



March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

GREECE

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 Greece, which ratified the Revised European Social Charter on 18 March 2016. The deadline for submitting the 5th report was 31 December 2021 and Greece submitted it on 12 July 2022.

The Committee recalls that Greece was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2014).

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

Comments on the 5th report by Greek General Confederation of Labour were registered on 26 September 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).

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

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

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

– 5 conclusions of conformity: Articles 2§1, 6§3, 21, 22 and 26§1

– 7 conclusions of non-conformity: Articles 2§2, 2§3, 2§4, 2§5, 4§1, 4§3 and 4§4.

In respect of the other 11 situations related to Articles 2§6, 2§7, 4§2, 4§5, 5, 6§1, 6§2, 6§4, 26§2, 28 and 29, the Committee needs further information in order to examine the situation.

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

The next report from Greece 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 Greece and of the comments submitted by the Greek General Confederation of Labour (GSEE).

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”).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions XX-3 (2014)). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted questions.

Measures to ensure reasonable working hours

Previously, the Committee observed that the daily rest time in the private sector could be reduced to 11 hours and the daily working hours could be as long as 13 hours. It asked whether in such cases, the maximum limit of 60 hours per week was still maintained for all categories of workers, including shop employees (Conclusions XX-3 (2014)).

In reply, the report states that in enterprises running on a five-day workweek that apply the 40-hour working hour schedule per week, the possibility of working 5 additional hours on a weekly basis was established as overtime. Moreover, employment exceeding 9 daily hours is also considered overtime. Authorisation for overtime beyond legal limits can be granted in urgent cases and extreme urgent cases, to serve in the armed forces and the public sector. Finally, the weekly working hours for salaried workers, over a period of four months, cannot exceed an average of 48 hours, including overtime.

In its comments, the GSEE states that workers are allowed to work up to 13 hours a day and the minimum obligatory rest period is unacceptably low. The Committee asks whether it is in fact possible for employees to work for up to 13 hours a day.

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

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

The report states that the legislation on working and rest time has not changed. The report provides statistics on workers who have been employed outside their working hours and on the fines imposed.

In its comments, the GSEE mentions a new regulation of 2021 under which the working time regulation becomes the prerogative of the employer. The Committee notes that this legislation

is outside the reference period for the purposes of the present reporting cycle but asks to be updated about it.

The Committee asks in what sectors of economic activity the largest number of inspections was carried out.

Law and practice regarding on-call periods

Previously, the Committee asked what rules applied to on-call service and whether inactive periods of on-call duty were considered as a rest period in their entirety or in part (Conclusions XX-3 (2014)).

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

In reply, the report states that the employee's readiness to perform duty is divided into 2 categories: actual readiness (a duty period) and mere readiness (a standby duty period). When on a duty period, the worker has to remain at the employer's premises or another specific location and has to make himself available during specific hours. This form is considered working time. When on a standby period, however, the worker has to remain at a specific place and for a specific period of time but is not obliged to maintain his/her mental and physical alertness. In this case, the provisions on increased pay for night work or work on Sundays and holidays do not apply, nor do the provisions on working time limits relating to additional pay for overtime, statutory overtime exceeding 45 hours, etc. However, the salary should be paid and the worker is entitled to supplementary pay.

The Committee notes that no information is provided on zero-hour contracts.

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 teleworking was allowed where possible, as well as work on rotation, special leave for child care was available. Parents were allowed to work reduced hours.

Conclusion

The Committee concludes that the situation in Greece is in conformity with Article 2§1 of the Charter.

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 Greece and in the comments submitted by the Greek General Confederation of Labour (GSEE).

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

In its previous conclusion (Conclusions XX-3 (2014)), the Committee found that the situation in Greece was not in conformity with Article 2§2 of the Charter on the ground that, in the private sector, work performed on a public holiday was not adequately compensated.

The report reiterates information already examined by the Committee in its previous conclusions (Conclusions XIX-3 (2010) and XX-3 (2014)): private-sector employees who work on a public holiday are entitled to their daily wage plus a supplement of 75% but not to compensatory days off. As the situation has not changed, the Committee reiterates its conclusion of non-conformity on this point.

With regard to the public sector, the Committee previously noted that workers were entitled to a compensatory rest day (one day worked = one day off), but not to an increased wage. Therefore, the Committee asked whether, in this case, employees are entitled to their daily wage, in addition to the compensatory rest day.

The report does not contain the requested information. The Committee therefore reiterates its question and considers in the meantime that it has not been established that, in the public sector, work performed on a public holiday is adequately compensated.

The Committee takes note from the GSEE comments, of the entry into force on 19 June 2021 of new legislation which introduces additional exceptions to the rule of compulsory rest on holidays (Law 4808/2021). However, as these changes are outside the reference period, the Committee will examine them in the next monitoring cycle.

Covid-19

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

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

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 2§2 of the Charter on the grounds that:

- in the private sector, work performed on a public holiday is not adequately compensated;
- it has not been established that, in the public sector, work performed on a public holiday is adequately compensated.

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 Greece and of the comments submitted by the Greek General Confederation of Labour (GSEE).

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

In its previous conclusion, the Committee considered that the situation in Greece was in conformity with Article 2§3 of the 1961 Charter, pending receipt of the information requested (Conclusions XX-3 (2014)).

The Committee asked whether an employee should take at least two weeks uninterrupted annual leave during each year. It also asked for clarification, in the absence of provisions allowing the deferral of leave in the private sector, what arrangements applied in such cases and whether leave not taken was considered lost. In addition, it asked for updated information on whether and under what circumstances, workers could postpone the days of leave which they could not use because of illness or injury. In the meantime, the Committee reserved its position on this issue.

In reply to the first question, the report indicates that a person having completed 12 months of continuous employment is entitled to 20 or 24 working days of annual leave (depending on whether the person works five or six days a week), which is increased by one working day for each year of employment in addition to the first year, up to a maximum of respectively 26 and 31 working days. Workers in employment for less than 12 months are entitled to a percentage of the normal annual paid leave which is proportional to the time spent in service.

In addition, according to paragraph 16 of Article 3 of Law 4504/1966, employees under a private-law employment relationship, working for any employer, are entitled to a holiday bonus equal to the total annual leave pay, provided that this bonus may not exceed a 15-day salary for employees paid on a monthly salary and 13 working days for employees paid on a daily wage. The above bonus shall be paid together with the employee’s holiday pay and in addition thereto.

In reply to the second question, the report indicates that the employer is obliged (even if the employer is not requested to do so) to grant a paid annual leave to the employee before the end of the calendar year.

In this respect, the GSEE states in its comments that, if an employer does not grant the leave requested by the worker, the former shall pay the remuneration of the period of leave due up to the end of the calendar year, plus the allowance (holiday bonus), with a surcharge of 100%. According to the GSEE comments, this last basic regulation was amended by Article 61 of Law 4808/2021 (outside the reference period), allowing for the annual leave to be granted until the first quarter of the following calendar year (by 30 March). The GSEE indicates that the regulation appears to stem from the possibility of transferring the annual leave applied by the emergency arrangements in the context of the pandemic response measures but is now becoming permanent.

The Committee takes note of the entry into force on 19 June 2021 of new legislation on annual holiday with pay (Law 4808/2021). However, as these changes are outside the reference period, the Committee will examine them in the next monitoring cycle.

In view of the above, the Committee observes that, at the end of the calendar year, the claim for leave shall be converted into a monetary claim, provided it is not permitted to carry the leave over to a subsequent year. The Committee points out that, under Article 2§3 of the

Charter, annual leave may not be replaced by financial compensation and employees must not have the option of giving up their annual leave. Consequently, it concludes that the situation is not in conformity with Article 2§3 of the Charter on the ground that employees may relinquish annual leave in return for increased remuneration.

In reply to the third question, the report indicates that, in accordance with paragraph 6 of Article 2 of Emergency Law 539/1945, the period during which the employee was or is absent from work due to short-term illness, is considered as working time and it isn't offset against the days of leave to which the latter is entitled. According to Article 3 of Law 4558/30, short-term illness is one month for employees who have served up to four years; three months for employees who have served up to ten years; four months for employees who have served up to fifteen years, and six months for those employees who have served for more than fifteen years. The report states that if an employee exceeds the short-term sickness limits, the excess working days shall be counted towards the holiday days to which the employee is entitled. Nevertheless, in any case, according to the report, employees are entitled to holiday pay and holiday bonus for the same calendar year, even though their entitlement to holiday days has been lost.

