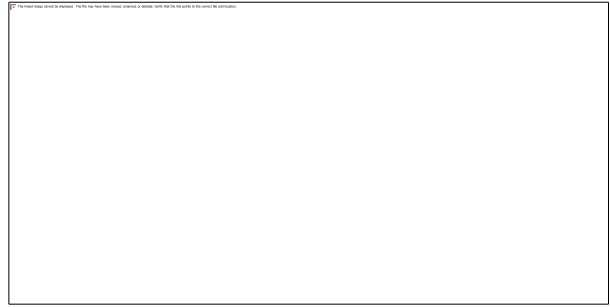


March 2023



EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

ARMENIA

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 Armenia, which ratified the Revised European Social Charter on 21 January 2004. The deadline for submitting the 16th report was 31 December 2021 and Armenia submitted it on 17 February 2022.

The Committee recalls that Armenia 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).

Armenia has accepted all provisions from the above-mentioned group except Articles 2§7, 4§1, 21, 26§1, 26§2 and 29.

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

The conclusions relating to Armenia concern 17 situations and are as follows:

– 6 conclusions of conformity: Articles 2§2, 2§3, 2§4, 2§5, 4§2, 22

– 9 conclusions of non-conformity: Articles 2§1, 2§6, 4§3, 4§4, 5, 6§1, 6§2, 6§4, 28.

In respect of the other 2 situations related to Articles 4§5, 6§3, the Committee needs further information in order to examine the situation.

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

The next report from Armenia 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 Armenia.

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 Armenia was not in conformity with Article 2§1 of the Charter on the ground that the daily working time of some categories of workers could be extended to 24 hours (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.

Measures to ensure reasonable working hours

The Committee notes that in its previous conclusion it found the situation in Armenia not to be in conformity with Article 2§1 of the Charter on the ground that the daily working time of some categories of workers could be extended to 24 hours (Conclusions 2018).

In reply, the report states that the Ministry of Labour and Social Affairs circulated a draft law providing for amendments to the Labour Code, according to which the duration of working time of certain categories of workers (for example, guards) was revised. This draft law provides for 12 hours of daily working hours. The Committee asks to be kept informed about the adoption of this draft law but notes that it has not been adopted yet, and reiterates its conclusion of non-conformity on the ground that the daily working time of some categories of workers can be extended to 24 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 states that in accordance with the Decision of the Prime Minister No. 755-L of 11 June 2018, the Health Inspection Body of the Ministry of Health was reorganised into the Health and Labour Inspection Body and its Statute was approved. According to the Statute, the aim of the Inspection Body is to ensure compliance with the requirements of the labour legislation and other regulatory legal acts containing provisions of labour law, collective agreements and employment contracts. Moreover, one of the objectives of the Inspection Body is the supervision of risk management in the field of labour law, including the protection of workers’ health and safety and compliance with the requirements of laws and other legal acts of the Republic of Armenia, as well as the implementation of preventive measures in the fields of safety assurance, protection of health and regulation of employment relations.

The report further states that on 29 April 2020, Law No. HO-237-N was adopted, under which the Code on Administrative Offences of the Republic of Armenia was supplemented by Article 230.1 Pursuant to it, the Inspection Body was granted the power to investigate the cases on administrative offences and to impose administrative penalties. Violation of the requirements of the labour legislation and other regulatory legal acts containing regulations of labour right entails the issue of a warning. If the same offence is committed repeatedly within one year, the employer is fined fifty times the prescribed minimum salary.

The Committee notes that no statistics is provided in the report on inspections, their prevalence by sector of economic activity and sanctions imposed. Therefore, it repeats its request for information.

Authorities' actions to ensure the respect of reasonable working hours and remedial action taken in respect of specific sectors of activity

In the targeted question, the Committee asked for specific information on proactive action taken by the authorities (whether national, regional, local and sectoral, including national human rights institutions and equality bodies, as well as labour inspectorate activity, and on the outcomes of cases brought before the courts) to ensure the respect of reasonable working hours; as well as for information on findings (e.g. results of labour inspection activities or determination of complaints by domestic tribunals and courts) and remedial action taken in respect of specific sectors of activity, such as the health sector, the catering industry, the hospitality industry, agriculture, domestic and care work.

In reply, the report states that after the Inspection Body was authorised to carry out supervision in the field of labour law, 95 complaints on violations of labour legislation were received, 15 of which concerned working and resting time violations. Administrative proceedings were also instituted on the basis of 15 complaints received by the Inspection Body on working and resting time violations. As a result of those, executive orders were issued, and the persons having committed the violations were held liable under administrative law.

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 on-call periods are provided for by Article 149 of the Labour Code. In particular, it is provided that to ensure workplace discipline within the organisation or the execution of urgent work in specific cases, the employer may engage the worker to carry out the duties at work or at home, at the end of the working day or on non-working holidays, public holidays and rest days not more often than once a month and, upon the consent of the worker – not more often than once a week. If the work is carried out at the end of the working day, the execution of the duty together with the regular working day may not exceed the duration of the working day (8 hours) and the duration of on-call periods on holidays, public holidays and rest days may not exceed 8 hours a day. The time of on-call period on the premises of the organisation should be considered as working time, and at home, it should be considered equivalent to at least half the working time. Workers under the age of 18 are not allowed to be on-call; pregnant women and workers taking care of a child under the age of 3 cannot be requested to be on-call without their formal consent.

