March 2019

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-3 (2018)

CZECH REPUBLIC

This text may be subject to editorial revision.

The following chapter concerns the Czech Republic which ratified the 1961 Charter on 3 November 1999. The deadline for submitting the 15th report was 31 October 2017 and Czech Republic submitted it on 24 October 2017.

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

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The Czech Republic has accepted all provisions from the above-mentioned group except Article 4§1.

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

The conclusions relating to the Czech Republic concern 16 situations and are as follows:

– 6 conclusions of conformity: Articles 2§2, 2§4, 6§1, 6§3 and Articles 2 and 3 of the Additional Protocol;

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

In respect of the other 3 situations related to Articles 2§3, 4§3 and 4§5, 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 Czech Republic under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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The next report to be submitted by the Czech Republic 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 Czech Republic.

In its previous conclusion (Conclusions XX-3 (2014)), the Committee found that the situation in the Czech Republic was not in conformity with Article 2§1 of the 1961 Charter on the ground that rest periods could be **reduced to a period** of 8 hours within 24 consecutive hours for employees in various occupations.

The Committee notes from the report that Czech legislation allows employees to work exceptionally up to 16 hours within a shift and the following period of overtime. These are extraordinary and marginal situations which occur only for exceptional reasons. According to the report, employers may only require such work to be performed in sudden, unforeseen circumstances which cannot be planned for in advance. Under Article 93(2) of the Labour Code, overtime may not exceed eight hours per week or 150 hours per year. The Committee notes from the same article that the number of overtime hours is calculated over a maximum period of 26 weeks in a row and this period can only be extended to a maximum of 52 weeks in a row under the relevant collective agreement. However, the Committee notes that under Article 93(4) of the Labour Code, overtime which has been offset by a compensatory rest period is not included in the limits cited above. Bearing in mind that standard working hours can already be long (see Conclusions 2014, Article 2§1) and the fact that overtime offset by a compensatory rest period is not covered by the limits set by the Labour Code, the Committee finds that the duration of working hours is not always reasonable.

The Committee notes from the report that uninterrupted rest periods between two shifts may not be shorter than 8 hours over 24 consecutive hours. Such periods may only be reduced when employees' subsequent rest periods are extended by the time by which their preceding rest periods were reduced.

In its previous conclusion (Conclusions XIX-3 (2010)), the Committee noted that the reference period for a new form of working time arrangement (the "working hours account"), which enabled employers to react to fluctuations in production and regulate employees' working hours in a more efficient manner, should in principle not exceed 26 weeks, but could be extended to a maximum of 52 weeks by collective agreement. It asked whether this possibility was subject to any objective or technical reasons or reasons concerning the organisation of work (or whether it was limited to certain sectors of activity, organisations or professions). The Committee repeats its question. It also asks for further information confirming that workers who have agreed to the new arrangements for organising working time over long reference periods are neither subject to unreasonable working hours nor expected to work for an excessive number of long working weeks. In the meantime, the Committee reserves its position on this point.

The Committee notes from EUROSTAT data that the number of hours worked per week by full-time employees fell slightly from 41.8 in 2013 to 41.4 in 2016. According to OECD statistics, the average number of hours worked per year per worker was 1763 in 2013 and 1770 in 2016.

The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period or not.

Lastly, the Committee asks for information in the next report on the work 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 Czech Republic is not in conformity with Article 2§1 of the 1961 Charter on the ground that the daily working hours may be extended up to 16 hours in a number of activities.

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 Czech Republic.

It notes that the situation which it previously found to be in conformity with the Charter (Conclusions XX-3 (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 public holidays with pay.

Conclusion

The Committee concludes that the situation in the Czech Republic is in conformity with Article 2§2 of the 1961 Charter.

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

The Committee notes that the Czech Republic's report contains no information on Article 2§3 of the Charter.

