March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

ESTONIA

This text may be subject to editorial revision.

The following chapter concerns Estonia which ratified the Charter on 11 September 2000. The deadline for submitting the 15th report was 31 October 2017 and Estonia submitted it on 3 January 2018.

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

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

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

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

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

– 12 conclusions of conformity: Articles 2§2, 2§3, 2§5, 2§6, 5, 6§1, 6§3, 21, 22, 26§1, 28 and 29;

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

In respect of the situation related to Article 26§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 Estonia under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

* * *

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

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

The deadline for submitting that report was 31 October 2018.

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

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was not in conformity with Article 2§1 of the Charter on the ground that the maximum working hours allowed for crew members on short sea shipping vessels was 72 hours in any seven-day period.

With regard to the ground of non-conformity, the report states that a new Seafarers Employment Act came into force on 1 July 2014 and chapter 3, section 4, of this Act lays down the rules on working hours and rest time for crew members. The Committee notes, however, that the new Act does not apply to employment on fishing vessels under 24 metres in length, which is covered by the Employment Contracts Act (ECA).

The report states that under the new Act, weekly maximum working hours have been replaced by weekly minimum rest time. Under Article 49, an agreement under which a crew member is left with less than 84 hours of rest over a seven-day period is void (49§1), as is an agreement under which a watchkeeper is left with less than 77 hours of rest over a seven-day period (49§2). Exceptions to the restriction in paragraph 1 may be made by collective agreement provided working will not impair the employee's health or safety and he/she still has at least 77 hours of rest over a seven-day period.

The Committee notes that, under Article 48, which relates to the daily rest period, an agreement under which a crew member is left with less than ten hours' rest over a period of 24 hours is void. Over 24 hours, the rest period may be divided into two provided that the length of one of the periods is no less than six hours in a row. Nor may the time between two rest periods exceed 14 hours.

The Committee recalls that article 2§1 of the Charter guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime. As the Charter does not expressly define what constitutes reasonable working hours, the Committee assesses situations on a case-by-case basis. Extremely long hours such as 16 hours within a 24-hour period or, under certain conditions, more than 60 hours in one week, are unreasonable and hence incompatible with the Charter (Conclusions XIV-2, 1998, Netherlands). To be found in conformity with the Charter, national laws or regulations must fulfil three criteria:

- they must prevent unreasonable daily and weekly working time. The maximum daily and weekly hours referred to above must not be exceeded in any event;
- they must operate within a legal framework providing adequate guarantees. Any flexible working time system must operate within a precise legal framework which clearly circumscribes the discretion given to employers and employees to alter working hours by collective agreement;
- they must provide for reasonable reference periods for the calculation of average working hours. Reference periods must not exceed six months. They may be extended to a maximum of one year in exceptional circumstances.

The Committee asks over what reference period average working hours are calculated for crew members. It asks what rules apply to on-call duty for crew members. It also asks whether it is possible to work 72 hours non-stop for crew members.

The Committee also asks for information in the next report on any infringements of the working hour regulations applying to crew members on short sea shipping vessels reported by an appropriate authority.

In the light of the foregoing, the Committee considers that such hours are unreasonably long and states that the law does not guarantee the right to reasonable weekly hours for seafarers.

In its previous conclusion, the Committee asked whether, in the situations described in Article 51(3) and (4) of the ECA (on working days of more than 13 hours), there was an absolute limit on daily working time, which could only be exceeded in exceptional circumstances, and whether there was also such a limit on weekly working time. In reply, the report states that the ECA does not set an absolute limit on daily working time in these situations, and this must be interpreted jointly with Article 51 (5), which provides that employers must grant a rest period to an employee working more than 13 hours over a 24-hour period. Compensatory time-off must be granted immediately after the end of the working day and be equal to the number of hours by which the 13 working hours were exceeded. Any agreement under which work exceeding 13 hours is compensated for in wages is void. The Committee considers that the situation is not in conformity with the Charter on this point.

