December 2010

European Social Charter

European Committee of Social Rights
Conclusions XIX-3 (2010)
(UNITED KINGDOM)

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 Conclusions.[1]

The European Social Charter was ratified by the United Kingdom on 11 July 1962. The time limit for submitting the 29th report on the application of this treaty to the Council of Europe was 31 October 2009 and the United Kingdom submitted it on 19 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 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).

The United Kingdom has accepted all of these Articles, with the exception of Articles 2§1 and 4§3 as well as Articles 2 and 3 of the Additional Protocol.

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

The present chapter on the United Kingdom concerns 13 situations and contains:

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

The next United Kingdom 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.

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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).*

rticle 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 United Kingdom.

The Committee points out that public holidays are not a right that is enshrined in legislation. They are covered instead by collective agreements and individual employment contracts. In its previous conclusions (Conclusions XVI-2 and XVIII-2), the Committee asked for information demonstrating that the great majority of workers were entitled to paid public holidays through collective agreements or otherwise. It also asked under what circumstances work could be performed on public holidays and whether employees were entitled to time off in lieu and/or increased remuneration. The report does not answer these questions. The Committee therefore reiterates them.

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

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 2§2 of the 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 the United Kingdom.

The Working Time Regulations were amended in 2007 and as a result, annual paid leave entitlement was extended to 28 days. Financial compensation may not be offered as an alternative to such leave.

On the Isle of Man, the right to paid annual leave was introduced in September 2007 by way of the Annual Leave Regulations and the Annual Leave Order. Workers are entitled to four weeks' paid leave per year.

The Committee considers that annual leave exceeding two weeks may be postponed in particular circumstances prescribed by domestic law, the nature of which should justify the postponement. It asks again for information in the next report on the rules on the postponement of annual leave.

In its previous conclusion (Conclusions XVIII-2), the Committee considered that the situation was not in conformity on the ground that workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time. According to the report, the Government is currently examining the impact of two recent judgments of the European Court of Justice (Stringer and Pereda)[1] and how they apply to rules governing working time. As there was no change in the situation during the reference period, the Committee renews its finding of non-conformity.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 2§3 of the Charter on the ground that workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time.

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[1] *ECJ, 20 January 2009, Case No. C-520/06, Stringer e.a. v. Her Majesty's Revenu and Customs; ECJ, 10 September 2009, Case No. C-277/08, Pereda v. Movilidad SA.*

Article 2 - Right to just conditions of work

Paragraph 4 - Reduced working hours or additional holidays in dangerous or unhealthy occupations

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

The Committee refers to the statement of interpretation it made on Article 2§4 of the 1961 Charter in the General Introduction to Conclusions XVIII-2.

Article 2§4 requires states to grant workers exposed to residual risks one form or another of compensation if the risks have not been eliminated or sufficiently reduced despite the full application of the prevention and protection measures deriving from Articles 3 and 11, or if such measures have not been applied. The aim of these 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. 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 in conformity with the Charter. Under no circumstances, however, can financial compensation be considered appropriate under Article 2§4 (Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No. 30/2005, decision on the merits of 6 December 2006 and Conclusions XVIII-2, statement of interpretation of Article 2§4).

The Committee refers to its conclusion under Article 3 of the Charter (Conclusions XIX-2) which describes the dangerous occupations performed and the preventing measures taken in this regard.

According to the report, in July 2006, the Government published guidelines for employers on managing the risks associated in particular with dangerous work. This tool takes account of the type of work, commuting time, the number and frequency of breaks and shift lengths. It highlights the points in the shift schedule where fatigue and risk are highest so that employers can reduce risks by changing work schedules or working hours or incorporating more breaks.

In its previous conclusion (Conclusions XVIII-2), the Committee concluded that the situation in the United Kingdom was not in conformity with Article 2§4 of the Charter as there is no provision in legislation for reduced working hours or additional holidays for workers exposed to occupational health risks coupled with the fact that no evidence was given demonstrating that such measures were provided by collective agreement or by other means. It asked for information on specific measures taken to reduce exposure to risks in occupations or involving work processes where it has not been possible to

eliminate all residual risks, in particular in those occupations typically considered as dangerous and unhealthy. The Committee notes that the guidelines published by the Government do not form a binding legal basis and that there is still no provision in UK legislation for working hours to be reduced or additional leave to be granted to workers engaged in dangerous or unhealthy occupations. It therefore reiterates its finding of non-conformity.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§4 of the Charter on the ground that it has not been established that measures reducing exposure to risks are provided.

