December 2010

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2010
(MOLDOVA)

Articles 2, 4, 5, 6, 21, 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 Conclusions[1].

The Revised European Social Charter was ratified by Moldova on 8 November 2001. The time limit for submitting the 6th report on the application of this treaty to the Council of Europe was 31 October 2009 and Moldova submitted it on 16 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).

Moldova has accepted Articles 2; 4§3, §4 et §5; 5; 6; 21; 26; 28 and 29 from this group.

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

The present chapter on Moldova concerns 19 situations and contains:

- 19 conclusions of non-conformity: Articles 2§§ 1, 2, 3, 4, 5, 6 and 7; 4§3, §4 et §5; 5; 6§§1, 2, 3 and 4; 21; 26§1 and §2; 28 and 29.

Having regard to the often inadequate nature of the information contained in the Moldovan report and in view of the large number of conclusions of non-conformity reached, the Committee invites the Moldovan authorities to a meeting during one of its forthcoming sessions in order to exchange views on the situation. The Committee refers in this respect to Article 24 of the Charter as amended by the Turin Protocol which provides for the possibility of such meetings and to Rule 21 of the Committee's Rules.

The next report from Moldova 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.

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

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 Moldova.

The report does not indicate any changes in respect of the regulations on working time. The Committee recalls that the Labour Code stipulates that standard weekly working hours cannot exceed 40 hours. Overtime is any time worked in excess of 40 hours, and is subject to a number of requirements. The total amount of overtime that can be worked in one year is limited to 120 hours, or 240 hours in exceptional circumstances (Conclusions 2005).

The regular working week is 5 days (8 hours per day). Depending on the nature of the work, it is possible to provide for a 6-day working week.

Pursuant to Article 99 of the Labour Code, companies may use global (average) records of working hours, provided that the limits in the Code are not exceeded. The reference period should not exceed one year, and daily duration of working hours (shifts) cannot exceed 12 hours. The Committee recalls in this respect that the reference periods for the averaging of working hours should not exceed four to six months, or 12 months in exceptional circumstances (General Introduction to Conclusions XIV-2). Given that the Labour Code permits companies to set reference periods up to 12 months as a general rule, not as an exception, and without setting any requirements of an objective or technical nature or limiting this to certain types of companies or sectors, the Committee finds that the situation is not in conformity with the Revised Charter on this point.

The Committee notes that under Article 100 of the Labour Code the employer and employee can agree a flexible regime of working hours. This article also provides, as previously noted by the Committee, that in different kinds of activities, enterprises or trades, it is possible to establish, by collective agreement, a 12-hour working day followed by a rest period of not less than 24 hours. The Committee asks for clarification as to whether there may be circumstances where it would be possible for an employee to work more than 60 hours per week under the scope of this article.

The Labour Code requires employers to keep a record of hours of work and provides penalties for the violation of regulations. The Committee asks the next report to provide information on the supervision of working time regulations by the Labour Inspection, including the number of breaches identified and penalties imposed in this area.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 2§1 of the Revised Charter on the ground that the Labour Code permits companies, as a general rule, to set reference periods up to 12 months for the calculation of average working hours.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

The Committee previously asked whether it was possible to derogate from the provisions of the Labour Code governing public holidays in collective agreements. It also asked for updated information on the rates of increased remuneration paid in respect of work done on a public holiday. The report does not provide any information on this subject. The Committee therefore repeats its requests. It also asks whether the base salary for the work carried out on a public holiday is maintained, in addition to the increased pay rate.

In the absence of information that would allow it to assess whether the right to public holidays with pay is guaranteed, the Committee concludes that the situation is not in conformity.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 2§2 of the Revised Charter on the ground that it has not been established that the right to public holidays with pay is guaranteed.

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 Moldova.

