In order to assess if the situation complies with the requirements of the Charter, the Committtee asks whether these deadlines are observed in practice.

Entitlement to call a collective action

The Committee notes that according to Article 183 of the Law on Social Dialogue the right to call a strike belongs to the representative trade unions involved in the conflict and it requires the written approval of at least half of the respective trade unions' members. The Committee recalls that it has held that limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4 of the Charter (Conclusions XV-1 (2000) France).

The Committee found in its previous conclusions (Conclusions 2002, 2004, 2006, 2010) that the situation was not in conformity with Article 6§4 of the Charter, on the grounds that according to the previous legislation a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union's members. The Committee recalls that subjecting the exercise of the right to strike to prior approval by a certain percentage of workers is in conformity with Article 6§4, provided that the ballot method, the quorum and the majority required are not such that the exercise of the right to strike is excessively limited (Conclusions XIV-1 (1998) United Kingdom).

The Committee observes that the situation in Romania has not changed as a result of the adoption of the Law on Social Dialogue. Therefore, the situation remains to be not in conformity with the Charter on this point.

The Law on Social Dialogue also provides that where there is no representative trade union, the decision to initiate collective action will be taken by the employees' representatives, with the written approval of at least one quarter of the employees of the respective unit. This rule is not

applicable in case of sympathy strikes, because then the initiative to call a strike can only be taken by the representative trade unions which are afiliated to the same federation or confederation of the trade union which organises the strike and requires the written approval of at least half of the members of the respective trade unions.

Specific restrictions to the right to strike and procedural requirements

The report indicates that the Law on Social Dialogue provides restrictions of the right to strike for some categories of personnel from the defence, public order and national security sector. According to the provisions of Article 202 of the Law, the following categories are prohibited to exercise the right to strike: prosecutors, judges, military staff and personnel with special status within the Ministry of National Defence, the Ministry of Administration and Interior, the Ministry of Justice and the institutions or structures subordinated or coordinated by such ministries, including the personnel within the National Administration of Prisons, Romanian Intelligence Service, External Intelligence Service, Special Communications Service, as well as the personnel employed by the foreign army forces situated on the Romanian territory.

The Committee recalls that the right to strike of certain categories of public officials may be restricted. Under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc. (Conclusions I (1969) Statement of Interpretation on Article 6§4). The Committee observes that the restrictions imposed on the categories listed above do not go beyond the margin of appreciation enjoyed by the state.

The Committee notes that Article 202 of the Law on Social Dialogue provides that the restriction on the right to strike also refers to other categories of personnel with respect to whom the exercise of the right to strike is forbidden by law. The Committee asks whether, to whom and in what circumstances the latter provision is being applied in practice.

Moreover, the report indicates that the prohibition of the right to strike for military staff is laid down in Article 28(c) of Law No. 80/1995 regarding the status of military staff. It stipulates that the active military staff members are forbidden to call and to participate in a strike.

As regards the restrictions applicable within key sectors, such as telecommunications; nuclear and national energetic systems; fire units; and gas, energy and water supply, the report indicates that the right to strike is permitted provided that at least one third of the activity is ensured, in order to guarantee some minimum services and in order to protect the life and health of people (Articles 205 and 206 of Law on Social Dialogue).

With regard to the right to strike of the contractual civilian personnel, the report indicates that according to the provisions of Article 30 (1) of Law No. 188/1999 regarding the status of civil servants, civil servants have the right to strike, in compliance with the law. The Law on Social Dialogue also provides that civil servants may initiate a strike in accordance with the procedure prescribed by the same Law. Moreover, the report indicates that according to the Labour Code, any restriction or prohibition of the right to strike only applies in cases and for the categories of employees expressly provided for by law.

Furthermore, as regards the procedural requirements of collective actions, the report indicates that during the strike, its organisers may continue the negotiation with the employer with the purpose of settling the collective labour dispute. During negotiations, the employees' representatives and the employer may agree to temporarily suspend the strike. If they reach an agreement, the collective labour dispute is settled and the strike ends. In case that the negotiations fail, the strike will be restarted without the obligation of observing all the preliminary procedural requirements provided by law. The Law on Social Dialogue stipulates that a strike

cannot be initiated during the mediation and arbitration procedures or it can be suspended for the duration of such procedures (Article 188 Law on Social Dialogue).

