March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

THE NETHERLANDS

This text may be subject to editorial revision.

The following chapter concerns the Netherlands which ratified the Charter on 3 May 2006. The deadline for submitting the 11th report was 31 October 2017 and the Netherlands submitted it on 23 January 2018 (Comments by the Netherlands Trade Union Confederation (FNV) were submitted on 23 January 2018).

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

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

The Netherlands has accepted all provisions from the above-mentioned group, which apply to the Kingdom in Europe (Declaration contained in the instrument of acceptance deposited on 3 May 2006 – Or. Engl.)

The Netherlands have furthermore accepted 2 provisions from this group (namely, Article 5 and 6 of the 1961 Charter), in respect of Aruba, Curaçao, Sint Maarten and the special Caribbean municipalities (Bonaire, Sint Eustatius and Saba).

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

The conclusions relating to the Netherlands concern 23 situations and are as follows:

– 11 conclusions of conformity : Articles 2§6, 2§7, 5, 6§1, 6§2, 6§3, 6§4, 21, 22, 28 and 29;

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

In respect of the 3 other situations related to Articles 4§3, 26§1 and 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 the Netherlands 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 21

The Works Council Act was amended during the reference period and modified the provisions governing the right to information. The funding of the system for training works council members has been changed. The Act now provides that training must be of a proper standard and that training costs should be directly borne by the undertaking. Further the duty to provide information has been expanded. An undertaking that forms part of an international group of undertakings must in future provide all contact information so that workers' representatives in the Netherlands can contact the parent company abroad in good time about decisions that affect the Dutch undertaking. The rules for holding works council elections have been changed. The requirement that a list of independent candidates can be submitted only if accompanied by a given number of signatures has been scrapped. The dispute settlement rules have been changed. The statutory obligation to present workers' participation disputes for mediation to a joint sectorial committee (consisting of representatives of central employers' and employees' organisations) before taking legal

action before the courts has been dropped. However, a joint sectorial committee can still be consulted on a voluntary basis. The Social and Economic Council is now explicitly responsible for promoting worker participation. The Committee for the Promotion of Worker Participation (CBM) has been established by the SER for this purpose. The key function of the CBM is broadly to promote worker participation and the standard of such participation in undertakings. It is also responsible for disseminating information in this regard.

Article 6§4

The Netherlands revoked the restrictions with respect to the right to strike regarding civil servants. This means civil servants now have a right to strike (Kingdom Act of 3 December 2014, published in the Bulletin of Acts and Decrees on 15 January 2015, No. 11).

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The next report to be submitted by the Netherlands will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.

The deadline for submitting that report was 31 October 2018.

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

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

The Committee takes note of the information contained in the report submitted by the Netherlands. It also takes note of the information contained in the observations presented by the Netherlands Trade Union Confederation (FNV) on 23 January 2018.

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation in the Netherlands was not in conformity with Article 2§1 of the Charter on the ground that certain categories of workers (sports professionals, scientists, performing artists, military personnel and the police) were excluded from the statutory protection against unreasonable working hours.

Regarding the ground of non-conformity, the report states that exceptions in respect of the above-mentioned categories of workers were made after consultation with the social partners and the representative organisations concerned. In accordance with Article 4§1 of the Working Hours Act, employers have a duty to put in place a working hours policy and to take into account the employees' personal circumstances in this regard. In addition, under Article 3 of the Working Conditions Act, employers are obliged to organise work in such a way that employees' health is not adversely affected. The report also indicates that although no statutory regulations concerning working hours exist, the matter has nonetheless been regulated by various agreements made within the occupational groups concerned. The Committee takes note of the reasons for exceptions in respect of these categories of workers presented in the report and asks that the next report contain more information on these agreements. However, the Committee notes that the legal framework does not clearly define how much scope is left for collective bargaining and individual negotiations, thus failing to offer sufficient safeguards for compliance with Article 2§1. It therefore reiterates its finding of non-conformity on this point.

In reply to the Committee's question on the rules applicable to on-call service, the report explains that the regime which requires workers to be present at the workplace ready to work if necessary is only possible in the case of a collective scheme; all such periods of on-call service count as working time. In particular, the report states that an employee may not be on call more than 52 times in a 26-week period and for more than 48 hours a week on average in a 26-week period. Before and after on-call service, employees are entitled to 11 hours' uninterrupted rest. In addition, each seven-day period must include 90 hours of rest consisting of one 24-hour period and six 11-hour periods which may be shortened once to 10 hours and once to eight hours, provided that the reduced hours are added to the following 11-hour rest period.

According to the report, the rules governing daily and weekly rest periods do not apply if the nature of the work is such that it has to be performed during on-call service either regularly or to a considerable extent. The Committee asks what type of work this relates to.

The Committee notes from EUROSTAT data that the number of hours worked per week by full-time employees has increased slightly from 40.7 in 2013 to 40.9 in 2016. According to the statistical data gathered by the OECD, the average annual number of working days per worker was 1 418 in 2013 and 1 430 in 2016.

The Committee notes from the observations presented, that there is a considerable number of employees who work longer hours than allowed by Article 2§1 of the Charter, especially in the sectors where many migrants are employed. Moreover, it notes that, according to the above observations, the Agency for Social Affairs and Employment (SZW) does not have the capacity to adequately enforce regulations in the field of fair working conditions. The Committee asks that the next report provide comments on these observations. It also asks for information on the activities of the labour inspectorate in monitoring compliance with the regulations on working hours, including overtime, and on the number of violations found and the fines imposed.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§1 of the Charter, on the ground of the exclusion of certain categories of workers from the statutory protection against unreasonable working hours.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

The Committee takes note of the information contained in the report submitted by the Netherlands. It also takes note of the information contained in the observations presented by the Netherlands Trade Union Confederation (FNV) on 23 January 2018. It will only consider recent developments and the additional information provided.