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 United Kingdom.

The Committee refers to its previous conclusion (Conclusions XVIII-2), in which it gave a list of situations in which it was possible to postpone weekly rest periods and work for more than 12 consecutive days. It found the list to be very broad-ranging and to contain few safeguards. It concluded that the situation was not in conformity with Article 2§5 of the Charter.

As there was no change in the situation during the reference period, the Committee renews its finding of non-conformity.

As regards Sunday work in 2006, 16 % of all persons in employment and in 2008, 15.1 % of all persons in employment worked regularly on a Sunday.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§5 of the Charter on the grounds that there are inadequate safeguards to prevent that workers may work for more than twelve consecutive days without a rest period.

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 United Kingdom.

In its previous conclusion the Committee held that the situation was not in conformity with Article 4§1 of the Charter on the ground that the minimum wage fell far below the threshold of 60% of the average wage.

It now notes from the report that in 2008 the adult rate of the UK National Minimum Wage (NMW) amounted to £ 5.73 (€6.90) gross per hour. According to the report the NMW has increased substantially faster than both average earnings and prices, especially since 2001. Since it was introduced in 1999, it has risen by around 59% up to October 2008. The Government takes advice on NMW rates from the independent Low Pay Commission. The aim when setting the rates is to help the low paid through an increased minimum wage, while making sure that no damage is done for their employment prospects by setting these rates too high.

As regards the minimum wage as a per cent of median earnings (the so called NMW bite), the Committee observes from the report that it is higher in low paid sectors such as hotels and restaurants, cleaning, hairdressing etc. On average, in all sectors it represented around 50% of the median wage in 2008. The report also describes the system of tax credits which aims at achieving fairness combined with flexibility in the labour market. The Committee observes that when combining the NMW with tax credits, a single person in October 2009 earned £ 197 (€ 237) per week.

The report does not provide information on the average wage. The Committee notes from Eurostat that the average gross annual earnings in industry and services in 2007 amounted to € 46,050. The Committee notes from OECD[2] that the minimum relative to average wage of full-time workers represented 46%.

Taking all elements at its disposal into account, the Committee still considers that the situation is not in conformity with the Charter. Despite a number of efforts aimed at improving the overall situation of minimum wage earners, and notwithstanding the fact that the pound value of the minimum wage has gone up during the reference period, this wage remains low and cannot be considered fair in the meaning of the Charter.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 4§1 of the Charter on the ground that the minimum wage is manifestly unfair.

[1] *http://stats.oecd.org/Index.aspx?DatasetCode=MIN2AVE*

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 United Kingdom.

The report shows that there have been no changes to the situation which has previously been considered as not being in conformity with the Charter.

The Committee recalls that both the threshold marking the beginning of overtime as well as the pay rates for overtime are determined freely between the employer and employee (usually by agreements at company level). According to information by the Government (Governmental Committee, Report concerning Conclusions XVIII-2, T-SG(2009)3) this aspect of the English Law of Contracts will not be changed.

The report fails to provide evidence that all workers are actually paid for overtime at an enhanced rate or compensated with leave of a longer duration than the overtime worked.

Moreover, the Committee notes from another source[3] that there are around five million UK employees who regularly work unpaid overtime (an average of 57 days a year without being paid).

Accordingly, given the absence of evidence that all workers received increased remuneration for overtime, and the fact the law does not guarantee an enhanced pay rate and/or time off in lieu, the Committee reiterates that the situation is not in conformity with this provision.

It also 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

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§2 of the Charter on the grounds that workers do not have adequate legal guarantees ensuring them increased remuneration for overtime.

[1] *Trades Union Congress (IUC), Annual Survey, 2010.*

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 United Kingdom.

