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EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

BELGIUM

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 Belgium, which ratified the Revised European Social Charter on 2 March 2004. The deadline for submitting the 16th report was 31 December 2021 and Belgium submitted it on 23 December 2021.

The Committee recalls that Belgium 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 2014).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2014) found the situation to be in conformity, there was no examination of the situation in 2022.

Joint comments on the 16th report by Confederation of Christian Trade Unions (CSC), General Confederation of Liberal Trade Unions of Belgium (CGSLB) and General Labour Federation of Belgium (FGTB) were registered on 17 July 2022. Moreover, joint comments on the 16th report by the Federal Institute for the Protection and Promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men, the Federal Migration Centre (Myria), and the Central Monitoring Council for Prisons were registered on 20 July 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).

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

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

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

- 12 conclusions of conformity: 2§2, 2§4, 2§5, 2§6, 2§7, 4§5, 6§1, 6§3, 6§4, 21, 22, 29,
- 3 conclusions of non-conformity: Articles 2§3, 4§3, 4§4.

In respect of the other 8 situations related to Articles 2§1, 4§1, 4§2, 5, 6§2, 26§1, 26§2, 28, 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 Belgium under the Revised Charter.

The next report from Belgium 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 Belgium and in the comments by the Belgian trade unions (CSC, CGSLB and FGTB) and by the Federal Institute for the protection and promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men, Myria, and the Central Monitoring Council for Prisons (alternative report).

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

In its previous conclusion, the Committee found that the situation in Belgium was in conformity with Article 2§1 of the Charter, pending receipt of the information requested (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion, and to the targeted questions.

Measures to ensure reasonable working hours

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

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

The report states that the main legal provisions on working time are laid down in the Employment Act of 16 March 1971. During the reference period, this act was subject to certain changes following the act of 5 March 2017 concerning feasible and manageable work. It made adjustments to the working time rules in the following areas: flexible working hours, voluntary overtime, internal working time limit, (European) working time limit, extension of the quota plus minus conto, floating hours.

The report further lists a number of implementing measures adopted pursuant to the provisions of the Employment Act concerning the sectors of metal, mechanical and electrical engineering, food trade, textile, aviation, post office.

The report also states that regulations on working hours and rest periods are set in the Law of 16 March 1971 and that they have not changed during the reference period.

The Committee notes that no information is provided on enforcement measures and monitoring arrangements, statistics on inspections and their prevalence by sector of economic activity, sanctions imposed. Therefore, it reiterates its request for information.

In their comments, the Belgian trade Unions (CSC, CGSLB and FGTB) state that the Act of 5 March of 2017 on agile work made working hours and working time considerably more flexible. However, the introduction of an additional system of voluntary overtime makes time regulations even more complex, confusing and difficult to control. Furthermore, some workers, such as medical doctors, dentists, managerial and confidential staff and domestic workers, are excluded from the labour act regulations covering working time limits. Finally, Belgium fails to make working time registration compulsory.

The alternative report similarly expresses concern about the introduction of voluntary overtime and the absence of an obligation to record working time. It also worries about the working hours of the medical staff, people holding trusted or leading positions, domestic workers, prison staff.

Law and practice regarding on-call periods

In its previous conclusion, the Committee asked what rules applied to on-call service and whether inactive periods of on-call duty were considered as a rest period in their entirety or in part (Conclusions 2014).

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.

The report states that the Belgian legislation does not provide for the possibility to conclude zero-hour contracts.

With regard to on-call time and service, domestic practice distinguishes between on-call time spent within the company, generally regarded as working time, and on-call time spent at home, during which the worker, without being present at his/her workplace, must be able to answer a professional call. Apart from the actual work performed, this does not in principle constitute working time. In this case, the more the employer requires the worker to be available for work at home, the closer the worker comes to this time being classified as working time. The Belgian labour courts and tribunals assess the degree of freedom granted to the worker on the basis of several elements, such as: the possibility of refusing to respond to a work-related call received during on-call duty; the way in which the worker can be reached (mobile or fixed phone); the number of workers required to be on-call simultaneously; the time within which the worker must respond to the professional call; the frequency of call-backs, etc.

The alternative report states that the remuneration for periods considered as working time should be clarified where collective agreements are silent on the issue.

The Committee reiterates that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for stand-by duty at the employer's premises as well as for on-call time spent at home (*Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Complaint No. 149/2017, decision on the merits of 19 May 2021, §61). The Committee asks whether on-call time is systematically seen as non-working time and asks for a legal framework regarding on-call time and which periods are considered working time and resting time. In the meantime, it reserves its position on this point.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to provide information on the impact of the Covid-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. More specifically, the Committee asked for information on the enjoyment of the right to reasonable working time in the following sectors: healthcare and social work; law enforcement, defence and other essential public services; education, transport.

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

The report states that the following measures were taken during the Covid-19 pandemic to mitigate the negative effects on fair working conditions: increase in voluntary overtime in critical sectors (to 220 hours in the second and fourth quarters of 2020 and in the first three quarters of 2021). However, the limit of 48 hours a week on average, calculated over a period of 4 months, may not be exceeded. In addition, the working hours may not exceed 11 hours a day and 50 hours a week.

The report further states that a temporary reduction of working hours was introduced in the context of the Covid-19 pandemic. This measure aimed at facilitating the redistribution of work in companies in difficulty or undergoing restructuring to avoid redundancies. This measure could be applied for the duration of the recognition period which had to start no earlier than 1 March 2020 and no later than 31 December 2020.

In addition, the report states that measures were taken to make teleworking compulsory in all the companies in non-essential sectors, in all functions for which it was possible. It was then recommended in companies where it was possible. This measure came into force on 18 March 2020 and remained in place until 27 June 2021. It was also possible for parents to take parental corona leave, which meant that workers who were employed for at least a month, could reduce their working hours to half time or 4/5 time in order to care for their child or a foster child under the age of 12 (under the age of 21 if the child is disabled) during the Covid-19 pandemic. This leave could be taken from 1 May 2020 to 30 September 2020. Furthermore, temporary unemployment was made possible for workers whose children could not attend the crèche, school or the care centre. It was in force between 1 October 2020 and 31 December 2021. Finally, employers were allowed to agree with their workers on a temporary partial career break in order to avoid redundancies. This measure could start on 1 July 2020 at the earliest and the total duration of the measure could not exceed 6 months and had to be within the period of recognition of the employer as a company in difficulty or ongoing restructuring. The start of this recognition period had to be between 1 March 2020 and 31 December 2020.

The alternative report states that precarious jobs generally do not lend themselves well to telework and that the Covid-19 crisis made access to childcare more difficult for the most vulnerable, since people in the lowest wage brackets were financially less able to take parental leave in view of the lower income it entailed.

Conclusion

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

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 Belgium.

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 Belgium 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.

The Committee takes note of the implementing measures adopted during the reference period, namely: Royal Decrees of 2017, 2018 and 2020 making the decisions of the Joint Commission for the Diamond Industry and Trade on the replacement of public holidays in 2018, 2019 and 2021 mandatory; and Royal decree of 18 October 2017 making mandatory the decision of the Joint Construction Committee on the replacement of the public holiday of 11 November 2018.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report indicates that no changes have been introduced regarding the right to public holidays with pay.

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

Conclusion

The Committee concludes that the situation in Belgium 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 Belgium.

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

In its previous conclusions (Conclusions 2014 and 2010), the Committee considered that the situation in Belgium was not in conformity with Article 2§3 of the Charter on the ground that workers who suffered illness or injury during leave were not entitled to take the days lost at another time. It notes that the relevant legislation concerning this matter has not changed. However, the report states that a draft law and a draft royal decree have been submitted to employers’ organisations, trade unions and the services of the European Commission with a view to making changes in the near future so that Belgian legislation concerning paid annual leave will be in conformity with Article 2§3 of the Charter. The Committee asks to be informed of developments in relation to these draft laws. In the meantime, it maintains its conclusion of non-conformity on the ground that workers who suffer from illness or injury while on holiday are not entitled to take the days lost at another time.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report states that since the beginning of the health crisis, days not worked because of the pandemic have been counted for the purpose of calculating the number of days of holidays and the double holiday pay allowance. According to the report, workers suffer no disadvantage if they have had to stop working for this reason. This legislation guarantees that employees receive four weeks’ paid leave and a full double holiday pay allowance. In addition, compensatory arrangements have been put in place for both holiday pay funds (for workers) and individual employers (for employees) to ensure that holiday allowances are paid.

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

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 2§3 of the Charter on the ground that workers who suffer from illness or injury while on holiday are not entitled to take the days lost at another time.