In its previous conclusion, the Committee asked what rules applied to on-call service and whether inactive periods of on-call duty were considered to be rest periods in whole or in part. In reply the report states that, given that on-call time is a period during which employees are not required to perform duties but are required to be ready to perform them when asked, it is not included in work or rest periods. The part of the on-call period during which employees are performing their duties is considered to be working time and employers must pay them the agreed wage. The part of the on-call period during which employees are inactive and do not perform duties, cannot be considered to be rest periods. The Committee asks for clarification of the situation, notably which is a legal nature of this period and how it is remunerated. In the meantime, the Committee reserves its position on this point.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 2§1 of the Charter on the ground that the law does not guarantee the right to reasonable weekly hours for seafarers.

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 Estonia.

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was in conformity with Article 2§2 of the Charter and asked whether the compensatory time off which was granted in lieu of wage compensation was equivalent to or longer than the hours worked on a public holiday.

In reply the report states that under Article 45§3 of the Employment Contracts Act, which came into force on 1 July 2009, employers and employees may agree on compensation for work done on a public holiday by granting additional time off which differs from the provisions of Article 45§2 of the Act. However, employee's must not lose their day's wages and the compensatory time-off must be equal to the hours worked on the public holiday. According to the report, compensatory time-off must not be deducted from the employee's normal rest time and must be remunerated as working hours.

The Committee asks if the right to paid public holidays applies to all workers including crew members on sea shipping vessels.

Conclusion

The Committee concludes that the situation in Estonia 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 Estonia.

It notes from the report 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.

However, the Committee notes that under Article 68(4) of the Employment Contracts Act, employees may demand annual leave if they have worked for their employer for more than six months. In addition, under Article 68(6) entitlement to annual leave expires within a year of the end of the calendar year for which the leave was calculated. This period ceases to run while employees are on leave for pregnancy, maternity, paternity, adoption or child care or while they are carrying out their military or alternative service.

The Committee asks for information in the next report on any change in the legal framework covering annual paid leave. It also asks whether the right to annual paid leave also applies to crew members on sea shipping vessels (Conclusions 2018, Article 2§1, Estonia). If not, it asks for detailed information in the next report on the limits which apply to the carrying over of annual leave for this category of workers, and more specifically if all annual leave may be carried over to the following year or whether a minimum number of days must be taken during the reference year without exception.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 2§3 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 Estonia.

It notes 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.

It also asks for updated information in the next report on any changes to the legal framework concerning weekly rest period.

Conclusion

The Committee concludes that the situation in Estonia 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 Estonia.

It notes from the report 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.

The Committee takes note of the information and statistics provided on the activities of the Labour Inspectorate to supervise compliance with the terms of employment contracts. The Committee asks for confirmation that the employment contract for crew members on sea shipping vessels or another written document also contains information on the identity of the parties, place of work, the start date of the contract or employment relationship, the length of paid leave, notice given in the event of termination of the contract or employment relationship, the employee's standard daily or weekly working hours and the references of any collective agreements governing the employee's working conditions.

Conclusion

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with Article 2§7 of the Charter and asked if workers' representatives were regularly consulted on the use of night work, the conditions in which it was performed and measures taken to reconcile workers' needs and the special nature of night work.

It is clear from the report that there are no specific regulations on the regular consultation of workers' representatives on the use of night work. However, under Article 13 §2(6) of the Occupational Health and Safety Act employers are required to notify employers through workers' representatives or members of committees on working conditions about hazards, the results of work environment risk assessments and measures to take to prevent damage to health.

The Committee points out that measures which take account of the special nature of night work must at least include the following: (1) regular medical examinations, including a check-up prior to assignment to night work; (2) the possibility of transferring to daytime work; (3) regular consultation with workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work. In view of the above, the Committee concludes that the situation is not in conformity with Article 2§7 on the ground that laws and regulations do not provide for continuous consultation with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 2§7 of the Charter on the ground that laws and regulations do not provide for continuous consultation with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

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 Estonia.

