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# **EUROPEAN SOCIAL CHARTER (REVISED)**

European Committee of Social Rights

Conclusions 2022

**AUSTRIA**

*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 Austria, which ratified the Revised European Social Charter on 20 May 2011. The deadline for submitting the 10<sup>th</sup> report was 31 December 2021 and Austria submitted it on 2 February 2022.

The Committee recalls that Austria 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 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group III "Labour Rights":

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

Austria has accepted all provisions from the above-mentioned group except Articles 2§1, 4§4, 6§4, 21, 22, 26§2 and 29.

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

The conclusions relating to Austria concern 16 situations and are as follows:

– 12 conclusions of conformity: Articles 2§2, 2§3, 2§4, 2§5, 2§7, 4§2, 4§3, 4§5, 5, 6§1, 6§2, 6§3;

– 2 conclusions of non-conformity: 4§1, 28.

In respect of the other 2 situations related to Articles 2§6, 26§1, 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 Austria under the Revised Charter.

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

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

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

The deadline for submitting that report was 31 December 2022.

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

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

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

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

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

As the previous conclusion found the situation in Austria to be in conformity with the Charter (Conclusions 2014), there was no examination of the situation in 2022 on this point. Therefore, the Committee reiterates its previous conclusion (Conclusions 2018).

### **Covid-19**

In reply to the targeted question regarding special arrangements related to the pandemic, the report indicates that exceptions, set out in ordinances, were made to rest on public holiday. These ordinances were based on Section 12(1) al. 1 of the Rest Periods Act (*Arbeitsruhegesetz, ARG*) which states that exceptions to the weekend and holiday rest rule may be authorised by ordinance in certain businesses for work necessary to provide the necessities of life.

According to the report, these exceptions applied to delivery services in the food sales sector. It also applies to chemist’s shops and drugstores with regards to several activities (receipt, processing and routing of orders; order picking and hanging over of goods to delivery personnel). They also concerned the delivery of goods ordered from delivery services in the food sales sector, chemist’s shops and drugstores. The Committee takes note from the report that the above businesses were allowed to carry out the above activities during holiday rest periods, if such activities could not be carried out before or after the holiday rest period, from 27 March to 31 May 2020 and from 28 November to 31 December 2020. The Committee understands from the report that the pay provisions continued to apply to work on public holidays.

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

### *Conclusion*

The Committee concludes that the situation in Austria 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 Austria.

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 Austria 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 indicates that to ensure uniform procedures in the Federal Civil Service, recommendations have been provided to federal ministries on the use of annual leave and the reduction of hours worked to ensure the continued availability of staff after the pandemic. Under the 2<sup>nd</sup> Covid-19 Act (No. 16/2020 of 21 March 2020), a legal basis has been created for employers to order the use of annual leave. These provisions were only valid until 31 December 2020 and were not extended thereafter.

The Committee takes note of the specific provisions that were in place in Burgenland, Upper Austria, Styria, Vorarlberg and Vienna regarding annual holiday with pay:

- In **Burgenland**, the Covid-19 Collective Amendment (No. 83/2020) introduced special provisions into the legislation governing employment in the *Land* and municipalities allowing employers, in the public interest, to unilaterally require employees to use a maximum of two weeks annual leave during periods in which there was a significant restriction on activity of at least six working days, if this was required in the immediate interests of the work carried out. At the same time, the rules regarding expiry of annual leave which could not be taken for work-related reasons related to the Covid-19 crisis were amended to suspend the expiration until 31 December 2021.
- Regarding **Upper Austria**, special provisions for 2020 were introduced in the public sector employment law regarding the use of unused holidays from previous years (“possibility to unilaterally require employees to use a maximum of 80 hours of leave in the case of full-time employees”).
- In **Styria**, despite other rules in force, civil servants at *Land* level were able to use part of their annual leave on an hourly basis in light of the pandemic. The length of leave that can be taken on an hourly basis was limited to 40 hours per calendar year.
- In **Vorarlberg**, special provisions have been introduced in Section 128 of the Vorarlberg Public Employees Act. Its Paragraph 2 allowed an employer to unilaterally require employees to take annual leave of up to two weeks’ if activities were significantly restricted for at least six working days due to Covid -19 measures and if important work-related interests or other public interests existed. These measures have been extended until 31 December 2021.
- A provision was included in the **Vienna** Public Sector Employment Amendment Act, allowing an employer, in pursuit of particular public interests, to unilaterally require employees to take up to 80 hours of unused annual leave left over from previous years, if the activity was significantly restricted to at least five working days. A decision to unilaterally instruct employees to take leave had to be taken according to objective criteria, particularly as regards the needs of the specific

work, the employer's duty of care, and the efficient and appropriate management of personnel. This rule expired on 30 June 2021.

