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European Social Charter

European Committee of Social Rights

Conclusions XIX-3 (2010)
(ICELAND)

Articles 2, 4, 5 and 6 of the 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 European Social Charter was ratified by Iceland on 15 January 1976. The time limit for submitting the 23rd report on the application of this treaty to the Council of Europe was 31 October 2009 and Iceland submitted it on 9 October 2010.

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 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

Iceland has accepted all the articles from this group with the exception of Article 2§2, 2§4 and Articles 2 and 3 of the Additional Protocol.

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

The present chapter on Iceland concerns 13 situations and contains:

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

The next Icelandic report 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 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).*

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 Iceland.

The report indicates that the only amendment during the reference period to the Health and Safety at Work Act (No. 46/1980) was related to the inclusion of doctors undergoing training within its scope. No changes are reported to the working time provisions in collective agreements.

The Committee recalls from its previous conclusion (Conclusions XVIII-2) that average working time per week, including overtime, should not exceed 48 hours. The reference period for calculating average working time is 6 months, but may be extended to 12 months by collective agreement when there are objective or technical reasons, or in view of the special nature of the jobs in question (Section 55 of the Act).

In reply to the Committee, the report provides examples of jobs where the reference period for averaging working hours can be extended up to 12 months. This includes jobs where there are seasonal peaks in work or fluctuations in an industry due to for example weather conditions (in fishing) or even market conditions.

Concerning the Committee's question on what are the absolute limits on daily and weekly working hours, the report makes reference to Article 53 of the Act, which provides that workers should have at least 11 consecutive hours of rest in each 24-hour period. Therefore, although there is no explicit maximum working day, a 13-hour maximum can be derived from the application of the 11-hour daily rest.

The report also mentions that pursuant to Article 53 of the Act the rest period can be reduced to 8 hours by agreement between the social partners if the nature of the work or particular working methods necessitates such derogation. The statutory 11 hour rest period may also be derogated from in cases of disruption of normal activities due to external causes, such as the weather or other natural forces, accidents, power failure, malfunction in machinery, equipment or other device or other comparable unforeseeable events.

The Committee finds that the reduction of the rest period to 8 hours may be justified in situations aimed at avoiding substantial loss or damage when operations are affected by external circumstances (weather, forces of nature, accidents, power failures, breakdown of equipment, etc.).

However, as regards the reduction of the rest period by agreement between the social partners, it considers that the Act gives social partners too much freedom in this area. The Committee notes that social partners will be able to agree on an extension of daily working hours to 16 hours (by reducing the rest period to 8 hours), subject to the only condition that "the nature of the work or particular working methods requires this". It recalls in this respect from information previously submitted by the Government some examples of activities where the social partners can reduce the rest period, such as shift work, security duties, agriculture and salvaging operations.

Accordingly, the Committee considers that the Act gives too broad a margin of discretion to the social partners in determining sectors of activity where working time can be extended to 16 hours. It recalls that working time should in no circumstances go up to 16 hours per day, and therefore considers, irrespective of the fact that the Act foresees compensatory rest when the daily rest time is shortened, that the situation is in breach of Article 2§1 of the Charter on this point.

In its previous conclusion (Conclusions XVIII-2) the Committee also found that the situation was not in conformity with Article 2§1 because working hours for seamen could reach up to 72 hours per week. There have been no changes to the situation, and, under the Seamens' Act (No. 35/1985) the working time limits continue being 14 hours per day or 72 hours per week. The report again states that such regulations are in line with relevant Community directives and other international instruments.

The Committee refers to its Introductory Observation on the relationship between European Union Law and the European Social Charter in Complaint No. 55/2009, *Confédération Générale du Travail (CGT) v. France*, decision on the merits of 23 June 2010, paragraph 38. It reiterates that

the fact that a domestic regulation reproduces or is inspired on a European Union Directive can not prejudice its conformity with the Charter. Therefore, given that weekly working time of more than 60 hours is too long to be considered as reasonable under Article 2§1 of the Charter, the Committee reiterates its conclusion of non-conformity on this ground.

The Committee notes that average actual working hours in 2008 stood at 41.4 hours, which is a slight decrease from the previous reference period.

