



March 2023

## **EUROPEAN SOCIAL CHARTER (REVISED)**

European Committee of Social Rights

Conclusions 2022

**IRELAND**

*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 Ireland, which ratified the Revised European Social Charter on 4 November 2000. The deadline for submitting the 19<sup>th</sup> report was 31 December 2021 and Ireland submitted it on 31 December 2021.

The Committee recalls that Ireland 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 19<sup>th</sup> report by Irish Human Rights and Equality Commission were registered on 18 July 2022. The reply from the Government to Irish Human Rights and Equality Commission comments was registered on 5 September 2022. Comments on the 19<sup>th</sup> report by Irish Congress of Trade Unions were registered on 25 January 2022. The reply from the Government to Irish Congress of Trade Unions was registered on 27 October 2022.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> 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).

Ireland has accepted all provisions from the above-mentioned group except Article 21.

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

The conclusions relating to Ireland concern 22 situations and are as follows:

– 10 conclusions of conformity: Articles 2§2, 2§4, 2§5, 2§6, 6§1, 6§2, 6§3, 26§1, 26§2 and 29,

– 9 conclusions of non-conformity: Articles 2§3, 2§7, 4§1, 4§2, 4§3, 4§4, 4§5, 5 and 6§4.

In respect of the other 4 situations related to Articles 2§1, 4§3, 22 and 28, the Committee needs further information in order to examine the situation.

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

The next report from Ireland 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](http://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 Ireland and in the comments by the Irish Human Rights and Equality Commission and the Government's response.

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 Ireland was not in conformity with Article 2§1 of the Charter on the ground that the working hours in the merchant shipping sector were allowed to go up to 72 hours per week (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***

The Committee notes that in its previous conclusion it found the situation in Ireland not to be in conformity with Article 2§1 of the Charter on the ground that the working hours in the merchant shipping sector were allowed to go up to 72 hours per week (Conclusions 2014). The Committee also asked the next report to contain information on what the maximum weekly working hours were, including overtime, for doctors in training, as well as persons working in civil protection services.

The Committee notes that, according to the S.I. No. 532/2003 – European Communities (Merchant Shipping), maximum weekly working hours in the merchant shipping sector can go up to maximum 72 hours per week.

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

The report further states that the regulations on working time for persons in civil protection services have to be amended to ensure the compliance with the Working Time Directive. The Committee therefore asks the next report to provide updated information on any amendments adopted in relation to the working time for persons in civil protection services.

With regard to doctors in training, the report states that the maximum average weekly working hours are 48 hours per week.

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 Organisation of Working Time Act 1997 sets out maximum weekly hours and minimum daily rest periods in Ireland. Generally, employees are entitled to a daily rest period of 11 consecutive hours per 24 hour period, a weekly rest period of 24 consecutive hours per 7 days, following a daily rest period, a 15 minute break when more than 4.5 hours have been worked, a 30 minute break when more than 6 hours have been worked, and the maximum number of hours that an employee may work in an average working week is 48 hours (depending on the circumstances the reference period may be for 4, 6 or 12 months).

The report further provides information on enforcement and inspection. Generally, enforcement of the minimum rest periods and intervals at work and the maximum average weekly working hours is a matter for the Workplace Relations Commission (WRC) inspections. Enforcement of working time issues for workers in Road Transport activities is the matter of the Road Safety Authority (RSA), in Civil Aviation activities – of the Irish Aviation Authority (IAA), of Sea going Fishing Activities and Merchant Shipping – Marine Survey Office (MSO). Issues of non-compliance (for WRC) are dealt with by issuing a Contravention Notice outlining the breaches detected and the actions required to rectify them. If no actions are taken within a given timeframe, a Compliance Notice is issued directing remedial action within 42 days. Ultimately, the sanction that may be given is criminal prosecution in the District Court.

The report states that the sanctions that may be imposed for non-compliance with the Compliance notice may be: on summary conviction, class A fine or imprisonment for 6 months or less, or both, or, on conviction on indictment, a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years or both.

The report provides detailed statistical information on WRC inspections carried out in different sectors of activity in 2017-2020 and the incidence of breach. For example, in 2017 the highest incidence of breach was in agriculture, contract cleaning, hair and beauty and wholesale and retail sectors, in 2018 – in electrical, equine, fisheries, food and drink, hair and beauty, transport and wholesale and retail sectors, in 2019 – in construction, contract cleaning, electrical, food and drink, hair and beauty, hotel, transport, wholesale and retail information and communications, mining and quarrying, postal and courier services, real estate and veterinary sectors and in 2020 – in equine activities, mining and quarrying and other accommodation sectors. The report states that in 2020, 7,687 inspections were carried out by the WRC and 41 Compliance Notices were issued.

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

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

In reply, the report states that annual sectoral campaigns are a recurring feature of WRC inspection activity and that sector focused campaign activity in recent years included agriculture, the hospitality and food catering sectors, the fishing sector and meat processing undertakings. The WRC inspectorate pro-actively engages with sectors with a view of raising awareness of employers' statutory employment law obligations and promoting compliance and best practice methodologies. Sectors targeted in recent years included the equine, hospitality sector and employers of domestic workers at home.

The report further states that there were two cases in the 2020 annual report related to the Organisation of Working Time Act 1997 and annual leave and the complainant was awarded €6,000 for the breaches found. The second complaint concerned a failure to provide work or

payments to the complainant except on occasion during a specified period and the complainant was awarded €1,572.75 for the breaches found.

### ***Law and practice regarding on-call periods***

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

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

In reply, the report states that the Organisation of Working Time Act 1997 defines “working time” as any time that the employee is: at his/her place of work or at his/her employer’s disposal and carrying on or performing the activities or duties of his/her work. This definition encompasses all hours of work, including normal contracted hours, night work, overtime, shift work, casual work and any additional or unforeseen hours. The report refers to the CJEU practice on standby time. Also, the Labour Court recommendation (LCR 20837) clarifies that the time spent by workers at work on call (but not actually working) should be acknowledged as working time.

The report further states that the Employment (Miscellaneous Provisions) Act 2018 amended the Organisation of Working Time Act 1997, Section 18, to prohibit zero-hour contracts except in the following circumstances: when the work is of a casual nature; the work is done in emergency circumstances or short-term relief work to cover routine absences for the employer. The amendment introduces a new minimum payment entitlement, which will be payable on each occasion an employee, to whom Section 18 applies, is called in to work and does not receive the expected hours of work. The minimum payment on each occasion will be three times the national minimum hourly rate of pay or three times the minimum hourly rate of pay set out in and Employment Regulation Order. Also, under the Act of 2018, workers whose contract of employment does not reflect the reality of the hours they habitually work, are entitled to be placed in a band of hours that better reflects the hours they have worked over a 12-month reference period.

### ***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 Code of Practice on the Right to Disconnect came into effect on 1 April 2021 and should be seen as a part of a wider suite of moves intended as a response to the changing work environment. The Committee notes that this legislative change is highly appreciated but it is outside the reference period for the purposes of the present reporting cycle.

With regard to additional measures, the report states that the Government has asked the employers to be as flexible as possible during Covid-19. Keeping childcare and childminding services open during Covid-19 is a priority of the Government. To facilitate reasonable working time, the Government launched a National Strategy for Remote Work on 15 January 2021. The Health and Safety Authority has also issued a guidance on working from home for employees, which contains a homeworking risk assessment/checklist to help employers and workers to carry out an assessment of the home working environment.

In its comments, the Irish Human Rights and Equality Commission states that teleworking and working from home often lead to longer working hours, due to a blurring of boundaries between work and personal life. The right to disconnect requires stronger enforcement powers and legislative protections.

In its response, the Government states that Ireland has a Code of Practice on the Right to Disconnect that covers statutory obligations around record keeping, maximum average weekly working hours permitted for employees and rest period entitlements.

#### *Conclusion*

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

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

## **Article 2 - Right to just conditions of work**

### *Paragraph 2 - Public holidays with pay*

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

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

As the previous conclusion found the situation in Ireland to be in conformity with the Charter (Conclusions 2014), there was no examination of the situation in 2022 on this point. Therefore, the Committee reiterates its previous conclusion.

### ***Covid-19***

In reply to the question regarding special arrangements related to the pandemic, the report indicates that provision for an extra public holiday is currently under review following the pandemic as a reward for front line workers and to boost the economy.

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

### *Conclusion*

The Committee concludes that the situation in Ireland 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 Ireland.