In this context, the Committee points out that workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time so that they receive the four-week annual holiday provided for under this paragraph, possibly under the condition of producing a medical certificate. Given that this is not the case in Greece, the Committee considers that the situation is not in conformity with Article 2§3.

Covid-19

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

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

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 2§3 of the Charter on the grounds that:

- employees may relinquish annual leave in return for increased remuneration;
- workers who suffer from illness or injury while on holiday are not entitled to take the days lost at another time.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

The Committee points out that no targeted questions were asked in relation to Article 2§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (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 concluded in 2014 that the situation was not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual risks in the mining industry do not all benefit from adequate compensatory measures (Conclusions XX-3 (2014)).

Elimination or reduction of risks

The Committee noted that the situation was in conformity with the Charter in this respect in its last Conclusion and therefore it reiterates its conclusion of conformity.

Measures in response to residual risks

When the risks have not been eliminated or sufficiently reduced despite the application of the measures described above, or if such measures have not been applied, the second part of Article 2§4 requires States to grant workers exposed to such risks one form or another of compensation. The aim of these compensatory measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk.

The Committee previously noted that the law provided for reduced working hours and/or additional paid holidays for workers engaged in certain activities such as radiology, construction, printing (state sector) and work in front of computer screens. Similar measures were adopted in respect of workers in the iron and steel industry, workers in the oil and gas industry, printers, electricians and repairers of ships. Workers in certain public companies (for example, telecommunications, airways etc.) also benefited from such measures. However, as regards the situation of workers in underground mines, the Committee found in the complaint *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Complaint No. 30/2005, decision on the merits of 12 June 2006) that Article 2§4 had been violated because Greek legislation did not require collective agreements to provide for compensation pursuant to the aim intended by Article 2§4, although employers and employees are of course at liberty to include such measures themselves.

The report does not provide any new information in this respect, and in the follow up to collective complaint No. 30/2005, the ECSR noted that Greek law still does not provide for such compensation nor does it require collective agreements to provide for it. It considered therefore that the situation had not been brought into conformity with Article 2§4 of the Charter (Findings 2021). Accordingly, considering the fact that no appropriate measures have been taken to remedy the shortcomings found in the complaint No. 30/2005, the Committee maintains its finding of non-conformity with Article 2§4 of the Charter.

Covid-19 related measures

The report states that several measures were adopted, mainly to flexibilise working conditions, and introduce teleworking, but no other specific measures are reported concerning this provision during the reference period.

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 2§4 of the Charter on the ground that workers exposed to residual risks in the mining industry do not all benefit from adequate compensatory measures

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

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 (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, the Committee considered that the situation was not in conformity with Article 2§5 of the 1961 Charter on the ground that domestic workers were not covered by the legislation guaranteeing a weekly rest period. The Committee noted that Greece had not ratified ILO Convention No. 189 on Domestic Workers, adopted in 2011, nor had it modified its legislation (Conclusion XX-3 (2014)).

The report states that the situation has not changed during the reference period. Accordingly, the Committee reiterates its conclusion of non-conformity on the ground that the law does not provide for the right of domestic workers to a weekly rest period.

The report refers to some specific measures relating to Covid-19 and working times which were set in place during the reference period, but they concern mainly teleworking arrangements, and do not refer to domestic workers.

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 2§5 of the Charter on the ground that domestic workers are not covered by the legislation guaranteeing a weekly rest period.

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 Greece.

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).

The Committee notes that Greece ratified the revised European Social Charter on 18 March 2016 and that therefore this is the first time that the Committee has examined whether Greece’s situation is in conformity with Article 2§6 of the Charter. The report does not contain any information with respect to the provision in question.

The Committee recalls that Article 2§6 of the Charter guarantees the right of workers to written information when starting employment. This information must at least cover essential aspects of the employment relationship or contract, namely the following:

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;
- in the case of a temporary contract or employment relationship, the expected duration thereof;
- the amount of paid leave;
- the length of the periods of notice in case of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee’s normal working day or week;
- where appropriate, a reference to the collective agreements governing the employee’s conditions of work.

The Committee asks that the next report clarify whether all the above-mentioned elements of information required by Article 2§6 of the Charter are provided in writing to workers when starting employment.

Covid-19

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

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).

The Committee notes that Greece ratified the revised European Social Charter on 18 March 2016 and that therefore this is the first time that the Committee has examined whether Greece’s situation is in conformity with Article 2§7 of the Charter. The report does not contain any information with respect to the provision in question.

The Committee further recalls that Article 2§7 of the Charter guarantees compensatory measures for persons performing night work. Domestic law or practice must define what is considered to be “night work” within the context of this provision, namely what period is considered to be “night” and who is considered to be a “night worker” (Conclusions 2014, Bulgaria). The measures which take account of the special nature of the work must include regular medical examinations, including a check prior to employment on night work, the provision of possibilities for transfer to daytime work, continuous consultation with workers’ representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work (Conclusions 2003, Romania). The Committee asks that the next report indicate whether and how these requirements are complied with.

Covid-19

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

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

The Committee takes note of the information contained in the report submitted by Greece and of the comments from the Greek General Confederation of Labour (GSEE).

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

In its previous conclusion (Conclusions 2014) the Committee found the situation was not in conformity with the Charter on the following grounds:

- The minimum wage applicable to contractual staff in the civil service and to the private sector workers is not sufficient to ensure a decent standard of living;
- The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 provide for the payment of a minimum wage to all workers under the age of 25 which is below the poverty level;
- The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 discriminate against workers under the age of 25.

The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusions of non-conformity and to the targeted questions.

As regards the Committee’s finding of non-conformity concerning young workers, the Committee notes that in its Findings (2020) concerning the assessment of follow-up in Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, Resolution CM/ResChS(2017)9, it has found that Circular No. 7613/395/2019 removed the difference in wage and the new statutory minimum wage and salary set for full-time employment applied to all workers, irrespective of age. The Committee therefore considered that the situation relating to age discrimination has been brought into conformity with Article 4§1 of the Charter.

Fair remuneration

In its Findings (2021) concerning the assessment of Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, Resolution CM/ResChS(2017)9, the Committee noted that the report did not provide information about the net value of the minimum wage for 2020. Therefore, the Committee considered that the situation has not been brought into conformity with the Charter as it had not been demonstrated that the minimum wage ensured a decent standard of living.

The Committee notes that upon completion of the Economic Adjustment Programme on 20/8/2018, a new minimum wage and salary setting system was introduced. Section 103 on “Provisions on minimum salary” of Law No. 4172/2013 (O.G. A’167) as amended by virtue of Section 1, subpara.IA.6 case 2 of Law No. 4254/2014 (O.G.A’85) and Section 2 of Law No. 4564/2018 (O.G. A’170) sets the statutory minimum wage and salary for a full-time employment. The Committee notes from Eurostat that the average earnings in 2020 amounted to € 18,834 gross and € 14,325 net. As regards the gross minimum wage, it stood at € 758 in 2020. The Committee notes that the gross minimum wage represented 48% of the gross average earnings. The Committee asks the next report to indicate the net value of the minimum wage and in the meantime, it considers that while the Government has not provided information on the net value of the average and minimum wages, the figures provided by Eurostat are sufficiently indicative for the Committee to conclude that the statutory minimum

wage does not ensure a decent standard of living. Therefore, the situation is not in conformity with the Charter in this respect.

The Committee notes from the comments of the Greek General Confederation of Labour (GSEE) that the reference period 2017-2020 includes the commencement in 2019 of the application of the procedure for the regulation by the State of the minimum wage. The GSEE however considers that the increase in the minimum wage will be wiped out by taxation as workers will be asked to give back to the State almost the entire amount of the increase. The GSEE also notes that the risk of in-work poverty remains high and the impact of the pandemic and soaring prices will have a dramatic effect on the labour market. Therefore, the GSEE considers that collective bargaining should be strengthened and sustainable and decent work must be the central objective of economic and social policy.

Workers in atypical employment

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

According to the report, Articles 68 – 71 of Law 4808/2021 (outside the reference period) establish a new protective framework for service providers – natural persons employed via digital platforms concerning their contractual relationship, trade union rights, their health and safety and the obligation to be informed of their rights. The report states that the detailed presentation of the above provisions will be provided in the next national report.

