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EUROPEAN SOCIAL CHARTER

Comments submitted by

German Trade Union Federation

(Deutscher Gewerkschaftsbund – DGB)

concerning the 2nd National Report on the implementation of the European Social Charter (REVISED)

submitted by

THE GOVERNMENT OF GERMANY

Articles 2, 3, 4, 5, 6, and 20

Comments registered by the Secretariat

on 30 June 2025

CYCLE 2024

Observations

Observations by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB)

In relation to the 40th Report on the Application of the Revised European Social Charter submitted by the Government of the Federal Republic of Germany

for the period from 1 January 2021 to 31 December 2024

Inhalt

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The German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB) and its affiliated unions welcome the opportunity to submit its Observations in relation to the 42nd Report of the Government of Germany the Application of the Revised European Social Charter (RESC) for the period from 1 January 2021 to 31 December 2024.

1 General Observations

The ESC reporting system is entering a new phase. It therefore seems important to first examine the fundamental problems this raises (1.1) before addressing the ratification deficits mentioned earlier (which are repeated here due to their significance) (1.2). Finally, it seems necessary to analyse and evaluate in more detail how previous DGB opinions have been taken into account (1.3).

1.1 Reporting system

First, the DGB would like to criticise that the Federal Government submitted its Report only with a delay of more than three months which was due by 31 December 2024. This important delay thus shortens the time available for the DGB to comment on this report to less than the half.

More generally, the DGB and its affiliated unions maintain their criticism of the reporting system.[1] Even after the simplification in 2022, it will still be unnecessarily complicated and opaque, as this report by the Federal Government shows. Instead, the reporting system should be designed in such a way that countries which, like the Federal Republic of Germany, have not ratified the Additional Protocol of 1995 providing for a system of collective complaints (CETS No. 158 – Collective Complaints Procedure Protocol - CCPP), submit a complete report every two years on all ratified provisions of the RESC and not just on some of them.[2]

The DGB associates itself with the 'Legal Opinion' elaborated by the ETUC on the question whether new reporting system introduced by the decision of the Council of Europe's Committee of Ministers of 27 September 2022 is in conformity with Article 21 European Social Charter (ESC) 1961 (available at ETUCLEX) and would like to draw the attention of the European Committee of Social Rights (ECSR or Committee) to it. It expresses the sincere hope that this will

[1] Observations by the DGB in relation to the Ad-hoc Report (2023) of the Government of the Federal Republic of Germany "Social rights and the cost-of-living crisis" from 5.7.2024 (available here: https://rm.coe.int/deu-comments-dgb-ad-hoc-on-cost-of-living-2024/1680b0fbe8).

[2] Observations by the DGB in relation to the 40th Report of the Government of the Federal Republic of Germany from 30.6.2023, Ziff. 1.1.2 (available here: https://rm.coe.int/comments-dgb-germany-40-nr-2023/1680ac55f0).

contribute to make the supervisory reporting system in legal and factual terms efficient.

1.2 Necessary Ratifications

Despite criticism from DGB[3] and contrary to the declared intention of the Committee of Ministers of the Council of Europe[4] several provisions of the RESC and the CCPP have not yet been ratified by the Federal Republic of Germany.

1.2.1 Collective complaints procedure

In its report on the status of the signing and ratification of European agreements and conventions by the Federal Republic of Germany for the period March 2021 to February 2023, the Federal Government justifies its rejection of the complaint procedure as follows:

> „*There are still reservations about the signing and ratification by the Federal Republic of Germany due to possible adverse effects on the institutional balance between social partners as non-governmental organisations and government agencies*." [5]

This position is unacceptable. Firstly, no detailed justification (e.g. further explanations/examples) is provided. Secondly, the complaint procedure has no adverse effects on the institutional balance between social partners and government bodies. This is evident from the 16 contracting states that have ratified the CCPP. But the underlying idea of a 'balance' is also inaccurate. The purpose of the CCPP was precisely to provide the social partners with an additional instrument to compensate at least to some extent for the inadequate control in the (particularly 'new') reporting system.

1.2.2 Provisions not ratified

The articles of the RESC that have not yet been ratified include Art. 7§1 RESC[6] regarding the minimum age for admission to employment of 15 years, Art. 21 RESC on the right to information and consultation, Article 22 RESC on the right to take part in the determination and improvement of working conditions and the working environment, in particular Article 24 on the right to protection in cases of termination of employment, Article 30 RESC on the right to protection against poverty social exclusion and Article 31 RESC on the right to housing.[7]

The DGB and its member unions therefore once again request the Government of the Federal Republic of Germany to ratify the remaining provisions of the

[3] See above under 1.1.1.
[4] Meeting of the Committee of Ministers of the Council of Europe on 15 March 2023 entitled: „Improving the European Social Charter system: long-term substantive and procedural issues", CM/Del/Dec(2023)1460/4.1 (available here: CM/Del/Dec(2023)1460/4.1).
[5] Federal Government, 29 February 2024, BT-Drucksache 20/10548.
[6] Articles without further specification refer to the Revised European Social Charter, unless the context or the indication clearly provides otherwise (such as 'ESC 1961').'
[7] For the further provisions not having been ratified (Articles 4§4, 10§5) see — Germany and the European Social Charter —.

RESC as well as the CCPP and the Amending Protocol of 1991 reforming the supervisory mechanism (CETS No. 142).

1.3 Consideration of previous DGB observations

The following section briefly discusses whether and to what extent previous DGB statements have been taken into account by the ECSR. The last two conclusions, 2004 {A} and XXII-3 {B}, of the previous reporting cycle (then Groups 4 and 3) are compared with the DGB Observations on the two corresponding reports of the Federal Government that preceded the respective Conclusions (on the 40th report[8] and the 39th report)[9].

1.3.1 No consideration

The DGB Observations were not taken into account at all in the conclusions on the following provisions:

- Art. 2§4 {B},
- Art. 4§5 {B},
- Art. 7§2 {A},
- Art. 7§5 {A},
- Art. 16 {A}.

Although formal reference is made to the DGB Observations at the beginning of the review of the following provisions,[10] no further reference is made to it in the course of the review of:

- Art. 6§4 {B},
- Art. 19§1 {A},
- Art. 19§4 {A}.

Finally, it should be noted that the criticisms made by international supervisory bodies (UN and ILO) regarding the relevant provisions that were quoted in the DGB Observations were not addressed at all. This is particularly noteworthy given that the ILO has a prominent position in relation to the ESC (see Art. 26 ESC 1961).

1.3.2 Limited consideration (at best)

With regard to the limited consideration, it should first be noted that none of the points raised in the observations led to a negative conclusion, unless they were used to confirm an incompatibility already identified in the last cycle:

[8] See below under 1.3.
[9] 30.06.2022; available here: https://rm.coe.int/comments-german-trade-union-confederation-deutscher-gewerkschaftsbund-/1680a736f2
[10] The usual formulation is: 'The Committee takes note of the information contained … in the comments of the German Trade Union Confederation (DGB).'

- Art. 4§3 {B}.[11]
- Art. 7§5 {A}.[12]

The 'maximum' was specific (follow-up) questions to the federal government (but not even in the form of a deferral):

- Art. 4§2 {B},[13]
- Art. 5 {B},[14]
- Art. 6§2 {B},[15]

[11] 'In this regard, the DGB indicates in its comments concerning the maximum compensation that all information provided in the Government's report does not change the legal situation of the limitation of severance payments in Section 10 of the Act on the Protection against Dismissal (Kündigungsschutzgesetz, KSchG). … In view of the above, the Committee reiterates its previous conclusion of nonconformity on the ground that the maximum compensation of 12 months wages established by law in cases of litigation concerning reprisals is not sufficient to make good the damage suffered by the victim and to act as a deterrent to the offender.' p. 18, is merely a repetition of previous criticism, not a new negative conclusion.

[12] 'According to the DGB, the legislation does not provide for 'fair wage' or 'appropriate allowances', at least not for young workers under the age of 18.
The Committee recalls that under Article 7§5, the allowance paid to apprentices must be at least one third of an adult's starting wage or minimum wage at the beginning of their apprenticeship and reach at least two thirds by the end (Conclusions 2006, Portugal). The Committee accordingly considers that the situation in Germany has not changed as regards the level of allowance paid to apprentices. It thus reiterates its conclusion of non-conformity.' p. 8.

[13] 'In its comments the DGB states that there is no legal requirement to increase the payment in case of overtime. The Committee asks the next report to contain information on the increase in salary in case of overtime.' p. 16. But the ECSR did not refer to this question in its conformity 'Conclusion' on this provision (by using the usual formulation: 'Pending receipt of the information' requested…', see below).

[14] 'According to the comments received from the DGB attempts by employers to prevent workplace representation (mainly works councils) are increasing. The Committee asks if the Government has taken any measures in order to prevent such practices.
Further the DGB states that during the pandemic they had no access to workers who were working remotely. The Committee asks whether any measures have been taken to ensure that trade unions have (virtual) access to workers working remotely.
Conclusion
Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 5 of the 1961 Charter.' p. 25.

[15] 'The Committee reiterates its request for information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee, including in the light of the comments received from DGB. …
Conclusion
Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 6§2 of the 1961 Charter.' p. 27.

However, there were also references that did not lead to any (at least immediate) conclusions:

- Art. 2§1 {B},[16]
- Art. 4§1 {B},[17]
- Art. 7§3 {A},[18]
- Art. 27§1,[19]
- Art. 27§3.[20]

Finally, there was criticism of the DGB Observations (Art. 2§2 {B},[21] or they were deemed irrelevant (Art. 2§1[22] und Art. 7§4 {A}).[23]

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[16] 'In its comments, the DBG states that on-call work is associated with disproportionately high levels of short part-time work, low pay and risks of poverty.' p. 5.
[17] ,The Committee notes from the Comments by the German Trade Union Confederation (DGB) that the Government's report refers to the definition of a 'worker' which would include all persons employed also in the gig economy or any other sector. However, according to the DGB, this is only partly true because there is a large 'grey zone'. …' p. 14.
[18] 'The Committee also notes from the comments provided by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB) regarding enforcement, that the Government refers to several examples of inspection visits, one being '661 farms were visited during inspections in North Rhine-Westphalia in the reporting period', which would amount to 165 visits per year. Given there are 33 630 farms in the federal State, the corresponding percentage would only be 0.5%. In other Länder, this rate could be even lower, not to mention that it is not clear whether the so- called 'audits' can be considered to be real inspections. If they are not, the percentage would be even lower.' p. 4.
[19] 'The Committee also notes observations submitted by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB) in relation to the report. In particular, it notes the estimation that despite several measures taken by the competent authorities, child-care facilities are still not sufficient and that there is still a need for about 372,000 professionals in early education (educators and childhood educators) until 2025 to be able to meet demands for child day-care services. The Committee notes that the Government did not respond to these observations.' p. 53-54. (The following Conclusion on non-conformity is mainly based on Article 16).
[20] 'The Committee also notes observations submitted by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB) in relation to the report. In particular, it notes specific provisions governing the protection against dismissal recalled by DGB, i.e. Section 18 Protection against Dismissal and Section 19 Termination at the end of parental leave established by Parental Allowance and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz - BEEG) and Section 5 Protection against dismissal of Nursing Care Leave Act (Pflegezeitgesetz - PflegeZG).' p. 58. It is not clear to which extent the following Conclusion on non-conformity is mainly based on this information.
[21] 'The Committee notes that the DGB does not take into account the time that is due in addition to the wage supplement in the case of working on a public holiday.' p. 7.
[22] ''In its comments, the DGB provides information about sanctions imposed by the Labour Inspection between 2018 and 2020. It appears that the number of orders, warnings and criminal charges slightly decreased.' p. 5.
[23] 'The Committee notes in this respect, a comment provided by the German Trade Union Confederation that the number of inspections has recently declined.[23] The

1.3.3 Conclusions

The above-mentioned missing consideration of points that had been criticised in the DGB Observations must be seen and assessed in the context that they were very detailed and extensive[24] and that many points were not addressed at all.

This very limited consideration is therefore very disappointing. It raises the fundamental question of whether it is even worthwhile to submit detailed comments.

In any case, this runs counter to the fundamental objective of effective review in the reporting system.

2 Specific Observations

In line with the report, the DGB's statement is also divided into three parts: the "Full Report" (2.1), the responses to the questions posed by the ECSR (2.2.) and, finally, points that have not been addressed at all but should have been looked into further (2.3) because they were either cases of non-conformity, deferrals or just lack of information.

2.1 Full Report

In view of the ESC provisions newly ratified by the Federal Republic of Germany, the Federal Government is submitting a 'full report', as is generally required for so-called 'first reports'. The following comments are made in this regard:

2.1.1 Art. 3 – The right to safe and healthy working conditions

Effective health protection[25] is of fundamental importance for workers. This is also evident from the fact that this article has been adapted by the RESC to meet modern requirements (§§ 1 and 4). The Federal Government's report addresses exclusively these provisions because only they have been revised or added by the RESC and subsequently ratified.

- **Art. 3§1 - National policy on occupational safety, occupational health and working environment**

First, the DGB will briefly comment on **the international obligations**:

Committee considers, however, that the supervision does not fall below the requirements of Article 7§4 of the Charter.' p. 6.

[24] S. Observations in n 8 (41 pages) and n 9 (42 pages).

[25] In this regard, it should be noted that the introductory sentence of Article 3 reads as follows: ‚With a view to ensuring the effective exercise of the right to safe and healthy working conditions…' (Emphasis added).

The Federal Government first refers to the ratification process for ILO Convention No. 155 concerning the right to safe and healthy work environment. Since the 110th ILO Conference in 2022, this Convention has become one of the ILO's fundamental principles/core labour standards, which all ILO members are obliged to comply with, even if they have not yet ratified the relevant Conventions, simply by virtue of their membership of the Organisation.

However, the Federal Government also fails to mention that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has made specific enquiries ('Direct Requests') regarding the occupational safety and health Conventions Nos. 187 and 161 referred to by the Federal Government in 2024,[26] nor does it mention that it is subject to further international obligations, in particular with regard to effective implementation[27] such as the ILO Conventions on labour inspection (Nos. 81 and 129). Here, too, there are so-called 'Direct Requests' pointing to important implementation problems.[28] The earlier comments by international monitoring bodies on the shortcomings in implementation had already been quoted in detail in the previous DGB observations.[29] Furthermore, there is no reference to Art. 7(b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).[30]

In terms of content, it should first be noted that the ECSR found a violation of Art. 3§1 in its latest conclusions:

> Certain categories of self-employed workers are not sufficiently covered by the occupational health and safety regulations.

This problem has not yet been resolved.

Furthermore, the Federal Government merely describes the current legal situation and the structure of the German occupational health and safety system. Unfortunately, crucial information on the actual implementation and application of these regulations is missing. The reference to the Safety and Health Inspection Act (*Arbeitsschutzkontrollgesetz* –ArbSchKG) is correct. However, it is already foreseeable that the minimum inspection rate provided for therein,

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[26] Direct Request (CEACR) - adopted 2024, published 113rd ILC session (2025) Germany, … Occupational Health Services Convention, 1985 (No. 161) (Ratification: 1994) … Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (Ratification: 2010), available here: https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4412529,102643:NO.

[27] See the information in the report under Art. 3 Abs. 1, b.iii.