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

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

The Committee previously noted that under Section 19§3 of the Working Time Organisation Act, the annual leave of an employee who works 8 or more months in a leave year shall, subject to the provisions of any employment regulation order, registered employment agreement, collective agreement or any agreement between the employee and his or her employer, include a consecutive period of 2 weeks. It also noted that, with the employee’s consent, the holidays can be taken within six months during the following leave year. Therefore, the Committee asked to clarify whether the legislation provided for a minimum amount of leave to be taken in the year in which the leave was due or if the employer might carry over all of the standard leave entitlement to the following year. The report does not provide any clarification on this matter. The Committee understands that the employer may carry over all of the standard leave entitlement to the following year. Therefore, it concludes that the situation in Ireland is not in conformity with Article 2§3 of the Charter on the ground that the law allows all annual leave to be carried over to the following year.

### **Covid-19**

In reply to the question regarding special arrangements related to the pandemic, the report indicates that no changes have been introduced regarding the right to annual holiday with pay; the Organisation of Working Time Act of 1997 continues to provide for a minimum four-week annual leave.

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

### *Conclusion*

The Committee concludes that the situation in Ireland is not in conformity with Article 2§3 of the Charter on the ground that the law allows all annual leave to be carried over to the following year.

**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 Ireland 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 Ireland is in conformity with Article 2§4 of the Charter.

**Article 2 - Right to just conditions of work**

*Paragraph 5 - Weekly rest period*

The Committee recalls that no targeted questions were asked for Article 2§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle.

As the previous conclusion found the situation in Ireland 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 Ireland is in conformity with Article 2§5 of the Charter.

## **Article 2 - Right to just conditions of work**

### *Paragraph 6 - Information on the employment contract*

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

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

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

The report notes that the Employment (Miscellaneous Provisions) Act 2018 introduced several amendments to the Terms of Employment (Information) Act 1994. First, the employer must notify the employee in writing, within five days of commencement of employment, of core terms of employment, namely the full names of the employer and the employee; the address of the employer; the expected duration of the contract, in the case of a temporary contract, or the end date if the contract is a fixed-term contract; the rate or method of calculation of the employee’s pay; and the number of hours the employer reasonably expects the employee to work per normal working day and per normal working week. The other terms of employment to be given to the employee under the Terms of Employment (Information) Act 1994 continue to be required within the existing two-month period. Second, two new offences were introduced regarding the failure to provide the above-mentioned information in the manner prescribed by the law. Third, the amendments detail the employees’ right to bring a claim to the Workplace Relations Commission (WRC) regarding the breach of the requirement to provide information. Fourth, new provisions protect employees against penalisation for invoking their rights to information when starting employment.

### ***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 Ireland 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 Ireland.

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 Ireland was in conformity with Article 2§7 of the Charter, pending receipt of the information requested (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the question raised in its previous conclusion.

The Committee previously asked for information on any provision made for consultation with worker representatives prior to 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 2014). The Committee warned that if the information requested was not provided in the next report, there would be nothing to establish that the situation was in conformity with the Charter. The Committee notes that these questions were carried over from its previous conclusion (Conclusions 2007), in the absence of replies from the State Party (Conclusions 2014). The Committee further notes that the information requested is not provided and reiterates its request. Meanwhile, the Committee concludes that the situation in Ireland is not in conformity with Article 2§7 of the Charter on the ground that it has not been established that employee representatives are consulted regularly on the conditions relating to night work and on measures taken to reconcile employees’ needs and the special nature of night work.

### ***Covid-19***

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

### *Conclusion*

The Committee concludes that the situation in Ireland is not in conformity with Article 2§7 of the Charter on the ground that it has not been established that employee representatives are consulted regularly on the conditions relating to night work and on measures taken to reconcile employees’ needs and the special nature of night work.

## **Article 4 - Right to a fair remuneration**

### *Paragraph 1 - Decent remuneration*

The Committee takes note of the information contained in the report submitted by Ireland and in the comments by the Irish Human Rights and Equality Commission and the Government's response.

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 that the situation was not in conformity with the Charter as reduced national minimum wage applicable to adult workers on their first employment or following a course of studies was not sufficient to ensure a decent standard of living.

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

### ***Fair remuneration***

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

In its previous conclusion (Conclusions 2014) the Committee observed that the National Minimum Wage (NMW) for 2012 net of social contributions and tax deductions represented 62.92% of the Eurostat net average earnings and therefore, was fair within the meaning of Article 4§1 of the Charter. However, it also observed that the reduced rates of the net NMW applicable to adult workers in their first employment and to those following a course of study were below the minimum threshold. It therefore considered that the reduced NMW did not constitute a decent remuneration within the meaning of Article 4§1 of the Charter.

The Committee notes from the report in this respect that the legislation governing the NMW is set down in the National Minimum Wage Act 2000 and the National Minimum Wage (Low Pay Commission) Act 2015. These Acts provide for the setting of the NMW and also provide that in specified circumstances, such as younger workers, a reduced, sub-minimum rate may be applied.

According to the report the Low Pay Commission makes recommendations to the Minister for Enterprise, Trade and Employment designed to set a minimum wage that is fair and sustainable. The minimum hourly rate of pay in 2020 was set at € 10.10. The report also provides information concerning the categories of workers for whom the National Minimum Wage Act 2000 provides exemptions.

The Committee notes from Eurostat that in 2020 the gross average earnings stood at € 49,875 per year (or € 4,156 per month). As regards net average earnings, they stood at € 36,738 per year or € 3,061 per month. Gross monthly minimum wage stood at € 1,706 per month. The Committee notes that the report does not provide information about the net minimum wage. The Committee notes that according to the Government's previous report (national report for Conclusions 2014), the net minimum wage represented around 95% of the gross minimum wage. The Committee thus estimates that the net monthly minimum wage in 2020 stood at € 1,619. The Committee thus observes that the net minimum wage amounted to 52% of net average earnings of a single person.

The Committee recalls that in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is

set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage is between 50 and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee asks the next report to provide this information, and, in the meantime, it reserves its position on this issue.

As regards the Committee's finding of non-conformity (Conclusions 2014) concerning the reduced NMW, the Committee notes that the Low Pay Commission also recommended in 2017 abolishing the training rates and simplifying the youth rates by moving to age related as opposed to experience-based rates. In its report published in 2018 the Low Pay Commission recommended simplifying the rates of minimum age for those aged under 18 to 20 as follows: employees aged 18 receive a minimum of 80% of the NMW and employees aged 19 would receive a minimum of 90% of the NMW. The Committee notes that these rates fall below 50% of the average earnings and are, therefore, not sufficient to ensure a decent standard of living. Therefore, the situation is not in conformity with the Charter.

In this connection, the Committee also notes from the comments of the Irish Human Rights and Equality Commission (IHREC) that the reduced national minimum wage applicable to adult workers on their first employment or following a course of studies is not sufficient to ensure a decent standard of living and has a disproportionate impact on young people entering the workforce.

As regards the proportion of workers earning the national minimum wage or less, the Committee notes from the report that it was reduced from 9.3% of the labour force in 2016 to 6.8% in 2020.

According to the report, there are two initiatives that specifically consider the issues of fair remuneration and adequacy of minimum wages. One initiative concerned the Living Wage Study, commissioned by the Low Pay Commission with a view to examining the design of a living wage and considering the policy, social and economic implications of a move to a living wage. The Study took into account national and international experience of a living wage and examined how a living wage could be calculated in the Irish context, examining, among others, a living wage as a percentage of the country's median wage and a living wage based on the cost of achieving a minimum standard of living, length of time a living wage should be introduced and whether a living wage should be statutory or non-statutory.

### ***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 for enforcement activities (e.g. by labour inspectorates or other relevant bodies) as regards circumvention of minimum wage requirements (e.g. through schemes such as sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).

The Committee notes from the report that the Workplace Relations Commission (WRC) Inspections Service carry out inspections at employers' workplaces to check compliance with employment legislation in areas such as the national minimum wage, working time and rest breaks. According to the report, zero hours contracts are prohibited in most circumstances under the Employment Miscellaneous Provisions Act 2018.