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

*Conclusion*

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

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 Austria 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 questions raised in its previous conclusion.

The Committee previously asked for information on the provisions of the 1948 Contractual Employees Act (VBG) as amended, on the implementing ordinances as amended, and on the measures taken to ensure that workers were informed in written form, as soon as possible, of the essential aspects of the contract or employment relationship (Conclusions 2018). The report reiterates information that had already been provided (Conclusions 2014 and 2018). In particular, Section 4(2) of the VBG lists the elements of information that should at a minimum be included in the employment contracts handed over at the beginning of an employment relationship in the case of federal contract public employees. The enumeration does not currently include any reference to the amount of paid leave or the length of the periods of notice in case of termination of the contract or the employment relationship, as required under Article 2§6 of the Charter. The report additionally notes that the substantive rights in question are regulated in a comprehensive manner and that workers receive all relevant information regarding their rights and obligations as part of compulsory training offered at the beginning of their employment relationship. However, Article 2§6 of the Charter refers to information that must be communicated in writing to the workers concerned. The Committee, therefore, repeats its question as to whether the amount of paid leave or the length of the periods of notice in case of termination of the contract or the employment relationship are specified in writing in the contract or some other document. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Austria is in conformity with Article 2§6 of the Charter.

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

In reply to the question regarding special arrangements related to the pandemic, the report does not mention any special arrangements relevant to Article 2§6 of the Charter.

### *Conclusion*

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

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

### *Paragraph 7 - Night work*

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

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

As the previous conclusion found the situation in Austria 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 mention any special measures relevant to Article 2§7 of the Charter.

### *Conclusion*

The Committee concludes that the situation in Austria is in conformity with Article 2§7 of the Charter.

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

### *Paragraph 1 - Decent remuneration*

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

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

In its previous conclusion (Conclusions 2018) the Committee considered that the situation was in conformity with the Charter pending receipt of the information concerning the situation of workers in agriculture, forestry and fishing.

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

### **Fair remuneration**

In its previous conclusion (Conclusions 2018) the Committee considered that the situation in Austria was in conformity with the Charter pending receipt of information concerning the situation of workers in agriculture, forestry and fishing.

According to the report, in 2017 the social partners agreed on a minimum wage of € 1,500 across the board and a corresponding general agreement was negotiated. The collective agreement parties agreed incremental plans for sectors where the lowest starting wage was below this threshold. Implementation was largely complete in 2020. As of July 2021, the lowest gross minimum wages stipulated in collective agreements were all above € 1,500. The majority of collective agreements stipulate minimum remuneration significantly above € 1,500.

According to the report, there are segments of the Austrian economy for which no collective agreements currently exist. The Governmental programme intends to appropriately close those gaps with the involvement of the social partners. According to the report, this will reduce yet further the already small proportion of employees who are not covered by a collective agreement.

The Committee further notes that the minimum wage schemes and collective agreements ensure that employees who are particularly vulnerable to exploitation are paid fairly. With regard to domestic workers, a minimum wage scheme is in place. In the agricultural and forestry sector, the social partners regularly enter into collective agreements which specify a minimum wage for agricultural and forestry employees.

The Committee takes note of the information provided in the report concerning the minimum wages stipulated in collective agreements for agriculture and forestry, farming operations and agricultural estates in the Laender. It notes that in Styria the minimum net wage in agriculture and forestry stood at € 1,182. According to the report, the Collective Agreement for Farming Operations in Lower Austria stipulates a minimum wage for farm workers for house, estate, field and barn and for harvest workers of € 1,420.86. A lump sum for overtime must also be paid, meaning that the lowest total wage for these workers is € 1,542.65 (€ 1,266.39 net).

