March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

ESTONIA

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, is contained in the General Introduction to all Conclusions.

The following chapter concerns Estonia, which ratified the Revised European Social Charter on 11 September 2000. The deadline for submitting the 19th report was 31 December 2021 and Estonia submitted it on 16 February 2022.

The Committee recalls that Estonia was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2018).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2018) found the situation to be in conformity, there was no examination of the situation in 2022.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group III "Labour Rights" :

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

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

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

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

– 16 conclusions of conformity : Articles 2§2, 2§3, 2§5, 2§6, 2§7, 4§2, 4§4, 4§5, 6§1, 6§3, 21, 22, 26§1, 26§2, 28, 29.

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

In respect of the other 2 situations related to Articles 4§3 and 5, 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 Estonia under the Revised Charter.

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

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

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

The deadline for submitting that report was 31 December 2022.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

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

In its previous conclusion, the Committee considered that the situation in Estonia was not in conformity with Article 2§1 of the Charter on the grounds that the law did not guarantee the right to reasonable weekly hours for seafarers and that there was no absolute limit on daily working time on working days of more than 13 hours (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Measures to ensure reasonable working hours

The Committee notes that in its previous conclusion it found the situation in Estonia not to be in conformity with Article 2§1 of the Charter on the ground that the law did not guarantee the right to reasonable weekly hours for seafarers. The Committee also asked over what reference period average working hours were calculated for crew members, what rules applied to on-call duty for crew members, whether it was possible to work 72 hours non-stop for crew members and on any infringements of the working hour regulations applying to crew members on short sea shipping vessels reported by an appropriate authority. The Committee also found the situation in Estonia not to be in conformity with Article 2§1 of the Charter on the ground that certain workers could be authorised to work for 24 hours (Conclusions 2018).

In reply, the report states that Seafarers Employment Act (SEA) regulates seafarers working and rest time. General conditions are regulated by Employment Contracts Act (ECA) unless determined otherwise by SEA. ECA provides that the summarised working time shall not exceed 48 hours in 7 days over a reference period of 4 months, unless a different reference period has been provided by law. The worker and the employer may agree upon a longer working time if the summarised working time does not exceed 52 hours in 7 days over a reference period of 4 months and the agreement is not unreasonably detrimental to the worker. According to Article 40 of the SEA, the reference period may be extended for a crew member up to 6 months and by a collective agreement up to 12 months.

The report states that the part of on-call time during which the crew member is in subordination to the management and control of the operator is considered to be working time and shall be remunerated accordingly. If a crew member has worked during on-call time, the master of the ship shall grant additional rest time to the extent equal to the time spent working during on-call time.

The report also states that it is not possible to work 72 hours non-stop for crew members since they are not allowed to work more than 14 consecutive hours. Article 48 of the SEA states that an agreement by which a crew member is left with less than 10 hours of rest time over a period of 24 hours is void. Thus, a crew member can work for 14 hours consecutively. Over a period of 24 hours the rest time may be divided into two periods but the duration of one period cannot be less than 6 hours. The working time between two consecutive rest times may not exceed 14 hours.

With regard to rest time, the report states that under the SEA, an agreement by which a crew member is left with less than 84 hours of rest time over the period of 7 days is void and an agreement by which a watchkeeper is left with less than 77 hours of rest time over a period of

7 days is void. Exceptions may be made by collective agreement, provided that the crew member is left with at least of 77 hours of rest time over a period of 7 days.

The report further states that application of working time regulations is supervised by Labour Inspectorate. According to the report, there is no specific information about the working time infringements on short sea shipping vessels since there are very few of them in Estonia (in 2015 there were 4 enterprises carrying out passenger transportation in inland waters and there were no enterprises carrying out freight transport). However, the report provides information about infringements of the working time regulation provided in the SEA. In 2017-2019 there were 15 violations each year and in 2020 there were 21 violations.

The Committee notes that it will reexamine the weekly working hours of seafarers in the future and in the meantime reserves its position on this point.

With regard to daily working hours of more than 13 hours, the report states that Article 51 of the ECA establishes the opportunity to work more than 13 hours a day in certain limited cases. The ECA also provides that the restriction on daily rest time shall not be applied to healthcare professionals and welfare workers, provided working does not harm their health and safety. In these situations, the worker can work a maximum of 24 hours and there must be breaks during the working day. Also, the employer must grant rest to a worker who works more than 13 hours over a 24-hour period and compensatory time-off must be granted immediately after the end of the working day and must be equal to the number of hours by which the 13 working hours were exceeded. The worker can work two 24-hour shifts per week and the maximum weekly working time of 48 or 52 hours in a period of 7 days within a reference period of 4 months cannot be exceeded.

The Committee recalls that daily working time should in all circumstances amount to less than 16 hours per day in order to be considered reasonable under the Charter (Conclusions XIV-2, General Introduction). Exceptions are only allowed in extraordinary circumstances (Conclusions 2018, Norway, Georgia). The Committee asks for information on sectors in which the workers can be allowed to work for up to 24 hours and what safeguards exist in the situations when the workers do work for 24 hours.

The Committee notes that the situation in Estonia appears to have not changed since its last conclusion and reiterates its conclusion of non-conformity on the ground that certain workers can be authorised to work for up to 24 hours.

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

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

The report states that no changes were made to the ECA with regard to working time and rest periods. The report further states that one of the functions of the Labour Inspectorate is to carry out State supervision of employers' compliance with obligations arising from legislation on occupational health, safety and employment relationships and it also carries out targeted inspections. The report provides extensive statistical information on the activities of the Labour

Inspectorate. With regard to working and rest time, there were 206 violations in 2017, 292 violations in 2018, 230 violations in 2019 and 148 violations in 2020. With regard to sectors of economic activity, the most violations were in the transportation and storage sector, accommodation and catering sector and manufacturing industry.

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

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

In reply, the report states that to ensure the respect of reasonable working hours the Labour Inspectorate conducts inspections, campaigns, trainings and disseminates information about employment legislation. Information on legislation concerning working hours is available in the Work Life Portal maintained by the Labour Inspectorate. Labour Inspectorate also provides free counselling, the goal of which is to help all parties of an employment relationship to know and fulfil all their contractual and agreed rights and obligations, to promote lawful actions and to reduce and prevent conflicts and violations. Also, a labour inspector has the right to issue a precept and demand that the identified violation be remedied, issue a penalty payment imposition warning to ensure compliance with a precept, impose a penalty payment, appeal to a bailiff for collection of a penalty payment.

Law and practice regarding on-call periods

In its previous conclusion, the Committee asked for information on the legal nature of the on-call period and how it was remunerated (Conclusions 2018).

In the targeted question, the Committee asked for information on law and practice as regards on-call time and service (including as regards zero-hour contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration.