In this connection, the Committee notes that the IHREC is concerned about the lack of adequate protection for employees in precarious employment, zero-hour contracts and workers in the platform or gig economy, including measures to ensure their right to a fair

remuneration. In particular, according to the IHREC the legislation which has amended the Organisation of Working Time Act 1997 to prohibit zero-hour contracts does not cover all categories of precarious work. For example, it may not apply where the expectation of work is based solely on the employee having done work of a casual nature on prior occasions, even if the number of those occasions or other circumstances is such to give rise to a reasonable expectation that they would be required by the employer to do work for the employer. The legislation does not apply to work done for the employer in emergency circumstances, or short-term relief work to cover routine absences. The legislation applies to employees, but not independent contractors. Therefore, there are significant gaps between the prohibition of zero-hour employment contracts and the protection of all workers from the risks of zero-hour work practices. In reply to these observations, the Government indicates that Section 18 of the Organisation of Working Time Act 1997 (OWTA) was amended to prohibit zero-hour contracts, except where the work is of a casual nature; where the work is done in emergency circumstances; or short-term relief work to cover routine absences for the employer.

As regards false self-employment, the report states that there are many ways to work and operate a business. Specific legislative protections for workers apply to each type, including self-employment, full-time employment, part-time employment etc. A binary system exists in relation to employment status, whereby an individual is either self-employed or an employee. No middle ground status exists for platform workers or any other category of worker. Decisions in relation to employment status are made by three different organisations. To improve awareness of the differences between employee and self-employed status, a revised Code of Practice on determining employment status was published in 2021. The misclassification of a worker as being self-employed when their terms and conditions mean that they are, in reality, employees, is a matter of concern. Misclassification reduces contributions to the Social Insurance Fund and excludes workers from full Pay Related Social Insurance and employment rights protections. It is a criminal offence under Section 252 of the Social Welfare Consolidation Act 2005 for an employer to knowingly and falsely classify a person as being self-employed, subject to a penalty on conviction of up to three years' imprisonment. The Committee further notes that the Competition (Amendment Act) 2017 gives a statutory definition of what constitutes 'false' or 'fully dependent' self-employment.

The Committee further notes that the IHREC is concerned that legislative and policy gaps result in employees not being adequately protected from bogus or false self-employment. In reply, the Government indicates that there is no compelling evidence that false self-employment is widespread. The Department of Social Protection takes it very seriously and does not want to see a situation where any workers are denied their social insurance entitlements or where much-needed funds are denied to the Social Insurance Fund. All self-employed contributors are currently covered for a wide range of social insurance benefits including State pension (contributory), widow's, widower's or surviving civil partner's pension (contributory), guardian's payment (contributory), maternity, adoptive and paternity benefits, treatment benefits, invalidity pension, partial capacity benefit if in receipt of invalidity pension, jobseeker's benefit (self-employed) and parent's benefit. The revised Code of Practice on Determining Employment Status – published in July 2021 – reflects both the modern world of work, and the relevant legislation and case law that has emerged from various court cases over the years.

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

As regards furlough schemes, the Committee takes note of the Temporary Wage Subsidy Scheme (March-August 2020) which enabled employers affected by the pandemic to give significant supports directly to their employees and keep their employees on the payroll throughout the pandemic. The Committee takes note of the stages of operation of the scheme, such as transitional and operational phases. This scheme was later replaced by Employment Wage Subsidy Scheme (September 2020- April 2022), under the Financial Provisions (Covid-19) Act 2020. The Office of the Revenue Commissioners publishes guidance on the operation of the scheme. Flat rate subsidies, whose rates were changed over the term of the scheme are paid based on an employee's gross wages. According to the report, details of persons on the Live Register in receipt of the Pandemic Unemployment Payment (PUP) and supported by the Temporary Wage subsidy Scheme or Employment Wage subsidy Scheme, are classified in a number of ways such as by gender, age, county and nationality.

The Committee asks whether the financial support provided for workers throughout furlough schemes was ensured through the period of partial or full suspension of activities due to the pandemic. It also asks what proportion of workers concerned were covered under such schemes.

### ***Conclusion***

The Committee concludes that the situation in Ireland is not in conformity with Article 4§1 of the Charter on the ground that the minimum wage paid to workers of 18 years of age and 19 years of age 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 Ireland and in the comments by the Irish Human Rights and Equality Commission and the Government's response.

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

In its previous conclusion, the Committee considered that the situation in Ireland was not in conformity with Article 4§2 of the Charter on the ground that it had not been established that the right to an increased remuneration for overtime work was guaranteed to all workers (Conclusions 2016). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted question.

### **Rules on increased remuneration for overtime work**

Previously, the Committee found that the situation in Ireland was not in conformity with the Charter because it had not been established that the right to an increased remuneration for overtime work was guaranteed to all workers (Conclusions 2016).

The report states that the increased remuneration for overtime work is not subject to statutory regulation but rather of negotiation and agreement between the parties. The exceptions are the activities covered by Employment Regulation Orders or sector-wide Registered Employment Agreements (REA) which set out increased remuneration rates for overtime work. Most collective agreements contain provisions in relation to remuneration for overtime work.

The report further states that in its judgment of May 2013 the Supreme Court adopted a decision and, as a consequence, the Labour Court no longer has jurisdiction to enforce, interpret or otherwise apply REAs. It meant that new workers in sectors previously covered by the REAs could be hired at any rate agreeable between them and their employers, subject only to provisions of the National Minimum Wage Acts. Sectoral Employment Orders (SEOs) were introduced in order to correct the flaws identified by the Supreme Court decision. A SEO may set out minimum pay rates, pension and sick pay schemes for an economic sector, it also contains a dispute resolution procedure. The new framework provides a mechanism where the Labour Court can initiate a review of the pay, pension and sick pay entitlements for workers in a specific sector and, if appropriate, make a recommendation to the Minister on the matter. The Minister can adopt an Order which is binding across the sector to which it relates.

In July 2021 the Supreme Court upheld the constitutionality of the SEO system and two SEOs – one for the Construction and one for the Electrical Contracting Sector have been approved and signed into law.

The report further states that Joint Labour Committees (JLCs) are bodies established under the Industrial Relations Acts to provide machinery for fixing statutory minimum pay rates and conditions of employment for employees in various sectors. A JLC is composed of equal numbers of representatives of employers and workers in an employment sector. The proposals adopted by the JLC will be submitted to the Labour Court for consideration, which will then make a recommendation on the adoption of proposals. The recommendation will then be forwarded to the Minister and if considered appropriate, an order giving effect to such proposals will be made by the Minister. These orders are known as Employment Regulation Orders (EROs). There are currently eight JLCs in the following sectors: Agriculture, Catering,

Contract Cleaning, Hairdressing, Hotels, Retail Grocery and Allied Trades, English Language Schools and Security.

In its comments, the Irish Human Rights and Equality Commission expresses its concern that there remains no statutory right to increased remuneration for overtime work.

In its response, the Government states that although there is no legal right to pay for working extra hours and there are no statutory levels of overtime pay, many employers pay employees higher rates of pay for overtime.

The Committee welcomes the information provided but considers that it is not clear how exactly overtime work is compensated in different sectors. The Committee thus asks the next report to provide specific information on how workers are compensated for overtime work. In the absence of such information, the Committee reiterates its previous conclusion that the situation in Ireland is not in conformity with Article 4§2 of the Charter on the ground that the right to an increased remuneration for overtime work is not guaranteed to all workers.

### ***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 workers do not have a statutory entitlement to overtime pay. Policy in relation to overtime pay may be decided by the employer and agreed as part of the worker's terms and conditions of employment or through collective agreements. Some of the EROs/REAs may regulate overtime pay and certain sectors have higher rates of pay for overtime than for normal hours. The Employment (Miscellaneous Provisions) Act 2018 provided that from 4 March 2019 an employer must notify each new worker, in writing, within five days of commencement of employment, of, inter alia, the rate or method of calculation of the worker's pay and the number of hours the employer reasonably expects the worker to work per day and per working week.

The report further states that health workers were entitled to overtime pay in accordance with the terms of their contracts and national pay policy from the onset of the Covid-19 pandemic. Special arrangements were introduced for public and community health doctors, specialist registrars in occupational and public health medicine, and GP registrars.

### ***Conclusion***

The Committee concludes that the situation in Ireland is not in conformity with Article 4§2 of the Charter on the ground that the right to increased remuneration for overtime work is not guaranteed to all workers.

## **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 Ireland. It also takes note of the comments submitted by the Irish Human Rights and Equality Commission and of the Government's reply to these comments.