The Collective Agreement for Agricultural and Forestry Workers in Vorarlberg stipulates a minimum wage of € 1,572.06 (€ 1,286.35 net) for unskilled workers over 18 years of age, and € 1,779.37 (€ 1,427.13 net) for skilled workers.

The Committee also notes that the gross minimum wage € 1,500 has been applied across the board since 2021. The Committee further notes from Eurostat that the gross average earnings

in 2020 stood at € 49,086 (€ 4,090 per month) and net average earnings at €33.032 (€ 2,752 per month).

According to the report, in 2019, the median gross income in Austria was € 29,458 per year, or €2,454.83 per month. In 2019, the gross average wage was € 34,167 per year, or € 2,847.25 per month (source: Statistik Austria: Annual Personal Income (statistik.at)).

As regards the minimum wage, the report states that, as agreed between the social partners, the figure of € 1,500 gross/month has now been implemented in all collective agreements; this corresponds to an annual minimum wage of € 21,000 gross (€ 1,500 x 14). According to the report, this amount is significantly higher than the thresholds of 60% of median gross wage or 50% of the gross average wage.

In the assessment of the national situation the Committee takes into account the net amounts of the average and minimum wages in the reference period. In the instant case, the Committee will take into account the gross and net values of the Eurostat average earnings in 2020 as well as the information about the lowest net minimum wages provided in the report for the year 2020. The Committee thus notes that in 2020 the average net earnings stood at € 2,752 per month, whereas the minimum net wage that has been indicated by the report (for agriculture and forestry workers in Styria) stood at € 1,182 net or 43% in the average net earnings. The Committee considers that this level of the minimum wage does not ensure a decent standard of living. Therefore, the situation is not in conformity with Article 4§1.

The Committee asks the next report to indicate whether € 1500 gross has been applied as the minimum wage in all collective agreements. It also asks for information about the minimum wage paid to workers not covered by collective agreements.

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

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

According to the report, in Austria, minimum wage schemes and collective agreements ensure that employees who are particularly vulnerable to exploitation are fairly paid. With regard to domestic workers, a minimum wage scheme is in place. In the agricultural and forestry sector, the social partners regularly enter into collective agreements which specify a minimum wage for agricultural and forestry employees (and thus also for seasonal agricultural workers and harvest workers).

If an employee is paid below the minimum wage stipulated by collective agreement or minimum wage scheme, the employer commits an offence under the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumpingbekämpfungsgesetz, LSD-BG*) and may be subject to an administrative penalty (fine).

According to the report, atypical employment for the purposes of national law refers to any form of employment other than a permanent full-time employment relationship. The relevant forms of employment in Austria are marginal part-time employment, part-time employment, fixed-term employment and temporary agency work. Zero hours contracts are not permitted in Austria. Collective agreements do not differentiate between the various types of employment mentioned and are therefore also applicable for atypical forms of employment. Around 98% of Austrian workers are covered by collective agreements.

According to a survey by the Austrian Institute of Economic Research (WIFO), just under 190,000 people in Austria regularly work for or via a platform. This corresponds to almost 5% of all employees in Austria. However, these individuals earn only 3% of their income from these activities (Accenture, platform economy study, 2020). There are no indications that these activities are becoming significantly more important. A survey conducted by the Chamber of Labour (AK) found that crowd work was the sole source of income for only 2% of crowd workers surveyed.

According to the report, crowd workers in Austria, both self-employed and dependently employed, enjoy comprehensive social protection. Self-employed workers are fully covered by social insurance and 90% are entitled to unemployment benefit if they cease to be self-employed. Protection in the case of long-term illness was also improved, as was reconciliation of work and family life. A pioneering prevention model for self-employed workers in Austria has been introduced (halving of the deductible).

Since 2011, efforts have been taken to counteract this development, which is undesirable both for the employment market and in terms of social policy. As a landmark piece of legislation, the Anti-Wage and Social-Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG*) entered into force on 1 January 2017.

The aim of the Act is to ensure equal labour market conditions and terms of remuneration for Austrian and foreign workers and to safeguard competitiveness among companies. The health insurance institutions were empowered to enforce fair remuneration within their remit under the LSD-BG.

