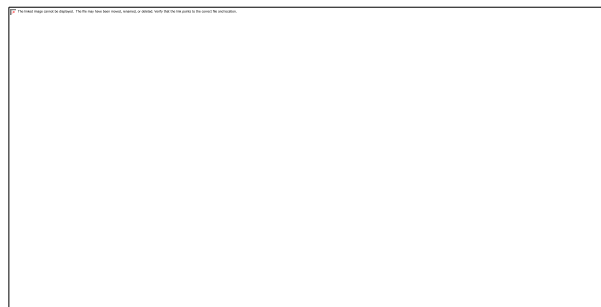


March 2023



EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

BULGARIA

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 Bulgaria, which ratified the Revised European Social Charter on 7 June 2000. The deadline for submitting the 20th report was 31 December 2021 and Bulgaria submitted it on 5 January 2022.

The Committee recalls that Bulgaria 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.

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).

Bulgaria has accepted all provisions from the above-mentioned group except Articles 2§1 and 4§1.

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

The conclusions relating to Bulgaria concern 21 situations and are as follows:

– 9 conclusions of conformity: Articles 2§2, 2§3, 2§4, 2§5, 2§6, 2§7, 4§2, 6§1, 22

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

In respect of the other 5 situations related to Articles 4§5, 26§1, 26§2, 21 and 29, the Committee needs further information in order to examine the situation.

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

The next report from Bulgaria 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 2 - Public holidays with pay

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

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 Bulgaria 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.

Covid-19

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

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

Conclusion

The Committee concludes that the situation in Bulgaria 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 Bulgaria.

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

In its previous conclusion, the Committee considered that the situation in Bulgaria was in conformity with Article 2§3 of the Charter, pending receipt of the information on whether the employee is guaranteed the opportunity to use two weeks of continuous paid annual leave due for the respective year (Conclusions 2014).

In response, the report recalls that the legal regime of paid annual leave is regulated by the Labour Code, the Ordinance on Working Hours, Breaks and Holidays and the Ordinance on Wage Structure and Organisation. The Committee has already noted that the paid annual leave is granted to the employee either once or in parts. According to Article 22(2) of the Ordinance on Working Hours, Breaks and Holidays, paid annual leave is granted upon the employee’s written request to the employer. This means that the employee shall determine the time and duration of the leave within the legally or contractually established duration. In accordance with Article 173(3) of the Labour Code, the employee must use his paid annual leave until the end of the calendar year to which it relates. The employer must allow the use of paid annual leave by the employee or worker until the end of the calendar year, unless its use is postponed pursuant to Article 176 of the Labour Code. In this case, the employee or worker is entitled to use at least half of his/her paid annual leave, i.e. at least two weeks. The Committee considers that this situation is in conformity with Article 2§3 of the Charter.

The report also states that Article 155(2) of the Labour Code was amended during the reference period. Currently, after the first day of work, each employee may use his/her paid annual leave only after he/she has worked for at least 4 months (instead of 8 months previously).

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report indicates that according to the new provision of Article 173a, paragraph 1, of the Labour Code, the employer may grant annual paid leave without the employee’s consent (including to an employee who has not attained the required length of service) if, in connection with a declared state of emergency or epidemic situation (by order of the employer or by order of a state body), the work of the enterprise, a part of the enterprise or individual employees is interrupted. The report adds that unpaid leave under Article 160 of the Labour Code is allowed by the employer only on the written request of the employee. This means that a worker or employee can only use unpaid leave once he/she has requested it (has submitted an application) and his/her employer has authorised its use. An employer may not unilaterally grant unpaid leave or oblige an employee to use it.

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

As the previous conclusion found the situation in Bulgaria 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 Bulgaria 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 Bulgaria 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 Bulgaria 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 Bulgaria.

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

Covid-19

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

Conclusion

The Committee concludes that the situation in Bulgaria 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 Bulgaria.

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

Covid-19

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

Conclusion

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

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 Bulgaria.

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

In its previous conclusion, the Committee found that the situation in Bulgaria was in conformity with Article 4§2 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 question raised in its previous conclusion, and to the targeted question.

Rules on increased remuneration for overtime work

In its previous conclusion, the Committee asked whether leave taken in lieu of an increased remuneration for overtime was also of an increased duration, and what rules applied in the public sector in this regard (Conclusions 2014).

The report states that the legal regime of overtime work is set in the Labour Code, the Ordinance on the structure and organisation of wages and the Ordinance on working hours, breaks and holidays. For those working in the civil service, the main act is the Civil Servants Act.

The report further states that according to the Labour Code, overtime work must be remunerated accordingly. It is not permissible to provide leave to compensate for overtime instead of paying the increased remuneration. If overtime work is carried out on the two days of the weekly rest, the worker is entitled, besides to an increased payment, to uninterrupted rest during the next working week amounting to no less than 24 hours. For some positions, due to the specific nature of the work, the employer may establish open-ended working hours after consultations with the representatives of the trade union organisations and the representatives of workers. Workers on open-ended working hours have to carry out their duties even after the expiry of the regular working hours but the total duration of the working hours must not breach the uninterrupted inter-day and inter-week rest. The work on regular working hours on working days has to be compensated by additional annual paid leave and work on weekends and public holidays – by increased remuneration. Additional leave for work on open-ended hours shall not be less than 5 working days per year.

With regard to civil servants, the report states that work carried out outside of the working hours established is overtime. If necessary, for the performance of duties outside of the working hours on working days, the civil servant shall be entitled to additional paid annual leave of up to 12 days per year.

Covid-19

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

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

The report states that in relation with Covid-19, a large proportion of healthcare workers worked overtime and the Government provided funds for payments for frontline workers amounting to BGN 1,000 (€511) per worker for all medical institutions for hospital care and general practitioners.