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

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

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

In its previous conclusion, the Committee found that the situation in Ireland was in conformity with Article 4§3 of the Charter, pending receipt of the information requested (Conclusions 2014). The Committee also found that the situation in Ireland was in conformity with Article 20 (Conclusions 2016). In addition, the Committee found in its decision on the merits of collective complaint University Women of Europe (UWE) v. Ireland No. 132/2016 (§182) that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that the obligation to recognise and respect pay transparency in practice was not satisfied.

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

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

#### ***Legal framework***

In its previous conclusion, the Committee asked whether the right to equal pay for work of equal value is explicitly provided for in the legislation.

The report does not contain any information on this point. However, the Committee refers to its decision on the merits of collective complaint UWE v. Ireland No. 132/2016 (§137), where it noted that Section (6)(2)(a) the Employment Equality Act of 1998 prohibits discrimination in the employment relationship on the grounds of gender. Section 19 of this Act guarantees the right to equal pay for work of equal value and Section 7 of this Act defines equal work (see also Conclusions 2012, Article 20).

The Committee notes that the obligation to recognise the right to equal pay for work of equal value in the legislation has been satisfied.

#### ***Pay transparency and job comparisons***

As regards the obligation to ensure *pay transparency* in practice, the Committee noted in its above-mentioned decision on the merits (§§155-160), that it had not yet been satisfied, pending the implementation of the measures foreseen under the Gender Pay Gap Information Bill. The Committee recalls that the follow-up to this complaint will be carried out in Findings 2023.

The report indicates that in line with a Programme for Government commitment to increase pay transparency with a view to reducing the gender pay gap, the Gender Pay Gap Information Act 2021 was signed into law on 13 July 2021 (outside the reference period). The Act provides for the Minister for Children, Equality, Disability, Integration and Youth to make Regulations, requiring employers to publish the following:

- the mean and median hourly wage gap, the former reflecting the entire pay range in an organisation and the latter excluding the impact of unusually high earners;
- data on bonus pay;
- the mean and median pay gaps for part-time employees and for employees on temporary contracts, which is relevant as women work part-time to a greater extent than men;
- the proportions of male and female employees in the lower, lower middle, upper middle and upper quartile pay bands, which, according to the report, will show the extent to which men and women are represented at the various pay levels in the firm.

In addition, the report indicates that the requirement will initially apply to organisations with 250 or more employees but will extend over time to organisations with 50 or more employees. Organisations will be required to indicate the reasons for any gender pay differentials that are reported. The Committee notes from the report that work has commenced on the regulations necessary to implement the provisions of the Act.

In its comments, the Irish Human Rights and Equality Commission confirms that the Gender Pay Gap Information Act 2021 recently introduced into Irish law, has introduced regulations which require employers to publish information in relation to the remuneration of their employees for the purpose of showing whether there are differences referable to gender.

The Committee takes note of the adoption of new legislation on pay transparency. However, as these changes are outside the reference period, the Committee will examine them in the next monitoring cycle. As no changes occurred during the reference period and in view of the above, the Committee concludes that the situation in Ireland is not in conformity with Article 4§3 of the Charter on the ground that, during the reference period, the obligation to recognise and respect pay transparency in practice is not respected.

### ***Statistics and measures to promote the right to equal pay***

For information purposes, the Committee takes note of the Eurostat data on the gender pay gap during the reference period in Ireland: 14.4% in 2017 and 11.3% in 2018 (compared to 12.7% in 2011). It notes that the gap in 2018 was lower than the average of the 27 EU countries, namely 14.4% in 2018 (data as of 4 March 2022). The Committee notes that there are no data for 2019 and 2020.

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

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

In response to the question regarding the impact of Covid-19, the report indicates that the Temporary Wage Subsidy Scheme (TWSS) has been replaced by the Employment Wage Subsidy Scheme (EWSS) as of 1 September 2020. The Committee notes that under the EWSS scheme, employers and new firms in sectors impacted by Covid-19 whose turnover has fallen 30% get a flat-rate subsidy per week based on the number of qualifying employees on the payroll, including seasonal staff and new employees. The EWSS will remain in place in a graduated form until 30 April 2022 for most businesses. For businesses directly impacted by the public health restrictions introduced in December 2021, the EWSS will end on 31 May 2022.

The Committee notes from the report that, based on Revenue Commissioners data, of the 653,300 employees who availed of EWSS, 54% were men and 46% women. Of the 664,000 employees who received a subsidy through the TWSS, 58% were male and 42% female.

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

#### *Conclusion*

The Committee concludes that the situation in Ireland is not in conformity with Article 4§3 of the Charter on the ground that, during the reference period, 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 Ireland and in the comments of the Irish Human Rights and Equality Commission and the Government's response.

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 Ireland was not in conformity with Article 4§4 of the Charter (Conclusions 2014).

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

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

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

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

### ***Reasonable period of notice: legal framework and length of service***

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

In reply to the targeted question, the report indicates that under the terms of the Minimum Notice and Terms of Employment Acts, 1973-2001, which also applies to civil servants, a worker or employer who intends to terminate a contract of employment must provide the other

party with specified minimum notice. Employers are obliged to provide their workers who have been in continuous service with the following notice periods:

- one week for workers with thirteen weeks to two years of service;
- two weeks for workers with two to five years of service;
- four weeks for workers with five to ten years of service;
- six weeks for workers with ten to fifteen years of service;
- eight weeks for workers with more than fifteen years of service.

The report further indicates that any provision in a contract of employment for shorter periods of notice than the minimum periods stipulated in the Acts is null and void. The Acts do not, however, prevent an employer or worker from waiving his/her right to notice or accepting payment in lieu of notice. If the employer does not require the worker to work out any part of the notice, the employer is obliged to pay the worker for that period.

The report states that workers continued to have the same general employment rights during the pandemic, including the right to a reasonable period of notice of termination.

In its comments, the Irish Human Rights and Equality Commission expresses concern that the periods of notice provided for by Irish legislation are not in conformity with Article 4§4 of the Charter.

In its response, the Government states that employees who have been in continuous employment for at least 13 weeks are obliged to provide their employer with one week's notice of termination of employment. Employers must give employees, who have been in continuous service, notice dependent on the length of the employee's service (13 weeks to 2 years – one week; two to five years – two weeks; five to 10 years – four weeks; 10 to 15 years – six weeks; more than 15 years – eight weeks). Complaints can be submitted to the Workplace Relations Commission and also may be referred to a Mediation Officer. They can then be referred to an Adjudication Officer, whose decision may be appealed to the Labour Court.

In its previous conclusion the Committee found that the situation in Ireland was not in conformity with Article 4§4 of the Charter on the grounds that the periods of notice applicable to workers and civil servants were inadequate (Conclusions 2014). The Committee notes that the situation remains unchanged. However, as noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. The Committee notes that the length of service is taken into account by the Minimum Notice and Terms of Employment Acts, 1973-2001, when setting out the minimum notice periods of termination of employment. However, the Committee considers that the minimum notice periods, in particular for workers with up to two years of service and for workers with up to five years of service, are manifestly unreasonable to allow the person concerned a certain time to look for other work before their current employment ends. The Committee therefore reiterates its conclusion of non-conformity with Article 4§4 of the Charter on the ground that the periods laid down in the Minimum Notice and Terms of Employment Act are manifestly unreasonable.

In its previous conclusion the Committee asked for information on the conditions in which workers affected by redundancy or short-term lay-offs are entitled to compensation under the Redundancy Payments Act of 18 December 1967 (No. 21/1967) (Conclusions 2014). The Committee takes note of the detailed information provided in this respect.

In its previous conclusion the Committee also asked for information on the periods of notice and/or the compensation that apply to workers working fewer than 18 hours per week; family members; seafarers governed by the Merchant Navy Act of 25 August 1894; and the categories of workers excluded (section 3, paragraphs 1 and 2 of the Act) from the scope of the Minimum Notice and Terms of Employment Act by Order of the Minister for Enterprise, Trade and Employment. It then asked for details concerning any periods of notice that may have been amended by Order of the Minister for Enterprise, Trade and Employment (section 4, paragraph 4 of the Act) (Conclusions 2014).