[28] Direct Request (CEACR) - adopted 2024, published 113rd ILC session (2025), Germany Labour Inspection Convention, 1947 (No. 81) (Ratification: 1955), Labour Inspection (Agriculture) Convention, 1969 (No. 129) (Ratification: 1973); available here: https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4414310,102643:NO.

[29] See n 9, pp 6-7.

[30] ‚Safe and healthy working conditions', s. for the concerns expressed by the CESCR, n 9, under 2.2.3.

which is already too low, will not be met by 2026 (i.e. even beyond the reporting period). Furthermore, the Federal Government unfortunately does not comment here on how it plans to provide the supervisory authorities with sufficient resources to enable them to meet the minimum inspection rate.

The Federal Government also describes the list of penalties for violations of occupational health and safety regulations. However, the 2017 SLIC report clearly states that German supervisory authorities 'rarely' impose penalties even in cases of 'serious or repeated violations'.[31] There are no indications that this has changed since then.

- **Maternity protection**

The Federal Government accurately describes the legal situation regarding maternity protection. However, in the view of the DGB and its affiliated unions, the provisions on maternity protection are not sufficient to adequately protect pregnant and breastfeeding women.

The Maternity Protection Act *(Mutterschutzgesetz – MuSchG)* of 2018 aims to ensure that pregnancy or the desire to breastfeed and working life are not mutually exclusive. However, there are considerable gaps in the practical implementation of maternity protection provisions at company level. This is indicated by the results of the DGB study on the implementation of maternity protection in companies.[32]

The problems that many working women face in the workplace from the moment they become pregnant cannot be dismissed. Pregnant and breastfeeding women are still far too often unable to automatically and naturally exercise their legal rights without encountering surprise, ignorance or conflicting expectations at work – or even being told that they should 'voluntarily' waive the protective rights to which they are entitled. Too many pregnant and breastfeeding women experience disadvantages in their working lives, even though the Maternity Protection Act should offer pregnant and breastfeeding workers significantly more protection than was the case in the version applicable before 2018. The amendment brings it much more into line with the contemporary model of equal participation of women on the labour market. It aims more strongly than before to protect the health of mothers and children and to promote women's participation in working life. The obligations of employers have become much more important because they are now directly enshrined in the text of the law: employers must organise the workplace of pregnant or breastfeeding women in such a way that pregnancy, the desire to breastfeed and employment are not mutually exclusive from the outset.

[31] SLIC-Report_2017_DE_Druckvorlage_komplett_final_19-06-2019_8_.pdf
[32] Mutterschutz – Zwischen Anspruch und Wirklichkeit klafft erhebliche Lücke | Frauen im Deutschen Gewerkschaftsbund.

Nevertheless, pregnant, and breastfeeding workers are still perceived as deviations from the norm, as exceptional occurrences, in the world of work. Due to the increasing participation of women in the labour market, pregnancy will become an even more common part of the working world in the future. For this reason alone, pregnancy and childbirth must become a normal part of everyday working life, shaped by those responsible within the company in accordance with the provisions of the Maternity Protection Act and accompanied and supported by all stakeholders involved in the company. Companies must (learn to) accept this phase of life much more than they have done so far as a natural part of their workers' lives. The corporate culture must be open to such phases of physical and emotional change in women's lives, value them and support them confidently.

There are considerable shortcomings in the implementation of maternity protection in companies and public services. In particular, the following must be ensured:

- Employers, as the primary targets of the Maternity Protection Act, must be held more effectively accountable and subject to stricter monitoring. Supervisory authorities must be provided with adequate staffing levels to enable them to quickly and effectively monitor the non-discriminatory implementation of the Maternity Protection Act in companies and public services.
- The working time arrangements permitted by law under certain conditions must not undermine the statutory requirements. This can only be achieved with reliable supervision and monitoring, as well as with reliable, collective rules and regulations at company level that protect pregnant/breastfeeding women from pressure from their employer and forced 'voluntary' measures, and guarantee a balance between the employer and the women concerned.
- The study[33] revealed considerable shortcomings not only with regard to the mandatory offer of consultation, but also in terms of expertise, information, further details and willingness to communicate. Even years after the Maternity Protection Act came into force, it remains essential to educate and, above all, raise awareness of the issue among those affected by the regulations and those involved in the workplace.

Finally, the Federal Government refers to various international obligations. However, it does not take into account the "direct request" for 2024 with regard to the aforementioned ILO Convention No. 183 on maternity protection.[34]

[33] Ibid.

[34] ILO, Direct Request (CEACR) - adopted 2024, published 113rd ILC session (2025), Maternity Protection Convention, 2000 (No. 183) - Germany (Ratification: 2021), available here: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID%2CP13100_COUNTRY_ID:4398682%2C102643.

- **Art. 3§4 - Occupational health services**

Furthermore, with regard to occupational health services, the Federal Government states that the Act on Occupational Physicians, Safety Engineers and other Occupational Safety Specialists *(Arbeitssicherheitsgesetz – ASiG)* and subordinate regulations stipulate the number of occupational physicians that must be available. However, there is no information whatsoever as to whether, and if so when and how, the Federal Government intends to counteract the existing shortage of occupational physicians.

2.1.2 Art. 10§4 - The right to vocational training - Special measures for the retraining and reintegration of the long-term unemployed

While it is to be welcomed that the Federal Government is responding to ILO Recommendation No. 176 with regard to **international obligations**, it nevertheless fails to address other international instruments such as Art. 6 of the International Covenant on Economic, Social and Cultural Rights, (ICESCR), to which compliance the competent UN Social Covenant Committee (CESCR) had expressed concerns.[35]

In terms of content, the Federal Government provides a detailed and accurate description of the support measures for reintegrating the long-term unemployed into the labour market.

The DGB shares the government's assessment that the 'Participation Opportunities Act' (*Teilhabechancengesetz – THCG*)[36], which promotes socially insured employment for former long-term benefit recipients with wage subsidies, and the 'The Citizen's Benefit Act'[37], which significantly strengthened support for continuing vocational training, have substantially improved the legal framework for promoting the long-term unemployed.

However, the federal government's employment promotion policy was and remains completely inadequate. This is because the employment services were not provided with the necessary financial resources to significantly improve

[35] See, for example, ‚The Committee is concerned at the inadequate level of compliance with the quota of 5 per cent of employees being persons with severe disabilities and at the high incidence of unemployment among persons with disabilities, particularly women with disabilities…', CESCR, Germany, 2018, E/C.12/DEU/CO/6, para. 34; available here: https://docs.un.org/en/E/C.12/DEU/CO/6.

[36] The Participation Opportunities Act (Tenth Act amending Book II of the Social Code – Creation of New Participation Opportunities for the Long-Term Unemployed on the General and Social Labour Market; Zehntes Gesetz zur Änderung des Zweiten Buches Sozialgesetzbuch – Schaffung neuer Teilhabechancen für Langzeitarbeitslose auf dem allgemeinen und sozialen Arbeitsmarkt, Teilhabechancengesetz – THCG).

[37] The Citizen's Benefit Act (Bürgergeld-Gesetz, Twelfth Act amending Book II of the Social Code and other laws – Introduction of a Citizen's Benefit; Zwölftes Gesetz zur Änderung des Zweiten Buches Sozialgesetzbuch und anderer Gesetze – Einführung eines Bürgergeldes.

their support for the unemployed and to make widespread use of the improved statutory support options.

The number of long-term unemployed people who received subsidised further training leading to a vocational qualification rose by an average of just 37 per month after the introduction thereof.[38] This increase is minimal and only just above the threshold of perception.

A core element of the 'Participation Opportunities Act' outlined in the government report is the 'Participation in the Labour Market' support instrument (Section 16i of Book II of the Social Code). This provides support for employment subject to social insurance contributions for up to five years. The peak of 43,000 people receiving support in December 2020 has been cut in half up to the current date (February 2025)! This is due to underfunding of the job centres that administer the support instrument.

The DGB also criticises the new federal government for wanting to reverse progressive elements of 'The Citizen's Benefit Act'. In future, priority will once again be given in some cases to rapid placement in any job rather than to training and sustainable integration into good work.

2.1.3 Art. 25- The right of workers to the protection of their claims in the event of the insolvency of their employer

The Federal Government accurately reflects the legal situation in its report. As the report shows, the requirements of Article 25 RESC are fully met from the Federal Government's point of view (p. 36 of the report).

As the Federal Government correctly states, claims by workers do not constitute special claims in insolvency proceedings. Workers are treated equally to other creditors and must also register their claims in the insolvency schedule. Their claims are therefore neither better nor worse protected than those of other creditors.

The only special protection for workers is insolvency allowance (*Insolvenzgeld*), which covers three months of unpaid wages. The Federal Government accurately describes the legal situation in its report. Nevertheless, the protection for workers in insolvency proceedings under current law is inadequate and therefore open to criticism. In particular, the German government's assessment that 'actually and factually in the event of an insolvency, workers get their claims effectively protected, guaranteed and satisfied' (p. 36) is not accurate in the view of the DGB and its member unions.

In fact, the insolvency allowance only provides insufficient relief for the social hardship suffered by workers in insolvency. The wage arrears often amount to more than three months' pay. If wage payments continue to be withheld after

[38] Own calculations by the DGB based on data from the Federal Employment Agency (promotion of continuing vocational training), June 2021 and October 2024.

the insolvency allowance has been paid, workers can register these wage arrears as claims in the insolvency schedule. In addition, the workers affected can apply for unemployment benefits under the 'Gleichwohlgewährung' (equivalent benefit) scheme, but these are only paid at the regular unemployment benefit rate (60% or 67% with children) and therefore not at 100%. Furthermore, the regular entitlement to unemployment benefits is exhausted, even though the person is not yet unemployed, and even though wage claims exist. This reduction in the duration of entitlement can be reversed if the Federal Employment Agency collects or enforces the wage claims transferred to it.

Under current law, insolvency allowance therefore offers only limited protection for workers ' claims. The DGB and its member unions are therefore calling for the entitlement period to be increased from three to six months.[39]

In addition, the DGB would like to point out that although the Federal Government correctly states that insolvency allowance also includes remuneration for leave taken. According to the explanatory memorandum to the law, Compensation in Lieu of Vacation was clearly not intended by the legislature to be included in insolvency payments, as it was considered to be a claim that only arose after the termination of the employment relationship.[40] In fact, Compensation in Lieu of Vacation – at least in relation to claims arising before the date of termination – is legally attributable to the days prior to termination and is therefore not subject to the exclusion of claims under Section 166§1 No. 1 of SGB III.[41]

It should also be noted that Art. 8 of Directive 2008/94/EC provides for a special protection obligation with regard to rights and entitlements to occupational pension benefits. According to Section 7 of the Company Pension Scheme Act (*Betriebliche Altersversorgungsgesetz* – BetrAVG), this is fulfilled by the Pension Protection Association ('Pensionssicherungsverein'), but only in the case of vested entitlements, which contradicts the Directive.[42]

2.1.4 Art. 28 - The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

The Federal Government's initial assessment of the legal situation regarding the protection of workers' representatives is basically correct.[43] However, in the

[39] Further demands: DGB_Forderungspapier_Lohnsicherung_NEU.pdf.
[40] BT-Drucks. 13/4941, p. 188 on Section 184 SGB III (now Section 166 SGB III).
[41] BeckOGK/Peters-Lange, SGB III Section 166, para 8.
[42] *Jessolat*, AuR 2022, 355.
[43] Although referring to its report on ILO Convention No. 135 the Government fails to mention the respective 'Direct request' (Direct Request (CEACR) - adopted 2021, published 110th ILC session (2022) Workers' Representatives Convention, 1971 (No. 135) - Germany (Ratification: 1973); available here: https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4118408,102643:NO.

view of the DGB and its member unions, this protection is insufficient and, in many cases, ineffective.

- **Works Council**

Members of the works council and the electoral board are protected against ordinary dismissal by individual protection against dismissal under Section 15 of the German Protection against Dismissal Act (*Kündigungsschutzgesetz* - KSchG) and against exceptional dismissal by collective protection against dismissal (only with the consent of the works council or replacement of this consent by a labour court) under Section 103 of the Works Constitution Act (*Betriebsverfassungsgesetz* - BetrVG)[44].
Those who are involved in the preliminary phase of a works council election, who invite people to the election works meeting, and those who initiate the election, on the other hand, enjoy significantly less protection: Those who invite others to the election meeting in accordance with Section 15§3a of the KSchG are only protected against ordinary dismissals; however, there is no protection against extraordinary dismissals as provided for in Section 103 of the BetrVG, i.e. only with the consent of the labour court. The existing protection is limited to the first six persons named in the invitation or the first three persons named in the application to the court. According to the case law of the Federal Labour Court, Section 103 of the BetrVG also does not apply in cases where a substitute member of the works council only joins the works council on a temporary basis and, after leaving the works council, is dismissed without notice, for which the requirement of prior consent of the works council does not apply.

For those who wish to prepare and initiate works council elections, known as initiators, the Works Council Modernisation Act ('Betriebsrätemodernisierungsgesetz') introduced special protection against dismissal for the first time, Section 15§3b of the KSchG. The protection against dismissal requires that the worker has actually taken preparatory steps and has made a declaration before a notary public stating their intention to establish a works council. Only then does protection against dismissal apply. However, this protection only applies to ordinary dismissals for personal and behavioural reasons, not to dismissals for operational reasons. There is no protection against extraordinary dismissals. However, the existing protection only applies until the date of the invitation to a meeting to prepare for the election and for a maximum of three months.
Accordingly, those who issue invitations and those who initiate elections enjoy only limited protection against dismissal, which is insufficient. However, in the experience of the DGB's member unions, this is the most sensitive phase of intimidation in the run-up to the establishment of a works council. The DGB and its member unions therefore advocate comprehensive protection against

[44] See the English version, available here: Works Constitution Act (Betriebsverfassungsgesetz – BetrVG).

dismissal for those inviting others to join and election initiators, covering both ordinary and extraordinary dismissals.[45]

Another problem is that the works council position does not protect workers from fixed-term contracts expiring. For fixed-term workers, serving on the works council therefore entails considerable risk. Although works council members are protected from dismissal, they cannot prevent their fixed-term contracts from expiring. According to Section 14§2 of the Part-Time and Fixed Term Employment Act (*Teilzeit- und Befristungsgesetz* - TzBfG), fixed-term contracts without objective grounds are also permissible in Germany. The DGB and its member unions are therefore calling for, among other things, the mandatory removal of time limits for works council members. A corresponding provision already exists for trainees who are members of a youth and trainee delegation under Section 78a of the BetrVG.[46]

According to Section 78§2 of the BetrVG, members of the works council may not be disadvantaged or favoured on account of their activities as works council members; this also applies to their professional development. The legislator has provided greater legal clarity in this regard with the Second Act Amending the Works Constitution Act *(Zweites Gesetz zur Änderung des Betriebsverfassungsgesetzes*), which amended Sections 37 and 78 of the BetrVG. However, remuneration is still based on the hypothetical professional development that the works council member would have pursued without taking on the honorary position. In the view of the German Trade Union Confederation (DGB), however, the knowledge and skills acquired by the works council member during and as a result of their work must also be taken into account, regardless of whether they are relevant to their original position or not.

