March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

ANDORRA

This text may be subject to editorial revision.

The following chapter concerns Andorra which ratified the Charter on 12 November 2004. The deadline for submitting the 11th report was 31 October 2017 and Andorra submitted it on 22 November 2017.

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

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

Andorra has accepted all provisions from the above-mentioned group except Articles 6, 21, 22, 28 and 29.

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

The conclusions relating to Andorra concern 15 situations and are as follows:

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

– 3 conclusions of non-conformity: Articles 2§7, 4§1 and 4§4.

In respect of the other 3 situations related to Articles 2§4, 4§2 and 4§3 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Andorra under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 26§1

The Equality Unit, which was set up in January 2016 within the Department of Social Affairs (...) includes a Specialised Unit for the Care of Victims of Violence, which provides cross-sectoral assistance (social, psychological and legal) for women who are victims of sexual harassment in the workplace.

Article 26§2

Article 149bis of the Criminal Code, as amended by the Decree-Law of 29 April 2015, henceforth defines sexual harassment as "verbal, non-verbal or physical behaviour of a sexual nature towards another without their consent with the aim or effect of compromising their dignity, particularly when this behaviour creates an intimidating, hostile, degrading, humiliating or offensive environment (...)".

* * *

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

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),

- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 October 2018.

* * *

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

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

In reply to the Committee's requests, the report confirms that, in accordance with Article 58 of Law No. 35/2008, of 18 December 2008, on the Labour Relations Code, the daily and weekly working hours and minimum rest periods must be met in order for the working week to not exceed 60 hours.

The report also states that, in accordance wiht Article 55 of the aforementioned law, periods of on-call duty must be expressly agreed in writing in the employment contract and compensated with a bonus which may, under no circumstances, be less than 25% of the fixed wage agreed in the said employment contract for standard working hours. Article 55 points out that only effective working time during on-call duty is taken into account in the statutory working time, whereas inactive periods of on-call duty must be regarded in their entirety as rest period. The Committee takes note of this information and asks for further information in the next report, in particular whether periods of on-call duty, having regard to the fact that inactive periods of on-call duty are considered as a rest period, may exceed 16 hours within a period of 24 hours or, under certain conditions, more than 60 hours in one week.

Conclusion

Pending receipt of the information requested**, t**he Committee concludes that the situation in Andorra 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 Andorra.

It takes note, in particular, of the decree setting out the schedule of statutory public holidays for 2016.

It also notes the changes in offences involving failure to comply with the rules on public holidays.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

In reply to the Committee's question, the report states that, under Article 70 of Law No. 35/2008, of 18 December 2008, on the Labour Relations Code, employees are entitled to at least 30 days of annual paid leave if they have worked a full year or, if the employment relationship is due to last less than one year, two and a half days of paid leave per month worked.

The report also states that the annual amount of paid leave may, however, be divided up into several periods, whether under a collective agreement or by mutual consent between the employer and the employee, provided that not more than half of the employee's annual leave is split in this way, so that he or she can take the other half in the form of uninterrupted leave.

Finally, the report states that, even in the absence of explicit provisions in this field in the Labour Relations Code, annual paid leave may, exceptionally, be taken entirely during the first quarter of the next calendar year. It points out that the situation concerns in particular employees who are a third country nationals. The Committee takes note of this information and considers that the situation is in conformity with the Charter in this respect.

Conclusion

The Committee concludes that the situation in Andorra is in conformity with Article 2§3 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

Elimination or reduction of risks

The Committee takes note of the information provided in the report on Law No. 34/2008, of 18 December 2008, on safety and health at work and refers to its previous conclusions on Article 3§1 (Conclusions 2013 and 2017) for a description of its provisions.

It notes that the situation which it previously considered in conformity with the Charter (Conclusions 2014) did not change during the reference period, so that it reiterates its conclusion of conformity in this respect.

Measures in response to residual risks

In reply to the Committee's questions on the form of compensation awarded in case of residual risks inherent in dangerous or unhealthy occupations, the report states that there is no general regulation **in this respect.** It points out, however, that, in some cases, flexible arrangements for working condition**s** are possible following a risk assessment by a senior technician specialising in risk prevention. The Committee asks that the next report indicate whether such assessments are carried out systematically in the case of all activities that remain dangerous, unhealthy or harmful, despite the efforts made to eliminate the risks. It also wishes to know what arrangements are possible in practice in such cases.

