December 2010

# European Social Charter (revised)

European Committee of Social Rights

Conclusions 2010
(ITALY)

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

*This text may be subject to editorial revision.*

**Introduction**

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

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions[1].

*The Revised European Social Charter was ratified by Italy on 5 July 1999. The time limit for submitting the 9th report on the application of this treaty to the Council of Europe was 31 October 2009 and Italy submitted it on 26 January 2010.*

This report concerned the accepted provisions of the following articles belonging to the thematic group "Labour rights":

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

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

The present chapter on Italy concerns 22 situations and contains:

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

The next Italian 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 right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

The deadline for the report was 31 October 2010.

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

**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.

The report indicates that there have been no changes in respect of the legislative framework on working time. The Committee recalls that hours worked by employees should not exceed 8 hours a day or 40 hours a week. Collective agreements determine the normal weekly working time (never more than 40 hours). Work performed in excess of 40 hours a week is overtime, which requires an agreement between the employer and employee and cannot exceed 250 hours per year. The general regulations on working time have been considered in conformity with the Charter (Conclusions 2003 and 2007).

However, in its previous conclusion (Conclusions 2007) the Committee found that the situation was not in conformity with Article 2§1 because working hours in the fishing industry could reach up to 72 hours per week. The report underlines that working time in this industry is governed by Community directives, *inter alia*, Directive 2003/88/EC concerning certain aspects of the organisation of working time. Article 21 of the latter sets a limit of 14 hours of work per day and 72 hours per week for workers on sea-going vessels. These same limits have accordingly been transposed into the relevant domestic regulations (Legislative Decree No. 66 of 8 April 2003).

The Committee refers to its Introductory Observation on the relationship between European Union Law and the European Social Charter in collective complaint No. 55/2009, *Confédération Générale du Travail (CGT) v. France,* decision on the merits of 23 June 2010, paragraph 38. It reiterates that the fact that a domestic regulation is based on a European Union Directive does not remove it from the ambit of an assessment under Article 2 of the Charter. Therefore, exceptions expressly provided by Directive 2003/88/EC must be assessed on a case-by-case basis as they are applied by the States Parties.

In this respect, the Committee recalls that weekly working time of more than sixty hours is too long to be considered as reasonable under this provision. This is a limit which cannot be exceeded even in the context of flexibility schemes, where compensation is granted by rest periods in other weeks, or in specific occupations. It therefore finds that Section 18 of Legislative Decree No. 66 of 8 April 2003, which sets working time limits for workers in the fishing industry, does not comply with the Charter.

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

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 2§1 of the Revised Charter on the ground that regulations permit weekly working time of up to 72 hours in the fishing industry.

**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.

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

The report cites examples of collective agreements on increased remuneration rates in fields such as food processing, freight and logistics, and the metal-working and mechanical engineering industries, in which employees are paid only 50% more than the usual rate for working on a public holiday.

The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. Given that this is not the case in collective agreements in fields such as food processing, freight and logistics, and the metal-working and mechanical engineering industries, the Committee considers that the situation is not in conformity with Article 2§2.

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 2§2 of the Revised Charter on the ground that work performed on a public holiday is not compensated at a sufficiently high level.

**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 asked previously for information on the rules on the postponement of annual leave. According to the report, Article 10 of Legislative Decree No. 66/2003 was amended by Legislative Decree No. 213/2004. Under the new Article 10, both private and public sector employees are entitled, in all events, to a period of annual leave of at least four weeks. Save in exceptional circumstances or the special rules applied to the categories of employee referred to in Article 2, paragraph 2 of Legislative Decree No. 66/2003 (i.e. 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 two remaining weeks of leave at any time in the 18 months following the end of the reference year.The Committee recalls 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 considers therefore that the situation is in conformity.

In its previous conclusion (Conclusions 2007), the Committee noted that, in respect of seafarers, national collective agreements may provide that due to exceptional circumstances annual leave may be replaced by an allowance determined by the agreement. The Committee asked whether in fact this just relates to seafarers or is also applicable to other categories of workers. It further asked whether all annual leave may be exchanged or only a proportion of it and what is meant by exceptional circumstances. In the absence of information in the report, the Committee reiterates its question.

*Conclusion*

Pending receipt of the information requested the Committee concludes that the situation in Italy is in conformity with Article 2§3 of the Revised 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.

