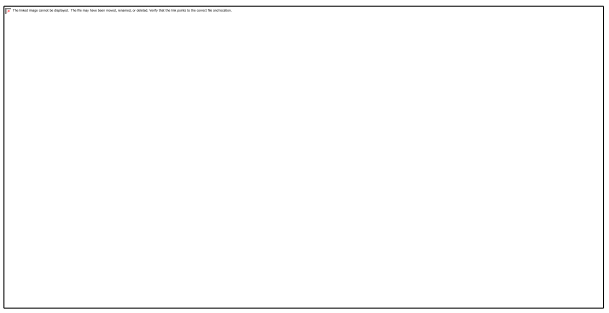

March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

HUNGARY

This text may be subject to editorial revision.

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, statements of interpretation, and general questions from the Committee, are contained in the General Introduction to all Conclusions.

The following chapter concerns Hungary, which ratified the Revised European Social Charter on 20 April 2003. The deadline for submitting the 18th report was 31 December 2021 and Hungary submitted it on 18 July 2022.

The Committee recalls that Hungary 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 18th report by Hungarian Trade Union Confederation were registered on 3 July 2022.

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

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

Hungary has accepted all provisions from the above-mentioned group except Articles 4§1, 4§2, 4§3, 4§4, 4§5, 26§1, 26§2, 28 and 29.

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

The conclusions relating to Hungary concern 14 situations and are as follows:

– 6 conclusions of conformity: Articles 2§2, 2§4, 2§6, 2§7, 5 and 6§3,

– 6 conclusions of non-conformity: Articles 2§1, 2§3, 2§5, 6§2, 6§4 and 22.

In respect of the other 2 situations related to Articles 6§1 and 21, 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 Hungary under the Revised Charter.

The next report from Hungary 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 Hungary and in the comments of the Hungarian Trade Union Confederation (MASZSZ).

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

In its previous conclusion, the Committee considered that the situation in Hungary was not in conformity with Article 2§1 of the Charter on the grounds that the working hours of employees on on-call and standby duty could be up to 24 hours a day and that the weekly working hours of employees on standby duty could be up to 72 hours (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Measures to ensure reasonable working hours

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

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

The report states that on 1 January 2019, certain amendments to the Labour Code on working and rest time came into force and it describes them. For example, the amendments introduced a maximum working time banking of 36 months that can be determined in the collective agreement when justified by objective or technical reasons or reasons related to work organisation, while previously this period was one year.

The Committee notes that the reference periods that do not exceed four to six months are acceptable, and periods of up to a maximum of one year may also be acceptable in exceptional circumstances. The extension of the reference period by a collective agreement up to a 12-month period would also be acceptable, provided there were objective or technical reasons or reasons concerning the organisation of work justifying such an extension and that the maximum working hours would not exceed 60 hours (*Confédération générale du travail* (CGT) and *Confédération française de l'encadrement-CGC* (CFE-CGC) v. France, Complaint No. 149/2017, §§ 156-157). The Committee notes that the reference period in Hungary can go up to 36 months, which, in accordance with its practice, is not acceptable under any circumstances. Therefore, the Committee concludes that the situation in Hungary is not in conformity with Article 2§1 of the Charter on the ground that, in certain cases, the reference period for the calculation of average working hours can be extended beyond 12 months.

The report further states that certain employees can work 24 hours per day and 72 hours per week. The total weekly working time bank for healthcare workers' may go up to 60 hours per week and 72 hours per week in case of medical on-call duty. The Committee asks whether this rule can be applicable to all workers and notes that it has already stated that the daily working time should in no circumstances (except for extraordinary situations) exceed 16 hours (Conclusions 2014, Armenia, Article 2§1) and a total working week, which, within the framework of "flexibility regulations", may attain up to 60 hours per week or exceed 60 hours is unreasonable. In these circumstances, the Committee concludes that the situation in Hungary is not in conformity with Article 2§1 of the Charter on the ground that daily working time can go up to 24 hours and weekly working time – up to 72 hours.

In the public sector, daily working time is 8 hours and weekly working time is 40 hours. However, it can be 12 hours per day and 48 hours per week accordingly. Working hours can be banked but the maximum reference period is four months.