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 Belgium 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 Belgium 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 Belgium 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 Belgium 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 Belgium and in the comments submitted jointly by the Federal Institute for the Protection and Promotion of Human Rights, the Combat Poverty Insecurity and Social Exclusion Service, the Institute for the Equality of Women and Men, Myria, and the Central Monitoring Council for Prisons.

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

As the previous conclusion found the situation in Belgium 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.

The Committee notes from the comments mentioned above that certain categories of workers, such as those in "flexi-jobs", occasional workers in the restaurant and hospitality sector, or seasonal agricultural workers, receive their terms of employment orally upon their recruitment, a practice considered to be in breach of Article 2§6 of the Charter. The Committee asks for information in the next report regarding the alleged practice of providing certain categories of workers with oral, as opposed to written, information regarding their employment conditions.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report notes that no special arrangements were made.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

The Committee takes note of the information contained in the report submitted by Belgium, as well as the comments submitted jointly by the trade union organisations Confederation of Christian Trade Unions (CSC), General Confederation of Liberal Trade Unions of Belgium (CGSLB), General Labour Federation of Belgium (FGTB), and by the Federal Institute for the Protection and Promotion of Human Rights, the Combat Poverty, Insecurity and Social Exclusion Service, the Institute for the Equality of Women and Men, Myria, and the Central Monitoring Council for Prisons, respectively.

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 Belgium 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.

The report notes that the Labour Law of 1971 was amended in 2017 by adding all logistical and ancillary services related to e-commerce to the list of activities where night work was permitted. Subsequent amendments adopted during 2017 specified that night work could be introduced in enterprises engaged in e-commerce with the agreement of a single representative trade union, rather than all of them. The third-party comments consider that the amendments on night work in the e-commerce sector circumvented regular consultation procedures, in breach of Article 2§7 of the Charter. The Committee further notes that the International Labour Organization (ILO) has recently invited the Belgian Government to hold consultations with the parties concerned to assess the effects of the exemption to the rules of collective bargaining introduced for e-commerce in relation to night work, and to determine possible measures to be taken in this regard (Direct Request (Committee of Experts on the Application of Conventions and Recommendations (CEACR)) – adopted 2020, published at the 109th International Labour Conference (ILC) session (2021)). The Committee recalls that measures which take account of the special nature of night work must include among others regular consultation with workers’ representatives on the use of night work, the conditions in which it is performed, and measures taken to reconcile workers’ needs and the special nature of night work (Conclusions 2018, Estonia). It therefore asks if workers’ representatives are regularly consulted on the use of night work, the conditions in which it is performed, and for information about the measures taken to reconcile workers’ needs and the special nature of night work, in light of the above-mentioned amendments concerning night work in the e-commerce sector.

Covid-19

In reply to the question regarding the special arrangements related to the pandemic, the report notes that no special arrangements were made.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium 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 Belgium and in the comments by the Belgian trade unions (CSC, CGSLB and FGTB).

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, the Committee found that the situation in Belgium was in conformity with the Charter.

The Committee's assessment will relate to the information provided by the Government in response to the targeted questions with regard to Article 4§1 of the Charter.

Fair remuneration

As part of its targeted questions the Committee asks for information on gross and net minimum and average wages and their evolution over the reference period. It also asks what proportion of workers is concerned by minimum or below minimum wage.

In its previous conclusion (Conclusions 2016) the Committee considered that the situation was in conformity with the Charter as regards adult workers as the lowest net minimum wage corresponded to about 61% of the net average wage for a single full-time employee. The Committee notes that according to the Collective Labour Agreement No. 45/15 the minimum wage was set at € 1,625 in 2020. The Committee has previously noted that reduced rates of tax and social security contributions apply to low wages and the net minimum wage, therefore, according to the same calculation used in the previous conclusion, corresponds to €1,365. The Committee notes from Eurostat that the gross annual earnings in 2020 stood at € 50,312 and at € 30,539 net (€ 2,544 per month). The Committee notes that the minimum wage now corresponds to 53% of the average wage and therefore requests that the next report provide evidence (e.g. additional benefits that a person earning the minimum wage would be entitled to) that the lowest wage is sufficient to give the worker a decent standard of living, even if it is below the threshold of 60%. In the meantime, it reserves its position on this issue.

In this connection, the Committee notes from the comments of the trade union organisations (CSC, CGSLB et FGTB) that despite increases in productivity and purchasing power, the wages in Belgium have not increased in real terms since 2008. The Committee further notes from Comments by the Federal Institute for the protection and promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men, Myria, and the Central Monitoring Council that the minimum wage in Belgium is in itself insufficient to ensure all family types a decent standard of living, if not adequately complemented by other social benefits, which is not always the case.

In its previous conclusion (Conclusions 2014) the Committee found that the average minimum wages laid down in Collective Agreement No. 50 were lower than 50% of the national average wage. It therefore considered that the average minimum wages paid to young workers under the age of 21 did not constitute a decent remuneration within the meaning of Article 4§1 of the Charter. The Committee notes from the report of the Governmental Committee (GC(2015)22 that the monthly minimum wage is no longer reduced for the young workers since 1 January 2015. However, the reduction remains in place for students in the following way: 20 year olds receive 94% of the minimum wage, and 19 year olds- 88%. The Committee notes that the report does not provide any information in this respect. It asks the next report to indicate whether this reduction of the minimum wage for students is still in force. In the meantime, it reserves its position on this issue.

Workers in atypical employment

As part of its targeted questions the Committee asked 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 sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).

According to the report, the possibility to conclude 'zero hours' contracts does not exist in Belgium. As regards workers in gig/platform economy, they do not have a special status. They are either self-employed or employed.

With regard to cross-border work and the posting of workers, Article 5 of the Belgian law of 5 March 2002 provides that the employer who employs a posted worker in Belgium is required to respect the working conditions, remuneration and employment which are provided for by a set of legal, regulatory (laws and royal decrees) and contractual provisions sanctioned by criminal law. In this way, foreign workers employed in Belgium are paid in the same way as Belgian workers according to the scales provided by the sectors.

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

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

The Committee notes from Comments by the Federal Institute for the protection and promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men, Myria, and the Central Monitoring Council that most platform workers work in the so-called collaborative economy scheme, under which the hourly minimum wage is not necessarily guaranteed and which does not allow for the build-up of social security rights.

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

Covid-19

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

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

The Committee takes note of the information provided in the report concerning parental leave schemes during the pandemic. According to the estimates, in 2020 € 69 million were spent on parental leave in addition to the regular expenditure.

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 proportion of workers concerned were covered under such schemes.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by Belgium and in the comments by the Belgian trade unions (CSC, CGSLB and FGTB).

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 Belgium was not in conformity with Article 4§2 of the Charter on the ground that the compensatory time off for overtime hours in the public sector was not sufficient (Conclusions 2014). 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 Belgium was not in conformity with Article 4§2 of the Charter because the compensatory time off for overtime hours in the public sector was not sufficient (Conclusions 2014).

In reply, the report states that the general legal provisions on extra pay for overtime work are contained in Article 29 of the Labour Act of 16 March 1971 which was amended by the Act of 5 March 2017. Royal Decree of 23 March 2017 was adopted amending the Royal Decree of 25 June 1990 assimilating to overtime work certain services of part-time workers.

The report states that for statutory and contractual agents working in the federal administrative civil service, an overtime allowance was introduced by the Royal Decree of 13 July 2017 fixing the allowances and indemnities of the members of the staff of the federal civil service in application of Article 8, paragraph 3, of the Law of 14 December 2000 fixing certain aspects of the organisation of working time in the public sector. This made it possible to pay overtime instead of recovery of hours in case of unforeseen circumstances requiring urgent action.

In their comments, the Belgian trade unions state that persons in the positions of trust and senior managerial positions are excluded from the Labour Act with regard to overtime.

The Committee asks for clarification on what is the amount of remuneration for overtime in the public sector instead of time off, and what is the amount of compensatory time off if the worker chooses it. In the meantime, the Committee reserves its position on this point.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to 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.

In reply, the report states that there was a possibility to increase voluntary overtime hours in critical sectors to 220 hours during the second and fourth quarters of 2020 and during the first three quarters of 2021. The increase of voluntary overtime, however, it is not regarded as

overtime within the meaning of section 29 of the Labour Act of 16 March 1971. Thus these overtime hours did not give entitlement to extra pay.

The report states that there were no changes in working hours in the medical sector.

