



March 2023

# **EUROPEAN SOCIAL CHARTER (REVISED)**

European Committee of Social Rights

Conclusions 2022

**ALBANIA**

*This text may be subject to editorial revision.*

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

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

The following chapter concerns Albania, which ratified the Revised European Social Charter on 14 November 2002. The deadline for submitting the 13<sup>th</sup> report was 31 December 2021 and Albania submitted it on 30 December 2021.

The Committee recalls that Albania was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2010).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2010) found the situation to be in conformity, there was no examination of the situation in 2022.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group III "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

Albania has accepted all provisions from the above-mentioned group.

The reference period was from 1 January 2017 to 31 December 2020.

The conclusions relating to Albania concern 23 situations and are as follows:

– 3 conclusions of conformity: Articles 2§4, 2§5, 2§6,

– 15 conclusions of non-conformity: Articles 2§1, 2§3, 2§7, 4§1, 4§4, 5, 6§1, 6§2, 6§3, 6§4, 21, 22, 26§1, 26§2, 28.

In respect of the other 5 situations related to Articles 2§2, 4§2, 4§3, 4§5, 29, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Albania under the Revised Charter.

The next report from Albania will deal with the following provisions of the thematic group IV "Children, families, migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of children and young persons to social, legal and economic protection (Article 17),

- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 December 2022.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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

### *Paragraph 1 - Reasonable working time*

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 2§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee considered that the situation in Albania was not in conformity with Article 2§1 of the Charter on the ground that regulations permitted weekly working time of more than 60 hours in various sectors of activity (Conclusions 2010). The Committee notes that no reports were submitted in 2013 and 2017 concerning the Articles in thematic group 3. The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

### ***Measures to ensure reasonable working hours***

The Committee notes that in its previous conclusion it found the situation in Albania not to be in conformity with Article 2§1 of the Charter on the ground that regulations permitted weekly working time of more than 60 hours in various sectors of activity (Conclusions 2010). The Committee also asked what was the reference period over which average weekly working time was calculated either in law or set out in collective agreements. It also asked for more detailed information on the supervision of working time regulations by the Labour Inspectorate, including the number of breaches identified and penalties imposed in this area.

The report provides no information on weekly working time in specific sectors of activity, on the reference period over which average weekly working time is calculated and the information provided on the supervision of working time regulations by the Labour Inspectorate only includes 2020 but not the whole reference period. The Committee thus reiterates its conclusion of non-conformity on the ground that regulations permit weekly working time of more than 60 hours in various sectors of activity. The Committee also repeats its request for information on the reference period over which average weekly working time and weekly rest periods were calculated either in law or set out in collective agreements and on the supervision of working time regulations by the Labour Inspectorate, including the number of breaches identified and penalties imposed in this area. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Albania is in conformity with Article 2§1 of the Charter on this point.

In its targeted question, the Committee asked for updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods, ...) and exceptions (including legal basis and justification). It also asked for detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).

The Committee recalls that teleworking or remote working may lead to excessive working hours. It also reiterates that it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours or while on holiday or on other forms of leave (sometimes referred to as the ‘right to disconnect’). States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform. In some cases, arrangements may be necessary to ensure the digital disconnect in order to guarantee

the enjoyment of rest periods (Statement on digital disconnect and electronic monitoring of workers).

The report states that, according to Article 78 of the Labour Code (as amended by Laws No. 8085/1996, No. 9125/2003, No. 10053/200, No. 136/2015), the normal daily working time does not exceed 8 hours and the daily rest period is at least 11 hours without interruption within 24 hours or, in case of need, spread over two consecutive days. In 2020 the Labour Inspectorate found 15 violations of this provision, in one case an administrative sanction was imposed for a repeated violation of this provision.

The report states that Article 79 of the Labour Code provides that the start and the end of working hours are determined in the internal regulations whereas the time and duration of daily breaks are set in the collective agreement or individual contract. In 2020, this provision was breached in 30 cases.

Article 83 of the Labour Code provides that the normal duration of the working week does not exceed 40 hours; in 2020, this provision was breached in 32 cases, out of which 6 cases resulted in administrative sanctions. The weekly break does not go under 36 hours, of which 24 hours must be without interruption, in accordance with Article 85 of the Labour Code. This provision was breached in 12 cases.

The report further provides information about inspections carried out in specific sectors of activity between January and August 2021. However, the Committee notes that this information is outside the reference period for the purposes of the present reporting cycle. It reiterates its request for information on enforcement measures and monitoring arrangements, in particular as regards the activities of the Labour Inspectorate during the whole reference period.

### ***Law and practice regarding on-call periods***

In the targeted question, the Committee asked for information on law and practice as regards on-call time and service (including as regards zero-hour contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration.

In reply, the report states that the Labour Inspectorate was asked to develop a legal interpretation on on-call employment relationships.

The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France* (§§ 64-65), Complaint No. 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee held that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home. The Committee asks whether it means that on-call time and service, as well as zero-hours contracts do not exist in practice. It also asks the next report to contain specific information on law and practice as regards on-call time and service, and how are inactive on-call periods treated in terms of work and rest time as well as remuneration. In the meantime, the Committee reserves its position on this point.

### ***Covid-19***

In the context of the Covid-19 crisis, the Committee asked the States Parties to provide information on the impact of the Covid-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. More specifically, the Committee asked for information on the enjoyment of the right to reasonable working time in the following

sectors: healthcare and social work; law enforcement, defence and other essential public services; education, transport.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

The report states that between 10 and 23 March 2020, paid leave was provided to one of the parents, if they were civil servants and other workers in public administrations, of children who attend kindergartens, preschools and other education institutions. As kindergartens were closing, all private employers were also advised to find ways and means allowing parents to take paid leave.

#### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 2§1 of the Charter on the ground that regulations permit weekly working time of more than 60 hours in various sectors of activity.

See dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter.

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

### *Paragraph 2 - Public holidays with pay*

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

The Committee recalls that no targeted questions were asked for Article 2§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in Albania was not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday was not compensated at a sufficiently high level (Conclusions 2010).

The report indicates that Article 86 of the Labour Code (as amended) prohibits work on public holidays except in cases provided for by a Council of Ministers decree or by collective agreements. Article 86(2) of the Labour Code (as amended) provides that “the employee has the right to be paid on official holidays. When the official holiday is on weekly breaks, the holiday is postponed to Monday.”

The Committee notes that under Article 87(2) of the Labour Code (as amended), work carried out on public holidays, when they are working days, is compensated by an additional payment of at least 25% and a paid leave equal to the duration of the work carried out on the holiday. According to Article 87(5) of the Labour Code, the manner and amount of compensation shall be determined by a decision of the Council of Ministers, a collective agreement or an individual contract. The Committee requests that the next report explain whether the base salary is maintained in addition to the 25% increased pay and a paid leave, according to Article 87(2) of the Labour Code. In the meantime, it reserves its position on this point.

The Committee notes from the report that, according to the statistics of the labour inspectorate, Article 87 was not respected in 232 cases in 2020; administrative measures were applied to 26 of these cases.

### ***Covid-19***

In reply to the question regarding special arrangements related to the pandemic, the report does not provide any information.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

### *Conclusion*

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

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

### *Paragraph 3 - Annual holiday with pay*

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

The Committee recalls that no targeted questions were asked for Article 2§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in Albania was not in conformity with Article 2§3 of the Charter on the ground that employees could relinquish annual leave in return for increased remuneration (Conclusions 2010). The report does not provide any information on this point. Therefore, the Committee asks the next report to indicate whether the law guarantees that employees cannot waive their right to annual leave or replace it by financial compensation. In the meantime, it maintains its previous conclusion of non-conformity in this respect.

The Committee notes from the other source that the Labour Code was amended by Law No. 136/2015 of 5 December 2015. It notes that the amended Labour Law provides for a minimum paid annual leave of at least four calendar weeks within one year (pro-rata for those who have worked less than one year) (Article 92).

According to Article 93(3) of the Labour Code, annual leave must be granted during the working year or during the first three months of the following year, but in no case may it be less than one calendar week without interruptions. The period during which an employee may take annual leave shall be determined by the employer, taking into account the employee’s preferences. The employee must notify the employer at least 30 days prior to the date of his/her annual leave (Article 93(1)).

The Committee recalls that an employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due and that annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. Therefore, as Albanian Labour Law allows for at least five uninterrupted working days per year, the Committee considers that the situation is not in conformity with Article 2§3 of the Charter on the ground that the employees’ right to take at least two weeks of uninterrupted holiday during the year in respect of which the holidays were due is not sufficiently guaranteed.

With regard to employees who suffer from illness or injury during their annual leave, the Committee notes that, according to Article 93(2) of the Labour Law, annual leave shall be postponed if the employee during the period of this leave has been hospitalised or has remained at home during the leave due to illness or accident, confirmed by a medical certificate. Pursuant to Article 93(4) of the Labour Code, “the right to leave not granted by the employer or not received by the employee shall be prescribed within three years from the day on which the employee is entitled to such right”. The Committee asks an explanation of the application of the latter provision in practice in the next report. In particular, it asks to explain in what cases the right to annual leave may “not be granted by the employer” or “not be received” by the employee.

The Committee notes from the report that, according to the statistics of the labour inspectorate, Article 92 on the duration of annual leave was not respected in 153 cases; administrative measures were applied to 16 of these cases.