In its two previous conclusions (Conclusions 2005 and 2007), the Committee asked a series of questions concerning annual holiday with pay. The report does not answer the questions. The Committee once again requests that the next report provide further information on a number of issues:

- workers can be recalled from their holidays with their written consent only in unforeseen working situations, requiring their presence at the enterprise. In this case the employee may take the remainder of the leave within the calendar year. What exactly is meant by “unforeseen working situations”?
- annual paid holiday can be postponed in cases when for example the employee is on sick leave or in other cases stipulated by law. When granting holiday may impact adversely on the activity of the enterprise, the holiday can be postponed to the next working year. What is meant by “impact adversely on the activity of the enterprise” and what precisely are the rules governing postponement?
- what are the rules if an employee falls sick during his or her annual leave?
- is it possible to reduce the amount of annual holidays in collective agreements?

In the absence of information that would enable it to assess whether the right to annual holiday with pay is guaranteed, the Committee concludes that the situation is not in conformity.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 2§3 of the Revised Charter on the ground that it has not been established that the right to annual holiday with pay is guaranteed.

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 Moldova.

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.

In its two previous conclusions (Conclusions 2005 and 2007), the Committee asked to be provided with a copy of Government decision No. 1223 on the list of occupations and functions deemed to be dangerous or unhealthy. No information has been provided concerning this list. The Committee therefore considers that it has not been established that the situation is in conformity with Article 2§4 on this point, and again asks to be provided with the relevant information.

The Committee takes note of the information given on the Law on Occupational Health and Safety adopted by the Parliament on 10 July 2008 and which has entered into force on 1 January 2009. This law lays down the general principles relating to the prevention of occupational risks, the elimination of risk factors or unforeseen factors, the provision of information to, consultation with and instruction of workers in such matters and also general guidelines for the application of these principles. The Committee observes however that the law in question does not cover the reference period. It will examine this law in its next conclusion and asks that the next report provide information on this law, in particular on the measures to eliminate and reduce risks in dangerous or unhealthy occupations.

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 2005), the Committee noted that workers employed in sectors considered dangerous or harmful are entitled to reduced working hours, 35 hours per week, 7 hours per day and may also be entitled to additional annual paid holidays. It asks that the next report provides updated information concerning the measures taken in response to residual risks.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 2§4 of the Charter on the ground that no steps have been taken to eliminate or reduce the risks associated with dangerous or unhealthy work.

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 Moldova.

The Committee notes that the report does not answer the previous questions and asks again what the duration of the weekly rest period is in where there is a six day working week, whether weekly rest period may be deferred to another week and whether all categories of workers are covered by the rules.

The Committee also asks that the next report contain information on the measures taken to ensure proper application of the rules on the weekly rest period, in particular on the supervision activities of the labour inspection in this regard.

In the absence of information allowing the Committee to consider whether the right to weekly rest period is guaranteed, it concludes that the situation is not in conformity.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 2§5 of the Revised Charter on the ground that it has not been established that the right to weekly rest period is guaranteed.

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 Moldova.

In its two previous conclusions (Conclusions 2005 and 2007), the Committee asked a series of questions concerning the contract of employment. The report does not answer the questions. The Committee again asks whether the employment contract is always in written form. It furthermore asked the next report to provide information on all other means by which workers are informed in writing of the essential aspects of their employment contract or employment relationship, such as notice periods in case of termination of employment, duration of the contract where it is for a fixed term period, entitlement to leave, daily and weekly working hours, place of work etc.

The Committee repeats its request for information on the activities of the Labour Inspectorate in monitoring these requirements.

In the absence of information that would allow it to assess whether the right to information on the employment contract is guaranteed, the Committee concludes that the situation is not in conformity.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 2§6 of the Revised Charter on the ground that it has not been established that the right to information ot the employment contract is guaranteed.

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 Moldova.