With regard to criminal sanctions, the Federal Government also correctly points out that a violation of the prohibition of discrimination – as well as the obstruction of works council work in general – constitutes a criminal offence under Section 119 of the BetrVG. However, the problem is that this is an offence that can only be prosecuted upon application, meaning that criminal proceedings are not initiated ex officio, but only upon application by a body entitled to do so. In order to ensure truly effective legal protection and protection against union-busting methods, the DGB and its member unions demand that Section 119§1 No. 1 and 2 of the BetrVG be classified as an offence prosecuted ex officio, so that the public prosecutor's office must investigate ex officio and criminal proceedings do not depend on a criminal complaint.

- **Staff Committees**

With regard to the protection of collective interest groups in the public sector (staff committee), the Federal Government limits itself to explaining the legal

[45] Opinion of the DGB on Works Council Modernisation Act, I.1., available here: Stellungnahme DGB.
[46] Betriebliche Mitbestimmung für das 21. Jahrhundert, § 78a BetrVG; available here: arbeit_und_recht_dgb_betrvg_reformentwurf.pdf.

situation at federal level. This is understandable given the legislative powers in the field of staff representation law in Germany. However, it also means that the legal situation described only affects a small group of public sector workers and their interest groups. The majority of public service workers are employed by the federal states and local authorities. The present report does not provide any information on the situation there.
The conclusion drawn by the Federal Government that staff councils are comprehensively informed and consulted cannot be endorsed. The statutory provisions do not sufficiently guarantee this. Among other things, it would be necessary to standardise that the department and the staff committee work together on an equal footing and not just in a spirit of trust, as provided for in Section 2§1 of the BPersVG[47]. The BPersVG also lacks an explicit right of appeal (*Beschwerderecht*) for staff councils. Another point of criticism concerns the timing of information. It is not uncommon for information to be provided only after important decisions have already been made. The DGB therefore calls for staff representatives to be provided with comprehensive information at an early stage so that preliminary decisions that would be difficult to change later are also covered.

- **Corporate co-determination**

The definition of workers' representatives in Art. 28 RESC also includes workers' representatives on a company's supervisory board.[48] Against this background, it is unclear to the DGB and its member unions why corporate co-determination has not been included in the report. Corporate co-determination is suffering from massive erosion. According to the latest study by the Hans Böckler Foundation's Institute for Co-Determination and Corporate Governance, the proportion of companies with a supervisory board with equal representation fell from 68 per cent in 2019 to 61 per cent in 2022 – a decline of seven percentage points in just three years.[49] Just under 24 per cent of companies deliberately circumvent equal co-determination, while 16 per cent ignore it completely. In the area covered by the One-Third Participation Act, co-determination is circumvented or disregarded even more frequently.

This deliberate avoidance and disregard of corporate co-determination effectively makes it impossible for workers' representatives to play any role whatsoever on a supervisory board, let alone grant them the facilities that would be necessary to enable them to perform their duties 'promptly and effectively' within the meaning of the RESC.

The federal government has a duty to counteract this trend and protect corporate co-determination from further erosion. Corporations, limited partnerships, foundations and ideological establishments ('*Tendenzbetriebe*') must be fully

[47] Federal Law on Staff Representation in the Public Service ('Bundespersonalvertretungsgesetz' – BPersVG).
[48] Conclusions 2014 - Austria - Article 28.
[49] Available here: https://www.imu-boeckler.de/fpdf/HBS-008879/p_mbf_report_2024_81.pdf.

included in the Co-Determination Act. These provisions must also be transferred to the One-Third Participation Act. In addition, the existing gaps in the One-Third Participation Act with regard to group allocation must be closed. The unlawful disregard of co-determination rights must be consistently punished. The federal government must ensure that European negotiation models do not freeze the status quo with little or no co-determination. The abusive circumvention of corporate co-determination in SEs and other existing and future (including 28th regime) models of European company law must be prevented. This requires changes to both national and European law.

For trade union representatives, see the comments on Art. 5 under 2.2.5..

2.1.5 Art. 29 - The right to information and consultation in collective redundancy procedures

Contrary to the German government's assertion, Article 29 RESC is not essentially based on Directive 98/59/EC. This is not possible because Directive 98/59/EC is more recent than the revised version of the ESC. In the opinion of the DGB, it is more correct to say that Art. 29 is based on the previous Directives 92/56/EEC and 75/129/EEC, which were consolidated in 1998, i.e. approximately two years after the signing of the ESC, without any changes to their content, to form the current Collective Redundancies Directive 98/59/EC (CRD).[50]

Furthermore, in the opinion of the DGB and its member trade unions, the report does not sufficiently distinguish between Art. 29 RESC and the provisions of the CRD. Insofar as it states in point 3 of the second paragraph that the German legislature has transposed the CRD into national law with Sections 17 et seq. of the KSchG, which is already an indication of the conformity of German law with the ESC, this is incorrect in two respects.

Although the expert committee, the European Committee of Social Rights (ECSR), largely bases its interpretation of Art. 29 RESC on the provisions of the CRD, Art. 29 RESC is only loosely based on the predecessor directives of the CRD[51] and is not identical to their provisions. For example, unlike CRD in Article 1§2b, Art. 29 RESC does not expressly exclude public administration and public law institutions from its scope (see also below under Lack of conformity of German law with Art. 29 RESC). Furthermore, Art. 29 RESC does not provide for a notification procedure to the labour authority, but merely requires employers to cooperate with the state authority,[52] whereby the cooperation may take very different forms.[53]

[50] See EuArbRK/Spelge, 5th edn, Directive 98/59/EG Art. 1, para 2.
[51] See EuArbRK/Schubert, 5th edn., RESC Art. 29, para. 1; Jaspers in Ales/Bell/Deinert/Robin-Olivier (eds.), International and European Labour Law, RESC Art. 29, para 1.
[52] ECSR, Digest of the case law of the European Committee of Social Rights 2022, p. 196, with reference to Conclusions 2014 – Georgia – Article 29; EuArbRK/Schubert, 5th edn. RESC Art. 29, para. 6.
[53] For more details, see Jaspers in Ales/Bell/Deinert/Robin-Olivier, International and European Labour Law, RESC Art. 29, para. 20 with further references.

On the other hand, it is highly doubtful whether the German legislature has properly transposed the CRD into German law with Sections 17 et seq. of the KSchG[54] (see also below under: Further criticisms of German law).

The report and the German translation of Art. 29 RESC, including the memorandum on its ratification[55] – do not make it sufficiently clear that Art. 29 RESC is not limited to a unilateral right to be heard within the meaning of right to submit an opinion, but provides for a right to consultation in the sense of mutual dialogue.[56] In the English version of the RESC, which is the only binding version alongside the French version, the term 'consultation' is used. Even though it is often translated into German as 'Konsultation' or 'Beratung' rather than the at least ambiguous term Anhörung' ('To be heard'),[57] it does not refer to a mere right to be heard (as provided for in Section 102§1 of the BetrVG, for example). Rather, it means a mutual dialogue in the sense of 'jointly advising', discussing, 'deliberating', 'debating' or even 'negotiating', etc. The aim is to agree on a common position as far as possible, without necessarily reaching an agreement.[58] The same should apply to the French term 'consultation'.

Non-compliance of German law with Art. 29 RESC

From the perspective of the DGB and its member unions, there are doubts as to whether German law complies with Art. 29 RESC with regard to its scope, the possibility of electing ad hoc workers' representatives, and preventive measures to enforce the right to information and consultation in collective redundancy procedures.

- Scope

According to Art. 2(b) of the CRD, the Directive does not apply to workers of public administrations or public law institutions. According to the case law of the ECJ on the interpretation of exemption provisions, there are several indications that only administrations and institutions of public law that exercise sovereign powers in the strict sense are exempt.[59] The terminology also corresponds to Art. 1§1c of the Transfer of Undertakings Directive 2001/23/EC, according to which public undertakings engaged in economic activities, whether or not they are operating for gain, fall within the scope of the Directive.

[54] For criticism of the failure to adapt Sections 17 et seq. KSchG to the case law of the ECJ on MERL, see LKB/Bayreuther, 16th edition, KSchG § 17 marginal number 3 et seq. and KR/Weigand/Henkel, 13th edition, § 17 KSchG marginal number 16; see also Sagan/Zeilmann, Soziales Recht (SR) 2025, 2 (9 et seq.).
[55] BT-Drs. 19/20976 p. 74 left column.
[56] Conclusions 2014, Statement of Interpretation on Art. 29.
[57] See, for example, Directive 2002/14/EC in the English and German versions, and in particular the legal definition in Art. 2(g).
[58] See Art. 2§1 of the CRD.
[59] For more details, see EuArbRK/Spelge, 5th ed. Directive 98/59/EC Art. 1, para. 40; ErfK/Kiel, 25th ed., KSchG § 17, para.19e; see also ECJ 18 October 2012 – C-583/10 – Nolan, para. 41.

Art. 29 RESC does not contain any such exemption clause.[60] As far as can be seen, the ECSR has not yet commented on whether the above restriction also applies to Art. 29 RESC. This could be argued on the grounds that the unrestricted inclusion of public administration could lead to conflicts with the principles of the rule of law and democracy.[61]

According to Section 23§2 of the KSchG, the provisions on mass redundancies in Section III of the KSchG apply to businesses run by public authorities only insofar as they pursue economic objectives. According to case law and legal doctrine, this is the case, regardless of any intention to make a profit, if the administration participates in private economic life like a private-sector company[62] or if the activities carried out could also be performed by private individuals.[63] In these circumstances, the public administration must be treated like a private-sector company.[64] Insofar as this means that only sovereign activities are excluded from Sections 17 et seq. of the KSchG, this should be in line with Art. 29 of the RESC, according to the above statements. However, insofar as public institutions pursuing educational, charitable, cultural or other non-material objectives, such as kindergardens, museums, schools, universities and welfare institutions, are also excluded,[65] this is unlikely to be compatible with Art. 29 of the RESC

In any case, Section 23§2 of the KSchG must be interpreted in accordance with the requirement of interpretation in conformity with international law[66] and at the same time in conformity with EU law to the effect that only activities that are originally sovereign activities are excluded from the application of Sections 17 et seq. of the KSchG

The same applies to churches organised as public-law corporations (so-called constituted churches 'verfasste Kirchen') or religious societies. Instead of the characteristic of 'sovereign activity', reference could be made to whether the institution is directly involved in preaching or pastoral care.

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[60] This is overlooked by the German legislature in its memorandum on the RESC ratification act, where it states in relation to Art. 29 RESC that, due to the exception provided for in Art. 1§2b of the CRD, implementation of Art. 29 RESC in the public service is likely to be dispensable. BT-Drs. 19/20976 p. 75.

[61] See EuArbRK/Schubert, 5. ed. RESC Art. 29, para.7.

[62] BAG 15.12.2016 – 2 AZR 867/17 – para. 25; APS/Moll 7. ed. KSchG § 23, para.79; BeckOK; ArbR/Volkening, as of 01.03.2025 KSchG § 23 marginal number. 28; contrary opinion regarding the intention to make a profit still: BAG 06.07.2006 - 2 AZR 442/05 – para. 63.

[63] LKB/Bayreuther, 16 ed. KSchG § 17, para. 8.

[64]BAG 15.12.2016 - 2 AZR 867/15 –, para. 25.

[65] See APS/Moll 7. ed. KSchG § 23 marginal number 79; ErfK/Kiel, 25. ed. KSchG § 17 marginal number 7 and § 23 margina number 12; BeckOK ArbR/Volkening, as of 01.03.2025 KSchG § 23 marginal number 28; EuArbRK/Spelge 5. ed. RL 98/59/EG Art. 1, para. 42.

[66] See BVerfG 15.12.2015 – 2 BvL 1/12 – para. 67 seq..

Insofar as public administrations or church institutions organised under public law of and religious societies fall under Sections 17 et seq. of the KSchG, it is widely recognised that, in analogous application of Section 17§2 of the KSchG, the competent staff committees or works councils must be consulted.[67]

Pursuant to Section 17 (5) No. 3 KSchG, senior executives are not considered as employees within the meaning of this provision. This violates both Art. 29 RESC and the Directive, which do not recognize this exception.

- Workers‘ representatives

According to the Annex to the RESC, workers' representatives within the meaning of Art. 29 RESC are persons who are recognised as such under national legislation or practice.

According to the ECSR's understanding, Art. 29 RESC also provides for the possibility of so-called ad hoc representatives who are appointed specifically for the purpose of conducting the consultation procedure.[68] The only requirement is that they represent all workers who may be affected by a planned collective redundancy.[69] Even though a works council can be elected at any time under German law, German law does not provide for such a possibility and thus falls short of Art. 29 RESC.[70] For works councils cannot usually be elected quickly enough to meet the requirements for an effective consultation procedure. In addition, with regard to the right to participate under Sections 111 et seq. BetrVG, the Federal Labour Court (*Bundesarbeitsgericht* – BAG) is of the opinion that employers are not obliged to wait until a functioning works council is in place before taking measures that require participation.[71]

However, in the opinion of the ECSR, Art. 29 RESC primarily considers a trade union represented in the company to be the worker representative in companies without a works council.[72] Although worker representatives within the meaning of the provision must represent all affected workers, the ‘whether’ and ‘how’ of a mass dismissal are always questions that would have to be settled in the event of a collective agreement through so-called ‘Betriebsnormen’[73]. Such ‘Betriebsnormen’, e.g. for a transfer company, are also always considered when mitigating the consequences. However, since ‘Betriebsnormen’ pursuant to Section 3§2 TVG apply to all workers of a company, trade unions

[67] EuArRK/Spelge, 5. ed. RL 98/59/EG Art. 1 marginal number 151 seq. with further references; on staff committees now also APS/Moll, 7. ed. KSchG § 17, para. 86; dissenting opinion: LKB/Bayreuther, 16. ed. KSchG § 17, para. 71.
[68] Conclusions 2014, Statement of Interpretation on Article 29.
[69] Conclusions 2014, Statement of Interpretation on Article 29.
[70] Similarly also EuArbRK/Schubert 5. ed. RESC Art. 29, para. 7, who also assumes a gap in protection.
[71] BAG 08.02.2022 – 1 ABR 2/21 – Rn. 30.
[72] Conclusions 2014, Statement of Interpretation on Article 29.
[73] Collective agreements regulating establishment-level issues and staff and works council matters, section 3§2 Collective Agreements Act (Tarifvertragsgesetz – TVG).

represent the entire workforce in this context. The resulting trade union rights are also not guaranteed by law in German law.

- Sanctions and preventive measures

Under Art. 29 of the RESC, Member States are required to provide for effective and sufficiently dissuasive penalties in the event of failure to comply with the right to information and consultation of wroker representatives. Furthermore, it must be possible to initiate administrative or judicial proceedings prior to the implementation of a collective redundancy in order to ensure that the collective redundancy is not carried out until the consultation obligation has been fulfilled.[74] The ECSR therefore regularly asks Member States not only for information on the sanctions provided for in the event of non-compliance with the right under Art. 29 of the RESC, but also on the preventive measures in place to ensure compliance.[75]

The Federal Government's report does not address the latter issue, but is merely pointing out that violations of the consultation requirement under Section 17§2 of the KSchG result in the termination being invalid..