In its previous conclusion (Conclusions 2014), the Committee found that the situation was not in conformity with Article 4§2 of the 1961 Charter on the ground that time off granted in lieu of increased remuneration for overtime was not sufficient.

The report states that under subsections 6 and 7 of Article 44 of the Employment Contracts Act, employers must compensate for overtime by granting a rest period equal to the overtime hours worked save where it has been agreed that overtime will be compensated for through a cash payment. The report explains that where a rest period is granted in compensation for overtime (instead of increased pay), this free time may not be deducted from standard rest periods and must be paid as working hours.

The Committee points out that granting time off to compensate for overtime is compatible with Article 4§2 of the Revised Charter provided that measures are taken to ensure that such time off is longer than the hours of overtime worked.

The Committee notes that Article 44 of the Employment Contracts Act does not provide for a mixed system of compensation for overtime. In this connection, it asks whether the right to increased compensatory time off exists and is ensured by law and in practice. In the meantime the Committee reiterates its finding of non-conformity.

The Committee takes note of the information on breaches reported by the Labour Inspectorate relating to the failure to pay overtime (12 cases in 2013, 11 in 2014, 10 in 2015 and 1 in 2016).

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 4§2 of the Charter on the ground that not enough time off is granted in lieu of increased wages for overtime.

Article 4 - Right to a fair remuneration

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

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

Legal basis of equal pay

In its previous conclusion (Conclusion 2014), the Committee asked for more precise information regarding the legislation that explicitly guarantees the right to equal pay of men and women for equal work or work of equal value. In reply, the report states that the Gender Equality Act prohibits establishing conditions for remuneration or receipt of benefits related to the employment relationship which are less favourable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same work or work of equal value. The Committee asks the next report to provide a more detailed information on the legal regulation. Meanwhile it reserves its position on this issue.

Guarantees of enforcement and judicial safeguards

As regards the judicial safeguards, the Committee has recalled in its previous conclusion that when the dismissal is the consequence of a worker's complaint concerning equal wages, the employee should be able to file claim for unfair dismissal and obtain adequate compensation to be fixed by courts. The Committee asked what rules applied in this regard. The report explains that disputes are resolved by a court or a labour dispute committee. Both Court and labour dispute committee have the right to reduce or increase the compensation as they see reasonable. There is no law that restricts this competence.

Methods of comparison and other measures

In its previous conclusion, the Committee also wished to be kept informed of the new developments in the regard of pay comparisons in equal pay litigations. The report provides extensive statistics in this respect. However, the report does not provide information on whether the existence of a comparator is required in equal pay cases. The Committee asks to provide relevant information on this issue in the next report, in particular, if the law prohibits discriminatory pay in the legislation or in collective agreements, as well as, if the pay comparison is possible outside one company, for example, if such company is a part of a holding company and the remuneration is set centrally by such holding company.

Statistics

According to the Eurostat statistics, Gender Pay Gap in Estonia amounts to 26,9%. The report acknowleges that the pay gap is too high, reflecting unequal opportunities for men and women in the society, and confirms that tackling the gap has been a priority for the Estonian authorities.

According to the report, the gender pay gap in Estonia comprises mostly of unadjusted pay gap. The general gender pay gap in Estonia avaraged in the reference period 28,7%, whereas only 4,4% of it was adjusted and 24,3% unadjusted. Variables that make up the adjusted part of the gap are for example different positions and fields of work (vertical and horisontal segregation), education, working time etc. However, the impact of these variables on the general pay gap is very small, explaining only about 15% of the gap. The report explains that the challenge for Estonia lies in the unadjusted gender pay gap. The Committee asks the next report to provide extensive information on the reasons for the high gender pay gap, and specifically statistics on the adjusted and unadjusted gender pay gap.