Conclusion

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

Article 4 - Right to a fair remuneration

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

The Committee takes note of the information contained in the report submitted by Belgium. It also takes note of the comments submitted by the Federal Institute for the protection and promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men, Myria, and the Central Monitoring Council for Prisons (alternative report).

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

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

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

In its previous conclusion, the Committee found that the situation in Belgium was in conformity with Article 4§3 of the Charter, pending receipt of the information requested (Conclusions 2014). In addition, the Committee found in its decision on the merits of collective complaint University Women of Europe (UWE) v. Belgium, No. 124/2016 (§182) that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that the obligation to recognise and respect pay transparency in practice was not satisfied.

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

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

Effective remedies

In its previous conclusions (Conclusions 2016, Article 20; Conclusions 2014, Article 4§3), the Committee requested information on the amounts of compensation awarded in sex discrimination cases. It also asked what rules applied in the event of dismissal in retaliation for a complaint about equal wages.

In response, the report states that the Federal Law of 10 May 2007 aimed at combatting discrimination between women and men (“gender law”) is intended to transpose Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. The law provides for protection mechanisms in the field of labour relations, which include remuneration. An effective remedy is available for victims, including through injunctive relief proceedings.

The report states that male and female workers, are protected against victimisation. Victims of discrimination can claim compensation which may take the form of either damages corresponding to the detriment actually suffered or a lump-sum payment, according to the wishes of the victims. The lump-sum payment is the equivalent of 6 months’ or 3 months’ gross earnings. In this context, the Committee refers to its decision on the merits UWE v. Belgium No. 124/2016 (§§ 152-153), where it also noted that there is no predetermined upper limit for workers who are dismissed as a result of gender discrimination claims. It considered that the obligation to ensure access to effective remedies was satisfied.

Pay transparency and job comparisons

As regards *systems to evaluate and compare jobs and pay transparency*, the Committee refers to its decision on the merits of collective complaint *UWE v. Belgium* No. 124/2016 (§181), where it noted that there were no legal provisions establishing comparative parameters to pinpoint equal value where work is performed by men and women; there was no guarantee in practice for the principle of pay transparency in the private sector; and there were some shortcomings in the job classification system. The Committee therefore considered that the obligation to recognise and respect the principle of pay transparency in practice was not satisfied.

The Committee recalls that the follow-up to this complaint will be carried out in Findings 2023. In the meantime, the Committee notes that the situation in Belgium is not in conformity with Article 4§3 of the Charter on the ground that the obligation to recognise and respect the principle of transparency of remuneration in practice is not complied with.

In addition, the report refers to the Recommendation issued in consequence of the collective complaint *University Women of Europe v. Belgium* (No. 124/2016), in which the Committee of Ministers recommends that Belgium adopt measures to improve pay transparency by taking into account parameters that would allow to establish the equal value of the work performed, such as the nature of the work, training and working conditions.

Statistics and measures to promote the right to equal pay

For information, the Committee takes note of the Eurostat data on the gender pay gap during the reference period in Belgium: 5.8% in 2017, 2018 and in 2019 and 5.3% (provisional figure) in 2020 (compared with 9.4% in 2011). It notes that this gap is lower than the average in the 27 countries of the European Union, namely 13% (provisional figure) in 2020 (data as of 4 March 2022).

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

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

In reply to the question regarding the impact of Covid-19, the report indicates that no information is available.

However, the Committee takes note from the alternative report that the Institute for the Equality of Women and Men will conduct a study regarding the impact of the pandemic on the gender pay gap, the results of which are expected in the course of 2022. The alternative report also indicates that women have made more use of the system of 'corona parental leave' – i.e. a new parental leave allowing parents to take care of their children during the Covid crisis (during the period May to September 2020) – than men did (59% compared to 41% in 2020), indicating that mothers have reduced their professional activities more than fathers did in order to cater for the increased care responsibilities resulting from 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 Belgium is not in conformity with Article 4§3 of the Charter on the ground that the obligation to recognise and respect the principle of transparency of remuneration in practice is not complied with.

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 Belgium and in the comments by the Belgian trade unions (CSC, CGSLB and FGTB).

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”).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2014).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted 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 this question, the report states that, following the ruling of the Constitutional Court of 7 July 2011, and in the framework of the provisions relating to the end of the employment contract (Articles 32 to 42 of the law of 3 July 1978, relating to employment contracts), notice periods were introduced by the Law of 26 December 2013, effective from 1^{er} January 2014, concerning the introduction of a single status between workers and employees with regard to

notice periods and the unpaid day, as well as accompanying measures. The report states that for the first five years of service, the notice period will evolve gradually: first quarterly for the first two years, and then annually. In this respect, the Committee takes note of the planned time limits, which vary from one week for the dismissal of a worker with 0 to less than 3 months seniority, to 15 weeks for the dismissal of a worker with 4 to less than 5 years seniority. The Committee also takes note that the regime which allowed notice periods to be disregarded no longer applies from 1 January 2018.

As noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. In the light of the information provided in the report, the Committee considers that the notice periods introduced by the Law of 26 December 2013 are not manifestly unreasonable.

In its previous conclusion, the Committee requested that the next report include information on notice periods and/or compensation applicable in the healthcare sector and to statutory and contractual civil servants (Conclusion 2014). In its previous conclusion, the Committee also requested that the information be updated on developments subsequent to the Constitutional Court's decision No. 125/2011 of 7 July 2011 (Conclusion 2014).

The report states that statutory employees in the public sector do not have a notice period. The report further states that the notice periods laid down in the Law of 3 July 1978 apply equally to contractual employees in the public sector and to contractual employees in the healthcare sector, as there are no special provisions on notice periods for them. In view of the information at its disposal, the Committee considers that the situation in Belgium is not in conformity with Article 4§4 of the Charter as regards statutory employees in the public sector.

The report also states that during the Covid-19 pandemic the notice period given by the employer during a period of temporary unemployment due to force majeure resulting from the coronavirus crisis was suspended. The Committee takes note of the information provided and asks that the next report provide specific information on how the employers made use of this measure. In line with its Statement on Covid-19 and social rights adopted on 24 March 2021, the Committee recalls that precarious and low-paid workers are particularly vulnerable to the impacts of the Covid-19 crisis. The Committee further recalls that States Parties must ensure that these categories of workers enjoy all the labour rights set out in the Charter, which also includes rights relating to notice periods.

Notice periods during probationary periods

In its previous conclusion, the Committee requested that the next report indicate the notice periods and/or compensation applicable during probationary periods (the maximum duration of which is 14 days for workers/blue-collar workers, 6 months for employees with a gross annual salary up to €36,355 (indexed), and 12 months for employees with a gross annual salary above that amount) (Conclusion 2014). In its previous conclusion, the Committee requested that the information be updated with developments subsequent to the Constitutional Court's decision No. 125/2011 of 7 July 2011 (Conclusion 2014).

In response to this question, the report states that trial periods have been abolished with regard to employment contracts for blue-collar and white-collar workers as of 1 January 2014 by the Law of 26 December 2013 on the single status. However, probationary periods still apply to student employment contracts (first three trial working days) and to temporary employment contracts (first three trial working days, unless otherwise agreed). Until the trial period expires, either party may terminate the contract without notice or compensation.

Notice periods with regard to workers in insecure jobs

In its previous conclusion, the Committee requested that the next report include information on the notice periods and/or compensation applicable in the event of termination of atypical employment relationships (Conclusion 2014). The Committee also asked for updated

information on developments subsequent to the Constitutional Court's decision No. 125/2011 of 7 July 2011 (Conclusion 2014).

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

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

In its previous conclusion, the Committee requested that the next report indicate the notice periods and/or compensation applicable to causes of termination of contract for reasons outside the parties' control (Conclusion 2014).

In its comments, CSC, CGSLB and FGTB state that the possibility of terminating an employment contract in case of force majeure without any notice periods or compensation, is not in conformity with Article 4§4 of the Charter.

The Committee asks for updated information on the notice periods in the event of termination of employment for reasons outside the parties' control.

Circumstances in which workers can be dismissed without notice or compensation

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

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 4§4 of the Charter on the ground that there is no notice period for statutory employees in the public sector.

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 Belgium.

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

The Committee 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

In its previous conclusion (Conclusions 2014) the Committee asked what limits to deduction from wages applied when deductions made pursuant to the Protection of Workers’ Pay Act were concurrent with deductions authorised under Article 1409, paragraph 1 of the Judicial Code.

