March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

ANDORRA

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 Andorra, which ratified the Revised European Social Charter on 12 November 2004. The deadline for submitting the 15th report was 31 December 2021 and Andorra submitted it on 10 May 2022.

The Committee recalls that Andorra 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 2018).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2018) 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 1196th 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).

Andorra has accepted all provisions from the above-mentioned group except Articles 6§1, 6§2, 6§3, 6§4, 21, 22, 28 and 29.

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

The conclusions relating to Andorra concern 15 situations and are as follows:

– 9 conclusions of conformity: Articles 2§1, 2§2, 2§3, 2§4, 2§5, 2§6, 4§2, 4§5, 5,

– 3 conclusions of non-conformity: Articles 2§7, 4§3, 4§4.

In respect of the other 3 situations related to Articles 4§1, 26§1, 26§2, 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 Andorra under the Revised Charter.

The next report from Andorra 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.

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 Andorra.

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 found that the situation in Andorra was in conformity with Article 2§1 of the Charter, pending receipt of the information requested (Conclusions 2018). 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.

Measures to ensure reasonable working hours

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 provides statistical information on the activities of the Labour Inspectorate concerning the violation of general working conditions and sanctions imposed. In 2017, there were 112 inspections, 67 sanctions were imposed, totalling €347,012; in 2018, 115 inspections, 84 sanctions amounting to €308,118; in 2019, 100 inspections, 63 sanctions for a total of €205,503; in 2020, 91 inspections, 29 sanctions making a total of €117,762. Most inspections in 2017 and in 2018 were carried out in the hotel trade sector, in 2019 in the commercial, hotel trade and construction sectors and in 2020 – in the hotel trade, commercial and industry sectors. The Committee asks whether all these inspections were related to the violation of working and resting time regulations.

In the absence of information provided, the Committee reiterates its request for updated information on the legal framework to ensure reasonable working hours and exceptions.

Law and practice regarding on-call periods

The Committee previously asked for information on whether periods of on-call duty, given that inactive periods of on-call duty were considered as a rest period, could exceed 16 hours within a period of 24 hours or, under certain conditions, over 60 hours in a week (Conclusions 2018).

The report states that under no circumstances may active working time exceed a maximum of 12 hours a day or 52 hours a week.

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 inactive on-call time outside of the employer's premises is not considered working time. However, it is also not considered as rest time. On-call time during which a worker has to stay at the employer's disposal has to be expressly defined in the contract of employment and it has to be paid by adding at least 25% to the basic salary.

The report provides no information on zero-hour contracts.

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 temporary suspension of employment contracts and reduction of working time was introduced as a response to Covid-19 but the salaries of those affected were maintained. Extraordinary paid leave was introduced for parents of children under 14 or children with disabilities who were impacted by the closure of schools and nurseries. Telework was also introduced.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 2§1 of the Charter.

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 Andorra.

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).

As the previous conclusion found the situation in Andorra to be in conformity with the Charter (Conclusions 2018), 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.

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

Conclusion

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

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 Andorra.

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).

As the previous conclusion (Conclusions 2018) found the situation in Andorra 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.

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report of Andorra.

The Committee recalls that no targeted questions have been asked in respect of Article 2§4 of the Charter. Only those states for which the previous conclusion had been one of non-compliance, deferral or compliance pending information were therefore required to provide information for this provision in the context of the present examination cycle (see the appendix to the letter by which the Committee requested a report on the implementation of the Charter with regard to the provisions of the "Labour Rights" thematic group).

The Committee had deferred its previous conclusion pending the requested information on the forms of compensation taken in the event of residual risks inherent in dangerous or unhealthy activities, as well as on the practice of possible adjustments (Conclusions 2018).

Elimination or reduction of risks

The Committee notes that it has previously considered the situation to be in conformity with the Charter (Conclusions 2018), and therefore reiterates its finding of conformity on this point.

Measures to be taken in case of residual risks

The Committee recalls that when risks have not yet been eliminated or sufficiently reduced despite the application of preventive measures, or in the absence of their application, the second part of Article 2§4 requires States to ensure that workers exposed to such risks are granted some form of compensation. The aim of these measures must be to provide the persons concerned with sufficient and regular rest periods to recover from the stress and fatigue caused by their activity and thus maintain their alertness or limit exposure to the risk.

In response to the Committee's questions, the report refers to previous reports which have indicated that it is the responsibility of the health ans safety prevention services, through risk assessments, to proceed to the elimination of risks related to dangerous or unhealthy activities or, failing that, where elimination has not been possible to assess the possibility of granting a reduction in working time or an extension of leave to workers who perform these types of activities. Additional rest periods due to the hazardous or unhealthy nature that could not be completely eliminated from certain work activities are not provided for by legislation but are decided on a case by case basis. The report ends by stating that in practice this has no impact in Andorra because these types of activities are very limited.