A claim for injunctive relief by the works council, the trade union or any ad hoc representative body that may be formed, derived from Section 17§2 of the KSchG and, if necessary, enforceable in urgent proceedings under Section 85§2 of the ArbGG[76], may be considered,[77] as it is partly affirmed in connection with non-compliance with the reconciliation procedure under Section 111 of the BetrVG.[78] The claim would be directed at refraining from implementing the planned mass dismissal as long as the consultation procedure under Section 17§2 KSchG has not yet been completed.[79] Insofar as one considers a claim for injunctive relief to be available in the event of non-compliance with the reconciliation procedure under Sections 111 et seq. BetrVG, the claim for injunctive relief under section 17§2 of the KSchG also follows from the principle of equivalence under EU law,[80] which states that procedures relating to EU law must not be less favourable or less effective than corresponding procedures relating only to national law..[81]

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[74] Digest of the Case Law of the European Committee of Social Rights 2022, p. 196 with reference to Conclusions 2014 – Georgia – Article 29 and Digest of the Case Law of the European Committee of Social Rights 2008 with reference to Conclusions 2003, Statement of Interpretation on Article 29.
[75] See for example Conclusions 2014 – Cyprus - Article 29 and with further reference in Jaspers in Ales/Bell/Deinert/Robin-Olivier, International an European Labour Law, RESC Art. 29, para. 21.
[76] Labour Court Act (*Arbeitsgerichtsgesetz* – ArbGG).
[77] Fitting, 31. ed. section 111, para. 138; for details, see Hinrichs, Kündigungsschutz und Arbeitnehmerbeteiligung bei Massenentlassungen 2001, p. 190 ff.
[78] For the current state of opinion, see Fitting, 31. ed. section 111, para. 162.
[79] On the question of when the consultation procedure is concluded, see, Hinrichs, Probleme des Konsultationsverfahrens bei Massenentlassungen, AuR 2019, 348, 351 f.
[80] Hinrichs, AuR 2019, 348, 353.
[81] Hinrichs, AuR 2019, 348, 352 with further references.

The ECSR derives the requirement to ensure effective legal protection against dismissals in breach of the rights under Art. 29 RESC from the provision of Art. 24 RESC, in respect of which Germany has declared a reservation in the context of the ratification of the RESC.[82] Whether this requirement also arises from Art. 29 RESC can be left open. According to the jurisdiction of the BAG, a dismissal pronounced in violation of the consultation obligation under Section 17§2 of the KSchG is invalid due to a violation of a statutory prohibition under Section 134 of the BGB.[83] The BAG does not question this legal consequence even in the context of the recent discussions on the proportionality of the invalidity of the termination in the event of violations of the notification obligation under Section 17§1 and §2 of the KSchG.[84] The invalidity of the termination due to a breach of the consultation obligation can be asserted in the context of an action for unfair dismissal pursuant to Section 4 of the KSchG.

2.2 Questions

Under the new reporting system (see 1.1), the ECSR only asked 'targeted questions' on a few (nine out of 50, or 98) ESC provisions. This further reduces the reporting obligations of governments. Nevertheless, the following comments should be made on the German government's responses:

2.2.1 Art. 2§1 – Right to just conditions of work - Reasonable working time

- **General comments**

Before going into more detail on the report, the following **general comments** seem necessary.

a. Interpretation of Art. 2§1

The wording of Art. 2§1 requires at least three things:

- in the introductory sentence: the principle of effectiveness,
- in §1:
  - the explicit mention not only of weekly but also of daily working hours and
  - the obligation to progressively reduce weekly working hours.

Against the backdrop of a growing trend towards greater flexibility and, above all, longer working hours (at least in certain sectors and/or occupations), the fundamental question arises as to whether the ECSR should not reorient its practice of finding in order to counteract this trend and, above all, bring it closer to the wording of the provision. In any case, fundamental extensions of weekly working hours in particular cannot be regarded as compatible with Article 2§1.

[82] BGBl. 2021 II, 1060, 1061.
[83] BAG 21.03.2013 – 2 AZR 60/12 – Rn. 19 and since then established jurisdiction.
[84] BAG 14.12.2023 – 6 AZR 157/22 B – para. 51 et seq.; BAG 01.02.2024 – 2 AS 22/23 (A), para. 19.

b. Questions no longer asked

In Conclusions XXII-3, a question was raised regarding on-call duty [85] which no longer appears.[86]

c. Report

The Federal Government's report only partially reflects the legal situation. The Working Hours Act (Arbeitszeitgesetz - ArbZG) is based on an eight-hour day and a six-day week, thus a weekly working time of 48 hours (see Section 3, first sentence, and Section 9 ArbZG). An extension of working time to a maximum of ten hours per working day (i.e. to a weekly working time of up to – but not more than – 60 hours) is possible already now. It is also true that this must be compensated for by a compensatory period or time off within six months in order to protect workers, so that the average working time per working day does not exceed eight hours.

The parties in the current German government have agreed in their coalition agreement to introduce a weekly maximum working time instead of a daily maximum working time. The DGB has strongly criticised this move, fearing that it will lead to the abolition of the 8-hour working day, which can be extended to 10 hours. It is completely unclear whether this regulation will only depend on the approval of the parties to collective agreements and what limits will be imposed. The only restriction arises from the minimum rest period of 11 hours per day prescribed by EU Directive 2003/88/EC. Without further restrictions, 12 hours and 15 minutes per day would then be possible and, with appropriate compensation, up to 73 hours and 30 minutes per week if there is no limit on weekly working hours. Art. 2§1 of the RESC guarantees workers the right to reasonable daily and weekly working hours.[87] A total weekly working time (normal working time + overtime) that can reach up to 60 hours per week or exceed 60 hours per week under 'flexibility arrangements' is unreasonable in the opinion of the ESCR.[88] The aim is to protect the safety and health of workers. The Federal Institute for Occupational Safety and Health[89] has extensive figures[90] on the consequences of

[85] ‚It is not clear from the information provided in the report, whether in the third case (Rufbereitschaft), inactive on-call periods are assimilated to rest periods in their entirety or in part when workers are not required to stay at the workplace. The Committee therefore reiterates its request for information. In the meantime, it reserves its position on this point.', p. 5.

[86] But s. below reply to question c).

[87] Conclusions XIV-2 - Statement of interpretation - Article 2-1: 'In order to meet the requirements of Article 2 para. 1, Contracting Parties must set a reasonable length to daily and weekly working time through legislation or regulations, collective agreements or any other obligatory means involving supervision by an appropriate authority.... It also finds that even if a reasonable limit is set to weekly working hours, this cannot compensate the fact that on a given day, hours may be above the authorised maximum.'

[88] Conclusions XIV-2 (1998), The Netherlands; Conclusions 2018, Turkey.

[89] Bundesanstalt für Arbeitsschutz und Arbeitsmedizin - BAUA

[90] Available here: https://www.baua.de/DE/Home .

excessive working hours.[91] Without further limitations, Germany may no longer be in compliance with the RESC in the future.
Furthermore, the Federal Government does not provide detailed information on the occupations in which the weekly working time may be 60 hours or more due to laws, collective agreements or other regulations, nor on the exact number of hours per week that persons in certain occupations may work, or on any measures to protect the health and safety of workers when they work more than 60 hours.

In addition, the reference period for compliance with the maximum working time – in violation of Art. 16 of the Working Time Directive 2003/88/EC, which allows a maximum reference period of four months – has been extended to six months. Under German law, this already allows 60-hour weeks over several months. According to the Working Time Directive 2003/88/EC, this is only possible for shorter periods due to the four-month reference period. The European Commission has already objected to the length of the German reference period on several occasions.[92] Whether the occupational health and safety of employees is sufficiently guaranteed appears to be at least doubtful to the DGB and its affiliated unions. The extension of the reference period in the Working Hours Act is considered by commentators in the literature to be contrary to European law.[93]
In any case, the ECSR rightly criticised the excessively long reference periods in its latest Conclusions XX-III.[94]-

- **Answer to question a**

[91] Schriftliche Stellungnahme Bundesanstalt für Arbeitsschutz und Arbeitsmedizin zur öffentlichen Anhörung von Sachverständigen in Berlin zu einem Antrag der CDU/CSU-Fraktion Arbeitszeit flexibilisieren, BT-Drucksache 20/10387, 18.4.2024, Ausschussdrucksache 20(11)488
[92] KOM (2010) 802, p. 4; COM (2017) 254 final, p. 8; most recently COM (2023) 72; for details, see Buschmann, Völker- und europarechtsnotwendige Korrekturen im Arbeitszeitrecht, Jahrbuch des Arbeitsrechts 2024, 19 ff.
[93] Sagan/Zeilmann, SR 2025, 2, 7; ErfK-Roloff, 25 ed., § 3 ArbZ, para. 4; Preis/Sagan-Ulber, § 7, para. 7; EU-ArbG/Gallner, Art. 16 RL 2003/88/EG, para. 5.
[94] ‚The Committee notes that the reference periods that do not exceed four to six months are acceptable, and periods of up to a maximum of one year may also be acceptable in exceptional circumstances. The extension of the reference period to a 12-month period by a collective agreement would also be acceptable, provided there were objective or technical reasons or reasons concerning the organisation of work justifying such an extension and that the maximum working hours would not exceed 60 hours (Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France, Complaint No. 149/2017, §§ 156-157). The Committee notes that the reference period in Germany can exceed 12 months, which, in accordance with its practice, is not acceptable under any circumstances. The Committee thus concludes that the situation in Germany is not in conformity with Article 2§1 of the 1961 Charter on the ground that it has not been established in certain cases that the reference period for the calculation of average working hours cannot be extended beyond 12 months.' p. 5.

a. Deviations within the scope of a collective agreement

The Federal Government correctly states that the deviation in a collective agreement or on the basis of a collective agreement in a works agreement or service agreement in Section 7§1 No. 1a of the ArbZG provides that working hours may be extended beyond ten hours per working day if the working hours regularly and to a considerable extent include standby duty or on-call duty. It justifies the collective agreement's opening clause for extending working time on the grounds that it gives the parties to the collective agreement the necessary leeway to take sufficient account of the special features and practical needs of individual sectors of the economy and occupational groups. However, the Committee's question concerns the specific occupations to which these derogations apply. In this regard, it should be noted that the German statutory provisions do not specify this, i.e. working hours exceeding 60 hours per week are possible in all occupations and sectors.

Further possible deviations from the collective agreement are regulated in the following sentences:

- Section 7§1 No. 1 b ArbZG stipulates that a different reference period may be specified.
- Section 7§4 ArbZG also allows this extension for night work, which is otherwise limited to eight hours under Section 6 ArbZG..

Longer reference periods for working time under collective agreements are also permitted in Section 7§2 Nos. 2–4 ArbZG (agriculture, health and care, public service).

Section 7§2a ArbZG provides for an opt-out with the consent of the workers. Where such collective agreements exist, workers are regularly required to give their consent upon hiring. They are then bound to this opt-out for at least six months pursuant to Section 7§7 ArbZG. This also constitutes a violation of Art. 22 of the Working Time Directive 2003/88/EC, which requires absolute voluntariness. Section 7§8 ArbZG stipulates that, pursuant to Section 7§1 nos. 1 and 4, §2 nos. 2 to 4 ArbZG or in the case of such provisions based on paragraphs 3 and 4, the reference period for calculating weekly working time may not exceed twelve months.
However, in the opinion of the DGB, this restriction does not apply to deviations resulting from collective agreements to which the workers concerned have agreed in accordance with the opt-out clause in Section 7(2a) in conjunction with Section 7(7) of the ArbZG, meaning that reference periods longer than twelve months are conceivable in this case.
Taking into account the opt-out option available under Section 7 (2a) of the Working Hours Act (ArbZG) with regard to working hours, the DGB and its member unions have determined that it is possible to regularly exceed 60 hours per week and also the 48-hour average over the reference period.

A total weekly working time (normal working time + overtime) that can reach up to 60 hours per week or exceed 60 hours per week within the framework of 'flexibility arrangements' is unreasonable in the opinion of the ESCR.[95]
In this respect, it is also essential to set absolute maximum daily and weekly working hours for on-call and standby duty. Art. 22 of the Working Time Directive 2003/88/EU requires that, when authorising opt-outs, the state must take the necessary measures to ensure that the general principles of the protection of the safety and health of workers are observed. Such state measures are completely absent from German law.
In the opinion of the Federal Government, the parties to collective agreements only make use of the derogation clauses if the interests of workers, in this case in particular health protection, are taken into account. Detailed explanations are lacking. Examples of this include collective agreements for fire brigade personnel. Some of these provide for derogations from the ArbZG, usually in combination with on-call times. Here, for example, there are 24-hour shifts consisting of 8 hours of working time, 8 hours of on-call time and 8 hours of rest time. After such a shift, an uninterrupted period of leisure time of 24 hours must be granted. In the case of emergency services, 24-hour shifts are also agreed in collective agreements (3 24-hour shifts per week).
Since the compensation period of six calendar months (or 24 weeks) for compliance with working time limits to protect the health of workers cannot be considered reasonable but rather contrary to EU law, this should also apply to even longer reference periods. The compensation period should therefore also be reduced to the four months provided for in the Working Time Directive within the framework of Section 7§2a of the ArbZG.

b. Deviations from the supervisory authorities of the federal states
The compensation period of six calendar months (or 24 weeks) to protect the health of workers is not appropriate and, in the opinion of the DGB and its affiliated unions, can be classified as contrary to EU law. It should be reduced to the four months provided for in the Working Time Directive.

c. Exceptions in emergencies and special cases
The compensation period of six calendar months (or 24 weeks) under the ArbZG should also be reduced to the four months provided for in the Working Time Directive in these cases.

- **Answer to question b**
Since it is de facto impossible to observe weekends in maritime shipping, the Maritime Labour Act (Seearbeitsgesetz - SeeArbG) does not specify a basic weekly working time. The working hours at sea specified in Section 43 SeeArbG are rendered ineffective by the wording 'as a rule'. In employment contracts

[95] Conclusions XIV-2 (1998), The Netherlands; Conclusions 2018, Turkey.

(work contracts) and many collective agreements, an annual working time is also specified in the form of working days to be worked.

The collective agreement for German maritime shipping (MTV-See) stipulates a 40-hour working week and defines any working hours in excess of this as overtime. However, as overtime in maritime shipping is remunerated at a flat rate (Section 11 MTV-See), the relevant provision is that on maximum working hours. This is identical in the SeeArbG and MTV-See at 72 hours in a period of seven days, whereby this does not refer to the calendar week, but to the period from the start of the voyage. At the same time, the SeeArbG and MTV-See stipulate a minimum rest period of 77 hours in a period of seven days.

In practice, the weekly working hours of seafarers on ships under the German flag are based on these maximum values, i.e. a weekly working time of 72 hours for seven working days per week.

These provisions are based on the Maritime Labour Convention (MLC-2006), which sets this limit. However, the MLC only requires signatory states to set either the maximum working hours OR the minimum rest period. In Germany, both are specified, which is considered best practice by the ITF, among others. However, there are efforts on the part of shipowners and the Federal Ministry of Labour to abolish this AND rule in favour of an OR rule. The DGB has been able to fend off these attempts so far and consider the codification of both rules to be an important protective measure for seafarers.

Rest periods on board are defined as all times when crew members are not on watch or engaged in other activities. This is, in fact, unavoidable, as seafarers are naturally always on standby when at sea (in case of emergencies, accidents, etc.).

The United Services Union (Vereinte Dienstleistungsgewerkschaft - ver.di) and ITF, we criticise the fact that compliance with working time regulations on board is inadequately monitored. According to research by the World Maritime University[96] almost 90 per cent of all seafarers violate working time regulations, almost always under pressure from their superiors. Given the particular dependency relationships on board, it is virtually impossible for them to actually resist such pressure.