The report provides statistical information on inspections carried out and irregularities detected in various sectors but does not categorise them by types of irregularity. It also provides information on a number of workers in various industries affected by infringements relating to working time, rest periods and overtime. Most workers affected by working time infringements worked in the sectors of trade, manufacturing and hospitality in 2017, 2018. In addition to the above-mentioned sectors, infringements also occurred in law enforcement in 2019 and in engineering in 2020. Most workers affected by infringements of rest periods worked in manufacturing and trade in 2017, 2018 and 2020; in manufacturing and engineering in 2019.

In its comments, the MASZSZ states that the worker and the employer can individually agree to increase overtime for up to 400 hours per year. Moreover, the application of a reference period enables the employer to arrange working time unequally in a given period. The MASZSZ criticises the reference period of 36 months, introduced in 2018, that can be agreed upon in a collective agreement. It also states that shift workers often work 18-20 days without a single resting day because of the banking of hours.

The Committee asks whether it is possible for shift workers to work such long periods without having rest days. The Committee also asks whether the agreement to increase overtime for up to 400 hours per year means that certain workers can work for 80 hours per week.

Law and practice regarding on-call periods

The Committee concluded previously that the situation in Hungary was not in conformity with Article 2§1 of the Charter on the grounds that the working hours of employees on on-call and standby duty could attain 24 hours a day and that the weekly working hours of employees on standby duty could reach 72 hours (Conclusions 2014).

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

In reply, the report distinguishes between on-call time and standby duty, the latter being more flexible as the worker can be at his/her chosen place and not at the employer's premises or other place indicated by the employer. The report states that on-call time shall not exceed 24 hours for law enforcement employees. For medical staff, the total weekly working time bank may not exceed 72 hours per week in case of medical on-call duty. For public service, on-call time shall not exceed 24 hours. The Committee asks whether these hours are for on-call periods when the worker has to remain at the workplace or when the worker can stay elsewhere other than the workplace.

The Committee notes that the situation with regard to overtime does not appear to have changed since its last assessment, and it reiterates that the situation in Hungary is not in conformity with Article 2§1 of the Charter on the ground that the working hours of employees on on-call and standby duty may reach 24 hours a day and 72 hours a week.

The Committee also reiterates its question on how inactive on-call periods are treated in terms of work and rest time. If the information requested is not provided in the next report, there will be nothing to establish that the situation in Hungary is in conformity with Article 2§1 of the Charter on this point.

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 the employer could order workers to telework or alter their working schedule. The banking of hours could be extended to 24 months by unilateral decision of the employer. Law enforcement employees could work weekly for more than 48 hours and daily duty period could be longer than 12 hours but could not exceed 24 hours. Persons employed in nursing homes until 31 December 2020 could work in 24-hour shifts but a subsequent period of 48-hour uninterrupted rest had to be granted.

In its comments, MASZSZ criticises the government decree permitting the employers to unilaterally apply a reference period of 24 months.

The Committee notes that the unilateral increase of a reference period to up to 24 months without the collective agreement is a ground for non-conformity with Article 2§1 of the Charter.

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 2§1 of the Charter on the grounds that:

- in certain cases, the reference period for the calculation of average working hours can be extended beyond 12 months;
- daily working time can go up to 24 hours and weekly working time – up to 72 hours;
- during the pandemic, the reference period for banking of hours could be extended to 24 months upon a unilateral decision of the employer.

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 Hungary.

The Committee recalls that no targeted questions were asked for Article XX 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 in the 2018 cycle, Hungary’s report could not be examined because it was not submitted in time. In addition, the Committee deferred its previous conclusion (Conclusions 2014).

In its previous conclusion (Conclusions 2014), the Committee noted that under Section 140(2) of the Labour Code, employees obliged to work regular hours on public holidays – including those falling on a Sunday – were entitled to a 100% wage supplement (that is, they receive a double wage). Employees remunerated on the basis of the hours worked or of the performance were entitled to the 100% wage supplement above their regular wage, and to "absence pay" (the pay due on account of the public holiday, whether worked or not). The Committee asked whether this meant that they were entitled to the equivalent of a triple wage and whether this was the case also for other employees.

In response, the report states that the Labour Code allows work on public holidays in a particularly limited way, and in this case all employees are entitled to a statutory wage supplement (100%).