## **Covid-19**

In reply to the question regarding special arrangements related to the pandemic, the report does not provide any information.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 2§3 of the Charter on the ground that:

- employees may relinquish annual leave in return for increased remuneration;
- employees' right to take at least two weeks of uninterrupted holiday during the year in respect of which the holidays were due is not sufficiently guaranteed.

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

*Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations*

The Committee recalls that no targeted questions were asked for Article 2§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle.

As the previous conclusion found the situation in Albania to be in conformity with the Charter, there was no examination of the situation in 2022.

Therefore the Committee reiterates its previous conclusion.

*Conclusion*

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

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

*Paragraph 5 - Weekly rest period*

The Committee recalls that no targeted questions were asked for Article 2§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle.

As the previous conclusion found the situation in Albania to be in conformity with the Charter, there was no examination of the situation in 2022.

Therefore the Committee reiterates its previous conclusion.

*Conclusion*

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

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

### *Paragraph 6 - Information on the employment contract*

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

The Committee recalls that no targeted questions were asked for Article 2§6 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

As the previous conclusion found the situation in Albania to be in conformity with the Charter, there was no examination of the situation in 2022 on this point. Therefore, the Committee reiterates its previous conclusion.

### ***Covid-19***

In reply to the question regarding special arrangements related to the pandemic, the report does not provide any information.

### *Conclusion*

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

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

### *Paragraph 7 - Night work*

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

The Committee recalls that no targeted questions were asked for Article 2§7 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2010). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral.

In its previous conclusion, the Committee asked for information on the frequency of medical examinations for night workers and whether these examinations were carried out in practice (Conclusions 2010). The Committee additionally asked for information concerning the possibilities for transfer to daytime work. The Committee notes that these questions had been carried over from its previous conclusion (Conclusions 2007) and that Albania did not submit reports during the last two review cycles (Conclusions 2014 and 2018). The Committee further notes that the information requested is not provided and reiterates its questions. Meanwhile, the Committee concludes that the situation in Albania is not in conformity with Article 2§7 of the Charter on the grounds that it has not been established that the possibilities of transfer to daytime work are sufficiently provided for, and that night workers are effectively subject to compulsory regular medical examination.

### **Covid-19**

In reply to the question regarding special arrangements related to the pandemic, the report does not provide any information.

### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 2§7 of the Charter on the grounds that it has not been established that:

- the possibilities of transfer to daytime work are sufficiently provided for;
- night workers are effectively subject to compulsory regular medical examination.

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

### *Paragraph 1 - Decent remuneration*

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 4§1 of the Charter as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

The Committee notes that the previous assessment of the national situation was in 2010 as Albania did not submit its reports in 2014 and 2018. Therefore, the previous conclusion of the Committee is from 2010, in which the Committee considered that the minimum wage was manifestly unfair.

The Committee’s assessment will therefore relate to the information provided by the Government in response to the questions raised in the previous conclusion as well as the targeted questions with regard to Article 4§1 of the Charter.

### ***Fair remuneration***

The Committee notes from the report that by the Decision of the Council of Ministers No. 1025 of 2020 the basic minimum monthly wage applied nationwide for workers was set at ALL 30,000 (€ 208 per month). The Committee notes from Eurostat that the gross minimum wage in 2020 stood at € 209.

The report does not provide any information about the average gross and net wage. The Committee recalls that in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage is between 50 and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1. In the absence of this information, the Committee concludes that the situation is not in conformity with the Charter as it has not been established that the minimum wage can ensure a decent standard of living.

The Committee asks the next report to provide information concerning the gross and net amounts of minimum and average wages.

### ***Workers in atypical employment***

As part of its targeted questions, the Committee asks for information on measures taken to ensure fair remuneration sufficient for a decent standard of living, for workers in atypical jobs, those employed in the gig or platform economy, and workers with zero hours contracts. It also asks about enforcement activities (e.g. by labour inspectorates or other relevant bodies) as regards circumvention of minimum wage requirements (e.g. through schemes such as sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).

The Committee considers that the requirement that workers be remunerated fairly to ensure a decent standard of living for themselves and their families applies equally to atypical jobs, such as part-time work, temporary work, fixed-term work, casual and seasonal work. In some cases, prevailing wages or contractual arrangements lead to a significant number of so-called

working poor, including persons working two or more jobs or full-time workers living in substandard conditions.

The Committee refers in particular to workers employed in emerging arrangements, such as the gig economy or platform economy, who are incorrectly classified as self-employed and therefore, do not have access to the applicable labour and social protection rights. As a result of the misclassification, such persons cannot enjoy the rights and protection to which they are entitled as workers. These rights include the right to a minimum wage.

The Committee asks what measures are being taken to ensure fair remuneration of workers in atypical jobs as well as misclassified self-employed persons in the platform economy.

### ***Covid-19***

As part of its targeted questions, the Committee also asked for specific information about furlough schemes during the pandemic.

The Committee recalls that in the context of the Covid-19 pandemic, States Parties must devote necessary efforts to reaching and respecting this minimum requirement and to regularly adjust minimum rates of pay. The right to fair remuneration includes the right to an increased pay for workers most exposed to Covid-19-related risks. More generally, income losses during lockdowns or additional costs incurred by teleworking and work from home practices due to Covid-19 should be adequately compensated.

The Committee notes that the report does not provide this information. The Committee asks whether the financial support provided for workers through furlough schemes was ensured throughout the period of partial or full suspension of activities due to the pandemic. It also asks what was the minimum level of support provided and what proportion of workers concerned were covered under such schemes.

### *Conclusion*

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

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

### *Paragraph 2 - Increased remuneration for overtime work*

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 4§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee found that the situation in Albania was in conformity with Article 4§2 of the Charter, pending receipt of the information requested (Conclusions 2010). The Committee notes that no reports were submitted in 2013 and 2017 concerning the Articles in thematic group 3. The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion, and to the targeted question.

### **Rules on increased remuneration for overtime work**

In its previous conclusion, the Committee asked whether collective agreements may stipulate a lower rate of remuneration or of time-off than that set out in the Labour Code (Conclusions 2010). The Committee also requested information on whether the statutory provisions on compensation for overtime applied to all categories of workers. Finally, the Committee asked to what extent the breaches to working time regulations identified by the Labour Inspectorate were related to any overtime work going unpaid in the context of flexible working time arrangements.

The report states that the employer may require the worker to work additional hours and that the maximum duration of such hours have to be determined in the collective agreement or individual employment contract. The worker cannot be required to work more than 200 additional hours a year. The compensation for additional hours is as follows: either additional leave days, or a normal wage with additional 25 per cent or more. Also, the remuneration for overtime may be compensated with leave, which must be at least 25% longer than the extra hours worked, unless defined otherwise in a collective agreement.

The Committee notes that the questions asked in its last conclusion (Conclusions 2010) are unanswered and reiterates them in full. The Committee notes that if the information requested is not provided in the next report, there will be nothing to establish that the situation in Albania is in conformity with Article 4§2 of the Charter.

### **Covid-19**

In the context of the Covid-19 crisis, the Committee asked the States Parties to explain the impact of the Covid-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. The Committee asked for specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, increased compensation).

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

The report states that according to DCM No. 254/2020 and DCM No. 305/2020, the Albanian Government organised financial assistance packages to business and employees.

### *Conclusion*

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



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

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

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 4§3 of the Charter, as well as, where applicable, previous conclusions of nonconformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

With respect to Article 4§3, the States were asked to provide information on the impact of Covid-19 pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter and does so every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2010).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral.

### ***Obligations to guarantee the right to equal pay for equal work or work of equal value***

#### ***Legal framework***

The report indicates that the principle of equal pay for equal work or work of equal value is set out in Article 115(1) of the Labour Code. Under Article 115(1), employers must pay employees equally for the same work or work of equal value, without discrimination on grounds including gender.

In its previous conclusion on Article 20 (Conclusions 2020), the Committee recalled that the concept of remuneration must cover all elements of pay, i.e., basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter’s employment. Therefore, it considered that the situation in Albania was not in conformity with the Charter on the ground that the legislation explicitly covers only certain elements of pay for the purposes of equal pay principle.

In this context, the Committee notes from the country report on gender equality in Albania prepared by the European Network of Legal Experts in Gender equality and Non-Discrimination (2022), that the concept of pay is defined in Article 109(1) of the Albanian Labour Code (as amended) according to which “pay means basic salary as well as permanent allowances”. According to this report, the Albanian legislation does not limit the definition of pay merely to this provision, but further defines equal pay in Article 115. The report states that according to Article 115(2) and (3):

- "2. (...) Equal pay, without discrimination, is the pay that for the same standardised work is calculated on the basis of the same unit of measurement;
- b. for the same time rates is the same for the same work position.
- 3. For the purpose of this Article, pay is referred to the ordinary base or minimum salary, or to the salary and any other payment, whether in cash or in kind, which the worker receives directly or indirectly, by his employer, for his accomplished work."

The Committee considers that this situation is now in conformity with the Charter.

The Committee also asks the next report to provide information on whether the law prohibits discriminatory pay clauses in collective agreements.

### ***Effective remedies***

The report does not contain any information regarding effective remedies in case of gender pay discrimination. In this connection, the Committee refers to its previous conclusion on Article 20(c) (Conclusions 2020) on this issue and reiterates all of its previous questions. In the meantime, it reserves its position on this point. The Committee points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Albania is in conformity with Article 4§3 of the Charter in this respect.