- **Answer to question c**
  EU law only distinguishes between work and leisure time. The Federal Government correctly states that, according to the ECJ, on-call duty counts as full working time and that standby duty only counts as working time if the restrictions imposed on workers objectively and significantly impair their ability to organise their leisure time and pursue their own interests during these periods. If this is

[96] Available here: https://commons.wmu.se/cgi/viewcontent.cgi?article=1093&context=lib_reports

not the case, only the hours actually worked count as working time, while the remaining hours are considered rest time.

The Matzak judgement of the ECJ[97] makes it possible to draw a distinction. The ECJ ruled that on-call time spent by a worker at home during which he is required to respond to a call from his employer within eight minutes, thereby significantly restricting his ability to engage in other activities, is to be regarded as 'working time'. According to Sagan/Zeilmann, German law does not make a clear distinction between work and leisure time in the case of on-call duty. Section 5§3 and Section 7§2 No. 1 of the ArbZG can, on the contrary, be interpreted to mean that on-call duty is not working time. As this contradicts the case law of the ECJ, the German provisions are partially contrary to the directive.[98]

The ECSR considers that on-call duty periods ('périodes d'astreinte') during which the worker is not required to work for the employer cannot be regarded as rest periods within the meaning of Art. 2 of the Charter, even though they do not constitute effective working time. Equating 'périodes d'astreinte' with rest periods constitutes a violation of the right to reasonable working hours under Art. 2(1). The absence of actual work, which is determined retrospectively for a period of time that was available to the worker, cannot be an appropriate criterion for considering that period as rest time, either for on-call duty at the employer's premises or for on-call duty spent at home.[99]

The Federal Government correctly states that the Working Hours Act provides for a general minimum daily rest period of 11 hours (with exceptions, e.g. for hospitals and nursing homes) and that a 30-minute break must be granted after no more than six hours of work. Exceptions may be permitted in a collective agreement or, on the basis of a collective agreement, in a works agreement or staff agreement in accordance with Section 7§1 No. 3 of the ArbZG: Notwithstanding Section 5§1, the rest period may be reduced by up to two hours if the nature of the work requires this and the reduction in the rest period is compensated for within a specified compensation period. In practice, this is only used very restrictively.
Particularly worthy of criticism is the fact that the opt-out provision in Section 7§2a of the ArbZG not only provides for a general extension of the daily working time without compensation, but also allows a deviation from the rest period provision in Section 5 of the ArbZG, i.e. a reduction in rest periods without compensation. This is not even permitted by Article 22 of the Working Time Directive 2003/88/EC, which only refers to the extension of weekly working time. This interference with rest periods violates both Article 2§1 and Article 2§5 of the ESC.

[97] ECJ, 21.02.2018, C-518/15, *Matzak*.
[98] Sagan/Zeilmann, SR 2025, 2, 7.
[99] ECSR, 12 October 2004, No. 16/2003, Confédération Française de l'Encadrement CFE-CGC v. France, §§ 50–53. ECSR, 23 June 2010, No. 55/2009, Confédération générale du travail (CGT) v. France, §§ 64-65.

In the opinion of the DGB, the option of reducing the rest period by up to two hours through collective agreements should only be used restrictively.

2.2.2 Art. 3 – The right to safe and healthy working conditions

- **General comments**

In general, it is to be welcomed that health protection is given great importance in the ECSR, but this must not be at the expense of issues relating to other provisions.

- **Art. 3 §1 – Right to safe and healthy working conditions – Safety and health regulations**

First, reference is made to the above comments on this provision (2.1.1).

a. Information about platform work

The Federal Government refers to the validity of the Occupational Safety and Health Act and to EU Directive 2024/2831 on platform work. However, the latter has not yet been implemented (implementation deadline pursuant to Art. 29: para. 1: 2 December 2026). It cannot therefore be taken into account for the reporting period. With regard to the statement on the applicability of the Safety and Health Protection Act (*Arbeitsschutzgesetz – ArbSchG*), the report does not contain any information on how platform workers are to be protected in concrete terms. A key issue here is the so-called risk assessment, i.e. who is responsible for carrying it out and how compliance with this law is to be ensured in general.

b. Information on occupational health and safety in teleworking

The federal government merely describes the regulations on so-called 'teleworking', which is precisely defined in the text of the law but only accounts for a very small part of the reality of working life. A binding regulatory framework for location-flexible screen work outside the workplace (so-called 'home office') would be much more important.

The 'recommendations' mentioned in the report merely provide guidance for the operational level and therefore do not go far enough.

With regard to protection against mental stress, the report merely refers to the new GDA programme. A binding regulatory framework is also needed, not least because the obligation to take mental stress into account in risk assessments is still not being adequately implemented.

The subparagraph on hazards arising from climate change also falls short of expectations. While the emergence of new hazards from biological agents is certainly an important aspect of climate change, it would have been desirable to see clear statements here, particularly on the hazards posed by heat and UV rays.

c. Information on occupational safety for domestic workers

The DGB cannot agree with the German government's positive assessment of the protection afforded to domestic workers. This is because the majority of people employed in private households – and these are mainly women – have little access to justice and are therefore not protected. According to Section 1§2 sentence 1 ArbSchG, this Act does not apply to the occupational safety and health of domestic workers in private households. Around 90% of domestic workers in Germany are employed illegally and have no insurance cover in the event of accident or illness. In order to establish effective occupational safety for domestic workers, irregular employment in this sector must be reduced and replaced by employment subject to social insurance contributions. Against this background, the DGB has been calling for many years for public funding of household-related services through a voucher model based on the Belgian model. In Belgium, around 150,000 jobs subject to social insurance contributions were created in this sector in the first 12 years after the introduction of the voucher model, and the proportion of irregular employment fell to 13%. Reference should also be made to the 'Direct Request' with various questions on the ratified ILO Convention No. 189, which are also relevant to the ESC.[100]

In addition, Section 18§1 No. 3 ArbZG expressly stipulates that the provisions of the ArbZG do not apply to domestic workers. However, in light of the Loredas ruling of the ECJ [101] this is unlikely to be compatible with European law.[102]

- **Art. 3§2 – Right to safe and healthy working conditions – Safety and health regulations**

The German federal government lists a considerable number of occupational safety regulations. However, the anti-stress regulation[103] demanded by trade unions, for example, has not yet been enacted.

- **Art. 3§3 – Right to safe and healthy working conditions – enforcement of such regulations by measures of supervision**

Significant implementation deficits have already been mentioned above.[104]

[100] Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021) Domestic Workers Convention, 2011 (No. 189) - Germany (Ratification: 2013); available here: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID%2CP13100_COUNTRY_ID:4059758%2C102643.
[101] EuGH v. 19.12.2024 – Az. C-531/23 – *Loredas*.
[102] See *Kocher* in HSI Report zum Europäischen Arbeits- und Sozialrecht Nr. 4/24, p. 4 et seq. (available here: Report zum Europäischen Arbeits- und Sozialrecht - Hugo Sinzheimer Institut für Arbeits- und Sozialrecht (HSI) der Hans-Böckler-Stiftung).
[103] S. for example, https://www.igmetall.de/im-betrieb/arbeits--und-sozialrecht/gute-arbeit-braucht-klare-regeln, and https://www.wainetzwerk.de/uploads/z-neue%20Uploads/Literatur/psychische%20Gesundheit/Anti-Stress-Verordnung_IG%20Metall.pdf .
[104] S. for example, n 9, p 8-12.

2.2.3 Art. 4§3 - Right to a fair remuneration – Non-discrimination between women and men workers with respect to remuneration

- **General comments**

Firstly, it should be noted that the 'targeted questions' do not address the actual core issue of equal pay, but rather (still very important) framework conditions.

Art. 4§3 requires:

> to recognise the right of men and women workers to equal pay for work of equal value;

The first step is therefore to obtain more precise information on the actual (numerical) extent of the gender pay gap.

Even after all the measures taken so far (see below for more details), which have contributed to a certain reduction, statistics from the Federal Statistical Office show that there is still a very significant gender pay gap.:

> Women earn 16% less
>
> Women earned on average 16% less per hour than men in 2024. The differences in western Germany (and Berlin), amounting to 17%, were markedly larger than those in the eastern part of Germany (5%).[105]

In this context, it should be recalled that in its latest conclusions, the ECSR not only criticised the limitation of the amount of severance pay (Sections 9 and 10 of the KSchG) (see below for more details), but also called for measurable progress in general:

> The obligation to make measurable progress in order to reduce the gender pay gap is not complied with.[106]

With regard to international commitments, particular reference should be made to the comments of the CEACR on Convention No. 100 on equal remuneration, which strongly calls for the strengthening of measures to eliminate the gender pay gap.:

> The Committee therefore urges, once again, the Government to strengthen its efforts to eliminate the gender pay gap, including by addressing the differences in remuneration that may be due to gender discrimination. It asks the Government to provide information on: (i) the specific measures implemented to that end as well as to address gender disparity in pensions; (ii) any assessment made of the impact of such measures and any initiative undertaken as a follow-up, including in collaboration with the social partners; and (iii)

[105] https://www.destatis.de/EN/Themes/Labour/Labour-Market/Quality-Employment/Dimension1/1_5_GenderPayGap.html (under 2.3)
[106] Conclusions XXII-3 (203) – Germany; available here: https://hudoc.esc.coe.int/eng?i=XXII-3/def/DEU/4/3/EN .

statistical information on the earnings of men and women, disaggregated by economic activity and occupation, both in the public and private sectors.[107]

In its report, the German government refers to Section 4 of the Pay Transparency Act (*Entgelttransparenzgesetz – EntgTranspG*) on determining equal and equivalent work and to the upcoming implementation of the EU Pay Transparency Directive by June 2026. The plan is to incorporate the assessment criteria specified in the directive into the EntgTransG. The implementation of the EU Pay Transparency Directive into national law remains to be seen.

With regard to the information on occupational classification and remuneration systems that reflect the principle of equal pay, the Federal Government correctly refers to Section 4§4 of the EntgTranspG. It should be noted that the provisions of the General Provisions in Chapter 1 of the EntgTranspG are clearly formulated. The challenge is to achieve the actual implementation of the principle of equal pay in practice. Even if the unadjusted gender pay gap cannot be equated with pay discrimination, it is striking that no change in the pay gap can be observed at this point.

The second evaluation report on the EntgTranspG also concludes that the individual procedure pursuant to Section 2 of the EntgTranspG does not contribute to reducing the pay gap.

The protection afforded to female workers who advocate equal pay is completely inadequate. In this context, the Committee has for years criticised the possibility provided for in Section 10 of the KSchG of terminating employment by means of a unilateral application for termination by the employer pursuant to Sections 9 and 10 KSchG with severance pay capped at 12 or 18 months' salary.

In November 2008[108] the Committee took Art. 4(1) of the ESC as the starting point for further consideration. In December 2010[109] the Committee reiterated its criticism of the upper limit on compensation set by the courts, stating: 'The Committee considers that the courts must be free to decide on the amount of compensation for termination of employment.' These shortcomings remain.

- **Act on the Equal Participation of Women and Men in Executive Positions[110]**

[107] Observation (CEACR) - adopted 2024, published 113rd ILC session (2025) Equal Remuneration Convention, 1951 (No. 100) - Germany (Ratification: 1956); available here: https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4416053,102643:NO

[108] Conclusions XIX-3 (2010), Germany

[109] Conclusions XX-1 (2012), Germany

[110] Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen – FüPoG.

The Federal Government has correctly presented the legal situation. The Second Leadership Positions Act (FüPoG II) was already developed under the Merkel IV government (2018–2021). There were no further developments in the legal situation during the 20th legislative period of the German Bundestag, even though the evaluation report by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) clearly criticised the scope of the Act:

> *Daher wäre zu prüfen, ob anstelle der Kriterien Börsennotierung und Mitbestimmung besser geeignete Anknüpfungskriterien für die Geltung der festen Quote und der Zielgrößen identifiziert werden können. Die Mitbestimmtheit weist keinen inneren Zusammenhang mit den geschlechtsbezogenen Besetzungsregelungen auf. Eine Geltung für Unternehmen einer bestimmten Mindestgröße könnte auch unmittelbar über das Kriterium der Zahl der Arbeitnehmerinnen und Arbeitnehmer erreicht werden, ggf. auch über eine Anknüpfung an die handelsrechtlichen Größenklassen.“*[111]
>
> *(It should therefore be examined whether, instead of the criteria of stock exchange listing and co-determination, more suitable criteria for the application of the fixed quota and the target figures can be identified. Co-determination has no intrinsic connection with gender-based appointment rules. Applying the quota to companies of a certain minimum size could also be achieved directly via the criterion of the number of workers, or, if necessary, via a link to the size categories under commercial law.)*

The DGB shares the criticism expressed in the evaluation report and calls for the scope of application to be based on the number of domestic workers. The law is not expected to have a major impact on the gender pay gap at present.

2025 is a special year for gender equality in the federal public service.

By the end of the year, equal participation of women and men in management positions is to be achieved. This is stipulated in the Federal Equality Act (Bundesgleichstellungsgesetz - BGleiG).

For the highest federal authorities – including the federal ministries, the Federal Audit Office and the Bundestag administration – the annual Equality Index provides information on the current state of affairs.

In 2024, 34,200 people were employed in the highest federal authorities, 55.2 percent of whom were women (as of 30 June 2024; excluding the headquarters of the Deutsche Bundesbank). Only four of the highest federal authorities employed fewer women than men. The proportion of women in management positions in the highest federal authorities was 44.3 per cent. This is an increase of 1.7 percentage points compared to the previous year.[112]

[111] Evaluation report of the BMFSFJ on FüPoG, p. 304, available here: evaluation-fuepog-data.pdf.
[112] Statistisches Bundesamt (Federal Statistical Office) (2025): Gleichstellungsindex 2024. Gleichstellung von Frauen und Männern in den obersten Bundesbehörden.

In order to achieve the goal of equal representation in management positions within the scope of the BGleiG, measures such as part-time management have been developed by the BMFSFJ. Only 12 percent of workers in management positions currently do so, 73 percent of whom are female. According to the DGB, the option of part-time work for jobs with management responsibilities will remain an essential work organisation tool in the future to enable women to advance their careers.

- **Statutory minimum wage**

As the Federal Government correctly points out, the introduction of the statutory minimum wage has contributed to reducing the gender pay gap. However, the minimum wage is currently too low. Based on the EU's 60 per cent criterion, the minimum wage should be around 15 euros, which would enable it to have an even greater positive impact on reducing the gender pay gap.

- **Childcare**

The importance of (early) education, care and upbringing for society as a whole is largely undisputed, both in terms of children's opportunities for participation and education and in terms of parents' life and career planning. All-day care for children under the age of three has become much more important in Germany, the quantitative expansion of childcare has progressed dynamically and public spending has risen significantly. The legal right to early childhood education in a daycare facility or in child day care from the age of one and the legal right to all-day care for children of primary school age from 1 August 2026, which is still to be implemented, have undoubtedly contributed significantly to this. Nevertheless, there is still a gap between the increased provision of childcare and the needs of parents, as demand for childcare is also growing. The differences between childcare coverage and parents' childcare needs are particularly high in the western German states. In eastern Germany, the gap between childcare needs and provision is not as large, but instead there has been no improvement in the ratio of childcare workers to children for years.[113] Incidentally, there are not only differences between childcare rates and demand. The childcare hours offered during the day, in the so-called off-peak hours (‘Randzeiten’) and during the holidays, do not generally meet parents' childcare needs. In order to meet parents' childcare needs, Germany needs several hundred thousand additional childcare places, especially in western Germany. Recently, the childcare situation has been exacerbated by staff shortages and a lack of skilled workers in the education sector.