***Elimination or reduction of risks***

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

Legislative Decree No. 81/2008, the “Single Act” on Occupational Health and Safety, strengthens the provisions and the levels of protection already afforded by Italian legislation and confirms the need to eliminate risks, or where this is impossible, to reduce them to a minimum. Article 15 of Legislative Decree No. 81/2008 includes *general protection measures* such as risk evaluation, prevention planning and the consideration of safety issues when selecting equipment and deciding on working and production methods.

Legislative Decree No. 81/2008 contains a list of activities posing a particular threat to employees' health and safety. It includes jobs exposing workers to the risk of burying, engulfing or drowning, tasks involving exposure to dangerous chemical or biological substances, ionising radiation or electric power cables, work in mines or underground locations or under water, and activities involving the use of explosives or the mounting and dismantling of heavy prefabricated components.

The Committee refers to its conclusion of non-conformity under Article 3 of the Revised Charter (Conclusions 2009) concerning the prevention of risks in inherently dangerous or unhealthy occupations.

***Measures in response to residual risks***

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

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

In its last conclusion (Conclusion 2007), the Committee asked for full information on compensatory measures for workers exposed to risks where it had not yet been possible to eliminate or sufficiently reduce these risks. According to the report, in the period 2006/2008 medical radiologists and health technicians benefitted from such measures. Over the same periods, benefits were introduced for persons who had worked with asbestos. These measures or benefits consisted in the payment of allowances for employees who had developed clinical conditions. The Committee considers that cash benefits for those employed on risk-related activities, particularly if these are in compensation for resulting clinical conditions, do not meet the requirements of Article 2§4.

*Conclusion*

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

- there is no prevention policy for the risks in inherently dangerous or unhealthy occupations;

- it has not been established that the right to just conditions of work in case of risks 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 there have been no changes to the situation which it has previously found to be in conformity with the Revised Charter.

*Conclusion*

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

**Article 2 - Right to just conditions of work**

*Paragraph 6 - Information on the employment contract*

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

It notes that there have been no changes to the situation which it has previously found to be in conformity with the Revised Charter.

*Conclusion*

The Committee concludes that the situation in Italy is in conformity with Article 2§6 of the Revised 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 reiterates that night work is now regulated by Legislative Decree No. 66/2003. Under Article 2, paragraph 1, of this decree, its provisions apply to all public and private sector activities apart from persons working at sea covered by Directive 1999/63/EC, mobile workers in civil aviation covered by Directive 2000/79/EC and persons performing mobile road transport activities covered by Directive 2002/15/EC.

Under Section 13 of Legislative Decree No. 66/2003, night work is restricted to eight hours every 24 hours on average. The Committee asked previously for detailed information (particularly on the period over which average working hours were calculated) including examples. The report cites the example of the collective agreement of 19 July 2005 on bread-making companies (the CCNT), which defines night work as work carried out between 10 p.m. and 5 a.m. A three-month reference period is used to calculate whether the 8-hour restriction is being observed on average. It is pointed out in the report, however, that only relatively few collective labour agreements negotiated at national or sub-national level explicitly lay down a restriction of this type.

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

*Conclusion*

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

**Article 4 - Right to a fair remuneration**

*Paragraph 1 - Decent remuneration*

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

In its previous conclusion (Conclusions XVIII-2) the Committee held that the situation in Italy was not in conformity with Article 4§1 as it had not been established that a decent standard of living was guaranteed for a single worker earning the minimum wage. In particular, even though the report provided information on the sectoral wage minima as negotiated in collective agreements, only gross values were indicated.

The Committee now notes that according to the report the Government is not in a position provide information concerning the minimum wage. As regards the average wage, the Committee observes from the Italian National Statistics Office (INSTAT) that in 2008 the net wage of a single employee representing the average in agriculture, industry, construction, services and public administration amounted to € 16,797 annually. However, in the absence of the information on the minimum wage, the Committee holds that it has not been established that the minimum wage can guarantee a decent standard of living.

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 4§1 of the Revised Charter on the ground that it has not been established that the minimum wage can guarantee a decent standard of living.

**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.

The report indicates that there have been no changes in respect of the legislative framework on remuneration of overtime work. The Committee recalls that pursuant to Act 623, of 1923, still in force, overtime must be paid with an increase of not less than 10% over the regular rate. However, many collective agreements provide that overtime shall be remunerated at a higher rate, of around 30% above the standard rate. The general regulations on remuneration of overtime have been considered in conformity with the Charter (Conclusions 2003 and 2007).