The Committee notes that the gender pay gap remains persistently high, which demonstrates that the enforcement of the right to equal pay is not effective. Therefore, the situation is not in conformity with the Charter.

Policy and other measures

The report states that Estonia faces problems with the implementation of some of the aspects of the legal framework. In order to improve it, in the reference period the Gender Equality Council was established; an advisory body to the Government in matters related to promotion of gender equality, gender equality policy and presenting opinions to the Government concerning the compliance of national programmes with the obligation of gender mainstreaming. The Committee futher notes from the report that amendments to the Gender Equality Act are planned, with a view to introduction of measures for supervision of implementation of the requirement of equal pay and wishes to be informed on the developments.

The Committee takes note of measures implemented to promote equal pay between men and women and to to tackle the gender pay gap. It notes in particular the Welfare Development Plan 2016-2023 which has gender equality as one its top priority and sets out activities for gender pay gap audits to help implement obligations foreseen in the Gender Equality Act. Furthermore, there are different projects implemented under the programme for mainstreaming gender equality and work-life balance, including one aimed at developing a new concept for gathering and analysing gender pay gap statistics. It asks the next report to provide comprehensive information about the progress in the adoption of positive measures to narrow the pay gap and on their noted or expected impact in practice.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 4§3 of the Charter on the ground that the enforcement of the right to equal pay is not effective, as demonstrated by the persistently high gender pay gap**.**

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 Estonia.

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§4 of the Charter on the grounds that general notice periods were insufficient for workers with more than three years of service. The report indicates that there have been no changes to the legal framework concerning notice of termination of employment during the reference period. The Committee refers to its previous conclusion (Conclusions 2014) for a detailed description of the situation as regards notice periods. It reiterates its conclusion of non-conformity as regards notice periods for employees with more than three and less than five years of service.

The report states that dismissal without notice may apply in case of reduced working capacity caused by the state of health, lasting for more than four months, and in case the employee is not able to perform working duties as a result of insufficient working skills or unsuitability for the position or incapability of adaptation. Immediate dismissal may also occur, according to Article 88§1 of the Employment Contracts Act, due to breach of duties or when the employee ignores the employer's instructions or breaches his/duties; work in state of intoxication; loss of the employer's trust because of theft, fraud or another act committed by the employee; disbelief of a third party towards the employer caused by the employee; damages caused by the employee or threat of damage; violation of confidentiality or restriction of trade. The Committee, therefore, considers that the situation is not in conformity with Article 4§4 of the Charter, on the ground that no notice period is provided for in case of dismissal due to reduced working capacity caused by the state of health and due to inability to perform work duties.

In its previous conclusion (Conclusion 2014), the Committee requested information regarding notice periods established by collective agreements (Article 97§4 of the Employment Contracts Act); notice periods and/or severance pay applicable to the early termination of fixed-term contracts and notice periods and/or compensation applicable to employees subject to the Civil Service Act of 13 June 2012 and the Seafarers Act of 8 February 2001.

In reply, the report indicates that collective agreements may prescribe different notice period and provides examples of such collective agreements. The Committee asks whether collective agreements may provide for less favorable notice periods and/or severance pay than those established by the Employment Contracts Act.

Furthermore, the report states that in case of early termination of fixed-term contracts, the same rules apply as for contracts of unspecified duration. In case a fixed-term contract is terminated on economic grounds other than insolvency, liquidation and force majeure, the employee is entitled to compensation, which equals the amount of wages that the employee would have been entitled to until the expiry of the contract. The Committee considers that notice period in conjunction with compensation, applicable to early termination of fixed-term contracts on economic grounds other than insolvency, liquidation and force majeure, are reasonable.

The report states that the Civil Service Act provides for the same notice periods and severance pay as the Employment Contracts Act. The Committee, therefore, concludes that as regards employees subject to the Civil Service Act, the situation is not in conformity with Article 4§4 of the Charter, on the ground that notice periods applicable are not reasonable for civil servants with more than three and less than five years of service.