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was not in conformity with the Charter, on the ground that work performed on a public holiday in the hotel and catering industry was not adequately compensated.

Regarding the ground for non-conformity, the report states that the collective agreement for the hotel and catering industry, which was in force from 1 August 2012 to 1 January 2014, was not renewed. However, workers in contract catering industry may claim a 100% bonus for working on a public holiday. Nevertheless, the Committee notes that there is no guarantee that compensation will be awarded to those working on a public holiday in the hotel and catering industry, other than contract catering, and that therefore the situation is not in conformity with Article 2§2 of the Charter.

In reply to the Committee's first question, the report states that there are no collective agreements that do not recognise the right to paid public holidays. However, in view of the above, the Committee asks whether all activity sectors in the country are covered by collective agreements.

In reply to the Committee's second question, the report indicates that although there is no law or universal provision governing work during public holidays, this is often regulated in the context of collective agreements. As a rule, employees should not be required to work on public holidays, but, in some sectors, employers' and employees' organisations reach an agreement allowing them to do so. The Committee asks which sectors are concerned. In addition, according to the report, in other sectors (healthcare, the police and fire services, utility and transport, production or service companies), work must continue even on public holidays. In accordance with Article 5:6 of the Working Hours Act, an employer may oblige an employee to work on public holidays only if it is necessary because of the nature of the work and if provision for this has been made in the employment contract. The Committee notes that according to the report, workers can only be required to work on public holidays if they have agreed to do so.

Regarding the range of bonuses paid in addition to the regular wage, the report states that according to a survey of the most extensive collective agreements, nearly all include provisions for a bonus for working on a public holidays, usually a percentage which varies between 45% and 250% of workers' normal hourly pay. Generally, the amount of such a bonus is the same for all public holidays. The Committee points out that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. In the light of the available information, the Committee considers that compensation corresponding to the normal salary increased by 45% is not sufficient for work carried out on a public holiday. It therefore concludes that the situation is not in conformity with Article 2§2 on this point.

In reply to another question from the Committee, the report states that employees may not always take additional leave to compensate for working on public holidays. According to the above-mentioned survey, half the collective agreements provide for compensation to be paid solely in monetary form and make no provision for opting for additional leave. Approximately a third of the collective agreements make provision for compensation to be paid in monetary form or in the form of a compensatory rest period. A small number of collective agreements provide for compensation to be paid in cash and a compensatory rest period for working on a public holiday which falls on a weekday.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated.

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

The Committee takes note of the information contained in the report submitted by the Netherlands. It also takes note of the information contained in the observations presented by the Netherlands Trade Union Confederation (FNV) on 23 January 2018.

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was not in conformity with the Charter on the ground that the employees' right to take at least two weeks of uninterrupted holiday during the year in respect of which the holidays were due was not sufficiently guaranteed. The report does not provide new information but stresses that it is important for employees to have freedom of choice: employees can best decide when they most need to take leave and, if need be, to carry over this entitlement to the following year.

The Committee recalls that employees must take at least two weeks of uninterrupted annual holidays during the year the holidays were dueand that annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. In the light of the foregoing, the Committee maintains its previous conclusion of non-conformity on the ground that not all employees have the right to take at least two weeks of uninterrupted holiday during the year.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§3 of the Charter on the ground that not all employees have the right to take at least two weeks of uninterrupted holiday during the year.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by the Netherlands. It also takes note of the information contained in the observations presented by the Netherlands Trade Union Confederation (FNV) on 23 January 2018.

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was not in conformity with the Charter, on the ground that workers performing dangerous or unhealthy work were not entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

The Committee takes note of the arguments put forward in the report concerning the introduction of appropriate compensatory measures. As Dutch legislation does not provide for any of the compensatory measures required by Article 2§4 of the Charter, the Committee reiterates its conclusion of non-conformity on this point.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§4 of the Charter, on the ground that workers performing dangerous or unhealthy work are not entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee takes note of the information contained in the report submitted by the Netherlands. It also takes note of the information contained in the observations presented by the Netherlands Trade Union Confederation (FNV) on 23 January 2018.

It notes that the situation which it previously found not to be in conformity with the Charter (Conclusions 2014) remained the same during the reference period, and therefore reiterates its finding of non-conformity.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§5 of the Charter on the ground that, in certain sectors, there are insufficient safeguards to prevent that workers may work for more than twelve consecutive days before being granted a rest period.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

The Committee takes note of the information contained in the report submitted by the Netherlands. It also takes note of the information contained in the observations presented by the Netherlands Trade Union Confederation (FNV) on 23 January 2018.

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.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 2§6 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

The Committee takes note of the information contained in the report submitted by the Netherlands. It also takes note of the information contained in the observations presented by the Netherlands Trade Union Confederation (FNV) on 23 January 2018.

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.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

The Committee takes note of the information in the Netherlands report. It also notes the information in the observations presented by the Netherlands Trade Union Confederation (FNV) on 23 January 2018.

The report states that the legislation remained unchanged during the reference period. However, a bill was passed by the House of Representatives on 20 December 2016 lowering the age of entitlement to the full adult minimum wage from 23 to 21. The legislation was due to come into force on 1 July 2017, outside the reference period. The Committee will assess this development in the next cycle.

According to EUROSTAT figures for 2014, the average annual earnings of single persons without children earning 100% of the average earnings of a worker in the business sector, were €49 900 gross and €33 236.97 net of social contributions and taxes; the minimum monthly wage of full-time employees aged 23 to 64 was €1 485.60 gross in the first six months of 2014 and €1 495.20 gross in the second half of the year; the minimum gross wage in 2014 represented 43.2% of average earnings.