It points out that the situation in the United Kingdom has never been found to be in conformity with Article 4§4 of the Charter because notice periods for employees with fewer than three years' service are too short. From the report, the Committee notes that that there has been no change in the situation in this respect. Notice periods are established by the Employment Rights Act of 1999 but individual employment contracts may set longer periods. In order to establish that reasonable notice periods are guaranteed, the Committee asks for the next report to contain examples of notice periods negotiated by the parties to an employment contract.

The Committee notes that in 2006, a new Employment Act came into force on the Isle of Man. The Act has enhanced some of the rights connected with notice periods granted under the previous Act of 1991. In particular, it has extended the right to notice periods to all full-time and part-time employees irrespective of the number of hours they work.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§4 of the Charter on the ground that notice periods for employees with less than three years' service are too short.

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 United Kingdom.

In its previous conclusion (Conclusions XVIII-2) it was not possible to establish whether there was any limit on deductions from wages. According to the report the National Minimum Wage Act 1999 protects workers from deductions which may deprive them of the minimum subsistence level. Accordingly, employers may not make deductions which would reduce pay below the national minimum wage, even if the employee has given written permission to do so. The only exception to this rule are deductions from wages related to housing. Following recommendations from the Low Pay Commission, the amount which can be deducted for housing provided by the employer has been increased from £4.46 to £4.51 per day. This increase took effect on 1 October 2009. The Committee asks if the National Minimum Wage Act applies to all forms of deductions, including trade union dues, fines, maintenance payments, repayment or wage advances, etc.

The Committee points out that the aim of Article 4§5 is to ensure, firstly, that it is only possible to make deductions from wages under certain well defined circumstances prescribed by a legal instrument (a law, a regulation, a collective agreement or an arbitration award) and, secondly, to ensure that reasonable limits are placed on such deductions.

The Committee considers the prohibition on making deductions from the minimum wage guaranteed by the National Minimum Wage Act 1999 to be in conformity with Article 4§5 of the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the United Kingdom 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 United Kingdom.

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion, in particular on grounds of non-conformity retained in the last conclusion (Conclusions XVIII-1).

Forming trade unions and employer associations

In the previous conclusion (Conclusions XVIII-1) the Committee noted that Section 174 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended by Sections 33 and 34 of the Employment Relations Act 2004, made it possible to exclude union members for reasons linked exclusively or mainly to the fact they have taken part in the activities of a political party but exclusion could not be carried out merely because they were affiliated to the party. It considered that this constituted an excessive interference with trade union membership conditions. In 2007 the European Court of Human Rights ruled on a case where a trade union was prevented from excluding a member who was affiliated with an extreme right party despite the fact that membership of this party was contrary to the union's rules (ASLEF v. United Kingdom, judgment of 27 February 2007). The Court, which referred to the Committee's conclusion and case law on Section 174 of the 1992 Act, held that this constituted a violation of Article 11 of the European Convention of Human Rights which guarantees the right to freedom of association. Section 19 of the Employment Act 2008 has since broadened trade unions' ability to exclude or expel members and made it possible for a union to exclude or expel on the grounds of political party membership where membership of that party is contrary to the rules of the union, or contrary to an objective of the union. The Government attempted to balance competing human rights, i.e. freedom of expression of the individual member and freedom of association of unions, and decided in line with the Court's judgment to provide the following conditions for an exclusion or expulsion to be lawful: the decision to exclude or expel must be taken in accordance with the union's rules; the decision must be taken fairly; exclusion or expulsion must not cause the individual to lose their livelihood or suffer exceptional hardship. The Committee notes that while the Employment Act 2008 was enacted during the reference period, the entry into force took place after the reference period in April 2009. It thus reserves its position until the next report, and will examine the situation in the light of examples to be provided in the next report of how it is applied and interpreted by domestic courts.

In its last conclusions (Conclusions XVI-1, XVII-1 & XVIII-1) the Committee considered that Section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992, which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, constituted an unjustified incursion into the autonomy of trade unions. The Government previously stated that Section 15 encourages union officials to act responsibly and prudently. However, the Committee previously noted that there was no positive right to strike under domestic law for employees and that the scope for workers to defend their interests through lawful collective action was excessively restrictive (Conclusions XVIII-1, Article 6§4). In addition, it notes that employees participating in collective action do not have immunity against civil wrongs or criminal offences committed in the course of any collective action,

such as intentional damage to property or unlawful trespass, e.g. by entering premises without the employer's authorisation or by staging a "sit-in" on the premises of the enterprise. Furthermore, an employer can apply for an interim injunction requiring an industrial action not to go ahead or to cease (for example if one of the formal requirements for a collective action to be considered lawful has not been met). If the organisers or individuals do not obey the injunction, they will be in contempt of court. In light of the above, the Committee concludes again that Section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992 is incompatible with the Charter.