### ***Pay transparency and job comparisons***

The report indicates that Article 115(4) of the Labour Code defines work of equal value on the basis of all the relevant criteria, especially the nature of the work, its quality and quantity, working conditions, vocational training, seniority, physical and intellectual efforts, experience and responsibility. The Committee also notes that according to this report, the legislation authorises differences in pay when they are justified by objective reasons set out in Article 115(4) of the Labour Code. The Committee asks for information in the next report on the way in which Article 115(4) of the Labour Code, as amended, is applied in practice, so that jobs of different types but of equal value can be compared.

The Committee also asks the next report to provide information on whether pay comparisons are possible across one company, for example, if such company is a part of a holding company and the remuneration is set centrally by such holding company. The Committee points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Albania is in conformity with Article 4§3 of the Charter in this respect.

Moreover, the Committee asks that the next report provide information on the specific measures provided for in national legislation concerning pay transparency in the labour market, and in particular, the possibility for workers to receive information on the pay levels of other workers and the information available on pay.

In the meantime, it reserves its position on this point.

### ***Statistics and measures to promote the right to equal pay***

The report does not provide any statistical data on equal pay gap during the reference period.

As Albania has accepted Article 20.c, the Committee examines policies and other measures to reduce the gender pay gap under Article 20 of the Charter.

### ***The impact of Covid-19 on the right of men and women workers to equal pay for work of equal value***

In response to the question on the impact of Covid-19, the report does not provide any information.

The Committee refers to its statement on Covid-19 and Social Rights of 24 March 2021.

### ***Conclusion***

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

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

### *Paragraph 4 - Reasonable notice of termination of employment*

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 4§4 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee considered that the situation in Albania was not in conformity with Article 4§4 of the Charter (Conclusions 2010).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

The Committee refers to its statement of interpretation on Article 4§4 (2018), where the Committee recalled that a reasonable notice period on termination of employment is regarded as one of the components of fair remuneration. The Committee further recalls that a reasonable notice period is one during which workers are entitled to their regular remuneration and that takes account of the workers’ length of service, the need not to deprive workers abruptly of their means of subsistence, as well as the need to inform workers of the termination in good time so as to enable them to seek a new job. The Committee points out that it is for governments to prove that these elements have been considered when devising and applying the basic rules on notice periods.

Following on from its statement of interpretation on Article 4§4 (2018), the Committee recalls that the question of the reasonableness of the notice periods will no longer be addressed, except where the notice periods are manifestly unreasonable. The Committee will assess this question on the basis of:

1. The rules governing the setting of notice periods (or the level of compensation in lieu of notice):
  - according to the source of the rule, namely the law, collective agreements, individual contracts and court judgments;
  - during any probationary periods, including those in the public service;
  - with regard to the treatment of workers in insecure jobs;
  - in the event of termination of employment for reasons outside the parties’ control;
  - including any circumstances in which workers can be dismissed without notice or compensation.
2. Acknowledgment, by law, collective agreement or individual contract of length of service, whether with the same employer or where a worker has been successively employed in precarious forms of employment relations.

### ***Reasonable period of notice: legal framework and length of service***

The Committee asked in its targeted question about information on the right of all workers to a reasonable period of notice for termination of employment (legal framework and practice), including any specific arrangements made in response to the Covid-19 crisis and the pandemic.

In its previous conclusion the Committee found that the situation in Albania was not in conformity with Article 4§4 of the Charter on the ground that five days’ notice for termination of employment is insufficient for workers with less than three months’ service, even in the probationary period (Conclusions 2010).

In reply to the targeted question and to the previous conclusion of non-conformity, the report states that according to the Labour Code, the parties shall respect the following period of notice for termination of indefinite contracts after the probationary period: (i) two weeks, when the employment relationship has lasted up to six months; (ii) one month, when the employment relationship has lasted over six months up to two years; (iii) two months, when the employment relationship has lasted for more than two years up to five years; (iv) three months, when the employment relationship has lasted for more than five years.

As noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. The Committee notes that the Labour Code in Albania provides for notice periods that acknowledge the workers' length of service and that are not manifestly unreasonable. The Committee therefore considers that the situation in Albania is in conformity with Article 4§4 of the Charter in this respect.

The report also states that if one of the parties terminates the contract without respecting the deadline notice, the termination shall be considered as a termination of contract with immediate effect. In its previous conclusions the Committee asked for clarification on how this rule provided for in Article 153§1 of the Labour Code is applied in practice and interpreted by the courts with regard to accumulation of less serious breaches (Conclusions 2007 and Conclusions 2010). The report does not provide the information requested. The Committee therefore reiterates its request and considers that, should the requested information not be provided in the next report, there will be nothing to establish that the situation in Albania is in conformity with Article 4§4 of the Charter in this respect.

The Committee previously concluded that a situation where a three-month notice period for workers with more than five years' service, provided for in Article 143§1 of the Labour Code, can be altered by a written agreement or a collective agreement, stipulating a minimum notice period of one month for workers with five or more years' service was not in conformity with Article 4§4 of the Charter (Conclusions 2010). The report does not provide information on any developments in this situation. Therefore, the Committee reiterates its previous conclusion of non-conformity in this respect.

The Committee notes that according to the report, workers benefit from at least 20 hours of payable leave per week to look for a new job during the notice period when the employment is terminated by the employer.

The Committee previously considered that the situation was in conformity with Article 4§4 of the Charter as regards fixed-term contracts (Conclusions 2010). However, it asked that the next report replied to the question as to whether employees are entitled to a period of notice to inform them that their contracts will not be renewed. The report does not provide the information requested. Therefore, the Committee reiterates its request.

#### ***Notice periods during probationary periods***

The Committee previously considered that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2010).

#### ***Notice periods with regard to workers in insecure jobs***

The Committee previously considered that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2010).

#### ***Notice periods in the event of termination of employment for reasons outside the parties' control***

The Committee previously considered that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2010).

### ***Circumstances in which workers can be dismissed without notice or compensation***

The Committee previously asked how the domestic courts decide in practice whether there are reasonable causes for terminating a contract immediately (Conclusions 2010). The report does not provide the information requested. Therefore, the Committee reiterates its request and specifically asks under what circumstances workers can be dismissed without notice period or compensation.

#### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 4§4 of the Charter on the ground that collective agreements may provide for a minimum notice period of one month in the case of workers with five or more years' service.

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

### *Paragraph 5 - Limits to deduction from wages*

The Committee notes that the report submitted by Albania does not provide any information concerning this provision.

The Committee recalls that no targeted questions were asked for Article 4§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information, were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee notes that Albania has never reported on this provision (Conclusions 2007, 2010, 2014 and 2018).

The Committee recalls that the deductions from wages envisaged in Article 4§5 can only be authorised in certain circumstances which must be well-defined in a legal instrument (for instance, a law, regulation, collective agreement or arbitration award (Conclusions V (1977), Statement of Interpretation on Article 4§5). The Committee further recalls that deductions from wages must be subject to reasonable limits and should not *per se* result in depriving workers and their dependents of their means of subsistence (Conclusions 2014, Estonia). 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.

### ***Deductions from wages and the protected wage***

The Committee asks the next report to demonstrate that the protected wage, i.e. the portion of wage left after all authorised deductions, including for child maintenance, in the case of a worker earning the minimum wage, will never fall below the subsistence level established by the Government. The Committee notes that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

### ***Waiving the right to the restriction on deductions from wage***

The Committee recalls that under Article 4§5 of the Charter, employees may not waive their right to the restriction on deductions from wages and the way in which such deductions are determined should not be left to the discretion of the parties to the employment contract (Conclusions 2005, Norway). The Committee asks whether the workers may be authorised to waive the conditions and limits to deductions from wages imposed by law. The Committee notes that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

### *Conclusion*

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

## **Article 5 - Right to organise**

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to the targeted questions for Article 5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion the Committee found that the situation in Albania was not in conformity with Article 5 of the Charter on the grounds that: (i) police personnel do not enjoy the right to form trade unions; and (ii) it has not been established that the prohibition on the right to form a trade union was not applied to an excessively high proportion of senior civil servants (Conclusions 2010).

The Committee also recalls that in the General Introduction of Conclusions 2018, it posed a general question under Article 5 and asked States to provide, in the next report, information on the right to organise for members of the armed forces.

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions and to the general question.

### ***Prevalence/Trade union density***

The Committee asked in its targeted question for data on trade union membership prevalence across the country and across sectors of activity. The report does not contain any information on this issue.

The Committee notes from other sources (ILOSTAT) that trade union density rate in 2017 in Albania was 36.6%.

### ***Personal scope***

In its previous conclusion, the Committee found that the situation was not in conformity with the Charter on the ground that it had not been established that the prohibition on the right to form a trade union was not applied to an excessively high proportion of senior civil servants (Conclusions 2010).

The report does not reply to the previous conclusion of non-conformity. Therefore, the Committee reiterates its previous conclusion of non-conformity on this point.

The Committee previously found that members of the police did not enjoy the right to form a trade union as legislation only permitted the establishment of one association. The report does not provide information on this point. Therefore, the Committee reiterates its previous conclusion of non-conformity.

