January 2015

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2014

(ITALY)

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

This text may be subject to editorial revision

The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Italy, which ratified the Charter on 5 July 1999. The deadline for submitting the 13th report was 31 October 2013 and Italy submitted it on 19 December 2013.

The report concerns the following provisions of the thematic group "Labour rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 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).

Italy has accepted all provisions from this group.

The reference period was from 1 January 2009 to 31 December

2012. The conclusions on Italy concern 23 situations and are as

follows:

- 12 conclusions of conformity: Articles 2§3, 2§5, 2§6, 2§7, 4§2, 5, 6§1, 6§2, 26§1, 26§2, 28 and 29;
- 7 conclusions of non-conformity: Articles 2§1, 2§4, 4§4, 4§5, 6§4, 21 and 22.

In respect of 4 other situations related to Articles 2§2, 4§1, 4§3 and 6§3, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Italy under the Charter. The Committee requests the Government to remedy that situation by providing this information in the next report.

The next report to be submitted by Italy will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.
The report should also contain information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information.

The deadline for submitting that report was 31 October 2014.

Conclusions and reports are available at 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 Italy.

In its previous conclusions (2007 and 2010) the Committee found that the situation was not in conformity with the Charter as Legislative Decree No 66/2003 permitted weekly working time of up to 72 hours in the fishing industry.

The Committee notes that there have been no amendments to the legislation during the reference period. However, the report states that the Italian legislation contains the norms which are in conformity with the requirements of the Charter. More precisely, according to the report, the reference made to the collective agreement in Article 18 of Legislative Decree No 66/2003 should always be interpreted as respecting the health and safety of workers. Prescriptive and binding legislation on health and safety of workers requires that the collective agreement which regulates working time, take into account the limits, even after the exclusion by the legislator of workers on sea-going vessels from the general application of certain Articles of the legislative degree No 66/2003.

The Committee observes that despite the considerations given to the protection of workers' health and safety as indicated in the report, the situation which it has previously considered not to be in conformity with the Charter has not changed. It reiterates its previous finding of non-conformity on the ground that the weekly working hours of workers on sea-going vessels may be up to 72 hours.

In its conclusion 2007 the Committee took note of the rules applicable to on-call work and time spent in readiness to work. It noted that according to Section 2 of Legislative Decree No. 66/2003 working hours are a period when a worker is obliged to be at the workplace, at the disposal of the employer or in readiness to carry out his or her duties as required. Therefore, this period (a typical example being doctor on-call) is considered as working time in its entirety.

As regards the *service d'astreinte* (stand-by duty), which is foreseen by collective agreements, it is a period when an employee does not have to stay at the workplace but in a place where he/she would be easily reachable by the employer in case of need and where otherwise he/she can manage his/her own time. In such cases, where no effective work is done, the "périodes d'astreinte" are not considered as working time.

The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France* (§§ 64-65), Complaint No 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined *a posteriori* for a period of time that the employee *a priori* did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee holds that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 2§1 of the Charter on the ground that the weekly working hours of workers on sea-going vessels may be up to 72 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 Italy.

It notes that Law No. 260/1949, as amended in particular by Law No. 54/1977 and Presidential Decree No. 792/1985, provides for 12 paid public holidays: 1 and 6 January, 25 April, Easter Monday, 1 May, 2 June, 15 August, 1 November, 8 December, 25 and 26 December plus a day determined at local level depending on the date of the patron saint's day.

The Committee previously noted that work done on public holidays confers an entitlement to increased remuneration, the amount of which is determined by collective agreements. In this regard, it noted that, based on the examples of collective agreements provided (for the food processing, freight and logistics, metal-working and mechanical engineering sectors), the increase was 50% of the usual rate of pay. It asks that the next report clarifies whether such increased remuneration (for example, 150% in the metal-working and mechanical engineering sector) is paid in addition to the normal remuneration due in respect of the public holiday with pay (100%), whether calculated on a daily, weekly or monthly basis.

The report furthermore states that compensatory leave may also be granted for work done on a public holiday. In this connection, the Committee asks that the next report clarifies whether equivalent compensatory leave is granted in all cases when an employee works on a public holiday (other than on a Sunday or the usual weekly rest day) and what rate of pay is provided for when an employee works on a public holiday (other than a Sunday) and is granted a day's compensatory leave. It reserves in the meantime its position on this issue.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

The Committee previously noted that, under Legislative Decree No.66/2003, as amended by Legislative Decree No. 213/2004, all employees are entitled to paid annual leave of at least four weeks.

Save in exceptional circumstances, laid down by collective agreements or the special rules applicable to certain categories of employee (including civil protection officers, court and prison staff and fire-fighters), employees are entitled to at least two consecutive weeks of leave in the reference year. They may take the remaining two weeks of leave at any time in the 18 months following the end of the reference year.

In reply to the question previously raised by the Committee, the report indicates that annual leave cannot be replaced by a compensatory payment, except if the employment contract is terminated, and that this applies in all cases, including to seafarers (Legislative Decree No.108/2005).

In addition, the Committee noted previously that the right to postpone annual level in the event of illness was recognised by the case law of the Constitutional Court and the Court of Cassation (Constitutional Court, judgment No. 616/1987, plenary Court of Cassation, judgment No. 1947/1998).

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

The Committee points out that the States party to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations and to apply compensatory measures to workers exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced, either in spite of the effective application of the preventive measures referred to above, or because they have not yet been applied.

Elimination or reduction of risks

The Committee refers to its conclusion concerning Article 3§1 of the Charter (Conclusions 2013) for a description of dangerous activities and the preventive measures taken in their respect. It notes, in particular, the entry into force, in 2008, of the Consolidated Act on Health and Safety at Work (the "Single Act", Legislative Decree No. 81/2008) listing the occupations at risk and providing for general protection measures. It nonetheless notes that the report mentions no further developments in respect of the situation of non-conformity described at the time of its examination of Article 3, paragraph 1, when it concluded that there is no satisfactory occupational health and safety policy and that there is no adequate system for organising occupational risk prevention (Conclusions 2013, previously cited).

In the light of the above, the Committee notes that a number of measures remain to be introduced and implemented so as to offset the deficiencies noted and ensure effective prevention of the risks linked to dangerous or arduous occupations. It consequently considers that it has not been established that the risks inherent in dangerous or unhealthy occupations have been sufficiently eliminated or reduced.

Measures in response to residual risks

The Committee recalls that, apart from the abovementioned preventive measures, the Charter requires compensatory measures to be taken, at least in clearly dangerous or unhealthy sectors and occupations where the risks cannot be eliminated, such as mining, quarrying, steelmaking and shipbuilding and activities which expose workers to ionising radiation, extreme temperatures or noise. The aim of these compensatory measures is to afford the workers concerned sufficient regular rest time to recover from the stress and fatigue and thus maintain their vigilance in the workplace.