It is therefore not enough to create legal entitlements. It is crucial to establish the material, infrastructural and human resources required to ensure equal living conditions in early childhood education and all-day care for primary school

[113] Kathrin Bock-Famulla, Eva Berg, Antje Girndt, Davin Patrick Akko, Michael Krause, Julia Schütz (2023): Länderreport Frühkindliche Bildungssysteme 2023. Transparenz schaffen – Governance stärken, hrsg. von der Bertelsmann-Stiftung, Gütersloh.

children, and to expand childcare services so that they reliably meet the needs of parents, i.e. also

- Childcare hours are offered that enable parents to engage in gainful employment that secures their livelihood and, at the same time, take into account travel times, especially in rural areas.
- are easily accessible and will be available free of charge throughout Germany in the medium term.
- meet high quality standards and set standards for staff and working conditions; to this end, the federal government must make a long-term financial contribution to measures aimed at improving quality and ensure that the facilities are adequately staffed and equipped.
- Bridge the gap between receiving parental allowance or parental leave and admission to a childcare facility by offering more flexibility at the local level.
- Open up the possibility of all-day care with educationally sound concepts for all children up to the age of 14 and ensure holiday care and care for children of shift workers in a way that meets needs and is in the best interests of the children.

- **Pay Transparency Act (Entgelttransparenzgesetz – EntgTranspG)**

The DGB shares the assessment of the Federal Government and the conclusion of the second evaluation report that the EntgTranspG must be further developed by means of the EU Pay Transparency Directive. At present, the EntgTranspG does not fulfil its own legislative objective of enforcing the principle of equal pay for women and men for equal work and work of equal value.

The DGB would like to add to the German government's correct reference to the low take-up of the individual right to information by pointing out that the individual procedure for reviewing equal pay does not provide a reliable result as to whether pay discrimination exists or not. According to the Federal Labour Court (BAG) ruling of 21 January 2021, however, lower pay than the male reference pay gives rise to a presumption of pay discrimination and leads to a reversal of the burden of proof.[114]

The DGB had already accurately predicted that only a few companies would voluntarily undergo a process to review and establish equal pay in accordance with Chapter 3 of the EntgTranspG when the law was passed.

With regard to the reporting obligations under Chapter 4 of the EntgTranspG, it should be added that the specific data requested – information on the average total number of workers and the average number of full-time and part-time workers broken down by gender – does not provide any direct insight into the issue of remuneration transparency.

[114] BAG, 21.01.2021 - 8 AZR 488/19.

The DGB is therefore calling for the swift and complete implementation of the EU Pay Transparency Directive into national law.

- **Further measures to reduce the gender pay gap**

a. Parental allowance

As with the information on childcare, the comments on parental allowance also make it clear that it is not enough to simply refer to the legal regulations. Rather, we need to regularly examine how legal regulations affect the different realities of life and employment histories of men and women and what consequences they have.

The following applies to parental allowance: Almost all mothers claim parental allowance after the birth of a child. This has hardly changed to date. In contrast, the proportion of fathers claiming parental allowance has risen steadily.

Currently, around 42 percent of all fathers in Germany with newborn children are taking advantage of parental allowance. Only one-ninth of all fathers receiving parental allowance (i.e. just over four per cent of all fathers) take advantage of the Parental Allowance Plus ('ElterngeldPlus') and/or partner months options, while eight-ninths stick with the basic parental allowance – and thus predominantly with the two so-called partner months. In the vast majority of cases, therefore, the '12+2' model established with the introduction of parental allowance (in basic parental allowance) continues to apply.

Continuity is also evident in the average duration of planned parental allowance payments: the average duration of planned parental allowance payments for women remained unchanged at 14.8 months in 2024. The duration of benefits sought by men was significantly shorter at an average of 3.8 months and remained virtually unchanged compared with previous years (2023: 3.7 months; 2022: 3.6 months).

The number of parental allowance months taken has changed significantly with the introduction of Parental Allowance Plus in summer 2015. With the option provided by Parental Allowance Plus for both parents to take their parental allowance over a longer period, the average duration of receipt has increased. Here too, there are clear differences in the usage patterns of fathers and mothers: fathers currently use an average of 3.3 months of parental allowance (for children born in 2018), while mothers use 13.6 months.

In Germany, the proportion of families in which only the mother of a newborn child takes parental leave and receives parental allowance is still statistically the highest. If both parents receive parental allowance, the father usually only takes two months. Economic factors play a central role in this pattern of behaviour, i.e. the level of household income on the one hand and the distribution of income between the father and his partner on the other. Many families cannot afford to forego the basic parental allowance, which is usually 35 per cent of the father's monthly income, for a longer period of time. This argument is all the

more valid the lower the family's household income is and the greater the difference between the individual incomes of the father and mother.

Occupational factors such as concerns about possible career consequences or negative reactions from superiors due to parental leave also have a major influence on fathers' decisions.[115]

For these reasons, among others, the further development of parental allowance is urgently needed. Extending the non-transferable parental allowance months can create positive incentives for fathers, as the involvement of fathers in the early stages of family life has been shown to strengthen the partnership-based division of paid and unpaid work. The longer, more extensively and more frequently fathers claim parental allowance while taking sole responsibility for childcare, the greater the division of labour between partners and the more intensive the father-child relationship. Leave for the second parent around the time of birth would further promote partnership in addition to parental leave.

b. Company programme: Family as a factor for success

While the target group of the company programme Success Factor Family is employers – company management, executive boards, HR managers and executives – the DGB project ‚Shaping Work-Life Balance'[116] addresses works councils and staff committees as well as equal opportunities and women's representatives and offers advice and coaching with the aim of achieving a good work-life balance for mothers and fathers or workers with care responsibilities. The project staff accompany change processes in companies and departments in all sectors with the aim of creating good working conditions. Works councils and staff committees that are setting out to assert the needs of their workforces can contact the project staff and receive practical advice on site to support them in their efforts. Not every measure is suitable for every company and every department, but there are suitable measures for every company and every department. Support is provided in assessing needs, searching for creative solutions and implementing them in practice. The service is free of charge.

c. Compatibility of work and care

The Federal Government briefly outlines the legal situation - The Caregiver Leave Act (Pflegezeitgesetz – PflegeZG) and the Family Caregiver Leave Act (Familienpflegezeitgesetz – FPfZG) - , but unfortunately fails to mention that Section 14 of the FPfZG established the Independent Advisory Board for the Reconciliation of Care and Work. The Board has already submitted two reports in which it assesses the legal situation as inadequate. One criticism, for example, is the low take-up of loans under the FPfZG. The Advisory Council's second report contains a concept for family care leave and a family care allowance,

[115] Svenja Pfahl, Stefan Reuyß unter Mitarbeit von Maike Wittmann (2022): Reformvorschläge für die Ausgestaltung des Elterngeldes.
[116] Project ‚Vereinbarkeit gestalten' available here: Vereinbarkeit gestalten.

which provides a good basis for further legislative development. The DGB considers the introduction of this tax-financed income replacement benefit to be particularly urgent. Taking on family care responsibilities leads to immediate income losses and subsequent pension losses. More women than men provide care, and they do so for longer periods of time. Taking on care responsibilities is one of the causes of the gender pay gap.

d. Right to return from part-time to full-time work

The right to temporary part-time work was introduced in 2019 with the aim of improving the conditions for reconciling work and family life and as an incentive for a more just division of paid employment and unpaid care and domestic work between the genders. This was the right move, but - as is so often the case when designing equality and family policy measures - it fell short. The design of the legal entitlement with numerous hurdles has meant that so-called bridging part-time work has not been able to establish itself as a powerful instrument.

With regard to Section 9a of the Part-Time Work and Fixed-Term Employment Act, the following goals should be achieved in the organization of working hours that enable fathers and mothers alike to secure their own livelihoods and fit in with their lives during phases of caring responsibilities to abolish all threshold values in the Part-Time and Fixed-Term Employment Act

- to enable repeated temporary so-called “bridging” part-time (*Brückenteilzeit*) work without a qualifying period
- to guarantee the possibility of returning to previous working hours earlier than originally planned and
- to enshrine a right to full-time work and a genuine legal entitlement to an increase in working hours.

e. Enhancing the status of social professions

As the German government rightly points out, the comparatively low salaries in many female-dominated professions and fields of work contribute significantly to the gender pay gap. In order to close the pay gap and secure the skilled labour base in female-dominated areas such as nursing and education, the DGB believes that it is absolutely necessary to raise the status of female-dominated professions.

Good progress has been made in terms of pay over the last ten years. Salary increases have been above average, particularly in elderly care, but also in nursing[117]. The introduction of statutory (sectoral) minimum wages and compulsory collective bargaining in elderly care have contributed significantly to this, as have good collective agreements in the hospital sector. This shows how important it is to strengthen collective bargaining coverage and introduce poverty-proof minimum wages in order to raise the status of female-dominated sectors. The federal government should step up its efforts in this regard so that

[117] See: IAB 2024.

workers in other sectors where many women work, such as childcare and retail, also benefit from living wages.

However, one major problem that the federal government completely ignores in its report is the poor working conditions in many female-dominated sectors. Due to staff shortages, the intensity of work is enormous, especially in the care and education sectors. Absenteeism due to illness is above average.[118] Many workers are reducing their working hours or leaving their jobs altogether due to physical and mental overload. In the representative employment survey DGB-Index Gute Arbeit 2024, 70% of workers in nursing and over 60% of workers in education stated that they would probably not be able to continue working in their jobs until retirement.[119] Effective countermeasures are needed here, such as statutory staffing levels to ensure the quality of work, maintain the long-term health of workers and make the professions more attractive.

f. Initiatives for the promotion of a fair distribution of paid employment and unpaid care work

In connection with the gender equality and labour market policy requirements for the fair distribution of paid employment and unpaid work, the Federal Government rightly refers to the 'Bündnis Sorgearbeit fair teilen' (Alliance for Fair Sharing of Care Work) and the Federal Government's support for the Alliance.

However, the alliance is not an end in itself. Its goals and demands[120] bring together the policies and recommendations for action of a broad civil society alliance in order to give them more clout. The coalition agreement between the CDU/CSU and SPD is a sign of how necessary this is. The alliance therefore expresses its expectation that the measures necessary for the fair distribution of paid work and care work will finally be actively pursued. After all, the decision to take on care responsibilities is not a matter of discretion, nor is it the exception, but the norm.

The actual equality of women and men in the economy, government and society is a constitutional mandate. To achieve this, and in particular to enable women to secure an independent livelihood, it is essential to eliminate structural disadvantages and ensure the fair distribution of care and paid work between women and men. It is now crucial to back up the fundamental objectives formulated by the government coalition with appropriate measures and sufficient financial resources.

g. Public relations campaign

In addition to the statements made by the Federal Government, mention should be made of the annual campaign organised by the DGB on Equal Pay Day in front of the 'Brandenburger Tor' in Berlin, which is usually attended by

[118] See for example on the area of child daycare: Bertelsmannstiftung 2024.
[119] DGB-Index Gute Arbeit 2024.
[120] See: Unsere Ziele - Bündnis Sorgearbeit fair teilen.

representatives of the Federal Government, as well as numerous decentralised campaigns and events organised by the DGB and its affiliated unions.

h. Activities by the Federal Anti-Discrimination Agency, esp. the equal pay check

In addition to the comments made by the Federal Government, it should be noted that the Federal Anti-Discrimination Agency is currently working on a project entitled 'Rechtliche Überprüfung und Anpassung des Entgeltgleichheits-Checks (eg-check.de) an die Vorgaben der Entgelttransparenzrichtlinie (RL [EU] 2023/970)' ('Legal review and adaptation of the equal pay check (eg-check.de) to the requirements of the Pay Transparency Directive (Directive (EU) 2023/970)'. The DGB welcomes the fact that the tried-and-tested eg-Check tool is being adapted to the requirements of the EU Pay Transparency Directive, which will soon come into force.

i. Continuation of statistical data series

The DGB appreciates the surveys conducted by the Federal Statistical Office on gender-specific wage gaps and welcomes the federal government's announcement that it will continue to collect statistical data on this issue.

It is incomprehensible that, although the negative impact of 'mini-jobs' on the gender pay gap has been recognised by the federal government, the opposite course has been taken politically by raising and indexing the earnings threshold for mini-jobs (in line with the minimum wage).

The DGB is also irritated by the fact that, in assessing the adjusted gender pay gap, it is noted that no findings are available on individual behaviour in wage negotiations. According to the BAG ruling of 16 February 2023[121], 'better negotiation' is not a justification for better pay for men than women for the same work.

Furthermore, it should be noted that the gender pay gap has decreased in the 'occupation and industry' category. There is much to suggest that the favourable collective agreements in the health and education professions – especially in nursing – have contributed to this positive development. The positive effects of collective bargaining agreements, especially for women (remuneration, working hours, working conditions), should be given even greater consideration.

2.2.4 Art. 5 - Right to organise

- **General comments**

Firstly, it should be noted that the ESCR sought answers to various questions in its latest Conclusions XXIII-3:

[121] BAG, 16.02.2023 - 8 AZR 450/21.

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 5 of the 1961 Charter.]

- **Right of access**

The German government addresses questions regarding freedom of association primarily in relation to collective bargaining autonomy and collective bargaining coverage. It merely mentions in passing that freedom of association requires effective access for trade unions to workplaces (p. 91). This necessarily includes digital access to workers for trade unions. The right to physical access is recognised by case law to a limited extent, i.e. twice a year. The right to digital access in the form of trade union advertising by email was recognised in principle by a decision of the BAG.[122] However, this case only concerned whether the trade union was allowed to use email addresses that it already had. In practice, however, there is uncertainty as to whether email addresses may or must be disclosed to the trade union if it does not yet have them, or whether trade unions can provide information about their work on the intranet, for example. This applies, for example, when trade unions want to provide information about their work in companies where they are not yet represented, in purely digital companies such as platform companies, or in companies with increasingly mobile work. However, in its most recent ruling of 28 January 2025[123] the BAG denied such a digital right of access, at least in the case it heard.