In its previous conclusion, the Committee requested that all states provide information on the right of members of the armed forces to organise (Conclusions 2018 – General Question). The report does not provide the information requested. The Committee therefore reiterates its request and considers that, should the information not be provided in the next report, nothing will allow to consider that the situation is in conformity with the Charter on this point.

The Committee recalls that Article 5 of the Charter allows States Parties to impose restrictions on the right of members of the armed forces to organise and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as through the imposition of a blanket prohibition on professional associations of a trade union nature and prohibition on the affiliation of such associations to national

federations/confederations (European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, Decision on the merits of 27 January 2016, §§80 and 84).

The Committee recalls that it has previously considered that the complete suppression of the right to organise (which involves freedom to establish organisations/trade unions as well as freedom to join or not to join trade unions) is not a measure which is necessary in a democratic society for the protection, *inter alia*, of national security (*Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019, §92).

### ***Restrictions on the right to organize***

In its targeted question, the Committee asked for information on public or private sector activities in which workers are denied the right to form organisations for the protection of their economic and social interests or to join such organisations. The report does not contain any information on the targeted question. The Committee therefore reiterates its request and considers that, should the requested information not be provided in the next report, nothing will allow to consider that the situation is in conformity with the Charter on this point.

### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 5 of the Charter on the grounds that:

- members of the police are prohibited from joining and forming trade unions;
- An excessively high proportion of senior civil servants are prohibited from enjoying the right to form or join a trade union



## **Article 6 - Right to bargain collectively**

### *Paragraph 1 - Joint consultation*

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

The Committee recalls that no targeted questions were asked for Article 6§1 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in Albania was not in conformity with Article 6§1 of the Charter on the grounds that it had not been established that refusals to grant trade unions with representative status were subject to judicial review, and that consultation also took place in the public sector (Conclusions 2010).

The Committee asked further questions regarding various aspects of Article 6§1 of the Charter, namely on the functioning of tripartite consultation structures at the national level, the process of settling challenges related to trade union representativeness for the purposes of taking part in the work of the National Council of Labour, successful examples of bipartite consultation, the interpretation of collective agreements, and joint consultation in the public sector.

The Committee notes that there has been a wide reporting gap since the previous report submitted by Albania (Conclusions 2010) and that the current report does not contain any information in reply to the above-mentioned questions. The Committee requests that the next report contain a complete up-dated description of the situation in law and in practice with regard to joint consultation between employees and employers at national, regional and sectoral levels in the private as well as the public sector, including the civil service, on all questions of mutual interest, which includes information in response to the conclusion of non-conformity. Meanwhile, the Committee reiterates its conclusion of non-conformity.

### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 6§1 of the Charter on the grounds that:

- the refusals to grant trade unions with representative status are not subject to judicial review;
- joint consultative bodies do not exist in the public sector.

**Article 6 - Right to bargain collectively**  
*Paragraph 2 - Negotiation procedures*

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

The Committee recalls that no targeted questions were asked for Article 6§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee also recalls that in the General Introduction to Conclusions 2018, it posed a general question under Article 6§2 of the Charter and asked States to provide, in the next report, 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.

In its previous conclusion, the Committee considered that the situation in Albania was not in conformity with Article 6§2 of the Charter on the ground that it had not been established that civil servants were entitled to participate in the processes that resulted in the determination of the regulations applicable to them (Conclusions 2010). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

The Committee also asked questions regarding various aspects of Article 6§2 of the Charter, namely on trade union representativeness criteria for the purposes of taking part in collective bargaining, safeguards protecting trade union independence, the process for settling the challenges related to trade union representativeness, the process for extending collective agreements, collective agreement coverage, and collective bargaining in the public sector (Conclusions 2010).

The Committee notes that there has been a wide reporting gap since the last report submitted by Albania (Conclusions 2010) and that the current report does not contain any information in reply to previously asked questions. Instead, the report provides information about the drafting process leading to the adoption of Instruction no. 13/12.05.2021 “On the organization and functioning of structures for mediation and conciliation of collective Labour conflicts, as well as the relevant procedures”, with assistance from the International Labour Organization (ILO).

Considering the aforementioned reporting gap, the Committee notes that there are outstanding questions regarding Albania’s compliance with Article 6§2 of the Charter. The Committee notes the following information from the comments of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) adopted in 2021 and published in 2022 (110th ILC session) on the Right to Organise and Collective Bargaining Convention 98 (1949). As Section 161 of the Labour Code provides that a collective agreement can only be concluded at the enterprise or branch level, no collective agreements have been concluded between the Government and workers and employers’ representatives at the national level. Between 2019 and 2020, 20 collective agreements were concluded in the tourism, food, energy and oil sectors, covering 15% of workers in the private sector.

The Committee further notes that according to Eurofound, as of 2017, the overall coverage of collective bargaining in Albania was 25.1%. The Committee recalls that it has previously considered a 30% rate of employees covered by collective agreements to be an indicator that voluntary negotiations are not sufficiently promoted in practice (Conclusions 2018, Slovak Republic). Therefore, the Committee reiterates its previous conclusion of non-conformity, on the ground that the legal framework does not allow for the participation of employees in the public sector in the determination of their working conditions. The Committee further adds one ground of non-conformity, namely that it has not been established that the promotion of collective bargaining is sufficient.

As the report does not provide any relevant information in relation to the above-mentioned general question, 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.

### ***Covid-19***

In reply to the question regarding special arrangements related to the pandemic, the report does not provide any information.

#### *Conclusion*

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

- it has not been established that the promotion of collective bargaining is sufficient;
- the legal framework does not allow for the participation of employees in the public sector in the determination of their working conditions.

## **Article 6 - Right to bargain collectively**

### *Paragraph 3 - Conciliation and arbitration*

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

The Committee recalls that no questions were asked for Article 6§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in Albania was not in conformity with Article 6§3 of the Charter on the ground that the circumstances in which compulsory arbitration was permitted went beyond the limits set by Article G of the Charter (Conclusions 2010).

More specifically, the Committee noted that in principle, recourse to arbitration was voluntary; the only exception was laid down in Article 196 of the Labour Code, which provides that when collective conflicts concern services of vital importance and mediation and conciliation attempts fail, a compulsory arbitration procedure closing with a binding decision of an arbitral tribunal would resolve the dispute. The services of vital importance in this respect were listed in Article 197/5 of the Labour Code and included “indispensable medical and hospital services, water and electricity supply services, air traffic control services, services of protection from fire as well as services at prisons”. The Committee also noted that compulsory arbitration terminated collective bargaining even before recourse to a strike could be made and that it did not serve the purpose of ending a strike in the above sectors which, for example, had lasted so long as to jeopardise the rights and freedoms of others or public health, etc.

In its report, the Government states (under Article 6§2 of the Charter) that a working group was set up in September 2020 to improve conciliation and mediation procedures in collective labour disputes. The work of this group, carried out in co-operation with experts from the International Labour Organisation, culminated in new guidelines on the organisation and functioning of structures for conciliation and mediation of collective labour disputes and the procedures relating thereto (Instruction No. 13 approved by the Minister of Finance and Economy on 12 May 2021, i.e. outside the reference period). The Government did not provide information on arbitration procedures in collective labour disputes.

The Committee asks for up-to-date and detailed information in the next report on the use of arbitration for the resolution of collective labour disputes, and in particular on the conditions and the procedure for compulsory arbitration. In the meantime, the Committee reiterates its conclusion of non-conformity.

### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 6§3 of the Charter on the ground that the circumstances in which compulsory arbitration is permitted go beyond the limits set by Article G of the Charter.

## **Article 6 - Right to bargain collectively**

### *Paragraph 4 - Collective action*

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

The Committee recalls that no targeted questions were asked for Article 6§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee also recalls that in the General Introduction to Conclusions 2018, it posed a general question under Article 6§4 and asked States to provide, in the next report, information on the right of members of the police to strike and any restrictions.

In its previous conclusion, the Committee considered that the situation in Albania was not in conformity with Article 6§4 of the Charter on the grounds that i) civil servants were denied the right to strike and ii) employees in electricity and water supply services were denied the right to strike (Conclusions 2010). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

### ***Right to collective action***

#### ***Entitlement to call a collective action***

In its previous conclusion, the Committee asked whether only the trade union having the largest number of members at enterprise, sectoral or industry level could call a strike and reserved its position on this point. It also asked whether the law permitted a strike only where conciliation procedures had failed or if a strike could still proceed where there was a merely partial resolution of the dispute and reserved its position on this point.

The Government provides no information in the report. The Committee therefore reiterates its questions and points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§4 of the Charter.

#### ***Restrictions to the right to strike, procedural requirements***

In its previous conclusion, the Committee considered that the situation was not in conformity with Article 6§4 of the Charter on the grounds that civil servants and employees in electricity and water supply services were denied the right to strike. In addition, the Committee asked whether the strike ban in air traffic control, fire protection and prison services extended to all employees in these sectors or only to staff essential for maintaining necessary services and reserved its position on this point. It also asked what were the criteria used to determine whether a minimum service needs to be introduced and what would be its scope, what were the sectors concerned and who was responsible to decide on their necessity and scope.

The Government provides no information in the report. The Committee notes from other sources that according to Law No. 152 of 30 May 2013 on Civil Servants, they have the right to strike, unless otherwise provided for by law. There is a strike ban in the area of essential services of the State activity such as transport, public television, water, gas and electricity, prison administration, administration of justice system, national defence services, emergency medical services, food supply or air traffic control.