However, the Committee noted in the last two supervision cycles that the increased rate of remuneration for workers in the food industry could be be replaced by compensatory time off. It asked in this respect whether the compensatory time off was higher than the overtime actually worked, and deferred its conclusion pending clarification on this point (Conclusions 2003 and 2007).

The report indicates that the collective agreement in the food industry sector (CCNL) foresees the possibility of a worker benefiting from a compensatory rest which is equivalent to the overtime worked, but not longer. However, the authorities believe that the situation is not in breach of this provision of the Charter, because the worker may in any event choose to be compensated for overtime with remuneration at an increased rate .

The Committee recalls that, pursuant to Article 4§2 of the Revised Charter, where remuneration for overtime is entirely given in the form of time off, such time must be longer than the additional hours worked (Conclusions XIV-2, Belgium).

Accordingly, it considers that the situation is not in conformity with this provision because workers falling under the CCNL are not entitled to a longer rest period in relation to the period of overtime work.

Finally, the Committee asks the next report to provide information on whether the Labour Inspection has identified any breaches related to the failure to pay overtime wages.

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 4§2 of the Revised Charter on the ground that time off granted to compensate overtime is not sufficiently long under the collective agreement in the food industry sector.

**Article 4 - Right to a fair remuneration**

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

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

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

**Article 4 - Right to a fair remuneration**

*Paragraph 4 - Reasonable notice of termination of employment*

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

It points out that the situation in Italy has never been found to be in conformity with Article 4§4 of the revised Charter because notice periods in some sectors are too short. From the report, the Committee notes that that there has been no change in the situation concerning notice periods. Notice periods are subject to collective bargaining but individual employment contracts may set longer periods. The Committee notes that, although new collective agreements were negotiated between 2003 and 2007, there was no change in the provisions on notice periods compared to Conclusions 2007.

*Conclusion*

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

- in textile, private metal-working and mechanical industries as well as food-processing sector, one week's notice is not reasonable period of notice for any worker whether or not he or she has completed six months' service;
- in private metal-working and mechanical industries sector, nine days' notice is not a reasonable period of notice for workers with five to ten years' service;
- in private metal-working and mechanical industries as well as food-processing sector, twelve days' notice is not a reasonable period of notice for workers with more than fourteen years' service.
- in textile sector, two weeks' notice is not a reasonable period of notice for workers with more than six month's service;
- in textile, private metal-working and mechanical industries as well as food-processing sector, one month's notice is not a reasonable period of notice for workers with five or more years' service.

**Article 4 - Right to a fair remuneration**

*Paragraph 5 - Limits to deduction from wages*

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

Under Act No. 180/50 amending Article 545 of the Code of Civil Procedure, up to one third of wages may be deduced for the purposes of maintenance payments, subject to any limits set in court. Other types of deduction may reach up to a fifth of the net wage. Employees are entitled to contest deductions they consider excessive in the courts. They may apply for the deduction to be reduced provided that they can prove that their daily or monthly income does not allow them to enjoy a decent standard of living. The Committee wishes to know how other types of debts such as taxes, debts to pay to the employer or to the Government are dealt with in practice and how in these cases, the minimum subsistence income is guaranteed for employees.

The Committee points out that the previous finding of non-conformity was based on Italy's inability to show that in practice, wages after deductions were still sufficient for workers to provide for themselves and their dependants. The Committee notes that the situation has not changed.

The Committee would point out that under Article 4§5, domestic law must contain guarantees to the effect that workers may not waive their right to limited deductions from wages (Conclusions 2005, Norway). It asks for further information in the next report on the measures preventing workers from waiving this right.

*Conclusion*

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

**Article 5 - Right to organise**

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

In reply to the Committee, the report underlines that there has been no change to the legal framework previously found to be in conformity with Article 5 and provides an overview of this framework. Therefore, and in the light of other sources, the Committee sees no reason to change its assessment of the situation in Italy regarding Article 5, but asks that the next report provide a full and up-to-date description of the situation.

*Conclusion*

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

**Article 6 - Right to bargain collectively**

*Paragraph 1 - Joint consultation*

The Committee notes from the information provided in the Italian report and all the information at its disposal that there have been no changes to the situation which it has previously considered to be in conformity with Article 6§1 of the Revised Charter.