The Committee notes that the report provides no information on zero-hour contracts and reiterates its request for information.

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 the definition of remote work was introduced. Moreover, if a worker did not work for a complete day because he or she had to take care of a child under the age of 12, such worker would still receive his/her full salary if the absence at work did not exceed 2 hours a day.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 2§1 of the Charter on the ground that the daily working time of some categories of workers can be extended to 24 hours.

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 Armenia.

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 (Conclusions 2018), the Committee considered that the situation in Armenia was in conformity with Article 2§2, pending receipt of the information requested (see below).

The report recalls that Article 156(2) of the Labour Code provides that work on public holidays (non-working holidays and commemoration days) is prohibited. It is exceptionally allowed in case of work which cannot be interrupted on technical grounds needed for providing services to the population as well as work involving urgent repair loading and unloading.

The Committee previously noted (Conclusions 2014) that, under Article 185 of the Labour Code, the work performed on rest days and non-working public holidays and commemoration days set by the law, shall be remunerated: (a) when it is not established in the work schedule, at least double the amount of the hourly (daily) pay rate or task rate, or the employee shall be provided with another paid rest day within a month, or that day shall be added to the annual leave; or (b) when it is established in the work schedule, at least double the amount of hourly (daily) pay rate or task rate. The remuneration of work performed on rest days, non-working public holidays and commemoration days shall be composed of the main salary and an additional remuneration equivalent thereto (supplement). Article 184 of the Labour Code provides for an additional supplement if the work is performed as overtime or at night. Consequently, the Committee found that this situation was in conformity with Article 2§2 of the Charter (Conclusions 2014).

Moreover, the Committee previously noted that Article 185(3) of the Labour Code (as amended) on remuneration for public holidays, commemoration days and rest days, provides that the requirements laid down in paragraphs 1 and 2 do not apply to persons working in health care, social work, child education, electricity, gas, heating, communications and other fields of a special nature, provided the work is performed for at least one out of five consecutive non-working days (public holidays, commemoration days, weekends). Consequently, the Committee asked for clarification as to whether the law provided for restrictive criteria defining the circumstances under which work on public holidays was permitted under Article 178§3 of the Labour Code. It also asked what additional remuneration, if any, was paid to workers in the above sectors who worked on public holidays.

In reply, the report indicates that this regulation applies if there are at least five consecutive non-working days in a row and when employees of these areas perform work on any of these days.

The report also indicates that Article 1 of the Law “on Public Holidays and Commemoration Days of the Republic of Armenia” was amended by the Law of the same title No. Ho-362-N adopted on 17 November 2021; it entered into force on 1 December 2021 (outside the reference period). According to this amendment, New Year and Christmas (which are non-working days) shall be celebrated from 31 December to 2 January (New Year) and on 6 January (Christmas and Epiphany). While according to the wording that was in force until 1 December 2021, New Year and Christmas holidays were celebrated from 31 December to 6 January.

The Committee notes from the report that, under the amended Law, there are three consecutive non-working days, and that Article 185(3) applies only to years in which two days of rest (weekend) follow or precede this period (from 31 December to 2 January).

The report emphasises that in all other cases, work performed on non-working public holidays and commemoration days is remunerated in accordance with Article 185 of the Labour Code, but the amount of additional pay for work performed on a non-working day in these cases is determined by agreement between the parties or by collective agreement. The Committee asks that the next report contain information on the situation in practice in these cases, including examples of the level of the increased pay rate determined by agreement between the parties or by collective agreement.

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 concludes that the situation in Armenia 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 Armenia.

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 Armenia 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 Armenia 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 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 Armenia 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 Armenia 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 Armenia 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 Armenia 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 Armenia.

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).

In its previous conclusion, the Committee found that the situation in Armenia was in conformity with Article 2§6 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 question raised in its previous conclusion.

The Committee previously asked for clarification as to whether the amended version of Article 84 of the Labour Code required the employment contract to indicate the length of the periods of notice in case of termination of the contract or the employment relationship (Conclusions 2018). The report clarifies that this is not the case, but that an amendment rectifying the issue would be adopted, without however providing any indication of timing in that respect. Therefore, the Committee concludes that the situation in Armenia is not in conformity with Article 2§6 of the Charter on the ground that the length of the periods of notice in case of termination of the contract or the employment relationship is not specified in the employment contract or some other document.

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 Armenia is not in conformity with Article 2§6 of the Charter on the ground that the length of the periods of notice in case of termination of the contract or the employment relationship is not specified in the employment contract or some other document.

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 Armenia.

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 considered that the situation in Armenia was not in conformity with Article 4§2 of the Charter on the ground that the legislation did not guarantee an increased time off in lieu of remuneration for overtime (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 question.

Rules on increased remuneration for overtime work

Previously, the Committee found that the situation in Armenia was not in conformity with Article 4§2 of the Charter because the legislation did not guarantee an increased time off in lieu of remuneration for overtime (Conclusions 2018).