The Committee notes that although under the current legislation civil servants in general are entitled to strike, in the essential sectors there still is a ban to strike. In these circumstances, the Committee concludes that the situation is not in conformity with Article 6§4 of the Charter

on the ground that employees in electricity, water supply services, air traffic control, fire protection and prison services are denied the right to strike.

### ***Consequences of strikes***

In its previous conclusion, the Committee asked what authority decided on the lawfulness of a strike, whether dismissal was only possible after the employer had notified the workers and/or the trade unions of the unlawfulness of the strike and requested the worker concerned to resume work and when the three days time period for resuming work started to run.

The Committee notes that no information is provided and reiterates its questions. Should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§4 of the Charter.

### ***Right of the police to strike***

The Committee notes that the Government has not answered the general question asked in the General Introduction to Conclusions 2018. It therefore reiterates its question and requests that the next report provide information on the right of members of the police to strike and any restrictions.

### ***Covid-19***

In the context of the Covid-19 crisis, the Committee asked all States to provide information on:

- specific measures taken during the pandemic to ensure the right to strike;
- as regards minimum or essential services, any measures introduced in connection with the Covid-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.

The Committee notes that the Government has not provided the requested information.

The Committee points out that in its Statement on Covid-19 and social rights adopted on 24 March 2021, it specified that Article 6§4 of the Charter entails a right of workers to take collective action (e.g. work stoppage) for occupational health and safety reasons. This means, for example, that strikes in response to a lack of adequate personal protective equipment or inadequate distancing, disinfection and cleaning protocols at the workplace would fall within the scope of the protection afforded by the Charter.

### ***Conclusion***

The Committee concludes that the situation in Albania is not in conformity with Article 6§4 of the Charter on the ground that employees in electricity, water supply services, air traffic control, fire protection and prison services are denied the right to strike.

## **Article 21 - Right of workers to be informed and consulted**

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 21 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee deferred its conclusion pending receipt of the information requested (see Conclusions 2010). The assessment of the Committee will therefore concern the information provided by the Government in response to the deferral, questions raised in its previous conclusion, and to the targeted questions.

The Committee recalls that Article 21 secures the right of workers to information and consultation within the undertaking, so that they are enabled to influence the company decisions which substantially affect them and that their views are considered when such decisions are taken, such as changes in the work organisation and in the working conditions.

Prior to this cycle, the Committee has not been able to carry out a comprehensive assessment of the Albanian legal framework regulating the right of workers to information and consultation within the undertaking. In 2007 and 2010, when Albania submitted its reports, the Committee deferred its conclusions due to the lack of essential information (Conclusions 2007 and 2010). In 2007 the Committee noted that the rules on the right of workers to be informed and consulted were contained both in collective agreements and in legislation and it requested information on these rules. The information was not provided for the 2010 examination cycle and the Committee pointed out that should the next report fail to provide it, there would be nothing to show that the situation in Albania was in conformity with Article 21 of the Revised Charter (Conclusions 2010). No report was submitted in 2014 and 2018. In the light of the fact that the present report still does not contain information on the relevant legal framework, the Committee concludes that it has not been established that the situation is in conformity with the Charter on this point.

The Committee has also previously requested information on the personal and material scope of the right to information and consultation within an undertaking (Conclusions 2010). It asked, in particular, whether the personal scope is restricted to undertakings with at least 50 employees and, if so, how is any threshold calculated. As to the material scope, the Committee noted that employers must inform trade union representatives in writing about any matter regarding the company’s financial situation or about decisions which may have an impact on employee’s jobs. It asked about the applicable procedures in this respect (Conclusions 2010). In the light of the lack of information on these two aspects, the Committee considers that it has not been established that the personal and material scope of the right to information and consultation within an undertaking is in conformity with Article 21 of the Charter.

The Committee has also previously requested information on sanctions or remedy available where employers have failed to respect their employees’ right to be informed and consulted (Conclusions 2010). The Committee asked what remedies, besides applying to the court of arbitration, had workers or workers’ representatives who considered that their right to information and consultation under Article 21 of the Revised Charter had been infringed, particularly with regard to information considered by employers to be confidential. It also asked what maximum fine the court of arbitration might impose where there had been an infringement of a collective agreement. This report does not include this information. Therefore, the Committee concludes that it has not been established that the situation is in conformity with the Charter on these points.

For this examination cycle, the Committee requested information on specific measures taken during the Covid-19 pandemic to ensure the respect of the right to information and consultation. It requested, in particular, specific reference to the situation and arrangements

in the sectors of activity hit worst by the crisis, whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The Committee notes that the report does not reply to this question. The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers' organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers' representatives in terms of Article 21 of the Charter.

### *Conclusion*

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

- the legal framework effectively secures the right of workers to information and consultation within an undertaking;
- personal and material scope of the right to information and consultation within an undertaking comply with the requirements of the Charter;
- there are effective sanctions and remedy available when employers have failed to respect their employees' right to be informed and consulted.



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

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 22 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

The Committee recalls that Article 22 secures the right of workers to participate, by themselves or through their representatives, in the shaping and improvement of their working environment.

In its previous conclusion, the Committee found that the situation in Albania was not in conformity with Article 22 of the Charter on the ground that it had not been established that employees were granted an effective right to participate in the decision-making process within the undertaking concerning the matters referred to in this Article. The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and questions raised in its previous conclusion, and to the targeted questions.

In its previous conclusion, the Committee asked what proportion of workers in the private and public sector were covered by collective agreements granting the right to participation in the improvement of working conditions and the working environments (Conclusions 2010). It further asked whether, according to national legislation or practice, undertakings employing fewer than a certain number of employees shall be excluded from the scope in this area. Since the report does not reply to these questions, the Committee recalls its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Albania is in conformity with Article 22 of the Charter in this respect.

In its previous conclusion (Conclusions 2010), the Committee considered that the situation was not in conformity with the Charter on this point, in the absence of any reform or measures envisaged to increase the effective participation by employees in the determination and improvement of working conditions or in the decision-making regarding the protection of health and safety within the undertaking. The report does not provide any information in this respect and the Committee reiterates its conclusion on non-conformity.

In its previous conclusion (Conclusions 2010), the Committee asked for information on practical arrangements for decision-making relating to access to socio-cultural services or any obligation on the part of the employer to provide these activities, since collective agreements did not provide for worker participation in the organisation of social and socio-cultural services and facilities within the undertaking. The report does not reply to this question and the Committee recalls its request. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Albania is in conformity with Article 22 of the Charter in this respect.

In its previous conclusion (Conclusions 2010), the Committee asked about the amount maximum fine the Labour Inspectorate (or the body responsible for the effective supervision of all the rules relating to participation in the determination and improvement of working conditions) might impose where there has been an infringement of a collective agreement. The report does not reply to this question and the Committee recalls its request. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Albania is in conformity with Article 22 of the Charter in this respect.

For this examination cycle, the Committee requested information on specific measures taken during the pandemic to ensure the respect of the right to take part in the determination and

improvement of the working conditions and working environment. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The report provides that the Employees' Organization has undertaken a project related to the Empowerment of Women against Covid-19 in the Fashion ("Façon") Sector (clothing and footwear industry) in the form of a survey of several companies to assess the impact of the Covid-19 pandemic on their operations in Albania. The sectors were selected based on the strategic importance of the sector, crisis sensitivity and representativeness in the surveyed sample. The first objective of the project was to provide direct financial assistance to 450 women who had always been employed in the fashion sector but their employment was terminated due to the pandemic. The second objective was to provide technical and financial assistance to selected economies in the fashion sector, to implement safeguards and ensure occupational health.

### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 22 of the Charter on the ground that employees are not granted an effective right to participate in the decision-making process concerning the shaping and improvement of their working environment.

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

### *Paragraph 1 - Sexual harassment*

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 26§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee concluded that the situation in Albania was in conformity with Article 26§1 of the Charter, pending receipt of the information requested (Conclusions 2010).

The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion, and to the targeted questions.

### **Prevention**

For this monitoring cycle, the Committee welcomed information on awareness raising and prevention campaigns as well as on action to ensure that the right to dignity at work is fully respected in practice.

Moreover, in its previous conclusion, the Committee particularly asked for information on any preventive measures to raise awareness about the problem of sexual harassment in the workplace (Conclusions 2010).

The report provides no information on this point.

The Committee recalls that Article 26§1 requires States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment. In particular, in consultation with social partners (Conclusions 2005, Lithuania), they should inform workers about the nature of the behaviour in question and the available remedies (Conclusions 2003, Italy).

The Committee reiterates its request for information on awareness raising and prevention campaigns as well as on any action to ensure that the right to dignity at work is fully respected in practice. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Albania is in conformity with Article 26§1 of the Charter on this point.

The Committee further asks whether, and to what extent, the employers' and workers' organisations are consulted on measures to promote awareness, knowledge and prevention measures in relation to sexual harassment at the workplace or in relation to work, including when working online/remotely.

### **Liability of employers and remedies**

In a targeted question, the Committee asked for information on the regulatory framework and any recent changes in order to combat sexual abuse in the framework of work or employment relations.

The report indicates that under Article 32(2) of the Labour Code, as amended in 2015, the employer is prohibited from taking any action that constitutes sexual harassment against employees and shall not allow such actions to be carried out by other employees. Sexual harassment is defined as any unwanted form of behaviour expressed in words or physical and symbolic actions of a sexual nature, which is intended or results in the violation of personal dignity, in particular when it creates a threatening, hostile, humiliating environment,

contemptuous or offensive, carried out by the employer against an employee, a jobseeker for work or between employees.