However, according to the data provided in the report, as calculated by the Dutch statistics office, Statistics Netherlands (CBS), the net standardised disposable income in 2014 was €26 000. The report states that according to the Ministry of Social Affairs and Employment's estimates in 2014, the annual disposable income of a single worker with no children who earns the minimum wage was €15 773. The Committee understands that annual disposable income encompasses all additional benefits (including housing assistance, holiday allowance, sickness benefit) and is deducted of the general tax credit, employed person's tax credit and health care benefit. The Committee asks the next report to confirm that understanding and to clarify how the annual disposal income of a single worker is calculated. In the meantime, the Committee reserves its position on this point.

The Committee notes from a document published by the Ministry of Social Affairs and Employment that the legal gross minimum wage for younger employees were €1 270.90 for those aged 22; €1 084 for those aged 21; €919.55 for those aged 20; €785 for those aged 19 and €680.30 for those aged 18. According to information provided to the Governmental Committee (Governmental Committee report on Conclusions 2014), these reduced rates applicable to young employees reflect a particular context, notably the fact that many employees under 23 are still living with their parents and therefore have fewer financial burdens.

The Committee also points out that while it may be permissible to pay a lower minimum wage to younger persons, the reduction must be for a legitimate aim and be proportionate to achieving that aim (General federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012, §60). In the present case, the reduced rates of the statutory minimum wage applicable to young workers are well below the legal minimum wage. The Committee therefore repeats its previous finding of non-conformity on this ground.

Lastly, it asks for information in the next report on the implications of the reform of the law on the minimum wage and holiday allowances, the results of which, according to the Governmental Committee report, were due to be published in late 2015.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§1 of the Charter on the ground that the reduced rates of the statutory minimum wages applicable to young workers are manifestly unfair.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by the Netherlands. It also takes note of the information contained in the observations presented by the Netherlands Trade Union Confederation (FNV) on 23 January 2018.

In its previous conclusion (Conclusions 2014), the Committee concluded that the situation was not in conformity with the Charter, on the ground that workers may be asked to work extended hours without any of these counting as overtime and therefore not remunerated at an increased rate.

The Committee notes that the situation which it previously found not to be in conformity with the Charter (Conclusions 2014) remained the same during the reference period, and therefore reiterates its finding of non conformity.

However, the Committee takes note of the fact that new legislation aiming to regulate the right of employees earning the statutory minimum wage to payment of overtime came into force on 1 January 2018 (outside of the reference period). Therefore, the Committee asks that the next report provide all the necessary information on this subject.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§2 of the Charter, on the ground that workers may be asked to work extended hours without being remunerated at an increased rate.

Article 4 - Right to a fair remuneration

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

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

Conclusion

Pending its decision concerning UWE v. the Netherlands, complaint No. 134/2016, 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 the Netherlands.

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§4 of the Charter, on the grounds that notice periods were not reasonable and that no notice of termination was required during the probationary period.

The report indicates that the Dutch Law provides for a preventive dismissal assessment. In principle, an employer may terminate the employment contract on economic grounds or due to long-term incapacity for work only upon the consent of the Employee Insurance Agency (UWV) or, in case of dismissal on personal grounds, upon a preventive assessment conducted by the limited jurisdiction sector of district courts. As of July 2015, the time required for proceedings before the UVW is deducted from the notice period that the employee is entitled to. Similarly, when courts set aside an employment contract, they may take into account the length of the court proceedings when determining the date of termination of the employment contract. However, under articles 7:672 (4) and 7:671b (8) of the Civil Code, the remaining notice period must always be at least one month.

Furthermore, as of 1 July 2015, pursuant to Work and Security Act, severance pay is regulated by the Civil Code. The report indicates that severance pay of three kinds is regulated: severance pay for early termination of the employment contract (Articles 7:672 (9) and 7:677 (4) of the Civil Code); transition payments (Article 7:673 of the Civil Code) and fair compensation (Articles 7:681, 7:681 (b) and 7:682 of the Civil Code). Severance pay for early termination of employment contract applies in cases of termination of the employment earlier “than legally permissible” or when no notice is given and amounts to wages corresponding to the period for which the employment contract would have been in effect. As regards transition payments, they apply to employment contracts that have been in effect for more than two years or to temporary contracts terminated by the employer after one year. Transition payments amount to one-sixth of the employee’s monthly wage per six months’ period of service for the first 10 years. Then, they amount to one-quarter of the monthly wage for each subsequent six months’ period of service. As a result, an employee with more than ten years of service is entitled to transitions payments of half monthly wage per year of service. Fair compensation is additional and is awarded by courts in case of a serious culpable act or omission on the part of the employer.

In order to assess the situation as regards the reasonableness of notice periods and/or severance pay applicable, the Committee asks the next report which situations constitute termination of employment “earlier than legally permissible”. It also asks whether severance pay is paid in addition to notice periods in the event of termination of employment, in particular as regards dismissal on economic grounds, long-term incapacity and personal grounds. In addition, it requests information on whether employees are entitled to both severance pay for early termination of employment, where applicable, and transitional payments. Furthermore, it asks the next report to confirm that general notice periods, provided for by Article 7:672 (2) of the Civil Code, have not been amended by the Work and Security Act, which came into force during the reference period and that they apply in case of dismissal upon the consent of the UVW. Meanwhile, it reserves itsposition on this point.

The report does not indicate changes as regards the lack of notice period in case of dismissal during the probationary period. The Committee, therefore, reiterates its previous conclusion of non-conformity in this regard.