However, as the most recent detailed information on the situation dates back from 2000, the Committee reiterates 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.

As far as joint consultation at the entreprise level is concerned, the Committee recalls that for States, like Italy, which have accepted both Article 6§1 and Article 21, the conformity of the situation of consultation at enterprise level is no longer examined within the framework of Article 6§1 as it is examined under Article 21 (Conclusions 2004, Ireland). It thus refers to its assessment under that provision in this regard.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Italy is in conformity with Article 6§1 of the Revised Charter.

**Article 6 - Right to bargain collectively**

*Paragraph 2 - Negotiation procedures*

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

***Legislative framework***

The Committee has already ruled, in Conclusions XV-1, on the collective bargaining procedures for the private sector provided for by the tripartite central agreement of 23 July 1993. It understands that there has been no change in the situation which it has previously found to be in conformity with Article 6§2.

With regard to the public sector, the Committee refers to Conclusions 2006 for a description of the collective bargaining procedures provided for by Legislative Decree No. 165/2001 and of the membership and functions of the agency for the representation of public administration in collective bargaining (ARAN).

In reply to the Committee's requests for clarification, the report confirms that:

- decisions relating to the representativeness of trade unions for the purposes of collective bargaining may be appealed against in court;
- the independence of trade unions entitled to take part in collective bargaining in the public sector vis-à-vis employers is guaranteed by the objective nature of the criteria used to determine the representativeness of trade unions (Section 43 of Legislative Decree No. 165/2001);
- the official document marking the conclusion of the negotiations for each contract renewal, through which the parties formally acknowledge the final agreement, has to be approved and signed by both parties to the agreement;
- in the sphere of decentralised agreements, the ARAN plays an advisory role when requested to do so by the parties, given that, under Section 40 of Legislative Decree No. 165/2001, decentralised collective bargaining must be confined to the subject areas and the limits established by national collective agreements between the parties concerned and according to the negotiating procedures described therein.

These clarifications do not give ground for changing the Committee's ruling that the legislative framework is in conformity with Article 6§2 of the Revised Charter. Nonetheless, the Committee reiterates that it expects the next report to provide a full, up-to-date description of the situation in practice as regards the aforementioned negotiating procedures.

***Conclusion of collective agreements***

According to the report, 238 national collective labour agreements were concluded in various private-sector occupations during the reference period along with 70 in the public sector. The Committee takes note of the sectors covered by these agreements. It also notes that the authorities do not have any up-to-date data on the number of collective agreements negotiated at regional, local or company level. It asks for these data to be included in the next report.

The Committee notes from a source other than the national report[1] that 80 % of the workforce were covered by collective agreements during the reference period.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Italy is in conformity with Article 6§2 of the Revised Charter.

[1] *European Trade Union Institute (ETUI), worker-participation.eu website, description of national industrial relations, Italy*

**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 previously found the situation to be in conformity with the Revised Charter but requested further updated information on mediation, conciliation and arbitration procedures in both the public and private sectors.

The report provides some information however much of it is not relevant to Article 6§3 of the Revised Charter. The Committee recalls that Article 6§3 is only concerned with collective conflicts of interest, not individual conflicts and not conflicts of rights. The Committee asks again for the next report to provide a detailed up-to-date description of mediation, conciliation and arbitration procedures in cases of collective conflicts only.

*Conclusion*

Pending receipt of the information requested the Committee concludes that the situation is in conformity with Article 6§3 of the Revised Charter.

**Article 6 - Right to bargain collectively**

*Paragraph 4 - Collective action*

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

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

The Committee has assessed the situation in Italy regarding the meaning and permitted objectives of collective action as well as the groups entitled to take collective action in its Conclusions XV-1. There has been no change to this situation.