In its capacity as the Competence Centre for Combating Wage and Social Dumping (CWSD Competence Centre), the Austrian Health Insurance Institution (*Österreichische Gesundheitskasse, ÖGK*) is tasked in particular with verification of pay levels of workers hired out or posted to Austria who are not subject to the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*). The CWSD Competence Centre also administers the central register of penalties, into which all administrative decisions with final effect issued in administrative penal proceedings pursuant to the LSD-BG are entered.

When carrying out verifications, inspectors also check the wages of employees subject to the ASVG and homeworkers under the Homeworking Act (*Heimarbeitsgesetz, HAG*) for underpayment.

If an inspection finds that an employer employs or has previously employed one or more individuals without paying the remuneration to which they are entitled in accordance with the laws, ordinances or collective agreements, the case will be reported to the competent authorities. The ÖGK has the status of a party in subsequent administrative penal proceedings and participates in proceedings accordingly. Any claims to outstanding remuneration are collected in accordance with the rules of civil law without any involvement by the ÖGK.

The report provides information about the results of inspections carried out in 2020. The Committee notes that, of all the workers inspected, a total of 435 cases of underpayment, or around 10% were identified.

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

### **Covid-19**

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

The Committee recalls that in the context of the Covid-19 pandemic, States Parties must devote the necessary efforts to reaching and respecting this minimum requirement and to regularly adjust minimum rates of pay. The right to fair remuneration includes the right to an increased pay for workers most exposed to Covid-19-related risks. More generally, income

losses during lockdowns or additional costs incurred by teleworking and work from home practices due to Covid-19 should be adequately compensated.

The Committee notes from the report that in Upper Austria, thanks to the work from home arrangements, there was very little need to furlough for public service employees. Employees belonging to the risk group who were unable to work from home and for whom infection could not be prevented with the greatest possible certainty due to the nature of their work and conditions in their workplace, with due regard for their journey to work and changed working conditions and with due regard for particular safeguards, could be released from work. In addition, employees with childcare responsibilities for children under the age of 15 and whose work could not be carried out from home could also be released from work during periods when the opening of nursery schools and schools was restricted for pandemic-related reasons.

Employees for whom mobile working is not possible due to the nature of their work (e.g. cleaning staff) can be placed on leave if they are not needed for the maintenance of critical infrastructure, their work cannot be carried out from home, and they cannot be redeployed elsewhere. Employees must be called into work where required. For remuneration purposes, leave from work granted unilaterally is treated as approved special leave, meaning that those employees will continue to receive their full monthly pay and flat-rate supplements.

According to the report, between 2017 and 2019, only between 326 (2018) and 1,227 (2019) workers were working temporarily reduced hours (*Kurzarbeit*). The number of people working temporarily reduced hours increased dramatically during the Covid-19 pandemic. In 2020, the number of employees supported under this scheme rose drastically to 1,245,556, 44% of them female, due to the Covid-19 reduced working time allowance (*Covid 19-Kurzarbeitsbeihilfe*). The pre-existing model for the temporary reduction of working hours was revised in March 2020: The Covid-19 scheme provides defined net compensation for employees whose working hours have been temporarily reduced, on a sliding scale determined by the employee's previous gross income.

The temporary reduced working hours scheme was administered in several phases, each with a funding period of three to six months. The fifth phase was to run until 30 June 2022 and was intended for businesses which were particularly badly affected by the crisis; as previously, these businesses are not required to cover any part of payments to employees under the scheme. The net compensation rate for employees also remained unchanged.

The Committee asks whether the financial support provided for workers through furlough schemes was ensured throughout the period of partial or full suspension of activities due to the pandemic. It also asks what was the minimum level of support provided and what proportion of workers concerned were covered under such schemes.

### *Conclusion*

The Committee concludes that the situation in Austria is not in conformity with Article 4§1 of the Charter on the ground that the minimum wage for agriculture and forestry workers in Styria does not ensure a decent standard of living.

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

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

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

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

In its previous conclusion, the Committee found that the situation in Austria was in conformity with Article 4§2 of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the targeted question.

### **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 Covid-19 crisis did not bring any changes to the provisions governing overtime work and remuneration or compensation. Section 6 of the Working Hours Act defines overtime as the hours worked beyond either the normal daily or weekly working time. A maximum working time of 12 hours per day and 60 hours per week continues to apply, with the weekly average being defined as 48 hours. A supplement of no less than 50% continues to apply for overtime work, with higher supplements being provided for in many collective agreements for specific overtime hours.