The report states that as a result of the amendments made to Article 184 of the Labour Code (HO-117-N) adopted on 24 June 2010, for each hour of overtime work, in addition to the hourly rate, an additional payment shall be made of not less than 50% of the hourly rate. The provision which allowed the employer not to make an additional payment to the worker for overtime work upon consent of the party was deleted. The report states that specified amendments were made for the purpose of bringing the relevant provisions of the Labour Code into compliance with Article 4§2 of the Charter.

The report further states that part 1 of Article 185 of the Labour Code provides that for the work performed on rest days and non-working days (holidays and public holidays), the worker shall both be paid for each hour of overtime, in addition to the hourly rate, a bonus no less than 50% of the hourly rate and, upon consent of the parties, shall be remunerated in at least double the amount of the hourly (daily) pay rate or task rate, or the worker shall be granted another paid rest day within a month, or that day shall be added to the annual leave.

The report thus states that the bonuses envisaged for overtime work and the bonuses envisaged for work performed on rest days, non-working days prescribed by law are irreplaceable guarantees defined by the Labour Code. Thus if work performed on rest days and non-working public holidays and commemoration days defined by law also constitutes an overtime work for the workers, the employer shall pay the worker both the bonuses prescribed for overtime work and for work performed on rest days and non-working public holidays and commemoration days defined by law. Also, where, upon the consent of the parties, the bonus for the work performed on non-working public holidays and commemoration days defined by law takes the form of rest time, the worker shall be granted both the additional rest time as compensation for work performed on rest days and non-working days of holidays and commemoration days and the bonus envisaged for overtime work.

The Committee notes that the combination of equivalent time off and an allowance for overtime corresponds to an increased remuneration for overtime hours and is therefore in conformity with the Charter (Conclusions 2014, Slovenia). In view of the information provided by the report, the Committee considers that the situation in Armenia is now 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, with regard to overtime, it can be permitted in relation with the prevention of epidemics and other cases of emergency or for elimination of the consequences thereof. Overtime work should not exceed 4 hours during 2 successive days and 180 hours during a year, and in exceptional cases it should not exceed 8 hours during 2 successive days and in which case maximum durations of daily and weekly time should be preserved. The maximum duration of working time, including overtime, should not exceed 12 hours a day and 48 hours a week.

The report states that in 2020 due to Covid-2019 pandemic, complaints were received by the authorised body for failure to provide salary, failure to grant annual leave or delay in granting it. For the purpose of eliminating the violations, executive orders on assignment of tasks were issued to economic entities, penalties were imposed. Also, awareness-raising and consultation works on the procedure for organising activities in a remote mode by reason of state of emergency were carried out.

Finally, the report states that the provision of the payment for overtime work extends to the work carried out remotely.

Conclusion

The Committee concludes that the situation in Armenia 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 Armenia.

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”).

In its previous conclusion (Conclusions 2018), the Committee found that the situation in Armenia was not in conformity with Article 4§3 of the Charter, on the grounds that:

- the upper limit on the amount of compensation that may be awarded in gender discrimination cases might preclude damages from making good the loss suffered and from being sufficiently dissuasive, and
- the enforcement of the right to equal pay was not effective, as demonstrated by the persistently high gender pay gap.

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

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

Legal framework

As regards the legislation prohibiting discrimination, the report states that the Law HO-173-N of 10 September 2019 on Making a Supplement to the Labour Code has entered into force on 19 October 2019, providing for the definition of discrimination in employment relations and clearly stating that discrimination is prohibited by the labour legislation.

The Committee previously found that the legal framework in Armenia was in conformity with the Charter (Conclusions 2018). However, in its conclusion on Article 20 (Conclusion 2020), the Committee found that the situation was not in conformity with the Charter on the ground that there was no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value.

The report recalls that Article 178(2) of the Labour Code provides for equal pay for the same or equivalent work. The Committee points out that under Articles 4§3 and 20 of the Charter (and Article 1 (c) of the 1988 Additional Protocol), the right of women and men to equal pay for work of equal value must be expressly provided for in legislation. The equal pay principle applies both to equal work and to work of equal or comparable value (University Women of Europe (UWE) v. France, Complaint No. 130/2016, decision on the merits adopted on 5 December 2019, §163). The Committee refers to its previous conclusion under Article 20 where it observed that the law provides for equal pay for men and women for “equal work” and for “equivalent work” but not for “work of equal or comparable value” and that this wording is narrower than the principle set out in the Charter.

In the light of the above, the Committee considers that the situation is not in conformity with the Charter on the ground that there is no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value.

Effective remedies

In its previous conclusions (Conclusions 2016, 2020 on Article 20; Conclusions 2018 on Article 4§3), the Committee considered that the situation was not in conformity with the Charter on the ground that the upper limit on the amount of compensation that could be awarded in pay discrimination cases could preclude damages from making good the loss suffered and from being sufficiently dissuasive. The Committee notes that there have been no changes to this situation; therefore, the Committee reiterates its previous conclusion of non-conformity on this issue.

In its previous conclusions, the Committee asked for information on legislative developments regarding the burden of proof and reserved its position on this issue (Conclusions 2018, 2014).