- **Protection of trade union work**

Furthermore, the report fails to take into account that freedom of association is affected when worers are deliberately intimidated and prevented from participating in trade union activities. Obstructing the establishment and work of works councils constitutes a criminal offence under Section 119 BetrVG (see above for further demands, 2.1.4.). Effective sanctions must also be developed for the obstruction of trade union work in companies; currently, only an injunction is available[124] In the opinion of the ECSR, national must guarantee the right of workers to join a trade union and include effective punishments and remedies where this right is not respected.[125] No explicit provisions are currently laid down in dismissal protection law, criminal law or anti-discrimination law. With regard to Moldova, the ECSR has called for trade union members to be protected by law from adverse consequences that their membership or activities for their trade union may have on their employment, in particular in the form of retaliatory measures or discrimination. National law must provide for

[122] BAG, 20.1.2009 - 1 AZR 515/08
[123] BAG, 28.1.2025 - 1 AZR 33/24.
[124] Digest of the case law of the European Committee of social rights, 2022, p. 84,
[125] Conclusions 2016, Estonia , Art. 5: Estonia subsequently amended its Criminal Code.

regulations in this regard and ensure that victims receive adequate and proportionate compensation for the damage suffered.[126]

- **Membership without collective bargaining coverage[127]**

With regard to the recognition of employers' associations, the term 'OT membership' is only mentioned (p. 92), but no reference is made to its effect on collective bargaining coverage. Many employers' associations offer such 'non-bargaining' membership, which means that their members are not bound by collective agreements even though they are members of the association. This contradicts the actual legal task of associations to conclude collective agreements and enables companies to evade collective bargaining coverage. Therefore, in the view of the DGB and its member unions, OT memberships should be abolished. In addition, there needs to be a disclosure requirement so that it is clear whether a company is bound by collective agreements or not.

The Federal Government correctly describes that the actual ability to conclude and enforce collective agreements is of crucial importance for trade unions. The case law rightly requires so-called assertive strength in this regard. Without this ability to enforce their rights, trade unions would not be in a position to negotiate with employers on an equal footing. This also requires an adequate number of members and organisation. This assertive strength is rightly not required of employers, as every employer is in a position to conclude collective agreements with trade unions. This legal situation is in line with the case law of the European Court of Human Rights.

2.2.5 Art. 6§1 - Right to bargain collectively - Joint consultation between workers and employer

- **General comments**

In its statement, the Federal Government accurately describes the legal situation with regard to joint consultations. In particular, the social partner negotiations mentioned took place on several topics.
The DGB and its member unions welcome in principle such social partner negotiations that precede the actual legislative process. This early involvement of the social partners is always useful and facilitates the subsequent legislative process.
Nevertheless, for the sake of completeness, it should be noted that none of the social partner negotiations described by the Federal Government have actually led to a legislative procedure to date, for various reasons..
According to the EU Minimum Wage Directive, Germany must submit an action plan. As of April 2025, the government had not held any preliminary talks with the trade unions on drawing up an action plan in accordance with the EU Minimum Wage Directive. As collective bargaining coverage in Germany is 49%, below the relevant threshold of 80%, it is mandatory to draw up an action plan to increase collective bargaining coverage in accordance with Art. 4§2, second

[126] Conclusions 2010, Moldova, Art. 5.
[127] Mitgliedschaft ohne Tarifbindung – OT-Mitgliedschaft (‚OT membership')

sentence, of the Directive. According to the EU Commission's interpretation of the provisions of the Directive, this action plan must be submitted by the German government by autumn 2025.

2.2.6 Art. 6§2

- **General comments**

Firstly, it should be noted that the ESCR sought answers to various questions in its latest Conclusions XXIII-3:

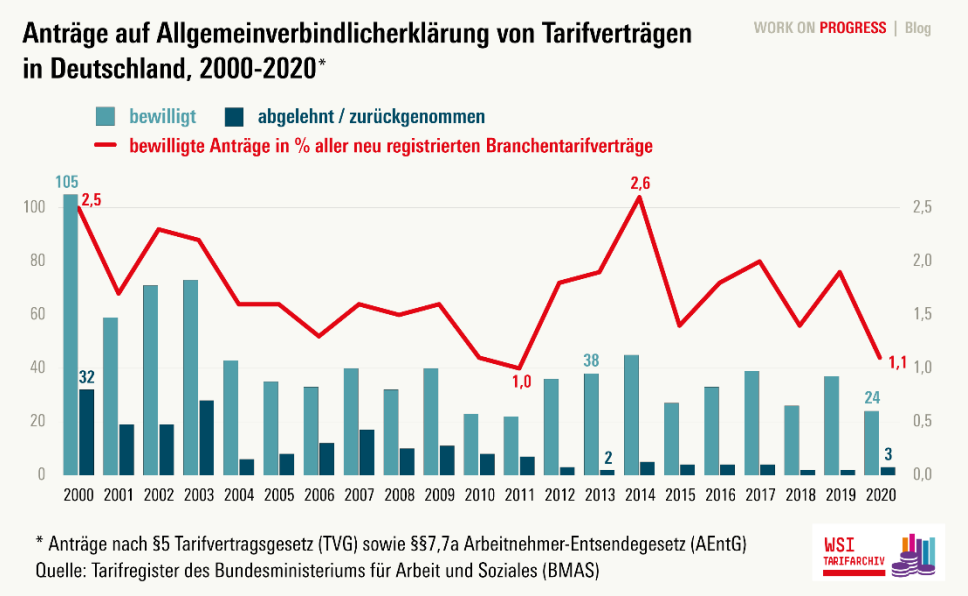
> Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 6§2 of the 1961 Charter.]

- **Answer to question a**

The Federal Government's description of the legal situation is correct in principle, but it fails to answer the question to which extent local/workplace agreements may derogate from legislation or collective agreements agreed at a higher level. The relationship between collective agreements and workplace agreements is governed by law for works agreements in Section 77§3 of the BetrVG, which stipulates that remuneration and other working conditions that are regulated by collective agreements or are usually regulated by collective agreements may not be the subject of a works agreement. An exception applies if a collective agreement expressly permits the conclusion of supplementary works agreements. In addition, the matters regulated in section 87§1 of the BetrVG are only subject to mandatory co-determination in so far as they are not prescribed by legislation or collective agreement.

Furthermore, although the Federal Government does address the declaration of universal applicability and the majority vote in the collective agreements committee (in particular p. 97), it fails to outline the actual effects of this. The continuing stagnation in the number of applications for collective agreements to be declared universally applicable can be attributed to several reasons: the requirement for applications to be submitted jointly, the veto option available to employers in the collective agreements committee, and the increasing number of employers in employers' associations who are members without collective agreements (OT members). These are employers who are members of the employers' association but do not want to be covered by the association's collective agreements and only make use of other services provided by the association, such as legal advice (see above).

Appropriate measures to further facilitate the declaration of collective agreements as universally applicable are listed in the answer to questions b and c on Art. 6§2 on the declaration of general applicability.



('Applications for collective agreements to be declared universally applicable in Germany, 2000-2020').

- **Answers to questions b and c**

Unfortunately, the DGB sees numerous obstacles preventing the conclusion of more collective agreements. The DGB has drawn up an action plan to strengthen collective bargaining coverage,[128] which includes the following demands, among others:

a. Awarding public contracts and funds

It is important that the state sets a good example. Currently, collective agreements are not given preferential treatment by the state in the context of public procurement or the awarding of public contracts. To this end, a draft Collective Agreement Loyalty Law ('Bundestariftreuegesetz') was introduced in the last legislative period, but the law has not been passed. It has been agreed again between the governing parties in the current coalition agreement.

From the perspective of the DGB and its affiliated unions, there is a need for a 'Bundestariftreuegesetz' that ensures fair wages and good working conditions when federal authorities award public contracts. Companies not bound by collective agreements must therefore be obliged in future to comply with the most important provisions of the relevant sectoral collective agreement when executing contracts. This will ensure a level playing field, as companies bound by collective agreements will no longer be disadvantaged.

In addition, the allocation of subsidies, economic aid and similar measures at federal and state level must only be granted on condition that companies comply with collective agreements.

[128] Available here: 240725_nationaler_Aktionsplan_Stärkung_Tarifbindung_kurz.pdf.

b. Prevention of circumvention of collective bargaining agreements through operating division

Companies are often restructured in order to avoid being bound by collective agreements, which results in a deterioration of conditions for workers. This leads to a decentralisation of collective bargaining, which is exacerbated in particular by outsourcing. If companies or parts of companies are transferred to another company that is not bound by collective agreements, there is no longer any normative collective bargaining coverage after the transfer, but only a limited contractual obligation for existing workers under the law on transfers of undertakings in accordance with the European Transfer of Undertakings Directive 2001/23/EC. However, poorer working conditions may be agreed for newly hired workers. This also applies to transfers of undertakings to newly established subsidiaries. This is particularly evident in the service sector (e.g. in the organisational area of ver.di in the field of air traffic and CFM, a subsidiary of Charité). This is a form of collective agreement evasion that must be prevented. Restructuring must not be at the expense of workers. In the event of company spin-offs, the continued validity of the collective agreement must be ensured.

- **Answer to question d**

As early as 1974, Section 12a was added to the Collective Agreements Act (Tarifvertragsgesetz – TVG), enabling collective agreements to be concluded for economically dependent and socially vulnerable persons, known as worker-like persons. While economic dependence and social vulnerability are generally assumed to exist if half of a person's income comes from one client, this threshold is one third in the media and cultural sector. In this sector, collective agreements were concluded in all public broadcasters and for the daily newspaper sector from 1976 onwards.

With the national copyright reform of 2002, the possibility of negotiating 'joint remuneration rules' was introduced as a further element of collective bargaining by user and copyright associations, which were concluded for the following areas, among others: Literature, literary translation, texts and photos in newspaper journalism (however, these agreements on appropriate minimum remuneration were unilaterally terminated by the Newspaper Publishers Association/BDZV on 1 March 2017).

This instrument, like the elements of the guidelines on the application of EU competition law to collective agreements on the working conditions of solo self-employed persons, is aimed not only at worker-like persons but also at collective agreements for 'self-employed workers.' Expert opinions have already been prepared on the possibilities and limitations of implementation for this group of persons within the national framework for action, but implementation in practice is still pending.

The DGB and its member unions are therefore calling for a reform of Section 12a of the TVG, for example by opening it up to a broader group of people (e.g. by waiving the requirement to be 'primarily employed by one client').

2.2.7 Art. 6§4 - Right to bargain collectively – Collective action

- **General comments**

a. General conditions

Firstly, it should be recalled that, in its latest conclusions on Art. 6§4, the ECSR criticised the following:

- The prohibition on all strikes not aimed at achieving a collective agreement constitutes an excessive restriction on the right to strike;
- The requirements to be met by a group of workers in order to form a union satisfying the conditions for calling a strike constitute an excessive restriction on the right to strike;
- All civil servants, regardless of whether they exercise public authority, are denied the right to strike.

With regard to international obligations, particular reference should be made to the latest observations of the ILO Committee of Experts, which continue to criticise the comprehensive ban on strikes by civil servants:

> The Committee thus observes that the situation in Germany is still not in line with the Convention in this regard. ***Regretting that it has not yet been possible to find a solution to this long-standing matter, the Committee encourages the Government to continue engaging in a comprehensive national dialogue with representative organizations in the public service with a view to finding possible ways of aligning the legislation with the Convention.***[129]

b. Report

The Federal Government correctly states that the right to strike is guaranteed by Art. 9§3 of the Basic Law (Grundgesetz – GG). It is also correctly stated that the right to strike can only be restricted if the fundamental rights of third parties are affected and that this can only be clarified by a court ruling in individual cases and not by a generalised provision. However, the jurisdiction of the labour courts has restricted the right to strike in one very important respect: according to this case law, strikes are only permissible to enforce collective agreements with objectives that can be regulated by collective agreements. These objectives that can be regulated by collective agreements are defined very narrowly by case law and are limited, inter alia, by reference to entrepreneurial freedom. The ECSR has long criticised this in its established case law, and this

[129] Observation (CEACR) - adopted 2024, published 113rd ILC session (2025), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Germany (Ratification: 1957); available here: https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4416817,102643:NO

has been confirmed by the Committee of Ministers of the Council of Europe. According to this, strikes are only permissible in the short period between the expiry of a collective agreement and the conclusion of a new collective agreement. These restrictions are not in line with the function of the right to strike in resolving conflicts of interest.

- **Answer to question a**

a. Sectors in which the right to strike is prohibited

With regard to the public service, and in this case civil servants, the Federal Government refers to the jurisdiction of the Federal Constitutional Court and a judgement of the European Court of Human Rights (ECstHR) on four striking civil servant teachers.[130] The latter does not confirm a general ban on strikes for civil servants, but merely the compatibility of individual, limited disciplinary measures with Art.s 11, 14 and 6 of the ECHR. The Court emphasised the minor nature of the sanctions as an argument for denying a violation of Art. 11 of the ECHR.

The rights of the relevant trade union under Article 11 of the ECHR were not decided in these proceedings. It should be noted that the ECtHR contradicted its own jurisdiction since Demir and Baykara and Enerji Yapi-Yol Sen. The consideration of individual cases and contextualisation in the assessment of the ban on strikes for civil servants who do not exercise authority in the name of the state is a novelty even in the case law of the ECtHR, and the Court thus contradicts its own case law, which had previously made a clear distinction between sovereign and non-sovereign activities and held that the right to strike could be denied by simple reference to the civil servant status. In this judgment, the ECtHR limited its opinion only to Article 11 of the ECHR and acknowledged that this was contrary to the case law of all relevant bodies of international labour law, such as the UN CESCR, the ILO CEACR and the Committee on Freedom of Association, as well as the ECSR.

> The competent monitoring bodies set up under the specialised international instruments – notably the CEACR and the ECSR as supervisory bodies for the ILO standards and the European Social Charter, the latter containing a more specific and exacting norm regarding industrial action, but also the CESCR and the HRC – have repeatedly criticised the status-based prohibition of strikes by civil servants in Germany, including, in particular, with respect to teachers with that status (see paragraphs 53, 54, 56 and 60 above). Without calling into question the analysis carried out by those bodies in their assessment of the respondent State's compliance with the international instruments which they were set up to monitor, …[131]

Furthermore, according to Art. 53 of the ECHR, the principle of favourability applies, i.e. a judgment of the ECtHR cannot have any adverse effects on the rights

[130] ECtHR, 14.12.2023, 59433/18 , *Humpert e.a. v. Germany.*
[131] Ibid, para. 126.

arising from other international human rights conventions and therefore cannot in any way negatively affect Germany's obligations under international law. The Federal Government believes that states are fundamentally free to decide what measures they wish to take to ensure compliance with the right to freedom of association, as long as they ensure that trade union freedom is not undermined. In this context, the Federal Government always refers to the right of trade unions to participate in an advisory capacity in the legislative process. However, the DGB is sure that the right of trade unions to participate is not an adequate means of protecting the interests of trade unions and their members. Legally and in practice, it is a simple right to be heard and is not suitable for ensuring compliance with the right to freedom of association. The public employer can easily reject all trade union proposals, which often happens in practice. It cannot be regarded as adequate compensation for the denial of the right to strike.

This also applies to the possibility that an individual civil servant can assert specific individual rights in court. Based on the principle of maintenance, civil servants have a direct right to receive remuneration commensurate with their position. The fact that this right must first be enforced through the administrative courts, up to the Federal Constitutional Court (which is the only court in Germany that can determine a violation of the Basic Law), in the event of a violation of the constitutional principle of maintenance cannot compensate for the denial of the right to strike. Furthermore, the length of proceedings before the competent administrative courts and ultimately the Federal Constitutional Court continues to be so long that the person concerned cannot reasonably be expected to pursue legal remedies. More than 50 cases are currently pending before the Federal Constitutional Court concerning the question of whether the applicants' remuneration is commensurate with their office.