The report further states that with regard to remote work, the individual employment contract may explicitly exclude the possibility of overtime work.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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 Bulgaria was not in conformity with Article 4§3 of the Charter on the ground that there was a predetermined upper limit on compensation for workers who were dismissed as a result of discrimination which could preclude damages from making good the loss suffered and from being sufficiently dissuasive (Conclusions 2014). In addition, the Committee found in its decision on the merits of Collective Complaint No. 125/2016, University Women of Europe (UWE) v. Bulgaria, (§187) that there was a violation of Articles 4§3 and 20.c of the Charter on the grounds that access to effective remedies was not ensured, that pay transparency was not ensured, that job comparisons were not made and that the obligation to maintain effective equality bodies in respect of equal pay was not satisfied.

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

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

Effective remedies

In its previous conclusion, the Committee found that the situation in Bulgaria was not in conformity with Article 4§3 of the Charter on the ground that there was a predetermined upper limit on compensation for workers who were dismissed as a result of discrimination which could preclude damages from making good the loss suffered and from being sufficiently dissuasive (Conclusions 2014).

In reply, the report points out that the right to equal pay for equal work for men and women is established in the Labour Code, the Protection against Discrimination Act and the Ordinance on wage structure and organisation. The report states that during the reference period, no change was made to the legislation on this matter.

In this connection, the Committee refers to its decision on the merits of Collective Complaint No. 125/2016, UWE v. Bulgaria (§163), in which it noted that there was a predetermined upper limit on compensation for employees who were dismissed as a result of gender discrimination which could preclude damages from making good the loss suffered and from being sufficiently dissuasive, and that the existing levels compensation were very low.

The Committee points out that the follow-up to this complaint will be assessed in Findings 2023. In the meantime, it repeats its conclusion of non-conformity in this respect.

In its previous conclusion, the Committee asked for information on the Bulgarian case law concerning gender pay discrimination. The report does not contain the information requested. The Committee repeats its question.

The Committee also asked whether a shift in the burden of proof was provided for in all gender discrimination cases. According to the report, if a worker or an employee considers that they have been discriminated against when determining their salary, the employer must prove that the staff regulations do not contain discriminatory criteria. Under Article 9 of the Protection against Discrimination Act, once the party claiming to be discriminated against has presented facts on the basis of which it can be assumed that there is discrimination, the respondent must prove that the principle of equal treatment has not been violated. In this connection the Committee refers to its decision on the merits of Collective Complaint No. 125/2016, *UWE v. Bulgaria* (§140), in which it noted that the requirement to reverse the burden of proof had been met. In the light of the foregoing, the Committee finds that the situation is in conformity with the Charter in this respect.

Pay transparency and job comparisons

In its previous conclusion, the Committee asked if under domestic law, *pay comparisons* could be extended outside the companies directly concerned. The report fails to answer this question.

On this subject, the Committee refers to its decision on the merits of Collective Complaint No. 125/2016, *UWE v. Bulgaria* (§165), in which it noted that the principle of pay transparency was not guaranteed in practice and job comparisons were not made. It also noted that there was no explicit definition of pay in the law, the principle of transparency did not appear in the legislation and there was no information on whether individual workers had access to relevant data concerning wages inside or outside their own company. Lastly, there were no gender neutral job classification systems.

The Committee points out that the follow-up to this complaint will be assessed in Findings 2023. In the meantime, it notes that the situation in Bulgaria is not in conformity with Article 4§3 of the Charter on the ground that the principle of pay transparency is not guaranteed in practice and job comparisons are not made.

Enforcement

With regard to equality bodies and other institutions, the Committee noted in the aforementioned decision on the merits in *UWE v. Bulgaria* (No. 125/2016) (§§158-162, §166) that the Commission for Protection against Discrimination had a broad mandate but it did not have enough resources and its decisions were not always followed up. Consequently the Committee considered that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay was not satisfied.

The Committee points out that the follow-up to this complaint will be assessed in Findings 2023. In the meantime, it notes that the situation in Bulgaria is not in conformity with Article 4§3 of the Charter on the ground that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay is not satisfied.

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 in Bulgaria during the reference period, which was 14.3% in 2017, 12.9% in 2018, 14.1% in 2019 and 12.7% (provisional figure) in 2020 (compared with 15.5% in 2015). It notes that the gender pay gap was less than the EU 27 average of 13% (provisional figure) in 2020 (data from 4 March 2022).

As Bulgaria 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 on the impact of Covid-19, the report states that the Labour Code has been amended in relation to the use of leave in the event that a state of emergency is declared, including an emergency epidemic situation. The amendment concerns the use of paid and unpaid leave, but does not alter the amount of remuneration awarded during paid leave, which is determined by the Labour Code.

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

Conclusion

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

- there is an upper limit on compensation for employees who are dismissed as a result of making a claim of gender discrimination which may preclude damages from making good the loss suffered and from being sufficiently deterrent;
- the principle of pay transparency is not guaranteed in practice and job comparisons are not made;
- the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay 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 Bulgaria.

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

In its previous conclusion, the Committee considered that the situation in Bulgaria was not in conformity with Article 4§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 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.

The Committee previously found the situation not to be in conformity on the grounds that some periods of notice were unreasonable (see above). However, as noted above the Committee will no longer assess the reasonableness of notice periods in any detail, but in line with the criteria above. The Committee recalls from previous conclusions (Conclusions 2014) that the Labour Code sets out minimum notice periods in the event of termination of employment. However, these may be increased by collective agreements, regulations or employment

contracts. In addition, the Committee notes that the length of service is taken into account when determining the minimum period of notice.

In its previous conclusion the Committee asked for information on the periods of notice and/or compensation applicable to the termination of the duties of civil servants and staff governed by the civil Servants Act of 16 June 1999 (No. 67/1999) (Conclusions 2014).

In reply to the Committee's question, the report states that the term of notice in case of unilateral termination by the appointing authority shall be one month. The report also states that a civil servant dismissed in the event of the closure of the administration, shall be entitled to compensation for the time during which he/she has lost his/her job, with a maximum of two months.