An employer who considers that a strike is illegal can request the court to render a decision to stop the strike. The competent court to hear the case is the court (tribunal) that has jurisdiction over the area where the unit is located. Within two working days from the registration of the claim, the court will summon the parties and hold a hearing to solve the case. The court can either reject the employer's claim or admit the employer's claim and consequently order that the strike ends. The decision rendered by the court is subject to appeal. The Committee requests more information regarding case law of the courts in relation to the right to strike (including whether Courts have declared strikes to be illegal and on what grounds).

Consequences of a strike

The report indicates that according to the Law on Social Dialogue the individual labour agreement of the employee who participates in a strike is suspended *de jure* for the entire duration of the strike. Only the health insurance related rights are maintained during the strike.

However, participation to a strike is not considered a violation of the employees' duties and it does not trigger any sanction in case of a legal strike. On the contrary, the latter provisions do not apply if the court finds the strike to be illegal. Also, in case of an illegal strike, the court can decide that the organisers of the strike and the employees participating in the strike are obliged to pay damages to the employer.

The report also indicates that the Labour Inspectorate may impose a fine of up to 3 000 Lei according to the provisions of Article 260(1)(c) of the Labour Code in case an employee or a group of employees is prevented or forced by threats or violence either to join the strike or to work during the strike.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 6§4 of the Charter on the ground that only representative trade unions may take collective action.

Article 21 - Right of workers to be informed and consulted

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

The report indicates that no changes have been made to the situation with respect to the right of workers to be informed and consulted, which the Committee has previously found to be in conformity with Article 21 (Conclusions 2010). It will therefore only consider additional information provided by the Government in this conclusion.

Legal framework

The Committee noted in its previous conclusion (Conclusions 2010) that Law No. 467/2006 of 18 December 2006 has transposed into domestic law the Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting the employees in the European Union.

Scope

Article 21 of the revised Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.

As the Committee has noted previously (Conclusions 2007 and 2010), the minimum thresholds which it has adopted for Article 21 of the Charter are laid down in Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002. Its scope is restricted to undertakings with at least 50 employees or establishments with at least 20 employees in any EU member state. Furthermore, when assessing compliance with Article 21 of the Charter, the Committee considers that all categories of employees (in other words all employees with an employment contract within an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (European Court of Justice *Confédération générale du travail (CGT) and Others*, Case C-385/05, Judgment of 18 January 2007 and *Association de médiation sociale,* Case No. C-176/12, Judgment of 15 January 2014).

In its previous conclusion (Conclusions 2010), the Committee has asked whether the foregoing scope applies to Romania's legislation. In addressing the Committee's question, the report indicates that the Law No. 467/2006 does not make any distinction and therefore all the employees are part of the total number of employees, which are defined in accordance with the Labour Code as citizens working on the Romanian territory under an individual labour agreement (regardless its form and duration) or under apprenticeship agreements. The report also states that the employees covered by framework agreements and conventions concluded by schools and enterprises for the purpose of strengthening the theoretical knowledge of pupils and students through practical activities (not covered by labour contracts and labour relations) are not included in the total number of employees.

The report indicates that for the purpose of Law No. 467/2006, "undertaking" means any public or private entity engaged in an economic activity, whether lucrative or non-profit.

Personal scope

The Committee noted in its previous conclusion (Conclusions 2010) that the right of workers to be informed and consulted is mainly exercised through the representative trade unions within

undertakings. The Committee refers to its conclusion on Article 5 where it examines the forming and representativeness of trade unions according to the new Law on Social Dialogue, which has repealed the previous Trade Unions Law No. 54/2003.