The Committee considers that, taking into account the fact that there are ad hoc assessments when necessary, and that it is rare that this happens in practice, that the situation is in conformity with the Charter in this respect.

Covid-19 related measures

No information was provided on measures taken during the Covid-19 pandemic in this field.

Conclusion

The Committee concludes that the situation in Andorra 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 Andorra 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 Andorra 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 Andorra.

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 Andorra 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 the special arrangements related to the pandemic, the report does not provide any information.

Conclusion

The Committee concludes that the situation in Andorra 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 Andorra.

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).

In its previous conclusion, the Committee considered that the situation in Andorra was not in conformity with Article 2§7 of the Charter on the ground that there was no provision in the legislation for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties or regular check-ups thereafter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity.

The report notes that the legislative provisions in question have not been amended during the reference period. Therefore, the Committee reiterates its previous conclusion.

Covid-19

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

Conclusion

The Committee concludes that the situation in Andorra is not in conformity with Article 2§7 of the Charter on the ground that there is no provision in the legislation for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties or regular check-ups thereafter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

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").

In its previous conclusion (Conclusions 2018) the Committee found that the situation was not in conformity with the Charter as the minimum interprofessional wage did not enable a decent standard of living.

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

In its previous conclusion the Committee found that the Minimum Interprofessional Wage (SMI) net of social contributions for workers older than 18 years was only 47.92% of the net average wage in 2016. Therefore, the Committee considered that the SMI did not ensure a decent standard of living.

According to the report the SMI was increased by 1.60% in 2017, 2.62% in 2018, 3.24% in 2019 and 3.14% in 2020. The Committee notes that in 2020 the gross average salary amounted to €2,161, whereas the SMI stood at € 1,083 or at 50.11% of the average wage. The Committee notes that as regards the net amounts, in both cases the social security contributions are set at 6.5%.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, 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 lies between 50% and 60% of the net average wage, it is for the State Party 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).

The Committee noted in its previous conclusions on Article 13§1 (Conclusions 2013 and 2017) that the Social Cohesion Economic Threshold (LECS) sets the minimum subsistence level at the same level as the minimum wage. Individuals whose income is below the LECS receive, by way of social assistance, a sum equivalent to the difference between their income and the said threshold. The Committee also noted however that employees on the SMI are not eligible for social assistance benefits, including the services, pecuniary benefits and social assistance programmes provided for in Law No. 6/2014 of 24 April 2014 on social and health services (see Conclusions 2017, Article 13§1), which allow income to be increased to the level of the LECS. However, according to the report, housing aid could be available for persons with an income higher than the personal LECS on certain conditions. The Committee asks the next report to provide more precise information concerning additional benefits, such as housing allowance that would be available for persons earning the minimum wage, to demonstrate that the minimum wage, together with these benefits can enable a decent standard of living. In the meantime, the Committee reserves its position on this issue.

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 notes from the report that for workers in atypical jobs in the gig or platform economy there are two recruitment options: by contract or by agreement. In case an employment contract is concluded, the general provisions of the Labour Code apply and in the case of an agreement, the provisions of the Civil Code apply.

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 and 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 notes that the report does not provide this information.

The Committee recalls that in the context of the Covid-19 pandemic, States Parties must devote the 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 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

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

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

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").

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted question.

Rules on increased remuneration for overtime work

Previously, having regard to the fact that the employees who hold positions of trust could not be subjected to strict working time limits, the Committee asked what were the criteria set up by case-law for determining whether the position was of trust and how many persons were holding positions of trust. The Committee also asked whether the civil division of the High Court of Justice has dealt with cases of this kind (Conclusions 2018).

The report states that a position of trust is exercised with full decision-making powers in the field of the specific commercial activity entrusted to it and is characterised by freedom of action, full responsibility and remuneration. According to case-law, if the remuneration of a person is lower than the average salary, it cannot be concluded that a person holds a position of trust. A technical operator who became a team leader was not recognised as holding a position of trust because although he had some autonomy, he depended on the orders and instructions of the head of the department. The report states that there is no information on the number of persons holding positions of trust in Andorra.

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 no new measures have been adopted.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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 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").

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 2018).

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

In its previous conclusion (Conclusions 2018), the Committee requested information about how the right to equal pay between women and men was regulated by the legislation and whether direct and indirect discrimination was prohibited. It also asked whether the law defined the concepts of "equal work" and "work of equal value".