The Committee notes that a fixed-term contract may be subject to early termination, if this is expressly provided for in the contract (Article 7:667 of the Civil Code). In this case standard notice periods apply. If a contract is terminated early when this has not been provided for in the employment contract, the other party is entitled to financial compensation equal to what

the employee would have been paid if the contract had continued in force. This sum may be reduced by the courts, but may not be less than three months' wages.

In reply to the Committee's question on notice periods and/or compensation applicable to other reasons for termination of employment (Conclusions 2014), the report states that Article 40 of the Bankruptcy Act sets a maximum period of notice of six weeks in the event of insolvency. If the employer has been declared bankrupt, employees are not entitled to transition payment (Article 7:673c (1) of the Civil Code). As regards termination of contracts because of cessation of an enterprise's business operations, notice periods laid down in the Civil Code apply, as it is an economic ground for dismissal and must be authorised by the Employment Insurance Agency. In this case, employees are also eligible for the transition payment if the employment contract concerned has been in force for at least 24 months. The death of the employer does not constitute ground for termination of the employment, unless otherwise agreed in the employment contract (Article 7:675 of the Civil Code). The Committee considers that the situation is not in conformity with Article 4§4 of the Charter, on the ground that six weeks' notice period provided for in case of termination of employment due to bankruptcy, is not reasonable for employees with more than five years of service.

In reply to the Committee's question on notice periods and/or severance pay applicable to employees that are not subject to the general law (Conclusions 2014), the report indicates that, where employees of public bodies are not covered by the Civil Code and do not have an employment contract, termination of employment is regulated separately. More specifically, civil servants and contractual public officials, that are covered by the Central and Local Government Personnel Act and the General Civil Service Regulations, in case of early termination of fixed-term contracts, are entitled to three months' notice for more than one year of service; to two months' notice for more than six months and less than a year of service; to one months' notice for less than six months of service (Article 95 of the General Civil Service Regulations). Furthermore, the report indicates that dismissal of officials with permanent appointments is regulated by Chapter X of the General Civil Service Regulations. The Committee also notes from the report that under Article 96 of the General Civil Service Regulations if, following a reorganisation, it proves impossible to find another suitable job for a civil servant, a three-month period of notice generally applies.

Conclusion

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

- no notice period is required for probationary periods;
- six weeks' notice period provided for in case of termination of employment due to bankruptcy, is not reasonable for employees with more than five years of service.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

The Committee takes note of the information contained in the report submitted by the Netherlands. It also takes note of the information contained in the observations presented by the Netherlands Trade Union Confederation (FNV) on 23 January 2018.

The Committee previously deferred its conclusion (Conclusions 2014) and requested information on whether certain grounds for deductions from wages are subject to limits.

The report explains that under the Civil Code, the limit of the statutory minimum wage applies as of 1 January 2017. However, additional deductions can occur for the cost of accommodation up to 25% of the statutory minimum. The Committee notes from the comments submitted by FVN that certain employers, even though they pay wages, also overcharge employees for housing etc. and as a result they do not comply with the legislation. Furthermore, the report indicates that limits provided by case-law, as well as the limit of the statutory minimum wage apply to the repayment of training cost. The Committee underlines that the conditions and the extent to which deductions are permitted, should be prescribed by national laws or regulations or should be fixed by collective agreements or arbitration awards. It, therefore, asks that the next report provides information on relevant legislation, regulations, collective agreements or arbitration awards, which, apart from the case-law, provide for limits to deductions.

Since the limit of the statutory minimum wage entered into force outside the reference period (as of 1 January 2017), the Committee defers its conclusions on these points, although it appears that the situation has now been brought into conformity. It asks that the next report contain up-dated information to allow a proper assessment.

Concerning attachment under the Civil Code and the Code of Civil Procedure, the report indicates that the attachment-exempt amount amounts to a minimum income, which is adequate for employees to support themselves. This amount depends on the person's cost of maintenance with the 90% of the general social assistance being the guideline. The Committee recalls that deductions should not result in depriving, not only workers but also their dependants of their means of subsistence (Conclusions XII-1(1991), Greece). The limits applicable in this situation may indeed take into account the workers' means of subsistence but they do not take into account their dependants'. The Committee, therefore, concludes that the situation is not in conformity with Article 4§5 of the Charter on this point.

In its previous conclusion (Conclusions 2014), the Committee asked for information as to which criteria were used to determine the damages owed to the employer in connection with employment under the Civil Code. It also asked that the next report indicates limits applied to other grounds for deductions, such as criminal or disciplinary fines; maintenance claims; compensation for wages in kind; assignment of wage or decline in business. The report indicates that an employee is liable only for damages caused by the employee's intent or deliberate negligence. These damages, which are connected with the employment, can be deducted from the employee's wage. The limit applicable in this case, as of 1 January 2017, is the minimum statutory wage. The report states that the same also applies to all the five legitimate grounds for deductions, which include fines owed by the employee to the employer, as well as to compensation in kind and assignment in wages or decline in business. Since the limit of the statutory minimum wage entered into force outside the reference period (from 1 January 2017), the Committee defers its conclusions on this point, although it appears that the situation has now been brought into conformity. It asks that the next report contain up-dated information to allow a proper assessment.

The Committee also notes from the report that if the wage is higher than the statutory minimum wage due to a collective agreement, the deduction is left to the employer's discretion and his interests, taking into account reasonableness and fairness, prevail over those of the employee. The Committee recalls that workers should not be allowed to waive

their right to limitation of deductions from their wage and the way in which such deductions are determined should not be left at the disposal of the sole parties to the employment contract (Conclusions 2005, Norway). The Committee, therefore, considers that the situation as regards deduction of wages that are higher than the statutory minimum wage and no collective agreement applies, is not in conformity with Article 4§5 of the Charter.