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

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

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

COVID-19

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

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

The Committee takes note of the special-purpose allowance paid to workers in companies whose activities was suspended by order of the State or in companies severely affected by State measures taken as a result of the Covid-19 pandemic. The support measures included: Labour Contract Suspension, Special Purpose Compensation, social insurance coverage, and Christmas and Easter allowance for the employees. The amount of the special-purpose allowance was €534 per person, corresponding to 30 days (the proportion of this paid depended on the number of days employees had not worked). For the period 15 March to 30 April 2020, the allowance was €800 and for November 2020, a proportionate amount of €800 for 30 days was paid. The measure was in force until 30 September 2021. The allowance was not taxed. The state budget covered social security contributions calculated on the basis of the nominal salary for the period covered by the special-purpose allowance. The Committee takes note of the numbers of workers who have received special purpose compensation.

The Committee also takes note of the Employment Support Mechanism “SYN-ERGASIA” which provided financial support to employees of companies in the private sector with the aim of maintaining full-time jobs. During the period they did not work, employees received state financial support for short-term employment, which amounted to 60% of their net salary. The Committee takes note of the numbers of employees who received this form of support in 2020.

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 4§1 of the Charter on the ground that the minimum wage does not ensure a decent standard of living.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by Greece and of the comments submitted by the Greek General Confederation of Labour (GSEE).

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”).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions XX-3 (2014)). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted question.

Rules on increased remuneration for overtime work

Previously, the Committee asked whether in the flexible working time arrangement the maximum limits of weekly working time could go beyond 60 hours. It also asked whether the increased remuneration for overtime could be replaced by compensatory time-off and, if so, whether this time-off would be of an equal length to the overtime worked. It also asked whether there were any exceptions to the right to an increased remuneration for overtime work (Conclusions XX-3 (2014)).

The report provides the same information as in the last report without directly answering the Committee’s questions. The Committee thus reiterates them and asks whether the increased remuneration for overtime could be replaced by reduced working hours and, in the affirmative, whether the reduction would be of an equal length to the overtime worked and whether there are any exceptions to the right to an increased remuneration for overtime work. The Committee considers that if the information requested is not provided in the next report, there will be nothing to establish that the situation in Greece is in conformity with Article 4§2 of the Charter.

In its comments, the GSEE makes a reference to a new regulation adopted in 2021. The Committee notes, however, that it is outside the reference period for the purposes of the present reporting cycle but asks to be updated about it.

Covid-19

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

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

The report states that in connection with Covid-19, enterprises-employers who have exhausted the legally provided maximum limits of overtime for their workers were allowed to ask them to work overtime without relevant approval decision by the Minister of Labour and Social Affairs. Such overtime work could not exceed the maximum daily limits provided for by law.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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”).

The Committee deferred its previous conclusion under Article 4§3 pending receipt of the information requested on job comparisons (Conclusions 2014). It also found in its decision on the merits of Collective Complaint No. 131/2016, University Women of Europe (UWE) v. Greece, (§§182-186) that there was a violation of Articles 4§3 and 20.c of the Charter on the grounds that access to effective remedies was not guaranteed and that wage transparency was not guaranteed in practice.

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

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

Effective remedies

In its previous conclusion, the Committee asked for information on the rules that apply in the event of dismissal in retaliation for an equal pay claim (Conclusions XX-3 (2014)).

The report does not provide any information on this point. In this connection, the Committee refers to its decision on the merits of Collective Complaint No. 131/2016, UWE v. Greece, (§§157-158), in which it noted that the legislation provided protection against dismissal in retaliation for an equal wage claim. It also noted that under the legislation, victims of wage discrimination were entitled to claim their right to equal pay. However, in view of the limited number of equal pay cases and information about the efforts deployed to address these problems, resulting in particular from the high cost of litigation and a lack of legal aid, and ensure access to effective remedies for victims of wage discrimination, the Committee considered that the requirement to provide effective remedies had not been complied with.

The Committee points out that the follow-up to this complaint will be assessed in Findings 2023. In the meantime, it notes that the situation in Greece is not in conformity with Article 4§3 of the Charter on the ground that the obligation to ensure access to effective remedies has not been met.

Pay transparency and job comparisons

In its previous conclusion, the Committee asked if, in equal pay cases, pay comparisons could be made across companies when the differences identified in the pay conditions of female and male workers performing work of equal value were attributable to a single source (Conclusions XX-3 (2014)).

The report does not provide any information on this point. However, the Committee refers to its decision on the merits of Collective Complaint No. 131/2016, *UWE v. Greece* (§168), in which it noted that neither Article 22(1)(b) of the Constitution nor the pertinent legislation explicitly required a comparator. However, case law relying on the broader constitutional principle of equal pay did require such a comparator in the same undertaking or service or within the framework of the same wage-fixing instrument.

With regard to *pay transparency*, the Committee also refers to its decision on the merits of Collective Complaint No. 131/2016, *UWE v. Greece* (§§ 164-171), in which it considered that the obligation to ensure pay transparency had not been satisfied because there were major limitations in terms of transparency. The notion of “equal value” was not clearly defined, either in legislation or in case law; enterprises were not obliged to have a system of job classification or monitoring of pay exceeding that stipulated by collective labour agreements; and there was no evidence as to whether a potential victim of pay discrimination could have access to the essential pay information of a fellow worker in the context of judicial proceedings.

The Committee points out that the follow-up to this complaint will be assessed in Findings 2023. In the meantime, it notes that the situation in Greece is not in conformity with Article 4§3 of the Charter on the ground that the obligation to ensure pay transparency has not been complied with.

Statistics and measures to promote the right to equal pay

For information, the Committee takes note of the Eurostat data on the gender pay gap in Greece during the reference period, which was 10.4% in 2018 (compared with 12.5% in 2014). It notes that this gap is lower than the EU 27 average of 14.4% in 2018 (data from 4 March 2022). The Committee also notes that the pay gap figures for 2017, 2019 and 2020 are not available.

As Greece 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

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

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

Conclusion

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

- the obligation to ensure access to effective remedies has not been complied with;
- the obligation to recognise and respect the principle of transparency of remuneration in practice is not complied with.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by Greece and in the comments by the Greek General Confederation of Labour (GSEE).

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 Greece was not in conformity with Article 4§4 of the 1961 Charter (Conclusions XX-3 (2014)).

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

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

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

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

Reasonable period of notice: legal framework and length of service

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

In reply to the targeted question, the report provides detailed information on notice periods and severance payment set out in sections 1-3, paragraph IA, sub-paragraph 12, of Act No. 4093/2012.

In its previous conclusion, the Committee found that the situation was not in conformity with Article 4§4 of the 1961 Charter on the ground that severance pay granted to manual workers (provided for under section 1, paragraph 1 of Royal Decree of 16-18 July 1920 and section 1 of Act No. 3198/1955) was inadequate (Conclusions XX-3 (2014)).

In response to the conclusion of non-conformity, the report states that manual workers (worker-technicians) are still governed by the rules in section 1, paragraph 1 of the Royal Decree of 16-18 July 1920 extending Act No. 2112/1920 to workers, technicians and servants and section 1 of Act No. 3198/1955 of 9 April 1955 amending and completing provisions on termination of employment. These provisions provide for the payment of severance pay amounting to:

- seven days' wages for one to two years of service;
- 15 days' wages for two to five years of service;
- 30 days' wages for five to ten years of service;
- 60 days' wages for ten to 15 years of service;
- 100 days' wages for 15 to 20 years of service;
- 120 days' wages for 20 to 25 years of service;
- 145 days' wages for 25 to 30 years of service;
- 165 days' wages for 30 or more years of service.

The Committee notes that the report reiterates the information contained in the previous report. The Committee notes that there have been no developments in this respect during the reference period. The Committee therefore reiterates its previous conclusion of non-conformity on the ground that the severance pay granted to manual workers provided for during the reference period under section 1, paragraph 1 of Royal Decree of 16-18 July 1920 and section 1 of Act No. 3198/1955 is inadequate and there is no notice period.

The Committee acknowledges the comments made by the GSEE regarding developments outside the reference period and will assess these developments in the next cycle.

Notice periods during probationary periods

In its previous conclusion, the Committee found that the situation was not in conformity with Article 4§4 of the 1961 Charter on the ground that there are no periods of notice or severance pay in cases of termination of employment during the probationary period (Conclusions XX-3 (2014)). The Committee also referred to its decision on the merits of Collective Complaint No. 65/2011 in which it held that section 17, paragraph 5 of Act No. 3899/2010 constituted a violation of Article 4§4 of the 1961 Charter on the ground that it made no provision for notice periods or severance pay in cases where an employment contract, which qualified as "permanent" under that Act, was terminated during the probationary period.