The report states that the deductions made on the basis of Article 23 of the Protection of Workers’ Pay Act must also respect the limits of Article 1409 of the Judicial Code. Therefore, according to the report, the limit set in Article 1409 of the Judicial Code is an absolute limit (100% of net pay exceeding €1 344 per month; 40% of net pay between €1 228 and €1 344 per month; 30% of net pay between €1 113 and €1 228 per month; 20% of net pay between €1 037 € and €1 113 per month; the band below €1 037 is completely unassignable and unattachable).

Waiving the right to the restriction on deductions from wage

The Committee has previously (Conclusions 2014) noted that according to the Federal Public Service for Employment, Labour and Social Dialogue, case law allows for the reciprocal offsetting of debts owed by employers and employees under agreements between them provided that such agreements are concluded after the wage becomes due. It asked for further information on this point in the next report.

The report states in this regard that Section 23 of the Protection of Remuneration Act does not preclude an agreement between the employer and the employee whereby it is agreed to

set the wages to be paid against a repayment obligation on the part of the employee, provided that such an agreement is concluded after the wages have become due. This is because it is not possible for the employee to waive rights based on mandatory legal provisions in advance. It should be noted that in the case of compensation of claims, the principles of civil law (Art. 1291 and 1293 of the Civil Code) must also be taken into account. Furthermore, deductions can only be made within the limits of Article 1409 of the Judicial Code (i.e. taking into account the part of the remuneration that cannot be seized as provided for in Article 1409 of the Judicial Code and following). Thus, the worker may, at the time when the remuneration is due, conclude an agreement with the employer by which they agree to set off certain amounts against the remuneration. This is only possible with the worker's express agreement after the remuneration has become due. The waiver of a right is to be interpreted strictly and can only be inferred from facts that do not lend themselves to any other interpretation. (Cass. 25 April 2005, S.03.0101.N/1 and Cass. 9 November 2015, JTT, 2016, n°1236, p. 26.) Therefore, the case law often requires that the waiver be in writing. Sometimes an implicit or tacit waiver of rights is accepted. (see Cass. 9 November 2015, JTT, 2016, n°1236, p.26).

Conclusion

The Committee concludes that the situation in Belgium 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 Belgium as well as the comments submitted jointly by the trade union organisations CSC, CGSLB and FGTB, and by the Federal Institute for the Protection and Promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men (Myria), and the Central Monitoring Council for Prisons.

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 Belgium was in conformity with Article 5 of the Charter (Conclusion 2014).

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 by the Government in response to the targeted and general questions.

Prevalence/Trade union density

In its targeted question the Committee asked that the report provide information on the prevalence of trade union membership in the country and in the sectors of activity.

In response to the targeted question, the report informs that the Belgian Government does not have official national figures on trade union membership in the various sectors of activity. It added that, according to studies carried out by national and international scientific institutions, the rate of unionisation in Belgium was between 50 and 55%. The data provided by the CSC, CGSLB and FGTB confirms this.

Personal scope

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

The Committee recalls that Article 5 of the Charter allows States Parties to impose restrictions on the right 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).

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

Restrictions on the right to 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.

In response to the targeted question, the report states that, in principle, workers are not denied the right to form or join organisations for the protection of their economic and social interests.

Trade union activities

The Committee previously found the situation to be in conformity in this respect (Conclusions 2014). However, according to the comments submitted by the Federal Institute for the Protection and Promotion of Human Rights, the Service to Combat Poverty, Insecurity and Social Exclusion, the Institute for the Equality of Women and Men (Myria), and the Central Monitoring Council for Prisons, while workers attempting to organise are protected under the prohibition of non-discrimination on the ground of trade union beliefs, there is no formal right for trade unions to gain access to the workplace to engage in recruitment practices – which is of particular importance in companies which have few or non-unionised members. The Committee asks what measures, if any, have been taken to facilitate trade union access to workplaces.

Representativeness

The Committee previously found the situation to be in conformity in this respect (Conclusions 2014). However it asked what rights are granted to 'non-representative' organisations (Conclusions 2014).

In response to the Committee's question, the report states that the Belgian Constitutional Court annulled a provision that introduced a new category of trade unions, the so-called "representative" unions (Law of 3 August 2016 in the organic law of 23 July 1926 concerning the *Société Nationale des Chemins de Fer Belges* and the staff of the Belgian railways). Only the latter were granted all the prerogatives of trade union status (in particular, calling strikes and participating in social elections). However according to the comments submitted by the Federal Institute for the Protection and Promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men (Myria), and the Central Monitoring Council for Prisons, this decision is very specific to the labour law arrangements at NMBS-SNCB, and does not necessarily apply by way of analogy to the whole private sector. For instance, the Constitutional Court expressly referred to the fact that the non-representative trade unions affected had beforehand enjoyed the possibility to participate in social elections, distinguishing it from the private sector in which this has never been the case. The Constitutional Court judgment thereby does not change anything about the exclusion of non-representative organisations in the private sector from participating in the social elections or from engaging in collective bargaining. The Committee asks the Government to comment on this.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

The Committee takes note of the information contained in the report submitted by Belgium, the joint comments submitted by the trade union organisations Confederation of Christian Trade Unions (CSC); General Confederation of Liberal Trade Unions of Belgium (CGSLB); General Labour Federation of Belgium (FGTB), as well as those submitted by the Federal Institute for the Protection and Promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men, Myria, and the Central Monitoring Council for Prisons.

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 Belgium 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 Belgium 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 Belgium, as well as the comments submitted jointly by the trade union organisations Confederation of Christian Trade Unions (CSC); General Confederation of Liberal Trade Unions of Belgium (CGSLB); General Labour Federation of Belgium (FGTB), and by the Federal Institute for the Protection and Promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men, Myria, and the Central Monitoring Council for Prisons, respectively.

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 Belgium was in conformity with Article 6§2 of the Charter (Conclusions 2014).

The above-mentioned comments indicate that the Act of 26 July 1996 on the promotion of employment and protection of competitiveness was amended in 2017 by introducing a maximum wage band that severely limits the possibilities for collective bargaining and does not really allow wage increases, not only on the national level, but also at the sectoral and enterprise level. The comments note that, as a result of these restrictive amendments, the social partners were unable to reach an agreement in collective negotiations that took place at the national level in 2019 and 2021.

The Committee further refers to the recently adopted conclusions of the Committee on Freedom of Association (CFA), which found that the amendments in question entailed a significant restriction of the ability of the social partners to autonomously negotiate wage levels in the private sector, in a manner that was potentially incompatible with the International Labour Organization Conventions no. 98 and 154 (400th Report of the Committee on Freedom of Association, GB.346/INS/15, 9 November 2022, §§ 110-149).

The Committee asks for the Government’s comments on the provisions of the Act of 26 July 1996, as amended by the Act of 19 March 2017, in light of the objections included in the above-mentioned third-party observations and the conclusions of the CFA.

As the report does not provide any relevant information in relation to the above-mentioned general question, the Committee reiterates its request for information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report notes that regulations adopted on 24 June 2020 and applying retroactively from the beginning of the pandemic on 1 March 2020 included a series of measures intended to facilitate the process of deliberation by joint committees and joint sub-committees engaged in collective bargaining. Namely, the report refers to changes concerning the use of electronic signatures, online registration of collective agreements, accommodations with regard to quorum and

virtual engagement, and providing access to secure electronic platforms. The report notes that although joint committees and joint sub-committees continued to engage in social dialogue, no new collective agreements have been concluded during the reference period in the sectors of activity most affected by the pandemic.

Conclusion

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

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 Belgium 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 Belgium is in conformity with Article 6§3 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

The Committee takes note of the information contained in the report submitted by Belgium and of the comments from the Belgian trade union organisations (CGSLB, CSC, FGTB) and from the Federal Institute for the Protection and Promotion of Human Rights, the Central Prison Surveillance Council, the Institute for the Equality of Women and Men, Myria (Federal Migration Centre) and the Service for the Fight against Poverty, Insecurity and Social Exclusion.

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

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

In its previous conclusion, the Committee considered that the situation in Belgium was not in conformity with Article 6§4 of the Charter (Conclusions 2014). 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

Restrictions to the right to strike, procedural requirements

In its previous conclusion, making reference to the decision it had taken in 2011 on the merits of Complaint No. 59/2009, European Trade Union Confederation (ETUC), *Centrale générale des syndicats libéraux de Belgique* (CGSLB), *Confédération des syndicats chrétiens de Belgique* (CSC) and *Fédération générale du travail de Belgique* (FGTB) v. Belgium, the Committee concluded that the situation in Belgium was not in conformity with Article 6§4 of the Charter on the ground that the restrictions on the right to strike did not comply with the requirements of Article G of the Charter because they were neither prescribed by law nor proportionate to the aims set out in Article G.