As for civil servants, the Committee notes from the 2018 report that under Article 98 of the Civil Servants Act, differentiated rules on remuneration for work on public holidays apply, depending on whether the work is performed during normal working hours or during overtime. On this basis, public officials obliged to work on a public holiday during overtime hours are entitled to receive time off equal to three times the amount of time worked, while those working during regular hours continue to be entitled to double compensatory time off.

In view of the above, the Committee finds that the situation is in conformity with Article 2§2 of the Charter.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report 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 Hungary is in conformity with Article 2§2 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Hungary and in the comments of the Hungarian Trade Union Confederation (MASZSZ).

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).

The Committee recalls that in the 2018 cycle, Hungary’s report could not be examined because it was not submitted in time. In its previous conclusion (Conclusions 2014), the Committee found that the situation in Hungary was not in conformity with Article 2§3 of the Charter on the ground that it had not been established that the workers’ right to take at least two weeks uninterrupted holidays during the year the holidays were due was sufficiently guaranteed.

The Committee asked to clarify whether Section 134(3)(a) of the Labour Code allowed the annual leave to be entirely postponed to the following year or whether in all cases the employee remained entitled, by virtue of Section 134(4), to take at least fourteen subsequent calendar days during the year in which the leave was due. It also asked for examples of case law concerning the interpretation of the notion of "economic interest of particular importance".

In response, the report indicates that the aforementioned provisions were included in Act XXII of 1992 on the Labour Code, which was repealed as from 1 January 2013 by Act LXXXVI of 2012 on the transitional provisions and amendments of acts related to the promulgation of Act I of 2012 on the Labour Code (when the new Labour Code entered into force).

The report indicates that an employee’s annual leave entitlement can be used upon the permission of the employer, however, 7 days has to be allocated in accordance with the request of the employee (Article 122§2 of the Labour Code). Unless the parties agree otherwise in their contract of employment, the employer must allocate the leave in a way to provide a continuous 14 days leave in a calendar year.

The Committee notes from the report that the law allows for derogations from the obligation to provide for a minimum of fourteen consecutive days. Such derogations may be defined in an agreement between the parties or in a collective agreement. The report indicates that derogations, as defined in the parties’ agreement, may be for the benefit or to the detriment of the employee (Article 135 of the Labour Code). Derogations from the statutory provision for granting a minimum of 14 consecutive days shall be subject to agreement between the parties. The report adds that derogations defined in the collective agreement may only be in the interest of the employee (Article 135§2 of the Labour Code).

In its comments, the MASZSZ indicates that the Labour Code provides that leave must be allocated during the year when it is due, although some exceptions derogate this principle. The Committee takes note of three exceptions explained in this report:

- Firstly, if the leave period begins in the year in which it is due, then a maximum of 5 working days may be granted in the year following the year in which the leave is due, without interruption. According to the MASZSZ, this means that if an employee is only entitled to the minimum amount of paid leave, then the application of this exception leads to a reduction of the annual paid leave to three weeks. The same problem arises if the employee is even entitled to extra leave according to his/her age, but he/she agrees (individually) with the employer to allocate the extra days to the following year.
- Secondly, the MASZSZ indicates that one-fourth of the leave, if so stipulated in the collective agreement (in the event of the employer’s economic interests of

particular importance or any direct and consequential reason arising in connection with its operations) can also be allocated by 31 March of the following year, which can also lead to a derogation of the four weeks' principle.

- Thirdly, if leave cannot be granted in the year in which it is due for reasons attributable to the employee, it must be granted within 60 days of the removal of the reason. However, leave may also be granted after the year following the year in which it is due.
  In its comments, the MASZSZ states that the above-mentioned derogations lead on paper and in practice to the non-conformity with the provisions of the Charter. The Committee requests comments on these observations in the next report.

The Committee recalls that an employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due and that annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. In the light thereof, it asks the next report to clarify the circumstances under which the law may allow derogations from the obligation to allot a minimum of fourteen consecutive days. In the meantime, the Committee considers that the situation is not in conformity with Article 2§3 of the Charter, on the ground that the employees' right to take at least two weeks of uninterrupted holiday during the year in respect of which the holidays were due is not sufficiently guaranteed.

The Committee notes from the report that the Government Administration Act came into force on 1 January 2019 and that the Special Status Act on 1 January 2020. According to new laws, the government officials and the civil servants at organs with special status are entitled to a minimum of 20 working days of annual leave, plus extra days granted on the basis of different criteria. The Committee notes that the situation in the public sector on this issue is still in conformity with the Charter.