In the meantime the Committee reserves its position on this point.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The report does not provide any information in this regard.

The Committee understands that the situation which it previously found to be in conformity with the Charter (Conclusions 2014) remained the same during the reference period, and therefore reiterates its finding of conformity on this point.

It further asks for updated information in the next report on any amendments made to the legal framework on the weekly rest period and on its implementation in practice.

Conclusion

The Committee concludes that the situation in Andorra 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 report does not provide any information in this regard.

The Committee understands that the situation which it previously found to be in conformity with the Charter (Conclusions 2014) remained the same during the reference period, and therefore reiterates its finding of conformity on this point.

It further asks for updated information in the next report on any amendments made to the legal framework and on what is done by the Labour Inspectorate to ensure compliance with the terms of the work contract.

Conclusion

The Committee concludes that the situation in Andorra 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 Andorra.

In reply to the Committee's questions, the report states that neither Article 19 of Law No. 34/2008, of 18 December 2008, on safety and health at work, nor Article 5 of the regulation of 14 November 2012 on occupational health services expressly provides for mandatory medical check-ups for night workers, either at the time when they are recruited or later, after they have taken up their duties, as night work is not considered as such to be a dangerous, unhealthy or harmful activity within the meaning of Appendix 1 to Law No. 34/2008, mentioned above.

The report states, however, that although periodic health checks for night workers are, in principle, voluntary and can therefore be refused by the worker concerned, they become mandatory if, following a risk assessment, senior technicians from the prevention service conclude that the activity in question represents a health risk for the worker concerned.

The Committee takes note of this information but considers nevertheless that the mechanism for protecting night workers falls short of the requirements laid down in Article 2§7 of the Charter.

The Committee notes from the report that a night worker may, in certain circumstances, be reassigned to day work, on an occasional or permanent basis, if that is expressly provided for in the contract of employment or after the worker in question has voluntarily agreed to it.

It further notes that, as regards consulting staff representatives about night work, the report refers to Article 26, paragraph 2, of Law No. 34/2008, which places a general obligation on the employer to consult workers and their representatives about, and to involve them in, any matter or decision relating to health and safety. The article also grants workers and/or their representatives the right to apply to the Labour Inspectorate if they consider that the measures adopted and the means used by the employer are not sufficient to ensure safety and health at work.

Conclusion

The Committee concludes that the situation in Andorra is not in conformity with Article 2§7 of the Charter on the ground that there is no provision in the legislation for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties or regular check-ups thereafter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

It notes from the report that wages are not subject to income tax but are subject to compulsory contributions to the Andorran Social Security Fund (CASS), the employee's share of which has been 6.5% since April 2016, when Law No. 18/2014, of 24 July 2014, amending Law No. 17/2008 of 3 October 2008 on social security, entered into force.

According to the report, the minimum interprofessional wage (SMI) for adult workers was €951.60 gross per month in 2016, i.e. approximately €889.75 net per month; the average wage, meanwhile, was €2,037.34 gross per month, i.e. €1,904.91 net.

The Committee notes from the report that the monthly wage of immigrant workers employed as kitchen workers or chamber maids, one of the lowest wages set by the Immigrant Wage Classification (CSI), was €1,122 gross in 2016, i.e. approximately €1,049.07 net.

The Committee notes that in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. When the net minimum wage is between 50% and 60% of the net average wage, the State Party must show that the wage provides a decent standard of living. It notes that, in the case in point, the minimum wage for immigrant workers set by the CSI is more than 60% of the net average wage and therefore constitutes remuneration that is in conformity with Article 4§1 of the Charter. It also notes, however, that the SMI net of social contributions for workers older than 18 years was only 47.92% of the net average wage in 2016, which is lower than the minimum threshold set at 50% of the net average wage considered by the Committee to constitute decent remuneration.