Notice periods during probationary periods

The Committee previously concluded that the situation in Bulgaria was not in conformity with Article 4§4 of the Charter on the ground that no notice period is provided for termination during the probationary period under specific circumstances (Article 71, paragraph 1 of the Labour Code) (Conclusions 2014). According to Article 71, paragraph 1 of the Labour Code, prior to the expiration of the trial period, the party in whose favour the termination period has been agreed upon may terminate the contract without notice.

The report states that during the reference period no amendments were made to the legislation. The Committee therefore reiterates its previous conclusion of non-conformity.

Notice periods with regard to workers in insecure jobs

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2014).

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

In its previous conclusion the Committee asked for information on the periods of notice and/or compensation applicable to grounds for termination of employment other than dismissal (invalidity or decease of the employer who is a natural person, etc.) (Conclusions 2014).

In reply to the Committee's question, as regards termination of employment due to the death of the employer who is a natural person, the report states that the employment relationship is terminated without any of the parties having to give notice. The Committee has decided to reassess its case law as regards notice periods in the event of termination of employment due to death of the employer who is a natural person, as such a notice period could not be given by the deceased employer. Therefore, the Committee considers that the situation in Bulgaria is in conformity with Article 4§4 of the Charter.

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 2014).

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

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 took note of the legal framework concerning deductions from wages. In particular, it noted that under Article 272, paragraph 2 of the Labour Code, the deductions are subject to the limits set out in the Code of Civil Procedure (CCP). These are limits that apply to income, after social security contributions and tax deductions, which determine the unattachable portion of income (Article 446, paragraphs 1 and 2 of the CCP), with maintenance claims being excluded and fully deductible from income (Article 446, paragraph 3 of the CCP). The Committee considered that the limits of one fifth, one quarter and one third of wages provided for in Articles 272 of the Labour Code and Article 446, paragraphs 1 and 2 of the Civil Procedure Code, caused situations where workers receive only 80% or even 75% of the national minimum wage after social security contributions and tax deductions, an amount that was not sufficient to enable them to provide for themselves and their dependents. Therefore, the Committee considered that the situation was not in conformity with Article 4§5 of the Charter. However, in its Conclusion 2010 the Committee noted that the deductions applied would, in all circumstances, ensure that employees are left with at least minimum subsistence.

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

Waiving the right to the restriction on deductions from wage

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

Conclusion

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

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by Bulgaria as well as the information submitted by the European trade union federations -EPSU, EuroCOP and EUROMIL.

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

In its previous conclusion, the Committee found that the situation in Bulgaria was not in conformity with Article 5 of the Charter on the grounds that (i) legislation does not provide for adequate compensation proportionate to the harm suffered by the victims of discriminatory dismissal based on involvement in trade union activities; (ii) foreign workers’ right to form or to participate in the formation of trade unions is subject to prior authorisation (Conclusions 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 in the report in response to the conclusion of non-conformity, to the targeted questions and to the general question.

Prevalence/Trade union density

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

Personal scope

In its previous conclusion, the Committee found that the situation was not in conformity with the Charter on the ground that foreign workers’ right to form or to participate in the formation of trade unions is subject to prior authorisation (Conclusions 2014).

The report states that Article 4§1 of the Labour Code provides that workers and employees are entitled, with no prior permission, to freely form, by their own choice, trade union organisations, to join and leave them on a voluntary basis. The report states that this applies to all persons who are in employment, including foreign workers employed in Bulgaria. The report further quotes Article 8§3 of the Labour Code, that provides that, in exercising labour rights and duties, no direct or indirect discrimination shall be allowed on grounds of affiliation to a trade union and other public organisations and movements. The report further refers to Article 10 of the Labour Code, as amended, which provides that the Labour Code shall apply to the employment relationship between an employer and a worker/an employee with a place of work in the Republic of Bulgaria, insofar as not provided otherwise in a law or a treaty in force for the Republic of Bulgaria.

The Committee previously noted that the prior authorisation on the right of foreign workers to form trade unions was required by Order No. 1 of 15 August 2002. The report does not explicitly state that this Order has been repealed. Therefore, the Committee maintains its conclusion of nonconformity on this point.

According to information provided by the European trade union federations -EPSU, EuroCOP and EUROMIL trade unions whose membership includes civil servants working in the Ministry

of Interior are not allowed to join or affiliate with national trade unions. The Committee asks for the Government's comments on this.

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

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).

The Committee recalls that Article 5 of the Charter allows States Parties to impose restrictions upon the right to organise of members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as through the imposition of a blanket prohibition of professional associations of a trade union nature and prohibition of the affiliation of such associations to national federations/confederations (*European Council of Trade Unions (CESP) v. France*, Complaint No.101/2013, Decision on the merits of 27 January 2016, §§80 and 84).

Restrictions on the right to organise

In its targeted question, the Committee asked for information on public or private sector activities in which workers are denied the right to form organisations for the protection of their economic and social interests or to join such organisations. The report does not contain any information on the targeted question. 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.

Freedom to join or not to join a trade union

In its previous conclusion, the Committee found that the situation was not in conformity with Article 5 of the Charter on the ground that legislation does not provide for adequate compensation proportionate to the harm suffered by the victims of discriminatory dismissal based on their involvement in trade union activities (Conclusions 2014).

In its previous conclusion, the Committee noted that the amendment of Article 225 of the Labour Code, which provides for damages of up to a maximum of 6 months wages in the event of discriminatory dismissal because of trade union activities, had been repealed (Conclusions 2014).

The Committee recalls that in the particular case of termination of employment on the ground of trade union activities compensation must at least be equal to the wage that would have been paid between the date of the dismissal and the date of the court decision or reinstatement. Since this is not the case, the Committee considered that the situation was not in conformity with Article 5 of the Charter (Conclusions 2004 Bulgaria). The report states that no changes were made in relation to this ground for non-conformity during the reference period. The Committee therefore reiterates its previous conclusion of non-conformity.

