

December 2010



European Social Charter (revised)

European Committee of Social Rights

Conclusions 2010
(NETHERLANDS)

Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29
of the Revised Charter

This text may be subject to editorial revision.

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts "conclusions" in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions¹.

The present chapter on the Netherlands contains three subsections:

- The Netherlands (Kingdom in Europe)
- The Netherlands (Netherlands Antilles)
- The Netherlands (Aruba)

The Netherlands (Kingdom in Europe)

The Revised European Social Charter was ratified the Netherlands (Kingdom in Europe) on 3 May 2006. The time limit for submitting the 3rd report on the application of this treaty to the Council of Europe was 31 October 2009 and the Netherlands (Kingdom in Europe) submitted it on 12 February 2010. Comments on the report from the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions in the Netherlands (CNV) were registered on 17 February 2010. On 4 May 2010, a letter was addressed to the Government requesting supplementary information regarding Article 21. The Government did not submit a reply.

This report concerned the accepted provisions of the following articles belonging to 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 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The Netherlands (Kingdom in Europe) has accepted all of these articles..

The reference period was 1 January 2005 to 31 December 2008.

The sub-section on the Netherlands (Kingdom in Europe) concerns 22 situations and contains:

- 9 conclusions of conformity: Articles 2§5, 4§5, 5, 6§1, 6§2, 6§3, 21, 22 and 28.
- 3 conclusions of non-conformity: Articles 2§4, 4§1 and 4§4.

In respect of the other 10 situations concerning Articles 2§1, 2§2, 2§3, 2§6, 2§7, 4§2, 6§4, 26§1, 26§2 and 29, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Dutch report (Kingdom of Europe) deals with the accepted provisions of the following articles belonging to the fourth thematic group "Children, families and migrants":

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

The deadline for the report was 31 October 2010.

The Netherlands (Netherlands Antilles)

The European Social Charter was ratified by the Netherlands with respect to the Netherlands Antilles on 22 April 1980. The time limit for submitting the 9th report on the application of this treaty to the Council of Europe was 31 October 2009 and was submitted on 6 November 2009.

This report concerned the accepted provisions of the following articles belonging to 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 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The Netherlands with respect to the Netherlands Antilles have accepted Article 5 and 6 from this group.

The reference period was 1 January 2005 to 31 December 2008.

The sub-section on the Netherlands with respect to the Netherlands Antilles concerns 5 situations and contains:

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

In respect of the other situation concerning Article 6§4, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the article in question.

The next Dutch report with respect to the Antilles deals with the accepted provisions of the following articles belonging to the fourth thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),

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

The deadline for the report was 31 October 2010.

The Netherlands (Aruba)

The European Social Charter was ratified by the Netherlands with respect to Aruba on 22 April 1980. The time limit for submitting the 4th report on the application of this treaty to the Council of Europe was 31 October 2009 and the Netherlands did not submit it.

This report should have concerned Article 5 (the right to organise) and Article 6 (the right to bargain collectively), the accepted provisions belonging to the thematic group “Labour rights”.

The Committee notes the failure of the Netherlands with respect to Aruba to respect its obligation, under the Charter, to report on the implementation of this treaty within the deadline. Under the circumstances the Committee was unable to reach any conclusions and it considers that there is nothing to demonstrate that the situation as regards the provisions concerned is in conformity with the Charter.

The next Dutch report with respect to Aruba deals with the accepted provisions of the following articles belonging to the fourth thematic group "Children, families and migrants":

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

The deadline for the report was 31 October 2010.

¹ *The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int/socialcharter).*

The Netherlands (Kingdom in Europe)

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.

A new Working Hours Act came into force on 1 April 2007. Maximum working hours according to the new law are 12 hours per day, 60 hours per week, no more than 55 hours a week on average over a four-week reference period, and, for every 16-week period, no more than 48 hours a week on average. Collective and individual agreements can be adopted within this statutory framework. Whereas previously a 12-hour working day was the exception, the new legislation makes it possible for this to be standard practice, unless employers and employees agree differently. Moreover, the Act no longer makes a distinction between normal working time and overtime (as was the case under the former regulations).

The Committee notes from another source¹, that the Social and Economic Council supported amendments to the working time legislation, but would have preferred to retain a higher level of statutory protection. There has also been trade union criticism to the new Act. The Allied Unions (FNV Bondgenoten) believes that maximum daily working hours have markedly increased. It is also concerned about the abrogation of the distinction between normal working hours and overtime. In the absence of collective agreements on working time stipulating otherwise, employees could be engaged for 12 hours a day and 60 hours a week, without this being considered as overtime. The union believes that the statutory standards are too broad and intends to formulate a definition of overtime, and to deal with other matters not covered by the Act, in collective agreements.