The report states that the overtime provisions for medical staff were not amended. Section 5 of the Hospital Working Hours Act defines overtime for medical staff as the hours worked beyond the daily working time of 8-9 hours where working hours are distributed differently across the working week, or the weekly working time of 40 hours is exceeded. The collective agreement or work agreement may stipulate different arrangements. Medical staff working overtime are entitled to a supplement of no less than 50% or to time in lieu at a ratio of no less than 1:1.5.

The report states that the general statutory provisions on working time and rest periods also apply to teleworking. Employers are required to keep records of hours worked but this obligation can be delegated to a worker.

In the public service sector, the provisions on working time have remained unchanged. Additional work is permitted upon request beyond the working hours set out in the work schedule and are paid separately. Civil servants and contractual public workers were ordered to work from home during the Covid-19 pandemic.

The report states that in Upper Austria the requirements generally applicable to the recording of working time also apply to the work in crisis teams (flexible working hours with electronic time recording). In addition, crisis team members can select, instead of receiving financial compensation, to have hours worked on Sundays and public holidays credited as time in lieu. Also, employees of the Office of the Voralberg Government and of the departments that were strongly involved in fighting the Covid-19 pandemic were given a time account for crediting 80 hours of overtime work. These hours have to be used up by the end of 2023.

*Conclusion*

The Committee concludes that the situation in Austria 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 Austria.

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

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

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

The Committee deferred its previous conclusion pending receipt of the information requested on measures to promote the right to equal pay (Conclusions 2018).

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

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

For information, the Committee takes note of the Eurostat data on the gender pay gap during the reference period in Austria: 20.7% in 2017, 20.4% in 2018, 19.9% (provisional figure) in 2019 and 18.9% (provisional figure) in 2020 (compared with 23.5% in 2011). It notes that this gap is higher than the average in the 27 countries of the European Union, namely 13% (provisional figure) in 2020 (data as of 4 March 2022). However, it also notes that the gender pay gap, although very high, had a downward trend during the reference period.

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

In response to the question on the impact of Covid-19, the report presents various measures aimed to achieve gender equality in the labour market.

The report also indicates that for 2020, income data (income and salary tax data) are not yet available. As the scheme of temporarily reduced working hours has been used differently based on gender, sector and time, the income for female and male workers and employees is expected to develop differently. According to the Equal Treatment Commission for the private sector, no increase in applications in regard to the determination of remuneration was recorded in 2020/2021. Furthermore, no exceptional focus on or increase in applications was recorded due to the pandemic.

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

### *Conclusion*

The Committee concludes that the situation in Austria is in conformity with Article 4§3 of the Charter.

## **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 Austria.

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 in Austria was in conformity with the Charter.

The Committee’s assessment will relate to the information provided by the Government in response to the questions raised in the previous conclusion (Conclusions 2018).

In its previous conclusion (Conclusions 2018) the Committee asked for further information on the amount the fines to be collected by the disciplinary commission and reiterates its question concerning the means employees had to check the calculations of the minimum subsistence level.

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 takes note of the information provided in the report in reply to the question asked by the Committee asked in the previous conclusion (Conclusions 2018).

The Committee asks the next report to demonstrate that the protected wage, i.e. the portion of wage left after all authorised deductions, including for child maintenance, in 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 the workers may be authorised to waive the conditions and limits to deductions from wages imposed by law.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 4§5 of the Charter.

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

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to 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”).

The Committee previously found the situation to be in conformity with the Charter (Conclusions 2018).

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 targeted questions and to the general question.

### ***Trade union density***

The Committee asked in its targeted question for data on trade union membership prevalence across the country and across sectors of activity.

The report provides links to data from *Österreichischer Gewerkschaftsbund* (ÖBG in German only).

According to ILOSTAT, the trade union density was 26.2% in May 2022 (outside the reference period).

### ***Personal scope***

The report provides no information on the right of the armed forces to organise. However, the Committee notes from other sources (EUROMIL) that members of the armed forces have trade union rights.

### ***Restrictions on the right to organise***

In its targeted question, the Committee asked for information on public or private sector activities in which workers are denied the right to form organisations for the protection of their economic and social interests or to join such organisations.