In reply to the Committee's question, the report states that since the enactment of the Protection of Workers (Part Time Work) Act 2001 there has been no distinction in the treatment of part time workers and equivalent full time workers vis-a-vis notice requirements. The report provides details on the categories of workers who have no statutory entitlement to a minimum notice (employment by family member; employment as a member of the Permanent Defence Forces (other than a temporary member of the Army Nursing Service); employment as a member of the Garda Síochána; employment under an employment agreement pursuant to Part II or Part IV of the Merchant Shipping Act, 1894). Despite this, according to the report all these workers are entitled to minimum notice under contract law provided for by their contract of employment/service.

### ***Notice periods during probationary periods***

In its previous conclusion the Committee asked for information on periods of notice and compensation in lieu thereof applicable to probationary periods for workers and civil servants. (Conclusions 2014). In reply to the Committee's question, the report states that any worker who has been in continuous service for a period of thirteen weeks or more shall have an entitlement to minimum notice applicable to their service. It further states that there is no exclusion for workers on probation.

### ***Notice periods with regard to workers in insecure jobs***

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

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

In its previous conclusion, the Committee asked for information on the periods of notice and compensation in lieu thereof applicable to cases of termination of employment other than dismissal (such as change in ownership of an enterprise, merger or division, temporary incapacity for work; substantial changes in working conditions; bankruptcy or winding up of the employer; and death of the employer) (Conclusions 2014). In reply to the Committee's question, the report states that workers who have their employment terminated for any reason other than dismissal are entitled to the minimum notice period applicable to their service as set out in section 4 (2) of the Act of 1973.

### ***Circumstances in which workers can be dismissed without notice or compensation***

In its previous conclusion, the Committee noted that section 8 of the Minimum Notice and Terms of Employment Act authorises immediate dismissal in cases of misconduct and asked that the next report clarified the concept of misconduct in this context (Conclusions 2014). The Committee takes note of the detailed explanation provided in the report in this regard.

### ***Conclusion***

The Committee concludes that the situation in Ireland is not in conformity with Article 4§4 of the Charter on the ground that the periods of notice applicable to workers and civil servants are manifestly unreasonable.

## **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 Ireland.

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 found that the situation was not in conformity with the Charter as after authorised deductions, the wages of workers with the lowest pay did not allow them to provide for themselves or their dependants. In particular, the Committee considered that although the “fair and reasonable” amount to which the deducted are limited could, in theory, limit deductions from wages in a way which could preserve workers’ means of subsistence, it had not been established that this principle is applied in the practice of conciliation commissioners or the case-law of the Court of Appeal in matters of employment. It has also not been established that other grounds for deductions authorised under Section 5 of the Payment of Wages Act, taken separately or in conjunction, are subject to the concept of “fair and reasonable”. Therefore, the Committee considered that the situations in which the portion of wages remaining after deductions may not be adequate to ensure the subsistence of workers and their dependents may consequently still exist.

According to the report, an employer is allowed to make the following deductions from an employee’s wage:

- any deduction required or authorised by law;
- any deduction authorised by the term of an employee’s contract (e.g. pension contributions, or particular till shortages);
- any deduction agreed to in writing in advance by the employee (e.g. health insurance subscription, sports and social club membership subscription).

Any deduction (or payment to the employer) arising from any act or omission of an employee must satisfy the following conditions: the employee must be given particulars in writing of the

act or omission and the amount of the deduction (or payment) at least one week before the deduction (or payment) is made, the deduction (or payment) must be made no later than 6 months after the act or omission became known to the employer. However, if a series of deductions (or payments) are to be made in respect of a particular act or omission, the first deduction (or payment) in the series must be made within the 6 month period.

The Committee further notes from the report that there is no statutory provision concerning the portion of wages protected from attachment in cases where multiple deductions are to be made on competing grounds. However, according to the report, an adjudicator in deciding on a claim under the payment of wages would be mindful of the full facts of the individual case and would take the totality of the deductions into consideration. In addition, many contracts of employment and collective agreements would contain provisions concerning the suitable amounts of attachment permissible for one pay period. Furthermore, if the permitted deduction is a revenue recoupment or court order then there would have been consideration of reasonableness of the proposed deductions by the Office of the Revenue Commissioners or the Courts as appropriate.

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

### ***Waiving the right to the restriction on deductions from wage***

The Committee notes that the report does not address the Committee's previous finding of non-conformity concerning the safeguards preventing workers from waiving their rights to limits to wage deductions.

In this connection, the Committee also notes from the Comments by the Irish Human Rights and Equality Commission (IHREC) on the national report of Ireland that under Section 5(2) of the *Payment of Wages Act 1991* prohibits the deduction of wages of an employee in respect of any act or omission of the employee or any goods or services supplied to or provided for the employee by the employer (the provision of which is necessary to the employment). However, this is permitted in certain circumstances, including where the deduction is made by virtue of a term of the contract of employment and is of an amount that is fair and reasonable having regard to all of the circumstances (Section 5(2) of the *Payment of Wages Act 1991*). IHREC expresses its concern that deductions from wages may still be determined by employers and employees in the context of a contractual agreement. Such deductions may also be authorised in circumstances which are not well-defined in the legislation. For these reasons, IHREC asserts that the situation has not been brought into conformity with Article 4§5 of the Charter.

In the absence of any new information in the report in this respect, the Committee reiterates its previous finding of non-conformity on this issue.

### ***Conclusion***

The Committee concludes that the situation in Ireland is not in conformity with Article 4§5 of the Charter on the ground that the safeguards preventing workers from waiving their right to limits to wage deductions are inadequate.

## **Article 5 - Right to organise**

The Committee takes note of the information contained in the report submitted by Ireland as well as of the information provided by the Irish Congress of Trade Unions (ICTU) and the Irish Human Rights and Equality Commission (IHREC) and of the response of the Irish government to these comments.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to 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 (Conclusions 2018), the Committee concluded that the situation in Ireland was not in conformity with Article 5 of the Charter on the grounds that:

- certain closed shop practices are authorised by law;
- the national legislation does not protect all workers against dismissal on grounds of trade union membership or involvement in trade union activities;
- police representative associations are not allowed to join national employees’ organisations.

The Committee also recalls that in the General Introduction 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 conclusion of non-conformity, and to the targeted questions and to the general question.

### ***Prevalence/Trade union density***

According to the report at the end of 2020 (outside the reference period) 54% of workers in the private sector and 46% of workers were members of trade unions.

According to IHREC, only 26% of the employed population are trade union or staff association members.

The report states that in order to support the work of ICTU, the Government provides a grant to assist ICTU in meeting the cost of providing its education, training and advisory service in the area of policy development, the provision of education and training supports to union officials and members, and advice to affiliated unions on particular issues.

### ***Freedom to join or not to join a trade union***

The Committee has previously considered that the situation was not in conformity with the Charter as certain closed shop practices are authorised by law (Conclusions 2014). The report in this respect refers to the *Code of Practice on Victimisation (Declaration) Order (S.I. No. 139 of 2004)* which was amended in 2015. The Committee notes that the Code states that victimisation in the context of this Code of Practice refers to victimisation arising from an employee’s membership or non-membership, activity or non-activity on behalf of a trade union or an excepted body.

The Code provides that neither an employee, employer, trade union or excepted body shall victimize an employee or (as the case maybe) another employee in the employment concerned on account of:

- i) the employee being or not being a member of a trade union or an excepted body;
- ii) the employee engaging or not engaging in any activities on behalf of a trade union or an excepted body.

According to IHREC the situation did not change during the reference period. However, IHREC draws the Committee’s attention to the decision of the Irish Court of Appeal in

O’Connell v. Building and Allied Trade Union [2016] IECA 338,125 where it was held that the defendant trade union had breached the plaintiff’s constitutional right to earn a living when it denied him full membership of the union, in circumstances where it enjoyed an effective monopoly on the relevant market.

In response to these comments, the Government stated that closed shop practices are unlikely to withstand constitutional scrutiny and accordingly, the practice is largely obsolete.

The Committee asks that the next report provide information on the legality and existence in practice of pre-entry closed shops, including information on the effect of the Code on such practices. Meanwhile, it reiterates its previous conclusion.

The Committee previously found the situation not to be in conformity with the Charter on the grounds that national legislation did not protect all workers against dismissal on grounds of trade union membership or involvement in trade union activities (Conclusions 2014). The Committee recalls that the Unfair Dismissals Act 1977, as amended, provides that a dismissal shall be deemed to be unfair if it results wholly or mainly from the employee’s trade union membership or intention to join a trade union or involvement in activities on behalf of a trade union or excepted body. In the context of this provision, “trade union” only refers to an authorised trade union, which is one that has a license to negotiate. The Committee considered that the fact that only members of a trade union with a negotiation licence are protected by the Unfair Dismissals Act 1977, as amended, is contrary to Article 5 of the Charter.