The Committee considers that the absolute limits on daily and weekly working hours are in conformity with the Charter. However, it also observes that the new Act gives the parties much more freedom in determining working hours and that the notion of overtime has been abolished. All this could lead to the risk of employers imposing harsher working conditions on the basis of the new provisions. Therefore, pending receipt of information on the evaluation of the new legislation, namely to what extent collective agreements have filled up the gaps resulting from the new legal framework, the Committee defers its conclusion.

It also notes that certain categories of workers, such as sports professionals, scientists, performing artists, military personnel and the police are not subject to the abovementioned statutory limits. It asks the next report to indicate if there are specific regulations for the latter occupations, and in particular what are the applicable daily and weekly working limits.

Finally, the Committee asks the next report to provide information on the supervision of working time regulations by the Labor Inspection, including the number of breaches identified and penalties imposed in this area.

Conclusion

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

¹*Eironline, New Working Hours Act places fewer restrictions on working hours, at <http://www.eurofound.europa.eu/eiro/2007/05/articles>*

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.

In its previous conclusion (Conclusions 2007), the Committee asked for updated information on the increased remuneration paid to employees for work done on public holidays. According to the

report, Dutch law makes no provision for monetary compensation or additional rest periods for work on public holidays. Compensatory measures are based on agreements between employers and employees or employees' associations.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee asks whether, in practice, increased remuneration is paid for work on public holidays and if so what the rate is.

Conclusion

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

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.

In its previous conclusion (Conclusions 2007), the Committee asked for information as to what proportion of the minimum statutory leave may be postponed to a subsequent year, or whether all of it so may be postponed. According to the report, there are no statutory rules on the proportion of leave not taken in the current year that can be carried over to the next year. Under Article 7:638, paragraph 1, of the Civil Code, it is for employers to ensure that their employees take the leave to which they are entitled during the current year. It is also employees' responsibility to take their leave. Financial compensation may not be offered as an alternative to holidays. The report states, however, that as a result of a decision of 6 April 2006 by the European Court of Justice in the case of the Federation of Dutch Trade Unions (FNV) v. the Netherlands (C-124/05), legislation on leave and, in particular, Article 7:640 of the Civil Code has been clarified. Leave not used in the current year may not be cashed in, but it may be carried over to the next year. The Committee asks again for information as to what proportion of the minimum statutory leave may be postponed to a subsequent year, or whether all of it so may be postponed.

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 Netherlands.

Elimination or reduction of risks

The Committee would point out that the first part of Article 2§4 of the Revised Charter requires states to eliminate risks in inherently dangerous or unhealthy occupations. This part of Article 2§4 is closely linked to Article 3 of the Charter (right to safe and healthy working conditions, see below), under which the states undertake to pursue policies and take measures to improve occupational health and safety and prevent accidents and damage to health, particularly by minimising the causes of hazards inherent in the working environment.

The Committee reminds that the Act No. 664 of 8 November 1980 on working conditions is intended to eliminate, or, if that is impossible, to restrict situations dangerous to workers' health or safety. Machines or substances used in undertakings must be replaced, working methods or work organisation changed, and so on, in order to eliminate dangerous or unhealthy situations at source. If such action cannot be taken, employers are authorised to take other appropriate steps.

The Committee refers to its conclusion under Article 3 of the Revised Charter (Conclusions 2009), which describes the dangerous occupations and the measures taken in this regard.

Measures in response to residual risks

When the risks have not been eliminated or sufficiently reduced despite the application of the measures described above, or if such measures have not been applied, the second part of Article 2§4 requires States to grant workers exposed to such risks one form or another of compensation. The aim of these compensatory measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk.

In its previous conclusion (Conclusions 2007), the Committee asked up to date detailed information on measures taken to reduce exposure to risks in all occupations where it has not been possible to eliminate all risks. According to the report there are no specific statutory regulations providing for reduced working hours or additional paid holidays. It is considered that the legislation in force provides employees with sufficient protection and there is no need for special rules providing for measures of this kind.

Article 2§4 mentions two forms of compensation, namely reduced working hours and additional paid holidays. In view of the emphasis the article places on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be compatible with the Charter (Conclusions 2005, statement of interpretation of Article 2§4).