In reply, the report states that Article 48 of the ECA sets out the concept and limitations of on-call time. On-call time is a separate type of time which is not a part of the working or rest period. On-call time is a period during which the worker is not carrying out his/her duties but has to be available to the employer. The part of on-call period during which the worker is in subordination to the management and control of the employer is considered working time. Remuneration which is not less than 1/10 of the agreed wages must be paid to the worker for the on-call time. Inactive on-call periods cannot be treated as rest time and an agreement on the application of on-call time which does not guarantee the worker the possibility of using daily and weekly rest time is void. The Committee asks for more information on the remuneration when the worker is on-call and whether it is in fact lower than the remuneration the worker receives for his or her ordinary work.

The Committee understands from the report that on-call period during which no active work is carried out, is neither working time, nor rest period and asks for clarifications.

The report states that zero-hour contracts are not used in Estonia.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to provide information on the impact of the Covid-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. More specifically, the Committee asked

for information on the enjoyment of the right to reasonable working time in the following sectors: healthcare and social work; law enforcement, defence and other essential public services; education, transport.

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

The report states that the option of applying extraordinary working hours during an emergency situation was established in the Emergency Act, which entered into force on 7 May 2020. Pursuant to this act, extraordinary working hours may be established for an official or a worker of an institution if it is necessary for resolving an emergency situation. However, changes in the specification of working hours detailed in the Emergency Act were not implemented in the area of jurisdiction of the Ministry of Interior.

The report also states that the Covid-19 pandemic increased teleworking, in 2019 a teleworking guide was prepared which describes when telework can be used, how to assess the risks of teleworking, what are the employer's responsibilities in the case of telework and it was pointed out in the guide that working and rest hours had to be followed.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 2§1 of the Charter on the ground that certain workers can be authorised to work for up to 24 hours.

See dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

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

In its previous conclusion, the Committee found that the situation in Estonia was in conformity with Article 2§2 of the Charter (Conclusions 2018). It asked whether the right to paid public holidays applied to all workers including crew members on sea shipping vessels.

In response, the report indicates that Article 6 of the Seafarers Employment Act (SEA) provides that the Employment Contracts Act and other legislation regulating employment relationships apply to the employment relationships of crew members, subject to the specific provisions of the SEA. However, the SEA does not provide for pay differences due to working on public holidays and, in this case, Article 45(2) of the Employment Contracts Act applies to crew members on sea shipping vessels, without any exceptions. Article 45(2) states that if the working time falls on a public holiday, the employer shall pay double the wage. The Committee considers that this situation is in conformity with Article 2§2 of the Charter.

Covid-19

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

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

Conclusion

The Committee concludes that the situation in Estonia 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 Estonia.

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 (Conclusions 2018), the Committee considered that the situation in Estonia was in conformity with Article 2§3 of the Charter, pending receipt of the information requested on any change in the legal framework covering annual paid leave. In addition, the Committee asked whether the right to annual paid leave also applied to crew members on sea shipping vessels. If not, it asked for detailed information on the limits which applied to the carrying over of annual leave for this category of workers, and more specifically if all annual leave might be carried over to the following year or whether a minimum number of days could be taken during the reference year without exception.

In response, the report indicates that the legal framework covering annual paid leave has not changed during the reference period. It indicates that the right to annual paid leave applies to crew members on sea shipping vessels. Pursuant to Article 51 of Seafarers Employment Act (SEA), crew members are entitled to 35 calendar days of annual leave. The report also indicates that the Employment Contracts Act applies to crew members, subject to the specific provisions of the SEA. However, the SEA does not provide specific rules for postponement of annual leave, and in this case, Article 68(5) of the Employment Contracts Act applies, according to which annual leave must be used within the calendar year. Annual leave is granted in parts only by agreement of the parties. An employee must use at least 14 calendar days of uninterrupted holiday during the year. An unused part of leave shall be transferred to the next calendar year. The employer has the right to refuse to divide the annual leave into parts shorter than seven days. The parties may agree on the application and carrying over, but an agreement that derogate from the rights, obligations and liability of the contracting parties is void.

Covid-19

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

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

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 2§3 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 Estonia 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 Estonia 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 Estonia.

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

In its previous conclusion, the Committee found that the situation in Estonia was in conformity with Article 2§6 of the Charter, pending receipt of the information requested (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the question raised in its previous conclusion.

The Committee previously asked for confirmation that the employment contract for crew members on sea shipping vessels or another written document contained the elements of information required under Article 2§6 of the Charter (Conclusions 2018). The report notes that Articles 5 and 6 of the Employment Contracts Act (ECA), specifying the elements of information that employees must receive at the beginning of the employment relationship, and which the Committee has assessed to be in compliance with Article 2§6 of the Charter (Conclusions 2014), apply equally to seafarers. Article 9 of the Seafarers Employment Act specifies that seafarers receive an additional written document that shall include, at a minimum, the following information:

- the place of birth of the crew member;
- the place where the crew member shall commence work;
- the ship or ships where work shall be commenced and the ship's registration number;
- a reference to the health and social security guarantees offered by the operator, including to the benefits in connection with work-related illnesses or injuries or death caused by an occupational accident;
- a reference to the organisation of repatriation of the crew member;
- a reference to the conditions of and the procedure for the cancellation of the seafarer's employment contract, including to the terms of advance notice of cancellation of the seafarer's employment contract.

Covid-19

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

Conclusion

The Committee concludes that the situation in Estonia 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 Estonia.

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

In its previous conclusion, the Committee considered that the situation in Estonia was not in conformity with Article 2§7 of the Charter on the ground that laws and regulations did not provide for continuous consultation with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity.

The report notes that although the Estonian legislation lacks a specific consultation process for night workers, the Occupational Health and Safety Act (OSHA) contains a series of provisions on risk assessment and consultation in connection with the working environment and working conditions more broadly as follows:

- employers and employees cooperate for the purpose of securing a safe working environment, by designing action plans and engaging in the implementation thereof (§ 12 (3));
- employers must conduct risk assessments in connection with night work and implement the recommendations issued as a result (§ 13⁴ (1));
- employers are required to conduct regular internal control of the working environment, in consultation with employees (§ 13);
- employers must inform employees or working environment representatives of any workplace hazards and of the measures taken to address them (§ 12);
- employees have a right to receive information on working environment hazards, the results of working environment risk assessments, the measures implemented to prevent damage to health, the results of medical examinations, and of the orders received by employers from the Labour Inspectorate (§ 14 (5)2);
- employees have a right to contact a working environment representative, members of the working environment council, other representatives of employees and the Labour Inspectorate if the measures implemented and the equipment provided by the employer do not ensure the safety of the working environment (§ 14 (5)7);
- the working environment representative has monitoring and consultation duties with regard to night work conditions among other occupational health and safety issues (§ 17).

Based on the information received, the Committee concludes that the situation is in conformity with Article 2§7 of the Charter.

Covid-19

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

Conclusion

The Committee concludes that the situation in Estonia 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 Estonia.

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

In its previous conclusion, the Committee considered that the situation in Estonia was not in conformity with Article 4§2 of the Charter on the ground that not enough time off was granted in lieu of increased wages for overtime (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted question.

Rules on increased remuneration for overtime work

Previously, the Committee found that the situation in Estonia was not in conformity with Article 4§2 of the Charter because time off granted in lieu of increased wages for overtime was not long enough (Conclusions 2018).