In his two previous conclulsions (Conclusions 2005 and 2007), the Committee raised a series of questions relating to night work. The report does not answer the questions. The Committee reiterates that the next report provide additional information and indicates whether:

- prior to the employment on night work, a medical examination is provided for;
- possibilities for transfer to daytime work are provided for;
- there is continuous consultation with workers' representatives on the introduction of night work, its conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

In the absence of information allowing the Committee to consider whether the right to fair working conditions for night work is guaranteed, it concludes that the situation is not in conformity.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 2§7 of the Revised Charter on the ground that it has not been established that the right to just conditions of night work is guaranteed.

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 Moldova 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 Moldova.

Reasonable period of notice

It refers to its last conclusion (Conclusions 2007), in which it asked for clarification concerning entitlement to one week’s pay per year of service, with a minimum of one month’s wage or salary and a maximum of three months, in addition to the period of notice. From the information in the report and the provisions of the Labour Code it has not been able to establish whether employees receive compensation over and above the period of notice. It therefore repeats its request for confirmation that the period of notice and compensation are cumulative, failing which it will conclude that the situation in this respect is not in conformity with Article 4§4 of the Revised Charter.

Employees' leave of absence to seek new work

Article 184§2 authorises employees to take one day's leave per week to look for new work. The Committee therefore concludes that the situation is compatible with Article 4§4 of the Revised Charter in this respect.

Immediate dismissal

The Committee also notes that there is no statutory provision for immediate dismissal for serious offences. According to the appendix to Article 4§4, the only exception to the principle of reasonable notice concerns immediate dismissal for serious offences, but the accumulation of several less serious breaches with written warnings from the employer may amount to a serious offence. The Committee therefore asks how serious offences are dealt with in practice and how the courts settle such cases.

Probationary period, part time employees, fixed term or piece-work contracts

The Committee considers that the right to reasonable notice in the event of termination of employment applies to all categories of employee irrespective of their status, including those in unusual employment relationships. It applies during probationary periods and covers part-time workers and workers on fixed-term and piece-work contracts. National law must protect all employees.

Cessation of employment other than through dismissal

Article 4§4 does not just apply to dismissal, but must cover covers all cases of termination of employment. The Committee therefore asks for information in the next report on other forms of termination of employment, for example as a result of insolvency, death or invalidity of the employer.

Conclusion

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

- one month notice is not sufficient for workers with at least five years' service;
- two months' notice is not sufficient for workers with more than fifteen years' service.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

In its last conclusion, the Committee asked for information on deductions that could be made from salaries or wages, other than ones provided for in Article 148 of the Labour Code, and on the 50 and 70% deductions thresholds applicable to workers earning the minimum wage. There is no information on these points in the report.

However the report does state that the minimum wage was reviewed three times over the period 2005 – 2009 and was lei 600 (MDL; € 34.5) on 1 January 2009. From 1 July 2007, the reference wage was MDL 900 (€ 51.72) and the average wage in 2008 was MDL 2,530 (€ 145.38), which was 22.5% more than in 2007. The Committee wishes to know what deductions apply to the minimum wage mentioned above.

In connection with Article 4§5, the Committee has also ruled that employees cannot waive their right to a limitation of deductions from wages (Conclusions 2005, Norway). It therefore asks for further information in the next report on the measures preventing workers from waiving this right.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 4§5 of the Revised Charter on the ground that it has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

Article 5 - Right to organise

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

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 conclusion (Conclusions 2006) and will therefore only consider recent developments and additional information in this conclusion.

Forming trade unions and employer associations

The Committee notes that Section 10 of the Trade Union Law makes belonging to a national, sectoral or inter-sectoral trade union a prerequisite for local and company-level trade unions to acquire legal personality and thus to fully defend their members' interests.[1] It concludes that this constitutes an undue restriction on the right to form trade unions which is not in conformity with Article 5.