In this connection, the Committee noted previously (Conclusions 2007) that workers exposed to ionising radiation were entitled to 15 days' additional leave, and it requested detailed information on the compensatory measures for other categories of workers exposed to risks which had not yet been eliminated or sufficiently reduced in spite of the application of preventive measures or in the absence of their application. In reply, the report reiterates the information concerning the compensatory measures for doctors and health technicians in the radiology sector and for employees in the asbestos industry, but provides no additional information on any compensatory measures (reduction of daily, weekly or annual working hours) coming under Article 2§4 of the Charter. The Committee already pointed out in its previous conclusion (Conclusions 2010) that monetary compensation cannot be considered a relevant and appropriate response to the requirements of Article 2§4. The Committee consequently maintains its finding of non-conformity with Article 2§4.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 2§4 of the Charter on the following grounds:

- there is no adequate prevention policy regarding the risks in inherently dangerous and unhealthy occupations, and
- it has not been established that the right to just conditions of work with regard to the risks present in inherently dangerous or unhealthy occupations is guaranteed.

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 Italy.

It notes that the situation which it previously found to be in conformity is unchanged: employees are entitled to a rest period of 24 hours per seven day period, generally on Sundays, and in sectors in which exceptions to the principle of Sunday rest may be made employees are entitled to a compensatory rest period.

The Committee requests that the next report give full and detailed updated information on the situation and clarify, in particular, whether there are circumstances in which a worker may be required to work more than twelve consecutive days before benefiting from two days' rest.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Italy is in conformity with Article 2§5 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

The Committee noted previously that the relevant legislation (Legislative Decrees Nos. 152/1997 and 181/2000, Law No. 183/2010) covered all categories of workers and was in conformity with Article 2§6 of the Charter. It notes from the report that the situation has not changed.

Conclusion

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

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 Italy.

The Committee noted previously that, pursuant to the legislation in force (Legislative Decrees Nos. 532/1999 and 66/2003) – subject to exceptions under certain collective labour agreements – night work concerns a period of at least seven consecutive hours including the period between midnight and 5 a.m. A night worker is an employee who works at least three hours during this timespan, either regularly or for at least 80 days per year (unless provided otherwise in the collective agreements).

The Committee also noted that the law provides for medical inspections prior to assignment to a night work activity, which are repeated at regular intervals subsequent to such assignment, and for the possibility of a reassignment to daytime work (Conclusions 2003).

In its previous conclusion (Conclusions 2010) the Committee asked whether regular consultation took place with workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work. In reply, the report refers to Article 12 of Legislative Decree No. 66/2003, which provides "the introduction of night work shall be preceded, in accordance with the criteria and conditions laid down in the relevant collective agreements, by a consultation with the trade union representative bodies which may have been established in the undertaking and which belong to the organisations signatories of the collective agreement applicable to the undertaking. Failing that, the consultation shall take place with the local workers' organisations, as defined above, through the intermediary of the association of which the undertaking is a member or which it has mandated. The consultation must be launched and terminated within seven days." The Committee asks whether, apart from this consultation prior to the introduction of night work, workers' representatives are regularly consulted on issues relating to night work. It requests that additional information on this point be provided in the next report.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Italy is in conformity with Article 2§7 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

The Committee takes note of the information provided in the addendum to the report submitted by Italy.

It previously concluded (Conclusions 2007 and 2010) that the situation in Italy with regard to decent remuneration was not in conformity with Article 4§1 of the Charter on the ground that it had not been established that the minimum wage ensures a decent standard of living. It asked for information concerning the amount of the average wage and the minimum wage net of social contributions and tax deductions.

The report states that the minimum wage is defined in national collective agreements, which are extended in practice to all employees in a specific branch by reference to Article 36 of the Constitution. The Interconfederal Agreement of 15 April 2009 established a second level of company-wide and local agreements; stipulated that minimum wages fixed by agreements must be reviewed every three years; based the index on the EU Harmonized Index of Consumer Prices; and established a new method of calculation. The Interconfederal Agreement of 28 June 2011 increased the independence of company-wide agreements in relation to collective agreements; authorised temporary or experimental derogation from collective agreements through company-wide agreements; and arranged for the extension of company-wide agreements signed by only one of the social partners. The Output Agreement of 21 November 2012 clarifies relations between collective agreements, which determine wages, and company-wide agreements, which stipulate working time arrangements. It nevertheless makes it possible, through a company-wide or local agreement, to link a part of the wage to changes in output. Draft legislation on the introduction of a cross-sectoral minimum wage has not been discussed since the previous legislator was in place.

According to the report, the average family income was €29 786 net in 2010, and the national collective agreement in the field of transport and logistics stipulated, for the period 1 January 2011 to 31 August 2011, that the annual minimum wage for workers in category 6J would be €17 163.00 gross and €12 893.00 net. The Committee notes from the national collective agreement of 15 October 2009 for employees in the private metalworks industry that the monthly minimum wage for workers in category 1 was €1 206.23 gross in 2011 (which was €15 680.99 gross over 13 months, plus a compensation bonus of €455.00).

According to EUROSTAT data for 2011 (table “earn_nt_net”), the annual average income of single workers without children (100% of the average worker) was €29 030.50 gross and €20 87.51 1 net.

According to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) (Convention No. 26 on Minimum Wage-Fixing Machinery (1949): Direct Request adopted in 2011, published at the 101st ILC session (2012)), the determination of wages henceforth depends on national branch collective agreements, local or company-wide collective agreements and the “pay guarantee component” for workers whose pay depends exclusively on national wage rates. Moreover, the National Institute of Statistics (ISTAT) does not have any direct information on the minimum wage rates applied in the “non-observed economy”, the informal economy accounting for some 15% of total employment in the country.

According to the European Industrial Relations Observatory (EiRO) (Italy: Industrial relations profile, p. 8), 80% of the workforce was covered by the national collective agreements in 2009, and the coverage by local or company-wide agreements was much smaller.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage is between 50 and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). It notes in the present case that, in the light of the national collective agreement in the field of transport and logistics, the minimum wage is higher than 60% of the net average wage. It considers this to be a decent wage within the meaning of Article 4§1 of the Charter.

The Committee asks that the next report provide an update of the gross and net amounts of social contributions and tax deductions on minimum wages in low-pay sectors. It also asks for further details concerning the aforementioned "pay guarantee component" and the coverage rate of national collective agreements in the private sector. Moreover, it asks for information on the minimum wages paid in sectors which are not covered by such agreements, and in particular in the informal economy.

The Committee asks that the next report provide further details on the use of the option offered by the Interconfederal Agreement of 28 June 2011 to derogate from the minimum wages provided for in national collective agreements by means of local or company-wide agreements and on the level of wages thus agreed upon. Finally, it asks for up to date information on the minimum wages paid to tenured civil servants and contractual staff in the civil service.

Conclusion

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

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 Italy.

In its previous conclusion (Conclusions 2010) the Committee found that the situation in Italy was not in conformity with the Charter as time off granted to compensate for overtime was not sufficiently long under the collective agreement in the food industry sector.

The Committee notes in this regard that indeed, the collective agreement of the food sector, like others, gives the possibility to an employee to choose between an increased remuneration or compensatory rest.