In response, the report indicates that the new Code of Civil Procedure, which entered into force on 29 April 2018, introduces Chapter 24 on "Proceedings in individual employment disputes", defining the range of cases heard in these proceedings, the time limits for their consideration, including the performance of certain acts, provides for the active role of the court, special rules on the distribution of the burden of proof and the issues to be discussed in judgement. Under Article 210(1), the courts assess and decide on individual labour disputes related to amending or terminating an employment contract and to disciplinary measures. Pursuant to Article 213, the respondent bears the responsibility of proving the facts.

The Committee refers to its previous conclusion on Article 20 (Conclusions 2020) where it examined this situation and asked if an employee may bring a claim before a court in case a dispute arises due to illegal practices not related to the amendments or termination of an employment contract or to disciplinary measures. It also asked how the principle of shifting of the burden of proof is applied in practice, for example, if it is systematically applied in the cases related to pay discrimination. In the meantime, it concluded that the situation was not in conformity with Article 20 of the Charter on the ground that it had not been established that legislation provides for a shift in the burden of proof in gender pay discrimination cases.

The report indicates that according to effective regulations where a disagreement arises between the employee (or the former employee) and the employer as a result of gender pay discrimination, it shall be subject to examination as a labour dispute, through a judicial procedure in the manner prescribed by the Code of Civil Procedure (Article 263 and Article 264§1 of the Labour Code).

The Committee considers that the situation is not in conformity with the Charter on the grounds that there is no shift in the burden of proof in pay discrimination cases.

Pay transparency and job comparisons

In its previous conclusion, the Committee asked whether there had been any equal pay litigation cases. It also asked for information on the number, nature and outcome of complaints about equal remuneration addressed by the judicial and administrative bodies (Conclusions 2018). The report does not contain any information on this issue. The Committee therefore reiterates its questions.

With regard to the organisation of remuneration, the report indicates that under Article 180§3 of the Labour Code, the same criteria apply to men and women in the case of a qualification system, and that this system should be designed in such a way as to exclude any gender discrimination.

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.

Statistics and measures to promote the right to equal pay

According to the report, women earned, overall, in all occupations, around 64.9% of men's salary in 2020 (compared to 66.4% in 2016); in other words, the gender pay gap (i.e., the difference between the average nominal monthly salary of men and women, expressed as a percentage of men's nominal monthly salary) was 35.1% (compared to 32.5% in 2017).

As Armenia 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

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

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

Conclusion

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

- there is no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value;
- there is an upper limit on the amount of compensation that may be awarded in pay discrimination cases which may preclude damages from making good the loss suffered and from being sufficiently deterrent;
- domestic law does not provide for a shift in the burden of proof in gender pay discrimination cases.

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 Armenia.

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 Armenia 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 reply to the targeted question, the report states that during the reference period, part 1 of Article 113 of the Labour Code has been amended to set out the right of the employer to rescind the employment contract concluded for an indefinite period of time, as well as the employment contract concluded for a fixed time limit before the end of the validity period thereof, in the event that the residence status of a foreigner is repealed or invalidated. The report further states that a supplement has also been made to part 1 of Article 115 of the

Labour Code, according to which the employer is obliged to notify the worker in writing three days in advance, in case the residence status of a foreigner is repealed or invalidated.

The Committee takes note of the information provided regarding the activity of the Inspection Body as regards the most frequent violations of the legislation committed by companies during the Covid-19 pandemic.

Notice periods during probationary periods

In its previous conclusion, the Committee asked for information on notice periods and/or severance pay in lieu thereof provided for in cases of early termination of fixed-term contracts and for dismissals during the probationary period (Conclusions 2018).

In reply to the Committee's question, the report states that according to Article 113, 115 and 129 of the Labour Code, grounds for dismissal, notification terms and benefits in cases of early termination of fixed-term contracts are the same as those provided for indefinite contracts. The report adds that the terms for notification and the dismissal benefit are not interchangeable. The report further adds that if the employer fails to observe the term for notification, the employer shall be obliged to pay a fine to the worker for every overdue day of notification. Such fine is calculated on the basis of the average daily salary rate.

The report does not contain the information requested as regards the probationary period. The Committee therefore reiterates its request and considers that, should the next report not provide the information requested, there will be nothing to establish that the situation in Armenia is in conformity with Article 4§4 of the Charter 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

In its previous conclusion, the Committee asked for information whether a notice period and/or severance pay in lieu thereof is applicable where a worker is called up for military service (Conclusions 2018).

In reply to the Committee's question, the report states that the written call-up for military service shall serve as a ground for rescission of the employment contract, so the notification within a reasonable time limit provided for by the Labour Code loses its relevance. The report further states that the employer shall rescind the employment contract no later than three days prior to the date mentioned in the relevant written notice.

Circumstances in which workers can be dismissed without notice or compensation

The Committee previously found that the situation was not in conformity with Article 4§4 of the Charter on the ground that no notice period was provided for in cases of dismissal due to minor disciplinary offences such as failure to come to work for one day with no good reason (Conclusions 2018).

In reply to the previous conclusion of non-conformity, the report states that despite the fact that the Labour Code will be amended in this respect, at the present time no amendments have been made to the Labour Code. The Committee therefore reiterates its previous conclusion of non-conformity in this respect.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 4§4 of the Charter on the ground that no notice period is provided for in cases of dismissal due to minor disciplinary offences.

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 Armenia

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).