The report refers in this respect to the above-mentioned Code of Practice on Victimisation which sets out the different types of practice which would constitute victimisation arising from an employee’s membership or activity on behalf of a trade union. However, the Committee notes that the Code shall not include any act constituting a dismissal of the employee within the meaning of the Unfair Dismissals Act 1977 to 2015, where there is a separate remedy available. Nonetheless, the Committee asks whether dismissal on grounds of trade union membership or activities where the employee is a member of trade union not holding a negotiation licence would be covered by the Code.

Meanwhile, the Committee reiterates its previous conclusion of nonconformity.

The Committee previously asked to be informed on any developments as regards the implementation of the recommendations of the ILO Committee on Freedom of Association following a complaint alleging anti-union discrimination and a refusal to engage in collective bargaining (Conclusions 2014). The Committee refers to its conclusion under Article 6.2 for information on this issue.

### ***Personal scope***

The Committee examined the right to organise of police personnel in Ireland in the Collective Complaint No. 83/2012 – European Confederation of Police (EuroCOP) v. Ireland, where the Committee held that there was no violation of Article 5 of the Charter on the ground that the police representative associations enjoy the basic trade union rights within the meaning of Article 5 of the Charter. The Committee did however find violation of Article 5 of the Charter on the ground of the prohibition on police representative associations from joining national employees’ organisations.

In the context of the follow-up to the decision the Committee noted that, although implementation of the legislation is still an ongoing process, it allows *An Garda Síochána* to participate in national public service pay negotiations. Therefore, the situation is now in conformity with Article 5 of the Charter (Findings 2021).

As regards the defence forces, the Committee recalls that in the complaint European Organisation of Military Associations (EUROMIL) v. Ireland Complaint No. 112/2014, decision on the merits of 12 September 2017, it noted that Ireland allows members of the armed forces to join professional associations subject to certain conditions but found a violation of Article 5

on the grounds that that the complete prohibition against military representative associations from joining national employees' organisations was not necessary and proportionate. In its Findings 2021 the Committee found that the situation had still not been brought into conformity in this respect.

The report states that the issue is currently before the courts. In its response to IHREC comments, the Government further states that both Defence Forces Representative Associations (PDFORRA & RACO) sought associate membership with the Irish Congress of Trade Unions (ICTU) for the purpose of being involved in central public sector pay negotiations. Conditional temporary consent for this purpose was provided to both organisations in late May and early June 2022, respectively (outside the reference period). This associate membership is temporary until the appropriate legislative provision is put in place.

The Committee concludes, however, that during the reference period the situation was not in conformity with Article 5.

### *Conclusion*

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

- certain closed shop practices are authorised by law;
- domestic law does not protect all workers against dismissal on grounds of trade union membership or involvement in trade union activities;
- during the reference period military representative associations were prohibited from joining national employees' organisations.

**Article 6 - Right to bargain collectively**  
*Paragraph 1 - Joint consultation*

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

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

As the previous conclusion found the situation in Ireland 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 Ireland is in conformity with Article 6§1 of the Charter.

## **Article 6 - Right to bargain collectively**

### *Paragraph 2 - Negotiation procedures*

The Committee takes note of the information contained in the report submitted by Ireland, as well as of the information provided by the Irish Congress of Trade Unions (ICTU), the Irish Human Rights and Equality Commission (IHREC), and of the response of the Irish Government to these comments.

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 Ireland was not in conformity with Article 6§2 of the Charter on the ground that the legislation and practice failed to ensure the sufficient access of police representative associations into pay agreement discussions (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.

With regard to the ground of non-conformity, the Committee refers to its latest assessment of follow-up to the decision on the merits in *European Confederation of Police (EuroCOP) v. Ireland* (Complaint no. 83/2012, decision on the merits of 2 December 2012), concluding that the situation had been brought into conformity with Article 6§2 of the Charter. In doing so, the Committee noted that the Garda Associations can take part in national public service pay negotiations and access the Workplace Relations Commission and the Labour Court.

The Committee previously asked to be informed on any developments as regards the implementation of the recommendations of the International Labour Organization’s Committee on Freedom of Association following a complaint alleging anti-union discrimination and a refusal to engage in collective bargaining (Conclusions 2014).

According to the report, Section 30 of the Industrial Relations (Amendment) Act 2015 introduces a mechanism so as to ensure that where an employer chooses not to engage in collective bargaining either with a trade union or an internal ‘excepted body’, and where the number of employees on whose behalf the matter is being pursued is not insignificant, a trade union may seek to have the remuneration and terms and conditions of its members in that employment assessed against relevant comparators and determined by the Labour Court, if necessary.

The Industrial Relations (Amendment) Act 2015 also explicitly prohibits the use of inducements by employers to persuade employees to forego collective bargaining representation and provides protections for workers who invoke the provisions of the 2001/2004 Industrial Relations Acts or who have acted as a witness or a comparator for the purposes of those Acts.

Furthermore, the Code of practice on Victimisation makes it explicit that any adverse effect arising from an employee refusing an inducement (financial or otherwise) designed specifically to have the employee forego collective representation by a trade union is a form of victimization.



The ICTU in its comments notes that Labour Court statistics and very low user take-up indicate that Section 30 of the Industrial relations (Amendment) Act 2015 is no longer operable or utilised. It further highlights that in Ireland workers have no collective bargaining rights with employers nor does current legislation confer any such collective rights of representation to workers by the trade union of their choice.

The Committee notes that a High-level Review Group was established to examine these issues and its final report was published in 2022. The Government will examine the report with a view to seeing how its recommendations can be implemented. The Committee asks the next report to provide updated information in this respect.

The report does not provide any relevant information in relation to the above-mentioned general question. However, the Committee notes that it has previously decided that the situation in Ireland was in conformity with Article 6§2 of the Charter (*Irish Congress of Trade Unions (ICTU) v. Ireland*, Complaint no. 123/2016, decision on the merits of 12 September 2018). This conclusion was predicated on an assumption that Section 15F of the Competition Act 2002 would not be given an interpretation that was overly restrictive, considering the requirements under Article 6§2 of the Charter (at §110-111 of the decision). Therefore, the Committee asks for information in the next report about the practical application of Section 15F of the Competition Act 2002 insofar as different categories of self-employed workers are concerned, following the adoption of the Competition (Amendment) Act 2017.

### **Covid-19**

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

#### *Conclusion*

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

**Article 6 - Right to bargain collectively**

*Paragraph 3 - Conciliation and arbitration*

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

As the previous conclusion found the situation in Ireland 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 Ireland 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 Ireland and of the comments from the Irish Human Rights and Equality Commission (IHREC).

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

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

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

- only authorised trade unions, which are trade unions holding a negotiation licence, their officials and members were granted immunity from civil liability in the event of a strike;
- the absolute prohibition of strike action by police forces went beyond the conditions established by Article G of the Charter;
- under the Unfair Dismissals Act, an employer could dismiss all employees for taking part in a strike.

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 report, the Government provides information that the Committee had already considered in its previous conclusions. Since the situation has not changed, the Committee reiterates its conclusion of non-conformity on this point.

#### ***Restrictions to the right to strike, procedural requirements***

In its third assessment of the follow-up to its decision of 2 December 2013 on admissibility and the merits of Complaint No. 83/2012, European Confederation of Police (EuroCOP) v. Ireland (Findings 2021), the Committee found that the situation had not been brought into conformity with Article 6§4 of the Charter, as Irish legislation still provided for a blanket ban on police strikes.

In its report, the Government states that the unique position of the police (*An Garda Síochána*) is such that any strike action is likely to impact on policing, the security of the State or the maintenance of public authority. The Government recognises that the prohibition of strikes places a particular obligation to ensure that the dispute resolution processes in place for the police are robust and effective, and that members of the force are not disadvantaged.

In this regard, the Government states that following the Committee’s conclusion of non-conformity, changes were made to the police’s internal dispute resolution mechanisms. These mechanisms allow for the resolution of collective disputes and support ongoing engagement between police management and the representative associations on relevant industrial relations issues. They also provide for formal access to the Workplace Relations Commission and the Labour Court for disputes which cannot be resolved internally. The Government reports that in implementing the new internal dispute resolution mechanisms in the police

force, every effort has been made to identify and agree processes that eliminate the need to have recourse to industrial action.