The report states that Article 44 of the Employment Contracts Act (ECA) provides for a mixed system of compensation for overtime. Overtime may be compensated in two ways – with money or with time off. According to Article 44(6) of the ECA, employer must compensate for overtime by time off equal to the overtime, unless it has been agreed that overtime is compensated for in money. Article 44(7) of the ECA provides that if overtime is compensated in money, it has to be done at 1.5 rate. When time off is granted instead of monetary compensation, this time off cannot be deducted from standard rest periods and must be paid as working hours. Thus the employer has to pay the regular wage for overtime and give time off in the same amount as overtime worked.

The Committee reiterates the aim of Article 4§2 is to ensure that the additional occupation of workers during overtime is rewarded. Under this provision such reward must take the form of an increased rate of remuneration. However, the Committee recognises reward in the form of time off, provided that the aim of the provision is met. This means, in particular, that where remuneration for overtime is entirely given in the form of time off, Article 4§2 requires that this time be longer than the additional hours worked (Conclusions 2014, Slovak Republic). The principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who therefore should be paid at a rate higher than the normal wage (Conclusions XIV-2, Statement of Interpretation of Article 4§2).

The Committee also notes that the combination of equivalent time off and an allowance for overtime corresponds to an increased remuneration for overtime hours and is therefore in conformity with the Charter (Conclusions 2014, Slovenia). In view of the information provided by the report, the Committee considers that the situation is Estonia is now in conformity with Article 4§2 of the Charter.

Covid-19

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

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

The report states that no specific measures were taken with regard to the impact of Covid-19 regarding the right to a fair remuneration. A financial allocation was made from the State budget to the Health Insurance Fund to support hospitals and it was for the specific hospitals to work out the compensational coefficients for remuneration of medical staff. Also, officials and staff agencies under the jurisdiction of the Ministry of Interior, since the beginning of 2020, worked overtime if necessary but only within the limits established for by law. The limit of overtime per one police officer is 300 hours in a calendar year and the payment rate is 1.5 times of their base salary rate, or additional time-off is provided. The report further states that there is no statistical data on the exact distribution of money.

Conclusion

The Committee concludes that the situation in Estonia 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 Estonia.

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 Estonia was not in conformity with Article 4§3 of the Charter, on the ground that the enforcement of the right to equal pay was not effective, as demonstrated by the persistently high gender pay gap (Conclusions 2018).

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

Legal framework

In its previous conclusion, the Committee asked for a more detailed information on the legal framework and reserved its position on this issue (Conclusions 2018).

In response, the report indicates that Article 6(2)(3) of the Gender Equality Act states that it is considered discriminatory for an employer to impose less favourable pay conditions or conditions for the provision and receipt of employment-related benefits in relation to an employee or employees of one gender as compared to an employee or employees of the other gender performing the same work or work of equal value. In addition, Article § 5(1) of the Gender Equality Act states that direct and indirect discrimination based on sex is prohibited.

The Committee notes from the report on Gender equality in Estonia published by the European Network of Legal Experts in Gender Equality and Non-Discrimination (2022) that Article 3 of the Employment Contracts Act explores the principle of equal treatment. Employers must ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality in accordance with the Employment Contracts Act and the Gender Equality Act.

In view of the above, the Committee concludes that the situation in this respect is in conformity with the Charter.

Pay transparency and job comparisons

In its previous conclusion, the Committee asked whether the existence of a comparator was required in equal pay cases. It also asked whether pay comparisons were possible across companies, for example, if such company was a part of a holding company and the remuneration was set centrally by such holding company (Conclusions 2018).

In response, the report indicates that according to Article 3(1)3 of the Gender Equality Act, direct discrimination based on sex occurs where one person is treated less favourably on the

grounds of sex than another is, has been or would be treated in a comparable situation. Thereby, according to the report, a hypothetical comparator can be used.

In addition, the report indicates that a specific pay comparisons outside one company but within a holding is possible, especially if the remuneration is set centrally by such holding company as it can then be considered "employer" referred to in f § 6(2)3 of the Gender Equality Act.

The Committee requests that the next report provide more information on the parameters making it possible to establish the equal value of the work peerformed (such as the nature of the work, training and working conditions) and on the job classification and promotion systems in place.

In the meantime, it reserves its position on this issue.

The Committee asks that the next report provide information as regards particular measures provided by national law regarding pay transparency in the labour market and notably the possibility for workers to receive information on pay levels of other workers and available information on pay.

Statistics and measures to promote the right to equal pay

The report provides data for each year of the reference period on gross hourly wages and salaries of men and women, as well as on the gender pay gap (in general and by economic activity). According to the report, Statistics Estonia and Eurostat use different methodologies to calculate the gender pay gap. The gender pay gap published by Eurostat does not take into account the indicators of enterprises and institutions with fewer than 10 employees; it also excludes the earnings of employees in agriculture, forestry, fishing and in public administration and defence. In contrast, Statistics Estonia takes into account all economically active enterprises, institutions and organisations with at least one employee. The Committee notes that, according to Statistics Estonia, the gender pay gap has had a downward trend during the reference period: 20,9% in 2017, 18% in 2018 and 17,1% in 2019 and 15,6% in 2020.

For information, the Committee takes note of the Eurostat data on the gender pay gap during the reference period in Estonia: 24.9% in 2017, 21.8% in 2018 and 21.7% (provisional figure) in 2019 and 21.1% (provisional figure) in 2020 (compared with 27.3% in 2011). It notes that this gap is higher than the average in the 27 countries of the European Union, namely 13% (provisional figure) in 2020 (data as of 4 March 2022). However, it also notes that the gender pay gap, although very high, has had a downward trend during the reference period.

As Estonia 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 Committee's question, the report indicates that there are no furlough schemes in Estonia.

It adds that a study on the socio-economic impact of the Covid-19 pandemic on gender equality was carried out by the Praxis Centre for Policy Studies in 2021. It showed that the pandemic increased gender inequality in Estonia, primarily due to the difficulty of reconciling work and family life, which hits women harder than men.

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

Conclusion

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

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 Estonia.

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

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

The Committee refers to its statement of interpretation on Article 4§4 (2018), where the Committee recalled that a reasonable notice period on termination of employment is regarded as one of the components of fair remuneration. The Committee further recalls that a reasonable notice period is one during which workers are entitled to their regular remuneration and that takes account of the workers' length of service, the need not to deprive workers abruptly of their means of subsistence, as well as the need to inform workers of the termination in good time so as to enable them to seek a new job. The Committee points out that it is for governments to prove that these elements have been considered when devising and applying the basic rules on notice periods.

Following on from its statement of interpretation on Article 4§4 (2018), the Committee recalls that the question of the reasonableness of the notice periods will no longer be addressed, except where the notice periods are manifestly unreasonable. The Committee will assess this question on the basis of:

1. The rules governing the setting of notice periods (or the level of compensation in lieu of notice):
    - according to the source of the rule, namely the law, collective agreements, individual contracts and court judgments;
    - during any probationary periods, including those in the public service;
    - with regard to the treatment of workers in insecure jobs;
    - in the event of termination of employment for reasons outside the parties' control;
    - including any circumstances in which workers can be dismissed without notice or compensation.
2. Acknowledgment, by law, collective agreement or individual contract of length of service, whether with the same employer or where a worker has been successively employed in precarious forms of employment relations.