In this regard, the report points out that Andorra has pledged to gradually increase the amount of the SMI, net of contributions to the CASS, by at least 1.5% per year between 2016 and 2019, until it reaches 50% of the average wage in 2019. The Committee takes note of the efforts made by Andorra, in particular the rise in the SMI between 2015 and 2016, and the 1.5% increase approved in November 2016 for 2017, but also notes that, in the longer term, the SMI will not reach the 60% threshold of the net average wage, which threshold the Committee considers as the lowest limit of a fair remuneration.

The Committee noted in its previous conclusions on Article 13§1 (Conclusions 2013 and 2017) that the Social Cohesion Economic Threshold (LECS) sets the minimum subsistence level at the same level as the minimum wage. Individuals whose income is below the LECS receive, by way of social assistance, a sum equivalent to the difference between their income and the said threshold.

The Committee understands that employees on the SMI are not eligible for social assistance benefits, including the services, pecuniary benefits and social assistance programmes provided for in Law No. 6/2014 of 24 April 2014 on social and health services (see Conclusions 2017, Article 13§1), which allow income to be increased to the level of the LECS. It wishes to know, however, whether employees on the SMI are entitled to supplementary benefits, such as housing and/or heating allowance (see Conclusions 2013, Article 13§1), allowance for young children, family allowance, single parent's allowance, and so. If that is the case, it asks that the next report provide updated information on these supplementary benefits, in particular the eligibility criteria and the amounts of the benefits and whether they are in addition to the benefits in kind paid under Article 80 of the Code.

In reply to the Committee's question about wage levels in the civil service, the report states that civil servants and contractual staff in the civil service are assigned, according to their responsibilities, to various grades which are themselves divided into several levels. The wage received by general staff on the lowest grade (level I) is equivalent to the SMI. The

report states that civil servants and contractual staff in the civil service receive a thirteenth month salary, which is paid during the Christmas holidays. The Committee understands that the net monthly wage for a civil servant or contractual staff member on level I was €989.04 in 2016, which is approximately 52% of the net average wage. The report also states that civil servants and contractual staff in the civil service receive a significant wage supplement. The Committee asks that the next report provide more information about this wage supplement, in particular the conditions of entitlement and the amount of the supplement.

Conclusion

The Committee concludes that Andorra is not in conformity with Article 4§1 of the Charter on the ground that the minimum interprofessional wage does not ensure a decent standard of living to all workers.

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 Andorra.

In reply to the Committee's question, the report states that, in accordance with Article 57, paragraph 2, of Law No. 35/2008, of 18 December 2008, on the Labour Relations Code, directors, managers and, in general, employees who hold positions of trust cannot, because of the nature of their work, be subjected to strict working time limits, except for one compulsory rest day per week.

The report points out that, according to the case law of the civil division of the High Court of Justice, in particular decision no. 17/14, of 27 May 2014, the fact of being in a position of trust cannot have the effect of depriving the worker concerned of his or her right to annual paid leave. The paid leave must be taken during the calendar year or, in special circumstances, during the first quarter of the following year. The law does not recognise any exceptions to this rule.

The report also points out that the courts have interpreted strictly the question as to which employees may be considered to hold positions of trust. In this regard, the Committee asks the next report to indicate what are the criteria set up by case-law for determining whether the position is of trust or not.

The Committee notes that, although Article 4§2 of the Charter requires the States Parties to compensate for overtime through an increased rate of remuneration, compensatory leave or even both, the said article does allow exceptions in certain specific circumstances. The Committee has stated that these exceptions which, essentially, must be few in number, may apply, for example, to certain categories of public officials or managers (Conclusions IX-2 and Decisions on the merits of 23 June 2010, Confédération Générale du Travail (CGT) v. France, Complaint No. 55/2009, §72, and of 2 December 2013, Union syndicale des magistrats administratifs (USMA) v. France, Complaint No. 84/2012, §§59 – 69).

In this context, it asks that the next report provide information on the number of persons holding positions of trust in Andorra within the meaning of Article 57, paragraph 2, of Law No. 35/2008. It also wishes to know whether the civil division of the High Court of Justice has dealt with other cases of this kind and, if so, what its decision was.

Conclusion

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

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 Andorra.