The report further indicates that the Ministry of Finance and Economy in coordination with the Ministry of Europe and Foreign Affairs and the Ministry of Justice has drafted the draft-decision on the proposal of the draft-law "On the Ratification of Convention 190 "Convention on Violence and Harassment" and Recommendation 206 "Recommendation on Violence and Harassment". The report states that at the time of drafting, the above mentioned draft-decision has been sent to the Albanian Council of Ministers for approval. The Committee notes that on 6 May 2022 Albania ratified the ILO Convention No. 190 on the elimination of violence and harassment in the world of work and the Convention will enter into force on 06 May 2023.

The Committee noted previously that sexual harassment also qualifies as a crime under the Albanian Criminal Code (Conclusions 2010).

The Committee notes in the *Country report on gender equality 2021* of the European network of legal experts in gender equality and non-discrimination that Article 18(1) of the Law on gender equality in society (Law No. 9970/2008, LGE) provides that any discrimination, harassment or sexual harassment in the workplace committed by the employer and/or employee, is prohibited. The employer has the obligation to protect the employees from sexual harassment and is responsible for taking preventive measures and determining disciplinary sanctions in the internal regulations to prevent sexual harassment, to take actions to stop the continuation of harassment and apply the disciplinary sanctions as well as to inform all the employees on the prohibition of harassment (Article 18 (2) of the LGE). The Committee further notes in the same report that Article 12(2) of the Law on protection from discrimination (Law No. 10221/2010, LPD) explicitly prohibits every kind of harassment, including sexual harassment, by an employer against an employee or an applicant for work or between employees (Article 12(2) of the LPD).

In its previous conclusion, the Committee noted that in practice sexual harassment remained widely unreported. It asked that the next report provide figures on the cases brought before the administrative bodies or the courts (Conclusions 2010).

The current report provides no information on such cases in response to the Committee's previous request. The report mentions that difficulties are encountered by employees when denouncing/reporting cases of sexual harassment at work and when proving such cases because most facts are verbal and difficult to document. The report further states that only few claims have been filed.

The Committee notes that according to the findings of GREVIO's (Baseline) Evaluation Report Albania (2017), the Commissioner for Protection against Discrimination, whose competence to handle cases of sexual harassment is based on the aforementioned Law No. 10 221/ 2010, has not as yet been requested to tackle this issue. Moreover, GREVIO found that recent studies on levels of sexual harassment in public administration show that the problem exists but that victims face considerable resistance to report it. The same report indicates that awareness on available mechanisms of redress is limited and victims stay silent for fear of damaging repercussions, including job loss.

The Committee recalls that workers must be afforded an effective protection against harassment (Conclusions 2003, Bulgaria; Conclusions 2005, Republic of Moldova). This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights (Conclusions 2007, Statement of Interpretation on Article 26).

Noting the lack of information on the cases brought before the administrative bodies or the courts, the Committee considers that the situation in Albania is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that workers are afforded sufficient and effective remedies against sexual harassment in relation to work.

In its previous conclusion, the Committee asked that the next report provide information as regards burden of proof (Conclusions 2010).

The report indicates that Article 32 (5) of the Labour Code, as amended in 2015, provides that “the employee who complains that he/she has been harassed (...) shall present facts proving his/her harassment and then the person to whom the complaint is addressed shall prove that his/her actions did not aim to harass, and to indicate the objective elements that are not related to harassment or disturbance.”

### **Damages**

In a targeted question, the Committee asked whether any limits apply to the compensation that might be awarded to the victim of sexual harassment for moral and material damages.

The report indicates that the labour legislation does not stipulate any regulation for compensation, even in cases when it can be proven that it is a case of sexual or moral harassment of employees.

The Committee asks whether other applicable laws (e.g. LPD, LGE or the Civil Code) provide for any type of redress or compensation to victims of sexual harassment in the framework of work.

The Committee notes in the *Country report on gender equality 2021* of the European network of legal experts in gender equality and non-discrimination that Articles 37(1)(3) and 38 of the LPD provides for the right of the court to decide on an indemnification if it finds that there is a violation of the LPD; the imposition of measures according to the LPD does not exclude the imposition of measures according to other laws; indemnification includes, among other things, the correction of the legal violations and their consequences through return to the prior situation, appropriate compensation for the property and non-property damages or through other appropriate measures. The Committee asks whether the provisions of Articles 37(1) and 38 of LPD are applicable in cases of sexual harassment in relation to work and information on court cases where compensation was granted to victims of sexual harassment.

Meanwhile, the Committee reserves its position on this point.

### **Covid-19**

In a targeted question, the Committee asked for information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards sexual harassment. The Committee welcomed specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers. The report does not provide any information in response to the above-mentioned targeted question.

The Committee therefore reiterates its request for information on specific measures taken during the pandemic to protect the right to dignity in the workplace/when working remotely and notably as regards sexual harassment.

### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that workers are afforded sufficient and effective remedies against sexual harassment in relation to work.

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

### *Paragraph 2 - Moral harassment*

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 26§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee found that the situation in Albania was not in conformity with Article 26§2 of the Charter on the ground that it had not been established that effective protection of employees against any form of moral harassment was in place (Conclusions 2010).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and in response to the targeted questions.

### **Prevention**

For this monitoring cycle, the Committee welcomed information on awareness - raising and prevention campaigns as well as on action to ensure that the right to dignity at work is fully respected in practice.

Moreover, in its previous conclusions, the Committee particularly asked for information on any preventive measures taken to raise awareness about the problem of moral harassment in the workplace (Conclusions 2006, Conclusions 2010).

The report provides no information on this point.

The Committee recalls that Article 26§2 imposes positive obligations on States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment, in particular in situations where harassment is likely to occur. A failure to take any preventative action, training or awareness-raising in such situations may amount to a violation of Article 26§2. In particular, in consultation with the social partners, they should inform workers about the nature of the behaviour in question and the available remedies.

Given the repeated lack of information, the Committee concludes that the situation in Albania is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that appropriate prevention measures are in place against moral harassment in relation to work.

The Committee asks whether, and to what extent, employers' and workers' organisations are consulted on measures to promote awareness, knowledge and prevention measures in relation to moral (psychological) harassment in the workplace or in relation to work, including when working online/remotely.

### **Liability of employers and remedies**

In a targeted question, the Committee asked for information on the regulatory framework and any recent changes introduced in order to combat harassment in the framework of work or employment relations.

The report indicates that Article 32 of the Labour Code, as amended in 2015, provides for the protection of the employee's personality/dignity. Under this provision, the employer has the obligation to respect and protect the personality/dignity of the employee in the framework of work relations and he/she must prevent any attitude that threatens/violates the dignity of the employee.

The report further indicates that the employer is obliged to respect and protect the personality of the employee in the context of work, and take all necessary measures to stop moral harassment by him/her or other employees. The employer must display the rules on moral and sexual harassment and their respective sanctions (Article 32(1)(b) of the Labour Code).

Under Article 32(3) of the Labour Code, the employer is prohibited from harassing the employee with actions aimed at or resulting in the degradation of working conditions, to such a degree that it may lead to the violation of the rights and dignity of the person, to the impairment of his or her physical or mental health or to the detriment of his/her professional future.

The report further indicates that the Ministry of Finance and Economy, in coordination with the Ministry for European and Foreign Affairs and the Ministry of Justice, has prepared the draft decision on a proposal for a law on the ratification of Convention 190 on the elimination of violence and harassment in the workplace and Recommendation 206 on violence and harassment. The report states that, at the time of drafting, the above-mentioned draft decision has been sent to the Albanian Council of Ministers for approval. The Committee notes that, on 6 May 2022, Albania ratified the ILO Convention No. 190 on the elimination of violence and harassment in the world of work and the Convention will enter into force on 6 May 2023.

The Committee asked previously for information on the availability of legal remedies to the victims of harassment and information on the specialised services which register and investigate complaints of harassment (Conclusions 2006). In its previous conclusion, the Committee reiterated its questions and also asked for figures of cases brought before administrative bodies or courts (Conclusions 2010). The Committee concluded that the situation in Albania was not in conformity with Article 26§2 of the Charter on the ground that it had not been established that effective protection of employees against any form of moral harassment was in place (Conclusions 2010).

The report indicates that in respect of the few cases of harassment that have been filed, it was difficult to prove whether there was sexual or moral harassment.

The Committee takes note that, according to the *Country report on non-discrimination 2021* of the European network of legal experts in gender equality and non-discrimination, over a 10-year period (2010-2019), the Commissioner for Protection against Discrimination (CPD) has dealt with 24 cases of hate speech, and the CPD has found discrimination in the form of harassment in 40% of them.

Noting that the report states that there were only few cases of harassment filed and in the absence of any information proving that the situation has improved, the Committee considers that the situation in Albania is not in conformity with Article 26§2 of the Charter on the ground that workers are not guaranteed effective protection against moral harassment in relation to work.

With regard to the burden of proof, the report indicates that Article 32 (5) of the Labour Code, as amended in 2015, provides that “*the employee who claims that he/she has been harassed (...) shall present facts proving his/her harassment and then the person to whom the complaint is addressed shall prove that his or her behaviour was not intended to harass, and to indicate the objective elements that deny the harassment or nuisance.*”

### **Damages**

In a targeted question, the Committee asked whether any limits apply to the compensation that might be awarded to the victim of moral harassment for moral and material damages.