Reasonable period of notice: legal framework and length of service

The Committee asked in its targeted question about information on the right of all workers to a reasonable period of notice for termination of employment (legal framework and practice), including any specific arrangements made in response to the Covid-19 crisis and the pandemic.

In reply to the targeted question the report states that there were no specific arrangements made in response to the Covid-19 crisis. The report also states that the Employment Contract Act (ECA) provides for the extraordinary cases of termination of an employment contract at the initiative of the employer due to economic reasons or due to the employee's own reasons. Section 97(2) of the ECA sets out the following notice periods for the extraordinary cases of termination of contract: no less than 15 calendar days if the employment relationship has

lasted less than one year; no less than 30 calendar days if the employment relationship has lasted from one to five years; no less than 60 calendar days if the employment relationship has lasted from five to ten years; no less than 90 calendar days if the employment relationship has lasted for ten or more years.

In its previous conclusion the Committee found that the situation in Estonia was not in conformity with Article 4§4 of the Charter on the ground that general notice periods are not reasonable for workers and civil servants with more than three and less than five years of service (Conclusions 2018). In this regard, the report states that the regulation and the notice periods set for officials are the same as those provided for in Section 97§2 of the ECA. In accordance with its statement of interpretation on Article 4§4 (2018), the Committee notes that Article 97.2 ECA provides for notice periods that acknowledge the workers' length of service and that are not manifestly unreasonable. The Committee therefore considers that the situation in Estonia is in conformity with Article 4§4 of the Charter on this point.

In its previous conclusion the Committee found that the situation in Estonia was not in conformity with Article 4§4 of the Charter on the ground that no notice period is provided for in case of dismissal due to reduced working capacity caused by the employee's state of health and due to an inability to perform work duties (Conclusions 2018). The report states that this is a case of extraordinary rescission of the employment relationship by the employer, so the applicable notice period is the one set in Section 97(2) of the ECA. The Committee therefore takes note of the notice period provided for in such case and considers that the situation in Estonia is in conformity with Article 4§4 of the Charter on this point.

In its previous conclusion the Committee asked whether collective agreements may provide for less favourable notice periods and/or severance pay than those established by the ECA. In reply to the Committee´s question, the report states that collective agreements can only provide for less favourable notice periods and/or severance pay than those established by the ECA when this possibility has been prescribed by the ECA. The Committee asks that the next report provide information about the specific cases in which this derogation from the notice period to the detriment of the employee is possible.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

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 2018) the Committee found that the situation in Estonia was not in conformity with Article 4§5 of the Charter on the ground that after maintenance payments and other authorised deductions, the wages of workers with the lowest pay did not allow them to provide for themselves or their dependants.

The Committee now notes from the report that the Article 132 (1) of the Code of Enforcement Procedure provides that earnings are not seized, if they do not exceed the minimum monthly salary or a corresponding proportion of earnings for a week or day. However, there can be some exceptions. Article 132 (11) of the Code of Enforcement Procedure provides that if making a claim for payment from other assets of a debtor has not or is unlikely to fully satisfy a claim for child support, it is possible to seize up to 50% of the income referred to in Article 132 (1). If the amount seized out of the income of the debtor for the fulfilment of a claim for child support is less than a half of the amount specified in Article 132 (1), up to one-third of the income of the debtor may be seized. Article 132 (12) of the Code of Enforcement Procedure provides that if making of a claim for payment from a debtor's other assets has not or is unlikely to fully satisfy the claim, it is possible to seize up to 20% of the income not exceeding the amount referred to in section 132(1), from which has been deducted the estimated subsistence minimum published by Statistics Estonia, irrespective of the number of enforcement proceedings initiated against the debtor in question. Earnings are not seized if they fall below the estimated subsistence minimum published by Statistics Estonia. However, according to the report, the provisions of this section do not apply to the enforcement of the maintenance claim.

In this respect, the report explains that all the claims concerning a child, including a claim for maintenance, are considered priority claims. This means that child-related maintenance claims are satisfied before any other monetary claim. Other monetary claims can only be enforced if the debtor does not owe monthly child maintenance. Article 132(13) of the Code of Enforcement Procedure provides that if a debtor has dependants, the 20% specified in Article 132 (12) shall be calculated on the income of the debtor from which the amount not subject to seizure pursuant to Article 132 (2) per each dependant and the estimated minimum subsistence figure published by Statistics Estonia have been deducted. Article 132 (2) and (3) of the Code of Enforcement Procedure are also important, since they set out additional rules on deductions in order to protect the debtor's wage.

Where, by law, a debtor provides for another person or pays maintenance to that person, the amount that cannot be seized increases by one third of the minimum monthly salary per each dependant, except where compulsory enforcement is conducted in respect of a child's claim for maintenance.

The report states that, in 2019, the minimum wage was €540. The official estimated subsistence minimum (set by Statistics Estonia) for 2018 was € 215.44. The Committee understands that in the case of a person earning the minimum wage and where compulsory enforcement is carried out in respect of a child's claim for maintenance, the amount seized may be 50% of the minimum wage, which in 2019 amounted to €270, which would leave the worker with a disposable income of €270, which is above the subsistence level. Therefore, the Committee considers that the situation is in conformity with the Charter on this point. The Committee asks, however, whether the subsistence level established by the Government can guarantee that the subsistence needs are met.

Waiving the right to the restriction on deductions from wage

The Committee has previously (Conclusions 2014) noted that while Article 78, paragraph 1 of the Employment Contract Act (ECA) allows employees to waive their right to limited deductions from wages, under Article 78, paragraph 4 of the ECA, their consent is subject to the limits set by Article 132 of the Code of Enforcement Procedure, relating to the non-seizable amount of the wage, which is the minimum wage net of social contributions and tax deductions. The Committee asks for the next report to provide updated information in this respect.

Conclusion

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

Article 5 - Right to organise

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

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

In its previous conclusion, the Committee concluded that the situation in Estonia was in conformity with Article 5 of the Charter (Conclusion 2018).

The Committee also recalls that in the General Introduction of Conclusions 2018, it posed a general question under Article 5 and asked States to provide, in the next report, information on the right to organise for members of the armed forces.

The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions and 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 Committee takes note of the information provided in the report regarding trade union membership by regions and activity during the reference period. The Committee notes that trade union membership has increased in all regions since 2017, except for West Estonia, where it has slightly decreased. The Committee further notes that trade union membership has increased in all sectors of activity but showed a slight decrease in the tertiary sector in 2020.

Personal scope

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 not be provided in the next report, there will be nothing to establish that the situation in Estonia is in conformity with the Charter on this point.

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).

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

Restrictions on the right to organise

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

economic and social interests or to join such organisations. In reply to the targeted question, the report states that there are no activities in which workers are denied the right to form or join organisations for the protection of their economic and social interests.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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

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

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 Estonia was not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining was not sufficient (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

As the report does not contain any relevant information in that regard, the Committee reiterates its conclusion of non-conformity.