In response, the report states that Law No. 13/2019 on equal treatment and non-discrimination was adopted on 15 February 2019 and entered into force on 21 March 2019. It defines the principle of equal pay between men and women. According to Article 13(1), this principle "entails an obligation to provide the same remuneration, whatever the nature of this remuneration, for work of equal value, without any form of discrimination against women regarding the elements or conditions of the work in question". According to the report, different types of work are deemed to be of equal value if they require comparable occupational or professional knowledge and skills, effort and capabilities, and are also comparable in terms of level of responsibility and physical, mental and psycho-social demands.

The report also states that Industrial Relations Law No. 31/2018 of 6 December 2018 as amended by the aforementioned Law No. 13/2019 explicitly states that women must not be discriminated against in relation to the elements or conditions of their remuneration.

In its previous conclusion (Conclusions 2018 and 2014 on Article 4§3, Conclusions 2020 on Article 20), the Committee asked whether domestic law prohibited pay discrimination in collective agreements. The report does not provide the requested information. The Committee therefore finds that the situation is not in conformity with Article 4§3 of the Charter on the ground that it has not been established that domestic law prohibits pay discrimination in collective agreements.

Effective remedies

In its previous conclusions (Conclusions 2018 and 2014), the Committee asked for detailed information on case-law regarding the burden of proof in discrimination cases and any cases concerning equal pay taken before the courts.

The report states that Article 25 of Law No. 13/2019 on equal treatment and non-discrimination shifts the burden of proof in proceedings where the claimant alleges discrimination and provides evidence of it.

This law also includes a system of sanctions as a deterrent while also regulating, among other things, parallel criminal proceedings, the criteria for determining the severity of sanctions, the limitation period, cessation of liability and the sanction procedure.

The Committee asks whether the new Law No. 13/2019 of 15 February 2019 on equal treatment and non-discrimination sets a maximum limit on the compensation that can be paid in cases of gender-based pay discrimination. In the meantime, it reserves its position on this point.

Pay transparency and job comparisons

In its previous conclusion (Conclusions 2018 and 2014 on Article 4§3, Conclusions 2020 on Article 20), the Committee asked whether pay comparisons between companies were possible, particularly where pay levels were set centrally for several companies belonging to a holding company.

The report does not provide the requested information. The Committee therefore finds that the situation is not in conformity with Article 4§3 of the Charter on the ground that it has not been established that pay comparisons between companies are possible .

Statistics and measures to promote the right to equal pay

The Committee notes from the report that the pay gap was 23.45% in March 2020 (€559.54) and 26.67% in March 2021 (a difference of €695.26).

As Andorra 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 Committee's question, the report states that a study entitled "Covid in Andorra. Its impact on working-class economics" has been conducted. Based on pay data from March 2020 and March 2021, this study shows that the pandemic widened the pay gap between men and women in Andorra. The Committee notes that according to this study, the pay gap between men and women fluctuated between 18.36% and 23.23% during the worst months of the pandemic.

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

Conclusion

The Committee concludes that the situation in Andorra is not in conformity with Article 4§3 of the Charter on the grounds that:

- it has not been established that pay comparisons across companies are possible
- it has not been established that domestic law prohibits pay discrimination in collective agreements.

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 Andorra.

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 Andorra was not in conformity with Article 4§4 of the Charter (Conclusions 2018).

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 Andorra was not in conformity with Article 4§4 of the Charter on the ground that the amount of severance pay awarded on termination of the employment contract was insufficient for workers with less than three years of service (Conclusions 2018).

As noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. In the light of the information at the Committee´s disposal, the Committee considers that the situation in Andorra is unclear. The Committee therefore asks that the next report provide updated information on the notice periods and/or the level of compensation in lieu of notice in line with the Statement of Interpretation on Article 4§4 (2018).

Notice periods during probationary periods

The Committee previously considered that the situation was not in conformity with Article 4§4 of the Charter on the ground that the legislation made no provision for notice periods in the case of termination of employment during probationary periods (Conclusions 2018). The report states that Law 31/2018 does not provide for notice periods in the case of termination of employment during probationary periods. The Committee therefore reiterates its previous conclusion of non-conformity in this respect.

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 2018).

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 2018).

Circumstances in which workers can be dismissed without notice or compensation

The Committee previously considered that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

Conclusion

The Committee concludes that the situation in Andorra is not in conformity with Article 4§4 of the Charter on the ground that there is no notice period for workers on probation.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

The Committee recalls that no 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).

As the previous conclusion found the situation in Andorra 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 Andorra is in conformity with Article 4§5 of the Charter.

Article 5 - Right to organise

The Committee takes note that no information on Article 5 is provided in the report submitted by Andorra.

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 concluded that the situation in Andorra was in conformity with Article 5 of the Charter.

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 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. No information is provided on thi issue.

Restrictions on the right to organise

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 provides no information on this issue. The Committee recalls that it has previously found the situation in conformity with Article 5 of the Charter (most recently in the 2018 Conclusions). Therefore, it considers that the situation remains in conformity in this respect. However, it requests that the next report confirm that there are no 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.