It refers to its previous conclusion (Conclusions XX-3 (2014)) in which it considered that the situation was in conformity with the Charter, pending receipt of the requested information. The report does not provide any information, the Committee reiterates its request, namely, whether the law provides for a minimum length of annual holiday to be taken during the year giving rise to the entitlement to leave or whether an employer can postpone to the subsequent year the whole standard period of annual leave, that is, four weeks. In the meantime, the Committee defers its conclusion on Article 2§3 of the Charter.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

It notes that the situation which it previously found to be in conformity with the Charter (Conclusions XX-3 (2014)) remained the same during the reference period, and therefore reiterates its finding of conformity. It asks for updated information in the next report on any changes to the legal framework concerning elimination of risks in dangerous or unhealthy occupations.

Conclusion

The Committee concludes that the situation in the Czech Republic is in conformity with Article 2§4 of the 1961 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 the Czech Republic.

In its previous conclusions (Conclusions XX-3 (2014), XIX-3 (2010), XVIII-2 (2007), XVII-2 (2005) and XVI-2 (2003)), the Committee considered that the situation was not in conformity with Article 2§5 of the Charter on the ground that agricultural workers could, pursuant to collective agreement or individual contract, postpone weekly rest resulting in an excessive number of consecutive working days.

As the situation has not changed, the Committee reiterates its finding of non-conformity.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 2§5 of the 1961 Charter on the ground that agricultural workers may, pursuant to collective agreement or individual contract, postpone weekly rest, resulting in an excessive number of consecutive working days.

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 Czech Republic.

In its previous conclusion (Conclusions XX-3 (2014)), the Committee found that the situation was not in conformity with Article 4§2 of the 1961 Charter on the ground that compensatory time off for more hours than the overtime hours worked was not guaranteed. Since there has been no change in this situation, the Committee reiterates its finding of non-conformity.

In reply to a request for clarification regarding negotiated pay, the report states that management staff are entitled to a higher negotiated wage (even when they do not work overtime) if this pay is negotiated at the same time as the scope of overtime (as reflected in the employment contract). The Committee notes from the report that a delimitation of the scope of working hours is a prerequisite for negotiating higher monthly pay. The report clarifies that the purpose of this legislation is to simplify the administrative procedure for the calculation of wages.

According to the report, if the amount of overtime is lower than 150 hours per year and management staff go over the limit, the formula applied is the same as that for calculating overtime (the standard wage plus at least 25% of the average wage of the employee in question).

Conclusion

The Committee concludes that the situation in Czech Republic is not in conformity with Article 4§2 of the 1961 Charter on the ground that an increased compensatory time-off for overtime hours is not guaranteed.

Article 4 - Right to a fair remuneration

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

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

Conclusion

Pending its decision concerning UWE v. Czech Republic, complaint No. 128/2016, 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 Czech Republic.

In reply to the Committees previous conclusion of non-conformity on the ground that notice periods and/or amount of severance pay was not reasonable for employees with more than 10 years of service (Conclusions XX-3 (2014)), the report indicates that the Labour Code sets a minimum period of notice of two months and regulates the issue of severance pay in Article 67 (see also Conclusions XX-3 (2014)). The report provides the example of an application of these provisions, according to which an employee with more than two years of service, is entitled to two months' notice and an additional severance pay of at least three months average wages. The report states that collective agreements or internal rules can provide for a longer period of notice and a higher severance pay.

However, the Committee notes from the Labour Code that severance pay, as provided for by Article 67 of the Labour Code, does not apply in cases of dismissal on grounds provided for by Article 52§1 (e) to (h) of the Labour Code (long-term incapacity as result of the state of health; unsuitability for the post; grounds that could justify immediate dismissal or less serious breaches of the employment contract; breach of obligations related to the prescribed regime for temporary incapacity and permitted leavs). In these cases, the employee is entitled to two months' notice period. The Committee requests information on grounds that could justify immediate dismissals referred to in Article 52§1(g) of the Labour Code. Meanwhile it concludes that the situation is not in conformity with Article 4§4 of the 1961 Charter on the ground that two months' period of notice, applicable to dismissals on grounds of long-term incapacity as a result of state of health; unsuitability for the post and breach of obligations related to the prescribed regime for temporary incapacity and permitted leaves, is not reasonable for employees with more than 10 years of service.