The report indicates that in 2014 a new Seafarers Employment Act entered into force. Notice periods and compensation are for workers under the new Seafarers Employment Act are regulated by the Employment Contracts Act, unless the Seafarers Employment act states otherwise.

Conclusion

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

- general notice periods are not reasonable for employees and civil servants with more than three and less than five years of service;
- no notice period is provided for in case of dismissal due to reduced working capacity caused by the state of health of the employee and due to an inability to perform work duties.

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 Estonia.

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§5 of the Charter on the ground that, after maintenance payments for children and other authorised deductions, the wages of workers with the lowest pay did not allow them to provide for themselves or their dependants.

In reply to the Committee's conclusion of non-conformity, the report states that, pursuant to Article 132 of the Code of Enforcement Procedure, the minimum wage can only be seized due to maintenance claims up to 50%. A debtor with low income may be entitled to social benefits, which are not attachable. When the debtor is responsible for the maintenance of another person, the unattachable amount of wage is increased by one third of the minimum monthly wage for every dependant. The Committee considers that the situation is still not in conformity with Article 4§5 of the Charter, on the ground that after maintenance payments and other authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

In its previous conclusion (Conclusions 2014), the Committee asked the next report to complete the list of circumstances (such as tax debts, civil claims, maintenance claims, fines, union dues) and the operations (assignments) liable to result in deductions from wages. It asked in particular for information on the limits to deductions from wages applied pursuant to agreements on the protection of working tools. The report indicates that deductions from wages are not left to the discretion of the parties of the employment contract. The law may allow parties to agree on proprietary liability, yet, in order for the employer to set off his/her claims against the employee's wage claims, the written consent of the employee is required. As no exhaustive information was provided on all points, the Committee reiterates its question.

The Committee also asked for information on the limits to deductions from wages applicable to employees covered by the Civil Service Act and the Seamen Act. The report states that the Seafarers Act was abolished and in 2014 the Seafarers Employment Act came into force. No additional limits to deductions from wages are established by the Civil Service Act and by the Seafarers Employment Act.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 4§5 of the Charter on the ground that, after maintenance payments and other 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 Estonia.

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

Forming trade unions and employers' organisations

The Committee previously found the situation to be in conformity with the Charter but sought confirmation that domestic law clearly prohibits all pre-entry or post-entry closed shop clauses and all union security clauses. According to the report Article 19 (3) of the Trade Unions Act prohibits the restriction of the rights of an employee and a person seeking employment on the ground of their membership or non-membership of a trade union.

Personal scope

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 Estonia is in conformity with Article 5 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee recalls it previously found that the situation was in conformity with the Charter. According to the report there have been no changes in the regulation during the reporting period (2013-2016).

The report provides examples of how the social partners are involved and consulted during the drafting of legislation relevant to them.

Conclusion

The Committee concludes that the situation in Estonia 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 Estonia.

The Committee previously noted that the entire legislative framework regarding industrial relations was under review and that amendments to the Collective Agreements Act were foreseen, draft legislation provided for principles for voluntary collective bargaining and introduced criteria for extending collective agreements. However according to the report the amendments to the Collective Agreements Act were not adopted as the procedure was interrupted by elections. There have been no changes to the regulations during the reporting period (2013-2016).

The Committee previously noted the low rate of employees are covered by collective agreements (33%) and concluded that the situation was not in conformity with the Charter on the ground that the promotion of collective bargaining was not sufficient.

According to the Estonian Work Life Survey (2015), 19% of employees say that their working conditions are regulated by a collective agreement and about 4% of organizations with over five employees have collective agreements. The number of collective agreements is significantly higher in undertakings with more than 250 employees – collective agreements have been concluded in 27% of those undertakings.

The report states that according to the collective agreements' database maintained by the Ministry of Social Affairs, by estimate, about 14% of salaried workers were covered by collective agreements in 2016 (although it is possible that the collective agreement database does not include all the collective agreements).