Besides the compensatory rest, a worker also gets a remuneration for the overtime hours worked, at a rate that is lower than what he would normally get had he opted for a remuneration only. The report provides an example of the collective agreement in the telecommunications sector where a worker will get 50% of what he would otherwise have received as an increased remuneration, in additional to the compensatory rest.

The Committee observes that a compensatory rest of equal length, in addition to the cash payment (of 50% of the standard payment for overtime) corresponds to an increased remuneration for overtime work and is in conformity with the Charter. The Committee asks whether all collective agreements guarantee the same level of remuneration.

Conclusion

The Committee concludes that the situation in Italy is in conformity with Article 4§2 of the Charter.

Article 4 - Right to a fair remuneration

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

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

Legal basis of equal pay

The Committee refers to its conclusion on Article 20 (Conclusions 2012) where it took note of the Legislative Decree No. 5 of 25 January 2010 which transposed Directive 2006/54/EC (on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation) into domestic law and amended the Legislative Decree of 11 April 2006 (the Code for Equal Opportunities). This reinforced the measures to combat discrimination on the ground of sex.

The Committee notes from the report that the new paragraph 1 of Art. 28 of the Code which reinforced the prohibition of discrimination , both direct and indirect, on any aspect or condition relating to pay for the same work or work to which equal value is attributed. Similarly, collective agreements are now expected to include specific measures to prevent discrimination on the ground of sex, particularly with regard to pay.

Guarantees of enforcement and judicial safeguards

According to the report, Chapter III of Book III of the Code of Equal Opportunities is devoted to the protection of the victim of direct and indirect discrimination. Distinction is made between individual discrimination and collective discrimination.

As regards individual discrimination, Article 36 of the Code recognises an individual right to appeal following an alleged act of discrimination in any matters relating to access to work, promotion and training, conditions of work, including remuneration. Article 37 of the Code deals with collective discrimination and empowers the regional councilor to take appropriate action.

According to the report the shift of the burden of proof applies in discrimination cases. As regards sanctions, tougher measures now apply. Administrative sanctions for violation of standards for access to employment, pay and work conditions are more severe. The amounts ranging from € 103 to 516 have been increased to amounts ranging from € 250 to 1,500.

Methods of comparison and other measures

According to Article 46, as amended by legislative degree 5/2010, enterprises, both public and private, employing more than 100 employees are required to produce a report every two years on the situation of gender in each profession regarding recruitment, training and promotion.

According to the report equal pay is one of the fundamental elements of equality in the labour market. The pay gap is measured as a difference between average salary of men and women. According to Eurostat in 2011 the unadjusted pay gap stood at 5,8% in Italy, which is significantly lower than the EU average. The Committee asks what is the pay gap for work of equal value.

Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very

least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.

The Committee holds that this interpretation applies, *mutatis mutandis* to Article 4§3.

The Committee asks whether in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

The Committee takes note of the information contained in the addendum to the report submitted by Italy.

It has concluded from Conclusions I (1969) onwards that the situation in Italy with regard to notice periods was not in conformity with Article 4§4 of the Charter on the ground that the notice given in some branches of activity (particularly the textile, private metal-working and mechanical, and food-processing industries) was not reasonable for certain lengths of service. It asked for information on the classification of notice periods by grade (Conclusions 2007).

Reasonable notice period

The report states that the notice periods provided for in national collective agreements depend on the length of service and classification of employees in the schedule of jobs and that these periods generally relate only to some of the employees in the industry. The national collective agreement of 22 September 2009 for the food-processing industry now includes the following notice periods:

- six days for manual workers with up to five years of service;
- 45 days for intermediate workers with five to ten years of service and 60 days for those with more;
- 60 days for employees with fewer than ten years of service and four months for those with more.

The national collective agreement for the textile industry of 2 September 2010 provides for longer notice periods:

- one month for employees in the 2nd, 3rd and 4th categories with up to five years of service;
- four months for employees in the 7th and 8th categories with more than ten years of service.

The notice periods set out in the national collective agreement of 20 January 2008 for the mechanical industry remain in force.

The Committee points out that by accepting Article 4§4 of the Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined primarily in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice. The Committee notes in the present case that there has been a tendency in recent collective agreements for notice periods to be lengthened. It notes, however, that these periods are still inadequate with regard to Article 4§4 of the Charter in the food-processing and mechanical industries. They are also inadequate in the textile industry for employees in the 7th and 8th categories with more than 15 years of service and for employees in the 2nd, 3rd or 4th categories with more than three years of service.

The Committee also notes that under Article 2118 of the Civil Code wages continue to be paid where notice periods are waived. It also notes that Article 2120 of the Code provides for the payment of severance pay which varies according to the length of service (*trattamento di fine rapporto*). In order to examine notice periods in conjunction with the compensation that may be granted in lieu thereof, in the case for the industries under consideration, the Committee asks

for information in the next report on any compensation provided for by the law or by collective agreements in the event of dismissal. It also asks for clarification on the compensation provided for by sections 8 and 9 of the Rules Applicable to Individual Dismissal Act of 15 July 1966 (No. 604/1966), as amended by Law No. 92/2012 of 28 June 2012 and the Decree of 30 January 2008 on the procedures for the application of section 1, paragraphs 755 and 756 of the Law No. 296/2006 of 27 December 2006 on the fund for the payment of severance pay to private sector employees.

Application to all workers

The Committee points out that protection by means of notice periods and/or compensation must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). It notes from another source (ILO-EPLEX) that under Legislative Decree No. 368/2001 of 6 September 2001 implementing Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, renewable fixed-term contracts are restricted to three years, except in the tourism and agriculture industries, or on the authorisation of the Regional Labour Directorate. It notes from an official source (*Cliclavoro*) that there is provision for work on request and piece work, secondary jobs and joint ventures. It therefore asks for information in the next report on the notice periods and/or compensation applicable on early termination of fixed-term contracts or on termination of these non-standard employment relationships. It also asks for information on the notice periods and/or compensation applicable to tenured civil servants and contractual staff in the civil service.

The Committee also points out that the protection offered by Article 4§4 of the Charter includes probationary periods (General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). Consequently, it asks for information on notice periods and/or compensation applicable during such periods.

The Committee also points out that a serious offence is the sole exception justifying immediate dismissal, although the accumulation of several less serious breaches with written warnings from the employer may amount to a serious offence (Conclusions 2010, Albania). It notes from another source (ILO-EPLEX) that the authorised grounds for lawful dismissal are professional incompetence and grounds linked inherently to the production process, work organisation or the smooth running of the business (section 3 of the Rules Applicable to Individual Dismissal Act). It also notes from this that, under section 1 of the Rules Applicable to Individual Dismissal Act and Article 2119 of the Code, the only lawful reason justifying dismissal without notice or compensation is serious misconduct which constitutes, from both a subjective and an objective viewpoint, a breach of contract. The Committee asks for clarification on this concept in the next report. It also asks for information on the notice periods and/or compensation applicable to grounds for the termination of contracts other than dismissal (transfer of ownership, transformation or winding up of a company; death of an employer).