The Committee asks that the next report provides 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 Iceland is not in conformity with Article 2§1 of the Revised Charter on the grounds that:

- the social partners can agree to extend daily working time to 16 hours in various occupations;
- working hours for seamen may go up to 72 hours per week.

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 Iceland .

Under collective agreements concluded in 2008 between the Icelandic Confederation of Labour (ASI) and the Confederation of Icelandic Employers (SA), the annual leave has been increased. Under the agreements, the duration of leave was extended to 30 days after 10 years working in the same company, 27 days after five years working in the same company and 25 days after five years of working in the same profession.

In its previous conclusion (Conclusions XVIII-2), the Committee asked for information on the rules on the postponement of annual leave. The report states that according the Holiday Allowance Act N° 30/1987, that if a worker is not able to take scheduled leave during the period 2 May to 15 September due to illness or accident the worker may, subject to the presentation of a medical certificate, take the leave at another time, however not later than 31 May in the following year.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

It notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter. The Committee asks that the next report provides a full and up-to-date description of the situation in law and practice in respect of Article 2§5.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

The report states that the minimum wages in Iceland, as well as other working terms, are determined in collective agreements between the social partners. Each collective agreement specifies the minimum wages for the particular occupation group and applies to all employees in the relevant occupation. The Committee notes from the report that between 2004 and 2007 the wages in Iceland rose overall by 30%. Further, the purchasing power of the minimum wage taken together with the lump-sum payments increased in the reference period.

According to the report, the minimum monthly wage of unskilled workers on the Icelandic labour market amounted to ISK 98,904 in January 2005 (€ 1,190 at the relevant time) and ISK 137,752 (€ 1,502) in January 2008. The report also provides the amounts of minimum and average monthly wages after deduction of pension-fund premiums and taxes. Net minimum wage represented ISK 87,445 (€ 1,052) in 2005 and 119,039 (€ 1,298) in 2008.

The report provides two kinds of average wages, namely average daytime wage and average aggregate wage. In its previous conclusion the Committee decided to take the aggregate average wage (which is higher than the average daytime wage) as the reference wage, since it represented the total income on which the income tax was based and therefore, in the Committee's view, better represented the national cross-sector average. Consequently, in the present conclusion the Committee made the comparison with the net aggregate average wage, which amounted to ISK 234,559 (€ 2,823) in 2005 and ISK 314,192 (€ 3,426) in 2008. The Committee notes that in 2005 the net minimum wage represented 37.3% of the aggregate net average wage and 37.9% in 2008. (The proportion to the net average daytime wage is higher and equals 45.8% and 47% respectively). The Committee notes that this relationship is not in conformity with Article 4§1 of the Charter.

In its previous conclusion the Committee asked whether the lump-sum supplements agreed in collective agreements paid to workers on a minimum wage, such as December supplement and holiday pay supplement, were included in the figures on net minimum wage provided in the report. In this connection the Committee notes from the report that the December supplement and the holiday supplement are not only paid to minimum wage earners. Those supplements constitute fixed amounts and are not related to an employee's wage. According to the report, the December supplement and the holiday pay supplement were included in the calculations of the minimum and average wages.

The Committee recalls that to be considered fair, a net minimum wage should amount to no less than 60% of a net average wage. If the wage lies between 50% and 60%, a state is asked to demonstrate that the wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living. However, a net wage which is less than half the net national average wage will be deemed to be unfair and therefore the situation of the Party concerned will not be in conformity with Article 4§1. Therefore, the Committee holds that the minimum net wage in Iceland is not fair as it falls too far below the average wage.

The Committee observes, however, that the proportion between minimum and average wages is considerably lower for this reference period compared to the previous one. It notes in this regard that the figures provided in the present report concerning net wages, insofar as they cover previous reference period, differ significantly from those provided in the last report. The Committee therefore asks for a clarification of this divergence, in particular what was the method used in both reports to calculate net wages.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Iceland is not in conformity with Article 4§1 of the Charter on the ground that the minimum wage is not fair.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

The Committee notes from the Icelandic report that there have been no changes in the situation which was previously considered to be in conformity (Conclusions XVIII-2).