The report provides no information in this respect. The Committee recalls that it has previously found the situation in conformity with Article 5 of the Charter (most recently in Conclusions 2014, 2018). Therefore, it considers that the situation remains in conformity in this respect. However, it requests that the next report confirm that there are no public or private sector activities in which workers are denied the right to form organisations for the protection of their economic and social interests or to join such organisations.

### ***Conclusion***

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

**Article 6 - Right to bargain collectively**  
*Paragraph 1 - Joint consultation*

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

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).

As the previous conclusion found the situation in Austria 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 Austria is in conformity with Article 6§1 of the Charter.

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

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

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 found that the situation in Austria was in conformity with Article 6§2 of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the general question.

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 notes that legislation has been amended to extend certain procedural deadlines in order to ensure the ongoing viability of collective bargaining arrangements.

*Conclusion*

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

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

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).

As the previous conclusion found the situation in Austria 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 Austria is in conformity with Article 6§3 of the Charter.

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

### *Paragraph 1 - Sexual harassment*

The Committee takes note of the information contained in the report submitted by Austria. It also takes note of the comments submitted by the Federal Chamber of Labour (*Bundesarbeitskammer* (BAK)).

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

In its previous conclusion, the Committee concluded that the situation in Austria was in conformity with Article 26§1 of the Charter, pending receipt of the information requested (Conclusions 2018).

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

### **Prevention**

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

The report provides no information on this point.

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

The Committee notes that studies carried out by the Vienna Chamber of Labour in 2019 and 2020 show that women are more frequently victims of discrimination in the workplace. For example, 20% of the women concerned stated that they had often or occasionally been subjected to sexual harassment, compared to 2% of men. The Federal Chamber of Labour (*Bundesarbeitskammer* (BAK)) pointed out that more awareness-raising and prevention campaigns are needed in this area (such as information/education on the remedies; company agreements and internal guidelines; the self-empowerment of employees through workshops; awareness-raising and training measures for trainee judges and judges).

The Committee requests that the next report provide information on awareness - raising and prevention campaigns as well as on any measures taken to ensure that the right to dignity at work is fully respected in practice.

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

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

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

The report indicates that people who consider themselves discriminated against within their work environment on the basis of their gender, age, ethnic origin, religion or belief, or sexual



orientation can take their case to the Equal Treatment Commission, noting that the Commission does not award damages. The procedure before the Equal Treatment Commission is not legally binding. The Commission's task is to investigate discrimination cases and provide an expert opinion. Appeals against dismissal and claims for compensation can only be made to a court. The report states that according to the data provided by the Equal Treatment Commission, in 2020/2021, claims alleging sexual harassment accounted for 29% of total claims brought before its first chamber and that this figure is comparable with that of the previous year.

The report provides information on the statutory provisions on combating harassment and sexual abuse in the public sector. The Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz* – B-GIBG), which is applicable to the public sector, bans harassment in the context of an employment relationship on the grounds of gender, ethnic origin, religion or belief, age and sexual orientation. According to Article 8 of the B-GIBG, the term discrimination based on gender also includes sexual harassment. Discrimination based on gender is considered to be a breach of professional obligations and constitutes a violation that must be sanctioned in accordance with disciplinary regulations. In the case of a discrimination as a result of sexual harassment, victims are entitled to compensation for the harm suffered (Article 19 para. 1, B-GIBG). Where the harm suffered does not explicitly result in financial loss, public servants and contractual employees are entitled to appropriate compensation for the harm suffered amounting to no less than €1 000.

The report further indicates that, according to the Federal Labour Protection Act (*Bundes-Bedienstetenschutzgesetz* – B-BSG), the employer has to take the necessary measures to protect the life, health, integrity and dignity of employees (Article 3 para. 1, B-BSG). The report further states that, in principle, victims have the right to remain in their jobs employment. Both the employer and the employee can terminate the contract if there are grounds for termination. The report also states that since victims of harassment and sexual abuse in the civil service often face difficult situations, the law provides for various options to support those victims, including the following: a transfer to a different position, guidance and support from staff representative bodies or the women's representative (a role specially created to support female staff); under the general duty of care incumbent on the authority, which is specifically the responsibility of the line manager, any breaches may be sanctioned under disciplinary provisions or by other means (e.g. dismissal).

