March 2019

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-3 (2018)

POLAND

This text may be subject to editorial revision.

The following chapter concerns Poland which ratified the 1961 Charter on 25 June 1997. The deadline for submitting the 17th report was 31 October 2017 and Poland submitted it on 21 September 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).

Poland has accepted all provisions from the above-mentioned group except Articles 2§2, 4§1, 6§4 and Articles 2 and 3 of the Additional Protocol.

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

The conclusions relating to Poland concern 12 situations and are as follows:

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

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

In respect of the situation related to Article 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 Poland 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 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 1 - Reasonable working time

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

According to the report, the law, of 12 July 2013, amending the Labour Code and the law on trade unions introduced new measures regarding the organisation of working time, which enable employers to regulate employees' working hours in a more efficient manner by extending the reference period for the calculation of working hours up to a maximum of twelve months, where justified for objective or technical reasons, or for reasons concerning the organisation of the work. The report stipulates that the extension of the reference period up to twelve months is only permitted after a prior agreement has been drawn up between the employers and the trade unions or the staff representatives with all due respect for the general principles relating to the health and safety of the workers.

The Committee asks that the next report provide further information establishing that the 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.

It notes that the regulations previously found not to be in conformity with the Charter (Conclusions XX-3 (2014)) have not been amended, and therefore reiterates its finding of non-conformity in this respect.

It also notes that the number of inspection visits carried out by the Labour Inspectorate increased during the reference period. According to the information provided in the report it notes that, where the workforce as a whole is concerned, the daily working hours were not respected in 22.9% of cases in 2013 and 27.3% in 2015. As for the duration of the working week, it was not respected in 20.5% of cases in 2013 and 31% in 2015.

In reply to the Committee's question, the report states that an employer may, in keeping with the provisions set out in the Labour Code, subject employees, irrespective of where they are, to an on-call or standby period provided they respect the employees' right to a daily and weekly rest period daily. The Committee notes that, even when employees have not carried out a service to their employers, the call-on period is considered as working time and they are therefore entitled to compensatory leave or, failing that, to financial compensation, unlike a standby period, which is only considered to be working hours if employees actually have to intervene on behalf of their employers. A standby period during which employees have not had to intervene on behalf of their employers, is, by principle, considered to be a rest period and consequently does not entitle them to either compensatory leave or financial compensation.

The Committee would point out that in its decision of 23 June 2010 on the merits of Complaint No. 55/2009, *Confédération générale du travail* (CGT) v. France, it held that the assimilation of on-call periods to rest periods constitutes a violation of the right to reasonable working time provided in Article 2 §1 of the Charter. It had held that the absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at his or her disposal, could not constitute an adequate criterion for regarding such a period as a rest period. It therefore holds that the situation in Poland is not in conformity with the Charter in this respect.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 2§1 of the 1961 Charter on the grounds that:

- in some jobs the working day can exceed sixteen hours and even be as long as 24 hours;
- on-call periods where no effective work is performed are assimilated to rest periods.

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 Poland.

It notes that the situation which was previously found to be in conformity with the 1961 Charter (Conclusions XX-3 (2014)) remains unchanged.

It also takes note of the information provided in the report on the inspections carried out by the Labour Inspectorate and of the measures and sanctions taken in this regard.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 2§3 of the 1961 Charter.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

In its previous conclusion (Conclusions XX-3 (2014)), it found that the situation was in conformity with the 1961 Charter. Given that the situation has not changed over the reference period, the Committee reiterates its conclusion of conformity.

Conclusion

The Committee concludes that the situation in Poland 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 Poland.

In its previous conclusion (Conclusions XX-3 (2014)), it found that the situation was in conformity with the 1961 Charter. Given that the situation has not changed over the reference period, the Committee reiterates its conclusion of conformity.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 2§5 of the 1961 Charter.

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 Poland.

The report states that no changes have been made to the legislation which the Committee found not to be in conformity with the Charter in its previous conclusion (Conclusions XX-3 (2014)). The Committee therefore reiterates its conclusion of non-conformity on these grounds.

It also asks that the next report provide further information on the possible change to the status of state civil servants and the Human Rights Commissioner's appeal to the Constitutional Court regarding the violation of the right to increased remuneration for overtime work.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 4§2 of the 1961 Charter on the ground that workers in both public and private sectors do not have a right to increased compensatory time-off for overtime hours.