In reply to the previous conclusion of non-conformity, the report states that under paragraph 2 of article 74 of Law 3863/2010, as amended by paragraph 5a of Article 17 of Law 3899/2010 on "Urgent measures for the implementation of the support programme of the Greek economy", employment with a permanent contract is considered as probationary employment for the first 12 months and can be terminated without notice and without severance pay, unless the parties have otherwise agreed.

The Committee notes that there have been no legal developments concerning the previous ground of non-conformity. The Committee therefore reiterates its previous conclusion of non-conformity in this respect.

Notice periods with regard to employees in insecure jobs

The Committee previously found that the situation was in conformity with Article 4§4 of the 1961 Charter in this respect (Conclusions XX-3 (2014)).

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

The Committee previously found that the situation was in conformity with Article 4§4 of the 1961 Charter in this respect (Conclusions XX-3 (2014)).

Circumstances in which employees can be dismissed without notice or compensation

The Committee previously found that the situation was in conformity with Article 4§4 of the 1961 Charter in this respect (Conclusions XX-3 (2014)).

Conclusion

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

- severance pay granted to manual workers during the reference period is inadequate;
- there is not notice period or severance pay for workers on probation.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

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

The Committee recalls that the deductions envisaged in Article 4§5 can only be authorised in certain circumstances which must be well-defined in a legal instrument (for instance, a law, regulation, collective agreement or arbitration award (Conclusions V (1977), Statement of Interpretation on Article 4§5). The Committee further recalls that deductions from wages must be subject to reasonable limits and should not *per se* result in depriving workers and their dependents of their means of subsistence (Conclusions 2014, Estonia). With a view to making an in-depth assessment of national situations the Committee has considered it necessary to change its approach. Therefore, the Committee asks States Parties to provide the following information in their next reports:

- a description of the legal framework regarding wage deductions, including the information on the amount of protected (unattachable) wage;
- Information on the national subsistence level, how it is calculated, and how the calculation of that minimum subsistence level ensures that workers can provide for the subsistence needs of themselves and their dependents.
- Information establishing that the disposable income of a worker earning the minimum wage after all deductions (including for child maintenance) is enough to guarantee the means of subsistence (i.e., to ensure that workers can provide for the subsistence needs of themselves and their dependents).
- a description of safeguards that prevent workers from waiving their right to the restriction on deductions from wage.

Deductions from wages and the protected wage

In its previous conclusion (Conclusions 2014) the Committee deferred its conclusion and asked what the portion of wages was protected in the event of attachment of wages or deductions made on competing grounds.

The Committee notes from the report that Article 664 of the Civil Code provides for the special protection of salary, according to which the employers may not offset salary due with a claim (for example a loan) they may have against the worker to the extent that such salary is absolutely necessary for the maintenance of the worker and their family and also provided that the worker has no adequate revenue from other sources for this purpose. This prohibition shall not apply to a claim that the employer may have by reason of fraudulent prejudice caused by the worker during the performance of their work. In this case the deduction is allowed without restrictions. For this provision to apply, prejudice must have been caused by a fraudulent act by the worker during the performance of the work (sabotage, damage to machinery with intent, etc.), although recklessness or gross negligence does not mean that the worker acted fraudulently.

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

Waiving the right to the restriction on deductions from wage

The report states in this respect that according to Law 4694/30 prohibition to offset salary stipulated in Article 664 of the Civil Code is of public order and therefore, any waiver of white or blue collar workers' relevant right shall be null and void.

Conclusion

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

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by Greece, as well as the information provided by the Greek General Confederation of Labour (GSEE) and the European trade union federations -ESPU, EuroCOP and EUROMIL.

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

This is the first time that Greece reports on Article 5 of the Charter.

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 of members of the armed forces to organise.

The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions and the general question.

Prevalence/Trade Union density

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

Personal scope

In its previous conclusion, the Committee requested that all States provide information on the right of members of the armed forces to unionise (Conclusions 2018 – General Question).

In reply to the general question, the report states that paragraph 4 of Article 30C of Law 1264/1982 expressly provides that military personnel on active duty are allowed to establish in each Region a primary Regional Union for military personnel on active duty and a Panhellenic Federation of primary Regional Unions as a secondary body. The report further states that the legislation governing all public sector personnel applies to the civilian personnel of the Ministry of National Defence.

The Committee also takes note of the information provided as regards the right of the members of the police to form trade unions and collectively express work, financial and social issues that are of concern to them (Article 30 a) of Law 1264/1982). The Committee notes that police officers' trade unions and their members are not allowed to become members of other professional trade unions, apart from International Police Trade Unions, or represent other workers. The Committee notes from the comments submitted by EPSU, EuroCOP and EUROMIL that members of the police force have the right to become a member of a trade union, but can only join the primary trade union organisation of the Police Directorate or of the district where they serve. According to EPSU, EuroCOP, and EUROMIL, the exercise of their trade union rights may not exceed the limits determined by the particularities, the mission and especially the national, social and cross-party character of the police.

The Committee asks for further information on the situation and meanwhile reserves its position on the issue. The Committee recalls firstly that police personnel must be able to form or join genuine organisations for the protection of their material and moral interests and secondly, that such organisations must be able to benefit from most trade union prerogatives. Basic trade union prerogatives mean the right to express demands with regard to working conditions and pay, the right of access to the working place as well as the right of assembly and speech. Such definition applies to professional organisations of police officers as well as to other professional organisations. The right of members of the police service to affiliate with

national workers' organisations shall not be restricted for the purpose of disallowing them to negotiate on pay, pensions and service conditions.

Restrictions on the right to organise

The Committee takes note of the information provided in the report as regards the right to organise in the private sector and the public sector. Such right falls within the scope of freedom of association recognized in Article 23 of the Constitution and is developed in sectoral regulations. The report refers to Law 1264/1982, "For the democratization of the Trade Union Movement and the safeguarding of workers' freedom of association", that guarantees workers' trade union rights and regulates the establishment, organisation, operation and action of trade union organisations with the aim of safeguarding and promoting their labour, economic, insurance, social and trade union interests; Law 3528/2007, "Ratifying the Code of Conduct for Public Civil Servants & Employees of Public Law Legal Entities", ensures the unimpeded exercise by employees of the freedom of association and strike action; Law 2265/1994, completes the provisions of Law 1264/1982 regarding unionisation in the Hellenic Police Force so that police officers of all ranks are given the possibility to create unions and to collectively express work, financial and social issues that are of concern to them.

Forming trade unions and employers' organisations

The Committee notes from the comments submitted by the GSEE and from an ILO Direct Request (Freedom of Association and Protection of the Right to Organise Convention 1048(N0.87) that an electronic registry for the registration of trade unions was established. The Committee asks that the next report provide further information on the system including information on any refusals to register a trade union.

Freedom to join or not to join trade unions

The Committee asks for information in this respect. The Committee recalls that workers must be free not only to join but also not to join a trade union. Any form of compulsory unionism imposed by law must be considered incompatible with the obligation arising under this article of the Charter. Domestic law must guarantee the right of workers to join a trade union and include effective sanctions and remedies where this right is not respected.

Trade union activities

The Committee asks for information in this respect. The Committee recalls that trade unions (and employers' organisations) must have broad autonomy regarding their internal structure or functioning. They must be entitled to perform their activities effectively and devise a work programme. Union leaders must have the right to access the workplace and union members must be able to hold meetings there, within limits linked to the interests of the employer and business needs.

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 Greece and of the comments from the Greek General Confederation of Labour (GSEE).

The Committee notes that Greece ratified the revised Charter on 18 March 2016 and accepted Article 6, which it had not done on ratification of the 1961 Charter. This is therefore the first time that the Committee has examined whether Greece's situation is in conformity with Article 6§1 of the Charter.

The Committee further notes that the report provides information under Article 6§1 of the Charter, which in fact pertains to Article 6§2 of the Charter. Accordingly, the Committee notes that no relevant information is provided, enabling an assessment of compliance with Article 6§1 of the Charter.

The Committee recalls that, within the meaning of Article 6§1 of the Charter, joint consultation is consultation between employees and employers or the organisations that represent them on terms of equality with a view to consultation on all questions of mutual interest at every level (Conclusions I (1969), Statement of Interpretation on Article 6§1 and Conclusions IV (1975), Statement of Interpretation on Article 6§1). The expression "joint consultation" is to be interpreted as being applicable to all kinds of consultation between both sides of industry – with or without any government representatives – on condition that both sides of industry have an equal say in the matter (Conclusions V (1977), Statement of Interpretation on Article 6§1). The Committee interprets Article 6§1 of the Charter to mean that States Parties must take positive steps to encourage consultation between trade unions and employers' organisations (*Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, decision on the merits of 9 May 2005, §41). Consultation should take place in the private and public sector, including the civil service (Conclusions III (1973), Denmark, Germany, Norway, Sweden; *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, §107). For the States Parties which have ratified both Article 6§1 and Article 21 of the Charter, consultation at enterprise level is examined under Article 21 (Conclusions 2010, Ukraine).