Finally, the Committee asked for information on the limits applied where grounds for deductions from wages conflict with each other. It notes from the report that in case attachments coincide with deductions, attachments prevail but in any case the employer cannot proceed to deductions from the minimum wage.

The report does not provide requested information on safeguards preventing employees from waiving their right to limitation of deductions from wages under Article 4§5 of the Charter, therefore, the Committee reiterates its question.

Conclusion

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

- the attachable amount of wages leaves workers who are paid the lowest wages and their dependants insufficient means of subsistence;
- deductions in cases when the wage is higher than the statutory minimum wage and no collective agreement applies are left to the discretion of the employer.

Article 5 - Right to organise

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

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 noted previously that union density was decreasing and asked for any information as regards measures or initiatives taken by the Government, the Social and Economic Council or the social partners in order to increase the union density and/or to strengthen the legitimacy of the trade unions in the process.

The report states that recruiting members is a matter for the trade unions themselves. However efforts are being made to increase the support for collective agreements. Modernising the system of collective agreements and maximising support for them is of great importance. The government asked the Social and Economic Council (SER) for an advisory opinion on this matter (see below).

Representativeness

The SER acknowledged in its 2013 opinion that support is not guaranteed for trade unions and that economic developments, the individualisation of society and a low level of union density may well cause an ongoing debate about the role and value of collective agreements and support for them. Various measures, examples of which have been described by the SER, have been and are being taken for this purpose. The trade unions are increasingly giving non-members the opportunity to participate in the collective bargaining process (by providing information and holding polls and referendums, mainly online). Although involving non-members is an obvious move, it presents the trade union movement with a dilemma. If non-members are involved in the collective bargaining process in almost the same way as members, there is less incentive for people to join a union. If union membership declines, this calls into question the extent to which the unions can claim to be representative.

The Committee notes from outside sources (EUROFOUND) that the major trade unions themselves have launched different initiatives to increase membership.

The Committee previously asked for information on the criteria used to determine representativeness of trade unions in the Netherlands (Conclusions 2014).

According to the report the Netherlands has no formal provisions regulating representativeness. To participate in the collective bargaining process, a trade union obviously needs to have one or more members within the sector which is the subject of negotiations. As parties are free to determine their negotiating partners, however, it is up to the other parties involved in the collective bargaining process (mainly the employers' organisations but also other trade unions) to decide whether to admit a trade union or other aspiring participant to the negotiations. The Committee recalls that a trade union or an employer's organization that has been excluded from collective bargaining may seek a court order to secure participation.

Personal scope

The Committee asked previously for up-to-date information on the scope *rationae personae*, in particular in relation to the treatment of nationals of other contracting parties in respect of membership of trade unions and enjoyment of the benefits of collective bargaining. The report provides no information on this point, the Committee repeats it's requested for this

information. It also refers to its general question on the right of members of the armed forces to organize.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee previously found the situation to be in conformity with the Charter, but requested the next report to provide updated information. The report states that there have been no new developments, the system remains unchanged.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 6§1 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The Committee notes from the report submitted by the Netherlands that there have been no new developments to the situation in respect of the Netherlands – Kingdom in Europe and the special Caribbean municipalities (Bonaire, Sint Eustatius and Saba), which it has previously found to be in conformity with Article 6§2 of the Charter. The Committee previously requested information on the new regulations on exemption from extension orders concerning sectoral collective agreements.

The policy on “declarations of universal application” (of collective agreements) was modified in 2007 in that the mere fact that a company or part of a sector has its own collective agreement is not a sufficient reason to warrant a dispensation by the Minister from a decision that a collective agreement is to be universally applicable. This change was made because companies had found that having their own collective agreement was a way of circumventing a universal application decision. Applicants for a dispensation must now show they cannot reasonably be required to apply the provisions of a collective agreement declared to be universally applicable. This can be done by presenting factors that are specific to the individual undertaking.

The Committee notes from other sources (European Trade Union Institute) that over 80% of employees in the Netherlands are covered by a collective agreement.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 6§2 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee notes from the report submitted by the Netherlands that there have been no new developments to the situation in respect of the Netherlands – Kingdom in Europe and the special Caribbean municipalities (Bonaire, Sint Eustatius and Saba), which it has previously found to be in conformity with Article 6§3 of the Charter.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 6§3 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

Collective action: definition and permitted objectives

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

Entitlement to call a collective action

The Committee previously examined the situation under this heading and found that it was in conformity with the Charter. The report indicates that there has been no change to the situation

Specific restrictions to the right to strike and procedural requirements

The Committee had in the past found the situation in the Netherlands not to be in conformity with Article 6§4 of the Charter, based on the fact that a Dutch judge may determine whether recourse to a strike is premature, constitutes an infringement on the very substance of the right to strike, as this allows the judge to exercise the trade unions' prerogative of deciding whether and when a strike is necessary (Conclusions XVII-1, XVIII-1). However the Committee observed in the previous conclusion (Conclusions 2014) that based on examples that the Dutch courts take into account the principles enshrined in Article G of the Charter in their decisions. The Committee therefore considered that the situation was now in conformity with the Charter on this point, but requested updated information on any new developments and case law of the courts with regard to this situation.

The report refers to the Enerco judgment (2014), where the Supreme Court interpreted the right to strike in broad terms and held that the trade unions are, in principle, free to decide on the nature of collective action, provided that the action they take can reasonably be assumed to be useful in furthering the exercise of their right to collective bargaining. The report also refers to the Amsta judgment (2015) where the Supreme Court ruled that although criteria such as 'timely notice' and 'first having exhausted all other possibilities' may still be applied, they are no longer sufficient in themselves to determine whether collective action is lawful. They may therefore be taken into account, but only in the context of a decision on whether or not article G of the Charter (serious social grounds) is applicable. According to the report collective action may be restricted only by article G of the Charter and not by rules laid down in previous cases.