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 Poland.

Legal basis of equal pay

The Committee notes that according to the report, there have been no legislative developments during the reference period.

Guarantees of enforcement and judicial safeguards

In its previous conclusions (Conclusions 2014, 2010) the Committee considered that the situation concerning guarantees of enforcement of the right to equal pay and judicial safeguards was in conformity with the Charter. It notes from the report that as regards the complaints submitted to the Labour Inspection relating to pay discrimination on the ground of gender, there have been 21 cases in 2016 and 10 in 2013. The Committee asks the next report to provide updated information as regards the burden of proof in discrimination cases.

The Committee refers to its conclusion under Article 1§2 (Conclusions 2016) where it recalled that in cases of discrimination, remedies must be effective, proportionate and dissuasive. Compensation for all acts of discrimination including discriminatory dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed (Conclusions 2012, Andorra). The Committee asks if there is an upper limit on compensation in cases of pay discrimination. The Committee states that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Methods of comparison

In its previous conclusion (Conclusions 2014) the Committee asked whether pay comparisons outside the company were possible in equal pay litigation cases, when difference in the pay conditions of female and male workers performing work of equal value is attributable to a single source. It notes in reply that in many judgements concerning equal treatment, what is compared is the remuneration paid by the same employer. For example, in the judgement of 12 February 2013 (II PK 163/12), the Supreme Court referred to the principle of the basic remuneration of members of only one chamber (regional accounting chamber). Then, in the judgement of 14 May 2014 (II PK 208/13), the Supreme Court held that the provisions of Chapter IIa of the Labour Code do not contain a standard which would show that all employees of one employer should be treated equally. However, the provisions define certain criteria (reasons) which cannot justify a differentiation of the situation of the employees. The courts did not refer to the problem of the comparison of remunerations coming from a single source. Nevertheless, according to the report, Polish labour law does not exclude such comparisons. However, given the absence of judgements so far, it is not possible to unambiguously determine the interpretation of the courts of the question. The Committee asks whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as whether the pay comparison is possible outside one company, for example, where such company is a part of a holding and the remuneration is set centrally.

Statistics

The Committee notes from the report that in 2014 in large professional groups the average remuneration of women stood at 3,717,57 zlotys, whereas that of men at 4,481,75 zlotys. The Committee notes from Eurostat that in 2016 the gender pay gap, as the difference

between average gross hourly earnings of male and female paid employees stood at 7,2% and at 7,4% in 2015. The EU average in the same period stood at 16.2%.

Policy and other measures

The Committee asks the next report to indicate measures taken to identify the main causes of the gender pay gap and measures taken to address them.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

The report states that, as far as the private sector is concerned, the provisions of Article 33 of the Labour Code, which the Committee had considered to be not in conformity with the 1961 Charter, as they provided that a fixed-term contract of more than 6 months' duration may be terminated by a two-week notice period (Conclusions XV-2 (2001) to XX-3 (2014)), have been amended by the law of 25 June 2015, which entered into force on 22 February 2016. The Committee notes from the report that employees on fixed-term contracts are now entitled to the same notice periods as employees on permanent contracts.

The Committee considers the notice periods provided for in Article 33 of the Labour Code (employees are entitled to two weeks' notice if they have less than six months' service with the employer, one month if they have at least six months' service and three months if they have at least three years' service) as amended by the law of 25 June 2015, to be reasonable and finds that the situation is in conformity with Article 4§4 of the 1961 Charter in this respect.

It also notes from the report that the notice period for termination of employment during the probationary period varies, in accordance with Article 34 of the Labour Code, from three working days to one or even two weeks depending on whether the probationary period is less than or greater than two weeks or longer than three months, respectively.

The Committee considers the situation to be in conformity with the 1961 Charter in this respect.

The report further states that, as regards the civil service, the arrangements for terminating the employment of civil servants are set out in the Public Service Act of 21 November 2008 or, failing that, the Labour Code. State civil servants are entitled to three months' notice if their contracts of employment are terminated early. If the contract is terminated because the department is being closed down and transfer to another department is not possible, the civil servant in question is entitled to financial compensation for a maximum of six months between the time when the contract is terminated and the time when the individual concerned starts a new job.