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 4§4 of the Charter on the grounds that notice periods are not reasonable:

- in the food-processing and mechanical industries;

- in the textile industry for employees in the 7th and 8th categories with more than 15 years of service and those in the 2nd, 3rd and 4th categories with more than three years of 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 addendum to the report submitted by Italy.

It has concluded from Conclusions VIII (1984) owards that the situation in Italy with regard to wage protection was not in conformity with Article 4§5 of the Charter on the ground that it had not been established that deductions from wages would not deprive workers and their dependents of their means of subsistence. It asked for information on how the minimum subsistence income is guaranteed for employees in the event of deductions from wages to pay tax debts or debts to the state or the employer. It has also asked for further information on the measures preventing workers from waiving their right to limited deductions from wages (Conclusions 2010).

Article 36 of the Constitution on the right to remuneration for work requires that wages are protected against deductions of which the effect is depriving workers and their families of their means of subsistence. The limits applicable to attachment of wages are determined by Presidential Decree No. 180/1950 of 5 January 1950 standardising the law on the assignment or attachment of civil servants' payments, wages and pensions, and by Article 545 of the Code of Civil Procedure. The report states that the 2005 Budget Act of 30 December 2004 (No. 31/2004) has harmonised the limits on attachment set by these texts:

- One third of wages, bonuses and fees net of social contributions for the recovery of maintenance debts;
- One fifth of wages and these other payments for the recovery of debts to the state and employers;
- One fifth of wages and these other payments for the recovery of tax debts.

The amount of combined deductions on concurrent grounds may not exceed half of net wages and other payments. Special laws may, however, provide for additional, separate limits in relation to this rule. In particular, Legislative Decree No. 16/2012 of 2 March 2012 establishing emergency measures for the purposes of tax simplification and the efficiency and improvement of control procedures amends the limits on deductions for taxes to a tenth of wages and other payments for the recovery of amounts up to €2 500, and a seventh of wages and other payments for the recovery of amounts between €2 500 and €5 000. It refers to Article 545, paragraph 5 of the Code for amounts above this.

Furthermore, under Article 546 of the Code, debtors are entitled to request a proportionate decrease in each deduction by the executions judge in the event of concurrent claims or when attachment is declared inefficient.

The report states that, in decision No. 506/2002 of 4 December 2002, the Constitutional Court linked the unattachable portion of pensions to the income necessary for subsistence. According to the case law cited in the report, when determining the income necessary for subsistence, the Courts refer to the social welfare minimum, which is the equivalent of the minimum pension of €460.97 per month, except where debtors successfully claim to have greater needs.

The Committee points out that the purpose of Article 4§5 of the Charter is to ensure that workers who enjoy the protection afforded by this provision are not deprived of their basic means of subsistence (Conclusions XVIII-2 (2007), Poland). It notes that in the present case, the limits on deductions provided for by Article 545 of the Code still allow situations in which some employees receive only 70% or even 50% of the lowest wages – an amount that does not

allow them to provide for themselves or their dependants. Hence it concludes that the situation in Italy remains not in conformity with Article 4§5 of the Charter.

The Committee also points out that under Article 4§5 of the Charter, national laws or regulations, collective agreements or arbitration awards must define the reasons for deductions from pay in a clear and precise manner and that the protection must include all forms of deductions from wages. It therefore asks for information in the next report on the special laws which set limits on attachment other than those provided for in Article 545 of the Code and on grounds for deductions from wages other than those linked to the recovery of debts (such as compensation for benefits in kind, fines for criminal or disciplinary offences, reimbursement of advances on wages, trade union dues, deductions for reduced output). It also asks for information on the limits on deductions from wages in the event of concurrent grounds for deductions.

The Committee points out that under Article 4§5 of the Charter, workers may not waive their right to the limitation of wage deductions and the determination of deductions from wages may not be left simply at the disposal of the parties to an employment contract (Conclusions XVI-2 (2004), Ireland). In this connection it repeats its request for information on the measures preventing workers from waiving their right to limited deductions.

Conclusion

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

Article 5 - Right to organise

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

Forming trade unions and employers' organisations

Article 39 of the Constitution establishes the principle of freedom to organise. This principle is taken up in Law No. 300/1970 (the Workers' Statute). The Committee refers to Conclusions XV-1 (2000), in which it noted that there was no registration procedure.

Freedom to join or not to join a trade union

Freedom to organise includes both the right to join and the right not to join a trade union without any interference from the state or employers. Article 14 of the Workers' Statute guarantees all workers the right to join trade unions and under Article 15, any discrimination in employment for trade union-related reasons or membership or non-membership is illegal.

The Committee notes from the ITUC Survey of Violations of Trade Union Rights that in June 2012, a labour court ruled in favour of 145 members of the metallurgy workers' union, the *Federazione Impiegati Operai Metallurgici* (FIOM) – *Confederazione Generale Italiana del Lavoro* (CGIL), who had not been re-employed by FIAT since the company began to reallocate jobs to its Pomigliano factory. There was not a single member of FIOM among the 2 000 new employees recruited to work in the Pomigliano factory. The court ordered FIAT to put a halt to its discriminatory behaviour and to guarantee in future that FIOM members would account for at least 8.9% of the workforce. FIAT was also ordered to pay compensation of €3 000 to each of the 19 employees who had taken legal action.

Trade union activities

The Committee refers to Conclusions XV-1 (2000), in which it noted that the Workers' Statute guarantees all workers the right to pursue trade union activities at their place of work in a manner compatible with the obligations of the employment relationship. In addition to the possibility of establishing trade union representation, this covers the right of assembly, office facilities for use by trade unions, special protection for union representatives and the right to post notices in the workplace.

Representativeness

The concept of representativeness was introduced into the legislation by the Workers' Statute. Article 19 of the Workers' Statute stipulates that the right to trade union representation is tied to the signature by the trade union of a collective agreement which applies to the company.

However, the notion of the "most representative trade union" has been retained in other parts of labour legislation. The most representative trade unions have certain powers, such as the power to appoint representatives to the National Council for Economic Affairs and Employment (Law No. 936/1986). The most representative organisations also appoint the members required to sit on public bodies such as the main social security institutions and employment services.

The criteria by which to identify the most representative trade unions have mainly been set by case law (although they are spelt out in some legislation) and include the following factors: the number of members; the organisation's geographic and professional scope; the degree of

participation in collective bargaining and the negotiation of collective agreements and participation in the settlement of individual and collective employment disputes.

As to collective bargaining in the private sector, the Committee referred to Conclusions XV-1 (2000), in which it noted that representativeness has an informal character: the right to bargain is not governed by statute but is basically dependent on the ability of the trade union to impose itself on the employer as a bargaining partner.

In the public sector, Legislative Decree No. 29/1993 provides that collective agreements must be concluded between the body representing the public interest and the most representative trade unions. Under Article 47 of this Decree, trade unions must represent at least 5% of the workers in the department or area concerned to be eligible. If a trade union considers itself to have been unduly rejected, it may take legal action.