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 Hungary is not in conformity with Article 2§3 of the Charter on the ground that the employees' right to take at least two weeks of uninterrupted holiday during the year in respect of which the holidays were due is not sufficiently guaranteed.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

As the previous conclusion found the situation in Hungary to be in conformity with the Charter, there was no examination of the situation in 2022.

Therefore the Committee reiterates its previous conclusion.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee takes note of the information contained in the report submitted by Hungary. It also takes note of the information submitted by the Hungarian Trade Union Confederation (MASZSZ) and by the European Trade Union Confederation (ETUC).

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 its previous conclusion, the Committee found that the situation in Hungary was in conformity with Article 2§5 of the Charter, pending receipt of the information requested concerning whether there are any such situations in which a worker might work more than twelve days consecutively before enjoying a rest period (Conclusions 2014).

The report states that from 1 January 2019, employers have the option of granting more or less than 2 days of rest per week, and the two weekly rest days are then averaged over a longer period, the working time banking or payroll period. At the end of the working time banking or payroll period, not only the hours worked but also the weekly rest days must be accounted for (Section 105(1) of the Labour Code). In the case of an irregular working time schedule, at least one weekly rest day shall be allocated after six consecutive working days (Section 105(2) of the Labour Code).

In special cases defined by law, in the case of irregular working time schedule, at least one weekly rest day per month must be allocated for employees employed within the framework of uninterrupted work, multi-shift work, or in a seasonal activity. The provisions of the Labour Code thus allow for a consolidated allocation of rest days within a limited scope of cases specified in Section 105(3) of the Labour Code.

According to MASZSZ , in case of an irregular work schedule (for example in case of a reference period/working time banking), after six days of work, one day of rest should be allocated in a given week. However, for employees working in continuous shifts, shift work or in seasonal jobs, only one resting day can be allocated in a month. Shift workers in the metal, automotive, chemical and pharmaceutical industries regularly have to work 18–20 days consecutively without a single resting day. This situation is in conformity with Hungarian legislation, which has become more flexible in this respect, because the minimum weekly rest period (48 hours) is calculated only on average during the period of working time banking. Furthermore, the principal rule of the 8-hours-long daily working time is also calculated on average, so there is no legal obstacle of scheduling 12-hours-long workdays consecutively for a longer period even without further financial compensation. Therefore, MASZSZ and ETUC consider that the Hungarian legislation does not comply with the provisions of the Charter.

The Committee reiterates that, although the rest period should be "weekly", it may be deferred to the following week, as long as no worker works more than twelve days consecutively before being granted a two–day rest period. The report refers to the fact that employers have the option of allocating more or fewer weekly rest days per week instead of two, and the information submitted by the trade unions indicate that there are several cases in which this allows for not granting two days rest period for more than 12 days. The Committee therefore considers that the situation in Hungary is not conformity with the Charter.

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 2§5 of the Charter on the ground that there are insufficient safeguards to prevent workers from working for more than twelve consecutive days before being granted a 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 Hungary and of that contained in the previous report, which it had not examined due to its late submission.

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

In its previous conclusion, the Committee found that the situation in Hungary was in conformity with Article 2§6 of the Charter, pending receipt of the information requested (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion.

The Committee asked whether in all circumstances the information concerning the identities of the parties, the place of work, the date of commencement of the contract or employment relationship and its expected duration were also provided in writing, whether in the contract or another document (Conclusions 2014). The report refers to several provisions from the Labour Code (namely Sections 23, 45, 46, 47 and 192), confirming that employees receive the elements of information in question in writing when starting employment.

The Committee further asked for confirmation that the employment contract or another written document provided to public officials and professional members of the armed forces and the Hungarian Defence Forces respectively when starting employment contains information on the parties, the place of work and, where applicable, the expected duration of a temporary contract or employment relationship (Conclusions 2014).

With regard to public officials, the report notes that new regulations were passed pertaining to their status during the reference period, namely the Government Administration Act (2019) and the Special Status Act (2020). These regulations contain provisions that refer to the elements of information in question. The Committee asks whether public officials receive information in writing regarding the amount of paid leave and the length of the periods of notice in case of termination of the contract or the employment relationship when starting employment.