In its previous conclusion, the Committee asked to receive information on how the right of persons to effective reparation for pecuniary and non-pecuniary damage is guaranteed, including the right not to be retaliated against for upholding of these rights (Conclusions 2010).

The report indicates that the labour legislation does not stipulate any regulation for compensation, even in cases when it can be proven that it is a case of sexual or moral harassment of employees.

The Committee asks whether other applicable laws (e.g. the Law on protection from discrimination (LPD) or the Civil Code) provide for any type of redress or compensation to victims of moral harassment in the framework of work.

The Committee notes that according to the *Country report on non-discrimination 2021* of the European network of legal experts in gender equality and non-discrimination, Article 37(1) of the LPD provides that “the decision of the court sets the indemnification, if the court decides that there is a violation of this law, also including a time period for making the indemnification”. In Article 38, the LPD provides a definition of ‘indemnification’, which includes, among other things, the correction of the legal violations and their consequences through return to the prior situation, appropriate compensation for the property and non-property damages or through other appropriate measures. The Committee further notes from the same report that under Articles 37(1) and 38, the LPD sets the payment of compensation. There are no limits stipulated by law, and the amount of compensation fully depends on the court verdict. The Committee asks whether the provisions of Articles 37(1) and 38 of the LPD are applicable in cases of moral harassment in relation to work and information on court cases where compensation was granted to victims of moral harassment.

Meanwhile, the Committee reserves its position on this point.

### ***Covid-19***

In a targeted question, the Committee asked for information on specific measures taken during the pandemic to protect the right to dignity in the workplace. The Committee welcomed specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

The report does not provide any information in response to the above-mentioned targeted question. The Committee therefore reiterates its request for information on specific measures taken during the pandemic to protect workers' right to dignity in the workplace/when working remotely.

### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 26§2 of the Charter on the grounds that:

- it has not been established that appropriate prevention measures are in place against moral harassment in relation to work;
- workers are not guaranteed effective protection against moral harassment in relation to work.



## **Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them**

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

The Committee points out that no targeted questions were asked in relation to Article 28 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

In the previous conclusions (Conclusions 2010), the Committee considered that the situation in Albania was not in conformity with Article 28 of the Charter on the ground that union representatives were protected against dismissal only until the end of their mandate. The Committee also notes that Albania did not submit its report on labour rights for the Conclusions 2018.

In the present conclusion, assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity.

### ***Protection granted to workers' representatives***

The Committee previously examined the situation regarding the protection granted to workers' representatives (Conclusions 2010). It took note that in Albania, union representatives are only protected against dismissal during the performance of their functions as workers' representatives, until their mandate expires. Recalling that the protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of period of their office, the Committee concluded that the situation in Albania was not in conformity with the Charter.

In the previous conclusion (Conclusions 2010), the Committee also asked for information on protection afforded to workers' representatives against prejudicial acts short of dismissal.

In reply, the report provides information on the legal obligations of employers in the framework of "collective dismissals" but does not provide any information on the protection specifically granted to workers' representatives.

Referring to its previous conclusion (Conclusions 2010), the Committee reiterates its request for information on measures taken or envisaged in order to extend the protection afforded to workers' representatives, for a reasonable period after the effective end of period of their office. It also reiterates its request for information on the protection of workers' representatives against prejudicial acts other than dismissal.

In the absence of a response to its questions in the previous conclusion, the Committee reiterates its conclusion of non-conformity in this respect.

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

In the previous conclusions (Conclusions 2010), the Committee referred to its 2010 Statement of Interpretation on Article 28 and asked that the next report provide information on facilities such as paid time off to represent employees, financial contributions to work councils, the use of premises and materials for works councils, as well as other facilities mentioned by the ILO R143 Recommendation concerning protection and facilities to be afforded to workers' representatives.

The report provides no information on these aspects. The Committee reiterates its request and considers that there is nothing to establish that appropriate facilities are granted to workers' representatives.

### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 28 of the Charter on the grounds that:

- the protection granted to workers' and union representatives against dismissal is not extended for a reasonable period after the end of their mandate;
- there is nothing to establish that appropriate facilities are granted to workers' representatives.

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

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

The Committee points out that no targeted questions were asked in relation to Article 29 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

In the previous conclusions (Conclusions 2010), the Committee concluded that, pending receipt of information requested (concerning sanctions and preventive measures), the situation in Albania was in conformity with Article 29 of the Charter.

In the present conclusion, assessment of the Committee will therefore concern the information provided by the Government in response to the questions raised in the previous conclusion (Conclusions 2010).

### ***Definitions and scope***

The report explains that according to Article 148 of the Labour Code, the collective dismissal from work shall be considered to be the termination of labour relations by the employer for reasons that are not related to the employees, when the number of dismissals from work within 90 days is at least 10 for enterprises employing up to 100 employees; 15 for enterprises employing 100 to 200 employees; 20 for enterprises employing more than 200 employees.

The Committee understands that the legislative provisions in this respect have not been amended since 2010 (see, Conclusions 2010).

### ***Prior information and consultation***

The report submits that when the employer plans to execute collective dismissals, they are obliged to inform in writing the employees' organisation recognised as the representative of the employees. In the absence of an employees' organisation, the employer informs his/her employee through advertisements put up at the workplace, which are readily visible. The notice must contain, in particular, the reasons for the dismissal, the number of the employees to be dismissed, the number of the employees normally employed, as well as the time during which it is planned to execute these dismissals. The employer submits to the Ministry of Labour and Social Affairs a copy of this notice.

The employer carries out consultations with the employees' organisation, recognised as the representative of the employees, for the purpose of reaching an agreement. In the absence of this, the employer gives the opportunity to the employees to participate in the consultations. They are made in order to take measures to avoid or reduce the collective dismissals from work and to soften their consequences. The consultations are made within 30 days, starting on the day of notice, except in cases where the employer accepts a longer duration. The employer informs in writing the Ministry of Labour and Social Affairs concerning the completion of the consultations and sends a copy of this notice to the concerned party. If the parties have failed to agree, the Ministry of Labour and Social Affairs helps them to reach an agreement within 30 days, starting from the day of notice as defined by this point, except in cases where the employer accepts a longer duration. According to the report, the Ministry of Labour and Social Affairs cannot stop the collective dismissal from work.

The Committee notes that the above information differs from the information provided for the 2010 Conclusions on two points in particular: the duration of the consultations is now 30 days (instead of 20) and the new information submitted in the report specifies that the Ministry cannot stop the collective redundancy. The Committee wishes to be informed on any

legislative amendment together with an explanation on the reasons of these amendments concerning the prior information and consultations in this respect. In particular, the Committee requests more detailed information on possible measures that can be taken by the Ministry in cases where a collective dismissal is not reasonably justified.

### ***Sanctions and preventative measures***

According to the report, the employer failing to respect the procedure of collective dismissal from work is obliged to pay the employee a damage, which equals up to six months of salary, and is added to the wage during the notice period.

The Committee observes that the legislative provisions in these respects have not been amended since the previous conclusion (Conclusions 2010). The report adds that the employer should give priority to the reemployment of the employees dismissed from work for reasons that do not relate to the employees (in case of several candidates with comparable qualifications).

The report does not provide any answer to the question previously put by the Committee (Conclusions 2007 and 2010) on whether there are any preventative measures in place to ensure that the employer does not fail in his/her duty to consult the employers' representatives in this procedure. The Committee reiterates its question and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Albania is in conformity with the Charter in this respect.

### ***Covid-19***

The report states that during the Covid-19 pandemic, businesses did not comply with the legal provisions on collective dismissals, but often, in agreement between the parties, made a partial suspension and applied for social support for employees or transferred the workforce to businesses that had continuity of work, solvency, supply of goods etc.

The Committee reiterates that the Covid-19 crisis cannot be an excuse for not respecting the important role of social dialogue in finding solutions to the problems caused by the pandemic that also affect the workers. The Committee asks that the next report provide information on the number of cases brought before the courts during the pandemic concerning failure to respect consultation procedures in the collective redundancies. It also asks information on specific measures, if any, taken to ensure that the collective redundancy procedures are effectively respected in practice.

### ***Conclusion***

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

### ***Dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter***

Article 2§1 of the 1961 European Social Charter, and the Revised European Social Charter provides that the Contracting Parties, with a view to ensuring the effective exercise of the right to just conditions of work, undertake "to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit".

The European Committee of Social Rights has ruled in the past on this provision and in particular on the guarantees provided for on-call duty, those periods during which the employee, without being at his place of work and without being at the permanent and immediate disposal of the employer, must be contactable and able to intervene in order to carry out work for the company.

The Committee examined their legal regime through the two systems for monitoring the compliance with the European Social Charter. On the one hand, four decisions on the merits, under the collective complaints procedure have been adopted: decision on the merits of 12 October 2004, *Confédération française de l'Encadrement CFE-CGC v. France*, Collective Complaint No. 16/2003; decision on the merits of 8 December 2004, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No. 22/2003; decision on the merits of 23 June 2020, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No 55/2009; decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No 149/2017.