Since there are none of the compensatory measures required by Article 2§4 of the Revised Charter, the Committee considers that the situation is not in conformity in this respect.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§4 of the Revised Charter on the ground that there is no provision for reduced working hours, additional paid holidays or another form of compensation in dangerous and unhealthy occupations.

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.

The Working Hours Act was amended on 1 April 2007. In principle, work on Sundays is prohibited. Exceptions are possible, however, where the nature of the work makes work on Sunday inevitable or the company's specific circumstances necessitate it. Employees who work on Sunday are entitled to 13 Sundays off per year but exceptions to this rule can be provided for in collective agreements provided that the employees agree. According to the report, less than 15% of employees work on Sunday.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

Under Article 7:655 of the Civil Code, a written agreement must be negotiated between employers and employees within one month of the start of the employment relationship. The agreement must mention the identity and address of the parties, the place of work, the employee's duties, the

working hours, the date of the beginning of the employment relationship and, if the employment contract or relationship is a temporary one, the length of the contract or the relationship.

Article 2§6 guarantees the right of workers to written information upon commencement of their employment. Information that must be included in employment contracts also includes the length of paid leave, the periods of notice required in the event of termination of the contract or the employment relationship, the remuneration and information on any collective agreements governing the employee's conditions of work. The Committee asks for confirmation that all aspects of the employment contract or relationship are covered by the contract or another written document.

Paragraph 4 of Article 7:655 of the Civil Code provides that in the case of contracts for personnel providing domestic services who work fewer than three days a week, employers need only provide this information if employees request it.

Conclusion

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

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.

The rules on night work are laid down by the Working Hours Act, which was amended on 1 April 2007. All employees who work for at least one hour between midnight and 6 a.m. are regarded as night workers. According to the report, about 10% of the working population do night work.

If a medical check-up reveals health problems, the employee concerned may be reassigned to day work. The Committee asks whether a medical checkup is carried out before an employee is assigned to night work and whether it exists other possibilities for night workers to be transferred to day work.

It also asks whether there is regular consultation with workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

In its previous conclusion (Conclusions XVIII-2) the Committee observed that the net minimum wage represented 82% of the net average wage. However, the statutory minimum wage of workers aged between 18-21 fell below the requirements of this provision thus amounting to a breach of the Charter.

The Committee now notes from the report that the estimated annual net average wage of a single full-time worker amounted to € 25,540 (or € 2,128 per month) in 2009. As regards the statutory minimum wage for workers aged between 23-65, it amounted to € 1,398 gross in 2009 while for workers between the ages of 18-22 to 85% of the adult rate. According to the report the net minimum wage amounts to about 85% of the gross minimum wage, i.e. € 1,188 in case of a worker aged 23-65.

The Committee observes that the average wage has significantly risen, from €18,060 in 2004 to €25,540 in 2009. It also observes that the net minimum wage now represents 56% of the net average wage. The Committee holds that a 'decent standard of living' which is at heart of this provision of the Charter, goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities. It follows that guaranteeing a decent standard of living means ensuring a minimum wage (and supplemented by any additional benefits where applicable) the level of which should be sufficient to meet these needs. Therefore, the Committee asks the next report to demonstrate whether the level of the minimum wage and its possible supplements in Netherlands meets this requirement.

As regards the minimum wage paid to workers aged 18-22, the Committee observes that its rate continues to be very low (around 47% of the average wage) and therefore the Committee reiterates its previous conclusion of non-conformity on this ground.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage paid to workers aged 18-22 is 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.

The report indicates there have been no new developments and refers to information provided in previous reports. The Committee recalls that the payment of overtime is governed by collective agreements which provide for an increase in pay of between 25% and 100% (Conclusions XIV-2).

However, the new Working Hours Act (entry into force on 1 April 2007) has abolished the statutory distinction between normal working time and overtime. The Committee notes from another source² that there has been trade union criticism to the new Act for no longer making such a difference, given that in the absence of a collective agreement formulating a definition of overtime, employees could be engaged for 12 hours a day and 60 hours a week, without any of this work being considered as overtime.

The Committee considers that the abrogation of the notion of overtime may lead to long working days –agreed by the parties- which will not be remunerated as such in the absence of a collective agreement covering this matter. Therefore, pending receipt of information on the evaluation of the new legislation, in particular to what extent collective agreements foresee an increase in basic pay for unsocial or extended working hours, the Committee defers its conclusion.

Finally, it asks the next report to provide information on the activities of the Labor Inspection in respect of any breaches related to the failure to pay overtime wages.