Personal scope

As regards the right of members of the armed forces to organise, the Committee notes from other sources (andorrapartner.com)) that Andorra has no standing army, but has special forces which are part of the police corps. The Committee asks that the next report provide information on the right of members of the special forces to organise.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in Andorra is in conformity with Article 5 of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

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 considered that the situation in Andorra was in conformity with Article 26§1 of the Charter (Conclusions 2018).

The assessment of the Committee will therefore concern the information provided in the report 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.

The report indicates that the Law No 13/2019 of 15 February 2019 on equal treatment and non-discrimination provides, further to a proposal put forward by the Ministry of Social Affairs, for the launch of a series of specific campaigns aimed at the various target groups recognised as the most vulnerable (the unemployed, new arrivals, women; see Articles 31, 32 and 33). It also establishes the Equality Observatory (Article 29) tasked with collecting and analysing data, making resources available, conducting studies and carrying out assessments on equality and non-discrimination in Andorra (Article 29). Under Article 30 of this law, a comprehensive four-year plan for equal treatment and non-discrimination was to be adopted, bringing together various measures aimed at women and the most vulnerable groups. The plan will include a practical guide for professionals and will take account specific government programmes.

The report adds that Article 36 of Law No 13/2019 encourages citizen consultation and participation in this field via the Social Entities Platform and other organisations representing the social sector in Andorra.

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 sexual abuse in the framework of work or employment relations.

The report notes that the primary aim of Law No. 13/2019 on equal treatment and non-discrimination, adopted by the Andorran Parliament on 15 February 2019, is to act as the main framework governing equality and non-discrimination in Andorra (see information provided for Article 4§3).

Article 25 of the Law provides for the reversal of the burden of proof in proceedings where the complainant alleges that discrimination took place and provides documented evidence supporting that claim.

Damages

In its 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 does not provide any information in response to the targeted question. The Committee therefore reiterates its question and points out that if the next report does not include the necessary information, there will be nothing to establish that the situation in Andorra is in conformity with Article 26§1 of the Charter on this point.

Covid-19

In a targeted question, the Committee requested information on any specific measures taken during the pandemic to protect the right to dignity in the workplace, and notably with regard to sexual harassment. It asked for 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 states that the Government does not have the requested data.

Conclusion

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

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 Andorra.

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 considered that the situation in Andorra was in conformity with Article 26§2 of the Charter, pending receipt of the information requested (Conclusions 2018).

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

In its previous conclusion, the Committee asked for information on any preventive measures taken in respect of moral (psychological) harassment. It also asked whether, and to what extent, social partners were consulted on measures to promote awareness, knowledge and prevention measures vis-à-vis moral (psychological) harassment in the workplace (Conclusions 2018).

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.

The report indicates that Law 13/2019 of 15 February 2019 on equal treatment and non-discrimination followed up on a proposal put forward by the Ministry of Social Affairs to launch a series of specific campaigns aimed at the various groups known to be the most vulnerable (the unemployed, newcomers, women; see Articles 31, 32 and 33) and provided for the establishment of an Equality Observatory tasked with collecting and analysing data, providing resources and studies and carrying out assessments on equality and non-discrimination in Andorra (Article 29). Under Article 30 of the law, a comprehensive four-year equal treatment and non-discrimination plan was to be adopted, bringing together various measures aimed at women and the most vulnerable groups. The plan was required to include a practical guide for professionals and take account of specific government programmes.

The report adds that Article 36 of Law 13/2019 encourages consultation and citizen participation in this field through the Platform of Social Entities or any other type of organisation representing the Andorran social sector.

Liability of employers and remedies

With regard to the targeted question on the regulatory framework and any recent changes made, the report notes that the primary aim of Law 13/2019 on equal treatment and non-discrimination, adopted by the Andorran Parliament on 15 February 2019, is to act as the main framework governing equality and non-discrimination in Andorra (see information provided for Article 4§3).

Article 25 of the law provides for the reversal of the burden of proof in proceedings where the complainant claims discrimination took place and provides documented evidence supporting that claim.

Damages

In its targeted question, the Committee asked whether any limits applied to the compensation that might be awarded to victims of moral (or psychological) harassment for material and non-material damage.

The report does not provide any information on this point. The Committee therefore repeats its request and points out that if the next report does not include the necessary information, there will be nothing to establish that the situation in Andorra is in conformity with Article 26§2 of the Charter.

Covid -19

In its targeted question, the Committee requested information on any specific measures taken during the pandemic to protect the right to dignity in the workplace, particularly with regard to sexual, and moral (psychological) harassment. It asked for 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 states that the Government does not have the requested data.

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:

1º. 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.

2º. 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.