Trade union activities

In its previous conclusion, the Committee requested information as to whether the labour inspectorate or courts had found cases of unions being denied access to workplaces or were

not permitted to hold meetings (Conclusions 2014). The report does not contain the information requested. The Committee therefore reiterates its request.

Conclusion

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

- legislation does not ensure adequate compensation to workers dismissed as a result of their involvement in trade union activities;
- foreign workers' right to form or to participate in the formation of trade unions is subject to prior authorisation.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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

In its previous conclusion, the Committee found that the situation in Bulgaria was in conformity with Article 6§1 of the Charter, pending receipt of the information regarding previously adopted legislative amendments on the right of civil servants to bargain collectively, and in particular the provisions on joint consultation (Conclusions 2016).

The report indicates that Article 46a of the Civil Service Act, No.67/1999, as amended in 2016, provides that social dialogue between the civil servants’ trade unions and the Council of Ministers takes place based on a special agreement negotiated between the parties and that civil servants’ trade unions shall be involved in negotiations regarding any legal acts concerning civil service relations. The report provides examples of collective agreements concluded in 2020 in the public sector, including in education and healthcare.

Conclusion

The Committee concludes that the situation in Bulgaria 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 Bulgaria.

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

The Committee also recalls that in the General Introduction to Conclusions 2018, it posed a general question under Article 6§2 of the Charter and asked States to provide, in the next report, information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

In its previous conclusion, the Committee considered that the situation in Bulgaria was not in conformity with Article 6§2 of the Charter on the ground that the machinery for voluntary negotiations was not sufficiently promoted (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.

The Committee previously stressed that if the spontaneous development of collective bargaining was not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements (Conclusions 2014). The report refers to several amendments to the Labour Code adopted in 2020 that seek to promote collective bargaining. Thus, a new provision formally sets out the State’s obligation to encourage social dialogue and bilateral cooperation between trade union organisations and employers’ organisations. In addition, the amendments in question provided those workers who were not members of a trade union organisation that is party to a collective agreement the option of joining a collective agreement concluded by their employer. The report indicates that this provision sought to encourage collective bargaining and trade union membership.

The Committee further noted that the number of employees covered by collective agreements remained relatively low, at around 30-33% (Conclusions 2014). The present report does not provide updated data concerning this indicator. The Committee notes from other sources that the level of coverage has remained relatively stable during the reference period: 30% in 2017, 30% in 2018, 28% in 2019, and 29% in 2020 (Plamen Dimitrov, Labour Relations and Social Dialogue in Bulgaria 2020, 2021). At the same time, the total number of valid collective agreements has been decreasing: 1888 in 2017, 1733 in 2018, 1741 in 2019 and 1672 in mid-2020. The Committee recalls that it has previously considered a 30% rate of employees covered by collective agreements to be an indicator that voluntary negotiations are not sufficiently promoted in practice (Conclusions 2018, Slovak Republic). The Committee asks for information as to the impact of the measures intended to promote collective bargaining in practice, including by reference to the total proportion of workers covered by a collective agreement, as well as to any additional measures intended to promote collective bargaining.

The Committee previously asked if the social partners were consulted or involved whatsoever before a sectoral collective agreement was extended (Conclusions 2014). The report notes that an amendment to the Labour Code adopted in 2020 provided that the Minister of Labour and Social Policy may extend a collective agreement (concluded at the sectoral level) at the initiative of the parties to the agreement and after consulting the workers’ and employers’ organisations recognised as being representative at the national level. Additional provisions sought to strengthen the procedure of disseminating a collective agreement after its adoption, with a view to increasing collective bargaining coverage.

The Committee also asked for additional information on the measures taken with a view to strengthening collective bargaining for civil servants (Conclusions 2014). The report indicates that Article 46a of the Civil Service Act, No.67/1999, as amended in 2016, provides that social dialogue between the civil servants' trade unions and the Council of Ministers takes place based on a special agreement negotiated between the parties and that civil servants' trade unions shall be involved in negotiations regarding any legal acts concerning civil service relations. The report provides examples of collective agreements concluded in 2020 in the public sector, including in education and healthcare.

In view of the above, the Committee reiterates its conclusion of non-conformity on the ground that the promotion of collective bargaining is not sufficient.

As the report does not contain any information in the response 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 collective bargaining rights have not been modified, and that in fact collective agreements continued to be adopted during this period, including with respect to issues arising in the context of the pandemic.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

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

In its previous conclusion, the Committee considered that the situation in Bulgaria was not in conformity with Article 6§3 of the Charter on the ground that there was no conciliation or arbitration procedure in the public service (Conclusions 2014).

In its report, the Government states that the Public Servants Act was amended in 2016 to include a new provision governing the right of public servants to strike. However, the Government has not reported any new developments as to whether it is possible to enter into conciliation or arbitration for the settlement of collective labour disputes in the public service. As there has been no change in the situation in this regard, the Committee maintains its conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§3 of the Charter on the ground that there is no conciliation or arbitration machinery for the settlement of labour disputes in the collective bargaining process in the public service.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

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

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

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

- civilian personnel of the Ministry of Defence and any establishments responsible to the ministry were denied the right to strike;
- the restriction on the right to strike in the railway sector pursuant to Section 51 of the Railway Transport Act did not comply with the conditions established by Article G;
- civil servants were only permitted to engage in symbolic action and were prohibited from striking (Section 47 of the Civil Service Act);
- the requirement to notify the duration of strikes to employers or their representatives prior to strike action did not comply with the conditions established by Article G of the Charter.

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

With regard to the first ground for non-conformity, the Government states in its report that, under Section 16§6 of the Collective Labour Dispute Resolution Act, strikes are prohibited in the system of the Ministry of Defence. Since the situation has not changed, the Committee reiterates its conclusion of non-conformity on this point.