In reply to the Committee's previous question (Conclusions XX-3 (2014)) on notice period applicable during the probationary period, the report states that no notice applies to dismissal during the probationary period, which may last up to 3 months and up to 6 months for managerial employees. The Committee considers that the situation is not in conformity with Article 4§4 of the 1961 Charter on the ground that no notice period is provided for dismissals during the probationary period.

The report provides information on employees on fixed-term contracts, however it does not provide clear information regarding the notice period, if any, applicable to early termination of fixed-term contracts. The Committee requests information on the notice period where there is early termination of the contract.

In reply to the Committee's question on notice period and/or severance pay applicable to tenured civil servants and contractual staff in the civil service, the report states that the conditions of termination of employment of civil servants are regulated by the Civil Service Act No. 234/2014, as amended. In case of termination of service under Article 72§1(d), the civil servant is also entitled to compensation amounting to three months' wages for up to three years of service; six months' wages for three to six years of service; nine months' wages for six to nine years of service and twelve months' wages for more than nine years of service. A notice period of 60 days applies where a civil servant is dismissed on the ground of two consecutive staff assessments with poor results (Article 72§1 (b) of the Civil Service Act) or lack of requirements for the post (Article 72§1 (c).

In its previous conclusion (Conclusions XX-3 (2014)) the Committee asked what rules apply for other causes of termination of employment such as bankruptcy, invalidity or the death of the employer. According to Article 48§ 4 of the Labour Code, in case of death of the employer, who is a natural person, the labour relationship ends immediately, unless the business is to be continued, when the notice period is three months. Furthermore, in case of

bankruptcy the period of notice of termination of employment is 2 months. The Committee concludes that the situation is not in conformity with Article 4§4 of the 1961 Charter on the ground that no notice period is provided for in case of termination of employment upon death of the employer.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 4§4 of the 1961 Charter on the grounds that:

- the two months' notice period provided for dismissals on grounds of long-term incapacity, unsuitability for the post and breach of obligations related to the prescribed regime for temporary incapacity and permitted leave, is not reasonable for employees with more than 10 years of service;
- no notice period is provided for dismissals during the probationary period or in case of termination of employment upon death of the employer if the business is discontinued.

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 Czech Republic.

It refers to its previous conclusion (Conclusions XX-3 (2014)) in which it considered that the situation was in conformity with the Charter, pending receipt of the information requested. It also reiterates its requests for information. In particular, the Committee asks that the next report provide information on whether wage deductions, taken individually or in combination, approved by agreement to settle liabilities towards third parties, by collective agreements to recover trade union membership fees and by Article 551 of the Civil Code to recover maintenance payments are subject to the deduction and/or seizure limits established by Ar. 278 of the Code of Civil Procedure, by Living and Subsistence Minima Act of 14 March 2006 (No. 110/2006) and by Government Regulation No. 595/2006. It also asks for explanation of how the seizure limits set by Government Regulation No. 595/2006 are combined with those set by Articles 278 and 279 of the Code of Civil Procedure. It then asks for information on the impact of the Law No. 347/2010 of 12 August 2010 amending several laws in relation with austerity measures adopted by the Ministry of Labour and Social Affairs and/or the Law No. 264/2011 of 6 November 2011 amending some acts in relation with austerity measures in the competence of the Ministry of Labour and Social Affairs.

Conclusion

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

Article 5 - Right to organise

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

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. Therefore it will only consider recent developments and additional information in this conclusion.

Freedom to Join or not to join a trade union

The report provides information on legislation in force which protect employees from discrimination on grounds of trade union membership and/or activities notably the Anti Discrimination Act and the recently amended Labour Code and Employment Act.