Legal basis of equal pay

No information was submitted to the Committee by the report of the Government concerning the existing legislation. In its former Conclusions on Article 4.3 (Conclusions XX-2(2014)), the Committee had referred to the Labour Relations Code, which had enshrined the principle of equality and non-discrimination in remuneration. In this respect, the Committee recalls that the CEDAW Committee on 2018 has recommended Andorra to adopt a legislative framework and specific measures recognising the principle of equal remuneration for work of equal value and ensuring the achievement of substantive equality, reducing occupational segregation and gender pay gap. The Committee asks for information on how the right to equal pay between women and men is regulated by the legislation and if direct and indirect discrimination is prohibited, as well as if the law defines the concepts of 'equal work' and 'work of equal value'.

Guarantees of enforcement and judicial safeguards

The Committee had also requested the Government in its conclusions on Article 20 (Conclusions (XIX-3) 2010) to submit information on whether there is a ceiling for compensations to be awarded in cases of reprisal dismissals in equal pay cases. The Committee had observed that if a court finds that a person has been discriminated against it may order compensation (up to a maximum of 30 months' salary) or require his/her reintegration and award compensation for non-economic loss which is unlimited.

The Committee further notes from the report that the Labour Relations Code in its Article 98.1 provides that dismissal on the ground of discrimination shall give rise to reparatory measures in favour of the employee, who can choose between compensation (at least 3 months of salary but a maximum of 30 months of salary) or reinstatement with compensation of damages, the amount of which is fixed by the competent jurisdiction (without a ceiling). It results from the legislation that if the employee chooses compensation, there is a ceiling of 30 months of salary, but not if he/she chooses reinstatement.

The Committee recalls that anyone who suffers wage discrimination on grounds of gender must be entitled to adequate compensation. In this connection, the Committee makes a distinction between compensation that is granted in cases of successful unequal pay claims and compensation/severance pay that is granted in retaliatory dismissal cases, even when the latter are the result of equal pay claims. In the first case no ceiling can be established by law. In the second case, a ceiling established by law is permissible under the Charter, only if its level is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender.

Concerning the applicable rules regarding the burden of proof in equal pay complaints, the Committee had referred in its previous conclusions to the judgment of the European Court of Justice *Kelly* of 21 July 2011 (par. 30), which stated that it is the person who considers himself to have been wronged because the principle of equal treatment has not been applied to him who must initially establish the facts from which it may be presumed that there has been direct or indirect discrimination. It is only where that person has established such facts that it is then for the defendant to prove that there has been no breach of the principle of non-discrimination.

The Committee takes note that the Andorran legislation does not have in its legislation rules establishing the shift in the burden of proof towards the defendant once the victim of discrimination has established the presumption of direct or indirect discrimination. However, the report further states that the shift in the burden of proof has been applied by recent case-

law of the Supreme Court of Justice in 2013 and 2014 in labour cases, although not specifically related to discrimination allegations. It results from the case-law presented that the burden of proof does not rest solely with the plaintiff and that the principle in *dubio pro operario* is applied in labour cases, which implies a certain shift in the burden of proof in practice. However, the report does not reply to the question asked in the last conclusions (on Article 20, Conclusions 2016) whether the lower courts have upheld the decisions by the Supreme Court of Justice with regard to the shift in the burden of proof in cases involving discrimination on the ground of sex. The Committee reiterates its question and asks for detailed information on case-law regarding the burden of proof in discrimination cases.

The Committee asked in its former conclusions on Article 4§3 to provide information on any cases on equal pay before courts. In its former report, there was no case-law in the subject. There is no information on this point on the report submitted for this cycle by the Government.

Methods of comparison and other measures

There is no information in the report on the methods of comparison.Therefore, the Committee asks to provide information on whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as whether the pay comparison is possible outside one company, for example, if such company is a part of a holding company and the remuneration is set centrally by such holding company.

Statistics

The official Statistics of Andorra had raised that there is an gender overall earnings gap of 22%, while the average in the EU is 39,6%. There are no figures on the hourly gender pay gap in Andorra or on other measures adopted in order to fight the gender pay gap.

The Committee recalls that the States Parties must provide information on the gender pay gap and are under obligation to take measures to improve the quality and coverage of wage statistics. They should collect reliable and standardised statistics on women's and men's wages. The Committee notes that the report does not provide this information. Therefore, it asks the next report to provide detailed information regarding the percentage difference between hourly earnings of men and women, in all occupations.