The report provides examples of measures taken to promote collective bargaining such as training for social partners, permitting derogations by collective agreement of the Employment Contracts Act. The report states that trade union membership is low in Estonia and thus trade unions are increasingly becoming weaker negotiation partners for employers.

The Committee takes notes of the measures described in the report taken to analyse the problems and promote collective bargaining however the rate of collective agreement coverage remains low and therefore the Committee reiterates its previous conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining is not sufficient.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee recalls it previously found that the situation was in conformity with the Charter. The reports states that the situation remains unchanged however in 2015 amendments to the Collective Labour Dispute Resolution Act came into force. The amendments included rules covering the election, functions and proceedings of the national conciliator. The Act was drafted in collaboration with social partners and government and lead to the election of new national conciliator in February 2017.

Conclusion

The Committee concludes that the situation in Estonia 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 Estonia.

It already examined the situation with respect to collective action (definition, permitted objectives, entitlement; consequences) in its previous conclusions and found the situation to be in conformity with the Charter.

Specific restrictions to the right to strike and procedural requirements

The Committee deferred its previous conclusion pending information on the categories of public servants exercising authority in the name of the state were denied the right to strike and the justifications for restrictions.

According to the report public servants are divided into two main categories – officials and employees. Officials exercise official authority. Employees are recruited for the jobs which do not involve the exercise of official authority but only supporting of the exercise of official authority. Primarily in accounting, human resource work, records management, activities of procurement specialists, activities of administrative personnel, activities of information technologists or other work in support of the exercise of official authority. Restrictions on the right to strike are not applicable to employees in public service.

The Committee recalls that the right to strike of certain categories of public servants may be restricted, in particular members of the police and armed forces, judges and senior civil servants. However, the denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter (cf. Conclusions I (1969)). Under Article G of the Charter, restrictions on the right to strike are acceptable only if they are prescribed by law, pursue a legitimate aim and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals (Conclusions X-1 (1987), Norway (under Article 31 of the Charter)).The Committee considers that such a blanket prohibition on all public officials exercising public authority cannot be in conformity with the Charter.

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

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 6§4 of the Charter on the ground that all public servants exercising authority in the name of the state are denied the right to strike and this blanket prohibition goes beyond the limits permitted by Article G of the Charter.

Article 21 - Right of workers to be informed and consulted

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

The Committee previously found the situation to be in conformity with the Charter but requested information on the material scope of the right to information and consultation.

The report states that Article 20 from the Employee Trustees Act 2006 provides that employees must be informed and consulted on:

- the structure of the employer, the staff, including the employees performing duties by way of temporary agency work, changes therein and planned decisions which significantly affect the structure of the employer and the staff;
- planned decisions which are likely to bring about substantial changes in the work organisation;
- planned decisions which are likely to bring about substantial changes in the employment contract relationships of employees, including termination of employment relationships;
- the annual report prepared pursuant to the Accounting Act no later than within 14 days after the approval of the annual report.

Remedies and supervision

The Committee previously found the situation to be in conformity in this respect. There has been no change to the situation.

Conclusion

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

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

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

The Committee previously found the situation to be in conformity as regards working conditions, work organization and working environment, protection of health and safety and Organisation of social and socio-cultural services and facilities but deferred its conclusion pending further information on enforcement and remedies. The report provides information on the remedies available to worker representatives in the event of a violation of the right to take part in the determination and improvement of the working conditions and working environment. Depending on the situation remedies are available Employee Trustees Act 2006, Trade Union Act and Collective Agreements Act.

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 22 of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

Prevention

In its previous conclusion (Conclusions 2014), the Committee took note of the initiatives under way (the drafting of a declaration to be signed by employers, the updating of on-line information on prevention of harassment, a research on sexual harassment), as well as of the employers' obligations under the law, and requested updated information on the measures effectively taken, in consultation with social partners, to raise awareness of sexual harassment issues and prevent it in the workplace.