In its last conclusions (*ibid*) the Committee also found that Section 65 of the aforementioned Act, which severely restricts the grounds on which a trade union might lawfully discipline members, constituted another unjustified incursion into the autonomy of trade unions. The Government stated that it did not consider this provision excessively restrictive as the law provides sufficient scope for unions to discipline their members for serious misdemeanours, including financial irregularities or bringing the union into disrepute. The report indicates that the Government's position regarding these two provisions has not changed. The Committee considers that, insofar as Section 65(2)(a) prohibits sanctions linked to the failure of a union member to participate in or support a strike or other industrial action, or to a union member's opposition or lack of support for this action, this provision continues to constitute an unjustified incursion into the autonomy of trade unions.

Trade union activities

In its last conclusion (Conclusions XVIII-1) the Committee enquired about the planned strengthening of individual rights in respect of trade union activities at recruitment, during employment and at termination of employment. According to an official source[4], the Committee notes that, according to Employment Act 2006, a worker has the right not to suffer any detriment for union membership or activities notably in terms of career or dismissal. Employees who are members of a trade union have the right to time off for trade union duties - notably in relation to collective bargaining - and activities. All these rights are enforceable with competent local courts and compensation may be awarded. The Committee considers the situation to be in conformity with Article 5 in this respect.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 5 of the Charter on the ground that Section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992, which makes unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and Section 65 of this Act, which severely restricts the grounds on which a trade union may lawfully discipline members, represent unjustified incursions into the autonomy of trade unions.

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[1] *The Isle of Man Government's website: http://www.gov.im/ded/employmentRights/rights.xml*

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

Having found British joint consultation mechanisms in the public and private sector and at national, sectoral and company level to be in conformity with Article 6§1 since 2002 (Conclusions XVI-1), in these conclusions the Committee will focus exclusively on recent developments.

In reply to a request for additional information by the Committee, the report specifies that the Regulations implementing the EC Directive establishing a general framework for informing and consulting employees in the European Community (2002/14/EC) came into force on 6 April 2005 for organisations with 150 or more employees, 6 April 2007 for organisations with 100 or more employees and 6 April 2008 for those organisations with 50 or more employees. The regulations apply to public and private undertakings which carry out an 'economic activity', including non-profit making organisations, public sector bodies who undertake commercial activity, but not central government departments.

The Committee notes that the obligation on employers to inform and consult does not operate automatically. It asks the next report whether the triggering of the obligation in practice is controversial or not.

The Committee also notes that a failure to inform and consult under either a negotiated agreement or the standard provisions can result in a complaint being taken to the Central Arbitration Committee (CAC). Complaints can be made by any individual employee, or a representative of the employees such as a trade union official. If the complaint is upheld, the CAC could order the employer to comply with the relevant requirements of the negotiated agreement or of the standard provisions. The complainant can also apply to the Employment Appeal Tribunal for a financial penalty to be imposed on the employer of up to £75,000.

The report further points out that on 6 April 2007, the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 came into effect. These require employers with a hundred or more employees to consult affected members of the pension scheme (or their representatives) before making a significant change to their work-based pension scheme. On 6 April 2008, employers with 50 or more employees came within scope of the Regulations.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

In its previous conclusion (Conclusion XVIII-1), it noted that following the judgment of the European Court of Human Rights in the Wilson, NUJ and others case, the Employment

Relations Act (ERA 2004) made it unlawful for employers to offer financial incentives to induce workers to exclude themselves from the scope of collective bargaining. However, as UK law permits financial incentives to be offered for other purposes, the Committee deferred its conclusion requesting that the next report clarify:

- under which circumstances the financial incentives would not be deemed to be made with the sole purpose to undermine collective bargaining agreements;
- whether workers have the right to claim that employers made offers to co-workers in order to induce them to surrender their union rights and whether trade unions can claim a violation of the right to collective bargaining in such cases.