In undertakings with more than 20 employees in which no trade union is established, the employers have the obligation to inform and consult the employees' representatives, which are elected by the general assembly of employees with the vote of at least half of the total number of employees within the undertaking. The Committee asks how the employees are informed and consulted and what the procedure is in case there are no representative trade unions or elected representatives in the undertaking.

The Committee has previously asked whether minimum thresholds are provided by the Romanian legislation in relation to the right to information and consultation. The report indicates in this respect that the provisions of Law No. 467/2006, which establish the general information and consultation framework of the employees, are applicable to undertakings with at least 20 employees, having their headquarters in Romania.

Material scope

The Committee refers to its previous conclusion (Conclusions 2010) as regards the material scope of the right to information and consulation which it found to be in conformity with Article 21 of the Charter.

Remedies

The report does not indicate any change to the situation as regards remedies available to workers, which the Committee has previously found to be in conformity.

Supervision

The Committee refers to its previous conclusion (Conclusions 2010) where it has examined the situation with respect to the sanctions applicable to employers who fail to meet the obligation to inform and consult their employees, which it found to be in conformity with Article 21 of the Charter.

Conclusion

The Committee concludes that the situation in Romania is in conformity with Article 21 of the Charter.

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

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

As regards the protection and facilities granted to workers' representatives, the report indicates that during the reference period the provisions of the Labour Code were supplemented with the provisions of Law No. 62/2011 on social dialogue (Law on Social Dialogue).

Protection granted to workers' representatives

The report indicates that in Romania the employees are represented during the collective negotiations by the representative trade union or if there is no representative trade union, by the employees' representatives elected by the general assembly of the employees with the vote of at least half of the total number of employees (Articles 134 and 135 of Law on Social Dialogue; Article 221 of the Labour Code).

The Committee notes from the report that the executive members of the trade unions are protected against any forms of conditioning, constraint or limitation in the exercise of their functions. Furthermore, they cannot be dismissed for reasons connected to their mandate received from the employees during the entire duration of their mandate (Article 9 of Law on Social Dialogue and Article 220 of Labour Code).

Furthermore, the Law on Social Dialogue provides that the amendment and/or the termination of individual labour agreements of the trade union's members, based on their membership and trade union's activities, are forbidden (including for civil servants and civil servants with special status). The Committee notes that, as a general rule, Article 220 of the Labour Code as well as Article 12 of the Law on Social Dialogue provide that the executive members of trade unions can benefit of additional protection measures established through collective agreements or special laws. The Committee requests concrete examples of such additional measures.

The Committee notes that the elected representatives of employees enjoy protection against dismissal for reasons connected with their mandate during the entire period of their mandate (Article 226 of the Labour Code). The Committee recalls in this context that according to the Appendix of Article 28, the term "workers representatives" means persons who are recognised as such under national legislation or in practice, whether trade union representatives or other types of representatives. However, all workers' representatives recognised under national legislation and practice, whether trade union representatives or other types of representatives, should be granted the right to protection in the undertaking and the right to be provided with certain facilities. The Committee recalls that such protection should include the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal (Conclusions 2003, France). The Committee asks if the elected employees' representatives are protected against prejudicial acts other than dismissal.

The Committee understands from the report and from the legislation examined (the Law on Social Dialogue and the Labour Code) that the protection is afforded to workers' representatives only during their mandate, but not after the end of period of their office as workers' representatives. The previous legislation, however, provided that trade union representatives cannot be dismissed for the duration of their mandate and for a period of two years following its expiration for reasons connected with their mandate, as noted by the Committee in a previous conclusion (Conclusion 2007).

The Committee recalls that the rights recognised in the Charter must take a practical and effective, rather than a purely theoretical form (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59). To this end,

the protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of period of their office (Conclusions 2010, Statement of Interpretation on Article 28). The Committee has in other instances found the situation to be in conformity with the requirements of Article 28 in countries such as Estonia (Conclusions 2010) and Slovenia (Conclusions 2010), where the protection is extended for one year after the end of the mandate of workers' representatives or in Bulgaria (Conclusions 2010) where the protection granted to workers' representatives is extended for six months after the end of their mandate.