In reply, the report states that the legislation relevant to sexual harassment is implemented in cooperation between the state, non-governmental organisations and employees' and employers' associations. It recalls that information and material relevant to sexual harassment issues are available on the Work Life Portal, the Gender Equality and Equal Treatment Commissioner's webpage and the website of the Sexual Health Association, an Estonian NGO. In addition, during the reference period, a "Strategy for Preventing Violence for 2015-2020" was adopted which aims, on the one hand, at raising the awareness of the general public on (moral/sexual) harassment and, on the other hand, addresses both victims and perpetrators of harassment. The report also indicates that this strategy, as well as the "Welfare Development Plan 2016-2023", include awareness-raising measures on gender equality, not only for employers, but also for Labour Dispute Committee members and Inspectors.

Liability of employers and remedies

The Committee refers to its previous conclusion (Conclusions 2014) as regards the definition of sexual harassment under the Gender Equality Act (GEA); it noted that sexual harassment was prohibited as a form of discrimination, together with retaliatory discrimination. It notes from the report that sexual harassment is also prohibited by Article 153 of the Estonian Penal Code, which came into force in 2017 (out of the reference period).

The Committee previously (Conclusions 2014) took note of the employer's liability under the GEA and asked the next report to clarify, in the light of any relevant example of case law, whether the employer's liability could also be engaged in respect of sexual harassment involving, as a victim or perpetrator, a third person, such as independent contractors, self-employed workers, visitors, clients. The report confirms that the employer's responsibility to create a harassment-free working environment includes employees (including work candidates) as well as third parties, be it other employees, clients, visitors or other.

The Committee refers to its previous conclusion (Conclusions 2014) as regards the remedies available before the Gender Equality and Equal Treatment Commissioner, the Chancellor of Justice, the Labour Dispute Committees and the courts.

Burden of proof

The Committee notes that there has been no change to the situation which it previously found to be in conformity with the Charter (Conclusions 2014).

Damages

The Committee previously noted (Conclusions 2014) that, under Section 13 of the GEA, the victim of discrimination can request that the harassment be brought to an end and that a compensation be paid for material and non-material damages, taking into account the scope, duration and nature of the discrimination suffered.

In response to the Committee's request to provide any relevant examples of case law, including in particular as regards the range of damages awarded in cases of sexual harassment, the report states that there are no examples of relevant case law. The Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination (Estonia, country report gender equality, 2017) that "claims for compensation related to discrimination have been rare and rather unsuccessful in the courts". It asks the next report to comment on this point and to provide evidence of the effectiveness of remedies, whether judicial, administrative or other kind, in particular as regards the range of damages awarded in cases of sexual harassment.

As regards reinstatement, also when employees have been forced to resign because of the sexual harassment, the report indicates, in response to the Committee's question that when a causal link can be detected between the end of the employment contract and (sexual/moral) harassment, it is possible for the victim to demand that the cancellation of the employment contract be annulled.

Conclusion

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

Prevention

In its previous conclusion (Conclusions 2014), the Committee took note of the initiatives under way (the drafting of a declaration to be signed by employers and the updating of on-line information on prevention of harassment) and requested updated information on the measures effectively taken, in consultation with social partners, to raise awareness of moral (psychological) harassment issues and prevent it in the workplace.

In reply, the report refers to the "Strategy for Preventing Violence for 2015-2020" which was adopted during the reference period and aims, on the one hand, at raising the awareness of the general public on (moral/sexual) harassment and, on the other hand, addresses both victims and perpetrators of harassment.

The Committee asks whether the cooperation between the state, non-governmental organisations and employees' and employers' associations, noted in respect of prevention of sexual harassment, also applies in respect of moral (psychological) harassment. On a more general level, it asks what other measures have been adopted in order to promote awareness specifically against moral harassment and to inform workers and employers about their rights and obligations in this respect.