Personal scope

The Committee previously notes that members of the Security and Intelligence Service (SIS) were prohibited from joining trade unions and from forming any type of association to protect their economic interests. The Committee recalls, even if it were to accept that SIS formed part of the armed forces, that Article 5, of the Charter allows States Parties to impose restrictions upon the right to organise of members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as the blanket prohibition of professional associations of a trade union nature and of the affiliation of such associations to national federations/confederations, military representative associations should under certain conditions be entitled to affiliate with national employees organisations.[1]

The Committee seeks confirmation that members of the armed forces are also prohibited from forming or joining professional organisation and rfers to its general question on the issue.

As members of the SIS are prohibited from forming any type of professional association for the protection of their economic interests the Committee concludes that the situation is not in conformity with the 1961 Charter.

Conclusion

The Committee concludes that the situation in Czech Republic is not in conformity with Article 5 of the 1961 Charter on the ground that members of the SIS are prohibited from forming any type of professional association for the protection of their economic interests.

[1] *European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, Decision on the merits of 27 January 2016, §82, European Organisation of Military Associations (EUROMIL) v. Ireland Complaint No. 112/2014, Decision on the merits of 12 September 2017.*

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee notes that there have been no changes to the situation, which it previously considered to be in conformity with Article 6§1 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Czech Republic is in conformity with Article 6§1 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

Legislative framework

The Committee refers to it previous conclusions (Conclusions XVII-1 (2004),VIII-1 (2006)and XX-3 (2014)) for a description of the rules governing collective bargaining in the private and public sectors and recalls that it previously held the situation in the Czech Republic to be in conformity with Article 6§2 of the 1961 Charter.

Conclusion of collective agreements

In its previous conclusion, considering the low coverage of collective bargaining, the Committee asked that the next report provide information on the measures taken by the Government to promote machinery for voluntary negotiations.

According to the report the Ministry of Labour and Social Affairs (MLSA) keeps records of higher-level collective agreements. Company level agreements are not registered. However the MLSA conducts limited statistical surveys and monitors employee and labour and payroll conditions of employees and other agreed benefits in collective agreements, including company level agreements, to monitor and analyse collective bargaining in the Czech Republic and to get an overview of collective bargaining trends. However, there is no data on the scope of collective bargaining.

As regards promotion of collective bargaining the MLSA is a body within the framework of the Economic and Social Council (a tripartite body composed of representatives of the government (ministers) and senior representatives of trade unions and employers' associations), which actively participated in the conclusion of the first ever high level collective agreement for state employees.

The report states that the MLSA makes a contribution to trade union organizations and employers' organizations to support mutual negotiations at national or regional level concerning the important interests of workers thus indirectly promoting the development of collective agreements.

According to Eurofound collective agreement coverage in 2016 was approximately 34%. The Committee notes that this is still low. The Committee recalls that according to Article 6§2, if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place are, collective bargaining should remain free and voluntary (Conclusions I, Statement of Interpretation on Article 6§2). The Committee notes that the report does not indicate the concrete positive measures taken by the Czech Republic in order to facilitate and encourage the conclusion of collective agreements. The Committee considers that the conclusion of collective agreements is not sufficiently encouraged in practice, as it results in a limited number of workers being covered by collective agreements. Therefore, the situation is not in conformity with Article 6§2 of the Charter on this point.

Conclusion

The Committee concludes that the situation in Czech Republic is not in conformity with Article 6§2 of the 1961 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 Czech Republic.

The report provides a description of the conciliation and arbitration procedure in the Czech Republic. The Committee notes that there have been no changes to the situation which it previously found to be in conformity with the 1961 Charter.

Conclusion

The Committee concludes that the situation in Czech Republic is in conformity with Article 6§3 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

Collective action: definition and permitted objectives

The Committee previously examined the situation under this heading and found it to be in conformity with the 1961 Charter (Conclusions XVIII-1 (2006)). The report indicates that there has been no change to the situation in this regard.