The Committee asks to be informed on developments concerning the draft bill amending the Law on Employers' Organisations insofar as it affects respect for requirements of Article 5 (formalities for registration, minimum number of founding members, etc.).[2]

Freedom to join or not to join a trade union

The report merely indicates the entry into force in 2009, i.e. outside the reference period, of the Code of Penalties which now explicitly provides for penalties in case a worker is prevented from creating or joining a trade union. The Committee notes that during the reference period there were no penalties specifically on trade-union related rights. It will reassess the situation in its next conclusion in the light of the newly adopted code provided that more details are given on situations which are covered by these penalties (e.g. discrimination upon recruitment and in terms of career and dismissal) and their amounts.

The Committee underlines that trade union members must be protected by law from any detrimental consequences that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities. It already noted that Section 6 of the Trade Union Law prohibits such discrimination (Conclusions 2006). It specifies in addition that domestic law must also make provision for compensation which is adequate and proportionate to the harm suffered by the victim (Conclusions 2004, Bulgaria). In its last conclusion (Conclusions 2006), the Committee thus asked not only whether any forms of direct or indirect discrimination against employees on grounds of trade union membership have been reported but also what forms of compensation are provided in the event of discrimination regarding recruitment, career and dismissal. In the absence of precise information on these issues, the Committee cannot consider as established that the situation is in conformity with Article 5 in this regard.

Trade union activities

The Committee notes that there is a case pending before the ILO Committee of Freedom on Association[3] in which the complainants allege that the public authorities and employers interfere in the internal matters of their organisations and pressure their members to change their affiliation and become members of a trade union supported by

the Government. It underlines that Article 5 protects the right of trade unions to organise freely and to perform their activities effectively, which is essential for the protection of workers' economic and social interests (Conclusions XII-2, Germany). **T**he Committee notes that Section 5 of the Trade Unions Act prohibits any interference from the authorities or employers in the exercise of the right to organise. It therefore asks whether there is any national case-law on undue interference with internal matters of trade unions and pressure on trade unions members by the authorities or employers. It will also take into account the developments and outcome of the aforementioned case.

Representativeness

According to another source[4], it is alleged that there are no clear rules for appointing trade union representatives to management bodies of state-owned enterprises or to tripartite bodies. The Committee reiterates its request for confirmation whether there are any criteria of representativeness and whether all trade unions enjoy the same prerogatives to defend their members' interests.

Personal scope

As noted in the previous conclusion (Conclusions 2006), Section 29 of the Police Act stipulates that members of the police who wish to join a trade union must apply to the courts. The Committee asks again whether this is a pre-condition for joining a trade union and, if so, what the courts' case law on this matter is. Should no information be provided in the next report, there will be nothing to establish that the situation is in conformity with Article 5 in this regard.

The Committee notes from another source[5] that the Supreme Court has validated the refusal of the Ministry of Justice to register the Trade Union of Public Administration and Civil Service Staff (USASP). It reiterates in this regard that the right to organise must be guaranteed to civil servants as to other employees, with the exception of staff belonging to certain branches of the civil service such as the armed forces and the police whose right may be restricted in accordance with the Charter (Conclusions I, Statement of Interpretation on Article 5). It therefore asks that the next reports specify what were the grounds for such a refusal.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 5 of the Revised Charter on the grounds that:

- trade unions not operating nationwide are required to belong to a national, sectoral or inter-sectoral trade union in order to acquire legal personality which unduly restricts the right to form trade unions;
- it has not been established that compensation and penalties are provided for by law in case of discrimination based on trade union membership.

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[1] *ILO Committee of Experts on the Application of Conventions and Recommendations: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Republic of Moldova (ratification: 1996) Published: 2009*

[2] *Ibid.*

[3] *Complaints against the Government of the Republic of Moldova presented by the Federation of Trade Unions of Public Service Employees (SINDASP), the Confederation of Trade Unions of the Republic of Moldova (CSRM) and the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINDSIND), supported by the International Confederation of*

Free Trade Unions (ICFTU), the General Confederation of Trade Unions (GCTU), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and Public Services International (PSI) Report No. 350, Case No. 2317.