In light of these principles of interpretation, the Committee asks that the next report contain a complete updated description of the situation in law and in practice with regard to joint consultation between employees and employers at national, regional and sectoral levels in the private as well as the public sector, including the civil service, on all questions of mutual interest.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by Greece and of the comments from the Greek General Confederation of Labour (GSEE).

The Committee notes that Greece ratified the revised European Social Charter on 18 March 2016 and accepted Article 6, which it had not done on ratification of the 1961 European Social Charter. This is therefore the first time that the Committee has examined whether Greece's situation is in conformity with Article 6§2 of the Charter.

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.

The report describes some of the main features of collective bargaining pursuant to Law no. 1876/1990 concerning free collective bargaining, and other legal provisions. Collective bargaining takes place at the national level, covering the whole economy, on the industry/occupation level, covering specific industrial sectors or specific occupations, and company level. The National General Labour Collective Agreement (NGLCA) covers working conditions broadly defined, with the exception of the national minimum wage. The collective agreements at the other levels cover pay and working conditions. The terms of Law no. 1876/1990 apply to all workers in a dependent working relationship with any Greek or foreign employer in the private and public sectors. While trade union organisations are ordinarily competent to conclude collective agreements at the company level, in their absence the same role may be assumed by groups of employees, designated as "associations of persons".

The GSEE in its comments refers to the continuing erosion of collective bargaining rights and diminished coverage as a result of measures taken in response to the financial and economic crisis of 2010. Among others, the GSEE deplores the reduced role of the NGLCA, which is no longer used for setting the national minimum wage, fixed instead by the Government. Insofar as developments taking place during the current reference period are concerned, the GSEE raises concerns regarding legislation introduced in 2019 (Act no. 4635/2019), which restricted, in relation to conflicting collective agreements, the application of the principle under which employees would always benefit from the most favourable contract applying to them (the so-called favourability principle), as well as laying down more onerous requirements for extending collective agreements. GSEE further alleges that Act no. 4808/2021, adopted after the reference period, further restricted trade union and collective bargaining rights.

The GSEE notes that the significant decrease in collective bargaining coverage is a symptom of the decentralisation and deregulation of industrial relations in Greece after 2010. Thus, in 2021 there were 34 collective labour agreements at the sectoral and occupation-level, corresponding to 27%, or 23% of the total number of workers, depending on the reference data used. The GSEE further submits that most of the enterprise-level collective agreements signed in 2021 (77%) did not result in wage increases compared to the previous year, 18% featured moderate wage increases, and 5% featured reduced wages.

Considering that this is the first assessment of Greece under Article 6§2 of the Charter, the Committee finds the information provided in the report to be insufficient. Accordingly, the Committee asks for information on the measures taken to promote collective bargaining, on the number of collective agreements concluded at all levels, and on the number and proportion of employees covered by the collective agreements. The Committee further asks for information on the number of collective labour agreements concluded with associations of persons in the sense of Law no. 1876/1990, and with trade union organisations respectively.

The Committee understands from the information it has received that new legislation passed in 2017 and entered into force on 20 August 2018 once the economic adjustment programme

expired (Law no. 4472/2017), rolled back some of the measures adopted in the wake of the 2010 crisis. In particular, the previously existing favourability principle and the right to extend collective agreements were restored. However, as mentioned in the GSEE comments, Act No. 4635/2019 once again appears to have reversed these measures. The Committee, therefore, asks for information on the application of the exceptions to the principle of favourability in practice and statistics as to their use. It also asks for information on the application of the procedure of extending collective agreements in practice. The Committee further expects complete information about the relevant provisions of Act no. 4808/2021, adopted after the current reference period, in the next report.

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

Covid-19

In reply to the question regarding the special arrangements related to the pandemic, the report notes that legislation has been amended to extend certain procedural deadlines in order to ensure the smooth running of collective bargaining arrangements during the pandemic.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

The Committee takes note of the information contained in the report submitted by Greece and of the comments from the Greek General Confederation of Labour (GSEE).

The Committee notes that Greece ratified the revised European Social Charter on 18 March 2016 and accepted Article 6, which it had not done on ratification of the 1961 European Social Charter. This is therefore the first time that the Committee will be examining whether Greece's situation is in conformity with Article 6§3 of the Charter.

The Committee also notes that Greece accepted Article 6 of the Charter with the following reservation: "[...] Article 6 of the European Social Charter (revised) [...] shall in no circumstances be applicable to [...] the right to establish and use arbitration mechanisms for the settlement of labour disputes in particular as regards the right to unilateral access to arbitration in case of collective bargaining failure [...]". The Committee's assessment will therefore not include arbitration procedures.

The Committee recalls that no targeted questions were asked in relation to Article 6§3 of the Charter (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 points out that, under Article 6§3 of the Charter, conciliation and/or mediation procedures should be introduced to facilitate the resolution of collective labour disputes in both the private and public sectors. This provision applies to disputes concerning the conclusion or amendment of a collective agreement ("conflicts of interest"); it does not concern conflicts related to the application or interpretation of a collective agreement or those of a political nature.

In its report, the Government states that Greek law provides for procedures and institutions for resolving all disputes concerning employment relationships or contracts, including disputes arising from negotiations prior to and/or after the conclusion of collective labour agreements.

During the reference period, the legal framework provided for the following procedures: conciliation and labour dispute resolution (Article 3 of Law 3996/2011) and mediation and arbitration (Articles 14 and 15 of Law 1876/1990). In particular, the interested parties had the right to request mediation services if collective bargaining had failed (Article 14 of Law 1876/1990).

The Government and the GSEE report that the aforementioned laws were amended in 2021 (outside the reference period).

The Committee asks for up-to-date information in the next report on conciliation/mediation procedures for the resolution of collective labour disputes. It also asks for clarification in the next report as to whether these procedures apply to both the private and public sectors.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Greece 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 Greece and of the comments from the Greek General Confederation of Labour (GSEE).

The Committee notes that Greece ratified the revised European Social Charter on 18 March 2016 and accepted Article 6 thereof, which it had not done upon ratifying the 1961 European Social Charter. This is therefore the first time that the Committee will be examining the conformity of the situation in Greece with Article 6§4 of the Charter.

The Committee also notes that Greece accepted Article 6 of the Charter with the following reservation: “[...] Article 6 of the European Social Charter (revised) [...] shall in no circumstances be applicable to [...] the regulation of employers’ right to collective action, in particular the right to lockouts”. The Committee’s assessment will therefore only concern the right of workers to collective action when conflicts of interests arise.

Right to collective action

The Committee notes that the section in the Government report on Article 6§4 of the Charter does not contain any information on the right of workers to collective action when conflicts of interests arise.

However, the GSEE states that Law 4808/2021 imposed additional restrictions (both procedural and substantive) on the exercise of workers’ right to strike in 2021 (outside the reference period). For instance, workers are required to give employers notice before the commencement of strikes; such notice must be delivered by a bailiff and must indicate, inter alia, the date and time the strikes are due to begin and their duration.

The Committee points out that it has developed a number of principles for the interpretation of Article 6§4 of the Charter, relating in particular to the permitted objectives of collective action, the groups entitled to call collective action, restrictions on the right to strike, the procedural requirements and the consequences of participation in a strike.

The Committee has held that Article 6§4 applies to conflicts which concern the conclusion or modification of collective agreements (“conflicts of interests”) but does not confer any rights in disputes involving the existence, validity or interpretation of collective agreements; likewise, political strikes are not covered by Article 6, as the provision is intended to protect “the right to bargain collectively”.

The Committee has also held that reserving the decision to call a strike to trade unions is in conformity with Article 6, provided that forming trade unions is not subject to excessive formalities.

States may regulate the exercise of the right to strike; however, restrictions on the right are possible only if they satisfy the conditions laid down by Article G of the Charter, i.e. they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of the public interest, national security, public health or morals. In this connection, the Committee has pointed out that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. “energy” or “health” – is not deemed proportionate to the specific requirements of each sector. At the most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4. The Committee has further held that prohibiting all public officials from exercising the right to strike is not in conformity with Article 6§4.