Entitlement to call a collective action

Pursuant to Section 17 of the Collective Bargaining Act No. 2/1991 as amended, the right to call a strike in disputes regarding the conclusion of collective agreements is subject to a majority requirement of two-thirds of the votes cast and a quorum requirement of 50% of the employees concerned by the agreement. In this regard. The Committee previously concluded that the situation is not in conformity on the ground that these thresholds are too high.

The report indicates that there has been no change to this situation therefore the Committee reiterates it previous conclusion of non conformity.

Specific restrictions to the right to strike and procedural requirements

The Committee previously requested further information on the categories of employees who are prohibited from striking and the justifications for these. According to the report Article 27 Sec. 4 of the Charter of Right and Freedoms excludes the right to strike judges, prosecutors, members of the armed forces or security forces. The right to strike is completely denied to those individuals. The term "judges" means judges of ordinary courts and the Constitutional Court. The term "prosecutors" means, in accordance with Article 109 of the Constitution of the Czech Republic, a public prosecutor. The "embers of the Armed Forces are soldiers in service within the meaning of Section 3 (3) of Act No. 219/1999 Coll., regulating the Armed Forces of the Czech Republic. Members of security forces according to Sec. 1 Subsec. 1 of Act No. 361/2003 Coll., On the Service of Members of "Security Forces" are meant members of Police, Fire and Rescue Guard, Customs Administration, Prison Service, Security Information Service and the Office for Foreign Relations and Information.

The Committee recalls that as regards the right of public servants to strike, it recognises that, by virtue of Article 31 of the 1961 Charter, the right to strike of certain categories of public servants may be restricted, including members of the police and armed forces, judges and senior civil servants. On the other hand, the Committee takes the view that a denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter" (Conclusions I (1969), Statement of Interpretation on Article 6§4). Under Article 31 of the 1961 Charter, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc. Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (ETUC) v. Bulgaria, Complaint No. 32/2005, decision on the merits of 16 October 2006, §46).

In particular concerning police officers, the Committee has held that an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it. (EuroCOP v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §211).

Therefore the Committee considers that the total prohibition of the right to strike for the police, fire and rescue service, prison service, customs administration, Security Information

Service and the Office for Foreign Relations and Information, with no justification under Article 31 of the 1961 Charter cannot be in conformity with Article 6§4 of the 1961 Charter.

The Committee previously found that the time that must elapse before mediation attempts are deemed to have failed and strike action can be taken was excessive. The report states that the period of 30 days provided for in Sec. 12. 2 of Collective Bargaining Act was reduced to 20 days from 7 June 2006. The Committee notes that this is an improvement in the situation.

Consequences of a strike

The Committee has previously examined the situation and found it to be in conformity with the 1961 Charter (Conclusions XVIII-1 (2006)). There has been no change to this situation.

Conclusion

The Committee concludes that the situation in Czech Republic is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- the percentage required for calling a strike in disputes regarding the conclusion of collective agreements is too high;
- there is an absolute prohibition on the right to strike for members of the police, fire and rescue service, prison service and the Office for Foreign Relations and Information.

Article 2 of the 1988 Additional Protocol - Right of workers to be informed and consulted

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

The Committee notes that there have been no changes to the situation, which it previously considered to be in conformity with Article 2 of the Additional Protocol to the 1961 Charter.

Conclusion

The Committee concludes that the situation in Czech Republic is in conformity with Article 2 of the Additional Protocol to the 1961 Charter.

Article 3 of the 1988 Additional Protocol - 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 Czech Republic.

The Committee notes that there have been no changes to the situation, which it previously considered to be in conformity with Article 3 of the Additional Protocol to the the 1961 Charter.

Conclusion

The Committee concludes that the situation in Czech Republic is in conformity with Article 3 of the Additional Protocol to 1961 Charter.