With regard to the professional members of the armed forces and the Hungarian Defence Forces, the Committee reiterates the request as to whether they receive the elements of information in writing when starting employment, as required under Article 2§6 of the Charter.

Covid-19

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

The Committee takes note of the information contained in the report submitted by Hungary and of that contained in the previous report, which it had not examined due to its late submission.

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

In its previous conclusion, the Committee found that the situation in Hungary was in conformity with Article 2§7 of the Charter, pending receipt of information on whether there was regular consultation with workers' representatives on the use of night work, the conditions in which it was performed, and measures taken to reconcile workers' needs and the special nature of night work (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the question raised in its previous conclusion.

The report notes that the relevant national legislation does not contain any explicit rule for consultation on night work. However, the regular plenary meetings of the National Occupational Safety and Health Committee, composed of representatives of employers, workers and the government, allow for consultation on all issues related to occupational safety and health at the initiative of either party, including with respect to night work and shift work.

Covid-19

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

Conclusion

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

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by Hungary as well as the information provided by the Hungarian Trade Union Confederation (MAZSZSZ).

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

In its previous conclusion, the Committee deferred its conclusion (Conclusions 2014).

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

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

Prevalence/Trade union density

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

Personal scope

In its previous conclusion, the Committee requested that all States provide information on the right of members of the armed forces to organise (Conclusions 2018 – General Question). In reply to the Committee´s question, the report states that the rules applicable to the military personnel of the Hungarian Defence Forces have not changed during the reference period of the report. The Committee therefore refers to its previous conclusion (Conclusion 2014), where it noted that professional members of the armed forces are entitled to form trade unions.

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

Restrictions on the right to organise

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

In reply to the targeted question, as regards the public sector, the report states that Section 170 of the Government Administration Act and Section 95 of the Special Status Act ensure the participation of government officials and civil servants working for special status bodies in the establishment of working conditions and in the definition of the procedure for the prevention and resolution of labour conflicts between these workers and government administrative bodies and special status bodies. Both government officials and civil servants working for special status bodies, as well as government administrative bodies and special status bodies, have the right to form, join ornot to join organisations to protect and promote

their economic and social interests, under the conditions laid down by law, and without any discrimination.

Forming trade unions and employers' organisations

In its previous conclusion the Committee asked whether under Act CLXXV of 2011 on the right of association the registration of a trade union is simple and easy to apply (Conclusions 2014). The Committee also asked for information on any applicable fees for the registration of trade unions (Conclusions 2014).

In reply to the Committee´s question, the report refers to the report submitted in 2018, where it was stated that the registration of trade unions shall meet the same requirements as the registration of an association. The Committee notes from the ILO (Observation -Freedom of Association and Protection of the Right to Organise Convention No.87 1948) that registration requirement are stringent and complex and that there have been allegations of refusal to register organisations due to minor flaws. The Committee asks that the next report provide information on the number of organisations denied registration.

In its previous conclusion the Committee also asked for information on any applicable fees to registration of trade unions (Conclusions 2014). In reply to the Committee´s question, the report refers to the report submitted in 2018, where it was stated that pursuant to Section 5(1) of Act XCIII of 1990 on fees and charges, the registration procedure and registration amendment procedure of the association shall be completely exempt from personal fees and charges.

Freedom to join or not to join a trade union

In its previous conclusion the Committee asked if closed shops are illegal in Hungary (Conclusions 2014). In reply to the Committee´s question, the report states that Section 271 of the Labour Code provides that employers may not demand that workers disclose their trade union affiliation; employment of a worker may not be rendered contingent upon his membership in any trade union, on whether or not the worker terminates his previous trade union membership, or on whether or not he agrees to join a trade union of the employer's choice; the employment relationship of a worker shall not be terminated, and the worker shall not be discriminated against or mistreated in any other way on the grounds of trade union affiliation or trade union activity; any entitlement or benefit may not be rendered contingent upon affiliation or lack of affiliation to a trade union.

According to the comments submitted by MASZSZ there have been cases of dismissals of trade union officials in order to prevent the establishment of a trade union in enterprises, and litigation in these cases can take years. The Committee asks what measures have been taken to ensure that remedies in cases of discrimination on grounds of trade union membership or activities are effective.