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

Covid-19

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

Conclusion

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

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

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

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

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

In its previous conclusion, the Committee considered that the situation in Estonia was not in conformity with Article 6§4 of the Charter on the ground that all public servants exercising authority in the name of the State were denied the right to strike and this blanket prohibition went beyond the limits permitted by Article G of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

Right to collective action

Restrictions to the right to strike, procedural requirements

In its report, the Government states that under the Civil Service Act (which entered into force in 2013), the definition of a civil servant is now considerably narrower. According to Article 6 of the Act, the civil service is a public service; it consists of a relationship of trust between the State or local government and civil servants performing the functions of public authority. Article 7 provides that civil servants are persons who are in the public service and who have a relationship of trust with the State or local government.

Under the Civil Service Act, all persons with civil servant status exercise public authority and are therefore prohibited from striking. In 2020, there were 28,371 people in the civil service; about 8,000 of them were employed on a contractual basis, meaning that they were not civil servants and, therefore, were not subject to the strike ban.

The Committee notes that the situation has not changed since its last conclusion: strike action is prohibited for all persons with civil servant status under the Civil Service Act of 2013. The Committee therefore 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 health crisis, the Committee asked all States to provide information on:

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

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

In its report, the Government mentions that no changes have been made to the law relating to the right to strike. Strikes could only take place if the Government's general Covid-19 prevention measures (including restrictions on the number of participants and distancing rules, etc.) were followed.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 6§4 of the Charter on the ground that all public servants exercising authority in the name of the State are denied the right to strike.

Article 21 - Right of workers to be informed and consulted

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

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 Estonia 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 states that no specific legislative measures were taken during the pandemic with respect to the right to information and consultation. It further recalls that the Employees’ Trustee Act guarantees the right to information and consultation and sets the relevant procedure. In December 2020 the fine rates were increased for employers for breach of obligation to inform or consult, or for provision of false information.

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.

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 21 of the Charter.

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

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

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

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

The report states that no specific measures were 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 the working environment. It recalls that this right is guaranteed in general by the Occupational Health and Safety Act, Trade Unions Act and Employees’ Trustee Act.

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 Estonia 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 Estonia.

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

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

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

Prevention

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

The report indicates that strategic policy documents have been developed for prevention purposes such as the Green Paper on Mental Health which addresses issues of harassment and violence, including sexual violence, at home, at work, at school and elsewhere. The changes envisaged in the paper contribute directly or indirectly to the prevention of violence and harassment in the workplace by providing (for example) assistance and support to employers and occupational health professionals in identifying, assessing and taking further action on psychosocial risk factors (including violence and harassment). The Welfare Development Plan 2016-2023 also includes some measures and activities to prevent and combat gender-based violence and harassment. There is also a dedicated web page about mental health on the Working Life Portal that contains all the necessary information that employers and employees need to know about psychosocial risks.

The report also provides information on other strategies such as violence and harassment in the workplace (outside the reference period). For example, the Violence Prevention Agreement for the period 2021-2025 deals with violence at home, in the digital space, in the workplace and elsewhere. The activities set out in the agreement (raising awareness of violence among the general public, strengthening the skills of health professionals in detecting violence, training and information materials for the prevention of sexual violence) also contribute to the prevention of violence in the workplace. In addition, Estonia 2035 strategy includes the prevention of harassment and violence, highlighting violence in the work environment.

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 indicates that harassment and sexual abuse are prohibited by Penal Code (PC). Article § 153^1 of the PC defines sexual harassment as 'a physical act of sexual nature committed intentionally against the will of a person with the aim of degrading them', which is punishable by a fine of up to €1 200 or detention. A legal person can be held accountable for sexual harassment and may be punished with a fine of up to €2 000. The report adds that, in

2019, Article § 141^1 prohibiting non-consensual acts of a sexual nature was added to the Penal Code.

The report further indicates that the Occupational Health and Safety Act (OHSA) was also amended. Article § 3 (2) of the OHSA states that (among other things), a psychosocial factor present in the working environment must not endanger the life or health of an employee or another person in the working environment. Article § 9^1 was added to the OHSA, stating that psychosocial risks are work situations where there is a risk of an accident or violence, where the employee is subjected to unequal treatment, bullying and harassment at work, where the work assigned to an employee does not correspond to their abilities, where the employee works alone for an extended period of time and where he or she performs monotonous tasks; they also refer to other factors related to management, work organisation and the working environment that can affect an employee's mental or physical health, including work stress. In order to prevent health problems arising from psychosocial risk, including bullying and harassment, the employer must take measures, such as adapting the organisation of work and the workplace to suit the employee, optimising the employee's workload, enabling breaks to be included in the working time for the employee during the working day or shift and improving the enterprise's psychosocial working environment.

The report also indicates that Article 27^3 of the OHSA also states that failure to comply with the requirements for a workplace exposed to physical, chemical, biological, physiological or psychosocial hazards if it involves a threat to the health or life of an employee, and if it is committed by an employer or a member of the employer's board of directors or another representative to whom the duty to ensure compliance with these requirements has been delegated, is punishable by a fine of up to 300 units (1 unit is equivalent to €4). The same act, if committed by a legal person, is punishable by a fine of up to €32 000.

Finally, the report states that the relevant provisions of the Equal Treatment Act and Gender Equality Act (GEA) which were described in the previous report remained unchanged.

Damages

The Committee previously noted that, under Article 13 of the GEA, a victim of discrimination can request that the harassment be brought to an end and that compensation be paid for material and non-material damages, taking into account the scope, duration and nature of the discrimination suffered (Conclusions 2014). In its previous conclusion, the Committee noted from the European Network of Legal Experts in Gender Equality and Non-Discrimination (Estonia, *Country report on gender equality, 2017*) that "claims for compensation related to discrimination have been rare and rather unsuccessful in the courts". It asked the next report to comment on this point and to provide evidence of the effectiveness of remedies, whether judicial, administrative or another kind, in particular as regards the range of damages awarded in cases of sexual harassment (Conclusions 2018).

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

The report indicates that both gender-based and sexual harassment are prohibited as discriminatory under the Gender Equality Act (GEA). According to Article § 13 of the GEA, if a person's rights have been violated by a discriminatory practice, the person may demand that the perpetrator of the discrimination cease the practice and compensate for the damage in accordance with the procedure provided by law. In addition, an injured party may claim reasonable compensation for the moral damage caused by the violation. The courts or the competent labour dispute committee must determine the amount of compensation taking into account, among other things, the scope, duration and nature of the discrimination. No specific limitations are fixed in the GEA for either material or moral damages.

The report indicates that according to the GEA § 6(2)5, the activities of the employer are considered discriminatory (and therefore also prohibited) when the employer (harasses a person on the basis of the sex of the person or sexually) and fails to comply with the duty to protect provided for in § 11(1)4 of the GEA, which requires the employer to ensure that employees are protected from gender-based harassment and sexual harassment in the working environment. An employer is liable for failing to comply with the duty of care if they were aware or should have been aware that gender-based harassment or sexual harassment was taking place and did not take the necessary steps to stop it.