Regarding civil servants the Committee notes that the Netherlands revoked the restrictions with respect to the right to strike. This means civil servants now have a right to strike (Kingdom Act of 3 December 2014, published in the Bulletin of Acts and Decrees on 15 January 2015, no. 11).

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

Consequences of a strike

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

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 6§4 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 the Netherlands.

Legal framework

The Committee notes that the Works Council Act was amended during the reference period and modified the provisions governing the right to information. The funding of the system for training works council members has been changed. The Act now provides that training must be of a proper standard and that training costs should be directly borne by the undertaking. Further the duty to provide information has been expanded. An undertaking that forms part of an international group of undertakings must in future provide all contact information so that workers' representatives in the Netherlands can contact the parent company abroad in good time about decisions that affect the Dutch undertaking. The rules for holding works council elections have been changed. The requirement that a list of independent candidates can be submitted only if accompanied by a given number of signatures has been scrapped. The dispute settlement rules have been changed. The statutory obligation to present workers' participation disputes for mediation to a joint sectoral committee (consisting of representatives of central employers' and employees' organisations) before taking legal action before the courts has been dropped. However, a joint sectoral committee can still be consulted on a voluntary basis.

The Social and Economic Council is now explicitly responsible for promoting worker participation. The Committee for the Promotion of Worker Participation (CBM) has been established by the SER for this purpose. The key function of the CBM is broadly to promote worker participation and the standard of such participation in undertakings. It is also responsible for disseminating information in this regard.

Personal and Material scope

The Committee previously found the situation to be in conformity with the Charter (Conclusions 2014). According to the report, there has been no change to this situation.

Remedies and Supervision

The Committee previously asked if legal remedies are available to workers. According to the report the Works Councils Act contains a number of sections or subsections that enable works councils to protect their rights:

- Under section 23, subsection 3 a works council can apply to the limited jurisdiction sector of the district court if the undertaking does not respond seriously to a proposal made by the works council (by virtue of the works council's right of initiative). However, no appeal lies against the court's judgment.
- Section 26 deals with the right of works councils to appeal against decisions made by the undertaking under section 25, subsection 5 in respect of which the works council has a right to give an advisory opinion.
- Section 27, subsections 5 and 6 deal with how the right of the works council to be consulted can be enforced.
- Under section 31, subsection 1 the works council can apply to the limited jurisdiction sector of the district court if it considers that its right to be informed is not being observed.

The Committee asked previously if there were sanctions against employers who fail to fulfill their obligations regarding information and consultation. The report states that the Dutch system makes no provision for sanctions under public law for failures by employers to fulfill their obligations under the Works Councils Act. Enforcement is effected by private parties bringing proceedings before the civil courts. Disputes between an employer and the works council about the manner in which the Works Councils Act is applied can be referred to a

separate court known as the Enterprise Division). This court has the power to overturn decisions by the employer.

Conclusion

The Committee concludes that the situation in the Netherlands 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 the Netherlands.

The Committee has examined the situation with respect to the right of workers to take part in the determination and improvement of their working conditions in its previous conclusion, and has found the situation in conformity with the Charter. However it requested further information on sanctions.

Enforcement

The Committee asked previously where sanctions may be instituted against employers who fail to fulfill their obligations. According to the report the Working Conditions Act sets out the sanctions that can be imposed if an employer infringes the provisions of the Act by failing to provide healthy and safe working conditions for employees. The main sanction is an administrative fine.

If an employer commits a repeat offence, the inspector may once again draw up a fine report. If this happens within 24 months of the original offence, the new fine may be increased by 50%. If the employer commits the same offence a third time within 48 months, an official report is drawn up and the Inspectorate orders the work to be halted.

Conclusion

The Committee concludes that the situation in the Netherlands 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 The Netherlands as well as in the Comments submitted by the Netherlands' Trade Union Confederation (FNV).

Prevention

The Committee previously noted the employers' legal obligations in respect of prevention of psychosocial burden, including sexual harassment, under the Working Conditions Act (see Conclusions 2014 for details), the respect of which is monitored by the Social Affairs and Employment Inspectorate. It asked the next report to provide updated information on the preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment, in particular those taken in consultation with social partners with a view to informing workers about the nature of the behavior in question and the available remedies. It also asked the next report to provide information on the activities, specifically related to sexual harassment, that have been undertaken in the context of the awareness-raising programme on psychological burden launched in cooperation with the European Occupational Safety and Health Agency (EU – OSHA).

The Committee notes the information provided in the report concerning the relevant activities that were implemented during the reference period (notably in the context of the abovementioned programme), including public campaigns, networking sessions, discussions with industries and sectors, development of tools and dissemination of research findings and practical knowledge, provision of information – including a factsheet and an action plan – on sexual harassment and discrimination at work on the website of the Ministry of Social Affairs and Employment.

Liability of employers and remedies

The Committee notes from the report that during the reference period there were no new developments concerning the liability of employers and the remedies available in relation to sexual harassment (see Conclusions 2014).

In reply to the Committee's question concerning the protection provided to victims of sexual harassment against retaliation for upholding their rights (Conclusions 2014), the report states that employees have the right to raise issues of harassment, including about being penalised for upholding their rights before the works council and/or a confidential adviser. Employees also have the right to lodge a complaint before the Netherlands Institute for Human Rights (under the Equal Treatment Act) or before the civil courts (under the Civil Code) if they believe they are being penalised for asserting their rights.