Policy and other measures

The report does not provide any information on the measures taken to tackle the gender pay gap.The Committee therefore asks the next report to provide relevant information in this respect.

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 Andorra.

The Committee recalls that, in its previous conclusion (Conclusions 2014), it found that the situation in Andorra was not in conformity with the Charter on the grounds firstly that the amount of severance pay awarded on termination of the employment contract was insufficient for workers with less than three years of service in cases of termination of the employment contract, and secondly that the legislation did not provide for notice in the case of termination of employment during probationary periods. Given that the situation has not been changed during the reference period, the Committee reiterates its conclusion of non-conformity.

Conclusion

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

- the amount of severance pay awarded on termination of the employment contract is insufficient for workers with less than three years of service;
- the legislation makes no provision for notice periods in the case of termination of employment during probationary periods.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

It previously concluded (Conclusions 2014) that the situation was in conformity with Article 4§5 of the Charter pending receipt of information on the following matters:

- how the means of subsistence are ensured to workers paid the lowest wages and their dependents in situations in which judicial authorities favour debt recovery to the creditor's benefit over the debtor's means of subsistence, and

- on regulation of enforcement measures.

The report states that in cases of recovery of maintenance claims, under Article 8 of the new Law No. 44/2014, of 18 December 2014 on attachment of earnings, attachment applies even to that part of the remuneration which corresponds to the minimum inter-professional wage (SMI). In such instances, the courts will assess and weigh the needs of the debtor and creditor on a case-by-case basis. A worker whose wage is not sufficient for the recovery of maintenance claims may claim, following an assessment of his or her social and economic circumstances, a one-off financial assistance and/or family benefit for dependent children from the Social Affairs Department of the Ministry of Social Affairs, Justice and the Interior. The Committee considers that this guarantee ensures the protection provided for by Article 4§5 in cases of recovery of maintenance claims from the minimum wage earners.

As regards the regulation of enforcement measures, a reform took place in the reference period, providing the general Administration, communities and public entities, if permitted by law, the power to enforce certain enforceable administrative measures without the – hitherto mandatory – intervention of the judiciary. It also introduced a position of an independent official operating under the supervision of the administrative or judicial authority whose decision is to be enforced.

In the light of this information, the Committee considers that the limits placed on deductions from wages are reasonable.

Conclusion

The Committee concludes that the situation in Andorra is in conformity with Article 4§5 of the Charter.

Article 5 - Right to organise

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

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

Trade union activities

In reply to the Committee's question, the report states, with regard to the right of trade unions to choose their own members and representatives, that the statutes of the union should set out the requirements and procedures for acquiring and losing membership status in accordance with Article 6 of Qualified Law No. 33/2008 on the Right to Organise of 18 December 2008. Trade unions which are also covered by the Qualified Law on Associations of 26 December 2000 should organise in a democratic manner.

With regard to disciplinary measures against members of a trade union, the report states that the statutes of the union should include the disciplinary rules applicable to members, including descriptions of the offences, penalties and the disciplinary procedure itself, in accordance with the Qualified Law of 29 December 2000. In a disciplinary procedure against a member an appeal may be lodged, where appropriate, before the relevant trade union bodies, subject to judicial review. The Committee understands that a decision taken by a trade union in the context of a disciplinary procedure may be appealed before a court.

Representativeness

In its previous conclusion (Conclusions 2014), the Committee noted that, according to the Qualified Law No. 33/2008 on the Right to Organise, being recognised as a "most representative" trade union confers a right to serve as institutional representative vis-à-vis the public authorities, to participate in the negotiation of sectoral and intersectoral collective agreements and to obtain public subsidies for the development of trade union activities. In reply to the Committee's question, the report states that Andorran legislation does not grant any specific rights to non-representative organisations. They have the right to engage in trade union activities in the broadest sense, whether it be in the company or elsewhere. Under Article 17 of Qualified Law No. 33/2008, any trade union which considers that it has been unjustly excluded may institute legal proceedings.

The Committee notes that the criteria for determining the representativeness of employee organisations are formally laid down and objective, and their application is subject to oversight by an independent body.