The right to strike of certain categories of public officials, such as members of the armed forces, may be restricted; under Article G, these restrictions should be limited to public officials

whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc.

Lastly, as regards procedural requirements, the Committee recalls that the requirement to notify the duration of strikes to the employer or his representatives prior to strike action goes beyond the limits of Article G of the Charter.

The Committee requests that the next report provide detailed information on workers' right to collective action and in particular on:

- the permitted objectives of collective action (disputes involving the conclusion/modification of collective agreements and/or other disputes);
- groups entitled to call collective action;
- restrictions on the right to strike (general restrictions, restrictions concerning sectors essential to the community, restrictions concerning public officials);
- procedural requirements;
- any consequences of participation in a strike (deductions from wages, dismissal, etc.).

Right of the police to strike

The Committee 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.

The Government has not provided the requested information. Therefore, the Committee reiterates its question.

Covid-19

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

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

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

In its report, the Government indicates that no specific measures relating to the right to strike were taken during the pandemic during the reference period.

Conclusion

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

Article 21 - Right of workers to be informed and consulted

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

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”).

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions XX-3 (2014)). The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions.

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.

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

The report provides that the suspension of employment contracts was the main tool adopted for the protection of workers, during the periods when the enterprises remained closed by state order and also for the enterprises affected by the pandemic. Accordingly, the employers were under obligation to inform without delay their workers in writing on the declaration of suspension, providing the reference number of the registration of the suspension of their employment contracts. Moreover, and in order to ensure representation and information of employees in an undertaking, if consultation with the employer took place during the pandemic, the term of workers' and employers' trade union executive bodies was extended by virtue of article 17 of the PNP of 13/04/2020 on Measures to tackle the continuing impact of COVID-19 pandemic and other urgent provisions, which was ratified by article 1 of Law 4690/2020. A series of legislative acts followed that included similar provisions. Sanctions imposed by Labour Relations Inspectors applied to offenses of consultation framework.

The report further specifies that the economic activities hit by the pandemic were the following: seafaring, tourism, catering industry (in particular night clubs, restaurants, bars, etc.), extracurricular and artistic activities (theater, cinemas, dance schools, playgrounds, etc.), retail sector and transport sector.

Conclusion

The Committee concludes that the situation in Greece 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 Greece.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question 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 the situation to be in conformity with the Charter (see Conclusions XX-3 (2014)). The assessment of the Committee will therefore concern the information provided by the Government in response 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 take part in the determination and improvement of the working conditions and working environment. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The report provides that following the pandemic outbreak in March 2020, the responsible national authorities issued guidelines to enhance the effectiveness of the measures proposed by the National Public Health Organization (EODY), including in respect of participation of workers in the determination and improvement of working conditions, which encompassed the obligation of an employer to inform about the sanitary measures that the enterprise was about to take or those proposed by the competent bodies for the containment of the pandemic, as well on the requirement for their full implementation. A specific circular was also issued on the obligation to keep the employees informed by any appropriate means. The consultations between the employer, the workers’ representatives and the OSH Committees or the workers themselves were crucial for the submission of proposals and for the systematic cooperation in the adoption and supervision of effective prevention measures.

The Committee also notes that the report further provides that the consultation and participation of workers in the improvement of working conditions was addressed by the Presidential Decree 82/2010 on the minimum health and safety requirements regarding the exposure of workers to risks. It referred to the provisions of the Code of Laws on Workers’ Health and Safety (KNYAE), according to which all workers shall enjoy the right to participate without exception in the control of work environment organization. The labour inspectors are responsible for the enforcement of legislation in this respect.

As regards the economic activities particularly hit by the pandemic, the report specifies under information provided under Article 21 of the Charter that there were seafaring, tourism, catering industry (in particular night clubs, restaurants, bars, etc.), extracurricular and artistic activities (theater, cinemas, dance schools, playgrounds, etc.), retail sector, mainly enterprises that did not have the ability of online trading, and transport sector. The report does not refer to any particular arrangements taken in these fields.

Conclusion

The Committee concludes that the situation in Greece 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 Greece. It also takes note of the comments submitted by the Greek General Confederation of Labour and of the reply of the Government to those comments.

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”).

The Committee notes that it is the first report submitted by Greece on Article 26§1 of the Charter.

The assessment of the Committee will therefore concern the information provided in the report in response to the targeted questions and in general the compliance of the national situation with the requirements of Article 26§1 of the Charter.

Prevention

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

The report provides information on a nationwide campaign "You're not the only one, you're not alone", which included seminars, information material in several languages, TV and radio spots, cultural events, publicity on public transport, press articles, a webpage (www.womensos.gr), a Facebook page, as well as banners on websites. In 2017, a public call was launched to gather personal stories on the theme "Complicity or sexual harassment? Where do we stand?" and TV spots on sexual harassment in public places were created in order to raise awareness.

The report further indicates that a training programme for labour inspectors on “Prevention and response to violence against women” was organised in 2020 by the Training Institute of the National School of Public Administration and Local Government. In addition, in accordance with Article 21 of Law 4604/2019 on promoting substantive gender equality, preventing and combating gender-based violence, the General Secretariat for Demography and Family Policies and Gender Equality (GSDFPGE) awards the “Equality Label” to public and private businesses that distinguish themselves, *among other things*, for their implementation of policies to promote products and services in a manner that supports the prevention of gender-based violence and discourages violence against women and sexism.

The Committee recalls that Article 26§1 requires States parties to take appropriate preventive measures in consultation with employers’ and workers’ organisations. The Committee asks whether and to what extent employers’ and workers’ organisations are consulted in the promotion of awareness, information and prevention of sexual 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 introduced to combat sexual harassment and abuse in the framework of work or employment relations.

The report states that Article 2 d) of Law 3896/2010 (as amended by Article 22(2) of Law 4604/2019) defines sexual harassment as follows: “*sexual harassment: any form of unwelcome verbal, psychological or physical conduct of sexual nature, resulting in the violation*”

of a person's dignity, especially by creating an intimidating, hostile, degrading, humiliating or offensive environment around that person. Provisions in force on sanctions for such conduct shall apply".

The report further indicates that Article 3 of Law 3896/2010 provides for the explicit prohibition of any form of direct or indirect discrimination on the grounds of sex, especially in connection with marital status. Harassment sexual harassment as well as any less favourable treatment due to the tolerance or rejection of such conduct constitute discrimination on the grounds of sex and are prohibited. The scope of application of the law includes access to employment and recruitment conditions (Article 11 of Law 3896/2010) as well as working terms and conditions, promotions and the planning and implementation of staff appraisal systems (Article 12 of Law 3896/2010).

The report also indicates that Article 14 of Law 3896/2010 explicitly prohibits the dismissal or termination in any other way of an employment relationship and any other adverse treatment: (a) on the grounds of sex or marital status; (b) when it constitutes retaliatory conduct by the employer, in the case of a worker's refusal to succumb to his sexual or other advances, in accordance with the definitions in Article 2; (c) when it constitutes the reaction of the employer or of the person responsible for vocational training, in response to a protest, complaint, testimony or any other action of a person, worker, trainee or of his or her representative, within the undertaking or the training location, before a court or other authority, in relation to the application of the law.

The report indicates that Greece ratified the ILO Convention 190 on the elimination of violence and harassment in the world of work by means of Law 4808/2021, which entered into force on 30 August 2021 (outside the reference period).

With regard to remedies, the report indicates that under Article 22 of Law 3896/2010, any person who considers that they have suffered harm because the above mentioned rules were not respected, even after the relationship in which the discrimination is alleged to have occurred has ceased, has the right to judicial protection and redress before the competent administrative authorities (Labour Inspectorate Agencies, SEPE). Mediation is also available through the Ombudsman. The exercise of these rights does not affect the time limits for administrative and judicial redress.

The report further provides information on the competences of Equality Body for promoting the principle of equal treatment, the Ombudsman and the Labour Inspectorate. The report outlines that the Labour Inspectorate Agencies (SEPE) have the obligation to inform the Ombudsman without delay both upon the receipt of each complaint and following the completion of their investigation and any sanctioning measures. The Ombudsman has the competence to investigate and formulate the final conclusion on the complaint. The report also provides data on sexual harassment complaints examined by SEPE during the reference period (2017-2020). Sanctions/fines were imposed in two cases, amounting to €500 and €2 000, respectively.