The report points out that the notice periods stipulated in the Labour Code apply to other state civil servants.

In reply to the Committee's request, the report states that there are several grounds for terminating a contract of employment other than dismissal, including bankruptcy or liquidation of the enterprise, death of the employer if the latter is a natural person, temporary incapacity for work and expiry of a fixed-term contract.

The reports states, however, that, under the law of 21 November 1967 on the universal obligation to defend the Polish Republic, employers may neither dismiss nor terminate the contracts of employees who have been called up, at any time during their military service, from the date of the call-up notice. The legislation does not apply, however, in cases where the employer, a legal entity, goes bankrupt or into liquidation.

With regard to early termination because of bankruptcy or liquidation of the enterprise or for any other reason unrelated to the worker, the report explains that the employeur may reduce the notice period from three months to one month, irrespective of the type of contract. In such cases, the worker is entitled to compensation equal to the pay due for the remaining notice period.

With regard to termination because of the death, the Committee notes from the report that contracts of employment lapse on the death of the employer, if the latter is a natural person. It understands that, in such a case, the employees are not entitled to any compensation and

asks that the next report to indicate whether its understanding is correct. In the meantime, it reserves its position in this respect.

The Committee also notes from the report that employers are entitled to dismiss without notice employees who are temporarily unable to work if the incapacity is the result of a long-term illness, an occupational accident or an unjustified absence of more than a month. In this regard, it recalls that, while unjustified absence from work for more than one month amounts to serious misconduct on the part of the worker, which is the sole exception justifying immediate dismissal without notice or severance pay (Conclusions 2010, Albania), this is not true of absences due to long-term illness or occupational accident, so it considers the ruling out of notice periods and/or severance pay in these circumstances not in conformity with the provisions of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 4§4 of the 1961 Charter, on the ground that no notice period is required in cases where a worker is dismissed due to long-term illness or occupational accident.

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 Poland.

The Committee refers to its previous conclusions (Conclusions XVIII-2 (2007) and XX-3 (2014)) for a description of the rules on deductions from wages.

It notes that the provisions of the Labour Code on the limitation of deductions from wages, which it had previously judged to be incompatible with Article 4§5 of the 1961 Charter on the ground that after the deductions authorised by law, the wages of workers with the lowest wages did not ensure that they could provide for themselves and their dependants (Conclusions XX-3 (2014)), remain unchanged. It therefore reiterates its conclusion on this point.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 4§5 of the 1961 Charter on the ground that, after maintenance payments and other authorised deductions, the wages of workers with the lowest pay do not enable them to provide for themselves or their dependants.

Article 5 - Right to organise

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

It already examined the situation with respect to the right to organise (forming trade unions and employers' organisations, 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.

Personal Scope

In its previous conclusion (Conclusions XX-3 (2014)), the Committee found that the situation in Poland was not in conformity with Article 5 of the 1961 Charter on the grounds that some categories of civil servants could not hold trade union positions and that home workers did not enjoy the right to form trade unions.

The legal framework remained unchanged in the reference period. The Committee notes that following the Constitutional Court's ruling of 2 June 2015 on the law on trade unions, provisions which restrict the trade union rights of some categories of workers were declared unconstitutional. A legislative amendment is underway, with the aim to address the critical issues and broaden the right to organise. The Committee asks for information in the next report on developments in this regard. Meanwhile, it reiterates its finding of non-conformity on the ground that, during the reference period, the legal framework continued to restrict some categories of workers from fully enjoying the right to organise.

As regards restrictions on the right of members of the Internal Security Agency' to organise, the Committee recalls that while the Security Agency plays an important role in the state's internal security, it also performs routine police work. According to the information provided, the Agency's work mainly comprises administrative police work and criminal investigation. The Committe notes that the Agency's personnel must inform their superior if they are members of national associations and need authorisation of the head of the Agency or their immediate superior. The Committee recalls that further to the restrictions permissible under the terms of the last two sentences of Article 5 in respect of members of the police and armed forces, any restriction to a right set forth in the 1961 Charter is only in conformity with the latter if it satisfies the conditions laid down in Article 31. This provision of the 1961 Charter provides that any restriction has to be prescribed by law, pursue a legitimate purpose and be necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals. The Committee asks whether the above mentioned conditions are fulfilled.

