



March 2019

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-3 (2018)

DENMARK

This text may be subject to editorial revision.

The following chapter concerns Denmark which ratified the 1961 Charter on 3 March 1965. The deadline for submitting the 37th report was 31 October 2017 and Denmark submitted it on 15 April 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":

- 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).

Denmark has accepted all provisions from the above-mentioned group except Articles 2§1, 2§4, 4§4 and 4§5.

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

The conclusions relating to Denmark concern 13 situations and are as follows:

– 7 conclusions of conformity: Articles 2§3, 2§5, 4§2, 6§1, 6§3 and Articles 2 and 3 of the Additional Protocol;

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

In respect of the other 2 situations related to Articles 4§1 and 4§3, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Denmark 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 3 of the Additional Protocol

The report provides information on the progress concerning the new strategy relating to the working environment up to 2020 aimed at reducing the number of serious accidents, the number of employees who are psychologically overloaded and the number of employees who experience musculoskeletal disorders and states the creation of a midterm study supporting the achievement of the goals. It further states that an expert committee on how to enhance the undertaken efforts has been established.

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

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The 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 2 - Public holidays with pay

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

It was previously noted that no general legislation regulates public holidays with pay (Conclusion XIV- 2 (1998)), but that in practice most workers are covered by collective agreements which generally provide for public holidays with pay.

In the last conclusions (Conclusions XX-3 (2014)) the Committee deferred its conclusion and requested clarification under what circumstances work is allowed during public holidays and whether an increased salary is paid for work on public holidays.

The report states that work on public holidays is considered to be extraordinary and has to be particularly justified. Extra pay is given for work done on a public holiday.

However additional pay for work on public holidays is regulated by collective agreements and according to the report there is no available statistical information as to the rate of the increased salary.

The Committee concludes that situation is not in conformity with Article 2§2 of the 1961 Charter on the ground that it has not been established that workers receive a sufficiently increased salary for work on public holidays.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 2§2 of the 1961 Charter on the ground that it has not been established that workers receive a sufficiently increased salary for work on public holidays.

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 Denmark.

The Committee recall from its previous conclusions that under Section 13, subsections 3-6 of the Holiday Act, entered into force on 1 May 2012, workers are allowed to interrupt their holidays in case of sickness or accident during their annual leave.

The report states that the Danish Holiday Act can be derogated from in collective agreements so it can be adapted to the various industries. However the right to five weeks of annual holiday is a minimum standard which cannot be derogated from.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 2§3 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 Denmark.

The Committee previously considered the situation to be in conformity with the Charter on the ground that the Danish Work Environment Authority (WEA) had not approved any agreements or given dispensations to more than 12 days between two weekly rest periods. It asked the next report to provide updated information in this respect.

The report explains in detail the process of dispensation from the weekly rest period repeating the information given in the previous report and states that the WEA rarely grants such exemptions but also states that as regards the question raised by the Committee no information is currently available.

The Committee reiterates its request for information on whether the WEA has approved any agreements or given dispensations to more than 12 days between two rest periods.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 2§5 of the 1961 Charter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

It previously concluded (Conclusions XVIII-2 (2007), XIX-3 (2010) and XX-3 (2014)) that the situation was in conformity with Article 4§1 of the 1961 Charter.

The report reiterates that minimum wages are determined for each sector under collective agreements, which cover nearly 60% of employees in the private sector and almost 100% in the public sector, amounting to about 80% overall coverage. According to the report, in sectors not covered by collective agreements the latter have a spill over effect, since workers' organizations verify that no "wage dumping" takes place and pressure employers to conclude agreements if necessary.

It considers in the present case that on the basis of figures provided for 2012 the typical net minimum wage represents 77.33% of the net average wage and thus constitutes a decent remuneration according to Article 4§1 of the 1961 Charter. However recent data is not provided.

The Committee points out that to be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. Where net figures are difficult to establish, it is for the state party concerned to conduct the needed enquiries or to provide estimates. Where the net minimum wage is between 50% and 60% of the net average wage, it is for the state party to establish that this wage permits a decent standard of living.