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on the following grounds:

- deductions from wages may deprive employees with the lowest pay and their dependants of their means of subsistence;
- withdrawal of wages in case of flawed products, for which the employee is responsible, deprives employees and their dependants of their means of subsistence.

The Committee recalls that the deductions 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 notes from the report that, under Article 214 of the Labour Code, the overall deductions from wages cannot exceed 50% of the worker’s monthly wage and the wage remaining after deductions cannot be less than the minimum wage. This restriction, according to the report, is of an imperative nature and no exception can be allowed, except for the cases stipulated in points 1 and 2 of Part 2 of Article 213 of the Labour Code (as modified in 2015), in particular, the cases of the advance payment on wages, over-payments as a result of calculation errors. Furthermore, in cases where the worker is materially liable of a worker, as prescribed by Article 237 of the Labour Code, the worker must compensate the employer for the damage caused, but not more than the amount of his or her average salary for three months, except for the cases provided by Article 239 of the Labour Code, such as when the damage has been caused intentionally. The report states that the limits established under Article 214 of the Code are also maintained for the cases of compensation provided for under Article 239.

The Committee notes that, under Article 190 paragraph 3 of the Labour Code, the work shall not be remunerated in the event of a defective product that is a result of the fault of the worker. The Committee asks what are the limits to deductions from wages in this case.

The report states, furthermore, that a draft law amending the Labour Code is being circulated. It aims to put an absolute limit on the deductions from wages in the amount of the minimum wage. The Committee asks for the next report to provide information about these developments.

The Committee asks next report to demonstrate that the protected wage, i.e., the portion of wage left after all authorised deductions, including for child maintenance, in case of a worker earning the minimum wage, will never fall below the subsistence level established by the Government.

Waiving the right to the restriction on deductions from wage

The Committee asks whether workers may be authorised to waive the conditions and limits to deductions from wages that are imposed by law.

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 Armenia.

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 Armenia was not in conformity with Article 5 of the Charter on the grounds that:

- the minimum membership requirements in order to form trade unions and employers’ organisations were too high;
- the following categories of workers cannot form or join trade unions of their own choosing: employees of the Prosecutor’s Office, civilians employed by the security service, all members of the police force (including civilians), self-employed workers, those working in liberal professions and workers in the informal economy.

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, 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.

According to the report, the information obtained from the Confederation of Trade Unions of Armenia, as of 1 January 2021 indicates that the Confederation unites 18 republican branch unions of trade union organisations with 188.259 trade union members. According to ILOSTAT, the trade union density was 20.5% in May 2022 (outside the reference period).

Forming trade unions and employers’ organisations

As regards minimum membership requirements, the Committee previously noted that pursuant to the Law on Employers, the number of employers required to form employers’ organisations is as follows:

- at national level: over half of the employers’ organisations operating at the sectoral and territorial levels;
- at sectoral level: over half of the employers’ organisations operating at the territorial levels;
- at territorial level: the majority of employers in a particular administrative territory or employers’ organisations from different sectors in a particular administrative territory.

The Committee also noted that section 2 of the Law on Trade Unions sets out similar prerequisites for federations of trade unions at the territorial, sectoral and national levels, by requiring the participation of more than half of the trade unions which include the majority of workers at the respective level.

The Committee previously concluded that the situation was not in conformity with the Charter, on the ground that the minimum membership requirements set for forming trade unions and employers’ organisations were too high and hence constituted an obstacle to founding associations (Conclusions 2018). The report indicates that the relevant legislation is under revision in order to bring the situation into conformity with Armenia’s international legal obligations. However as there

has been no change to the situation the Committee reiterates its previous conclusion on this point.

Personal scope

The Committee previously concluded that the situation was not in conformity with the Charter, on the ground that employees of the Prosecutor's Office, members of the police force (including civilians), civilians employed by the security services, self-employed workers, those working in liberal professions and workers in the informal economy could not form and join organisations for the protection of their economic and social interests (Conclusions 2018).

According to the report, Article 6 of the Law of the Republic of Armenia "On trade unions" provides that officers of the armed forces, the police, national security bodies and prosecutor's office, as well as judges and members of the Constitutional Court of the Republic of Armenia may not be members of a trade union organisation.

Further, the report indicates that there has been no change to the situation as regards self-employed workers, those working in liberal professions and in the informal sector.

As there has been no change to this situation, the Committee reiterates its previous conclusion of nonconformity.

However, the report states that civil servants (not considered as police officers) working with the police service, enjoy trade union rights. Likewise, civilians working in the National Security Service may form and join trade unions of their choice.

The Committee notes from ILO Observation (2020 CEARC Freedom of Association and Protection of the Right to Organise Convention No 87) that the ILO urged the Government to take the necessary measures to amend the Law on Trade Unions to ensure that employees of the Prosecutor's Office, judges (including judges of the Constitutional Court), civilians employed by the police and security services, self-employed workers, those working in liberal professions, and workers in the informal economy can establish and join organisations for furthering and defending their interests.

The Committee therefore asks for clarification on the situation of civilian members of the police force and security services with regard to forming and joining trade unions.

In its previous conclusion, the Committee requested all States to provide information on the right of members of the armed forces to organise (Conclusions 2018 – General Question). The report states that members of the armed forces may not be members of a trade union.