Personal scope

The Committee refers to Conclusions 2002, in which it noted that foreign nationals enjoy the same trade union rights as Italian nationals.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

As the most recent detailed information on the situation dates back from 2000, in its previous conclusion (Conclusion 2010) the Committee reiterated its request that the next report contain a complete up-dated description of the situation in law and in practice with regard to joint consultation between employees and employers at national, regional and sectoral level in the private as well as the public sector, including the civil service.

The Committee takes note of the detailed information provided by the report with respect to the development of the social consultation and social dialogue, carried out by the Government with social partners between 1998 and 2012 with respect to work and employment. However, it notes that further to the abovementioned system and a description of a series of framework agreements relating to collective bargaining (examined by the Committee under Article 6§2 of the Charter), the report does not contain specific information on joint consultation.

The Committee recalls that within the meaning of Article 6§1, joint consultation is consultation between employees and employers or the organisations that represent them (Conclusions I (1969), Statement of Interpretation on Article 6§1). Such consultation can take place within tripartite bodies provided that the social partners are represented in these bodies on an equal footing (Conclusions V (1977), Statement of Interpretation on Article 6§1). If adequate consultation already exists, there is no need for the state to intervene. If no adequate joint consultation is in place, the state must take positive steps to encourage it (*Centrale générale des services publics (CGSP)* v. Belgium, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41).

The Committee also recalls that consultation must take place on several levels: national, regional/sectoral. It should take place in the private and public sector (including the civil service) (Conclusions III (1973), Denmark, Germany, Norway, Sweden and *Centrale générale des services publics (CGSP)* v. Belgium, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41). 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 (1969), Statement of Interpretation on Article 6§1 and Conclusions V (1977), Ireland).

The Committee wishes to receive confirmation that the above-mentioned principles are fullfiled in Italy and asks that the next report provide a detailed description of the legal framework concerning joint consultation and its implementation.

Conclusion

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

The Committee notes that an Interconfederal Framework Agreement for the reform of collective bargaining was adopted on 22 January 2009. This Agreement is not a true three-party pact involving the Government and the social partners as signatories but an interconfederal agreement, only involving the Government indirectly when the social partners consider that measures to reduce taxes and social contributions are needed to take negotiation at company level forward. The report points out that the new industrial relations system places the emphasis on the role of bargaining within companies, the aim of which should be to incorporate the national collective labour agreement so that it meets each individual companies' requirements more fully.

The Framework Agreement is implemented by the Interconfederal Agreement of 15 April 2009, which sets out the following collective bargaining plan:

- a three-year national collective labour agreement for each occupational category, covering both regulatory and economic aspects. The national collective labour agreements for occupational categories govern the system of industrial relations at national, local and regional, and company level;
- a second level of collective bargaining at company level or alternatively, depending on the current practice in some specific sectors, at local and regional level, resulting in agreements which are always valid for three years.

The regulations on collective bargaining contained in the 2009 Framework Agreement were subsequently added to, a few years later, by a new agreement, the Interconfederal Agreement of 28 June 2011, providing general rules on actors, levels, deadlines, and contents of collective bargaining, which was accepted by all associations of employees and employers. It was therefore quite different from the agreement of 1993 and the time of three-party agreements, one of whose features was the participation of the Government as a third negotiating partner.

The Interconfederal Agreement of 28 June 2011 lays down the rules on the representativeness of workers' trade unions, introducing a system to monitor trade union representativeness and aiming to enhance the legitimacy of collective bargaining both at national and at company level. In the national collective bargaining procedures, the trade union representativeness criteria refer to a concept of quantified representation based on objective, quantifiable data taking account of member numbers and the presence of the trade union in the business community.

The Committee notes that a few months after the adoption of the Agreement, the Finance (Amendment) Act of 2011 was superimposed on the interconfederal agreement. This act places the local, regional or company collective agreement at the heart of the system of negotiation between trade unions and employers. Agreements negotiated at company level may even depart from the provisions of the relevant legislation and collective agreements, with the sole limit that they must respect the Constitution, the EU law and the international labour conventions. The Committee asks that the next report provide information on local collective agreements deviating from national legislation and collective agreements.

The reference text for collective bargaining in the civil service is Legislative Decree 165/2001. This text has, however, recently undergone a series of major amendments:

- Law No. 15 of 4 March 2009 gave the Government the task of reforming civil service labour regulations with a view to bringing the regulatory framework on employment

in the public sector more into line with the private sector (particularly with regard to the system of trade union relations);
- Legislative Decree No. 150 of 27 October 2009, which is known as the *Brunetta reform*, put these principles into practice.

National negotiation is based mainly on sectoral collective agreements. It means that the public administrative services must be structured according to sectors of activity, determined through special agreements between the Agency for the representation of public administration in collective bargaining (ARAN) and the most representative trade union confederations. These agreements are drawn up by ARAN, as far as the public partner is concerned, and by trade unions with a specified degree of representativeness in the sector concerned. Legislative Decree No. 150 now provides that collective bargaining determines the rights and obligations directly connected with employment contracts and matters linked to trade union relations.

It is planned to establish no more than four sectors of activity for collective agreements: local entities and chambers of commerce; regions, regional entities and health; schools; and national authorities and non-economic bodies.

As with the private sector, collective bargaining determines contractual arrangements, the relationship between different levels and the duration of national and supplementary collective agreements. Durations are fixed so as to ensure that the legal regulations tally with the economic ones. Subsequently, the public administrative services set up separate levels of supplementary collective bargaining.

The Committee notes from the EIRO that collective agreements cover 80% of the workforce.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee notes that the information provided in the report concern conflicts of rights and not conflicts of interest.

It therefore asks the next report to provide detailed information on conflicts of interest, i.e. generally conflicts which concern the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement. The Committee recalls that Article 6§3 does not concern conflicts of rights, i.e. conflicts related to the application and implementation of a collective agreement, or to political disputes (Conclusions V (1977), Statement of Interpretation on Article 6§3; Conclusions V (1977), Italy). Should the next report not provide the requested information, there will be nothing to show that the situation is in conformity with Article 6§3 of the Charter.

In the meantime, the Committee reserves its position on this issue.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

The Committee has assessed the situation of Italy with regard to collective action (meaning, permitted objectives, entitlement to take collective action, consequences of strikes) in previous conclusions and found it to be in conformity with the Charter. It will therefore only consider recent developments and additional information in this conclusion, focusing in particular on the grounds of non-conformity given in the previous conclusion (Conclusions 2010).

Specific restrictions to the right to strike and procedural requirements

The Committee concluded previously (Conclusions 2010) that the situation in Italy was not in conformity with Article 6§4 of the Charter because it had not been established that the power of the Government to issue injunctions or orders restricting strikes in essential public services fell within the limits of Article G of the Charter.

The report does not provide any new information on the subject. The Committee therefore renews its previous finding of non-conformity because it has not been established that the power of the Government to issue injunctions or orders restricting strikes in essential public services falls within the limits of Article G of the Charter.

In its previous conclusion (Conclusions 2010), the Committee asked for information on the new punitive powers granted to the Guarantee Commission. Under Law 83/2000, the Commission has the following punitive powers:

- to decide on the general scope of the penalties provided for in Article 4 of the Law (penalties applicable to trade unions and public bodies or private companies providing services);
- to order employers to impose penalties on their employees.