In reply, the report explains that:

- According to the law, it is for the employer to show what was his sole or main purpose in making the offers was. Employment Tribunals are accustomed to apply the “sole or main purpose" test and therefore will distinguish between cases where offers are made for the purpose of, in effect, achieving derecognition of a union and cases where they are made for the purpose of retaining or rewarding valuable staff;
- The ERA 2004 does not provide workers who did not receive an offer with the right to complain about the making of offers to co-workers. Additionally, the Act also does not create a free-standing right for a trade union to appeal about infringement of its own right to collective bargaining.

The Committee understands from this information that only workers having received an offer of financial inducement may complain. Moreover, trade unions do not have a free standing right to claim a violation of the right to collective bargaining in such event. Therefore the Committee holds that under Article 6§2 of the Charter the free and voluntary character of the right to bargain collectively is not sufficiently guaranteed in the particular circumstances at stake.

Conclusion

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

- workers do not have the right to bring legal proceedings against employers who made offers to co-workers in order to induce them to surrender their union rights
- and, in such cases, trade unions too cannot claim a violation of the right to collective bargaining.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

The Committee notes from the report submitted by the United Kingdom 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. 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 United Kingdom 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 United Kingdom.

Meaning of collective action, Permitted objectives of collective action, Who is entitled to take collective action?

In its previous conclusions (Conclusions XVII-1, Conclusions XVII-1) the Committee found that lawful collective action was limited to disputes between workers and their employer, thus preventing a union from taking action against the de facto employer if this was not the immediate employer. It furthermore noted that British courts excluded collective action concerning a future employer and future terms and conditions of employment in the context of a transfer of part of a business (University College London NHS Trust v UNISON). The Committee therefore considered that the scope for workers to defend their interests through lawful collective action was excessively circumscribed in the United Kingdom. Given that there have been no changes to the situation, the Committee reiterates its finding that the situation is not in conformity with Article 6§4 of the Charter in this respect.

Restrictions on the right to take collective action

The Committee asks for updated information as to whether section 235A of the Trade Union and Labour Relations (Consolidation) Act 1992 (which provides for the possibility for third parties to obtain an injunction against a trade union organising industrial action under certain conditions) has been used to try to stop strike action.

Procedural requirements pertaining to collective action

The Committee considered in its previous conclusions (Conclusions XVII-1, XVIII-1) that the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive (even the simplified requirements introduced by the Employment Relations Act (ERA)2004). As there have been no changes to the situation, the Committee reiterates its finding that the situation is not in conformity with Article 6§4 of the Charter in this respect.

Consequences of collective action

Pursuant to the ERA 2004, workers participating in lawful industrial action are protected against dismissal for twelve weeks. The Committee previously held the period of twelve weeks beyond which those concerned lost their employment protection to be arbitrary. It notes from the report that 96.5% of all industrial actions last less than 12 weeks. The report specifies that days on which employees are locked out from their workplace by their employer do not count towards the protected period. Furthermore, employers are obliged to take all reasonable procedural steps to resolve the dispute with the union before dismissing any employees after the end of the protected period. However the Committee previously considered that this did not alter its view of the situation. The

situation has not changed in this respect and therefore the Committee reiterates its conclusion of non-conformity.

The Committee had previously held that the United Kingdom is not in conformity with Article 1§2 of the Charter because under Section 59 of the Merchant Shipping Act seamen on strike may face criminal sanctions. The Committee then decided to deal with this issue under Article 6§4 of the Charter. The previous report stated that Section 59 of the above mentioned Act must be read so as to be in conformity with the Human Rights Act 1998 which incorporates the European Convention of Human Rights into UK law and which takes precedence over all other legislation. Therefore, according to the report a sanction could not be imposed on a striking seaman unless such action endangered the life of persons etc. However, the Government again states that it nevertheless intends to amend the relevant legislation. The Committee wishes to be informed of any developments in this respect and reserves its position on this point.

Conclusion

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

- the scope for workers to defend their interests through lawful collective action is excessively circumscribed;
- the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive;
- the protection of workers against dismissal when taking industrial action is insufficient.