Therefore the Committee concludes that the situation is not in conformity in this respect.

The Committee recalls that Article 5 of the Charter allows States Parties to impose restrictions upon the right to organise of members of the armed forces 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 of professional associations of a trade union nature and prohibition of 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).

Conclusion

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

- the minimum membership requirements in order to form trade unions and employers' organisations are too high;
- members of the police force and armed forces, self-employed workers, those working in liberal professions and workers in the informal economy are prohibited from joining and forming organisations for the protection of their interests.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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).

The Committee deferred its previous conclusion pending receipt of information requested on joint consultation in the public sector and civil service (Conclusions 2018).

The report notes that issues related to public servants may be discussed within the framework laid down in the collective agreement concluded at the national level in 2020 between the Government, the Confederation of Trade Unions, and the Association of Employers. The collective agreement in question regulates, among others and not limited to public servants, the process of joint consultation on a wide range of matters of mutual interest and renews the mandate of the Tripartite Commission involving the same parties.

The Committee considers that the information regarding joint consultation in the public sector is insufficient. It further points out that this question has been carried over successively since 2010, without being satisfactorily settled (Conclusions 2010, 2014, 2018). Accordingly, the Committee reiterates its request for information as to whether there are specific consultative bodies in the public sector and, if so, what their structures are and how they operate. It also asks for examples of such consultation giving rise to new rights for workers and/or improving their working conditions. Meanwhile, the Committee concludes that, given the lack of information, the situation is not in conformity with Article 6§1 of the Charter as it cannot be established that joint consultative bodies exist in the public sector.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 6§1 of the Charter on the ground that it has not been established that joint consultative bodies 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 Armenia.

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 Armenia was not in conformity with Article 6§2 of the Charter on the ground that it had not been established that the promotion of collective bargaining was sufficient (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 general question.

The previous conclusion of non-conformity was based on the lack of information on the percentage of employees covered by a collective agreement (Conclusions 2018). The report notes that as of 1 January 2021, 422 collective agreements have been concluded, of which 2 are at the branch level, 55 at the territorial level, and 365 at the enterprise level. These collective agreements covered 117 119 employees, of which 111 187 were trade union members. This reveals a numerical decrease from data presented in the previous report (665 collective agreements concluded as of 1 January 2017, of which four are at the branch level, 60 at the territorial level and 601 at the enterprise level, Conclusions 2018). As the report does not provide the information requested, the Committee reiterates its request for information regarding the percentage of employees covered by a collective agreement. The Committee further asks for information on the measures taken to promote collective bargaining. Meanwhile, the Committee concludes that the situation in Armenia is not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining is not sufficient.

The Committee identified another issue of concern in connection to the way collective bargaining was articulated in the absence of a representative trade union (Conclusions 2014, 2018). In that sense, the Committee asked for clarifications as to whether only trade unions representing more than half of the employees in an undertaking were entitled to conclude a collective agreement. The Committee further asked whether a trade union representing less than 50% of the employees could still negotiate an agreement for its own members. The report summarises the relevant legislative provisions as follows. A trade union representing over half of a company’s workers is entitled to represent all workers, and the resulting collective agreement would apply to all workers of the undertaking in question. A union representing less than half of a company’s workers can only negotiate on behalf of its own members. In the absence of a trade union, the representation functions can be transferred to the relevant regional or sectoral trade union. Pursuant to section 23 of the Labour Code, if no trade union exists in an enterprise, or if the existing unions represent less than half of the employees of the undertaking, the staff assembly may elect other representatives. In the latter case, pursuant to section 56 of the Labour Code, the union representing less than half of a company’s workers bargains collectively through a joint representative body together with other elected representatives.

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

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining is not sufficient.

Article 6 - Right to bargain collectively
Paragraph 3 - Conciliation and arbitration

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

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 found that the situation in Armenia was in conformity with Article 6§3 of the Charter pending receipt of the information requested. It requested confirmation that recourse to arbitration is only permitted where the parties have so agreed (Conclusions 2018).

The Committee notes that the Government has not provided any information in this regard. It therefore reiterates its request that the next report provide information as to whether recourse to arbitration for the settlement of collective labour disputes is voluntary or compulsory. The Committee 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§3 of the Charter.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

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 (Conclusions 2018), the Committee considered that the situation in Armenia was not in conformity with Article 6§4 of the Charter on the grounds that:

- the percentage of workers required to call a strike was too high;
- strikes were prohibited in the energy supply services;
- all members of the police were prohibited from striking;
- restrictions on the right to strike in certain sectors were too extensive and went beyond the limits permitted by Article G.

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 found that the percentage of workers required to call a strike was too high. In this regard, it noted that Article 74§1 of the Labour Code requires a vote approved by two thirds of an organisation’s (enterprise’s) employees or, if a strike is declared by a subdivision of an organisation, a vote approved by two thirds of the employees of that subdivision (provided that this is not less than half of the total number of employees of the organisation if the strike hampers the activities of other subdivisions).

In its report, the Government states that it is considering amending Article 74 of the Labour Code to reduce the number of votes required to call a strike from two thirds of the total number of employees in an organisation to at least half of the employees. A draft law to amend and supplement the Labour Code has been drawn up and circulated by the Ministry of Labour and Social Affairs and is expected to be submitted to the Prime Minister’s Office in June 2022.