***Restrictions on the right to strike***

The Committee previously concluded that the situation in Italy is not in conformity with Article 6§4 of the Revised Charter on the grounds that it was not able to assess whether the Government's

right to issue ordinances restricting strikes in essential public services fell within the limits of Article G of the Revised Charter. In this respect the Committee recalls that the operation of minimum services during strike action in the public sector is determined by agreements between the administrations or enterprises providing essential services and the trade unions concerned. These agreements define the level of services that should be maintained, their organisation and the number of workers required for the maintenance of these services. They are communicated to the Guarantee Commission, an independent administrative authority, whose approval makes the agreements binding upon the parties. However, when there is a real and imminent danger of serious infringements of personal freedoms guaranteed by the Constitution due to non-functioning of services of a general (public) interest and should conciliation efforts have proven unsuccessful, an ordinance may be adopted upon initiative of the Guarantee Commission by the President of the Council of Ministers or a minister to which this power has been delegated or a prefect with the aim to guarantee a sufficient minimum service in the sector concerned. The Committee therefore asked again for precise and detailed information in the next report on the power of public authorities to issue ordinances and its consequences but meanwhile concluded that there was nothing to establish that the restrictions to the right to strike following from the Government's power to define minimum services in essential public services fell within the limits of Article G of the Revised Charter.

The report provides no new information on this issue, it simply reiterates the Governments view that as the law only permits ordinances imposing minimum service requirements where there is a real and imminent danger of serious infringements of personal freedoms guaranteed by the Constitution this ensures that the requirements of Article G of the Revised Charter are fulfilled. The Committee therefore reiterates its previous finding of non conformity on the grounds that it is not able to assess whether the Government's right to issue ordinances restricting strikes in essential public services falls within the limits of Article G of the Revised Charter.

The Committee noted previously that the Guarantee Commission has been granted new powers to penalise the conduct of trade unions, employers and self-employed workers in connection with collective action. The Committee asked the authorities to provide detailed information on the implementation in practice of the new powers granted to the Commission. As no such information is provided the Committee again asks for this information to be provided.

Legislation requires certain categories of professions to adopt codes of self-regulation regarding the right to strike, such as the self-employed and owners of small businesses. The Committee asked the authorities for further information. The Committee finds no information on this therefore repeats its request for this information.

***Procedural requirements pertaining to collective action – Consequences of collective action***

As regards procedural requirements pertaining to collective action as well as its consequences, the Committee refers to its assessment of the situation in Italy in its Conclusions XV-1. As far as the public sector is concerned, the Committee previously noted that Act No. 83/2000 introduced an obligation to notify the exact duration, the modalities and the reasons for a strike concerning essential public services to the employer concerned as well as to the administrative authority which is competent for deciding whether an ordinance should possibly be issued in order to guarantee minimum services during strike action. The administrative authority is under an obligation to forward the strike notification to the Guarantee Commission**.** The Committee considered that a requirement to notify the duration of strikes concerning essential public services to the employer prior to strike action was an excessive restriction to the right to strike going beyond the limits of Article G of the Revised Charter and was therefore not in conformity with Article 6§4 of the Revised Charter. There has been no change to this situation therefore the Committee reiterates its previous finding of non conformity.

*Conclusion*

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

- it has not been demonstrated that the Government's right to issue ordinances restricting strikes in essential public services falls within the limits of Article G of the Revised Charter;
- the requirement to notify the duration of strikes concerning essential public services to the employer 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.

In its Conclusions 2007, 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 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. 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***

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

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

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

***Personal scope***

The above-mentioned decree of 2007 covers all enterprises, public or private, established in Italy, whether or not they are profit making. Employers are required to inform and consult trade union representatives in enterprises employing at least 50 persons.

The Committee looks at the case-law of the Court of Justice of the European Union to determine what is reasonable from the standpoint of Article 21. It considers in particular whether all categories of employees are taken into account when calculating limits in terms of number of employees from which employers are responsible for ensuring that the right to information and consultation is respected under this provision. The Committee therefore asks whether all categories of employees are taken into account when calculating the number of employees entitled to benefit from the right to information and consultation under this provision.

The report states 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 Committee considers that the information given in the report on the proportion of employees entitled to be informed and consulted within their enterprise is not satisfactory. It therefore considers that the situation is still not in conformity with the Revised Charter.

***Material scope***

Under the 2007 decree, the arrangements for informing and consulting employees are governed by collective agreements in each sector of the economy. Employers are required to inform and consult trade union representatives on any matters relating to the organisation of work, changes in the employment situation, the firm's financial situation and any changes to it, any planned measures that might have an impact on employees' situation and the transfer of undertakings. The information must be passed on in good time to enable employee representatives to study it in depth and, if necessary, prepare for consultations. Such consultations must offer the representatives an opportunity to meet the employer, receive a response to any opinions they may express and reach agreement on decisions within the employer's remit.ùù

Unless collective agreements provide to the contrary, employee representatives may not pass on information that they know to be confidential and that is considered to be so by the employer and his or her representatives, if disclosure would be detrimental to the undertaking's activities or interests. This ban applies for a period of three years. Employee representatives who breach this ban are liable to disciplinary sanctions provided for in collective agreements. In the event of a dispute about the confidentiality of information supplied by an employer the matter may be referred to a conciliation commission.