The Committee asked for detailed information in the next report on the restrictions on the right to strike based on judicial decisions so that it could verify that the situation had been brought into conformity with the Charter.

In its follow-up to the aforementioned decision (Findings 2018), the Committee considered that the examples of case law given by the Belgian authorities showed, on the one hand, that Belgian case law on strikes was stable, consistent and predictable, and on the other hand, that the procedures for unilateral applications were adequately regulated. The Committee therefore stated that the situation had been brought into conformity with the Charter and decided to bring its examination of the follow-up to the decision to an end.

In its report, the Government states that the right to strike is adequately guaranteed by case law. To illustrate this statement, it makes reference to two cases that were heard by the Belgian courts recently; they concerned strikes which were combined with obstruction of major highways (an offence under Article 406 of the Criminal Code, malicious obstruction of traffic).

In the first of these cases (obstruction of a road giving access to the port area of Antwerp during a national strike day in June 2016), one of the trade union activists was found guilty of maliciously obstructing the public highway by Antwerp Criminal Court (which did not impose any sentence). In the last instance, the Court of Cassation stated that the effective exercise of

fundamental rights (which were not in question) can be subject to conditions and limitations, in particular where there is a breach of a provision of criminal law leading to more than the ordinary nuisances that can result from a strike, e.g. offences of malicious obstruction of a highway, theft, illegal possession of a weapon, arson or hostage-taking (Cass. (2nd Chamber) AR P.19.0804.N, 7 January 2020 (B. P. V)). In the second case (strike combined with a roadblock on the Herstal viaduct on the E40 motorway), 17 trade union activists were convicted by Liège Criminal Court of offences under Article 406 of the Criminal Code. The Court of Cassation delivered its judgment in March 2022 (outside the reference period).

With regard to minimum or essential services, the Government states that since 2017, a number of pieces of legislation have been passed to implement/specify the continuity of services provided during strikes, e.g. Law of 29 November 2017 amending Law of 23 July 1926 on the SNCB/NMBS and Belgian railway workers, and Law of 23 March 2019 on the organisation of prison services and prison staff regulations.

According to the trade union organisations, the development of case law concerning limitations of the right to strike and the right to collective action is particularly worrying. In this regard, they mention that in the case concerning the obstruction of the Cheratte bridge (roadblock on the Herstal viaduct), Liège Court of Appeal reclassified the offences (obstruction of a highway making traffic dangerous) and increased the amounts of the fines imposed on first instance (judgment of 19 October 2021, outside the reference period).

The trade union organisations also state that following the decision on the merits of Collective Complaint No. 59/2009, the practice of “unilateral applications” limiting the exercise of the right to strike appears to be less frequent. However, they lament the fact that this procedure is still used; for example, they cite the decision taken by the president of Leuven Regional Court to grant a unilateral request of 4 December 2019 to stop a strike (this decision was annulled by that court on 19 December 2019).

Lastly, the trade union organisations confirm that the use of minimum services is growing in Belgium in several sectors (rail transport in 2017 and prison services in 2019).

In the light of all of the aforementioned factors, the Committee considers that the situation is in conformity with Article 6§4 of the Charter.

Right of the police to strike

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

Covid-19

In the context of the Covid-19 health 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 states that during the pandemic, the Belgian authorities did not take any additional specific measures to guarantee the right to strike.

The trade union organisations mention that during the pandemic, Belgium adopted a number of measures that restricted workers' right to take industrial action. Gatherings/demonstrations were completely prohibited from 13 March to 1 July 2020 by the Ministerial Order of 13 March 2020 on emergency measures to limit the spread of the Covid-19 coronavirus. They were permitted again from 1 July 2020 onwards, but subject to conditions (number of participants and social distancing). In practice, administrative sanctions were imposed by the district authorities on trade union activists in connection with peaceful industrial action during the pandemic.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 6§4 of the Charter.

Article 21 - Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Belgium. It also takes note of the information contained in the comments by the CSC, CGSLB and FGFB, as well as by the Federal Institute for the protection and promotion of Human Rights, The Central Monitoring Council for Prisons, The Institute for the Equality of Women and Men, Myria and The Service to Combat Poverty, Insecurity and Social Exclusion.

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

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

In its previous conclusion, the Committee found that the situation in Belgium was in conformity with Article 21 of the Charter (Conclusions 2018). It will therefore restrict its consideration to the Government’s replies to the targeted question, namely to provide information on specific measures taken during the COVID-19 pandemic to ensure the respect of the right to information and consultation.

The Committee notes from the report that with a view to the social elections of 2020, the laws of 1948, 1996 and 2007 relating to social elections, the organization of the economy and to the well-being of workers during the performance of their work were amended. It asks the next report to provide information whether these changes affected the workers’ right to information and consultation.

The Committee further notes the joint comment submitted by the Belgian trade union organisations CSC, CGSLB and FGFB that the social elections have been considerably affected by the first lockdown. It also notes the indication that, within the framework of the planned “labour agreement”, the government intends to allow certain companies to introduce night work without prior consultation with workers or negotiation with their unions. They should only be “involved”, which is not the same as consultation or negotiation. Additionally, the employer would also have the possibility of modifying the work regulations without following the procedure normally required for such a modification, which requires the agreement of the representatives of the workers on the works council. The Committee asks the next report to provide information whether these amendments were adopted and came into force in the form as presented by the trade union organisations.

The Committee also notes from the joint comments submitted by the Federal Institute for the protection and promotion of Human Rights and other organisations that the right to protect personal data is not fully balanced against other fundamental rights, such as the right to information and consultation and that the current lack of clarity on the regulations’ application can lead to important restrictions to the workers’ right to information and consultation. In its criticism, they refer to the refusal to grant trade unions access to certain data pertaining to the identity of a company’s workers, in the name of compliance with the General Data Protection Regulation. The Regulation prohibits the processing of personal data except for several explicitly legal grounds, such as acting with the consent of the data owner or carrying out a task in the public interest. Trade unions may claim that they are carrying out a public interest task, but this exception does not lend itself easily to the context of social elections, and such an argument may place the provisions’ interpretation on the employer, giving him or her considerable leeway to allow or to refuse the request. Without this information, Trade unions would face considerable difficulty to inform and consult with the workers they intend to represent. The trade union organisations further submit examples of inadequate practices to

withhold certain data on workers based on the impugned provisions. The Committee asks the next report to comment on this observation.

For this examination cycle, the Committee requested information on specific measures taken during the COVID-19 pandemic to ensure the respect of the right to information and consultation. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis, whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The report provides that the 2020 social elections were affected by the Coronavirus crisis and therefore collectively suspended in March 2020 by the law of May 4, 2020. The procedure was resumed at the end of September 2020 and the social elections took place from November 16 to 29, 2020.

Following the November 2020 election, many new or renewed participation bodies have been set up as an important basis for social consultation in order to meet the difficult challenges facing many companies due to the Coronavirus crisis. More specifically, these consultation bodies make it possible to guarantee that the workers are informed, regularly or in a timely manner and in an understandable manner, of the economic and financial situation of the company and that they are, through their representatives, consulted in good time on the decisions envisaged which are likely to substantially affect their interests. This consultation relates in particular to decisions that will have significant consequences on the employment situation in the company. Within these consultation bodies, questions concerning new forms of work, developed during the Coronavirus crisis, are also addressed, such as the introduction of structural teleworking. In order to ensure the continuity of this social dialogue at company level, despite the health context, the FPS Employment allows meetings of the participation bodies to be organized digitally (skype, teams, zoom, videoconferences, etc.), according to the procedures provided for in the internal rules of the body.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 21 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 Belgium. It also takes note of the information contained in the comments by the CSC, CGSLB and FGTB, as well as by the Federal Institute for the protection and promotion of Human Rights, The Central Monitoring Council for Prisons, The Institute for the Equality of Women and Men, Myria and The Service to Combat Poverty, Insecurity and Social Exclusion.

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 Belgium 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.

The Committee also refers to the comments put forward by the Federal Institute for the protection and promotion of Human Rights and trade union organisations as regards the organisation of social and socio-cultural services and facilities, according to which the varied nature of these benefits and the lack of systematic or statistical studies make it difficult for the trade union organisations to provide comprehensive information on the organisation of these services and facilities. According to their comments, given the importance of these services to the right to participate in the determination and improvement of the working conditions and work environment, the State should be strengthen its efforts to provide accurate and detailed information on this issue. They point to the fact that this information had also been requested by the Committee, however, in their opinion, not provided fully. The Committee invites the next report to comment on these observations.