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 Hungary, the information contained in the previous report, which it had not examined due to its late submission, as well as the joint comments submitted by the Hungarian Union Confederation (MASZSZ) and the European Trade Union Confederation (ETUC).

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

In its previous conclusion, the Committee considered that the situation in Hungary was in conformity with Article 6§1 of the Charter (Conclusions 2014). The report provides information on a range of amendments to the legal framework on joint consultation at the sectoral level adopted during the reference period, as well as on the operation of sectoral dialogue committees.

The Committee refers to its previous conclusion for a description of the main joint consultation mechanisms in Hungary, namely the National Economic and Social Council (NGTT), the National Public Service Interest Reconciliation Council (OKET), the Permanent Consultative Forum of the Competitive Sector and the Government (VKF), and the sector-level dialogue committees (APBs) (Conclusions 2014).

The joint comments formulate a series of criticisms regarding the way some of these bodies operate as follows:

- The NGTT is not a tripartite social dialogue structure, as it no longer includes representation of the state; its membership has been diluted by including civil society actors without specific work-related expertise, such as churches or non-governmental organisations from the area of culture and arts; in contrast to the National Interest Reconciliation Committee (OET), the body it replaced in 2011, the NGTT no longer acts as an effective forum for discussing issues such as wages, working conditions or labour legislation in a tripartite format.
- As the VKF lacks representation from public sector workers and its mandate lacks a clear legal basis, it cannot act as an effective forum for joint consultation either.
- Although sectoral level joint consultation is well established, it suffers from a shortage of funding, as well as the absence of employers' organisations in certain sectors, such as car-making.

The Committee notes that Conclusions 2018 do not contain an assessment of the conformity of the situation with Article 6§1 of the Charter, and that the most recent assessment dates from 2014. The Committee therefore requests that the next report contain a complete up-dated 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, also in light of the views expressed in the above-mentioned joint comments. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Hungary is in conformity with Article 6§1 of the Charter.

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 Hungary, the information contained in the previous report, which it had not examined due to its late submission, as well as the joint comments submitted by the Hungarian Union Confederation (MASZSZ) and the European Trade Union Confederation (ETUC).

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

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

In its previous conclusion, the Committee considered that the situation in Hungary was not in conformity with Article 6§2 of the Charter on the ground that no promoting measures have been taken in order to facilitate and encourage the conclusion of collective agreements, even though the coverage of workers by collective agreements was manifestly low (33.6% of the workforce was covered by collective agreements in 2012) (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

The report notes that no measures to promote collective bargaining were taken during the reference period. Although the report provides detailed figures as to the number of collective agreements concluded during the reference period, it does not provide aggregated figures for collective bargaining coverage rates at the national level.

The joint comments by trade unions note that the number of workers covered by collective agreements decreased to 18.5% in 2020 and confirmed that no measures were taken to promote collective bargaining during the reference period. On the contrary, large employers were able to lobby the Government directly for preferential treatment in terms of working conditions, without trade union involvement. Other sources provide collective bargaining coverage levels of between 18% to 22% for the reference period (for example www.worker-participation.eu or Eurofound).

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

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

Covid-19

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

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

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

In its previous conclusion, the Committee found that the situation in Hungary was in conformity with Article 6§3 of the Charter pending receipt of the information requested. It asked that the next report indicate how the Labour Mediation and Arbitration Service (MKDSZ) operated in practice (Conclusions 2014).

In its report, the Government states that the relevant law was not altered during the reference period.

The Government had provided the requested information in its penultimate report, but it was received after the deadline for it to be taken into account. The Committee did, however, state that it would consider this information in conjunction with the next report on the provisions concerned (see General Introduction to Conclusions 2018, §5).

The Committee notes in particular that the MKDSZ no longer exists; it was replaced in 2016 by the Labour Advisory and Dispute Settlement Service (*Munkaügyi Tanácsadó és Vitarendező Szolgálat*, MTVSZ). The latter's main objectives are to contribute to the functioning of collective labour relations and prevent and resolve collective labour disputes. It offers various services (advice, conciliation, negotiation, mediation and arbitration) for trade unions and federations of trade unions, works councils and employers and employers' groups – in both the private and public sectors. The MTVSZ can only act "at the mutual and voluntary request of the parties"; either party may leave an ongoing procedure.

Conclusion

The Committee concludes that the situation in Hungary 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 Hungary and of the comments from the Hungarian Trade Union Confederation (MASZSZ).