Regarding the second ground for non-conformity, the Government points out that the right to strike in the railway sector is guaranteed, but is also subject to regulation to ensure satisfactory public transport services are provided even during strike action. It refers in particular to Section 51 of the Railway Transport Act (RTA), which provides that workers and their employers, the railway operators, are obliged to provide public transport services equivalent to at least 50% of the volume of traffic before the strike. The Committee notes that the situation has not changed since its decision on the merits of complaint No. 32/2005, Confederation of Independent Trade Unions in Bulgaria, Confederation of Labour *Podkrepa* and European Trade Union Confederation v. Bulgaria, in which it found a violation of Article 6§4 of the Charter on the grounds, inter alia, that the scope of Section 51 of the RTA and the restrictions on the right to strike resulting from this provision were not sufficiently clear to allow workers in the sector concerned wishing to call or participate in a strike to assess the extent of the services which the law required them to provide in order to meet the 50% threshold. Since the situation has not changed, the Committee reiterates its conclusion of non-conformity on this point.

Concerning the third ground for non-conformity, the Government reports that progress has been made: Section 47 of the Civil Servants Act was amended in 2016 to provide for the right

to strike for civil servants. This right applies to all civil servants, with the exception of senior civil servants, i.e. those holding the positions of secretary general, municipal secretary, director general, director and head of the inspectorate (cf. Section 5§2 of the Civil Servants Act). The Committee takes note of this positive development. It asks for clarification in the next report on whether the restrictions on the right to strike in the civil service are limited to managers who are involved in the exercise of public authority at the highest level.

As for the fourth ground for non-conformity, the Government's report shows that the legislation has not changed: under Section 11§3 of the Collective Labour Dispute Resolution Act, the length of strike action must be notified in advance. In the absence of any developments, the Committee reiterates its conclusion of non-conformity on this point.

Right of the police to strike

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

Covid-19

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

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

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

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

Conclusion

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

- strikes are prohibited for civilian personnel at the Ministry of Defence and its subordinate bodies;
- the restriction on the right to strike in the railway sector pursuant to Section 51 of the Railway Transport Act goes beyond the limits set by Article G of the Charter;
- the obligation to notify employers or their representatives of the length of strikes prior to strike action goes beyond the limits set by Article G 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 Bulgaria.

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 Bulgaria 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 questions.

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 no changes in legislation have been made, thus the obligations laid down on employers applied in full.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the COVID-19 crisis. Trade unions and employers’ organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers’ representatives in terms of Article 21 of the Charter.

The Committee further notes information provided by the report under Article 22, that during the Covid-19 crisis, Art. 138a, para. 2 of the Labour Code introduced a possibility for the employers to establish for the whole period of declared state of emergency or declared epidemic emergency situation or for part of this period part-time work for full-time employees, in which case the employer is not obliged to hold prior consultations with trade union representatives and with the representatives of the workers and employees. The establishment of part-time work under this provision is a temporary measure that can be taken by the employer only during a declared state of emergency or emergency epidemic situation. The Committee notes that such regulation infringes the workers’ right for information and consultation as guaranteed by Article 21 of the Charter and asks the next report to provide comprehensive information on the said amendment and its implementation.

Conclusion

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

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 Bulgaria.

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 Bulgaria was not in conformity with the Charter (Conclusions 2016). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and questions raised in its previous conclusion, and to the targeted questions.

The Committee concluded that the situation was not in conformity on this point, since it had not been established that the right of workers to take part in the determination and improvement of the working conditions, work organisation and working environment was ensured (Conclusions 2016).

The report states in response that pursuant to the Labour Code, the collective employment contract shall regulate issues of the labour and social security relations of the workers and the employees which are not regulated by mandatory provisions of the law. Workers and the employees through trade unions can negotiate working conditions with the employer that are more favourable than the minimum required by labour law. In addition to collective bargaining, labour law provides a number of mechanisms for the direct participation of the workers and the employees in resolving issues related to working conditions and work organization. The right of employees to directly participate in determining and improving working conditions, work organization and the working environment is guaranteed through the powers of trade unions and the powers of employees’ representatives in the company. In this regard, the Labour Code provides in Art. 37, that trade unions representatives in the enterprise have the right to participate in the preparation of the drafts of all internal regulations and ordinances, which refer to labour relations. Failure to comply with Art. 37 of the LC leads to sanctions for the employer. The report further confirms the obligations of employers to inform and consult employees in enterprises, which is covered by Article 21 of the Charter.

In its previous conclusion (Conclusions 2014), the Committee asked for information on examples of such socio-cultural services and facilities contained by collective agreements and how workers are actually involved in their organisation.

The report confirms that the Labour Code establishes that social and cultural services shall be financed by the employer and by other sources. The employer can independently or jointly with other bodies and organizations, provide to the workers and the employees organised meals, commercial and public services, transportation, facilities for rest, culture, sport and tourism, clubs, etc. The manner of allocation of the funds for social and cultural services shall be decided by the general meeting of employees. The funds for social and cultural services shall not be diverted and used for other purposes. The social funds and the forms of social services shall be used also by the employee’s families upon decision of the general meeting (meeting of proxies) and in conformity with the collective bargaining agreement. Upon the decision of the general meeting of the workers and the employees the social funds and the forms of social services shall be used also by pensioners having worked with the same employer. (Articles 292 to 300 of the Labour Code).

In its previous conclusion (Conclusions 2014), the Committee asked whether employees' representatives may challenge any violation of the workers' right to take part in the determination and improvement of working conditions and working environment before competent courts or administrative bodies (for example the Labour Inspectorate), what were the competent courts or administrative bodies in this respect, what was the procedure and what remedies were available.

The report provides in reply that pursuant to the Labour Code provides alleged violations of labour legislation may be brought to the competent control institution – Executive Agency "General Labour Inspectorate" by any employee, as well as by trade unions. Trade union organizations shall have the power to notify controlling bodies about violations of labour law and to demand enforcement of administrative sanctions against the offenders. The controlling bodies shall be obliged to inform the trade union organizations within one month of the measures undertaken.