As the most recent detailed information on the situation dates back from the period 1993-1996, the Committee reiterates its request that the next report provide a full and up-to-date description of the situation in law and practice in respect of Article 4§2.

Conclusion

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

Article 4 - Right to a fair remuneration

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

The Committee takes note of the information in the Icelandic report.

A new Act (10/2008) on the equal status and rights of women and men came into force on 18 March 2008. It replaces the Act on the same subject adopted in 2000. The Act of 2008 reiterates companies' obligations with regard to gender equality in the areas of pay, working conditions, vocational training and leave. New supervisory and disciplinary powers have been assigned to the Centre for Gender Equality. Employees are now permitted to disclose information on their wages outside the company. As a result of these measures, the independence of the committee that deals with complaints on gender-related issues has been enhanced; its decisions are now binding and its investigation and information-gathering powers have been extended.

In 2007, the Minister of Social Affairs and the Minister of Finance established three committees which were asked to look into the situation and propose measures to bridge the gender pay-gap. Since February 2008, collective agreements negotiated in the private sector have referred specifically to gender equality and the development of gender equality policies by the companies concerned. In October 2008, the Minister of Social Affairs and Social Security, the Confederation of Icelandic Employers and the Icelandic Confederation of Labour adopted a declaration in which they undertook to adopt equal pay standards.

Legal Protection

Under the new legislation, the Complaints Committee on Gender Equality consists of three lawyers, all appointed by the Supreme Court of Iceland. The Committee now gives binding decisions whereas previously it could only issue non-binding opinions. No other authority may give it instructions and its decisions may only be contested in a court of law. In this event, the Committee may, at either party's request, postpone the legal effects of its decisions. Individuals, companies, institutions and non-governmental organisations may submit a case to the Committee on their own or their members' behalf. The Centre for Gender Equality may also refer cases to it. Under the new Act, complainants are allowed to ask the Centre to ensure that the Committee's decisions are fully complied with. In this connection, the Centre will, where necessary, issue instructions to the party concerned with regard to the reparation measures decided on by the Committee. If the instruction is ignored, the Centre may decide to impose a fine until the Committee's decision is implemented. Under the new legislation, the Committee is entitled, after consulting the complainant, to refer the case for arbitration by the Centre. This applies to cases in which a result may be reached more quickly without infringing the complainant's rights. The Committee may also decide that a party found to have violated the law must pay the complainant's costs. The Committee gave eight rulings in 2005, sixteen in 2006, five in 2007 and nine in 2008. During the period from 2005 to 2008, the Supreme Court gave three judgements on gender equality cases (on the basis of the Act of 2000). They all related to job appointments and in only one was there found to have been an infringement of the law.

Comparison of Salaries

The Committee points out that the right of women and men to “equal pay for work of equal value” must be expressly provided for in legally binding form (Conclusions XV-2). As comparisons need to be made in order to determine whether women and men really do receive equal pay, the Committee has consistently found that “the possibility to look outside an enterprise for an appropriate comparison should exist where necessary” (Conclusions XIII-1). It considers that the possibility of looking outside the enterprise for appropriate comparisons is of fundamental importance in those exceptional cases when it is necessary “for a system of objective job evaluation to be efficient in certain circumstances, in particular in enterprises where the workforce is largely, or even exclusively, female” (Conclusions XIII-5).

Based on the information provided by the Icelandic authorities, the Committee notes the following: the new Act of 2008 authorizes pay comparisons with regard to the same employer but not between employers; wages are dependent on firms’ financial results. Consequently, the Committee considers that the situation is not in conformity with the Charter on this point, nonetheless that in practice, according to the information provided by the Icelandic authorities, when the social partners negotiated wages and adopted collective agreements by sector, they took account of the situation in other firms.