The Committee considers that the situation in Romania is not in conformity with Article 28 of the Charter on this point.

As regards the remedies available to workers' representatives, the report indicates that the workers' representatives can initiate legal proceedings concerning their dismissal in court and the burden of proof rests with the employer.

Facilities granted to workers' representatives

As regards facilities granted to workers' representatives, the Committee recalls that facilities may include for example those mentioned in 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. These include: support in terms of benefits and other welfare benefit,s because of the time off to perform their function;, access for workers representatives or other elected representatives to all premises, where necessar;, the access without any delay to the undertaking's management board if necessar;, the authorisation to regularly collect subscriptions in the undertaking; the authorisation to post bills or notices in one or several places to be determined with the management board; and the authorisation to distribute information sheets, factsheets and other documents on general trade unions' activities. Other facilities may also be included, such as financial contribution to the workers' council and the use of premises and materials for the operation of the workers' council (Conclusions 2010, Statement of Interpretation on Article 28).

The Law on Social Dialogue provides that representative trade unions may negotiate, through the collective agreement at company level, to have access to the premises and other facilities necessary for carrying out their activities. The Committee notes that this right is provided only for the trade unions which fulfil the criteria of representativeness. The Committee asks if other workers' representatives, such as the elected employees' representatives have the right to use the premises, means of communication and other facilities in order to perform their duties.

Moreover, according to the Law on Social Dialogue the executive members of trade unions have the right to a reduction of their monthly working time with the number of days allocated for trade union activities, which are negotiated with the employer through the collective agreement at unit level. The Law provides that the employer is not obliged to pay the wage for these days (Article 35).

As regards the workers' representatives, Article 225 of the Labour Code provides that the number of hours used in fulfilling their mandate is negotiated through the collective agreement or through direct negotiation with the employer in case there is no collective agreement.

Finally, under Law No. 319/2006, in addition to representative trade unions and other elected employees' representatives, there are representatives with specific responsibilities for health and safety who sit on the entreprise Occupational Health and Safety Committees. In its previous conclusion (Conclusions 2010), the Committee has asked if the latter enjoy the same protection as representative trade unions and elected employees' representatives. The report indicates that in accordance with Article 61 of Government Decision No. 1425/2006 on the approval of

Methodological Norms for the application of Law No. 319/2006 on Health and Safety at Work, the employer undertakes to provide each employees' representative within the Occupational Health and Safety Committees, the necessary time to carry out the specific duties and which is considered working time. Furthermore, the necessary training for each member of the Occupational Health and Safety Committee must be done during work hours and at the expense of the undertaking.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 28 of the Charter on the ground that the protection granted to workers' representatives is not extended for a reasonable period after the end of their mandate.

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 Romania.

Definition and scope

The Committee notes that Article 69 of the Labour Code, as republished, deals with redundancy procedures. It notes that there have been no changes to the previous situation as regards definition and scope of redundancies.

Prior information and consultation

According to Article 69 of the Labour Code, in case the employer considers a collective redundancy it shall initiate in good time and in order to reach an agreement, under the terms provided for in the law, consultations with the trade union or, where appropriate, with the employees' representatives on:

a) methods and means for avoiding collective redundancies or reducing the number of employees subject to the redundancy;

b) mitigation of the collective redundancy consequences by relying on social measures aiming, among others, at the retraining and professional redeployment of the dismissed employees.

During the consultations the employer shall provide all the relevant information in writing concerning, among others, the reasons leading to the considered collective redundancy, the number and categories of employees to be affected by the dismissal; the criteria taken into account, according to the law and/or collective labour agreements for prioritising the dismissal; the measures considered in order to limit the number of dismissals; date or timeframe of dismissals; and the deadline for the proposals of the trade union or, where appropriate, of the employees' representatives, to avoid or reduce the number of dismissed persons.

Preventive measures and sanctions

According to Article 80 of the Labour Code, in case of unlawful dismissal the court may, upon the request of the employee, order a reinstatement or a compensation equal to the indexed, increased and updated wages and other rights the employee would have enjoyed.

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

Conclusion

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