There is a range of penalties, which vary according to the different persons or bodies who have failed to fulfil obligations or infringed the rules, as follows:

- for workers, penalties are disciplinary in nature and may not include any punishment which definitively alters the employment contract (such as dismissal)
- for trade unions, fines are imposed, which may range from €2 582 to €25 822;
- for public bodies or private companies providing essential services, administrative penalties of varying amounts are applicable;
- administrative penalties are provided for for associations representing self-employed workers, the liberal professions or small-scale entrepreneurs, and are imposed by means of an order from the Provincial Labour Directorate.

In its previous conclusion, the Committee also asked for information on the codes of self-regulation on the right to strike which apply to self-employed workers and to owners of small businesses. The Committee notes that these codes are issued by associations and organisations representing the professional categories (such as the *Consiglio nazionale forense* or the *Confartigianato*). The Guarantee Commission assesses the pertinence of agreements, which must include compulsory reconciliation and conflict settlement procedures before strikes are called. If there is no code or the existing codes are deemed insufficient to secure the aims of the law, the Guarantee Commission must consult the parties concerned and establish provisional regulations.

With regard to procedural requirements, the Committee concluded previously (Conclusions 2010) that the situation in Italy was not in conformity with Article 6§4 of the Charter because the

requirement to notify employers of the duration of strikes affecting essential public services prior to strike action was excessive. As there has been no change in the situation, the Committee renews its finding of non-conformity in this respect.

Conclusion

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

- it has not been established that the Government's power to issue injunctions or orders restricting strikes in essential public services falls within the limits of Article G of the Charter;
- the requirement to notify employers of the duration of strikes affecting essential public services prior to strike action is excessive.

Article 21 - Right of workers to be informed and consulted

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

Legal framework

The Committee notes that Legislative Decree No. 25 of 6 February 2007 transposed Directive 2002/14/EC establishing a general framework for informing and consulting employees into domestic law.

The Committee also noted previously (Conclusions 2007 and 2010) that pursuant to the national framework agreement of 20 December 1993 between the employers' organisation and the main national trade unions, under the auspices of the government, the right of workers to information and consultation was vested in a representative structure called *Rappresentanza Sindacale Unitaria* (RSU), which could be established in any undertaking with more than fifteen employees, including those managed by public authorities. It noted that information to and consultation of RSUs was governed by statutes, government regulations and collective agreements on a case-by-case basis in virtually all fields of labour relations within the undertaking.

Scope

Under Article 21 of the Charter, employees and/or their representatives (trade unions, staff committees, works councils or health and safety committees) have the right to be informed about any issue which might affect their working environment unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

States may exclude from this provision's scope undertakings employing fewer than a certain number of employees, to be determined by national legislation or practice. In this respect, the Committee considers that limits comparable to those authorised by Directive 2002/14/EC – undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state – are in conformity with the Charter.

In this context, the Committee points out that all categories of worker (all employees holding an employment contract with the company regardless of their status, length of service or place of work) must be included in the calculation of the number of employees enjoying the right to information and consultation (see judgments of the Court of Justice and the European Union, *Confédération générale du travail* and Others, Case No. C-385/05 of 18 January 2007, and *Association de médiation sociale,* Case No. C-176/12 of 15 January 2014).

Personal scope

The abovementioned Decree of 2007 covers all undertakings established in Italy, whether public or private and whether engaged in a profit-making activity or not. Employers are required to inform and consult trade union representatives in enterprises employing at least 50 persons.

In its previous conclusion (Conclusions 2010), the Committee asked whether all categories of employees were taken into account when calculating the number of employees entitled to benefit from the right to information and consultation. The Committee notes from its previous conclusion (Conclusions 2010) that the rules and procedures for appointing and electing trade

union representatives applicable to employees on permanent contracts also apply to those on fixed-term contracts, so long as the contract is for more than nine months. The report does not provide any more information about the categories of employees taken into account when calculating the number of employees entitled to benefit from the right to information and consultation. Consequently, the Committee reiterates its finding of non-conformity on the ground that it has not been established that the rules on information and consultation of workers cover all categories of employees.

Material scope

The Committee refers to its previous conclusion (Conclusions 2010) for a detailed description of the material scope of the legislation, which it found to be in conformity with the Charter.

Remedies

The Committee noted previously (Conclusions 2003) that in the event of infringements of the RSUs' right to information and consultation, labour courts could order employers to carry out their obligations and declare any decision taken in violation of these obligations void. Employers who don't execute labour court orders are liable to criminal prosecution.

The Committee asked whether these remedies were available both to union representatives and to employees themselves, and to other bodies or individuals representing non-unionised employees. As the report fails to answer this question, the Committee concludes that the situation is not in conformity on the ground that it has not been established that there are appropriate remedies for employees themselves or their representatives.

Supervision

The Committee refers to its previous conclusion (Conclusions 2010) for a detailed description of the supervision of the right of workers to information and consultation, which it found to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 21 of the Charter on the grounds that it has not been established that:

- the rules on information and consultation of workers cover all categories of employees;
- there are appropriate remedies for employees themselves or their representatives.

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

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

Working conditions, work organisation and working environment

In its previous conclusions (Conclusions 2007 and 2010) the Committee noted that pursuant to the national framework agreement of 20 December 1993 between the employers' organisation and the main national trade unions, under the auspices of the government, the right of workers to take part in the determination and improvement of working conditions and the working environment in undertakings was vested in a representative structure called *Rappresentanza Sindacale Unitaria* (RSU), which could be established in any undertaking with more than fifteen employees, including those managed by public authorities. Employee participation in Italy mainly takes the form of consultation and joint decision making and management within enterprises. In the light of this information, the Committee concluded that it had not been established that a majority of employees had an effective right to participate in the decision making process in their undertaking on matters relating to Article 22 of the Charter.

As the current report fails to provide any more information on the system for the participation of employees in the determination and improvement of working conditions and the working environment, the Committee repeats its finding of non-conformity on the ground that it has not been established that workers and/or their representatives have an effective right to participate in the decision-making process within undertakings with regard to working conditions, work organisation or the working environment.

Protection of health and safety

The Committee recalls that according to the Appendix, Article 22 affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of bodies in charge of monitoring their application, and that the right of workers' representatives to consultation at the enterprise level in matters of health and safety at the workplace is equally dealt with by Article 3 of the Charter. For the States who have accepted Articles 3 and 22, this issue is examined only under Article 22.

The Committee refers to its previous conclusion (Conclusions 2010), in which it noted that employers are required to consult the RSUs as well as the safety delegate on all issues relating to health and safety. Legislative Decree No. 26 of 19 September 1994 requires all undertakings to appoint safety delegates, who have very broad powers to supervise the application of health and safety legislation. In undertakings with up to fifteen employees, safety delegates are elected from among and by all employees. In undertakings with more than fifteen employees, they are elected within the trade-union-controlled representative bodies and if no trade union representation exists, by all employees.