Personal scope

The Committee takes note of the laws governing the trade union membership of special corps, and the draft laws approved outside the reference period. It asks for information on the specific provisions governing the manner in which the trade unions of these various professions are organised.

The Committee also notes from the report that, even if judges and prosecutors may not join a trade union, they nevertheless have the right under Article 68*bis* of the Qualified Law on Justice of 3 September 1993, as amended by Law No. 28/2014 of 24 July 2014, to organise freely within entities which have no ties to political parties, or economic or socio-professional organisations, in order to protect their occupational interests.

The Committee considers that the restrictions on the right of judges and prosecutors to organise appear to be justified.

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

Conclusion

The Committee concludes that the situation in Andorra is in conformity with Article 5 of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

It refers to its previous conclusions (Conclusions 2014, 2010) for a general description of the relevant legal framework.

Prevention

In reply to the Committee's question (Conclusions 2010 and 2014) on the preventive measures adopted to combat sexual harassment, the report states that prevention and action projects and campaigns with regard to gender equality in the workplace, including in relation to sexual harassment, are under the responsibility of the Equality Unit, which was set up in January 2016 within the Department of Social Affairs. The Equality Unit includes a Specialised Unit for the Care of Victims of Violence, which provides cross-sectoral assistance (social, psychological and legal) for women who are victims of sexual harassment in the workplace.

The Committee takes note of the activities carried out, and detailed in the report, to provide information and assistance for employers, employees, and the general public. It asks if, and to what extent, the social partners are consulted on measures to promote awareness, knowledge and prevention measures vis-à-vis sexual harassment in the workplace.

Liability of employers and remedies

For a detailed description of the liability rules in force under the Labour Relations Code, the Committee refers to its previous conclusion (Conclusions 2014).

The Committee previously noted that a reform of the Criminal Code was planned, which would introduce a specific provision on sexual harassment. In this respect, the report confirms that Article 149bis of the Criminal Code, as amended by the Decree-Law of 29 April 2015, henceforth defines sexual harassment as "verbal, non-verbal or physical behaviour of a sexual nature towards another without their consent with the aim or effect of compromising their dignity, particularly when this behaviour creates an intimidating, hostile, degrading, humiliating or offensive environment (...)". This offence can lead to detention.

Burden of proof / Damages

As regards the rules on burden of proof, reinstatement and compensation, the Committee notes that the situation which it previously considered to be in conformity with the Charter (Conclusions 2014) has not changed.

Conclusion

The Committee concludes that the situation in Andorra is in conformity with Article 26§1 of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

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

It refers to its previous conclusions (Conclusions 2014, 2010) for a detailed description of the relevant legal framework.

Prevention

The Committee previously noted (Conclusions 2010) that the same regulations apply in the case of moral (psychological) harassment as in that of sexual harassment and requested information on any preventive measures aimed at raising awareness of the problem of moral (psychological) harassment in the workplace.

In reply to this question, the report states that "it is the responsibility of the Department of Social Affairs to promote prevention policies designed to avert risk situations, vulnerability, exclusion and dependence, particularly for the most vulnerable persons, families and population groups, and to foster and improve social protection, cohesion and integration". The Committee notes that the information presented in the report concerns prevention and action projects and campaigns with regard to gender equality, including in relation to harassment, under the responsibility of the Equality Unit, which was set up in January 2016 within the Department of Social Affairs. These initiatives, however, do not directly concern moral (psychological) harassment.

The Committee recalls that Article 26§2 of the Charter establishes a right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person. Article 26§2 imposes positive obligations on States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment, in particular in situations where harassment is likely to occur. A failure to take any preventative action, training or awareness-raising in such situations may amount to a violation of Article 26§2. In particular, in consultation with social partners, they should inform workers about the nature of the behaviour in question and the available remedies. The Committee reiterates its request for information on any preventive measures taken in respect of moral (psychological) harassment and asks whether, and to what extent, the social partners are consulted on measures to promote awareness, knowledge and prevention measures vis-à-vis moral (psychological) harassment in the workplace

Liability of employers and remedies / Burden of proof / Damages

The Committee notes that the situation which it previously considered to be in conformity with the Charter (Conclusions 2014) has not changed.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 26§2 of the Charter.