The Committee takes note of these developments. Since Article 74 of the Labour Code was not amended during the reference period, however, the Committee reiterates its conclusion of non-conformity on this point.

Restrictions to the right to strike, procedural requirements

In its previous conclusion, the Committee found that the situation was not in conformity with Article 6§4 of the Charter on the grounds that i) strikes were prohibited in the energy supply services and ii) all members of the police were prohibited from striking.

In its report, the Government states, firstly, that Article 39§1, point 8, of the Law on Police Services, which provides that police officers are not entitled to organise or participate in strikes, only applies to police officers and not to civil servants employed by the police force. It then states that the draft law referred above (see section “Entitlement to call a collective action”) provides for amending Article 75 of the Labour Code, which lists the sectors in which

strikes are prohibited. Removing the police force and electricity providers from the list is one of the proposed amendments.

The Committee takes note of these developments. It asks for updated information in the next report. In the meantime, the Committee reiterates its conclusion of non-conformity on these points.

In its previous conclusion, the Committee considered that the sectors in which the right to strike could be restricted were overly extensive and that it had not been demonstrated that the restrictions satisfied the conditions laid down in Article G of the Charter. The Committee asked whether employee representatives were involved in the discussions on the minimum service to be provided.

In this respect, the Committee recalls that the right to strike may be restricted provided that any restriction on this right meets the requirements of Article G, i.e. it must be prescribed by law, serve a legitimate purpose and be necessary in a democratic society. Prohibiting strikes in sectors deemed essential to the community is considered to serve a legitimate purpose since such strikes could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. “energy” or “health” – is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be deemed in conformity with Article 6§4.

According to the Government’s report and other sources (e.g. the observation made by the ILO Committee of Experts on the Application of Conventions and Recommendations, adopted in 2020 and published in 2021, concerning Convention No. 87 on Freedom of Association and Protection of the Right to Organise), there are plans to amend the Labour Code to i) reduce the number of sectors in which strikes are banned and ii) specify that the right to strike may be restricted by law in sectors which are of significant importance so as to protect public interests and the rights and freedoms of others; it was also proposed to amend the provisions concerning the negotiation of minimum services between employers and workers’ representatives.

The Committee takes note of these developments. It asks for updated information in the next report. In the meantime, the Committee reiterates its conclusion of non-conformity on this point.

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 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.

In its report, the Government explains that a state of emergency was declared throughout the country in response to the Covid-19 pandemic from 16 March to 11 September 2020. Thereafter, a quarantine system was introduced. Under Article 75§2 of the Labour Code, strikes are prohibited in regions where a state of emergency has been declared. The Labour Code does not prohibit strikes in cases of quarantine, however.

In addition, the Government refers to various regulations adopted in the first half of 2020, in particular: the guidelines on compliance with health and epidemiological rules in organisations, possible dangers and organising work in the event of any violations (approved by the Instruction of the Commandant of the Republic of Armenia No. Ts/17-2020 of 20 March 2020) and Rules for preventing the spread of the novel coronavirus disease (Covid-19) in organisations (established by Decision of the Commandant of the Republic of Armenia No. 27 of 31 March 2020, in force from 1 April to 3 May 2020).

Conclusion

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

- the percentage of workers required to call a strike is too high;
- strikes are prohibited in energy supply services;
- the police are denied the right to strike;
- restrictions on the right to strike in some sectors go beyond the limits set by Article G of the Charter.

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 Armenia.

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 Armenia was in conformity with Article 22 of the Charter (Conclusions 2018). It will therefore restrict its consideration to the Government’s replies to the targeted questions.

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 information on three sectors, particularly affected by the pandemics in Armenia: healthcare, police and transport. It states that the health care system during the pandemic, being of frontline nature, has continued providing medical assistance and service to patients and their contacts. Awareness on coronavirus disease has been raised among medical workers in the form of trainings in the course of which the principles on organizing outpatient medical assistance and service of patients with coronavirus disease, patient management, isolation thereof, use of individual protective measures have been presented. In the execution of the Order of the Minister of Health of 25 June 2020, research has been made in organisations carrying out medical assistance and service, resulting in a risk assessment and identification of flaws. As a follow up, a 27 times reduction in the cases of coronavirus disease among the personnel of organisations carrying out medical assistance and service was observed. The police had no possibility to provide for a distance work, however, according to the report, the smooth functioning of the service has been ensured. As to the transport sector, companies engaged in interstate passenger transportations had to stop their activities due to restrictions applied in different states. Drivers employed in the sphere were either sent to forced leave or changed their sphere of activity. Interregional, intraregional and intracommunity regular passenger transportations have been conducted in full, exercising the measures provided for prevention of the pandemic. Financial aid was granted to coach station services, thus enabling to maintain the jobs. Organisations carrying out activities in the sphere of road transport were granted state aid on general bases within the scope of programs for neutralisation of social and economic impact of the coronavirus.

Conclusion

The Committee concludes that the situation in Armenia is in conformity with Article 22 of the Charter.

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

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

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 2018), the Committee concluded that the situation in Armenia was not in conformity with Article 28 of the Charter on the grounds that the protection granted to workers' representatives was not extended for a reasonable period after the expiration of their mandate and that it was not established that workers' representatives were effectively protected against prejudicial acts other than dismissal and that facilities granted to workers' representatives were adequate.