The Committee also notes critical comments raised by the trade union organisations that there is no specific legal mechanism to compel an employer who adopts a regulation or wrongfully refrains from a policy without the favourable advice of the Committee on Prevention and Protection in the Workplace (CPW). The trade union organisations point out that the refusal to follow consecutive recommendations of the CPW would be difficult to challenge in the labour courts, particularly if these advisory opinions are not legally binding on the employer. In their opinion, it is particularly critical in case of disputes pertaining to social elections and the dismissal of a workers’ representative. The Committee asks the next report to comment on that observation and to explain whether there is any specific legal mechanism to compel an employer who adopts a regulation or wrongfully refrains from a policy without the favourable advice of the CPW.

For this examination cycle, the Committee requested information on specific measures taken during the Covid-19 pandemic to ensure the respect of the right to take part in the determination and improvement of the working conditions and working environment. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The report provides that a generic guide to fight against the spread of Covid-19 at work was drawn up by the public authorities with the collaboration of the social partners of the Higher Council for Prevention and Protection at Work. The Committee notes, however, that it

concerns rather social distancing measures than measures to secure the right to participate in determination and improvement of working conditions and working environment.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers' organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers' representatives in terms of Article 22 of the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 22 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 Belgium and in the comments submitted jointly by the Federal Institute for the Protection and Promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men, the Belgian Federal Migration Centre (MYRIA), and the Central Council on Prison Monitoring.

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 Belgium was in conformity with Article 26§1 of the Charter, pending receipt of the information requested (Conclusions 2014).

The assessment of the Committee will therefore concern the information provided by 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 indicates that the Royal Decree of 10 April 2014 on the prevention of psychosocial risks at work (which replaced that of 17 May 2007) has further improved the prevention of psychosocial risks at work and better defined the role of specialised prevention advisers (“*les conseillers en prévention aspects psychosociaux*”) and confidential counsellors (“*les personnes de confiance*”). The report also indicates that the specialised prevention advisers (compulsory for all employers) and confidential counsellors (not compulsory) carry out their tasks with regard to all psychosocial risks (such as harassment and violence at work, stress, burn-out and work-related conflicts).

The report also provides detailed information on the preventive measures taken during the reference period. It states that the website of the Federal Public Service Employment, Labour and Social Dialogue has been updated in order to provide a detailed explanation of the legislation applicable to the prevention of psychosocial risks at work. The report further states that the FPS Employment, Labour and Social Dialogue continues to manage the networks of specialised prevention advisers and confidential counsellors which allows those actors to exchange their experiences in dealing with formal or informal complaints (including those concerning acts of violence or moral or sexual harassment at work) and to share good practices, under the supervision and coordination of a facilitator. The report provides examples of training and awareness sessions organised during the reference period.

The report provides examples of specific tools that have been developed during the reference period such as: (i) standard documents/templates to help specialised prevention advisers and confidential counsellors when dealing with an informal complaint; (ii) a manual with practical explanations for specialised prevention advisers on how to draft an opinion in the case of a formal complaint; (iii) various brochures and training guides for local managers and trainers; and (iv) a series of videos for use during training to explain psychosocial risks, regulations, practical exercises through illustrated cases.

The Committee recalls that Article 26§1 requires States parties to take appropriate preventive measures in consultation with employers' and workers' organisations. The Committee asks whether and to what extent employers' and workers' organisations are consulted in promoting awareness, information and the prevention of sexual harassment in the workplace or in relation to work, including in the context of online/remote work.

The Committee notes in the comments of the Federal Institute for the Protection and Promotion of Human Rights and others submitted during this cycle that according to a survey conducted in 2020/2021 by the Institute for the Equality of Women and Men, 9% of female workers and 4% of male workers reported having been confronted with sexual harassment in the workplace. The same survey indicates that (female and male) workers younger than 25 years in particular are more likely to have experienced sexual harassment in the workplace in the preceding year. It also shows that sexual harassment at the workplace is particularly prevalent in sectors where workers come into contact with customers, and in which women are often over-represented such as care and education.

The Committee further notes in the same comments that the Interfederal Centre for Equal Opportunities, Unia, has drawn attention to the specific vulnerability of persons with a disability being victims of harassment in the workplace. Unia is also concerned about the particularly vulnerable situation in the labour market of women with disabilities, especially in sheltered workshops where they are under-represented.

The Committee asks that the next report provide information on the prevention measures taken in order to protect workers against sexual harassment, including with regard to workers under 25 years of age, those who often work with customers and those who work in sectors where women are often over-represented such as care and education, and women with disabilities.

Liability of employers and remedies

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

The report indicates that the legislation relating to the well-being of workers was codified in 2017. The Code of Well-being at Work now includes (almost) all the decrees implementing the Act of 4 August 1996 on the well-being of workers during the performance of their work, as well as the decree of 10 April 2014 (Title 3 (prevention of psychosocial risks at work) of Book I (general principles) of the Code of Well-being at Work).

Damages

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

The report indicates that the victim of harassment can claim from the perpetrator compensation for the damage actually suffered (where the victim has to prove the extent of the damage and the causal link between the behaviour and the damage), or a lump-sum compensation which exempts the victim from providing this evidence. The latter lump sum compensation amounts to an amount corresponding to 3 months of the victim's gross remuneration (for which a threshold is defined). It is increased to 6 months when the conduct is linked to discrimination, is serious or when the perpetrator is in a relationship of authority *vis-à-vis* the victim.

The Committee notes from the *Country report on non-discrimination 2021* of the European network of legal experts in gender equality and non-discrimination that in Belgium, there is no maximum amount for compensation as such, but the victim is entitled to choose the lump sums defined in the law rather than asking for damages calculated on the basis of the 'effective' loss. In the field of employment, the lump sum compensation amounts to six months'

salary, reduced to three months' salary if the employer shows that the disputed measure would have been adopted anyway, even in the absence of the discriminatory element. The same report indicates that there is no information available as to the average amount of compensation awarded to victims of discrimination.

The Committee asks that the next report provide information on the relevant case law, in particular as regards the actual damages awarded to victims of sexual harassment.

In its previous conclusion, the Committee asked for updated information on the relevant case-law concerning sexual harassment and for clarification as to whether reinstatement is possible when employees have been forced to resign due to sexual harassment (Conclusions 2014).

The report does not provide the requested information. The Committee notes in the comments submitted by the Federal Institute for the Protection and Promotion of Human Rights and other bodies, that while the Well-being at Work Act provides for the possibility for the dismissed employee to request reinstatement (§ 3), the sanction for a refusal by the employer to do so consists of compensation equivalent to six months of gross remuneration or compensation for the damage actually suffered by the employee – who, in the latter case, must prove the extent of the damage (§ 4). The same comments indicate that under Belgian labour law, reinstatement cannot be ordered since the parties are considered to have a right to unilaterally terminate a labour contract.

The Committee asks that the next report clarify whether the right to reinstatement is guaranteed to employees who have been unfairly dismissed or pressured to resign for reasons related to sexual harassment. It points out that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Covid-19

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

The report indicates that according to statistics from the annual reports of the external services for prevention and protection at work, the numbers of complaints of harassment or burnout at work have remained stable during the pandemic. The report further states that, in accordance with the legislation on well-being, in order to avoid harmful consequences for the physical and mental health of workers, all employers had to take into account, in their prevention policies, the specific risks faced by workers as a result of the pandemic situation. Specific prevention measures were implemented by employers, with the support of the prevention services.

The report indicates that the authorities are not in possession of information on any measures taken in the specific sectors of night workers, home workers, domestic workers, store workers or medical personnel.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

The Committee takes note of the information contained in the report submitted by Belgium and in the comments submitted jointly by the Federal Institute for the Protection and Promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men, the Belgian Federal Migration Centre (MYRIA), and the Central Council on Prison Monitoring.

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

The Committee notes that it is the first report submitted by Belgium on Article 26§2 of the Charter.

The assessment of the Committee will therefore concern the information provided in the report in response to the targeted questions and in general the compliance of the national situation with the requirements of Article 26§2 of the Charter.

Prevention

The report states that national law requires that the employer integrates the prevention of abusive behaviour into its policy on the well-being of workers: among other things, carry out an a priori risk analysis which includes sexual harassment and moral harassment, on the basis of which it implements preventive measures that must be regularly evaluated. To improve the prevention of behaviour originating from third parties, the employer must keep a register in which workers can indicate that they believe they have been victims of moral or sexual harassment by a third party to the company. The amendments made to the Federal Act of 4 August 1996 on the well-being of workers in the performance of their work (‘Well-being at Work Act’) in 2007 and 2014 have further defined the obligations of the employer regarding prevention, in cooperation with specialised prevention advisers and a network of confidential counsellors.