IHREC notes that the absolute prohibition of strikes remains in place.

Since the situation has not changed, the Committee reiterates its conclusion of non-conformity on this point.

### ***Consequences of strikes***

The Government's report and IHREC's comments show that the situation has not changed: under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in a strike. Since the situation has not changed, the Committee reiterates its conclusion of non-conformity on this point.

### ***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 states that no specific measures were taken in connection with the Covid-19 crisis to ensure the right to strike or to restrict the right of workers and employers to take industrial action.

### ***Conclusion***

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

- only authorised trade unions, their officials and members are granted immunity from civil liability in the event of a strike;
- the police are denied the right to strike;
- an employer may dismiss all employees for taking part in a strike.

## **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 Ireland. It also takes notes of comments by the comments by the ICTU, comments by the Irish Human Rights and Equality Commission (IHREC) and of the Government's of Ireland response to IHREC comments.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 22 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Labour rights").

The Committee recalls that Article 22 secures the right of workers to participate, by themselves or through their representatives, in the shaping and improvement of their working environment.

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

The Committee notes that it has examined the situation in Ireland under this provision only once (Conclusion 2014). It has then deferred its conclusion, in the light of lack of information on participation of workers in shaping their working conditions, work organisation and working environment. The report refers in response to the legal framework setting out minimum requirements for the right to information and consultation of employees in undertakings with at least 50 employees. It further states that the Industrial Relations Act 2015 provides a framework for workers looking to improve their terms and conditions of employment, where collective bargaining is not recognised by their employer. The Committee recalls that the right to information and consultation is covered by Article 21 by the Charter. It asks the next report to provide specific information on how workers take part in the termination and improvement of working conditions and working environment in undertaking with at least 50 employees, as required by Article 22 of the Charter.

The Committee has also previously requested information on the right of workers and/or their representatives to take part in the organisation of social and socio-cultural services within the undertaking. It asked how workers or their representatives participated in the organisation of these services in Ireland (see Conclusions 2014). The report does not provide any information in this respect.

The Committee recalls in this context that Article 22 of the Charter does not require that employers offer social and socio-cultural services and facilities to their employees, but requires that workers may participate in their organisation, where such services and facilities have been established (Conclusions 2007, Italy). The Committee reiterates its request for information and considers that if it is not provided in the next report, there will be nothing to establish that the situation in this respect is in conformity with the Charter.

The Committee notes concerns raised by the IHREC that disabled employees do not have an express right to consult with their employer in relation to the provision of reasonable accommodation in the workplace. IHREC is therefore of the view that disabled employees are not adequately afforded the right to take part in the determination and improvement of the working conditions and working environment under Article 22; and that the State needs to urgently legislate for a proactive duty on employers. In reply, the Irish government provides that pursuant to Regulation 25 of the Safety, Health and Welfare at Work (General Application) Regulations 2007 to 2021 the provision of suitable accommodation for all workers at a place of work must be taken into consideration when an employer carries out their statutorily required risk assessment and should also be referred to their written safety statement. The relevant contents of the employer's safety statement must be shared with appropriate workers

and the workers must acknowledge having received the information to validate the employer's safety statement. The Committee asks the next report to provide information on supervision of the respect of this provision in practice.

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

The report states in reply that the Minister for Enterprise Trade and Employment published Ireland's National Remote Work Strategy and set out the path to making remote working a more permanent option in workplaces across Ireland after the Covid-19 pandemic has passed. It also refers to the introduction of the right to disconnect. The Committee notes that these matters are not relevant for the assessment under Article 22 of the Charter.

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

#### *Conclusion*

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

**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 Ireland.

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

In its previous conclusion, the Committee concluded that the situation in Ireland was in conformity with Article 26§1 of the Charter (Conclusions 2014).

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

***Prevention***

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

The report provides information on awareness-raising campaigns developed under the second National strategy to combat domestic, sexual and gender-based violence, such as the campaign “No Excuses” focused on sexual harassment and sexual violence launched in 2019, whose adverts cover a number of scenarios which include sexual harassment in the workplace. The report also mentions the development of Ireland’s third National strategy to combat domestic, sexual and gender-based violence. The latter will give priority to prevention and reduction, and will include a national preventative strategy.

The report indicates that in October 2020, the Department of Justice launched the programme “Supporting a Victim’s Journey: A Plan to Help Victims and Vulnerable Witnesses in Sexual Violence Cases” aimed at introducing important reforms to support and protect vulnerable victims, and to ensure that the criminal justice system is more victim-centered.

***Liability of employers and remedies***

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

In its previous conclusions, the Committee noted that moral and sexual harassment are prohibited under Irish law as a form of discrimination in the Employment Equality Acts 1998-2011 and the Equal Status Acts 2000-2011 (see Conclusions 2007; Conclusions 2014). The current report refers to the same legislation, namely the Employment Equality Acts 1998 to 2015 and the Equal Status Acts 2000 to 2018.

The Committee previously took note that a revised Code of Practice on Sexual Harassment and Harassment at Work was published by the Equality Authority in 2012 (Conclusions 2014). The current report indicates that the Code of Practice has recently been revised by the Irish Human Rights and Equality Commission and is awaiting Ministerial approval. The Committee asks to be kept informed of any relevant amendments in relation to list of forms of behaviour which may be regarded as acts of sexual harassment.

The report indicates that the enactment in February 2021 (outside the reference period) of the Harassment, Harmful Communications and Related Offences Act 2020 (“Coco’s Law) created two separate image-based criminal offences and broadened the scope of the existing offence of harassment to cover all forms of persistent communications about a person. It is reported

that the Department has been running a campaign on intimate image abuse to highlight the new offences introduced by Coco's law.

### ***Damages***

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

The report indicates that under Employment Equality legislation, the redress that may be awarded by the Workplace Relations Commission in complaints of harassment or sexual harassment includes one or more of the following, as appropriate:

- an order for equal treatment; an order for compensation of up to 2 years' pay or up to €40 000, whichever is the greater, for the effects of discrimination or harassment/sexual harassment suffered (and for someone who is not an employee of the respondent, compensation of up to €13 000 is applicable);
- an order for compensation of up to 2 years pay or up to €40 000, whichever is the greater, for the effects of 'victimisation' (and for someone who is not an employee of the respondent, compensation of up to €13 000 is applicable);
- an order for a specified person to take a specified action; and an order for re-instatement or re-engagement.

The report indicates that complaints on the gender ground may also be brought in the first instance before the Circuit Court, and that in such cases no prior upper limit applies to the compensation that may be awarded by the Circuit Court.

### ***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, and moral harassment. The Committee welcomed specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

The report indicates that during its meetings in 2020, the Worker and Employer Advisory Committee of the Irish Human Rights and Equality Commission, which is made up of representatives of trade unions and employer groups, addressed the right to decent work and the impact of Covid-19 on employment, unemployment and supports and services to those most affected.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Ireland 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 Ireland.

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

In its previous conclusion, the Committee concluded that the situation in Ireland was in conformity with Article 26§2 of the Charter (Conclusions 2014).

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

***Prevention***

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

The report indicates that a Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work came into effect in December 2020. The Code sets out the responsibilities and the roles of the Health and Safety Authority (HSA) and the Workplace Relations Commission (WRC). It gives guidance for employees, employers and trade unions on dealing with an informal and formal bullying complaint in the workplace. While failure to follow a Code prepared under the Industrial Relations Act 1990 is not an offence in itself, Section 42(4) provides that in any proceedings before a Court, the Labour Court or the WRC, a code of practice shall be admissible in evidence and any provision of the Code which appears to the Court, body or officer concerned to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

***Liability of employers and remedies***

The Committee noted previously that moral and sexual harassment are prohibited under Irish law as a form of discrimination in the Employment Equality Acts 1998-2011 and the Equal Status Acts 2000-2011 (Conclusion 2007; Conclusions 2014). The current report refers to the same legislation, namely the Employment Equality Acts 1998 to 2015 and the Equal Status Acts 2000 to 2018.

The report further indicates that the Irish Government has, in its current Programme, committed to examining the introduction of a new ground of discrimination based on socioeconomic disadvantage to the Employment Equality and Equal Status Acts. The Committee asks for information on any developments on this initiative in future reports.