When health and safety representatives are elected from among the trade union representatives they represent all their undertaking's employees on matters relating to the employee contribution to health and safety in the workplace.

Organisation of social and socio-cultural services and facilities

The Committee refers to its previous conclusion (Conclusions 2010) for a detailed description of the organisation of socio-cultural services and facilities, which it found to be in conformity with the Charter.

Enforcement

In its previous conclusion (Conclusions 2010), the Committee asked whether workers' representatives were entitled to appeal to the relevant courts in respect of alleged breaches of their right to take part in the determination and improvement of working conditions and what penalties employers were liable to if they failed to fulfil their obligations in this respect. The only information provided in the current report relates to the right to information and consultation covered by Article 21, not to the right of employees to take part in the determination and improvement of working conditions and the working environment. The Committee therefore concludes that the situation is not in conformity with the Charter because it has not been established that legal remedies are available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 22 of the Charter on the grounds that it has not been established that:

- workers and/or their representatives have an effective right to take part in the decision-making process in undertakings with regard to working conditions, work organisation and the working environment;
- legal remedies are available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

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 Italy.

Prevention

The report states that, pursuant to Article 2087 of the Civil Code, employers are obliged to take all measures necessary to safeguard their employees' physical and moral integrity, including measures to prevent sexual harassment. In addition, Law No. 123 of 2 August 2007 and Legislative Decree No. 5/2010 provide that employers or collective agreements can establish codes of conduct, ethics and good practice defining sexual harassment and determining internal complaint procedures and the applicable disciplinary penalties.

The Committee notes that the adoption of these prevention measures is left to the initiative of employers or collective agreements. It wishes to know whether specific prevention and awareness-raising measures, other than of a legislative nature, are taken by the national authorities to inform workers about sexual harassment and the remedies available and to what extent the social partners are involved in the development and implementation of any such measures.

Liability of employers and remedies

The Committee notes the references to relevant legal instruments in the report, in particular Legislative Degree No.145/2005, which transposed Directive 73/2002/EC into Italian law, and Legislative Decree No. 198/2006, as amended by Legislative Decree No. 5/2010, establishing a "Code of Equal Opportunities between Women and Men". This code bans any gender-based direct or indirect discrimination. In particular, Article 26, paragraph 2 of this Code specifically prohibits sexual harassment, namely "any unwanted physical, verbal or non-verbal conduct with sexual connotations, having the purpose or effect of violating a worker's dignity and, in particular, creating an intimidating, hostile, degrading, humiliating or offensive environment." The amendment of 2010 also introduced an express ban on any kind of unfavourable treatment of a worker for having rejected or been subjected to behaviour qualifying as gender discrimination or sexual harassment. The Equal Opportunities Code further recognises the right not to be retaliated against for upholding their right to protection from discrimination and sexual harassment. Apart from the specific protection against sexual harassment afforded to workers, the Code covers third parties in its Article 55 *bis*, concerning the prohibition of discrimination and sexual harassment in the supply of goods and services.

Any alleged victim of sexual harassment may first and foremost have recourse to the mediation procedures provided for in Article 410 of the Code of Civil Procedure, Article 66 of Legislative Decree No. 165/2001 and the collective agreements, or may take the case to the local gender equality counsellor. In the event of discrimination of a collective nature – including cases constituting sexual harassment – the local counsellor in gender equality matters may, within a time limit of 120 days, order that the behaviour in question be brought to an end or refer the matter to the administrative or labour courts so that they can give a finding of discrimination and possibly order appropriate reparatory measures. In the event of failure to take the measures the courts may impose a fine (of up to € 50 000), imprisonment (for up to six months) and a penalty of €51 per day of non-compliance plus exclusion from certain economic advantages. Disciplinary measures may also be ordered against a person responsible for sexual harassment. The Equal Opportunities Code also provides for an expedited procedure in certain

cases and for the possibility of collective complaints by recognised associations or public law organisations.

An alleged victim of sexual harassment can also bring a case directly before the competent courts. In this regard, the Committee noted in its previous conclusion that, even before the adoption of the Equal Opportunities Code, the employer could be held liable for any act of sexual harassment committed against an employee, in accordance with Article 2087 of the Civil Code mentioned above. According to the case law, the employer can also be held liable for failing to take action to end behaviour constituting sexual harassment of which it is or should have been aware. In reply to the Committee's question whether this provision also covers an employee who suffers sexual harassment from a person who is not another member of staff, the report confirms that this is the case.

Under Article 2049 of the Civil Code the employer may also be held liable for sexual harassment perpetrated by an employee against another employee or a third party. Lastly, where the employer cannot be held liable, victims of sexual harassment can always rely on Article 2043 of the Civil Code, concerning the general obligation to repair any damage caused.

In some particularly serious cases involving harassment of a criminal nature (including stalking, sexual assault or rape) intentional sexual harassment may also give rise to criminal liability.

Burden of proof

The Committee previously noted that the procedure established by the Equal Opportunities Code provided for a shift of the burden of proof in favour of the alleged victim (Articles 40 and 55 *sexies*). The report confirms that where a victim adduces evidence substantiating a presumption of sexual harassment, it is for the defendant to prove that there was no discrimination or harassment or to demonstrate that he/she was completely unaware of the facts complained of.

Redress

The report states that, under the case law, a victim of sexual harassment is entitled to compensation for all kinds of damage suffered, including non-pecuniary damage and biological, moral or existential damage. Under settled case law precedent, the obligation to repair such damage lies with both the perpetrator of harassment and the employer.

The Committee takes note of the case-law examples set out in the report, confirming inter alia the possibility of referring a case to the industrial tribunal under Article 26 of the Equal Opportunities Code, the rules of evidence, the joint liability of the perpetrator and the employer and the possibility of obtaining the annulment of a wrongful dismissal linked to harassment. It notes from the European Network of Legal Experts in the Field of Gender Equality ("Harassment related to sex and sexual harassment law in 33 European countries" – 2012) that the reinstatement of a worker who resigned for reasons linked to sexual harassment is also possible.

Concerning the reparation of non-pecuniary and pecuniary damage, the Committee asks that the next report give more detailed information on the amounts of compensation awarded in sexual harassment proceedings.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Italy is in conformity with Article 26§1 of the Charter.

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 Italy.

Prevention

The report states that, pursuant to Article 2087 of the Civil Code, employers are obliged to take all measures necessary to safeguard their employees' physical and moral integrity, including measures to prevent moral harassment.

The Committee recalls that States Parties are required to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) to combat moral harassment. In particular, in consultation with the social partners, they must inform workers about the nature of the behaviour in question and the available remedies. That being the case, the Committee asks that the next report provide information on the tangible measures taken to prevent moral harassment and the extent to which the social partners are involved in them.

Liability of employers and remedies

The Committee previously noted that, while there were no specific rules, protection against moral harassment in the workplace was afforded by various pieces of legislation, as interpreted by the case law.