The Committee notes from the *Country report on gender equality 2022* of the European network of legal experts in gender equality and non-discrimination that sexual harassment cases that reach the Labour Inspectorates and the Ombudsman as well as the courts are scarce because, in practice, women who are harassed rarely complain: (i) for fear of being victimised (claimants, witnesses: dismissal, detrimental change in working conditions) and in particular for fear of the perpetrator bringing criminal charges against them for slander (which is quite common in practice) and/or civil claims for moral damages, (ii) for fear of acquiring a 'bad name' in the labour market, (iii) for lack of evidence and support and (iv) due to the sharply rising litigation costs, etc. All of these are explicitly acknowledged in the Ombudsman's 2020 Yearly Report on Equal Treatment.

The Committee recalls that workers must be provided with effective protection against harassment. It asks that the next report provide information on the sexual harassment

complaints dealt with by the Labour Inspectorates, the Ombudsman and the courts, and their outcomes (in terms of sanctions imposed and the compensation awarded to victims).

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

With regard to the burden of proof, the report indicates that under Article 24 of Law 3896/2010, when a person claims they are a victim of sex discrimination and invokes - before a court or another competent authority - facts or evidence upon which it may be presumed that there has been direct or indirect discrimination on the grounds of sex, or that a sexual or other form of harassment has occurred, the defendant bears the burden of proving to the court or other competent authority that there has been no breach of the principle of equal treatment of men and women.

The Committee notes in the *Country report on gender equality 2022* of the European network of legal experts in gender equality and non-discrimination that in the jurisprudence of the civil courts, judgment No. 1196/2020 of the Thessaloniki Civil Court of Appeal applied, for the first time, the rule of the shift in the burden of proof in a sexual harassment case with no eyewitnesses.

The Committee asks that information be provided in the next report on examples of case law where the courts have applied the shift in the burden of proof from the claimant to the defendant in sexual harassment cases.

Damages

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

The Committee notes that Article 23 of Law No. 3896/2010 transposing Directive 2006/54/EC reads: 'In the event of non-compliance with the prohibition of discrimination on grounds of sex enshrined in this law, the victim shall be entitled, among other things, to full compensation covering the actual harm suffered and the loss of income, as well as the moral harm.' The report states that there are no limits on the amount of compensation to be paid in favour of the person affected, which is set by the courts.

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

The Committee requests that the next report provide updated information on compensation awarded in cases of sexual harassment at work or in relation to work.

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 provides information on the measures taken by the General Secretariat for Demography, Family Policy and Gender Equality and its 63 structures set up to protect women victims of gender-based violence (namely domestic violence, rape, sexual harassment, trafficking in women). These include services such as counselling and telephone or Skype support sessions, and a 24-hour SOS 15900 telephone helpline. Since 2017, the target group for these services has also been expanded to include not only women victims of gender-based violence, but also women victims of multiple discrimination (refugees, single parents, Roma, etc.).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Greece 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 Greece. It also takes note of the comments submitted by the Greek General Confederation of Labour and of the reply of the Government to those comments.

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

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

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

Prevention

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

The report provides information on awareness-raising initiatives in relation to sexual harassment only. No information is provided on awareness-raising and prevention campaigns on moral (psychological) harassment.

The Committee recalls that Article 26§2 requires States parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral (psychological) harassment. In particular, in consultation with social partners, they should inform workers about the nature and behaviour in question and the available remedies.

The Committee asks the next report to provide information on any preventive measures taken during the reference period with the aim of raising awareness of the problem of moral (psychological) harassment at the workplace. It also asks whether and to what extent employers’ and workers’ organisations are consulted on the promotion of awareness, information and prevention of 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 introduced to combat moral (psychological) in the framework of work or employment relations.

The Committee notes that the report mainly provides a detailed description of the regulatory framework applicable to sexual harassment in particular (and discrimination on grounds of sex) which the Committee has examined under Article 26§1 of the Charter.

The report outlines that by means of Law 4808/2021, Greece ratified the ILO Convention 190 on the elimination of violence and harassment in the world of work, which entered into force on 30 August 2021 (outside the reference period).

The Committee notes from the *Country report on non-discrimination 2021* of the European network of legal experts in gender equality and non-discrimination that, according to Article 2(2)(c) of the Equal Treatment Law 4443/2016, harassment is considered ‘discrimination

within the scope of paragraph 1 [prohibited discrimination] as long as it concerns unacceptable behaviour linked to the grounds of Article 1, which aims to or results in offending a person's dignity and creating an intimidating, hostile, derogatory, degrading or aggressive environment'. Therefore, Article 2(2)(c), in combination with Article 1, prohibits harassment based on all grounds covered by Law 4443/2016 and in all fields. The same report indicates that there is no relevant case law.

The Committee points out that workers must be afforded effective protection against moral (psychological) harassment by domestic law, irrespective of whether this is a general anti-discrimination act or a specific law 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. The Committee asks that the next report provide comprehensive information on all procedures and remedies available to persons who consider themselves to be victims of moral (psychological) harassment. It also asks how the right not to be retaliated against is guaranteed.

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

With regard to the burden of proof, the Committee notes from the *Country report on non-discrimination 2021* of the European network of legal experts in gender equality and non-discrimination, that the burden of proof in cases where anti-discrimination law has been violated is covered in Article 9 (1) of the Equal Treatment Law 4443/2016, which stipulates: "*when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.*"

The Committee asks that information be provided in the next report on examples of case law where the courts have applied the shift in the burden of proof from the claimant to the defendant in moral (psychological) harassment cases.

Damages

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

The report makes reference to Article 23 of Law 3896/2010 (see Conclusion on Article 26§1 of the Charter) and Article 11 of Law 4443/2016. It states that there are no limits on the amount of compensation to be paid in favour of the person affected, which is imposed by the courts.

The Committee notes in the *Country report on non-discrimination 2021* of the European network of legal experts in gender equality and non-discrimination, that Article 11 of the Equal Treatment Law 4443/2016 lists the criminal sanctions (six months' to three years' imprisonment and a fine ranging from €1 000 to € 5 000) and administrative sanctions (a fine ranging from €146 to €805) that may be incurred. The maximum fine imposed on the discriminator in criminal cases is €5 000 (fine to be paid to the State). The maximum fine imposed on those responsible for discrimination in administrative cases is €30 000 (fine to be paid to the State).

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

Covid -19

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

The report does not provide information on any specific measures taken during the Covid-19 pandemic to protect workers against moral (psychological) harassment.

Conclusion

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

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

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

The Committee recalls that Greece ratified the Revised Social Charter on 18 March 2016. This means that this is the first time the Committee will be examining the implementation of Article 28 of the Charter in Greece.

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

Types of workers' representatives

The Committee understands from the report that trade unions are the main form of employee representation in Greece. There are also workers representatives in undertakings as well as workers' representatives assigned in works related to occupational safety and health.

In order to obtain a comprehensive picture of the situation, the Committee asks that the next report provide for more detailed information on different categories of workers' representatives and their specific functions, both within and outside the scope of collective bargaining with the employer.

Protection granted to workers' representatives

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

The report does not provide any information in respect of these issues.

In their comments concerning the 5th national report submitted by Greece, the Greek General Confederation of Labour (hereinafter, "the GSEE") provides that under the domestic legislation, the extent of the protection against dismissal granted to trade union representatives depends on the number of members of the trade union concerned: where a trade union has two hundred members, five members of the trade union administration are protected, if a trade union has one thousand members, seven members of the trade union administration are protected, if a trade union has more than one thousand members, nine members of the trade union administration are protected. If there is more than one trade union in the same undertaking, each of their representatives are not granted a separate protection and the legislation sets a ceiling on the number of members to be protected.

According to the GSEE, the dismissal of a trade union representative will be permitted if there is a "serious reason" for the dismissal and the validity of the "serious reason" should be assessed by the competent courts. The GSEE criticises the vagueness of the notion "serious reasons" which might legitimise a wide range of illegal dismissals of protected trade unionists.

The GSEE also indicates that the "Judicial Trade Union Executives Protection Committee" which was competent to consider and decide on the reasons of trade union representatives' redundancy was repealed in the new Labour Code which entered into force in 2021. The GSEE considers that the repeal of this committee undermines the efficiency of the protection provided as its purpose was to thoroughly assess the reasons for dismissals in a timely manner. Moreover, according to the GSEE, the legal provisions which provide protection against the transfer of trade union representatives are not effective, as they allow the transfer

of trade union representatives if this is strictly necessary for the company's operation or is required for health protection reasons.