***Remedies***

The Committee noted in Conclusions 2003 that in the event of infringements of RSUs' right to information and consultation, labour courts could order employers to execute their obligations and declare any decision taken in violation of these obligations void. Employers who did not execute labour court orders were liable to criminal prosecution. It asks whether these remedies are available to both union representatives and employees themselves, and to other bodies or individuals representing non-unionised employees.

***Supervision***

The provincial labour directorates, which are part of the ministry of labour and social protection, are responsible for enforcing employees' right to information and consultation. Employers who fail to respect this right are liable to fines ranging from 3 000 to 18 000 €.

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 21 of the Revised Charter because it has not been established that the rules relating to information and consultation cover the majority of employees concerned.

**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.

The Committee underlines that Article 22 applies to all undertakings, public or private. States may exclude from its scope undertakings employing fewer than a certain number of employees, to be determined by national legislation or practice (Conclusions 2005, Estonia).

In its previous conclusions (Conclusions 2003 and 2007), the Committee asked for information to enable it to assess whether the great majority of employees had the right to participate in the determination and improvement of working conditions and the working environment within their undertaking. As no relevant information was provided in the previous report, it found that Italy was not in conformity with Article 22 of the Revised Charter. The present report contains no relevant data on this subject. The Committee therefore considers that there is still nothing to establish that the situation is in conformity with the Revised Charter.

***Working conditions, work organisation and working environment***

In its last conclusion (Conclusions 2007), 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 the working conditions and working environment within the undertaking was vested in the 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.

According to the report, employee participation in Italy mainly takes the form of consultation and joint decision making and management within enterprises. The Committee asks for further information on this system of participation of workers.

***Protection of health and safety***

The Committee already noted that employers were required to consult the RSUs as well as the safety delegate elected by all the staff on all issues relating to health and safety. Legislative decree No. 626 of 19 September 1994 requires safety delegates to be appointed in all undertakings. They have very broad powers to supervise the implementation of relevant legal provisions with regard to health and safety. 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.

In reply to the Committee, the report states that 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 participation to health and safety in the workplace.

***Organisation of social and socio-cultural services and facilities***

Under Act No. 300/70, various national collective agreements provide for the promotion and management of cultural activities in the public and private sectors. Such activities are managed by bodies a majority of whose members are employee representatives. The Committee notes that in public or private undertakings with a CRAL (*circolo ricreativo aziendale per i lavoratori* – workplace recreational committee) employees are eligible for the services offered on payment of a social contribution.

***Enforcement***

The Committee reiterates that employees must be entitled to appeal to the courts where their rights have been infringed (Conclusions 2003, Bulgaria). However, the report describes the remedies available in the event of failure to respect employee representatives' right to information and consultation, a matter which falls under Article 21 of the Revised Charter. The Committee therefore asks whether trade union representatives are 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. It also asks whether individual employees or their representatives can also claim compensation for such breaches or for physical injury as a result of dangerous or unhealthy working conditions.

The Committee stresses that employers who fail to fulfil their obligations in this respect must be liable to penalties (Conclusions 2003, Bulgaria). The Committee therefore asks whether employers are liable to penalties if they fail to fulfil their obligations as regards the right of workers to take part in the determination and improvement of working conditions and the work environment, and if so what these penalties are.

Should the next report not provide the relevant information, there will be nothing to establish that the situation is in conformity with Article 22 concerning appeals and sanctions in case of breach of the right of workers to take part in the determination and improvement of working conditions, work organisation and working environment.

*Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 22 of the Revised Charter on the ground that it has not been established that a majority of employees have an effective right to participate in the decision-making process in their undertaking on matters referred to in Article 22 of the Revised Charter.

**Article 26 - Right to dignity in the workplace**

*Paragraph 1 - Sexual harassment*

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

The report states that the legislative framework has been completed by Legislative Decree No. 145/2005 which has included in the Italian legislation the EC directive 73/2002 and Legislative Decree No. 198/2006 “Code of equality of chances between men and women”.