The report states that, according to the Labour Dispute Committee, in the period of 2017-2020, there were 84 disputes which related to discrimination or unequal treatment settled. Thus, in 2018, 19 complaints were submitted to the labour dispute committees in relation to unequal treatment, and the Labour Dispute Committee decided that there had been unequal treatment in 11 cases. In 8 cases, the Committee was asked to establish that the employee had been bullied at work (3 cases included harassment). Compensation for non-material damages caused amounted to €3 000. In 2019, there were 22 labour disputes settled. Six cases of discrimination or bullying at work ended with compromise agreement and in only one case did the Labour Dispute Committee award the victim with compensation for non-material damage to the amount of €1 200. In 2020, the Labour Dispute Committee received 17 disputes related to discrimination or unequal treatment, but it did not register any harassment cases.

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, unfortunately, sexual harassment has come before the courts on only a couple of occasions and further exploration of the concept has been modest. According to the same report, there is still a problem in getting testimonies from people who have experienced harassment or sexual harassment. Reporting is low due to the denial of victim's position, the victim's fear of being blamed, the lack of effective handling of cases by the courts, and the small size of the country, which makes it easy to identify the person concerned. The Committee requests information on measures taken to ensure effective protection against the victimisation of victims and witnesses of sexual harassment.

The Committee recalls that workers must be effectively protected against harassment. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights (Conclusions 2007, Statement of Interpretation on Article 26). The Committee requests that the next report provide information on the cases of sexual harassment dealt with by the Labour Dispute Committee and the courts, as well as on the amount of damages awarded in such cases.

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 specific measures taken during the pandemic.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 26§1 of the Charter.

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 Estonia.

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 deferred its conclusion, pending receipt of the information requested (Conclusions 2018).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted questions.

Prevention

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

In its previous conclusion, the Committee asked whether the cooperation between the state, non-governmental organisations and employees' and employers' associations, noted in respect of prevention of sexual harassment, also applied in respect of moral (psychological) harassment. On a more general level, it asked what other measures have been adopted in order to promote awareness specifically against moral harassment and to inform workers and employers about their rights and obligations in this respect (Conclusions 2018).

The report indicates that the Occupational Health and Safety Act (OHSA) was amended in 2019. The Article § 9^1 was added to the OHSA, pointing out that psychosocial hazards are also bullying and harassment at work. In order to prevent damage to health arising from a psychosocial hazard, the employer shall take measures, including adapting the organisation of work and workplace to suit the employee and improve the enterprise's psychosocial working environment. The employer shall inform workers about possible risks at workplace, prevent or minimalize risks, also risks of harassment (GEA § 11, OHSA §-s 12 and 12^1). In case the employer does not provide safe work environment, the employee may terminate the employment contract on the bases of Employment Contracts Act (ECA, § 91 (2) 1).

The report further states that in order to promote awareness specifically on moral harassment and to inform workers and employers about their rights and obligations, different strategic documents and guidelines for prevention have been developed. For example, the Green Book on Mental Health was created in cooperation with social partners. The changes envisaged in the book contribute directly or indirectly to the prevention of violence and harassment in the workplace and promoting awareness. Welfare Development Plan 2016-2023 also brings out some measures and activities of prevention and combating of gender-based violence and harassment. There is also a dedicated web page about mental health on the Working Life Portal that gathers all necessary information about psychosocial hazards that employers and employees need to know.

The report further provides information on other strategies that include promoting awareness and prevention of harassment in the workplace (outside the reference period). For example, Violence Prevention Agreement for 2021-2025 deals with violence at workplace. The activities set out in the agreement (raising awareness of violence among the general public, increasing the competence of health professionals in detecting violence, training and information materials for the prevention of sexual violence) also contribute to the prevention and promotion of awareness of violence in the workplace.

The Committee asks whether, and to what extent, the social partners are consulted on measures to promote awareness, knowledge and prevention measures in relation to moral (psychological) harassment in the workplace or in relation to work, including when working online/remotely.

Liability of employers and remedies

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

In its previous conclusion, the Committee requested further information on the procedures available to victims of harassment (Conclusions 2018).

The report indicates that, as described in previous report, harassment is prohibited in the Occupational Health and Safety Act (OHSA), the Penal Code and the Gender Equality Act (GEA) and the Equal Treatment Act. Before taking any actions, victims can receive consultation or an opinion from the Gender Equality and Equal Treatment Commissioner, an independent and impartial expert, who acts independently, monitors compliance with the requirements of GEA and the Equal Treatment Act and performs other functions imposed by law.

The Committee notes that Article § 23 of the Equal Treatment Act establishes that discrimination disputes shall be resolved by a court or a labour dispute committee. Discrimination disputes shall be resolved by the Chancellor of Justice by way of conciliation procedure.

The report indicates that the Labour Dispute Committees also conduct conciliation proceedings. Conciliation proceedings are a simplified process for the settlement of a labour dispute by the chairman of the labour dispute committee. Victims of harassment may access the restorative justice service offered by the Social Insurance Board. The restorative justice process differs from the conciliation proceedings of labour dispute committees in that, instead of dealing with legal aspects, it focuses on interpersonal relations.

The report indicates that if the rights of a person have been violated due to discrimination, he or she may demand from the person who has violated the rights that the harmful activity be terminated and that the damage be compensated on the bases of and pursuant to the procedure provided by law.

In its previous conclusion, the Committee requested that the next report provides information on the legal framework concerning the liability of the employer in cases of harassment involving a third person, in the light of any relevant case law (Conclusions 2018).

The report indicates that employers must ensure working conditions that comply with occupational safety and health requirements under Article § 28 (2) (6) of the ECA. In order to prevent damage to employees' health arising from a psychosocial hazard, an employer must take measures and improve the enterprise's psychosocial working environment (OHSA § 91 (2)). This means that the employer must take all possible measures to prevent the risk of harassment in the workplace, including any possible harassment risk involving third parties (such as independent contractors, self-employed workers, visitors, clients, etc). If the employer fails to comply with the safety requirements established for a workplace by OHSA and this threatens the health or life of an employee, he or she is liable to a fine and to a claim for damages.

According to the Labour Dispute Committee, in 2018 and 2019, two cases where harassment was caused by a third party were registered. One case was caused by a colleague and the other by a landlord. Both cases were dismissed due to a lack of proof of possible harassment caused by a third party. The Committee asks for information on the procedure followed in such cases.

Damages

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

In its previous conclusion, the Committee noted from the European network of legal experts in gender equality and non-discrimination (Estonia, country report gender equality, 2017) that "claims for compensation related to discrimination have been rare and rather unsuccessful in the courts". It asked for the next report to comment on this point and to provide any relevant case law or other evidence of the effectiveness of remedies, whether judicial, administrative or another kind (Conclusions 2018).