Burden of proof

The Committee notes that, on this issue, there have been no changes to the situation which it previously found to be in conformity with the Charter (see Conclusions 2014).

Damages

In its previous conclusion (Conclusions 2014), the Committee asked for comprehensive and updated information on the relevant case law concerning sexual harassment, including information on damages awarded. On this point, the report refers to a legal database (jure.nl), without providing the specific information requested. The Committee notes from the European Network of Experts in Gender Equality and Non-Discrimination (The Netherlands, country report – non-discrimination, 2017) that in civil and administrative court cases compensation for both material and non – material damages can be requested and no

ceiling applies in this respect. However, according to the FNV, it is very difficult in practice for a victim to be awarded compensation for moral damage, because under the relevant provisions of the Civil Code there must be a tangible damage, and it is difficult to prove the existence of intangible damage or the causal link between harassment and psychological damage. The Committee asks the next report to clarify this point; moreover, it reiterates its request for updated information on any examples case law or other evidence of the effectiveness of remedies, whether judicial, administrative or other kind, in particular as regards to the range of damages awarded in cases of sexual harassment. The Committee points out that in the absence of information in the next report there will be nothing to establish that the situation is in conformity with the Charter in this respect.

The Committee also notes from the abovementioned report of the European Network of Experts in Gender Equality and Non-Discrimination that victims of discriminatory dismissals can demand to be reinstated (as of 1st July 2015, they can also request a reasonable compensation, instead of the annulment of the termination of employment). However, the Netherlands Trade Union Confederation states that in cases of sexual harassment there is often agreement between the employee and the employer to terminate the employment relationship, which is often accompanied by a confidentiality clause, according to which the victim of sexual harassment may not reveal the grounds of the termination of the employment relationship. The Committee asks the next report to provide comments in this regard. Furthermore, as the report does not clarify, as requested (Conclusions 2014), whether reinstatement is also possible when employees have been pressured to resign because of the sexual harassment suffered, the Committee reiterates its question on this point.

Conclusion

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

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 Netherlands as well as in the Comments submitted by the Netherlands' Trade Union Confederation (FNV).

Prevention

The Committee previously noted the employers' legal obligations in respect of prevention of psychosocial burden, including harassment, under the Working Conditions Act (see Conclusions 2014 for details), the respect of which is monitored by the Social Affairs and Employment Inspectorate. It asked the next report to provide updated information on the preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment, in particular those taken in consultation with social partners with a view to informing workers about the nature of the behavior in question and the available remedies. It also asked the next report to provide information on the activities, specifically related to moral harassment, that have been undertaken in the context of the awareness-raising programme on psychological burden launched in cooperation with the European Occupational Safety and Health Agency (EU – OSHA).

The Committee notes the information provided in the report concerning the relevant activities that were implemented during the reference period (notably in the context of the abovementioned programme), including public campaigns, networking sessions, discussions with industries and sectors, development of tools and dissemination of research findings and practical knowledge, provision of information – including a factsheet and an action plan – on harassment and discrimination at work on the website of the Ministry of Social Affairs and Employment.

Liability of employers and remedies

In its previous conclusion (Conclusions 2014), the Committee asked the next report to clarify how moral harassment is defined and prohibited. In reply, the report indicates that, pursuant to the Working Conditions Act, moral harassment is considered to be a psychosocial stressor and, as such, it qualifies as a form of discrimination. Although this Act does not provide a specific definition of moral harassment, the Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination (The Netherlands, country report non-discrimination, 2017) that the General Equal Treatment Act (GETA) defines harassment as "conduct related to the characteristics or behavior on the grounds covered by the Act, including race, religion, sexual orientation and which has the purpose of effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment". Harassment is prohibited by GETA and similar prohibitions apply according to the Age Discrimination Act (ADA) and the Disability Discrimination Act (DDA). This prohibition extends not only to the employer, but also to anyone who acts on their behalf.

As regards the Committee's request for information on the legal remedies, which are available to victims of harassment, the report indicates that according to the Working Conditions Act employers who are aware or could reasonably be expected to know that their actions could put into danger the health of their employees can be held criminally liable. Furthermore, according to the Civil Code (articles 7:658; 6:162 and 6:10) and the Equal Treatment Act, persons that are victims of harassment have the right to claim damages from the perpetrator or to compel the employer to take other measures.

In response to the Committee's request for information (Conclusions 2014), on any specialized bodies that register and investigate complaints of harassment, such as mediation services and advice centers, the report indicates that the Netherlands Institute for Human

Rights is a specialized body on harassment issues, in conformity with the GETA. In addition, employers can establish a complaints procedure and complaints committee and appoint a special counselor.

In its previous conclusion (Conclusions 2014), the Committee also asked whether employers can be held liable towards persons working for them who are not their employees (subcontractors, self- employed persons, etc.) and have suffered psychological harassment on their business premises or from employees under their responsibility. It also asked whether the liability of employers towards workers (whether they are employees or not) also applies in cases of psychological harassment suffered by persons not working for them (such as customers, visitors, etc).

In reply, the report confirms that the employers' obligation to protect their employees from stressors at work, including harassment and that this obligation to prevent or minimize bullying in the workplace applies also to any contact their employees may have with third parties, such as visitors or customers. The Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination (The Netherlands, country report-non-discrimination, 2017) that the person exercising authority may be held responsible for acts of discrimination, including harassment by employees or third parties (provided they do not take appropriate action against such offences). According to the case law of the Dutch civil courts (including the Supreme Court), these individuals can also be held responsible and accountable under general civil law provisions/procedures. The Committee notes from the same source that protections against harassment also covers protection against retaliation.