In its last conclusion the Committee sought confirmation that the employer may be held liable for an act of sexual harassment committed on his premises by a third party against one of his employees. The report states that the employer has the duty to oversee that the employees are not victims of sexual harassment by their colleagues or superiors. The Committee recalls that it must be possible for employers to be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc (Conclusions 2003, Italy). It therefore asks whether the employer can be held liable towards the above-mentioned categories of persons as well.

The Committee takes note of the information regarding the Code of conduct in the fight against sexual harassment for the employees of the Ministry of Labour and Social Security. It also notes the set-up of the National Observatory on Activities of Conciliation as well as the set-up of a bank of data on discrimination which contains legal documents concerning sexual harassment as a tool for legal professionals working in this field.

The Committee takes note of the situation concerning the burden of proof as a shared responsibility between the employee and the employer. It takes note of the role of the counselors assisting employees in legal proceedings in cases of sexual harassment.

In its last conclusion, the Committee asked whether the reinstatement of employees unfairly dismissed as the result of a case of sexual harassment is not subject to any particular condition. The report states that all measures, dismissal included, taken against employees as victims of sexual harassment at workplace are null and void.

The Committee takes note of the statistical figures on sexual harassment cases, provided in the report. It takes note also of the measures concerning activities of prevention that have been taken during the reference period.

*Conclusion*

The Committee concludes that the situation in Italy is in conformity with Article 26§1 of the Revised 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.

The report refers to the previous report and states that the legislation concerning moral harassment has not undergone any changes. The Committee previously found the situation to be in conformity with Article 26§2.

In answer to Committee’s request in its last conclusion, the report provides information on the case-law concerning moral harassment at workplace. The Committee takes note of the development of the case-law concerning moral harassment in Italy.

In its last conclusion the Committee asked whether specific rules covering public sector employees extend to all acts of harassment. The report states that the National Collective Agreement of Workers of the staff of Ministries of 12 June 2003 has foreseen the set-up in every institution of

administration of a Joint Committee on the Phenomenon of Moral Harassment and it explains their role and functions.

*Conclusion*

The Committee concludes that the situation in Italy is in conformity with Article 26§2 of the Revised 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 had previously noted (Conclusions 2007) that the main form of worker representation in Italy was trade union representation, however it had also noted, in its conclusion under Article 22 that a staff safety representative is appointed in each company to represent the workers on issues relating to health and safety in the workplace. It has also noted the existence of the works council, the CRAL (*circolo ricreativo aziendale per i lavoratori*), and noted the existence of workers' representatives on works councils established in accordance with Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

The Committee asks for updated information in the next report on the measures to protect trade union representatives against dismissal or other prejudicial acts short of dismissal for activities linked to their representative duties, and if representatives who have been unlawfully dismissed are entitled to reinstatement in their previous job or, if they do not want this, the award of compensation. The Committee refers to its interpretative statement in the General Introduction on the duration of protection for workers' representatives and wishes to be informed as to how long the protection for worker representatives lasts after the cessation of their functions

***Facilities granted to workers' representatives***

The Commitee recalls that in Italy trade union representatives are entitled to paid time off during working hours to perform their representative duties. Collective agreements may always establish more favourable conditions than those laid down in the relevant legislation. Trade union representatives are also entitled to free time to travel when performing their functions. In reply to the Committee, the report states that workers’ representatives on works councils established in accordance with Directive 94/45/EC are granted the same facilities as trade union representatives.

The Committee refers to its interpretative statement on the facilities to be granted to workers' representatives in the General Introduction as well as to its question on travelling expenses and asks the next report to provide any further information.

*Conclusion*

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

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

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

The report states that the normative framework, as previously reported, has not undergone any changes. The Committee previously deferred its conclusion, requesting more information.

The report states that the collective redundancies are regulated by art. 24 of Law No. 223/91, "Norme in materia di cassa integrazione, mobilità, trattamenti di disoccupazione, attuazione delle direttive della Comunità europea, avviamento al lavoro ed altre disposizioni in materia di lavoro" ("Standards regarding redundacy fund, mobility, unemployment treatments, transposition of the European Community Directives, vocational training and other provisions of the labor market "), which transposed into Italian law the EU Directive No. 75/129/EEC and subsequent amendments (Law No. 236/93 and No. 451/94). In addition the Legislative Decree No. 110/2004, "Amendments and integrations to the Law no. 223, of July 23, 1991, on collective redundancies" regulates collective redundancies for employers who are not entrepreneurs but who hold a non-profit activity of political, trade union, cultural, educational or religious nature.