The report further provides detailed information on the preventive measures taken during the reference period. It indicates that the website of the Federal Public Service Employment, Labour and Social Dialogue has been updated in order to provide a detailed explanation of the legislation applicable to the prevention of psychosocial risks at work. The report further states that the FPS Employment, Labour and Social Dialogue continues to manage the networks of specialised prevention advisers and confidential counsellors which allows them to exchange their experiences in dealing with formal or informal complaints (including those regarding acts of violence or moral or sexual harassment at work) and to share good practices, under the supervision and coordination of a facilitator. The report provides examples of training and awareness sessions organised during the reference period.

The report provides examples of specific tools that have been developed during the reference period, such as: (i) standard documents/templates to help specialised prevention advisers and confidential counsellors when dealing with an informal complaint; (ii) a manual with practical explanations for specialised prevention advisers on how to draft an opinion in case of a formal complaint; (iii) various brochures and training guides for local managers and trainers; and (iv) a series of videos that can be used during training to explain psychosocial risks, regulations, practical exercises by means of illustrated cases.

The Committee recalls that Article 26§2 requires States parties to take appropriate preventive measures in consultation with employers’ and workers’ organisations. The Committee asks whether and to what extent employers’ and workers’ organisations are consulted in the

promotion of awareness, information and prevention of moral (psychological) harassment at the workplace or in relation to work, including when working online/remotely.

The Committee notes that according to the comments submitted by the Federal Institute for the protection and promotion of human rights and others, despite a relatively strong legal framework, harassment at the workplace remains widespread in Belgium. Survey results indicate that between 14.2 and 18.6% of workers have been faced with (non-sexual) harassment at the workplace in 2021.

The Committee asks that the next report provide information on the prevention measures taken in order to protect workers against moral (psychological) harassment and on any actions taken to ensure that the right to dignity at work is fully respected in practice.

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 moral (psychological) harassment in the framework of work or employment relations.

The report indicates that in the Federal Act of 4 August 1996 on well-being of workers in the performance of their work ('Well-being at Work Act'), 'moral harassment at work' is defined as "*several similar or different abusive behaviours, whether external or internal to the company or the institution, which occur over a certain period of time, with the purpose or the effect of harming the personality, the dignity or the physical or psychological integrity of a worker (...), during the performance of his or her work, of putting in jeopardy his/her work or of creating an intimidating, hostile, degrading, humiliating or offensive environment and which manifest themselves in particular by words, intimidations, acts, gestures or unilateral writings.*"

The report further indicates that the legislation relating to the well-being of workers was codified in 2017. The Code of Well-being at Work now includes (almost) all the decrees implementing the Act of 4 August 1996 on the well-being of workers in the performance of their work, as well as the decree of 10 April 2014 (title 3 (prevention of psychosocial risks at work) of book I (general principles) of the Code of Well-being at work).

The report indicates that Section V bis of the Well-being at Work Act, as subsequently amended, sets out the protection against moral harassment, sexual harassment and violence at work. The report indicates that the legal system put in place for the protection and prevention of moral harassment at work is similar to that provided for sexual harassment. The Well-being at Work Act requires employers to take preventive measures to prevent or mitigate such harm and to provide for (informal and formal) internal procedures. It also allows victims to access, in a subsidiary manner, the external complaints procedure before the labour inspectorate or the labour courts. In addition, there is the possibility to complain to the public prosecutor (labour inspector) or to file a complaint with civil party status before the investigating judge with a view to opening a criminal proceeding against the alleged perpetrator for violence, harassment or sexual harassment, or against the employer for failure to comply with the obligations arising from the Well-being at Work Act.

With regard to the liability of employers, the Committee recalls that it must be possible for employers to be held liable for harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them (independent contractor, self-employed worker, visitor, client, etc.) is the victim or the perpetrator (Conclusions 2014, Finland). The Committee asks whether employers may be held liable (i) for the actions of their employees and (ii) when moral (psychological) harassment occurs in relation to work, or on premises under their responsibility, but it is suffered or perpetrated by a third person, not employed by them, such as an independent contractor, self-employed worker, visitor, client, etc..

With regard to the burden of proof, the Committee notes from the *Country report on non-discrimination 2021* of the European network of legal experts in gender equality and non-

discrimination that, in Belgium, national law, at both federal and regional levels, provides for a shift in the burden of proof in favour of the plaintiff in civil procedures.

The Committee asks that the next report provide updated information on relevant case law, including as regards the damages effectively awarded to victims of moral (psychological) harassment.

Damages

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

The report states that victims of harassment can claim compensation from the perpetrator that corresponds either to the damage actually suffered (where the victim has to prove the extent of the damage and the causal link between the behaviour and the damage), or a lump-sum compensation which exempts the victim from providing this evidence. The latter lump sum compensation amounts to an amount corresponding to 3 months of the victim's gross remuneration (for which a threshold is defined). It is increased to 6 months when the conduct linked to discrimination, is serious or when the perpetrator is in a relationship of authority *vis-à-vis* the victim.

The Committee notes from the Country report on non-discrimination 2021 of the European network of legal experts in gender equality and non-discrimination that in Belgium, there is no maximum amount for compensation as such, but the victim is entitled to choose the lump sums defined in the law rather than asking for damages calculated on the basis of the 'effective' loss. In the field of employment, the lump sum compensation amounts to six months' salary, reduced to three months' salary if the employer shows that the disputed measure would have been adopted anyway, even in the absence of the discriminatory element. The same report indicates that there is no information available as to the average amount of compensation awarded to victims of discrimination.

The Committee recalls that victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or pressured to resign for reasons related to harassment. The Committee asks whether the right to reinstatement is available to all victims of moral (psychological) harassment, including when the employee has been pressured to resign for reasons related to harassment.

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 moral (psychological) 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, according to statistics from the annual reports of the external services for prevention and protection at work, the number of complaints of harassment or burnout at work have remained stable during the pandemic period. The report further states that, in accordance with the legislation on well-being, in order to avoid harmful consequences for the physical and mental health of workers, employers had to take into account, in their prevention policy, the specific risks which workers faced as a result of the pandemic situation. Specific prevention measures have been implemented by employers, with the support of the prevention services.

The pandemic situation may have confronted front-line workers with more physical or psychological violence from third parties (e.g. *vis-à-vis* medical personnel, workers having to enforce protective measures, workers refusing to respect these measures, etc.). Medical staff and other front-line workers have been put at increased risk of stress that can lead to abusive behaviour. According to a report by an external service for prevention and protection at work, different forms of harassment have emerged: some people are targeted because they have different values and standards regarding the measures taken; conflicts arise due to different views between colleagues who can/want to telework or not.

The report indicates that the authorities are not in possession of information on any measures taken in the specific sectors of night workers, home workers, domestic workers, store employees or medical personnel.

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 Belgium.

The Committee recalls that Belgium ratified Article 28 of the Charter in June 2015. This is the first time the Committee will be examining the implementation of Article 28 of the Charter in Belgium.

The Committee also recalls that no targeted questions were asked in relation to Article 28 of the Charter.

Protection granted to workers' representatives

The Committee recalls that Article 28 of the Charter guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises, *inter alia*, a similar right in respect of trade union representatives (Conclusions 2003, Bulgaria). Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal. The protection afforded to worker representatives should extend for a period beyond the mandate. To this end, the protection afforded to workers shall be extended for a reasonable period after the effective end of period of their office.

The report indicates that according to Law of 19 March 1991 (Law on Establishing a Special Dismissal Regime for Staff Delegates to Works Councils and to Committees for Safety, Hygiene and Embellishment of Workplaces, as well as for Candidate Staff Delegates), the employer cannot unilaterally terminate the employment relationship of a protected workers' representative. According to the report, workers' representatives, and candidates for social elections, may only be dismissed for a serious reason or for economic or technical reasons. The Committee asks for more information on the application of those criteria in practice, and on whether any limiting interpretation of these criteria applies before the labour courts.

According to the report, in the event of an unlawful dismissal, the workers' representative is entitled to compensation in the amount corresponding to the current remuneration for a period which varies from two to four years, depending on their seniority in the company. In addition, if the employer does not respond favourably to a request for reinstatement, they are also liable for an indemnity equivalent to the remaining remuneration until the end of the mandate.