The Committee asks that the next report provide information on the protection afforded to trade union and workers' representatives against dismissals. It specifically asks that the next report provide information on the application/interpretation of the criterion of "serious reasons" in the dismissal of trade union and workers' representatives in the domestic case-law.

The Committee also asks that the next report provide for detailed explanations concerning the protection of trade union and workers' representatives from prejudicial acts short of dismissal which may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts cut-down or any other taunts or abuse.

The Committee asks whether or not the protection afforded to workers' representatives is extended for a reasonable period after the effective end of period of their office (see, Conclusions 2010, Statement of Interpretation on Article 28).

Moreover, the Committee recalls that remedies must be available to workers' representatives to allow them to contest their dismissal (Conclusions 2010, Norway). Also, remedies should also be available to workers' representatives claiming other detrimental treatment on the part of the employer (Conclusions 2018, Armenia). The Committee therefore asks detailed information on remedies available to workers' and trade union representatives against dismissals and prejudicial acts short of dismissal.

The Committee recalls that where a dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. The compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement (Conclusions 2007, Bulgaria). It requests that the next report provide detailed information concerning legal provisions on compensation which can be claimed by the employee in case the dismissal is based on trade union membership.

Facilities granted to workers' representatives

The Committee recalls that under Article 28 of the Charter, workers' and trade union representatives must be granted the following facilities: paid time off to represent employees, financial contributions to work councils, the use of premises and materials for works councils, as well as other facilities mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971 (support in terms of benefits and other welfare benefits because of the time off to perform their functions; access for workers' representatives or other elected representatives to all premises, where necessary; the access without any delay to the undertaking's management board if necessary; the authorisation to regularly collect subscriptions in the undertaking; the authorization to post bills or notices in one or several places to be determined with the management board, the authorization to distribute information sheets, factsheets and other documents on general trade unions' activities) (Conclusions 2010, Statement of Interpretation on Article 28).

The Committee also recalls that the participation in training courses on economic, social and union issues should not result in a loss of pay. Training costs should not be borne by the workers' representatives (Conclusions 2010, Statement of Interpretation on Article 28).

The report does not provide any information in respect of these issues.

In their comments concerning the 5th national report submitted by Greece, the GSEE states that the provisions of the new Labour Code make it difficult for trade union representatives to exercise their right to paid time-off to represent employees. According to the GSEE, the trade union representative who wishes to make use of this leave, has to inform the employer in

writing no later than the week preceding the start of the leave concerned. Only in very exceptional cases, the leave may start immediately after the employer is informed.

The GSEE points particularly at a ministerial decision (No 42981/N1/22-4-2022) of the Ministry of Education, which granted only partial leave to the members of the board of the Federation of Private Educators of Greece, abolishing the terms of a collective agreement which granted board members full paid-time off to allow them to conduct trade union activities. The GSEE concludes that through this process, the Ministry of Education unilaterally abolished the trade union system of leaves for teachers' representatives, which has been in effect for decades in Greece.

The Committee requests that the next report provide detailed information on facilities that must be granted by employers to enable workers' representatives to carry out their functions effectively, including in particular information concerning the use of premises, access to technology etc. (see, §16 above). The Committee would also like to know whether the provisions on afforded facilities apply to all types of workers' representatives.

Meanwhile, the Committee reserves its position in this respect.

Conclusion

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

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

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

The Committee recalls that Greece ratified the Revised Social Charter on 18 March 2016. This means that this is the first time the Committee will be examining the implementation of Article 29 of the Charter in Greece.

The Committee also recalls that no targeted questions were asked in relation to Article 29 of the Charter.

Prior information and consultation

The report indicates that under the domestic legislation (Law No. 1387/1983 on Control on Collective Redundancies and Other Provisions), prior to collective redundancies, the employer has the obligation to enter consultations with the workers' representatives with the objective of investigating the possibility of avoiding or decreasing the redundancies and their adverse consequences. Within this framework, the employer is required to provide the workers' representatives with all relevant information and notify them in writing of the reasons of the planned redundancies, on the number and the categories of workers to be made redundant, the number and categories of workers normally employed, the period over which planned redundancies are to be made, and the criteria proposed for the selection of workers to be made redundant. Copies of those documents shall be submitted by the employer to the Supreme Labour Council ("ASE").

According to the report, these obligations apply irrespective of whether the decision regarding collective redundancies was taken by the employer or by an undertaking controlling the employer. The fact that the undertaking which decided upon collective redundancy did not provide the employer with the necessary information, shall not exempt the employer from their obligation to inform, consult and notify.

The report further indicates that in consultation with the workers' representatives, the employer may bring to the attention of the workers a social plan for workers who are being made redundant, namely measures to mitigate the effects of redundancy, for instance, compensation for training and counselling services for reintegration into the labour market and actions for the use of special programs, addressing the imminent unemployment of workers who are being made redundant as well as possibilities, methods and criteria for their reemployment as a priority.

According to the report, the period of consultations between workers and the employer shall be 30 days starting from the date of the employer's invitation for consultations addressed to the workers' representatives.

Where there is an agreement on the collective redundancy between employer and employees, the collective redundancy shall be carried out in accordance with the content of this agreement. If there is no agreement between the parties, the ASE may ascertain whether the employer's obligations concerning information, consultation and notification have been complied with. If the ASE considers that the above-mentioned obligations of the employer have been met, then the redundancy shall be valid in 20 days from the adoption of the decision. Otherwise, the ASE extends the consultations of the parties or sets a deadline for the employer so that the latter shall take the necessary action to comply with the obligations. According to the report, in any case, the redundancies shall be valid in 60 days from the notification of the consultation minutes to the ASE.

Concerning measures to mitigate the effects of redundancy, in their comments on the 5th National Report on the implementation of the Charter submitted by Greece, the Greek General Confederation of Labour ("GSEE") state that the presentation of a social plan is not an obligation for the employer who is simply free to bring it or not to the attention of the workers.

The Committee asks that the next report provide explanation on how and following which procedure measures to mitigate the effects of redundancy are taken in the practice, in particular in the absence of a social plan presented by the employer.

The report also provides that according to the figures provided by the Ministry of Labour and Social Affairs, in 2019, the total number of redundant workers was 117 in 3 cases of collective redundancy. All those cases were closed by an agreement between the parties and in one case, a social plan was provided by the employer. In 2020, the number of redundant workers was 125 in 5 cases of collective redundancy. 4 cases were closed by an agreement between the parties. In the remaining one case, the redundancy concerned an enterprise under a special liquidation regime following a court decision. In 2020, in one case of redundancy, the employer presented a social plan.

The report further indicates that there have been no legislative changes during the reference period in order to modify or limit the employers' obligations in the context of collective redundancies due to the Covid-19 crisis.

Sanctions and preventative measures

The Committee recalls that where employers fail to fulfil their obligations, there must be some possibility of recourse to administrative or judicial bodies before redundancies are implemented, to ensure that they are not put into effect before the consultation requirement is met.

In their comments, the GSEE state that in the procedure concerning collective redundancies as described in the report (see, § 8 above), the only possibility for the ASE in the event of failure by the employer to comply with their obligations, is either to extend the consultations or to set a deadline to the employer to fulfil its obligations. They also underline in this respect that even if the employers fail to meet their obligations, collective redundancies will take place within 60 days from the notification of the consultation minutes (drawn up at the end of the conciliation procedure confirming the agreement or disagreement of the parties) to the ASE.

The Committee asks that the next report provide detailed and updated information on the procedure followed before the Supreme Labour Council. It asks specifically for clarifications, in view of the submissions by the GSEE, on whether the finding that the employer has not complied with their obligation and the setting up of a new deadline by the Labour Council, will prevent or not the collective redundancy from coming into force in 60 days from the notification of the consultation minutes to the Labour Council.

The Committee further recalls that legal provisions must be made for sanctions after the event, for employers who fail to fulfil the information and consultation duties. The sanctions must be sufficiently deterrent for employers. The report does not provide any information in this respect. Therefore, the Committee asks what sanctions exist if the employer fails to fulfil their obligations in the context of collective redundancies.

Moreover, the GSEE asserts that the finding by the ASE that the employer has complied with their obligations will prevent the workers concerned to lodge an action before the courts. Therefore, according to the GSEE, the courts will not be competent to assess the validity of collective redundancies in the event of a ASE decision confirming that the employers' obligations were fulfilled. The Committee asks that the next report comment on this submission and provide information on whether the workers have the possibility to file an action before the courts against a decision of the Supreme Labour Council finding that the employer has fulfilled their obligations.

Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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