The Executive Agency "General Labour Inspectorate" has the authority to apply coercive administrative measures to eliminate violations, including the obligations of social services for employees and the obligations of information and consultation, as well as to eliminate shortcomings in ensuring healthy and safe working conditions. The Executive Agency "General Labour Inspectorate" also has the power to impose administrative sanctions (fines and property sanctions). In cases of refusal of the employer to provide information and in case of a dispute over its validity, the workers and the employees' representatives may seek assistance in resolving the dispute through mediation and/or voluntary arbitration from the National Institute for Conciliation and Arbitration.

Furthermore, the parties to the labour dispute may file a lawsuit in court. Labour disputes shall be reviewed pursuant to the rules of the Civil Procedure Code, which establishes in Art. 114 on claims in labour cases deviation from the general local jurisdiction, providing that the workers and the employees may file a claim against the employer at the place where they normally work.

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 states that no changes have been made to the legislation so as to restrict the right to participate in the definition and improvement of working conditions. It refers to a possibility introduced in Art. 138a, para. 2 of the Labour Code for the employers during period of declared epidemic emergency situation to take some decisions on part-time work without prior consultations with trade union representatives and with the representatives of the workers and employees. The Committee notes that this matter is considered under Article 21 of the Charter, which secures the workers' right to information and consultations.

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

The Committee concludes that the situation in Bulgaria 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 Bulgaria.

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 found that the situation in Bulgaria 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 in the report in response to the questions raised in its previous conclusion, and to the targeted questions.

Prevention

The report provides no information in this regard. The Committee reiterates its request for information on awareness - raising and prevention campaigns, as well as on any action taken to ensure that the right to dignity at work is fully respected in practice.

In its previous conclusion, the Committee noted that under Article 18 of the Protection against Discrimination Act (PADA, 16 September 2003) the employer is obliged, in cooperation with the trade unions, to take effective measures to prevent all forms of discrimination in the workplace. The employer must also post, in a place accessible to workers, all the applicable rules relating to protection against discrimination, including sexual harassment (Conclusions 2014). The Committee asked that the next report explain how the implementation of the obligation under Article 18 of the PADA is monitored, and what sort of measures have been taken by employers to comply with their obligation under this provision (Conclusions 2014).

The report indicates that the Commission for Protection against Discrimination (CPD) examines complaints and issues decisions establishing violations of the PADA or other acts regulating equal treatment; identifies the perpetrator; sets out the measures to be taken to end/remove the discriminatory practice and restore the original situation; imposes sanctions and applies administrative enforcement measures; issues binding instructions to comply with the PADA or other laws equal treatment (Article 47, item 1 – item 4, Article 65 and Article 76 of the PADA).

The Committee further 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.

Liability of employers and remedies

In a targeted question, the Committee asked for information on the regulatory framework and any recent changes introduced to combat sexual harassment and abuse in the framework of work or employment relations. The report states that there were no amendments made to the legislation presented in the previous national report during the reference period.

The report adds that the legal regime for the prevention of sexual harassment in the workplace is regulated by the Protection against Discrimination Act (PADA). The Labour Code (LC) contains general provisions on protection against direct or indirect discrimination on the grounds of nationality, origin, sex, sexual orientation and others (Article 8, paragraph 3 of the LC). The Labour Code also provides for the obligation of the employer to protect the dignity of the employees in the performance of their work duties (Article 127, paragraph 2 of the LC).

In its previous conclusions, the Committee asked for information on the employer's liability for sexual harassment involving, as victims or perpetrators, persons not employed by them (such as independent contractors, self-employed workers, visitors, customers) (Conclusions 2010 and 2014).

The report does not provide the requested information. 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 persons, including employers, can be held liable and sanctioned by a fine if they knowingly aided an act of discrimination, including harassment, by a third party. If an employee suffers harassment in the workplace by a third party and complains about it to the employer, the latter has a duty to take action to stop the harassment. If an employer fails to take such action, the affected employee could take legal action against them.

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 states that, according to Articles 71-74 of the PADA, any person may seek compensation for damage before the courts, in the event of a violation of their rights under this act or other laws governing equal treatment. The amount of compensation, in this case, is not limited by law. In this regard, a person who is a victim of harassment and sexual harassment has the right to claim compensation for pecuniary and non-pecuniary damage, which, in accordance with the Law on Obligations and Agreements (LOC), is neither limited in time nor capped. The report adds that the court may award compensation for damage suffered as a direct and immediate consequence of the unlawful act.

In its previous conclusion, the Committee asked that the next report provide information on case law in sexual harassment cases and on the compensation awarded. It also asked whether, in the light of any relevant case law, the right to reinstatement also applies in cases where the employee has been pressured to resign as a result of sexual harassment (Conclusions 2014).

The report does not provide the requested information.

The Committee notes from the *Country report on gender equality 2021* of the European network of legal experts in gender equality and non-discrimination, that there is no case law on compensation awarded in cases of gender discrimination. The report also states that in Bulgarian legal practice, the amount of compensation for moral damages, which is mostly suffered in discrimination cases, is very low.

The Committee notes that the Committee on the Elimination of Discrimination against Women (CEDAW) in its *Concluding observations on the eighth periodic report of Bulgaria* noted with concern the very low number of cases of sexual harassment and gender-based discrimination in the workplace investigated between 2014 and 2018, despite the existence of legislation on workplace discrimination based on sex and sexual harassment (CEDAW/C/BGR/CO/8, 10 March 2020, paragraph 31).

The Committee reiterates its request for information on examples of cases of sexual harassment, the sanctions applied and compensation awarded. It also asks whether the right to reinstatement also applies in cases where the employee has been pressured to resign for reasons related to sexual harassment. The Committee points out that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bulgaria is in conformity with Article 26§1 of the Charter in this respect.

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 there were no changes in the legislation with regard to measures taken during the Covid-19 pandemic to protect the right to dignity in the workplace.

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 Bulgaria.

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

In its previous conclusion, the Committee found that the situation in Bulgaria was in conformity with Article 26§2 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.

Prevention

The report provides no information in this regard. The Committee requests that the next report contains information on awareness - raising and prevention campaigns, as well as on any action taken to ensure that the right to dignity at work is fully respected in practice.