***Definition and scope***

Collective redundancies rules apply to enterprises which fulfil the following conditions:

- have more than 15 employees (the number is calculated as the average of the last semester, including workers with contracts of training-employment and apprentices);
- intend to dismiss at the provincial level, at least 5 employees within 120 days as a general rule,
- the reason of redundancy must be ralated to a reduction, transformation or cessation of activity.

These elements distinguish collective redundancies from multiple individual dismissals for objective just reasons.

The Committee asks whether there are any categories of workers which are exempt from collective redundancy rules.

***Prior information and consultation***

An employer who wants to initiate collective redundancies must communicate proactively to all the trade unions or enterprise union representations (RSA), if present, respective associations, the provincial and regional labour directorates and the Ministry of Labour, Health and Social Policy, according to the importance of redundancy (respectively of provincial, regional or national level).

The communication must contain:

- the reasons that have caused the eccessive number of staff;
- the technical, organisational and/or productivity reasons on the basis of which the inevitable redundancies are calculated;
- the number, role and management of excess staff and of employed staff.

Within 7 days of the communication, the enterprise union representations or respective associations may seek a bilateral consultation concerning the reasons of excess staff and alternatives to collective redundancy. The alternatives may include:

- the possibility to assign workers to equal duties or to a lower level in the company and with no change of position;
- displacement;
- outsourcing with possible safeguard clauses to another affiliate, connected, controlled enterprise or one that has no relationship of property with the transferor enterprise.

The consultations may be extended for a period of 45 days maximum, except in cases when the number of the workers affected by mobility process is less then 10, in which case the applied period is reduced to 30 days (Section 3 of Act 223/91) In case of a negative outcome of the bilateral consultations, a second trilateral consultation is carried out with the initiative of the Provincial Labour Directorate with the aim of discussing the issue with employers and union representatives in order to reach an agreement and to determine useful solutions for the redeployment of excess staff.

After the consultation phase, even if the parties do not reach an agreement, the employer may proceed with the dismissal of redundant workers. The determination of workers to be made collectively redundant is bound by criteria defined by collective bargaining or determined by the National Collective Bargaining Agreement, or otherwise, by the criteria listed in Section 5 of Act 223/91:

- family responsibilities;
- technical and productive;
- seniority in the company.

These criteria are concurrent and binding on the employer's choice. For the employment relationship to end, it is necessary that the termination is communicated in writing to each worker in accordance with the terms of notice. At the same time, the employer must send the communication to the Regional Labour Directorate, the Regional Commission and to respective trade unions.

The Committee takes note of the consultation procedures and considers that they are in conformity with the requirements of Article 29 of the Revised Charter.

***Sanctions and preventive measures***

The termination should not be related to any disease, fact which may cause the invalidity of the act. The termination is ineffective if it was not notified in writing, if the procedures were not followed, or if the conditions of notification and comunication to the relevant offices have not been met. In general, the failure of any part of the procedure causes the invalidity of the proceedings. In this case the dismissal may be contested within 60 days also with an extrajudicial act.

If the dismissal is declared unlawful, Section 18 of Act 300/70 is applied and the worker can choose between:

- the return to work and compensation for damages;
- the payment of an indemnity for damages and compensation.

The Committee asks what is the level of compensation that the worker may be entitled to in case of unjustly being made collectively redundant.

The workers selected for redundancy are put in mobility procedures.

The Committee takes note also of the decisions of the Supreme Court of Cassation such as its Decision No. 1923 of 19 February 2000 where it has ruled that the illegitimacy of collective redundancies due to the failure on the part of the company to inform unions, may be denounced to the judicial authority by each worker even if the process has ended with the signing of an agreement with the union. It takes note of the Decision No. 302, of 11 May 2000 of the Supreme Court of Cassation in which it has ruled that the obligation of information and transparency does not apply only for unions but also for every singe worker. Accordingly, the worker may proceed to obtain a judicial declaration of invalidity for the measures taken by the enterprise.

*Conclusion*

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