With regard to the burden of proof, the Committee noted previously that Section 12§12 of the GIBG provides that, faced with an arguable claim of sexual or gender-based harassment, the defendant has to prove that there was no harassment (Conclusions 2014).

The Committee notes that according to the *Country report on gender equality 2021* of the European network of legal experts in gender equality and non-discrimination, the Austrian Supreme Court has recognised the reversal of the burden of proof in sex discrimination cases where statistical evidence supports the assumption of indirect discrimination: in such a case, the employer needs to prove that discrimination did not take place. The same report indicates that, nevertheless, claimants have to observe the general rules of civil procedural law and have to offer at least circumstantial proof of discrimination; they cannot rely solely on *prima facie* evidence. Furthermore, due to the rather high standards of proof that apply in civil procedural law, legal claims concerning sexual harassment and harassment for sexual reasons face certain procedural difficulties. Claimants are required to provide at least circumstantial evidence, which very often relies mainly or exclusively on their own testimony.

The Committee recalls that under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges (Conclusions 2007, Statement of Interpretation on Article 26; Conclusions 2018, Azerbaijan).

The Committee notes that the burden of proof is not completely reversed in discrimination cases, including harassment cases. It asks that the next report provide examples of case law,

clearly indicating on what courts consider as circumstantial evidence/proof in cases of sexual harassment.

### **Damages**

With regard to damages, the Committee previously noted (Conclusions 2014) that a person subject to sexual or gender-based harassment was entitled to compensation covering material and moral damages (at least €1000 in this respect). It asked whether a right to reinstatement was available to all victims of sexual harassment, including in cases where they had been pressured to resign, and whether the damages awarded were sufficiently deterrent for the employer (Conclusions 2014, Conclusions 2018).

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

The report indicates that appeals against termination of employment and claims for damages can only be lodged with the court, since the Equal Treatment Commission does not award damages. The report further indicates that the provisions on the payment of damages in Article 12 para. 11 in conjunction with Article 14 of the Equal Treatment Act (*Gleichbehandlungsgesetz*, GIBG) only lay down a lower limit of €1 000 for non-material loss or damage suffered, but no upper limit has been set.

The Committee notes from the *Country report on gender equality 2021* of the European network of legal experts in gender equality and non-discrimination, that individuals who are dismissed from work under circumstances that indicate discrimination may sue for the reinstatement of their employment relationship and the return to their workplace. Victims of discrimination can claim compensation for the loss of their job and also for damages for personal injury caused by discrimination (e.g. Article 12(3) of GIBG). The legal right to sue for personal damages in addition to a loss of earnings provides a remedy in cases where the claimant does not wish to return to their workplace.

The same report indicates that compensation in discrimination cases does not usually exceed concrete losses incurred by the claimant, e.g. unpaid severance payments (in civil cases, claimants can also demand a certain amount of missed interest under the general rules of civil procedure). Only in some cases, e.g. severe sexual harassment cases, does the court add an additional amount for immaterial damages for 'the personal impairment suffered' to the usual damages. Therefore, labour and social courts have not granted compensation that exceeds more than specific monetary losses, except for in sexual harassment cases, where the amount of additional personal damages is also based on the concrete remuneration and usually does not exceed about three months of average payments.

### **Covid-19**

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

The report indicates that the Covid-19 pandemic did not result in an increase in applications to the Equal Treatment Commission. The report adds that the regulatory framework for combatting harassment and sexual abuse is subject to continuous adaptation and updating.

The Committee notes that according to the *Country report on gender equality 2021* of the European network of legal experts in gender equality and non-discrimination, during the Covid-19 pandemic, many employees were working from home. According to the same report, the Equal Treatment Ombudsman (*Gleichbehandlungsanwaltschaft*) found that, due to increased job insecurity, employees were less likely to report harassment.

*Conclusion*

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

## **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 Austria.

The Committee recalls 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 previous conclusions (Conclusions 2018), the Committee concluded that the situation in Austria was not in conformity with Article 28 of the Charter on the ground that the period of three months beyond the mandate during which protection is afforded to workers' representatives was not reasonable.

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.

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

In previous conclusion (Conclusions 2018), the Committee concluded that the situation in Austria was not in conformity with Article 28 of the Charter on the ground that the period of three months beyond the mandate during which protection is afforded to workers' representatives was not reasonable.