In its previous conclusion, the Committee noted that Article 18 of the Protection against discrimination Act (PADA) sets out an obligation for the employer, in cooperation with the trade unions, to take effective measures to prevent any form of discrimination in the workplace. The employer shall also post, in a place accessible to workers, all applicable rules relating to protection against discrimination, including sexual harassment (Conclusions 2014). The Committee asked that the next report explain how the implementation of the obligation stemming from Article 18 of the PADA is monitored, and what sort of measures have been taken by employers to comply with their obligation under this provision (Conclusions 2014).

The report indicates that the Commission for Protection against Discrimination (CPD) examines complaints and issues decisions establishing breaches of the PADA or other laws governing equal treatment; identifies the perpetrator; sets out the measures to be taken to end/remove the discriminatory practice and restore the original situation; imposes sanctions and applies administrative enforcement measures; issues mandatory instructions for compliance with the PADA or other laws regulating equal treatment (Article 47, item 1 – item 4, Article 65 and Article 76 of the PADA).

The Committee further asks whether and to what extent employers’ and workers’ organisations are consulted in promoting awareness, information and the prevention of moral (or psychological) in the workplace or in relation to work, including in the context of online/remote work.

Liability of employers and remedies

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

The report indicates that, during the reference period, no amendments were made to the legislation presented in the previous national report.

The report adds that the legal regime for the prevention of harassment in the workplace is regulated by the Protection against Discrimination Act (PADA). The Labour Code (LC) contains general provisions for protection against direct or indirect discrimination on the grounds of nationality, origin, sex, sexual orientation and other reasons (Article 8, paragraph

3 of the LC). The Labour Code also provides for the obligation of the employer to protect the dignity of employees in the course of performing their work duties (Article 127, paragraph 2 of the LC).

In its previous conclusions, the Committee asked for information as regards employers' liability in the case of moral (psychological) harassment involving, as victim or perpetrator, persons not employed by them (such as independent contractors, self-employed workers, visitors, clients) (Conclusions 2010 and 2014).

The report does not provide the requested information. 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 persons, including employers, can be held liable and sanctioned by a fine if they knowingly aided an act of discrimination, including harassment, by a third party. If an employee suffers harassment in the workplace by a third party and complains about it to the employer, the latter has a duty to take action to stop the harassment. If an employer fails to take such action, the affected employee can take legal action against them.

Damages

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

The report states that, according to Articles 71-74 of the PADA, compensation for damages may be sought by any person before the courts, when his rights under this or other laws governing equality of treatment are violated. The amount of compensation in this case is not limited by law. In this regard, a person who is victim of harassment has the right to claim compensation for pecuniary and non-pecuniary damages, which according to the Law on Obligations and Agreements (LOC), is neither limited in time nor capped. The report adds that the court may award compensation for the damages suffered, which are a direct and immediate consequence of the unlawful behaviour.

In its previous conclusion, the Committee asked that the next report provide information on the case law in cases of moral harassment and the damages awarded. It also asked, in the light of any relevant case law, whether the right to reinstatement also applies in cases where the employee has been pressured to resign on account of the moral harassment (Conclusions 2014).

The report does not provide the requested information.

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 a victim can choose between the judicial and CPD remedies. The courts can make a declaration of discrimination and award compensation for damages, as well as order the respondent to take remedial action or to abstain from or to terminate particular action or inaction found to be in breach of the law. The equality body can make a finding of discrimination, order preventive or remedial action and impose financial sanctions. It cannot award compensation.

The Committee reiterates its request for information on the case law in cases of moral harassment and the damages awarded, as well as whether the right to reinstatement also applies in cases where the employee has been pressured to resign for reasons related to moral (psychological) harassment. The Committee points out that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bulgaria is in conformity with Article 26§2 of the Charter on these points.

Covid -19

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

The report indicates that there were no changes in the legislation with regard to measures taken during the Covid-19 pandemic to protect the right to dignity in the workplace.

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 Bulgaria.

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

In previous conclusions (Conclusions 2014), the Committee concluded that the situation in Bulgaria was not in conformity with Article 28 of the Charter on the ground that the legislation did not provide for adequate protection in the event of an unlawful dismissal based on trade union membership activities.

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

Protection granted to workers' representatives

In previous conclusions (2007, 2010 and 2014), the Committee considered that the situation in Bulgaria was not in conformity with Article 28 on the ground that the Labour Code which provides for damages up to maximum of 6 months wages in the event of discriminatory dismissal based on trade union activities, did not provide for adequate compensation which would be proportionate to the damage suffered by the victim. In Conclusions 2014, the Committee observed that the situation had not changed and therefore it maintained its conclusion of non-conformity on this point.

The report indicates that during the reference period no amendments were made to the relevant legislation, including Article 225§3 of the Labour Code concerning the right to compensation of the employee in cases of unlawful dismissal based on trade union activities.

The report refers to Article 344§4 of the Labour Code which provides for shortened deadlines during which the court should consider the employee's claim in case of unlawful dismissal. Accordingly, labour disputes should be considered by the district court within three months following the receipt of the claim and by regional courts as a second instance, within one month following the receipt of the appeal. The report concludes that the legislation provides for guarantees for timely consideration of claims filed by employees in order to ensure their adequate protection and that the compensation for a period of 6 months in cases of unlawful dismissal based on trade union activities.

The report also indicates that in cases of unlawful dismissal, the employee has the right to claim compensation for non-pecuniary damages, which, according to the Obligations and Agreements Act, is not limited in time and amount. Moreover, according to the report, discriminatory dismissals based on trade union activities can be appealed against before the Commission for Protection against Discrimination which establishes violations of laws governing equality of treatment and prevents and stops the violation, restores the original situation and imposes sanctions and applies measures of administrative coercion. The report indicates that the Commission does not have the power to award compensation.

The Committee recalls that if a dismissal on the ground of being a workers' representative or based on trade union membership activities takes place, there must be adequate compensation proportionate to the damage suffered by the employee concerned.