The Committee asks the next report to provide updated figures concerning the average annual wage and typical minimum wage as paid in the wholesale and retail sector under the terms of the relevant collective agreement.

Conclusion

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

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 Denmark.

In its previous conclusion (Conclusions 2014), the Committee deferred its conclusion requesting further information

- whether workers in the private sector had adequate legal guarantees ensuring them increased remuneration for overtime;
- whether under flexible working time arrangements there are limits to daily and weekly working hours.

The report reiterates that overtime pay is regulated by collective bargaining. The social partners make sure that there are no breaches in their collective agreements concerning overtime. The report also confirms, as requested in the previous conclusions (Conclusions XX-3 (2014)), that the level of overtime pay according to collective agreements also has a significant spill over effect in fields that are not covered by any collective agreement (i.e. the overtime pay within these fields is at the same level as within the fields covered by collective agreements). Since overtime pay is a part of the wage, the trade unions also supervise that no “wage dumping” takes place on the part of non-organised employers in relation to overtime pay.

As regards the second, the Committee notes that the report provides no information on flexible working time arrangements.

The Committee reiterates its request and asks the next report to answer the question whether under flexible working time arrangements there are any limits to daily and weekly working hours that the workers may be asked to perform.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 4§2 of the 1961 Charter.

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 Denmark.

Legal basis of equal pay

The legal basis was analysed by the Committee in its conclusions under Article 20 (Conclusions XX-1 (2012) and Conclusions XXI-1(2016)). It noted that the Equal Pay Act prohibits discrimination against women and men in pay. The Committee asks the next report to provide updated information on this issue.

Guarantees of enforcement and judicial safeguards

The Equal Pay Act provides protection against discrimination, and such cases are dealt with by the courts of law, the Board of Equal Treatment and industrial arbitration. The report does not give any information on the cases dealt with during the reference period, and the Committee asks on the case law developed by the courts and the Board of Equal Treatment regarding discrimination on the basis of gender in employment and equal pay.

Methods of comparison

The Committee refers to its conclusion under Article 20 (Conclusions XX-1) where it noted from the report that the current case law only deals with comparisons within the same company. Under Article 20 of the Charter (Article 1 of the Additional Protocol of 1988), equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings.

The Committee asked therefore whether pay comparisons outside the company are possible in equal pay litigation cases, when the difference identified in the pay conditions of female and male workers performing work of equal value is attributable to a single source. The report states on this respect that pay comparison across companies and/or outside the company is not part of the existing rules on gender-segregated pay statistics, which applies to companies and/or entities. Furthermore the collective bargaining system is to a large extent based on wages being negotiated locally and therefore the gender pay comparison is dealt with at a company or entity level. The Committee therefore takes note that wages and pay depends ultimately on individual negotiation, but requests for further information on pay transparency, and on whether pay comparison accross companies is possible not only in the legislation, but also in cases on equal pay, and what is the practice followed.

Statistics

The undadjusted gender pay gap in Denmark, according to EUROSTAT data of 2016, stood at 15%, while in 2011 it stood at 16.3%.

There is no information on the report on the gender pay gap, but the Committee takes note of the factsheet prepared by the European Union on Danemark, in which it is referred to the main factors that contribute to the gender pay gap. One is the fact that women take important unpaid tasks, such as household work and caring for children and relatives, which is reflected in working part-time. Women also tend to stay periods off the labour market more often than men and there is a seggregation in education and in the labour market. This means that in some sectors and occupations, women tend to be overrepresented, while in others men are overrepresented. Occupations predominantly carried out by women, such as teaching or sales, offer lower wages than occupations predominantly carried out by men, even when the same level of experience and education is needed. Finally, management and supervisory positions are overwhelmingly held by men. Pay discrimination, according to this

factsheet, while illegal, continues to exist. The Committee therefore asks for further information on measures taken addressing the gender pay gap.