[4] *International Trade Union Confederation (ITUC) 2007 Annual Survey on Violations of Trade Union Rights: http://survey07.ituc-csi.org/getcountry.php?IDCountry=MDA&IDLang=EN*

[5] *International Trade Union Confederation (ITUC) 2009 Annual Survey on Violations of Trade Union Rights: http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=MDA&Lang=EN*

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

Levels of joint consultation

The Committee examined the mechanisms for joint consultation at the national, sectoral and enterprise level in the private and the public sector in its previous conclusion (Conclusions 2006). Having noted that consultation takes place at various levels, the Committee had asked for details on the composition and functioning of the consultative bodies as well as whether participation of trade unions in consultation procedures is subject to a requirement of representativeness.

The report fails to provide the requested information. The Committee reiterates its request, referring also to the questions raised under Article 5 as concerns representativeness criteria.

Matters for joint consultation

Since the previous report did not indicate the matters for joint consultation, the Committee requested that the next report do so, recalling that under Article 6§1 consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.) (Conclusions I, Statement of Interpretation on Article 6§1 and Conclusions V, Ireland).

The report fails to include the requested information. Moreover, the Committee notes that within the framework of ILO, the Government also failed to provide the information needed to assess the situation with regard to Convention No. 144 concerning Tripartite Consultation.[6] The Committee therefore finds that it cannot be established whether joint consultation covers all matters of mutual interest. The situation is not in conformity with the requirements of Article 6§1 of the Revised Charter on this point.

The Committee asks the next report to clarify whether issues of interpretation of collective agreements are dealt within the framework of joint consultation or within other specific mechanisms.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 6§1 of the Revised Charter on the ground that it has not been established that joint consultation covers all matters of mutual interest.

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[1] *Individual direct request concerning tripartite consultation, ILO Convention No. 144 (ratified by Moldova in 1996), document No. (Ilolex): 092009MDA144.*

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The Committee refers to its assessment under Article 5 as concerns questions on representativeness of trade unions entitled to bargain collectively.

Legislative framework

The Committee refers to it previous conclusion (Conclusions 2006) for a partial description of the rules governing collective bargaining and recalls that it asked for the following information in order to assess the conformity of the situation in Moldova with the requirements of Article 6§2 of the Revised Charter:

- at what level tripartite collective agreements are concluded and what is the function of the bodies of social partnership, i.e. the commissions on consultations and collective negotiations at national, branch, territorial and enterprise level in the context of collective bargaining;
- whether and to which extent the state may intervene in the collective bargaining process and what are the safeguards to ensure that the trade unions entitled to bargain collectively are independent from the employer's side;
- what are the liabilities incurred by a party not complying with its obligation under a collective agreement.

The report fails to provide the requested clarifications. However, the Committee notes that the ILO Committee of Freedom of Association expects that the Governement will take measures to address violations *inter alia* of collective bargaining rights.[7] Pending receipt of the requested clarifications and information on any measures taken to address alleged violations of collective bargaining rights, the Committee cannot establish whether the situation is in conformity with Article 6§2.

Conclusion of collective agreements

The report informs that during the reference period the social partners concluded:

- 2 collective agreements at the national level (agreement No. 4 on the model for individual work contracts, concluded on 25 July 2005 and agreement No. 8 on the elimination of the worst forms of child labour, concluded on 12 July 2007);
- 37 collective agreements at the branch and territorial levels;
- 3105 collective agreements at the entreprise level.

The Committee reiterates that it requests details on whether the agreements were concluded in the private or in the public sector and it needs information on the number of employers and employees covered by these agreements. It thus asks the next report to contain updated information on collective agreements concluded in the private and public sector at enterprise, sectoral and national level and on the number of employers and employees covered by these agreements.

As the ILO Committee of Freedom of Association,[8] the Committee holds that the extension of collective agreements should take place subject to tripartite analysis of the

consequences it would have on the sector to which it is applied. The Committee asks the next report to provide information on the procedures governing the possible extension of collective agreements.