The report states that the Equal Treatment Act provides for the right of an injured party to demand compensation for damage and for the discrimination to cease. Furthermore, a victim may demand that a 'reasonable amount of money' be paid as compensation for non-pecuniary damage caused by the violation (Article § 24 of the Equal Treatment Act). The Committee also notes that according to Article § 24 of the Equal Treatment Act, in determining the amount of compensation, a court or a labour dispute committee must take into account, *inter alia*, the scope, duration and nature of discrimination. The Committee also notes that no upper limits were explicitly laid down in the Equal Treatment Act.

The report further provides data on the cases relating to discrimination or unequal treatment dealt with by the Labour Dispute Committee during the reference period 2017-2020 (84 disputes in total). For example, in 2017, the Labour Dispute Committee dealt with 26 disputes relating to discrimination or unequal treatment. In many cases the Labour Dispute Committee could not identify harassment. In some cases, compensation was awarded, mainly for wrongful dismissal. In 2018, 19 complaints were submitted to the labour dispute committees in relation to unequal treatment, and the Labour Dispute Committee decided that there had been unequal treatment in 11 cases. In 8 cases, the Committee was asked to establish that the employee had been bullied at work (3 cases included harassment). Compensation for non-material damages caused amounted to a maximum of €3 000. In 2019, there were 22 labour disputes settled. Six cases of discrimination or bullying at work ended with compromise agreement and, only in one case, did the Labour Dispute Committee award the victim with compensation for non-material damage of €1 200. In 2020, the Labour Dispute Committee received 17 disputes relating to discrimination or unequal treatment, but no harassment cases were registered by the Labour Dispute Committee.

The Committee asks that the next report provide information on the cases of moral harassment dealt with by the Labour Dispute Committee and the courts, as well as the amount of damages awarded in such cases.

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 specific measures taken during the pandemic.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 26§2 of the Charter.

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

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

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

In the previous conclusion (Conclusions 2018) the Committee, recalling that previously (Conclusions 2014) it had found the situation in Estonia to be in conformity with Article 28 of the Charter, and observing that there had been no change in the legislation and practice in these respects, concluded that the situation was in conformity with Article 28. In the 2018 conclusion for Estonia, the Committee did not raise any question in respect of Article 28.

The Committee takes note from the report that the legislation regarding protection of workers’ representatives and facilities granted to workers’ representatives has not changed during the reference period and that no specific measures were taken on the impact of Covid-19 crisis on employees’ representatives protection.

Since no targeted questions were asked under Article 28, and the previous conclusion found the situation in Estonia to be in conformity with the Charter without requesting any information, there was no examination of the situation in 2022.

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 28 of the Charter.

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 Estonia.

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

In the previous conclusions (Conclusions 2018), the Committee concluded that the situation in Estonia was in conformity with Article 29 of the Charter, without raising any question in respect of this provision.

The Committee notes from the report that no significant changes were made to the regulation since the last report, and the information and consultation upon collective cancellation of employment contracts continue to be regulated by the Employment Contracts Act described in detail in previous national reports. There were no modifications to the relevant legislation during the Covid-19 pandemic. Information about the right to information and consultation in collective redundancy procedures was available during the pandemic and has been kept up to date on the website of the Ministry of Social Affairs and in Work Life Portal maintained by the Labour Inspectorate.

Since no targeted questions were asked under Article 29, and the previous conclusion found the situation in Estonia to be in conformity with the Charter without requesting any information, there was no examination of the situation in 2022.

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 29 of the Charter.

Dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter

Article 2§1 of the 1961 European Social Charter, and the Revised European Social Charter provides that the Contracting Parties, with a view to ensuring the effective exercise of the right to just conditions of work, undertake "to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit".

The European Committee of Social Rights has ruled in the past on this provision and in particular on the guarantees provided for on-call duty, those periods during which the employee, without being at his place of work and without being at the permanent and immediate disposal of the employer, must be contactable and able to intervene in order to carry out work for the company.

The Committee examined their legal regime through the two systems for monitoring the compliance with the European Social Charter. On the one hand, four decisions on the merits, under the collective complaints procedure have been adopted: decision on the merits of 12 October 2004, *Confédération française de l'Encadrement CFE-CGC* v. France, Collective Complaint No. 16/2003; decision on the merits of 8 December 2004, *Confédération Générale du Travail (CGT)* v. France, Collective Complaint No. 22/2003; decision on the merits of 23 June 2020, *Confédération Générale du Travail (CGT)* v. France, Collective Complaint No 55/2009; decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC)* v. France, Collective Complaint No 149/2017.

On the other hand, directly or indirectly, 68 conclusions on the reporting system, of which 35 were of non-conformity, have been adopted (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3, Conclusions 2013, Conclusions 2011, Conclusions 2010, Conclusions XVIII-2, Conclusions 2007, Conclusions XVII-1, Conclusions XVI-2, Conclusions XVI-1).

As a result of this consolidated case law, the Committee has focused its attention on on-call periods, in order to decide whether or not article 2§1 of the European Social Charter has been complied with, or violated, on two specific points that it has clearly identified in this respect:

1º. On one hand, on the payment to the on-call employee of a compensation, either in financial form (bonus) or in the form of rest, in order to compensate for the impact on his/her ability to organise his private life and manage his personal time in the same way as if he/she was not on call.

2º. On the other hand, on the minimum duration of the compulsory daily and/or weekly rest period which all States must respect and which all workers must enjoy. It is common for employees to start their on-call period, totally or partially, at the end of their working day and end it at the beginning of the next working day. Even if the employee is not required to carry out actual work, the consequence is that he/she will not have had his/her rest time at his/her disposal in full freedom or without any difficulty, i.e. the conditions and purpose of the minimum rest period are difficult to achieve *stricto sensu*.

In this perspective, I would like to emphasise the two effects mentioned which impact on two different elements of the employment relationship (salary and minimum rest period). States often integrate them together into one, so that the payment of a bonus is the most usual (only) remedy (compensation for the first effect) and the legal assimilation of the on-call period without carrying out actual work to rest time (i.e. it has no consideration for the second effect).

The case law that the ECSR has adopted in recent years has considered both effects separately. Both must be valued and respected at the same time. On one hand, the availability of the employee to intervene must be compensated. On the other hand, the consequences for the minimum period of compulsory rest must be considered. For this reason, in the four

decisions on the merits mentioned above, France was condemned for the violation of article 2§1 of the revised European Social Charter. As far as France is concerned, even though Article L3121-9 of the Labour Code provides that "the period of on-call duty shall be compensated for, either financially or in the form of rest", it should be noted that considering on-call duty without intervention for the calculation of the minimum daily rest period undermines the second condition. Indeed, it is necessary to point out that the ECSR specified in the last decision on the merits that this considering will involve a violation of the provision if it is "in its entirety" (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT)* and *Confédération française de l'encadrement-CGC (CFE-CGC)* v. France, Collective Complaint No. 149/2017.

In the 2022 conclusions, on-call duty was specifically examined. The Committee requested information on the legislation and practice regarding working time, on-call duty and how inactive periods of on-call duty were treated in terms of working time and rest and their remuneration.