Conclusion

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

¹*Eironline, New Working Hours Act places fewer restrictions on working hours, at <http://www.eurofound.europa.eu/eiro/2007/05/articles>*

Article 4 - Right to a fair remuneration

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

In the General Introduction to Conclusions 2002 on the Revised Charter, the Committee indicated that national situations in respect of Article 4§3 (right to equal pay) would be examined under Article 20 of the Revised Charter. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4§3.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4§3 and Article 20, thus every two years (under the thematic group 1 "Employment, training and equal opportunities", as well as thematic group 3 "Labour rights"). Henceforth, the Committee invites Netherlands to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

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.

It notes that no changes were made during the reference period to improve the situation which it previously considered not to be in conformity with the Charter.

Conclusion

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

- its legislation does not require any notice of termination of employment to be given during the probationary period;
- the reduction of the notice period to a minimum of one month under collective agreements is unreasonable in the case of employees with five or more years' length of service

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

The Committee notes from the report submitted by the Netherlands and all the information at its disposal that there have been no changes to the situation with regard to the limitation of deductions from wages, which it has previously considered to be in conformity with the Charter (Conclusions XVIII-2). It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 4§5 of the revised Charter.

Article 5 - Right to organise

The Committee notes from the report submitted by the Netherlands and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 5 of the Revised Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 5 of the Revised Charter.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

The Committee notes from the report submitted by the Netherlands and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6§1 of the Revised Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

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

Legislative framework

The Committee refers to its previous conclusions (Conclusions XVII-1 and XVIII-1) for a description of the rules governing collective bargaining in the private and in the public sector and recalls that it has held this framework to be in conformity with Article 6§2 of the Charter.

In reply to a question for further information, the report points out that under national and international legislation, both employers' and employees' associations must be independent of each other in the establishment, activities and management of an organisation. In situations where independence is called into question, the Ministry of Social Affairs and Employment can conduct an investigation and use its findings to reach a decision on extension orders concerning sectoral collective agreements and exemption (dispensation) from such orders. Following a decision by the Council of State on 27 October 2004 (200400672/1), more or less automatic dispensation from an extension order (exemption where a company has its own collective agreement) had to be abandoned. The Council of State ruled that such a dispensation decision is open to objection and review. There must therefore be a clear set of procedural rules for submitting a request and reaching any decision.

The report highlights that following this ruling the Government amended the regulations on exemption from extension orders as of 1 January 2007. The Committee notes that prior to adoption amendments to these regulations which set a framework for assessing whether collective agreement provisions can be declared binding on an entire industry of the (the "Toetsingskader AVV" Regulations) had been presented to the Labour Foundation and to other relevant parties not represented in the Labour Foundation.

The Committee asks that the next report inform it about the implementation of the regulations.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

The Committee notes from the report submitted by the Netherlands and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6§3 of the Revised Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

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

Meaning of collective action – Who is entitled to take collective action

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

Restrictions on the right to strike

The Committee held the situation in the Netherlands not to be in conformity with Article 6§4 of the Charter in previous supervision cycles on the grounds that the fact that a Dutch judge may determine whether recourse to a strike is premature constitutes an impingement 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). The Committee previously acknowledged that its conclusion of non-conformity was referred to the courts by the Minister of Justice in order to inform the judiciary once again of the Committee's objections to court rulings on the exercise of the right to collective action.

The current report reiterates that the conditions for exercising the right to strike are not laid down in legislation, but enshrined in the case law of the highest judicial authority, i.e. the Supreme Court. The Dutch government does not deem it necessary to codify these 'criteria' developed by the Supreme Court. According to the report the case law that has built up regarding the right to strike gives proper substance to the normative framework of the ESC, making it possible – more so than would be the case for the legislature – to take into account the special circumstances of any collective action. The Committee asks the next report to provide examples of case law demonstrating that the requirements of Article G of the Revised Charter are taken into account when the courts are considering whether a strike may be premature.

The Committee further noted in its previous conclusions, that a strike is considered to be illegal by Dutch courts if it undermines the rights of third parties or the general public to such an extent that restrictions of the right to strike become necessary for the interests of society. In making their decision, the courts resort to a proportionality criterion by balancing the interests in the exercise of the right to strike against those which are infringed. The Committee considered that the Dutch courts' use of the proportionality criterion did not in itself undermine the right to strike as it is essential for determining whether a restriction is necessary in a democratic society, in accordance with Article 31 of the Charter. The Committee asked to be informed on any development in this respect. The report states that there have been no new developments.