Public sector

In its previous conclusion (Conclusions 2006), the Committee noted that the provisions of the Labour Code apply to employers being physical or juridical persons in the public sector as well as to workers of public bodies (Article 3 (d) and (e) of the Labour Code). However it asked clarification as to whether this means that the rules on collective bargaining procedures apply in the same way to the public sector including the civil service or what other regulations allow a participation of employees in the public sector in the determination of their working conditions.

The Committee reiterates that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them (Conclusions III, Germany). Since the report fails to provide the requested clarification, it cannot be established whether the situation in Moldova is in conformity with Article 6§2 on this point.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 6§2 of the Revised Charter on the grounds that:

- it has not been established that there is an appropriate legislative framework;
- it has not been established that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them.

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[1] *Complaints against the Government of the Republic of Moldova presented by the Federation of Trade Unions of Public Service Employees (SINDASP), the Confederation of Trade Unions of the Republic of Moldova (CSRM) and the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINDSIND), supported by the International Confederation of Free Trade Unions (ICFTU), the General Confederation of Trade Unions (GCTU), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and Public Services International (PSI) Report No. 350, Case No. 2317*

[2] *Digest of the Freedom of Association Committee of the Governing Body of the ILO, 5th (revised edition), 2006, para 1051.*

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee previously noted that in the event no agreement was reached in a conciliation commission or in the event the parties disagree with the decision of the conciliation commission, the parties have the right to submit an application for settlement of the dispute to the labour "jurisdiction" (court). The parties are summoned by the competent court within 10 days following registration of the application and the court renders a judgement for settlement of the dispute within a maximum period of thirty days

which may be appealed against pursuant to the stipulations of the Civil Code.The Committee again asks the next report to specify whether referral of a collective conflict to the labour court for binding settlement requires the consent of both parties to the conflict or whether it is possible upon request of one party only without the other party's consent.

The Committee recalls in this context that any form of compulsory recourse to arbitration is a violation of Article 6§3 of the Revised Charter, whether domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both, unless such deferral is limited to cases prescribed by Article G of the Revised Charter.

The Committee previously concluded that the situation in Moldova was not in conformity with Article 6§3 of the Revised Charter on the ground that recourse to compulsory arbitration is permitted in circumstances which go beyond the limits set out in Article G of the Revised Charter (Conclusions 2006). The Committee recalls that collective disputes involving certain categories of workers who are denied the right to strike, such as, *inter alia*, employees in water supply and electricity supply services, communication services and air traffic control services are subject to binding arbitration by the labour court (Article 369 para. 4 of the Labour Code). Therefore in these cases, compulsory arbitration terminates collective disputes even before recourse to a strike can be made.

The report does not indicate any change to the situation therefore the Committee once again concludes that the situation is not in conformity with the Revised Charter.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 6§3 of the Revised Charter on the ground that recourse to compulsory arbitration is permitted in circumstances which go beyond the limits set out in Article G 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 Moldova.

The Committee previously found the situation in Moldova not to be in conformity with Article 6§4 of the Revised Charter (Conclusions 2006) on two grounds, and posed a significant number of questions to the authorities. The report fails to provide any information on Article 6§4. Therefore the Committee reiterates all its previous questions and considers that if information on these points is not submitted in the next report there will be nothing to show that the situation is in conformity on the outstanding issues either.

Meaning of collective action

The Committee asks the next report to provide information on whether employers have the right to have recourse to lock-outs and if so what are the conditions under which this right might be exercised.

Permitted objectives of collective action

Pursuant to Article 362 of the Labour Code a strike may be called with the purpose of protecting the professional, economic and social interests of workers and may not pursue political goals.

The Committee asks the next report to confirm that the right to strike is guaranteed in the context of any negotiation between employers and employees in order to settle an industrial dispute.

Who is entitled to take collective action?