It should be noted that most responses did not answer in the affirmative. In other words, the State reports did not inform the Committee simply that "on-call time is working time or rest time". However, the answers had a negative meaning, i.e., the responses stated verbatim that on-call duty "is not considered as working time".

The majority of the Committee felt that this information did not answer the question asked and decided to defer most of the conclusions.

I regret that I am unable to agree with these conclusions. I will explain my reasons below. Firstly, I consider that the negative responses from the Member States provide sufficient information on the legislative frameworks in place regarding the inclusion of on-call duty in daily or weekly rest periods. In my opinion, it is meaningless not to examine or value the replies, because the sentence "on-call duty is rest time" is not transcribed positively, but "on-call duty is not working time" is transcribed negatively. I believe that the Committee has sufficient information to assess conformity or non-conformity.

In my view, the consequences of not assessing this information are remarkable. Firstly, it encourages States not to provide the information within the time limits set by the Committee and to take advantage of an attitude that, in addition, does not comply with an obligation that they know perfectly well and that they have become accustomed to not fulfilling.

Secondly, it should be remembered that the legal interpretation of the European Social Charter goes beyond a textual interpretation. It is a legal instrument for the protection of human rights which has binding force. A treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Art. 31 Vienna Convention on the Law of Treaties). In the light of the Charter, it means protecting rights that are not theoretical but effective (European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, Collective Complaint No. 53/2008, decision on the merits of 8 September 2009, §28). As such, the Committee has long interpreted the rights and freedoms set out in the Charter in the light of current reality, international instruments and new issues and situations, since the Charter is a living instrument (Marangopoulos Foundation for Human Rights v. Greece, Collective Complaint No. 30/2005, decision on the merits of 6 December 2006, §194; European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Collective Complaint No. 39/2006, decision on the merits of 5 December 2007, §64 and ILGA v. Czech Republic, Collective Complaint No. 117/2015, decision on the merits of 15 May 2018, §75).

Finally, in the event that the Committee does not have all the relevant information, in my view it should take the most favourable meaning for the social rights of the Charter. In other words, States must provide all the information, which becomes a more qualified obligation when this information has been repeatedly requested. Furthermore, I would like to point out that this

information was requested in previous Conclusions (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3). Therefore, the States were obliged to provide all the information that the Committee has repeatedly requested.

In view of the above arguments, my separate dissenting opinion concerns, firstly, those deferred conclusions by the majority of the Committee members regarding the States which, on one hand, replied that on-call duty "is not working time", and then that they take it into account in the minimum rest period which every employee must enjoy. These include Belgium, Bosnia and Herzegovina, Finland, Germany, Italy, Lithuania, North Macedonia, Malta, Montenegro, Slovak Republic and Spain. Similarly, on the other hand, it concerns States that did not respond or did so in a confused or incomplete manner. These are Albania, Estonia, Georgia, Hungary, Ireland, Latvia and the Republic of Moldova. It follows from all the above considerations that the conclusions in relation to all these States should be of non-conformity.

Secondly, my separate dissenting opinion also concerns the "general" findings of conformity with Article 2§1 of the Charter reached by the majority of the Committee in respect of four States. More specifically, with regard to Andorra, the report informs about the on-call time. It "is not considered as actual working time for the purposes of calculating the number of hours of the legal working day, since it does not generate overtime. Nevertheless, it is not considered as rest time either, it being understood that in order to comply with the obligation to benefit from at least one full day of weekly rest, the worker must be released from work at least one day in the week - of course from actual work, but also from the situation of being available outside of his working day-". The document expressly states that one day of weekly rest is respected in relation to on-call duty, but it does not communicate anything about the respect of daily rest (except for a mention of the general minimum duration of 12 hours). In relation to Greece, the report informs that the provisions of labour law do not apply to on-call duty without intervention since, even if the worker has to remain in a given place for a certain period of time, he/she does not have to be physically and mentally ready to work. As regards Luxembourg, the document informs that on-call duty is not working time. Finally, as regards Romania, the report informs, first of all, that Article 111 of the Labour Code, considers the period of availability of the worker as working time. However, immediately, on the organisation and on-call services in the public units of the health sector, informs that on-call duty is carried out on the basis of an individual part-time work contract. On-call hours as well as calls received from home "must be recorded on an on-call attendance sheet, and 'only' the hours actually worked in the health facility where the call is received from home will be considered as on-call hours". Consequently, on the basis of this information, if there are no hours worked or calls, this time is not work. It follows from all the above considerations that the conclusions in relation to these four states should also be of non-conformity.

Thirdly, in coherence, my separate dissenting opinion also concerns the finding of non-conformity with regard to Armenia. This State has informed that the time at home without intervention should be considered as at least half of the working time (Art. 149 of the Labour Code). This legal regulation is in line with the latest case law of the Committee (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT)* and *Confédération française de l'encadrement-CGC (CFE-CGC)* v. France, Collective Complaint No. 149/2017). In my view, a positive finding on this point should be adopted expressly, independently of the finding of non-conformity on the daily working time of certain categories of workers.

Finally, I would like to raise two important questions following some of the answers contained in the reports. The first question relates to the governmental reports that have justified the national legal regime of on-call duty or non-compliance with previous findings of non-conformity on the basis of the judgments of the Court of Justice of the European Union, including some responses that challenge the Committee's ruling on "misinterpretation" of the Charter. These are Bosnia and Herzegovina, Spain, Italy, Ireland and Luxembourg. It is necessary to recall that the European Committee of Social Rights has affirmed that "the fact that a provision complies with a Community Directive does not remove it from the ambit of the Charter and from the supervision of the Committee" (*Confédération française de*

l'Encadrement (CFE-CGC) v. France, Collective Complaint No. 16/2003, decision on the merits of 12 October 2004, §30). Furthermore, it stressed that, even if the European Court of Human Rights considered that "there could be, in certain cases, a presumption of conformity of European Union law with the Convention, such a presumption - even if it could be rebutted - is not intended to apply in relation to the European Social Charter". On the relationship between the Charter and European Union law, it pointed out that "(...) they are two different legal systems, and the principles, rules and obligations which form the latter do not necessarily coincide with the system of values, principles and rights enshrined in the former; (...) whenever it is confronted with the latter, the European Union will have to take account of the latter.) whenever it is confronted with the situation where States take account of or are constrained by European Union law, the Committee will examine on a case-by-case basis the implementation by States Parties of the rights guaranteed by the Charter in domestic law (General Confederation of Labour of Sweden (LO) and General Confederation of Executives, Civil Servants and Clerks (TCO) v. Sweden, Collective Complaint No. 85/2013, decision on admissibility and merits of 3 July 2013, §§72-74).

The second issue is that the Charter sets out obligations under international law which are legally binding on the States Parties and that the Committee, as a treaty body, has "exclusive" responsibility for legally assessing whether the provisions of the Charter have been satisfactorily implemented (*Syndicat CFDT de la métallurgie de la Meuse* v. France, Collective Complaint No. 175/2019, decision on the merits of 5 July 2022, §91).

These are the reasons for my different approach to the conclusions of Article 2§1 of the European Social Charter in relation to on-call duty.