Liability of employers and remedies

The Committee refers to its previous conclusion (Conclusions 2014) as regards the prohibition of gender-based harassment under the Gender Equality Act (GEA) and the prohibition of discriminatory harassment under the Equal Treatment Act (ETA) . Noting that violence or harassment in the employment relationship was contrary to the "principle of good faith" and the "principle of reasonableness" under the Obligations Act, the Committee asked for any relevant example of case-law showing that these provisions could be used in case of harassment, which would not necessarily qualify as discrimination under the ETA. According to the report, there are no such case-law examples.

As regards the employers' liability, the Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination (Estonia, country report non-discrimination, 2017) that in case an employee is the perpetrator, the employer may be held liable under the Obligations Act (Article 1054). The Committee previously (Conclusions 2014) asked, in the light of any relevant case law, whether the employer's liability can be engaged in respect of harassment involving, as a victim or as a perpetrator, a third person, such as independent contractors, self-employed workers, visitors, clients etc. According to the report, there are no examples of relevant case law. Therefore, the Committee requests that the next report provides information on the legal framework concerning the liability of the employer in cases of harassment involving a third person, as explained above, in the light of any relevant case law.

The Committee refers to its previous conclusion (Conclusions 2014) as regards the remedies available before the Gender Equality and Equal Treatment Commissioner, the Chancellor of Justice, the Labour Dispute Committees and the courts and reiterates its request for further information on the procedures available to victims of harassment.

Burden of proof

The Committee notes that there has been no change to the situation which it previously found to be in conformity with the Charter (Conclusions 2014).

Damages

The Committee previously noted (Conclusions 2014) that, under Section 24 of the ETA , the victim of discrimination can request that the harassment be brought to an end and that a compensation be paid for material and non-material damages, taking into account the scope, duration and nature of the discrimination suffered.

In response to the Committee's request to provide any relevant examples of case law, including in particular as regards the range of damages awarded in cases of moral harassment, the report states that there are no examples of relevant case law. The Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination (Estonia, country report gender equality, 2017) that "claims for compensation related to discrimination have been rare and rather unsuccessful in the courts". It asks the next report to comment on this point and to provide any relevant case law or other evidence of the effectiveness of remedies, whether judicial, administrative or other kind.

As regards reinstatement, including when employees have been forced to resign because of the harassment, the report indicates, in response to the Committee's question that when a causal link can be detected between the end of the employment contract and (sexual/moral) harassment, it is possible for the victim to demand that the cancellation of the employment contract be annulled.

Conclusion

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

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

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

The Committee previously found the situation to be in conformity with 28 of the Charter. The report indicates that there has been no change to this situation.

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 28 of the Charter.

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 Estonia.

The Committee already examined the situation with respect to the right to information and consultation in procedures of collective redundancy in its previous conclusions (Conclusions 2014 and 2010). It will therefore only consider recent developments and additional information in this conclusion.

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was in conformity with the Charter and asked what preventive measures existed to ensure that redundancies did not take effect before the obligation of the employer to inform and consult the workers' representatives had been fulfilled.

In reply, in addition to the information provided previously, the report states that when employers submit verified data on the final decision with regard to the number of redundancies and the date of termination of employment to the Estonian Unemployment Insurance Fund and send a copy to the relevant staff representative or trade union delegate, the latter has seven calendar days to submit his/her opinion on the redundancy.

According to the report, employees or their representatives also have the right to file a complaint for an infringement of the right to information and consultation with the Labour Inspectorate, which is responsible for state supervision of compliance with this obligation during collective redundancy procedures.

The Committee notes that, under Article 104§1 of the Employment Contracts Act, cancellation of an employment contract without legal basis or in conflict with the law is void. According to the report, if employers fail to comply with the regulations on collective redundancies, such cancellations are void.

The Committee takes note of the figure for the number of collective redundancies presented in the report.

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 29 of the Charter.