Strikes at the national, territorial and branch levels may be called and organised by the corresponding national, territorial and branch trade union body. As regards strikes at the enterprise level, the Labour Code stipulates that the interests of striking workers are expressed by their representatives (Article 363 para. 2). The Committee wishes the next report to specify whether this means that at the enterprise level the right to call a strike is also limited to trade unions. It further asks whether and what kind of representativeness criteria, are applicable.

Restrictions on the right to strike

The Committee considered previously that a strike ban in sectors such as public administation ("internal affairs"), state security sectors and national defence could serve a legitimate purpose since work stoppages in these sectors could pose threats to public order and national security. However, simply prohibiting all employees in the aforementioned sectors from striking, without any distinction as to function, could not be considered proportionate, and therefore necessary in a democratic society.It found that the situation in Moldova was not in conformity with Article 6§4 of the Revised Charter in this regard.

The report fails to provide any information on this point therefore the Committee reiterates its finding of non conformity on this point.

The Committee also previously noted that employees of the customs authorities of a particular grade are also denied the right to strike. The Committee again asks the next report to specify whether the duties and functions of the employees concerned, given their nature or level of responsibility, are directly related to national security or the protection of public order.

The Committee noted previously that the right to strike is denied to all employees in electricity and water supply services, telecommunication and air traffic control. The Committee considered that such a ban could serve a legitimate purpose since work stoppages in these areas, which are essential to the life of the community, could create a threat to the lives of others or to public interest, national security or public health. However, simply prohibiting all employees in these services, even though essential, from striking could not be considered proportionate to the requirements of these sectors, and therefore necessary in a democratic society. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4. The Committee therefore considered that the situation in Moldova was not in conformity with Article 6§4 of the Revised Charter in this regard.

The report fails to provide any information on this point therefore the Committee reiterates its finding of non conformity on this point.

Minimum / Essential services

Pursuant to Article 363 para. 5 of the Labour Code striking workers together with the employer are obliged to protect the enterprise installations and equipment and to provide their uninterrupted functioning if a work stoppage could endanger the life and health of people or cause irreparable damage to the enterprise.

In order to be able to assess whether these restrictions to the right to strike fall within the limits of Article G of the Revised Charter and are in conformity with Article 6§4 of the Revised Charter, the Committee again asks for information on what are the criteria used to determine whether such services have to be introduced and what would be their scope and who is responsible to decide on their necessity and scope. It wishes the next report in particular to specify what is the scope and meaning of “irreparable damages to the enterprise” within the meaning of Article 363 para. 5 of the Labour Code. The Committee further asks again how this provision is applied where the parties are unable to agree on the level and the forms of services to be maintained.

The Committee again asks what may be the maximum duration of a conciliation procedure to be carried out before a strike can be called. It further asks whether the law permits a strike only where conciliation procedures have failed or if a strike may still proceed where there is a merely partial resolution of the dispute.

Consequences of collective action

The Committee again asks the next report to specify if there is a prohibition on dismissal for participation in a lawful strike under Moldovan law. It further wishes to know whether workers participating in a strike who are not members of the trade union having called it, have the right to the same protection as trade union members.

Conclusion

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

- the restrictions to the right to strike for public officials and employees in sectors such as the public administration ("internal afairs") state security sectors and national defence go beyond those permitted by Article G of the Revised Charter;
- the right to strike is denied to all employees in electricity and water supply services, telecommunication and air traffic control.

Article 21 - Right of workers to be informed and consulted

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

In the absence of a reply, the Committtee reiterates the questions it raised in its last conclusion (Conclusions 2007).

The Committee again asks:

- whether elected personnel representatives may continue their activities in the event trade union representation is subsequently established at an enterprise;
- the next report to confirm that the provisions of the Labour Code concerning the right to information cover all employees in the private sector and companies controlled by public authorities.