Some of these proceedings have been ongoing for over 14 years and have still not been decided. Thousands of cases are pending before the administrative courts throughout Germany. In the case of federal civil servants, the federal government has been aware for five years that their remuneration is not commensurate with their position. Nevertheless, the federal government has not yet taken any measures to bring the remuneration of federal civil servants into line with the constitution. Those affected cannot take legal action against this because the federal government acknowledges the unconstitutionality and does not rule on corresponding appeals. This denies federal civil servants access to legal recourse. This example reveals that the right of civil servants to sue for their remuneration is not sufficient to justify denying them the right to strike. Furthermore, these procedural channels only relate to remuneration, not to other working conditions. The proceedings brought before the ECtHR were initially triggered by trade union action against an extension of working hours without compensation, in this case teachers' teaching hours. This was also overlooked by the ECtHR, which based its reasoning solely on remuneration.

The argument that workers can decide for themselves whether they want to be employed as a public service worker or as civil servants is also unconvincing. It is solely the public employers who determine the status of their workers. For example, teachers in Germany are now civil servants in all 16 federal states. Workers therefore have no right to choose. Nor do civil servants have the right to switch from civil servant status to worker status on their own initiative. The civil service laws of the federal and state governments only recognise the right to leave the service and lose civil servant status. There is no right to continue employment as a worker.

This is not in line with the ECSR's jurisdiction. As already cited above in relation to Germany, the ECSR considers a general ban on the right to strike for public sector employees to be a violation of Art. 6§4. In the case against Bulgaria, public sector worker were only allowed to participate in symbolic measures, which the law there qualifies as strikes. However, they were not allowed to withhold their labour. The Committee considered this to be a deprivation of the full right to strike for all public service workers. The ECSR stated that a restriction of the right to strike for certain public service workers, e.g. those whose tasks and functions, by their nature or by virtue of the responsibilities they entail, directly affect the rights of others, national security or the public interest, may serve a legitimate aim. However, the ECSR did not consider the restriction to be proportionate because it denied all public service workers the right to strike, regardless of their specific tasks and services. Such restrictions cannot be regarded as necessary in a democratic society.[132]

Due to the constitutionally guaranteed right of self-determination of churches, the right to strike is also restricted in church institutions, according to the BAG; under certain conditions, the exclusion of the right to strike should be possible in the Third Way (‘Dritter Weg’), according to the BAG. This does not concern the churches and their liturgical institutions themselves, for which the trade union has never demanded the right to strike. Rather, it concerns institutions that are not involved in preaching, such as hospitals, day-care facility for children and social institutions, which employ millions of people in Germany and are run by churches. In practice, the churches either agree on an absolute peace obligation with their collective bargaining partners (the so-called ‘Zweiter Weg’ ‘Second Way’) or regulate the working conditions of their workers primarily through commissions with equal representation (the so-called ‘Dritter Weg’ ‘third way’). in which, contrary to the requirements of the BAG of 2012, the DGB and its member unions do not believe that trade unions have been adequately involved to date – the participation process for trade unions envisaged by the churches for the third way does not constitute a path comparable to the conclusion of collective agreements. Furthermore, the Federal Constitutional Court

[132] ECSR, 16 October 2006, No. 32/2005, *Confederation of Independent Trade Unions in Bulgaria, Confederation of Labour "Podkrepa" and European Trade Union Confederation (ETUC) v. Bulgaria*; available here: https://hudoc.esc.coe.int/eng/?i=cc-32-2005-dmerits-en .

has not yet ruled on whether the options provided by the Federal Labour Court with regard to the exclusion of the right to strike are constitutional. In any case, there is no legal basis for this in Art. 6§4 of the ESC.

- **Answer to question b**

a. Legal disputes

Employers can take immediate action against labour disputes in specific individual cases by seeking interim legal protection and, depending on the individual case, can obtain an injunction against the strike. Subsequently, there is the possibility of clarification in what is known as the main proceedings. Employers also like to take action against trade unions for damages afterwards. Such proceedings for damages amounting to millions are currently pending against trade unions before labour courts. If the establishment of emergency services is necessary in individual cases, the responsible trade union will propose certain emergency services. If no agreement can be reached, the competent court can determine certain emergency services..

From a trade union perspective, the following developments in case law on interim legal protection are critical:

- Injunctions are often issued without oral hearings. This carries the risk that the specific nature of the situation and the position of trade unions will not be adequately taken into account. From the point of view of the DGB and its member unions, this must not be possible, if only for reasons of a level playing field.
- Emergency services: In order to protect life and limb and also to protect essential infrastructure, emergency services are required in some areas. The staffing situation is tense in many areas. In some cases, strikes are being made impossible due to increasingly low staffing levels. This is the case in hospitals, for example. Courts are then demanding staffing levels that correspond to normal services as emergency services.
- Injunction court proceedings are increasingly being used by employers. It is not uncommon for it to transpire afterwards that the interim injunction was wrongly issued. Although trade unions are also entitled to compensation on paper, this cannot replace a failed round of collective bargaining, and it is very difficult to assess the damage in collective bargaining capacity incurred.[133]

b. Arbitrations

Arbitration is not mandatory under law. In some cases, it is agreed as part of collective bargaining for a specific industry and then precedes industrial action. In other cases, although not agreed in principle, it may be considered on a case-by-case basis when the positions are particularly entrenched.

c. Further restrictions

[133] Berg/Kocher/Schumann (editors), Tarifvertragsgesetz und Arbeitskampfrecht, 7. ed., 2021, p. 1059, para. 439.

Further critical points from jurisdiction:

- In the event of (allegedly) unlawful strikes, trade unions sometimes face excessive claims for damages without further specification that could ruin them financially. Often, the amount is simply claimed as a lump sum and is not substantiated. At the very least, there needs to be a limit and, above all, a corresponding legal basis.
- **Extension of the illegality of strikes:**
  If the strike is aimed at an inadmissible collective bargaining objective (e.g. violation of the peace obligation), it is unlawful as a whole according to the current trend in German case law. This is the 'scrambled egg theory' ('Rühreitheorie') that still prevails in domestic case law: one rotten egg spoils the whole scrambled egg. The DGB and its member unions criticise this case law as contrary to international law (see the relevant ECtHR case law HLS/Croatia); moreover, it imposes an excessive responsibility on trade unions to maintain order. This entails considerable liability risks which, in practice, jeopardise the realisation of the fundamental right to strike. It also violates the ECtHR's case law on Art. 11 of the ECHR.[134]

2.2.8 Art. 20 - The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

- **General comments**

The labour market in Germany is characterised by strong gender segregation, which limits the career prospects and opportunities for women and men and reinforces gender-specific pay gaps (see above). In order to overcome the division of the labour market into female- and male-dominated occupational fields, girls and boys must be supported in making career choices free from gender stereotypes, and gender stereotypes must be dismantled.

The DGB has long supported the German government's measures to promote career guidance free of stereotypes: it is both a member of the 'Klischeefrei' initiative and an action partner of 'Girls' Day – Mädchen Zukunftstag'. The effectiveness of Girls' Day has been proven by regular evaluations: after participating in the orientation day, more girls can imagine pursuing a career, training or studies in the male-dominated STEM sector than before participating.[135] Against this background, project funding by the federal government must also be secured in the long term and planning security for Girls' Day and Boys' Day must be created.

Despite the wide range of measures, the career choices available to young women remain very limited overall and generally follow traditional role patterns: more than half of them choose one of only ten apprenticeship

[134] ECtHR, 27.11.2014 – No. 36701/09, *HLS v. Croatia.*

[135] For details see: Wirkungsstudie 2022 | Girls'Day (girls-day.de).

occupations, even though there are more than 330 dual apprenticeship occupations (ibid.). In view of this, the DGB believes it is necessary to fundamentally strengthen career guidance in schools and companies and to establish gender sensitivity as a characteristic of professional conduct in the field of career guidance. Career counsellors and teachers in general education schools must be equipped with the appropriate gender competencies, and the teaching of these competencies must be anchored in the relevant training and study programmes and ensured within the framework of continuing vocational training.

The DGB also supports the other programmes mentioned in the Federal Government's report to promote equal opportunities in the labour market. In addition to GAPS, the 'MY TURN' programme deserves special mention, as it focuses on the specific needs of (low-skilled) women with a migrant background. The barriers to language acquisition and labour market integration are particularly high for women with a migrant background[136], which is why more tailored support measures are needed for this target group. It is regrettable that the predecessor project 'Stark im Beruf' (Strong at Work) is not being continued, even though it was very successful in helping mothers with a migrant background to enter the labour market and the needs remain high. The project had become well established during its seven-year funding period, and given the long start-up times required for new projects, the DGB criticises the fact that successful projects supporting women with a migrant background in integrating into the labour market are not being made permanent through regular funding.

The DGB reiterates its demand, already expressed in Art. 4, that the Executive Positions Act should not be based on the criteria of equal representation and listing on the stock exchange, but rather on the number of domestic workers. The EU Executive Management Directive – which does not need to be implemented in Germany – is based solely on whether a company is listed on the stock exchange, which would be a significant improvement on the status quo. The circumvention of co-determination in Germany means that companies can simultaneously evade the requirements of the executive management laws.

2.3 Overview of problems with the application of provisions of the ESC that have not yet been addressed but have been ratified

At least with regard to Group 1, the ECSR's previous points of criticism that are not covered by the 'targeted questions' are identified.

[136] For example, an evaluation by the German Institute for Economic Research (2023) based on data from the IAB-BAMF-SOEP survey shows that there are significant gender-specific differences among refugees in terms of acquiring the German language: in 2020, more than half of men but only a quarter of women stated that they had a high level of language proficiency. See: DIW Berlin: Erwerbschancen geflüchteter Frauen in Deutschland verbessern sich trotz ungünstiger Ausgangslage

2.3.1 Situations of non-conformity[137]

- **Thematic Group 1 "Employment, training and equal opportunities" - Conclusions XXII-1 (2020)**

Article 18§1 – Right to engage in a gainful occupation in the territory of other States Parties - Applying existing regulations in a spirit of liberality

> It has not been established that the regulations governing the right to engage in a gainful occupation are applied in a spirit of liberality.

- **Thematic Group 2 "Health, social security and social protection" - Conclusions XXI-2 (2017)**

No report was submitted concerning the Articles in thematic group 2 in 2021; therefore, the Committee was unable to adopt Conclusions in the XXII-2 (2021) cycle.[138]

For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions XXI-2 (2017).

[[139]**Article 3§1** – Right to safe and healthy working conditions – Safety and health regulations …[140]]

Article 12§1 – Right to social security – Existence of a Social security system

> It has not been established that the level of old age and invalidity pensions is adequate in all cases.

Article 12§4 – Right to social security – Social security of persons moving between states

> - Equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
>
> - Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
>
> - The right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

Article 13§1 – Right to social and medical assistance – Adequate assistance for every person in need

> The total level of social assistance, including the basic and additional benefits is not adequate.

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[137] Available here: https://rm.coe.int/germany-april2024-en-2775-9801-0889-1/1680b0e5aa.
[138] Footnote 5: ‚Germany submitted report, however it arrived too late to be examined by the Committee.'
[139] The provisions in [ ]-brackets are part of the 'targeted questions'.
[140] See above 2.1.1.

- **Thematic Group 3 "Labour rights" - Conclusions XXII-3 (2022)**

[**Article 2§1** - Right to just conditions of work - Reasonable working time …[141]]

[**Article 4§3** – Right to a fair remuneration – Non-discrimination between women and men workers with respect to remuneration …[142]]

[**Article 6§4** – Right to bargain collectively – Collective action …][143]

- **Thematic Group 4 "Children, families, migrants" – Conclusions 2023[144]**

Article 7§3 - Right of children and young persons to protection - Prohibition of employment of children subject to compulsory education

> The duration of light work performed by children still subject to compulsory schooling is excessive and may deprive them of the full benefit of education.

Article 7§5 – Right of children and young persons to protection – Fair pay

> Allowances paid to apprentices at the end of the apprenticeship in some sectors are too low.

Article 17§1 – Right of children and young persons to social, legal and economic protection – Assistance, education and training

> The measures taken to reduce institutionalisation of children are insufficient.

Article 19§6 – Right of migrant workers and their families to protection and assistance - Family reunion

> - The requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;
>
> - The requirements to prove language proficiency for family reunion of children over 16 wishing to move to Germany present an obstacle to family reunion;
>
> - Spouses do not enjoy an independent right of residence in case of expulsion of a migrant worker.

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[141] See above 2.2.1.
[142] See above 2.2.3.
[143] See above 2.2.7.
[144] It should be recalled that in Groups 3 and 4 (previous reporting system) the assessment was already limited to 'targeted questions', thus, the ECSR did

- not examine all relevant provisions (using several times the formulation: 'As the previous conclusion found the situation in Germany to be in conformity with the 1961 Charter, there was no examination of the situation in 2023. Therefore, the Committee reiterates its previous conclusion.'), such as, for example, Articles 1§3, 2§2, 2§4, 6§1, 6§3, 7§2, 7§6, 7§7, 8§3, 10§2, 18§2, 18§4, 19§3, 19§5,
- examine only the replies to the 'targeted questions' without examining the whole content of the provision concerned.

Article 19§10 – Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed

> The grounds of non-conformity under Articles 19§6, 19§9 and 19§12 apply also to self-employed migrants.

- **Situations of non-conformity on grounds** of **failure to provide requested information**

The Committee also considered that the failure to provide requested information on Articles 7§8, 8§§1-2, 16, 17§1, 19§6, 19§9, 19§12, 27§1 and 27§3 amounts to a breach by Germany of its reporting obligations under Article C of the Charter.

2.3.2 Situations of insufficient information

In case of insufficient information the ECSR has either officially 'deferred' its conclusions or at least requested further information.[145]

- **Deferral**

Article 1§2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

> Pending receipt of the information requested, the Committee defers its conclusion.[146]

Article 1§4 – Vocational guidance, training and rehabilitation

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

Article 4§1 – Decent remuneration

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

Article 9 – Right to vocational guidance

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

Article 18§3 – Liberalising regulations

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

[145] The cases in which the ECSR has asked additional questions in its Conclusions but which did not lead to a deferral or official mentioning the the Conclusing ('Prending receipt of the information requested') are not listed below but still (may) raise important issues.

[146] An important number of specific questions have been asked: https://hudoc.esc.coe.int/eng?i=XXII-1/def/DEU/1/2/EN

- **Lack of information**

Article 2§2 – Public holidays with pay

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 2§2 of the 1961 Charter.

[**Article 5** – Right to organise …[147]]

[**Article 6§2** – Negotiation procedures …[148]]

Article 15§1 – Education and training for persons with disabilities

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 15§1 of the 1961 Charter.

Article 15§2 – Employment of persons with disabilities

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 15§2 of the 1961 Charter.

- **(General) Information originally required but not included in the 'targeted questions'**

Article 4§5 –Limits to deduction from wages

'With a view to making an in-depth assessment of national situations the Committee has considered it necessary to change its approach. Therefore, the Committee asks States Parties to provide the following information in their next reports:

- a description of the legal framework regarding wage deductions, including the information on the amount of protected (unattachable) wage;
- Information on the national subsistence level, how it is calculated, and how the calculation of that minimum subsistence level ensures that workers can provide for the subsistence needs of themselves and their dependents.
- Information establishing that the disposable income of a worker earning the minimum wage after all deductions (including for child maintenance) is enough to guarantee the means of subsistence (i.e., to ensure that workers can provide for the subsistence needs of themselves and their dependents).
- a description of safeguards that prevent workers from waiving their right to the restriction on deductions from wage.

[147] See above 2.2.4.
[148] See above 2.2.6.