Studies on equal pay

With regard to the Committee’s request for other studies to be conducted, particularly with a view to collecting reliable data to be able to determine whether qualifications have an impact on the scale of the pay gap between women and men, the Icelandic report refers to the following items:- the survey on “Wage Formation and Gender-Based Wage Differentials” (Launamyndun og kynbundinn launamunur), conducted in 2006 by Capacent Gallup for the Ministry of Social Affairs (the previous survey had been carried out in 1994); - surveys carried out by the trade unions among their own members (autumn 2006); - research launched by Statistics Iceland in February 2008 on the main methods that scientific theories on gender-based wage differences have formulated; - the findings of a survey on gender-based wage differences for the period 2000-2007 published by Statistics Iceland in 2010; - a research project on the wage gap launched in 2007 by the Centre for Gender Equality in collaboration with the Ministry of Social Affairs in connection with the European Year of Equal Opportunities for All; - a survey on gender-based wage differences carried out by the University of Iceland in 2008 at the request of the Ministry of Social Affairs. The latter survey, which covered the entire national labour market, showed that the overall wage gap is 16.3%. The difference is greater among people working in the private sector and even greater among those employed outside the greater capital area. In the public sector, no significant gender-based wage difference was measured among employees with primary school education and university education. However, there were significant differences among employees with secondary school education.

Retaliatory dismissal

The Committee points out that in the event of retaliatory dismissal, reparation must, in principle, take the form of reinstatement in the same or a similar post. Where this is not possible or not desired by the employee, financial compensation may be acceptable, but only if it is of a sufficient amount to deter the employer and to compensate the worker (see, in particular, Conclusions VII and VIII, Denmark; Conclusions XIII-5, general observation; Conclusions XIV-2, Luxembourg and Iceland).

The Gender Equality Act of 2008 reiterates that employers are prohibited from dismissing workers who have filed complaints or instituted court proceedings under the Act. Employers are also required to ensure that employees will not be disadvantaged in their employment conditions because they have made a complaint. Employers who wilfully or negligently violate the provisions of the Act are required to pay compensatory damages under the general rules and possibly compensation for non-pecuniary damage. There is no statutory ceiling on compensatory damages, the amount of which is determined by the court.

The report states that Icelandic law does not address the rights of individuals who believe that their rights to demand reinstatement with the same employer have been violated. The Committee notes

that the report states that although the courts do not in practice order reinstatement this is not to say that they may do so or will not do so in the future. However, it considers that this is not sufficient to bring the law of Iceland into compliance with the Charter on this point.

Conclusion

The Committee concludes that the situation in Iceland is not in conformity with Article 4§3 of the Charter on the grounds that:

- legislation does not permit pay comparisons to determine whether there is equal pay for equal work or work of equal value beyond a single employer;
- law makes no provision for declaring a dismissal null and void and/or reinstating an employee in the event of a retaliatory dismissal connected with a claim for equal pay.

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 Iceland .

In its last conclusion the Committee found that the situation in Iceland was not in conformity with Article 4§4 of the Charter on the ground that the two weeks' notice period in the collective agreement between the Confederation of Icelandic Employers and Skilled Construction and Industrial workers, for employees with more than six months' service, was not reasonable.

The present report does not provide information allowing the Committee to assess whether the situation has changed since the previous conclusion. Instead, the report describes the employee's right to know the reason for the termination of his/her employment. In the absence of any relevant information, the Committee requests the Icelandic authorities to address these matters fully in the next report. In the meantime, it renews its finding of non-conformity.

Conclusion

The Committee concludes that the situation in Iceland is not in conformity with Article 4§4 of the Charter on the ground that the two weeks' notice period for employees with more than six months' service, covered by the collective agreement between the Confederation of Icelandic Employers and Skilled Construction and Industrial workers, is not reasonable.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

The Committee notes from the Icelandic report that there have been no changes in the situation which was previously considered to be in conformity (Conclusions XVIII-2).

As the most recent reports have not submitted any information, the Committee requests that the next report provide a full and up-to-date description of the situation in law and practice in respect of Article 4§5.

Conclusion

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

Article 5 - Right to organise

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

In its previous conclusion (Conclusions XVIII-1) the Committee took note of the amendment to Article 74 of the Constitution on freedom of association but considered that, in the absence of any case law to the contrary, it had not been established that the changes made to the Constitution protected the negative freedom of association of a scope large enough to avoid an obligation to belong to a trade union being imposed by a closed shop or priority clauses in collective agreements.