Policy and other measures

The Conclusions further indicated that in June 2014, the Danish Government amended the Equal Pay Act and adopted new legislation to extend the obligation to prepare annually gender-segregated pay statistics from employers employing 35 workers or more to employers employing 10 workers or more, of which at least 3 are men and 3 are women. This extended the scope of the regulation from approximately 2.24 million employees and 3.500 enterprises to approximately 2.7 million employees and 13.000 enterprises. However, the report indicates that the legislation has been revised again on this point in 2016, and that the threshold for drawing up gender-segregated pay-statistics has changed again from 10 to 35 employees.

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 Denmark.

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.

Personal scope

The Committee takes note from the information contained in the report submitted by Denmark that there have been no changes to the situation, which it previously considered not to be conformity on the ground that the legislation on the International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark. This restriction impairs the right of non-resident seafarers engaged on vessels entered in the Register to be fully represented by their trade unions, and the right of Danish trade unions to effectively protect the social and economic interests of such workers.

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

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 5 of the 1961 Charter on the ground that the legislation on the International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee takes note from the information contained in the report submitted by Denmark 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.

The report states that any independent trade union can take part in collective bargaining as established the Danish Labour Court but confirms that tripartite cooperation only takes place between the Government and the social partners at a central level.

Conclusion

The Committee concludes that the situation in Denmark 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 Denmark.

The Committee takes note from the information contained in the report submitted by Denmark that there have been no changes to the situation, which it previously considered not to be in conformity on the ground that the right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register is restricted.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 6§2 of the 1961 Charter on the ground that the right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register is restricted.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee notes from the report submitted by Denmark that there have been no changes to the situation, which it previously considered to be in conformity with Article 6§3 of the Charter.

Conclusion

The Committee concludes that the situation in Denmark 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 Denmark.

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

Specific restrictions to the right to strike and procedural requirements

The Committee recalls that the situation in Denmark has been in violation of the 1961 Charter since Conclusions XX-3 (2014) on the grounds that civil servants employed under the Civil Service Act are denied the right to strike and that the workers who are not members of a trade union having called a strike are prevented from participating in the strike unless they join the relevant trade union, and they do not enjoy the same protection as the trade union members if they participate in a strike.

It notes from the report submitted by Denmark that there have been no changes to the situation.

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

Conclusion

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

- civil servants employed under the Civil Service Act are denied the right to strike and
- the workers who are not members of a trade union that has called a strike are prevented from participating in the strike unless they join the relevant trade union, and they do not enjoy the same protection as the trade union members if they participate in a strike.

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 Denmark.

The Committee notes from the report submitted by Denmark that there have been no changes to the situation, which it previously considered to be in conformity with Article 2 of the 1988 Additional Protocol.

Conclusion

The Committee concludes that the situation in Denmark 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 Denmark.

The Committee has already examined the situation with respect to the right of workers to take part in the determination and improvement of working conditions and working environment in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion.

Working conditions, work organisation and working environment

The report provides information on the progress concerning the new strategy relating to the working environment up to 2020 aimed at reducing the number of serious accidents, the number of employees who are psychologically overloaded and the number of employees who experience musculoskeletal disorders and states the creation of a midterm study supporting the achievement of the goals. It further states that an expert committee on how to enhance the undertaken efforts has been established.

Protection of health and safety

The Committee notes the guidelines issued based on Order No. 1181 of 15 October 2010 and Order No. 840 of 29 June 2010 mentioned in the report.

The report indicates that there is an ongoing review and audit process as several of the guidelines were upgraded in January 2016.

Organisation of social and socio-cultural services and facilities

The Committee has already examined the situation in its previous conclusion (Conclusions XIX-3 (2010) and found it to be in conformity with Article 3 of the 1988 Additional Protocol. The report does not contain any new information in this regard.

Enforcement

The Committee has already examined the situation as regards the enforcement in its previous conclusion (Conclusions XIX-3 (2010) and found it to be in conformity with Article 3 of the 1988 Additional Protocol. The report does not contain any new information in this regard.

Conclusion

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