According to the comments submitted by the FNV, the monitoring capacity of the Social Affairs and Employment Inspectorate is inadequate to ensure, in practice, a sufficient protection of workers against harassment at work, particularly in respect of abuses against foreign workers. The Committee asks the next report to comment on this allegation and indicate the measures taken, if any, to address this issue.

Burden of proof

The Committee notes that, on this issue, there have been no changes to the situation which it previously found to be in conformity with the Charter (see Conclusions 2014).

Damages

In its previous conclusion (Conclusions 2014), the Committee noted that victims of harassment could claim compensation for pecuniary and non-pecuniary damages under the tort law and requested more detailed information and examples of case law concerning remedies that are available to employees who suffered from harassment at work, compensation awarded for material and moral damages before civil or administrative courts and reinstatement in the event of unlawful dismissal.

The report refers to a legal database (jure.nl), without providing the specific information requested. The Committee notes from the European Network of Experts in Gender Equality and Non-Discrimination (The Netherlands, country report – non-discrimination, 2017) that in civil and administrative court cases compensation for both material and non – material damages can be requested and no ceiling applies in this respect. However, according to the FNV, it is very difficult in practice for a victim to be awarded compensation for moral damage, because under the relevant provisions of the Civil Code there must be a tangible damage, and it is difficult to prove the existence of intangible damage or the causal link between harassment and psychological damage. The Committee reiterates its request for relevant examples of case-law on this issue.

The Committee also notes from the abovementioned report of the European Network of Experts in Gender Equality and Non-Discrimination that victims of discriminatory dismissals

can demand to be reinstated. It asks the next report to clarify whether reinstatement is also possible when employees have been pressured to resign because of moral (psychological) harassment.

Conclusion

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

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

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

The Committee previously concluded that the situation in the Netherlands was in conformity with Article 28 of the Charter pending receipt of information on compensation and facilities granted to workers' representatives.

Protection granted to workers' representatives

The Committee previously asked the next report to indicate whether adequate compensation proportionate to the damage suffered by the workers' representative who is dismissed is granted. The report confirms that damages are payable if a workers representative has been found to be unlawfully dismissed and states depending on the circumstances may be substantial.

Facilities granted to workers' representatives

In response to the Committee's question the report states that the basic principle is that time spent on works council business counts as working time. The works council is bound to arrange as far as possible for its work to be performed during normal working hours. If this is impossible, the member must be paid or compensated for the extra time. This can be done in various ways, for example by temporarily adjusting the employment contract, by recording and paying the extra hours as overtime or by granting time off in lieu. Works council members may also treat the following activities as works council business for this purpose, namely preparing for meetings, keeping in contact with the people they represent, getting information online, in journals and from consulting in-house and external experts and taking training courses in works council-related matters. Once again, they should be either paid for these hours or given time off in lieu. Payment for overtime is made in accordance with the normal definition of wages within the company or sector concerned.

By virtue of an amendment to the Works Council Act the employer and the works council have to negotiate between them the costs and budget for training and education. The costs are borne by the employer. The new Act, also explicitly states that works council members are entitled to at least five days of training and education 'of sufficient quality'. As a result of this change, works councils have shifted from comprehensive standard training to more focused training.

The Committee concludes the situation is in conformity in this respect.

Conclusion

The Committee concludes that the situation in the Netherlands 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 the Netherlands. It also notes the information contained in the observations presented on 23 January 2018 by the Netherlands Trade Union Confederation (FNV).

Prior information and consultation

In its previous conclusion (Conclusions 2014), the Committee asked what rules applied with regard to prior information and consultation.

In reply, adding to the information provided previously, the report states that employers are required to notify the trade unions concerned about the collective redundancies concerned in writing. In accordance with section 4, subsections 1 and 2, of the Collective Redundancy (Notification) Act, employers must communicate various documents to trade unions, namely the reasons for the collective redundancies planned; the number of employees they plan to make redundant, broken down according to occupation/position, age and gender, together with the number of people usually employed; the method for calculating any redundancy payment; the dates on which it is planned to terminate employment contracts; the criteria for redundancy and information on the order in which redundancies will take place.

The Committee notes from the report that under section 3, consultations must always address ways and means of avoiding collective redundancies or reducing the number of workers affected and of mitigating the consequences (through recourse to accompanying social measures aimed at redeploying or retraining the workers concerned).

Employers are also required to inform works councils and give them the opportunity to give their opinion on any proposed decision. Section 25, subsection 1, of the Works Councils Act lists the grounds for such consultation (intention to reorganise resulting in redundancies, major downsizing of the undertaking, etc.). Under section 25, subsection 3, works councils must receive a statement of the reasons for the decision and the consequences for people employed in the undertaking, and information on the measures proposed to deal with the consequences (social measures envisaged).

The Committee concludes that the situation is in conformity with the Charter in this respect.

Preventive measures and sanctions

In its previous conclusion (Conclusions 2014), the Committee asked what rules applied with regard to preventive measures and sanctions.

In reply, the report states that if employers fail to comply with their obligations under the Collective Redundancy (Notification) Act, the redundancies can be cancelled. Under section 7, employees may apply to the limited jurisdiction sector of the district court for an order quashing the termination agreement. In addition to the sanctions explicitly included in the Act, trade unions may apply to the courts under the general principles of civil law for an order requiring the employer to fulfil its obligations under the Act (see report for more details).

If the employer does not meet its obligations under the Works Councils Act, the works council may ask the courts to order the undertaking to fulfil its obligations. Under section 36, subsection 5, of the Works Councils Act, undertakings are bound to comply with such obligations (see report for more details).

The Committee concludes that the situation is in conformity with the Charter in this respect.

Conclusion

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