The Committee notes that the reservation made when the Dutch Government ratified the 1961 Charter regarding the right to strike for public servants/public sector employees was not made when it ratified the Revised Charter. The report confirms that public sector employees have the right to strike. The revised version of the Military Personnel Act 1931 (Bulletin of Acts and Decrees, 2007, 480) came into effect on 1 January 2008 and gave defence personnel (military personnel on active service and civil servants employed in the Ministry of Defence) the right to collective action (section 12i of the Act). The amended legislation stipulates the restrictions on the right to collective action taking into account the special demands and obligations that are placed on the armed forces because of the nature of their task and that are less common, or non-existent, in other organisations. Participation in strikes or collective action is not permitted where this might disrupt or hinder the operational deployment of the armed forces.

Procedural requirements pertaining to collective action - Consequences of collective action

The Committee notes that there have been no changes to the situation under these headings which it previously held to be in conformity with the Charter.

Conclusion

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

Article 21 - Right of workers to be informed and consulted

The Committee takes note of the short information contained in the report submitted by the Netherlands. It notes that there has been no change in the situation which it previously considered (Conclusions 2007) to be in conformity.

Article 21 of the Revised Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.

As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 21 of the Revised Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 21 of the Revised Charter, the Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (Judgment of the European Court of Justice of 18 January 2007 (Confédération générale du travail (CGT) and Others, Case C-385/05)).

Consequently, the Committee asks whether this is the scope of Netherlands' legislation, particularly as regards the calculation of these minimum thresholds.

The Committee asks the next report to provide updated information on the workers' right to take part in the determination and improvement of the working conditions and working environment in the undertaking.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 22 of the Revised 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 in the report submitted by the Netherlands. It notes that there has been no significant change in the situation which it previously considered to be in conformity.

In reply to the Committee, the report states that amendments were made to the Working Conditions Act during the reference period. The tripartite Social and Economic Council was consulted beforehand. These amendments concern occupational health and safety, and their main objective is to increase the sense of responsibility of employers and employees in ensuring that workers are given a certain level of protection in the workplace. Clear and specific objectives are fixed by law at the national level for this purpose. In the private sector, criteria can then be set by the social partners at sectorial level in order to meet the objectives set by law and be gathered in a catalogue, which can be submitted to the Labour Inspectorate for approval. If approved by the Labour Inspectorate, these catalogues will be used within the framework of inspections. Whilst employers are not legally required to use these catalogues, if they choose not to, they must nonetheless offer a similar level of safety, health and welfare to workers. The Committee asks whether any appeals are available to workers or their representatives in cases where an employer decides not follow the catalogue drawn up by the social partners. It also asks for more specific information on the system in place in the public sector which, as it understands it from the report, is different from that of the private sector. Finally, it asks whether workers at the level of enterprises can take part in decisions concerning the protection of health and safety at work.

The Committee noted previously (Conclusions XIV-2) that matters relating to in-company social work and other social and socio-cultural services and facilities were mostly regulated by law. The Committee asks for further information on this point, particularly as regards the arrangements for worker participation in the organisation of such services and facilities within companies.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in the Netherlands is in conformity with Article 22 of the Revised 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.

The report states that a section on the psychosocial burden was included in the Working Conditions Act of 2007 which comprises, among others, sexual harassment, aggression and violence, bullying and pressure at work. The definition of sexual harassment is based on Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 269).

The Committee takes note of the Working Conditions Act 2007. It notes that the Government has taken the view that social partners are the main implementers of sexual harassment policies. It also notes the role of the professional agencies in defining policies for employers. The report also informs about the awareness-raising activities undertaken by different institutions.

Article 26§1 requires that the right to protection from sexual harassment is effectively guaranteed. The Committee asks that the next report explain how this right is effectively guaranteed in Netherlands. It asks for information on the liability of employers, means of redress, burden of proof in a case of alleged sexual harassment, the damages for the victim and prevention policies undertaken by the Government.

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 the Netherlands.

The report deals with sexual and moral harassment at the workplace interdependently. The Committee understands that the same rules apply in the case of moral harassment as in that of sexual harassment. It asks next report to confirm whether this understanding is correct and refers to its remarks, questions and conclusion in Article 26§1.

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 submitted in the report by the Netherlands.

Article 28 entitles workers' representatives to protection in the undertaking and certain facilities. It complements Article 5, which grants a similar right to trade union representatives (Conclusions 2003, Bulgaria).