The Committee took note previously that a revised Code of Practice on Sexual Harassment and Harassment at Work was published by the Equality Authority in 2012 (Conclusions 2014). The current report indicates that the Code of Practice has recently been revised by the Irish Human Rights and Equality Commission and is awaiting Ministerial approval. The Committee asks to be kept informed of any relevant amendments in relation to the list of forms of behaviour which may be regarded as acts of moral harassment.

The report indicates that the enactment in February 2021 (outside the reference period) of the Harassment, Harmful Communications and Related Offences Act 2020 created two separate image-based criminal offences and broadened the scope of the existing offence of harassment to cover all forms of persistent communications about a person. It is reported that the

Department has been running a campaign on intimate image abuse to highlight the new offences introduced by Coco's law.

### ***Damages***

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

The report indicates that under Employment Equality legislation, the redress that may be awarded by the Workplace Relations Commission in complaints of harassment or sexual harassment includes one or more of the following as appropriate:

- an order for equal treatment; an order for compensation of up to 2 years' pay or up to €40 000, whichever is the greater, for the effects of discrimination or harassment/sexual harassment suffered (and for someone who is not an employee of the respondent, compensation of up to €13 000 is applicable);
- an order for compensation of up to 2 years' pay or up to €40 000, whichever is the greater, for the effects of 'victimisation' (and for someone who is not an employee of the respondent, compensation of up to €13 000 is applicable);
- an order for a specified person to take a specified action; and an order for reinstatement or re-engagement.

The report indicates that complaints on the grounds of gender may also be brought in the first instance before the Circuit Court, and, in such cases, no prior upper limit applies to the compensation that may be awarded by the Circuit Court.

### ***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, and moral harassment. The Committee welcomed specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

The report indicates that during its meetings in 2020, the Worker and Employer Advisory Committee of the Irish Human Rights and Equality Commission, which is made up of representatives of trade unions and employer groups, addressed the right to decent work and the impact of Covid-19 on employment, unemployment and supports and services to those most affected.

### ***Conclusion***

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

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

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

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

In the previous conclusion (Conclusions 2014), the Committee concluded that pending receipt of the information requested, the situation in Ireland was in conformity with Article 28 of the Charter.

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

### ***Protection granted to workers' representatives***

In the previous conclusion (Conclusions 2014), recalling that the protection afforded to workers' representatives should extend for a period beyond the mandate and that 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 Committee asked to be informed on how long the protection for workers' representatives lasts after the end of their functions.

Moreover, the Committee also recalled that where a dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim and added that the compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement. Therefore, the Committee asked the next report to indicate whether an adequate compensation proportionate to the damage suffered by the workers' representative who is dismissed is granted.

In reply, the report reiterates that the 2006 Employees Act (Provision of Information and Consultation) provides that an employer should not penalise representatives for performing their functions under the Act (for example, by dismissal or other prejudicial treatment such as unfavourable changes in conditions of employment). It also reiterates that according to this Act, a grievance arising in this regard can be referred to a Rights Commissioner and that a decision of a Rights Commissioner can be appealed to the labour court.

The report underlines in addition that Section 27 of the 2005 Safety, Health and Welfare at Work Act provides protection against such penalisation, including suspension, lay-off or dismissal or the threat of suspension, demotion or loss of opportunity for promotion; transfer of duties, change of location of place of work, reduction in wages or change in working hours; imposition of any discipline, reprimand or other penalty (including a financial penalty), and coercion or intimidation.

According to the report, a Code of Practice on duties and responsibilities of employee representatives and the protection and facilities was introduced by the Labour Relations Commission in 1993 under the 1990 Industrial Relations Act. Section 5 of this Code regarding the protection of Employee Representatives, sets out that Employee representatives who carry out their duties and responsibilities should not be dismissed or suffer any unfavourable change in their conditions of employment or unfair treatment, including selection for redundancy, because of their status or activities as employee representatives; or suffer any action prejudicial to their employment because of their status or activities as employee

representatives, without prior consultation taking place between the management and the relevant trade union.

The report lastly indicates that there has been no change to any of the above legal provisions during the Covid-19 pandemic.

However, the report does not provide any answer to the above-mentioned questions, namely on how long the protection for workers' representatives lasts after the end of their functions and on provisions concerning the proportionate compensation in case of breach of the guarantees granted to workers' representatives.

The Committee reiterates its questions. It considers that if the next report does not provide answers in these respects, there will be nothing to establish that the situation in Ireland is in conformity with the Charter.

### ***Facilities granted to workers' representatives***

In the previous conclusion (Conclusions 2014), the Committee took note of the relevant legislation which sets out the facilities granted to workers' representatives, including the 2006 Employees Act (Provision of Information and Consultation), the 1996 Transnational Information and Consultation of Employees Act, the 2006, 2007 and 2008 European Communities Regulations and the 1993 Code of Practice of Employee Representatives. These legal provisions provide that employees' representatives shall be afforded any reasonable facilities, including paid time off, that will enable them to perform their functions as employees' representatives, or as a member of special negotiating body.

The Committee previously asked (Conclusions 2014) how the above-mentioned provisions/regulations are implemented in practice. It requested that the next report provide examples of such facilities granted to workers' representatives in practice.

However, although the report mentions the relevant legal provisions, it does not provide any answer concerning the implementation of these regulations in practice. The Committee reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ireland is in conformity with the Charter on this point.

### ***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 Ireland.

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

In the previous conclusions (Conclusions 2014), the Committee concluded that, pending receipt of information requested, the situation in Ireland was in conformity with Article 29 of the Charter.

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

### ***Definitions and scope***

The Committee understands from the information provided in the report, that there have been no changes to the situation which it previously found to be in conformity with the Charter (Conclusions 2007 and 2014).

### ***Prior information and consultation***

In reply to the question previously raised by the Committee (Conclusions 2014), the report explains that under the Protection of Employment Act, there are a number of provisions regarding the information and consultation process that must be entered into prior to any redundancies being implemented and regarding the provision information to employees and to the Minister for Jobs, Enterprise and Innovation.

According to the report, Sections 9 and 10 of the Protection of Employment Act make it mandatory on employers proposing a collective redundancy to engage in an information and consultation process with employees’ representatives and to provide certain information relating to the proposed redundancies. An employer is prohibited from issuing any notice or redundancy during the mandatory 30-day (minimum) employee information and consultation period.

As to the measures aimed at mitigating the consequences of collective redundancies, the report indicates that a Job Loss Response Protocol has been established between the Department of Social Protection (DSP), Department of Further and Higher Education, Research (DFHERIS), Innovation and Science and the Department of Enterprise, Trade and Employment (DETE). In practice as the redundancy position becomes clear, the protocol arrangements are put in place to assist the impacted workers access their welfare entitlements, job-search assistance and access to the wide range of upskilling and reskilling opportunities available. These arrangements include the creation of a “high-level skills profile” for each worker losing their job in order to ensure that those workers receive the best advice concerning training opportunities and in finding new employment. Moreover, the relevant public agency (the Department of Social Protection) assists the business to maintain or extend existing jobs, providing advice to management about a potential Management-Buy-Out, conducting searches to find replacement business to take over the vacant premises and attempt to minimise the commercial impacts on the firm’s suppliers. The Department of Social Protection tries to get the firm to commit to funding employment support services, releasing staff from work so that they can attend upskilling before they finish up, letting an employee leave with full redundancy if an employee finds another job with a start date before they get to their exit date.

The report indicates in addition that the Job Loss Response Protocol also involves assessing whether the location is suitable for a replacement firm to take over some of the existing staff or premises and providing advice for workers who are seeking advice on starting a business.

### ***Sanctions and preventative measures***

In response to the question raised by the Committee in the previous conclusion with regard to the guarantees which accompany the consultation rights ensuring that they can be exercised effectively in practice, the report indicates that pursuant to Section 11 of the Protection of Employment Act, an employer found guilty or failing to comply with Section 9 (obligation to consult) or Section 10 (obligation to supply certain information) may be subject to a fine not exceeding 5,000 €.

The report also indicates that Regulation 6 of the European Communities (Protection of Employment) Regulations 2000 provides a remedy for employees whose employer has not complied with Sections 9 and 10 of the Protection of Employment Act whereby they may refer complaints to the Labour Relations Commission.

### ***Covid-19***

The report indicates that there have been no changes to the law or practice during the pandemic and the Workplace Relations Commission have facilitated both in person and remote meetings between employer and employee representatives as required through the pandemic.

#### *Conclusion*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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