The report further indicates that trade union representatives also benefit from protection against dismissal. Under the Collective Labour Agreement No. 5 of 24 May 1997 concerning the status of trade union representatives, the trade union representatives cannot be dismissed for reasons related to the exercise of their mandate. Moreover, the employer who plans to dismiss a trade union representative must follow a precise procedure described in Collective Labour Agreement No. 5. In the event of irregular dismissal, the employer is required to pay the trade union representative compensation corresponding to one year's remuneration.

In their comments concerning the 16th national report submitted by Belgium, the Federal Institute for the Protection and Promotion of Human Rights and others, state that although in Belgium, there is a protection against dismissal for workers' representatives in the private sector, representatives in the public sector have only minimal protection. The submissions indicate in this respect that although the Royal Decree of 28 September 1984 (applicable in the public sector) provides for some protection against dismissals for statutory workers' representatives, contractual workers' representatives (in the public sector) do not benefit from the same protection (According to the official website developed and maintained by the Federal Public Service Chancellery of the Prime Minister and the Federal Public Service Strategy and Support (BOSA) (belgium.be), in the case of statutory employment, staff are appointed on a permanent basis and whose working conditions are governed by a set of texts defining the status. In contractual employment, staff are appointed on the basis of a contract of employment, for a fixed or indefinite period). The Committee asks for detailed and updated

information on the protection afforded to workers' representatives in the public sector, concerning both contractual and statutory employees.

Moreover, according to the submissions, although the Royal Decree of 28 September 1984 states that the dismissal of workers' representatives must be preceded by a prior hearing and consultation with the High Consultation Committee, a failure to comply with this procedure is not subject to any sanctions. In addition, in case the High Consultation Committee gives a negative opinion concerning the dismissal of a workers' representative, the employer has only the obligation to state merely the reasons for the dismissal of the workers' representative.

The submissions also indicate that the Royal Decree does not provide for any form of specific compensation for unlawful dismissal of a workers' representative. In the public sector, a workers' representative dismissed by a public authority may at most claim compensation for discrimination based on trade union activities, or for unfair or manifestly unreasonable dismissal.

As to the remedies available to workers' representatives to allow them to contest their dismissal, the submissions state that, in the case of contractual workers' representatives in the public sector, the burden of proof lies with the contractual employee who must demonstrate, in case of a legal dispute concerning their dismissal, the existence of a link between their dismissal and their activity as a workers' representative.

The Committee notes that the report does not provide any information as to whether the protection afforded to workers' representatives against dismissal is extended for a reasonable time after the effective end of mandate as a workers' representative. The Committee asks that the next report provide information in this regard.

Concerning compensation, the Committee notes from the report that in the event of unlawful dismissal in the private sector, the workers' representative is entitled to compensation in the amount corresponding to the remuneration for a period from two to four years. If the employer does not respond favourably to a request for reinstatement, the workers' representative is entitled to compensation equivalent to the remaining remuneration until the end of their mandate. Concerning trade union representatives, it is stated in the report that the upper limit for the compensation is one year remuneration. The Committee also notes from the third-party submissions that the legislation does not provide any compensation for the unjustified dismissal of workers' representatives in the public sector and that the employee concerned may only ask compensation for discrimination based on trade union activities.

The Committee recalls that under the Charter, employees dismissed without valid reason must be granted adequate compensation or other appropriate relief. Therefore, compensation systems should provide reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body. The compensation should be at a level high enough to dissuade the employer and cover the damage suffered by the employee (Conclusions 2016, Finland). The Committee also held that any upper limit on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is in principle, contrary to the Charter. However, if there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation) (Conclusions 2012, Andorra, Articles 1§2, and 24, Conclusions 2011 Statement of Interpretations Articles 8§2 and 27§3).

The Committee found, for instance, that the general ceiling in Finland on compensation equivalent to 24 months' pay may result in situations where compensation awarded is not commensurate with the loss suffered (Conclusions 2016, Finland).

In order to have a clear picture of the situation, the Committee asks that the next report provide information on whether the compensation which can be granted for discrimination on the ground of trade union membership have any upper limits. It also asks for information on the factors that can be taken into account by the courts in determining the amount of

compensation for such discrimination. The Committee asks that the next report provides this information for workers' representatives in both the private and public sectors separately.

The Committee further wishes to know who has the burden of proof in the event of a court procedure regarding the dismissal of a workers' representative. The Committee asks that this information cover contractual and statutory workers' representatives in the public sector and workers' representatives in the private sector. It also asks for information about the sanctions for employers in the event of dismissal of a workers' or trade union representative in violation of the domestic legislation. It further asks for clarifications on whether unlawfully dismissed workers' representatives are entitled to seek reinstatement.

Pending receipt of the information requested, the Committee reserves its position in these respects.

The Committee recalls that the protection afforded to workers' and trade union representatives should also cover the prohibition of detriment in employment other than dismissal (Conclusions 2003, France), which 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. Therefore, the Committee asks that the next report provide information on the protection granted to workers' and trade union representatives against detrimental acts other than dismissal.

Facilities granted to workers' representatives

According to the report, the services and activities of workers' representatives are considered as actual working time and they are entitled to their normal remuneration for the hours devoted to work council meetings even if these are held outside their working hours. Moreover, apart from the "home-workplace" travel costs which are in principle borne by the worker, additional travel expenses for the exercise of the mandate as a workers' representative are borne by the employer. If the travel takes place during normal working hours, the time spent on this travel must be considered as working time and remunerated as such. Workers' representatives have the right to participate, without loss of remuneration, in courses or seminars aiming to improve their economic, social and technical knowledge relating to their mission, at times coinciding with their normal working hours.

The report further indicates that the operating costs of the work councils are borne by the employer and the latter must provide the necessary infrastructure for the smooth running of the meetings (including premises and equipment) (Collective Labour Agreement No.9 of 19 March 1972 and Collective Labour Agreement No.6 of 30 June 1971).

Covid-19

According to the report, the procedure for the 2020 social elections, which had started in December 2019, was suspended in March 2020 due to the pandemic. In this context, particular attention has been paid to maintaining protection against dismissal, both for candidates in the 2020 elections, and for current members of workers' councils. In addition, the necessary measures have been taken so that the workers' representatives can continue to carry out their missions, despite the difficult conditions due to pandemic.

The third-party submissions indicate that in its 2020 annual report, the Inter-federal Center for Equal Opportunities (an independent public service for the fight against discrimination and the promotion of equal opportunities) reported that it had received several claims from workers' representatives regarding temporary unemployment for "force majeure due to the corona pandemic or the war in Ukraine". A particular feature of this measure is that it allows the employer to specifically select which workers or categories of workers they wish to temporarily place in the unemployment scheme. According to third-party submissions, the reports received by UNIA therefore concern abuses of this system – where temporary unemployment is diverted from its purpose to allow the removal of workers with a trade union mandate.

The Committee asks that the next report comment on these submissions and provide information on any measures taken to prevent temporary unemployment schemes introduced in the context of Covid-19 being used by the employers to dismiss workers' and trade union representatives.

Conclusion

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

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

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

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

In the previous conclusions (Conclusions 2018), the Committee concluded that the situation in Belgium was in conformity with Article 29 of the Charter.

The Committee notes from the report that there have been no developments to the situation which was previously found to be in conformity with the Charter.

In their comments concerning the 16th national report submitted by Belgium, Belgian trade union organisations CSC, CGSLB and FGTB state that in practice, the right to information and consultation in the context of collective redundancy are not always fully respected by employers carrying out collective redundancies. Employers often seek to close the information and consultation phase without providing all the information required in this context. According to the submission, it is not very difficult for a well-informed employer to circumvent the legislation on collective redundancies and bypass the information and consultations processes.

The submissions criticise the inefficiency of preventive measures aimed at ensuring that redundancies do not take effect before the obligation of the employer to inform and consult the workers’ representatives has been fulfilled. In this respect, the submissions assert that workers are often obliged to file an action before the courts in order to obtain a judgment compelling the employer to provide the required information in accordance with the applicable social provisions. According to the submissions, having to file a lawsuit in order to obtain the required information, would constitute obstacle to the effective implementation of the rights to consultation and information.

The submission assert that the Belgian legal framework in this area should be amended in such a way as to improve the effectiveness of these rights in the practice, in particular by facilitating workers’ access to effective remedies and providing for sanctions that are sufficiently dissuasive in the event of non-respect of these rights.

The Committee asks that the next report provide updated information on preventive measures to ensure that redundancies do not take effect before the employers’ obligation to inform the workers’ representatives have been fulfilled. It also asks updated information on applicable sanctions in case the employer fails to notify, inform and consult about the planned redundancies.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 29 of the Charter.

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.