The Committee does not consider that the information provided in the report concerning the shortened deadlines within which the district courts should consider the labour disputes, the non-pecuniary damage in case of unlawful dismissals which could be awarded under the

Obligations and Agreements Act or the protection provided by the Commission for Protection against Discrimination, are sufficient to enable it to conclude that victims of discriminatory treatment based on trade union activities are awarded adequate compensation proportionate to the damage suffered. The Committee reiterates that the compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement (Conclusions 2018, Montenegro). Therefore, the Committee maintains its previous conclusion that the situation in Bulgaria is not in conformity with the Charter in this regard.

Concerning the protection granted to workers' representatives other than trade union representatives, the Committee previously took note (Conclusions 2014) that a bill proposing that the National Assembly adopt changes to the Labour Code, providing protection against dismissal of an employee who is elected to represent workers with regard to health and safety in the enterprise, and invited the Government to provide detailed and up-to-date information on this matter and reserved its position on this point.

In reply, the report indicates that Bulgarian legislation provides for adequate protection in the event of unlawful dismissal for workers' representatives for the period during which they have this capacity. Accordingly, the employer may dismiss those workers' representatives only with the prior permission of the labour inspectorate on a case-by-case basis. In cases where the dismissal takes place without the prior consent of the labour inspectorate, the courts shall cancel the order of dismissal as unlawful, without considering the merits of the labour dispute.

According to the Committee's case-law, the protection for workers' representatives should extend for a reasonable period beyond the end of their mandate (Conclusions 2010, Statement of Interpretation on Article 28). The report states that the protection afforded to workers' representatives is currently limited to the period during which they serve in this capacity. Therefore, the Committee concludes that the situation is not in conformity with Article 28 in this respect.

The Committee asks that the next report also provide information on protection of workers' representatives against prejudicial acts short of dismissal.

Facilities granted to workers' representatives

In previous conclusions (Conclusions 2014), the Committee took note that workers' representatives were entitled to access to all workplaces, paid time off and to participation in trainings. It asked whether the facilities indicated in the R143 Recommendation concerning protection and facilities to be afforded to workers' representatives within the undertaking adopted by the ILO General Conference of 23 June 1971 are granted to trade union representatives and other workers' representatives.

In reply, the report indicates that the Labour Code establishes a general obligation to provide assistance in carrying out the activities of trade unions and representatives of employees. According to the report, pursuant to Article 46 of the Labour Code, state agencies, local self-government bodies and employers shall provide conditions for, and cooperate with, trade union organisations to conduct their activities. The employer has therefore the obligation to make available for workers' and trade union representatives, for gratuitous use, buildings and premises and other facilities required for the performance of their functions. Moreover, according to Article 7c§3 of the Labour Code, the workers' representatives are allowed to establish their order of their work.

The report indicates that the provisions of the Labour Code provide that the workers' representatives are entitled to access to all working places at the enterprise as well as to require meetings with the employer in cases when it is necessary to inform them of the questions raised by the workers and employees. Also, trade union representatives have the right to visit, at any time, the enterprises and other places where the work is performed, as well as premises used by workers and employees (Article 406§1 and 2 of the Labour Code).

According to the report, for the performance of trade union activities, the unpaid members of national, sectional, and regional leaderships of trade union organisations, as well as the unpaid chairman of the trade union leaderships in the enterprises shall be entitled to a paid leave of duration specified by the collective contracts, but not shorter than 25 hours for one calendar year.

Further, workers representatives shall also be entitled to a training leave necessary for the performance of their functions. Workers' representatives, on the basis of an individual or collective agreement with the employer, may also be entitled to reduced working times or to additional leave. Appendix No 4 to the report, provides examples of collective bargaining agreements for the creation of adequate conditions for the conduct of trade union activities, including the free of charge use of premises, use of reproduction equipment, computers, internet, paid leave for carrying out trade union activities or the provision of transport or covering the transport costs of the trade union representatives in their functions.

Conclusion

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

- adequate protection is not provided for in the event of an unlawful dismissal based on trade union membership activities;
- the protection granted to workers' representatives against dismissal is not extended for a reasonable period after the end of their mandate.

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 Bulgaria.

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 2014), the Committee concluded that, pending receipt of information requested, the situation in Bulgaria was in conformity with Article 29 of the Charter.

In the present conclusion, assessment of the Committee will therefore concern the information provided by the Government in response to the question raised in the previous conclusion (Conclusions 2014).

Prior information and consultation

In Conclusions 2010, the Committee took note of the employer’s obligation to start consultations with the representatives of trade union organisations and with the employees’ representatives not later than 45 days prior to launching collective redundancies and to make efforts to achieve an agreement with the employees’ and trade union representatives to avoid or limit collective redundancies and to mitigate its consequences. It also took note that before the start of consultations, the employer must provide information in writing to the representatives of trade union organisations and to the employees’ representatives on the reasons for planned redundancies; the number of employees to be dismissed; the period when such redundancies are to be carried out; and compensations relative to redundancies.

In the previous conclusions (Conclusions 2014), the Committee specifically asked how the information and consultation process in this respect ensures mitigating the consequences of collective redundancies. In this regard, the Committee asked for an explanation of the employer’s obligation to cooperate with administrative authorities or public agencies which are responsible for the policy counteracting unemployment (for example, by notifying them about planned collective redundancies and/or cooperating with them in relation to retraining employees who are made redundant or providing them with other forms of assistance with a view to obtaining a new job).

The report does not provide any answers in these respects. The Committee reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 29 of the Charter in this respect.

Sanctions and preventative measures

In the previous conclusions (Conclusions 2014), the Committee noted that there had been no changes to the situation which it previously found to be in conformity with the Charter. It asked what preventative measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers’ representatives had been fulfilled.

The report does not provide any answer in this respect. The Committee reiterates its request and considers that if the request information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 29 of the Charter in this respect.

Conclusion

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