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

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 5 of the 1961 Charter on the ground that, during the reference period, the legal framework continued to restrict some categories of workers from fully enjoying the right to organise.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

It notes that there has been no change in the situation that it previously deemed to be in conformity (Conclusions XV-1 (2000), XVI-I (2002), XVII-1 (2004), XVIII-1 (2006), XIX-3 (2010) and XX-3 (2014)) with regard to the legal framework. Therefore, the Committee refers to its previous conclusions for a description of the relevant legislation.

The Committee nonetheless notes that according to the report, under the Law of 21 July 2015, a Council for Social Dialogue was established to replace the Tripartite Committee for Social and Economic Affairs. It comprises members of the government and representative trade unions and employers' organisations, and it engages in dialogue intended to create the conditions for social and economic development. Under the same law, councils for social dialogue at voivodship level were set up. Their members are the voivodship marshal, delegates of representative trade unions and employers' organisations, and representatives of the voivodship. They act both as advisory bodies and as a mechanism to promote social harmony, particularly when issues affecting various sectors are of regional significance.

The report provides detailed information on the measures taken by the National Labour Inspectorate following complaints concerning violations during the reference period of the right of workers to information and consultation (as enshrined in the Law of 7 April 2006). It also provides data on the results of inspections carried out by the National Labour Inspectorate which made it possible to identify irregularities in the implementation of the aforementioned law over the same period.

Conclusion

The Committee concludes that the situation in Poland 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 Poland.

The Committee notes that there has been no change in the situation that it previously deemed to be in conformity (Conclusions XVIII-1 (2006), XIX-3 (2010) and XX-3 (2014)) with regard to the legal framework.

In reply to the Committee's question, the report sets out the composition, responsibilities and objectives of the Working Group on Local Government Officials and Civil Servants established by Resolution No. 34 of the Tripartite Committee for Social and Economic Affairs of 16 February 2009. The Committee notes that, as the working group was unsuccessful, it was dissolved on 31 December 2011. In addition, under the Law of 21 July 2015, the Council for Social Dialogue replaced the Tripartite Committee for Social and Economic Affairs. According to the report, there is no group in charge of social and economic affairs (the Committee also refers to its assessment under Article 6§1 of the 1961 Charter).

In reply to another question put by the Committee on the measures taken/planned to facilitate the conclusion of collective labour agreements, the report states that under the above-mentioned law, the parties to the Council for Social Dialogue may conclude tripartite agreements on the parties' obligations designed to implement the Council's objectives. They can also negotiate collective labour agreements which cover all the employers associated with organisations which are representative of social partners or a group of such employers and their employees, together with agreements setting out the obligations of these parties. However, according to the report, the parties have not yet taken advantage of these possibilities. The report also states that the aim of the work on the reform of collective labour law and strengthening collective labour agreements undertaken during the 4th quarter of 2016 by the Committee for the Codification of Labour Law is to make the dialogue between the social partners more efficient and afford them a degree of independence where it comes to establishing legal relationships on workers' and employers' collective rights and interests.

The Committee recalls that in order to ensure the effective exercise of the right to bargain collectively, the Government shall promote machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements. It asks for information in the next report on any developments in this respect, including information on the steps taken to promote machinery for voluntary negotiations.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 6§2 of the 1961 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 Poland.

The report states that there were no changes to the legislative framework in force during the reference period.

In its previous conclusions (Conclusions XX-3 (2014)), the Committee asked for complete and up-to-date information on the situation with regard to Article 6§3 of the Charter. In reply, the report provides all the necessary information which, moreover, has not changed and falls under the scope of the Law of 23 May 1991 on the Settlement of Collective Disputes. Therefore, the Committee refers to its previous conclusions (Conclusions XV-1 (2000), XVI-1 (2002) and XVII-2 (2004)) for a detailed description.

The Committee also notes that the Ministry of Family, Labour and Social Policy received 55 requests to designate a mediator in 2016, 106 in 2015, 67 in 2014 and 55 in 2013. The report states that when labour inspectors identify suspected breaches of the Law of 23 May 1991, they refer them to the prosecutor (there was one such referral in 2013, 2014 and 2015, and two in 2016). The report also notes that the information on the outcome of disputes is incomplete because there is no statutory obligation for employers to report on the steps taken following the settlement or end of a dispute or a strike.

Conclusion

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