According to the appendix to Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice. States may therefore institute various categories of workers' representatives other than trade union representatives, or both. Representation may be exercised, for example, through workers' commissioners, works councils or workers' representatives on the undertaking's supervisory board (Conclusions 2003, Bulgaria).

Protection granted to workers' representatives

In the Netherlands, the main forms of employee representation are trade union representatives and works council members. All worker representatives enjoy protection against acts prejudicial to their position including protection against unfair dismissal. Section 21 of the Works Council Act states that employers are required to ensure that anyone whose name appears or has appeared on a list of candidates or who is or has been a member of the works council or one of its committees is not placed at any disadvantage with respect to his/her position in the company on the grounds of his/her candidature or membership. The Civil Code provides that an employer may not terminate the employment contract of an employee who is a member of a central works council, group works council, standing committee of these councils or divisional committee of a works council or employee representative body.

The Civil Code also stipulates that an employee who has been placed on the candidate list for a works council, central works council, group works council or employee representative body, may not have his or her contract terminated without the prior consent of the district court.

The above does not apply to terminations during a probationary period or for a compelling reason.

The Committee considers that the protection afforded to workers' representatives is adequate, as it appears to the Committee that anyone who has even been a candidate for a works council will benefit from ongoing protection.

Facilities granted to workers' representatives

The Committee refers to its interpretative statement on the facilities to be granted to workers' representatives in the general introduction as well as to its question on travelling expenses and asks the next report to provide all the necessary information.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 28 of the Revised Charter.

Article 29 - Right to information and consultation in procedures of collective redundancy

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

The Committee notes the regulatory framework under the Collective Redundancy (Notification) Act and the Work Council Act.

Definition and Scope

The report gives no definition of collective redundancies, but it states that an employer must inform the appropriate workplace representatives in writing of its intention to make 20 or more employees redundant at one place of work, at any time within a three-month period with a view to starting consultation in good time.

The Committee has explained that the collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity. The Committee asks the next report to provide the definition and scope of collective redundancies.

Prior information and consultation

The report states that consultations should consider ways of avoiding or reducing the number of redundancies and minimising their effect by providing redundancy counselling and support, specifically by helping to relocate or retrain employees who have been made redundant.

Article 29 provides for the employer's duty to consult with workers' representatives and the purpose of such consultation. The Committee has stated that "this obligation is not just an obligation to inform unilaterally, but implies that a process will be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers' representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached".

With a view to fostering dialogue, the Committee has stipulated that all relevant documents must be supplied before consultation starts, including the reasons for the redundancies, planned social measures, the criteria for being made redundant and information on the order of the redundancies.

The Committee asks that the next report contains information on the prior information provided to workers' representatives and the consultation process.

Sanctions and preventive measures

Consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers.

The CNV Vakcentrale in its observations on the report of Netherlands has commented that in practice the employers avoid the collective redundancies procedures by keeping the number of redundancies below 20 employees.

The Committee asks what measures has the Government taken to reduce the possibility that employers avoid their obligations in these circumstances.

Conclusion

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

Netherlands Antilles

Article 5 - Right to organise

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

It notes from the report that there have been no changes in the situation which has already been found in conformity with Article 5 (Conclusions XVIII-1). It asks that developments, if any, be indicated in the next report.

Conclusion

The Committee concludes that the situation in the Netherlands Antilles is in conformity with Article 5 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

The Committee notes from the report submitted by the Netherlands Antilles and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6§1 of the Charter (Conclusions XVIII-1). It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee notes from the report submitted by the Netherlands Antilles that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6§2 of the Charter.

The Committee however notes from the report that in 2008 there was a sudden decrease in number of negotiated collective labour agreements.

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 thus requests the Government to indicate what measures it has taken or plans to take to facilitate and encourage the conclusion of collective agreements.

The Committee also asks the next report to provide up-dated information on collective agreements concluded in the private and public sector at all relevant levels and on the number of employers and employees covered by these agreements.

Conclusion

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

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter.

The Committee notes that according to the report that there will be profound reforms in the Netherlands Antilles in 2010 and that updated information will be provided in the next report.

Conclusion

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

The Committee recalls that the previous conclusion was deferred pending receipt of information on restrictions on the right to strike. The current report does not provide the information requested but explains that the constitutional status of the Netherlands Antilles was being altered in 2010 and as a result there will be inter alia, changes to the legislation currently on the right to strike.

The Committee asks the next report to provide full information in the next report. It points out that if the next report fails to provide all the necessary information there will be nothing to show that the situation is in conformity with the Charter.

Conclusion

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