In previous conclusions, the Committee also took note of the remedies available to workers' representatives contesting their dismissal and asked for additional information on examples of when workers' representatives have been dismissed by a court decision on the ground that reasonable cooperation with the employer was no longer possible. The Committee also asked whether it was possible for workers' representative to be dismissed without the court's prior approval during the protection period.

The Committee further requested information on protection against harmful acts other than dismissal.

In reply, the report indicates that during the mandate and within three months after its end, the termination of the employment contract or the dismissal of a workers' representative must be previously approved by a civil court judgment. A termination or dismissal without the court's approval is invalid. According to the report, the court gives its consent to dismissal of a workers' representative only in cases specified in the law. However, in some severe and exceptional cases such as misleading about contact conditions, violent behaviour or severe libel that impedes reasonable cooperation with the employer, the workers' representative may be dismissed without a court decision, but the approval of the court should be sought after the dismissal. The ruling of the court can then be challenged by appeal. The report indicates that only in two cases the court adjudicated that dismissal was justified (concerning verbal abuse and defamation).

According to the report, after the expiry of the three months period, the decision on the dismissal of a former workers' representative should be notified by the employer to the Works Council. The Works Council may approve, acquiesce or object to the decision within a period of five working days. The employer may only proceed after this period has expired or the Works Council has reacted. Otherwise, the termination will be void. If the Works Council does not approve the dismissal, it is entitled to file a complaint with the labour court. In case of approval of the termination/dismissal by the Works Council, the employee (former workers' representative) is entitled to contest the dismissal themselves by filing an action before the courts based on unlawfulness of the dismissal.

The report specifies that termination or dismissal based on previous participation in the Works Council is deemed unlawful and can be challenged before the labour court at any time after expiry of the employee's mandate. Moreover, during the court proceedings, there is an easing of the burden of proof in favour of the plaintiff. The former workers' representative has to only plausibly demonstrate that the dismissal is based on their former activities as workers' representative. The challenge is only to be dismissed by the courts where it appears more likely that another reason made credible by the employer was the major reason for the dismissal.

If the termination is set aside due to unlawfulness of the dismissal, the employment relationship will be reinstated. The employee is consequently entitled to full payment including compensation for the duration of the legal procedure.

Concerning protection afforded against prejudicial acts short of dismissal, the report indicates that the Labour Constitution Act stipulates the independence of workers' representatives and prohibits any restrictions to this requirement. They cannot be disadvantaged due to their mandate, in particular with regard to wages and career opportunities.

In their submissions, the Federal Chamber of Workers states that the regulation in Labour Constitution Act according to which the protection against dismissal of workers' representatives ends after the expiry of three months after the end of the mandate contradicts the Charter and that the regulation should be amended for compliance with its Article 28. The Federal Chamber moreover asserts that in practice, the formation of work councils is often associated with major hurdles and there have been attempts by employers to use the pandemic as an excuse to prevent the establishment of work councils. Some employers openly stated that they did not want a works council or took measures to prevent work council elections (even layoffs were pronounced) which discouraged workers from setting up work councils. The Federal Chamber asserts that in order for the protection afforded to former workers representatives (after the expiry of the three months period) be effective, the establishment and functioning of work councils should be improved.

The Committee notes that even after the expiry of the three months period, the domestic law provides for some guarantees in order to prevent employers from dismissing former workers' representatives based on their previous activities during their mandate.

However, the Committee also notes that under the domestic law, although the employer has the obligation to notify the decision on dismissal of a former workers' representative to the Works Council, and to wait until the Works Council renders its decision, the decision of the Works Council does not have any suspensive effect on the dismissal. If the Works Council disapproves the dismissal, it should contest the decision before the court. Considering that in the current system, the efficiency of the protection granted to former workers' representatives after the expiry of the three months period depends largely on the efficiency of Works Councils, the Committee requests that the next report comments on the submissions of the Federal Chamber of Workers about the establishment and functioning of work councils.

Pending receipt of this information, the Committee concludes that the situation is not in conformity with the Charter on the ground that the period of three months beyond the mandate during which protection is afforded to workers' representatives is not reasonable.

### *Conclusion*

The Committee concludes that the situation in Austria is not in conformity with Article 28 of the Charter on the ground that protection granted to workers' representatives is not extended for a reasonable period after the end of their mandate.