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

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

In its previous conclusion, the Committee considered that the situation in Hungary was not in conformity with Article 6§4 of the Charter (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

Right to collective action

Entitlement to call a collective action

In its previous conclusion, the Committee considered that the situation was not in conformity with Article 6§4 of the Charter on the ground that in the civil service, a strike could only be called by a trade union that was party to the agreement concluded between the Government and the trade unions concerned in 1994.

The Government states that there have been no changes in the legislation. Therefore, the Committee reiterates its conclusion of non-conformity on this point.

Restrictions to the right to strike, procedural requirements

In its previous conclusion, the Committee considered that the situation was not in conformity with Article 6§4 of the Charter on the grounds i) that the criteria used to define civil servant officials who were denied the right to strike went beyond the scope of Article G of the Charter and ii) that civil service trade unions could only call strikes with the approval of a majority of the staff concerned.

The Government states that there have been no changes in the legislation. Therefore, the Committee reiterates its conclusion of non-conformity on these two points.

In its comments, MASZSZ states that according to the Strike Act, employees who carry out activities that are of fundamental concern to the public can only go on strike if it does not impede the sufficient services of the employer but there are only some examples in the Strike Act of this requirement. Furthermore, there is a general prohibition of strike in the public healthcare sector in practice. In public education, the right to strike has also been heavily reduced in 2022 (outside the reference period) because there is a requirement that during the strike the supervision of children has to be fully maintained and 50% of the lessons of all subjects and 100% of graduation subjects are required to be conducted as normally.

The Committee asks the next report to include information on the restrictions on the right to strike in the public healthcare and public education sectors.

Consequences of strikes

In its previous conclusion, the Committee asked to be informed on the consequences and sanctions for an employer who unlawfully dismissed an employee following his/her participation in a strike.

The Committee notes that the report provides no information in this respect. The Committee reiterates its question and points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§4 of the Charter.

Right of the police to strike

The Committee notes that the Government has not answered the general question asked in the General Introduction to Conclusions 2018. However, it appears from the previous report that members of the police are prohibited from striking.

The Committee points out with regard to the regulation of the collective bargaining rights of police officers, that states must demonstrate compelling reasons as to why an absolute prohibition on the right to strike is justified in the specific national context in question, as distinct from the imposition of restrictions as to the mode and form of such strike action (European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on admissibility and the merits of 2 December 2013, §211). The Committee considers therefore that the situation is not in conformity with Article 6§4 of the Charter on the ground that the absolute prohibition on the right to strike for the police goes beyond the limits set by Article G of the Charter.

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.

The Government states that no specific measures were taken to restrict the right to strike in public education and that the strike negotiations were suspended by mutual agreement of the trade union and the government in 2020; they were resumed in 2021.

Conclusion

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

- in the civil service, the right to call a strike is restricted to trade unions which are parties to the agreement concluded with the Government;
- the criteria used to define civil servant officials who are denied the right to strike go beyond the limits set by Article G;
- civil service trade unions may only call strikes with the approval of a majority of the staff concerned;
- the police are denied the right to strike.

Article 21 - Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Hungary. It also takes note of comments submitted by the Hungarian Trade Union Confederation.

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

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

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

The Committee has asked in its previous conclusion whether the personal scope of the legislation on the right of workers to be informed and consulted corresponded to the thresholds authorised by Directive 2002/14/EC – undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state, particularly as regards the calculation of these minimum thresholds. The report confirms that this is the case, section 233(1) of the Labor Code defining the concepts of information and consultation by transposing the relevant provisions of Directive 2002/14/EC which establish a general framework for informing and consulting employees in the European Community.

The Committee has also previously requested information on the monitoring body responsible for monitoring the respect of the right of workers to be informed and consulted within the undertaking. In particular, it wished to know what the powers and operational means of this body were, as well as to receive updated information on its decisions. The report provides information on the European Works Council, as a special negotiating body, as well as on a judicial procedure in case of disagreement between the European Works Council and its members. The Committee considers that the information provided does not fully address its question, which related more specifically to a monitoring body. Therefore, it reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

The Committee also notes, with this respect, a comment raised by the Hungarian Trade Union Confederation that, from a practical point of view, even when trade unions (or the workers’ councils) request information or initiate consultation, the law does not guarantee the actual enforcement of these rights. Even though the Labour Code contains a special judicial procedure for the case when the employer does not fulfill his legal obligations, the law does provide for a remedy. In their opinion, in practice, this procedure can only be used to express the seriousness of the unlawful situation, but it remains the decision of the employers whether they comply with the decision. The Committee asks the next report to comment on these observations and to provide information on the enforcement of the right to information and consultation.