The report states that it is prohibited to oblige workers to join trade unions or other associations, in line with the judgment of the European Court of Human Rights of 30 June 1993 (*Sigurður A. Sigurjónsson v. Iceland*) which found a violation of Article 11 of the European Convention of Human Rights on the ground that Act No. 77/1980 obliged taxi-drivers to be members of trade unions in their profession - this is reflected in the explanatory memorandum of the law which amended Article 74 of the Constitution. However, the report differentiates such cases from those where priority clauses are agreed on by trade unions and employers as part of collective bargaining.

The report indicates that priority rights, which result from priority clauses, mean that the employer undertakes to accept union members in preference to non-unionised workers as long as they are available. The report states that the Constitutional Committee of the Parliament considers that priority clauses contained in collective agreements do not entail compulsory membership of the type covered by Article 74 of the Constitution, which was not intended to change the legal situation prevailing on the labour market as regards priority clauses. This was confirmed by the Labour Court in a judgment of 28 May 2002 where the court considered that priority clauses were not in contradiction with Article 74 of the Constitution. The Labour Court underlined that nothing prevented other trade unions than the one which benefits from a priority clause to negotiate priority clauses for their own members. In a judgment of 23 January 2007 the Labour Court held that the amendment to Article 74 was not meant to alter the situation of the labour market as regards priority clauses. The Labour Court also stated that priority rights apply not only to recruitment by also to termination of employment.

The Committee considers that such priority clauses constitute a serious interference with the right not to join trade unions as non-unionised workers find themselves in a clearly disadvantageous position on the labour market compared to workers belonging to trade unions having negotiated priority clauses for their members. The report indicates that it is the Government's position that intervention by way of legislation or measures aiming to prohibit priority clauses in collective agreements would risk jeopardising the stability of the labour market. Arguing that these clauses are the result of agreements freely reached by employers and unions and are long-standing practice, the Government appears to leave it to the social partners themselves to stop having recourse to them. The Committee, however, considers that, ultimately, it remains for the Government to ensure conformity of the national situation with the Charter. For this reason it asks what concrete steps are taken to encourage social partners not to have recourse to priority clauses anymore and whether a decrease has been noted as a result of such action. In the meantime, and given the current state of legislation and case law as described in the report, the Committee still cannot consider the situation to be in conformity with Article 5 by reason of the existence of such priority clauses.

Conclusion

The Committee concludes that the situation in Iceland is not in conformity with Article 5 of the Charter on the ground that the existence of priority clauses in collective agreements which give priority to members of certain trade unions in respect of recruitment and termination of employment infringes the right not to join trade unions.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

The Committee notes from the report submitted by Iceland 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. 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 Iceland 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 Iceland 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§2 of the 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 Iceland is in conformity with Article 6§2 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

The Committee notes from the report submitted by Iceland 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 Charter.

Conclusion

The Committee concludes that the situation in Iceland 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 Iceland .

Who is entitled to take collective action?

Under Section 14 of Act No. 80/1938 only trade unions have the right to call a strike. However there are no formal conditions for the establishment of trade unions in Iceland. The Committee previously considered that the situation in this regard was in conformity with Article 6§4 of the Charter. There has been no change to this situation.

Restrictions to the right to strike

The Committee notes that according to the report there were no Government interventions to terminate strikes during the reference period.

The Committee previously sought clarification whether the right to strike for civil servants was now guaranteed in the context of any negotiation between employers and employees in order to settle a collective dispute and was no longer limited to situations where the strike is aimed at the conclusion of a collective agreement. Meanwhile, it reserved its position on this point. The report confirms that the changes made mean that civil servants may strike

Procedural requirements

The Committee previously found the situation to be in conformity in this respect (Conclusions XVIII-1) but asks the next report to provide updated information on procedural requirements before a strike can take place.

Consequences of a strike

The Committee previously found the situation to be in conformity in this respect (Conclusions XVIII-1) but asks the next report to provide updated information on the consequences of a strike.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Iceland is in conformity with Article 6§4 of the Charter.