In particular, Legislative Decree No. 216 of 9 July 2003 on protection against discrimination, transposing Directive 2000/78/EC, prohibits all forms of discrimination on grounds of religious or other beliefs, disability, age or sexual orientation, including where discrimination on such grounds takes the form of moral harassment, defined as "any unwanted behaviour having the purpose of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment." The Decree stipulates that the principle of equal treatment applies to both the public and the private sector and concerns access to employment, working conditions – not least promotion and compensation, access to training and vocational guidance and trade union activities. The decree provides for both mediation and judicial procedures, and in the latter case the courts may be led to order that the impugned behaviour and its consequences be brought to an end, along with an award of compensation. The same legislative instrument also recognises the right not to suffer reprisals for having enforced one's right to protection from discrimination and harassment. In the case of moral harassment on grounds of gender, but not constituting sexual harassment, the Committee takes note of the information concerning the Equal Opportunities Code examined in greater detail under Article 26§1.

According to the report moral harassment proceedings are, however, most frequently brought under certain provisions of the Civil Code which do not specifically relate to this form of harassment. For example, an employer may be held liable under Article 2103 of the Civil Code when harassment takes the form of de facto downgrading of an employee, who is assigned to tasks not in keeping with his or her functions or left unoccupied. More generally, under the abovementioned Article 2087 of the Civil Code, an employer may incur liability for any act of harassment suffered by employees. According to the case-law, an employer may also be held liable under this article for failing to take steps to end behaviour constituting harassment of which it is or should have been aware. In reply to the Committee's question in connection with

Article 26§1, the report confirms that this also covers an employee who suffers harassment by a person who is not another member of staff.

Under Article 2049 of the Civil Code the employer may also be held liable for harassment perpetrated by an employee against another employee or a third party. Lastly, where the employer cannot be held liable, harassment victims can always rely on Article 2043 of the Civil Code, concerning the general obligation to repair any damage caused.

Apart from the provisions already mentioned, the courts have taken the view that moral harassment exists where the challenged behaviour:

- is continuous and lasts a long time;
- is adopted in respect of a worker within the workplace;
- takes an intentionally hostile, repetitive and systematic, disproportionate or unusual form as compared with normal working relations, aims to persecute or torment the worker and is likely to harm his or her psychological and physical health.

In some particularly serious cases – unintentional injuries, private violence, insults and defamation – moral harassment may also give rise to criminal liability (Articles 590, 610, 594 and 595 of the Criminal Code).

Burden of proof

Legislative Decree No. 216/2003 provides for a shift in the burden of proof, in that it permits judges to find in favour of a victim on the basis of sufficient *prima facie* evidence and their personal conviction, in accordance with Article 2729 of the Civil Code. The Committee asks whether the same rules of proof apply in cases of moral harassment brought under other provisions of the Civil Code.

Redress

The Committee takes note of the case law examples set out in the report and notes that a victim of moral harassment is entitled to seek compensation for pecuniary and non-pecuniary damage suffered.

In addition, according to the report, when it is possible to establish a causal link showing the work-related origin of a disease, a worker who is the victim of harassment may obtain compensation for "mental and psychosomatic impairments due to malfunctioning of the work organisation".

The Committee points out that victims of harassment must have access to effective judicial remedies to obtain reparation of pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim’s pecuniary and non-pecuniary damage and act as a deterrent to the employer. It asks that the next report provide more detailed information on the amounts of compensation awarded in moral harassment proceedings.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Italy is in conformity with Article 26§2 of the Charter.

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 Italy.

Protection granted to workers' representatives

The Committee refers to its previous conclusions (Conclusions 2007 and 2010) where it noted that the main form of worker representation in Italy was through unitarian trade unions ("RSU").

The Committee noted that Law No. 300 of 20 May 1970 afforded a number of forms of protection to RSU leaders. The Committee understands that protection is granted to the leader because it is he or she who assumes responsibility for union decisions. The Committee seeks confirmation of this interpretation.

The Committee notes that the RSU leader benefits from the following protection:

- existence of an urgent protective procedure making it possible to obtain the immediate reinstatement of an RSU leader who has been wrongfully dismissed;
- the transfer of an RSU leader from one production unit to another requires the trade union's prior consent;
- the rules on unlawful transfers and dismissals take effect until the end of the year following that in which an RSU leader's term of office expires.

Facilities granted to workers' representatives

The Committee recalls that the facilities may include for example those mentioned in the ILO Recommendation R143 concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971 (support in terms of benefits and other welfare benefits because of the time off to perform their functions, access for workers representatives or other elected representatives to all premises, where necessary, the access without any delay to the undertaking's management board if necessary, the authorisation to regularly collect subscriptions in the undertaking, the authorization to post bills or notices in one or several places to be determined with the management board, the authorization to distribute information sheets, factsheets and other documents on general trade unions' activities), as well as other facilities such as financial contribution to the workers' council and the use of premises and materials for the operation of the workers' council (Conclusions 2010, Statement of Interpretation on Article 28 and Conclusions 2003, Slovenia). The Committee also recalls that the participation in training courses on economic, social and union issues should not result in a loss of pay. Training costs should not be borne by the workers' representatives (Conclusions 2010, Statement of Interpretation on Article 28).

The Committee refers to its conclusion concerning Article 5 (Conclusions XV-1 (2000)) for a description of the facilities granted to trade union representatives. The Committee takes note of the following additional facilities mentioned in the present report: the right to paid time off to enable RSU leaders to perform their mandate; the right to time off without pay to enable RSU leaders to participate in bargaining processes or in trade union congresses or conferences, of at least 8 days per year; a leave entitlement and a right to special leave for external union leaders. The Committee asks that the next report provide a detailed and up-to-date description of the facilities granted to members of the RSU in the light of the Committee's case law, as referred to in the preceding paragraph.

Conclusion

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

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 Italy.

Definition and scope

The Committee notes that there have been no changes to the definition and scope of redundancies.

Prior information and consultation

The Committee notes that there have been no changes to the content of prior information and consultation which it previously (Conclusions 2010) found to be in conformity with the Charter.

Preventive measures and sanctions

In its previous conclusion (Conclusions 2010) the Committee asks what the level of compensation was to which the worker is entitled if they were unjustly being made collectively redundant.

In this regard it notes from the report that the remedies and sanctions in case of unlawful dismissal include reinstatement in addition to compensation, proportionate to the remuneration that the worker concerned would have received from the date of dismissal until the date of reinstatement. The compensation may be limited to 12 months in certain cases of unlawful dismissal or between 12 and 24 months in cases of dismissal imposed in violation of the procedures established by the law.

The Committee observes that the sanctions as well as remedies in case of unlawful dismissal are dealt with under Article 24 of the Charter.

The Committee refers to the Statement of Interpretation in the General Introduction and asks for more information regarding the social measures proposed to mitigate the effects of redundancies. It asks in particular, whether employers are required to cooperate with administrative authorities or public agencies which are responsible for the policy counteracting unemployment, by notifying them about planned collective redundancies and/or cooperating with them in relation to retraining employees who are made redundant or providing them with other forms of assistance with a view to obtaining a new job.

The Committee asks what sanctions exist if the employer fails to notify the workers' representatives about the planned redundancies. It also asks what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has not been fulfilled.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Italy is in conformity with Article 29 of the Charter.