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

The report states in reply that in companies representatives of employers and workers' were given detailed and up-to-date information on the economic impact of the coronavirus pandemic, labour market statistics, changes in some indicators and the government's response to the coronavirus pandemic, including measures to stimulate the economy and protect jobs. The social partners have taken the opportunity to be consulted on the job protection programmes to be introduced and have actively contributed to both the strategic underpinning of the measures and the fine-tuning of their final form by sharing their first-hand experience. After the first wave of the pandemic subsided, the meetings of the Permanent Consultative Forum of the Competitive Sector and the Government (VKF) were held monthly, and then intensified again during the subsequent waves, depending on the severity of the situation.

Conclusion

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

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

The Committee takes note of the information contained in the report submitted by Hungary. It also takes note of comments submitted by the Hungarian Trade Union Confederation (MASZSZ).

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

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.

The Committee has previously requested information on the determination and improvement of the working conditions, work organisation and working environment within the undertaking, The report provides detailed information as regards the rights of workers in this respect in the field of health and safety. It states that Section 70/A of the Labor Safety Act provides that an election of a safety and health representative must be held in all employers with at least twenty employees. In order to ensure health and safety at work, the employer is obliged to consult the workers and their safety and health representatives and to give them the opportunity to participate in a timely prior discussion of the employer’s health and safety measures. When the number of safety and health representatives reaches three, a safety and health committee may be established. Where a committee is set up, the rights of the safety and health representative, if they concern all the workers, shall be exercised by the committee. The OSH authority and the Occupational Safety and Health Department provide information and advice to employers, workers, occupational health service providers, safety and health representatives and anyone else who makes use of this possibility, as well as to interest organizations, to enable them to exercise their rights and fulfill their obligations in relation to OSH. The Committee notes that the report does not provide information on the right of workers to determine and improve their working conditions and working environment in other fields than health and safety. It thus reiterates its request for comprehensive information in this respect and considers that if it is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

The Committee has also requested information on organisation of social and socio-cultural services and facilities. The report does not provide the information requested. In this respect, the Committee recalls that according to the Appendix, Article 22 the terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children’s holiday camps, etc. It thus reiterates its request for comprehensive information in this respect and considers that if it is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

The Committee has previously requested information on the existence of means of appealing where the right of workers to take part in the determination and improvement of working conditions and the working environment had been violated, as well as on the penalties which could be imposed on employers if they have failed to respect this right. Finally, the Committee wished to know if workers or their representatives were entitled to compensation in the event of violations of this right. It has then stressed that should the next report not provide the

requested information, there would be nothing to establish that the situation is in conformity with Article 22.

In this regard, the Committee notes a comment by the Hungarian Trade Union Confederation that, from a practical point of view, even when trade unions (or the workers' councils) request information or initiate consultation, the law does not guarantee the actual enforcement of these rights. Even though the Labour Code contains a special judicial procedure for the case when the employer does not fulfill his legal obligations, the law does provide for remedies. In their opinion, in practice, this procedure can only be used to express the seriousness of the unlawful situation, but it remains the decision of the employers whether they comply with the decision. In light of the lack of the information in the report on these aspects, the Committee considers that is has not been established that the situation is in conformity with the Charter in this respect.

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 Committee notes that it appears from the report that no specific measures were taken during the pandemic. The report refers mostly to measures of a more general nature, relating in particular to health and safety in the workplace.

The Committee also notes a comment made by the Hungarian Trade Union Confederation that workers' participation in the determination of issues defined by Article 22 of the ESC is manifestly low in Hungary. However, no promoting measures were adopted during the reporting period by the legislator. The Committee asks the next report to provide information on any awareness raising measures concerning workers' participation in the determination of their working environment and working conditions.

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

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 22 of the Charter on the ground that it has not been established that there exist legal remedies in cases of alleged violation of the right of workers to take part in the determination and improvement of working conditions and the working environment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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