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

Types of workers' representatives

In Conclusions 2018, the Committee observed that in enterprises where no trade union is active, the staff assembly shall elect representatives to represent employees' interests in collective negotiations with the employer. It asked that the next report provide information on how the employees are represented outside the scope of collective negotiations in enterprises without an active trade union. The report does not provide any answer in this respect. The Committee reiterates its question and considers that if the next report does not provide any answer in this regard there will be nothing to establish that the situation in Armenia is in conformity with the Charter.

Protection granted to workers' representatives

Concerning protection of workers' representatives against dismissal, in Conclusion 2018, the Committee noted that according to the provisions of the Labour Law, the workers' representative could be dismissed by the employer without the consent of the Labour Inspectorate when the "employee no longer enjoys the employer's confidence". The Committee noted that the notion of "employer's confidence" with respect to worker's representatives may be open to abuse and asked that the next report provide information on whether there are strict limitations for the application of the "loss of confidence" ground for dismissal. In Conclusions 2018, the Committee also considered that if the requested information is not provided in the next report, there would be nothing to show that the situation is in conformity with the Charter on this point.

Moreover, in Conclusions 2018, the Committee also reiterated its previous conclusions (Conclusions 2014 and 2010) that the situation in Armenia was not in conformity with Article 28 of the Charter with respect to the protection of workers' representatives against dismissals, because of the limitation of this protection to the period of performance of their functions as workers' representatives.

In reply, the report indicates that the Ministry of Labour and Social Affairs has prepared a draft law which provides for amendments to Article 119 of the Labour Code, which provides, among other issues, that representatives of employees may not be dismissed from work within 6 months after the expiry of powers thereof without the preliminary consent of the representative body of employees.

The Committee request that the next report provide information on any legislative development in this respect, in particular on the adoption of the above-mentioned draft provision.

The report does not provide any answer to the Committee's previous question on whether there are strict limitations for the application of the "loss of confidence" ground for dismissal. Nor does the report provide information on any developments in terms of the extension of the protection granted to workers' representatives for a reasonable period after the end of their mandate during the relevant reporting period.

The Committee therefore concludes the situation in Armenia is not in conformity with Article 28 of the Charter on the ground that the protection granted to workers' representatives against dismissal is not effective. It also reiterates its previous conclusion of non-conformity on the ground that this protection is not extended for a reasonable period after the end of their mandate.

As regards the protection from prejudicial acts others than dismissal, in Conclusions 2018, the Committee found that despite repeated requests for information on the legislative framework prohibiting discrimination in the workplace, including on the ground of affiliation to trade unions, and penalizing impediment of worker representatives' actions, successive national reports had failed to provide any answers in these respects (Conclusions 2010, 2014, 2016).

In Conclusions 2018, in the absence of any explanations in the relevant report on how workers' representatives are protected in practice from prejudicial acts, the Committee considered that it had not been established that workers' representatives were effectively protected against prejudicial acts short of dismissal.

In the absence of such information, the Committee reiterates that the prejudicial acts may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts cut-down or any other taunts or abuse and that any measures, including legislative amendments, aiming at the protection of workers representatives against prejudicial acts other than dismissal, should take into account all these different aspects in designing protection.

The Committee reiterates its previous conclusion that the situation in Armenia is not in conformity with Article 28 of the Charter on the ground that workers' representatives are not effectively protected against prejudicial acts short of dismissal.

Facilities granted to workers' representatives

In previous conclusions (2014, 2016 and 2018), the Committee took note that pursuant to part 3 of Article 175 of the Labour Code, employee representatives shall be exempt from employment duties for up to six working days per year, to attend various events organised by the employees' representative bodies or to improve their qualifications as members of the representative bodies of employees. However, in the absence of any other information on facilities granted to workers' representatives, it concluded that it had not been established that facilities granted to workers' representatives were adequate (Conclusions 2014, 2016 and 2018).

In reply, the report indicates that according to the draft law on amending Article 26 of the Labour Code prepared by the Ministry of Labour and Social Affairs, the employees elected within the representative bodies of employees shall be exempt from the performance of working duties to attend various events organized by the employees' representative bodies or to improve their qualifications as members of the representative bodies of employees. For these periods the employee shall be paid two-thirds of his or her average hourly salary. According to the report, the draft law also provides that the employer shall be obliged to provide the representatives of employers with conditions, facilities and logistics necessary for exercising their powers. The Committee asks that the next report provide information on any legislative development in this respect.

The Committee notes that the information at its disposal for the purposes of the reference period is not sufficient to establish the conformity of the situation with the requirements of the Charter. It reiterates its request for information on facilities mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971, including access to premises, use of materials, distribution of information, support in terms of benefits, training costs (Statement of Interpretation, Conclusions 2016).

The Committee therefore reiterates its previous conclusion that facilities granted to workers' representatives are not adequate.

Conclusion

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

- the protection granted to workers' representatives against dismissal is not effective and is not extended for a reasonable period after the end of their mandate;
- workers' representatives are not effectively protected against prejudicial acts short of dismissal;
- facilities granted to workers' representatives are not adequate.

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.