Despite its repeated requests, the Committee still finds no information in the report about the sanctions applicable in case employers fail to fulfil their obligation to inform and consult workers within the undertaking. It considers the situation in Moldova to be not in conformity with the Revised Charter on this point.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 21 of the Revised Charter on the ground that it has not been established that sanctions are applicable in case employers fail to fulfil their obligation to inform and consult workers within the undertaking.

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 Moldova.

The report states that the concept of sexual harassment is defined by the Law No. 5-XVI, of 09 February 2006, on the equality of opportunities between women and men. The report mentions that national legislation will be amended with the aim of meeting the standards concerning sexual harassment. The Committee notes the information concerning the work on revision of the Labour Code. It notes that this information falls outside the reference period and asks the next report to provide information on any developments in this regard.

In its last conclusion, the Committee reiterated the questions posed in Conclusions 2005 which the previous report failed to provide. The current report again fails to provide answers to the questions posed.

Conclusion

The Committee concludes that the situation is not in conformity with Article 26§1 of the Revised Charter on the ground that it has not been established that Moldova guerantees the right to protection from sexual harassment in the workplace.

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 Moldova.

The report states that the Labour Code and the legislation regulating the remuneration prohibits discrimination. It does not explain whether moral harassment is encompassed under the notion of discrimination.

The Committee considers that Article 26§2 of the Charter establishes a right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person. The states party are required to take all necessary preventive and compensatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them at the workplace or in relation to their work, since these acts constitute humiliating behaviour (Conclusions 2005, Statement of Interpretation on Article 26§2). This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be discriminated against for upholding these rights. (Conclusions 2003, Slovenia).

The Committee asks that the next report specifies how moral harassment is included in the anti-discrimination provisions of the Moldovan legislation.

The Committee notes the information concerning the work on revision of the Labour Code and that one of the amendments foreseen is the introduction of the obligation of the employer to promote conditions of respecting dignity in the workplace. It notes that this information falls outside the reference period and asks the next report to provide information on the possible developments in this regard.

In its last conclusion, the Committee reiterated the questions posed in Conclusions 2005 which the previous report failed to provide. The current report again fails to provide answers to the questions posed.

Conclusion

The Committee concludes that the situation is not in conformity with Article 26§2 of the Revised Charter on the ground that it has not been established that Moldova guarantees the right to protection from moral harassment in the workplace.

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

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

Despite its repeated requests, the Committee still finds no information in the report on:

- any existing protection for employees' representatives, other than trade union representatives against dismissal or prejudicial acts short of dismissal where they are exercising their functions outside the scope of collective bargaining,
- existing facilities other employees' representatives, identical to those afforded to trade union representatives.

Therefore the Committee considers the situation in Moldova to be not in conformity with the Revised Charter on these two points.

The Committee refers to its interpretative statement in the General Introduction on the duration of protection for workers' representatives and wishes to be informed as to how long the protection for worker representatives lasts after the cessation of their functions.

In addition 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 further information.

Conclusion

The Committee concludes that the situation in Moldova is not in conformity with Article 28 of the Revised Charter as it has not been established that:

- employees'representatives, other than trade union representatives are guaranteed protection against dismissal or prejudicial acts short of dismissal where they are exercising their functions outside the scope of collective bargaining.
- facilities identical to those afforded to trade union representatives are provided to other employees' representatives.

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

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

The report states that the legislation in force concerning collective redundancies remains the same as previously.

The Committee examined the situation in Conclusions 2005 in depth and posed a certain number of questions and consequently deferred its conclusion. Both the current and the last report have failed to provide answers to those questions. The current report states that the criteria for the definition of collective redundancies are defined by collective agreements and gives the example of the collective agreement applicable to the region of Edinet. The Committee asks for information covering the rest of the Moldovan regions.

Conclusion

The Committee concludes that the situation is not in conformity with Article 29 of the Revised Charter on the ground that it has not been established that Moldova guarantees the right to information and consultation in collective redundancy procedures.