On the other hand, directly or indirectly, 68 conclusions on the reporting system, of which 35 were of non-conformity, have been adopted (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3, Conclusions 2013, Conclusions 2011, Conclusions 2010, Conclusions XVIII-2, Conclusions 2007, Conclusions XVII-1, Conclusions XVI-2, Conclusions XVI-1).

As a result of this consolidated case law, the Committee has focused its attention on on-call periods, in order to decide whether or not article 2§1 of the European Social Charter has been complied with, or violated, on two specific points that it has clearly identified in this respect:

1°. On one hand, on the payment to the on-call employee of a compensation, either in financial form (bonus) or in the form of rest, in order to compensate for the impact on his/her ability to organise his private life and manage his personal time in the same way as if he/she was not on call.

2°. On the other hand, on the minimum duration of the compulsory daily and/or weekly rest period which all States must respect and which all workers must enjoy. It is common for employees to start their on-call period, totally or partially, at the end of their working day and end it at the beginning of the next working day. Even if the employee is not required to carry out actual work, the consequence is that he/she will not have had his/her rest time at his/her disposal in full freedom or without any difficulty, i.e. the conditions and purpose of the minimum rest period are difficult to achieve *stricto sensu*.

In this perspective, I would like to emphasise the two effects mentioned which impact on two different elements of the employment relationship (salary and minimum rest period). States often integrate them together into one, so that the payment of a bonus is the most usual (only) remedy (compensation for the first effect) and the legal assimilation of the on-call period without carrying out actual work to rest time (i.e. it has no consideration for the second effect).

The case law that the ECSR has adopted in recent years has considered both effects separately. Both must be valued and respected at the same time. On one hand, the availability of the employee to intervene must be compensated. On the other hand, the consequences for the minimum period of compulsory rest must be considered. For this reason, in the four

decisions on the merits mentioned above, France was condemned for the violation of article 2§1 of the revised European Social Charter. As far as France is concerned, even though Article L3121-9 of the Labour Code provides that "the period of on-call duty shall be compensated for, either financially or in the form of rest", it should be noted that considering on-call duty without intervention for the calculation of the minimum daily rest period undermines the second condition. Indeed, it is necessary to point out that the ECSR specified in the last decision on the merits that this considering will involve a violation of the provision if it is "in its entirety" (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017).

In the 2022 conclusions, on-call duty was specifically examined. The Committee requested information on the legislation and practice regarding working time, on-call duty and how inactive periods of on-call duty were treated in terms of working time and rest and their remuneration.

It should be noted that most responses did not answer in the affirmative. In other words, the State reports did not inform the Committee simply that "on-call time is working time or rest time". However, the answers had a negative meaning, i.e., the responses stated verbatim that on-call duty "is not considered as working time".

The majority of the Committee felt that this information did not answer the question asked and decided to defer most of the conclusions.

I regret that I am unable to agree with these conclusions. I will explain my reasons below. Firstly, I consider that the negative responses from the Member States provide sufficient information on the legislative frameworks in place regarding the inclusion of on-call duty in daily or weekly rest periods. In my opinion, it is meaningless not to examine or value the replies, because the sentence "on-call duty is rest time" is not transcribed positively, but "on-call duty is not working time" is transcribed negatively. I believe that the Committee has sufficient information to assess conformity or non-conformity.

In my view, the consequences of not assessing this information are remarkable. Firstly, it encourages States not to provide the information within the time limits set by the Committee and to take advantage of an attitude that, in addition, does not comply with an obligation that they know perfectly well and that they have become accustomed to not fulfilling.

Secondly, it should be remembered that the legal interpretation of the European Social Charter goes beyond a textual interpretation. It is a legal instrument for the protection of human rights which has binding force. A treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Art. 31 Vienna Convention on the Law of Treaties). In the light of the Charter, it means protecting rights that are not theoretical but effective (*European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia*, Collective Complaint No. 53/2008, decision on the merits of 8 September 2009, §28). As such, the Committee has long interpreted the rights and freedoms set out in the Charter in the light of current reality, international instruments and new issues and situations, since the Charter is a living instrument (*Marangopoulos Foundation for Human Rights v. Greece*, Collective Complaint No. 30/2005, decision on the merits of 6 December 2006, §194; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Collective Complaint No. 39/2006, decision on the merits of 5 December 2007, §64 and *ILGA v. Czech Republic*, Collective Complaint No. 117/2015, decision on the merits of 15 May 2018, §75).

Finally, in the event that the Committee does not have all the relevant information, in my view it should take the most favourable meaning for the social rights of the Charter. In other words, States must provide all the information, which becomes a more qualified obligation when this information has been repeatedly requested. Furthermore, I would like to point out that this

information was requested in previous Conclusions (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3). Therefore, the States were obliged to provide all the information that the Committee has repeatedly requested.

In view of the above arguments, my separate dissenting opinion concerns, firstly, those deferred conclusions by the majority of the Committee members regarding the States which, on one hand, replied that on-call duty "is not working time", and then that they take it into account in the minimum rest period which every employee must enjoy. These include Belgium, Bosnia and Herzegovina, Finland, Germany, Italy, Lithuania, North Macedonia, Malta, Montenegro, Slovak Republic and Spain. Similarly, on the other hand, it concerns States that did not respond or did so in a confused or incomplete manner. These are Albania, Estonia, Georgia, Hungary, Ireland, Latvia and the Republic of Moldova. It follows from all the above considerations that the conclusions in relation to all these States should be of non-conformity.

Secondly, my separate dissenting opinion also concerns the "general" findings of conformity with Article 2§1 of the Charter reached by the majority of the Committee in respect of four States. More specifically, with regard to Andorra, the report informs about the on-call time. It "is not considered as actual working time for the purposes of calculating the number of hours of the legal working day, since it does not generate overtime. Nevertheless, it is not considered as rest time either, it being understood that in order to comply with the obligation to benefit from at least one full day of weekly rest, the worker must be released from work at least one day in the week - of course from actual work, but also from the situation of being available outside of his working day-". The document expressly states that one day of weekly rest is respected in relation to on-call duty, but it does not communicate anything about the respect of daily rest (except for a mention of the general minimum duration of 12 hours). In relation to Greece, the report informs that the provisions of labour law do not apply to on-call duty without intervention since, even if the worker has to remain in a given place for a certain period of time, he/she does not have to be physically and mentally ready to work. As regards Luxembourg, the document informs that on-call duty is not working time. Finally, as regards Romania, the report informs, first of all, that Article 111 of the Labour Code, considers the period of availability of the worker as working time. However, immediately, on the organisation and on-call services in the public units of the health sector, informs that on-call duty is carried out on the basis of an individual part-time work contract. On-call hours as well as calls received from home "must be recorded on an on-call attendance sheet, and 'only' the hours actually worked in the health facility where the call is received from home will be considered as on-call hours". Consequently, on the basis of this information, if there are no hours worked or calls, this time is not work. It follows from all the above considerations that the conclusions in relation to these four states should also be of non-conformity.

Thirdly, in coherence, my separate dissenting opinion also concerns the finding of non-conformity with regard to Armenia. This State has informed that the time at home without intervention should be considered as at least half of the working time (Art. 149 of the Labour Code). This legal regulation is in line with the latest case law of the Committee (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017). In my view, a positive finding on this point should be adopted expressly, independently of the finding of non-conformity on the daily working time of certain categories of workers.

Finally, I would like to raise two important questions following some of the answers contained in the reports. The first question relates to the governmental reports that have justified the national legal regime of on-call duty or non-compliance with previous findings of non-conformity on the basis of the judgments of the Court of Justice of the European Union, including some responses that challenge the Committee's ruling on "misinterpretation" of the Charter. These are Bosnia and Herzegovina, Spain, Italy, Ireland and Luxembourg. It is necessary to recall that the European Committee of Social Rights has affirmed that "the fact that a provision complies with a Community Directive does not remove it from the ambit of the Charter and from the supervision of the Committee" (*Confédération française de*

*l'Encadrement (CFE-CGC) v. France*, Collective Complaint No. 16/2003, decision on the merits of 12 October 2004, §30). Furthermore, it stressed that, even if the European Court of Human Rights considered that "there could be, in certain cases, a presumption of conformity of European Union law with the Convention, such a presumption - even if it could be rebutted - is not intended to apply in relation to the European Social Charter". On the relationship between the Charter and European Union law, it pointed out that "(...) they are two different legal systems, and the principles, rules and obligations which form the latter do not necessarily coincide with the system of values, principles and rights enshrined in the former; (...) whenever it is confronted with the latter, the European Union will have to take account of the latter.) whenever it is confronted with the situation where States take account of or are constrained by European Union law, the Committee will examine on a case-by-case basis the implementation by States Parties of the rights guaranteed by the Charter in domestic law (*General Confederation of Labour of Sweden (LO) and General Confederation of Executives, Civil Servants and Clerks (TCO) v. Sweden*, Collective Complaint No. 85/2013, decision on admissibility and merits of 3 July 2013, §§72-74).

The second issue is that the Charter sets out obligations under international law which are legally binding on the States Parties and that the Committee, as a treaty body, has "exclusive" responsibility for legally assessing whether the provisions of the Charter have been satisfactorily implemented (*Syndicat CFDT de la métallurgie de la Meuse v. France*, Collective Complaint No. 175/2019, decision on the merits of 5 July 2022, §91).

These are the reasons for my different approach to the conclusions of Article 2§1 of the European Social Charter in relation to on-call duty.