



March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

ITALY

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 Italy, which ratified the Revised European Social Charter on 5 July 1999. The deadline for submitting the 21st report was 31 December 2021 and Italy submitted it on 1 March 2022.

The Committee recalls that Italy 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 Italian report by the *Sindacato Italiano Lavoratori Finanziari* were registered on 27 June 2022. The reply from the Government to these comments was registered on 18 August 2022.

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

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

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

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

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

– 11 conclusions of conformity: Articles 2§3, 2§5, 2§6, 4§2, 6§4, 21, 22, 26§1, 26§2, 28 and 29,

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

In respect of the other 3 situations related to Articles 2§1, 4§5 and 6§1 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 Italy under the Revised Charter.

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

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),

- the right of the family to social, legal and economic protection (Article 16),
- the right of children and young persons to social, legal and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 December 2022.

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

Article 2 - Right to just conditions of work
Paragraph 1 - Reasonable working time

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

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 Italy was not in conformity with Article 2§1 of the Charter on the ground that the weekly working hours of workers on sea-going vessels could be up to 72 hours (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Measures to ensure reasonable working hours

The Committee notes that in its previous conclusion it found the situation in Italy not to be in conformity with Article 2§1 of the Charter on the ground that the weekly working hours of workers on sea-going vessels could be up to 72 hours (Conclusions 2014).

In reply, the report states that the legislative framework has not been changed concerning this matter. The report reiterates that the Italian legislation is in line with the European Union regulations.

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.

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 provides information on sanctions applicable in the event of non-compliance with the maximum working time. In accordance with Article 4 of the Legislative Decree No. 66/2003, collective agreements establish the maximum weekly working hours which cannot exceed 48 hours per 7-day period, including overtime. The breach of these rules may result in an administrative sanction of €200-€1,500, which is given to the employer for each worker and each period to which the breach is related to. If the breach relates to more than 5 workers or it has occurred in at least three reference periods, the administrative sanction ranges from €800 to €3,000. If the breach relates to more than 10 workers or it has occurred in at least five reference periods, the administrative sanction ranges from €2,000 to €10,000 and the payment of a reduced sanction is not allowed. The Constitutional Court declared Article 18 bis, paragraphs 3 and 4 of the Legislative Decree No. 66/2003 in relation to the penalties provided

for in case of violation of the maximum working hours as they are higher than those laid down in the previous system. Also, starting from 1 January 2019, violation of the regulation on working hours and daily/weekly rest periods entails penalties for the employer that are increased by 20%: for up to five workers – between €120-€360 and €240-€1,800; for up to 10 workers or if it has occurred in at least five reference periods – between €480-€1,800 and €960-€3,600; for more than 10 workers or if it has occurred in at least five reference periods – between €960-€5,400 and €2,400-€12,000.

The report further provides results of the supervisory activity. In 2020, supervision of working hours carried out and violations in respect of 11,016 workers were found, the most violations in tertiary (8,413 workers) and manufacturing (1,624 workers) sectors. In the road transport sector, 467 employers were charged with violations on the organisation of working hours for persons performing road transport mobile activities and 2,917 violations were related to driving, breaks and rest periods.

Law and practice regarding on-call periods

In its previous conclusion, the Committee asked what rules applied to on-call service and whether inactive periods of on-call duty were considered as a rest period in their entirety or in part (Conclusions 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 when the worker is not at the workplace but he or she is in the so-called regime of passive standby, such period is not considered as working hours. On the contrary, active standby is fully calculated towards working hours as it requires physical presence of a worker at the workplace, or another place established by the employer. The report mentions the rulings of the CJEU on this matter.

The report also states that the Italian case-law has also recognised the limitations imposed to the worker's right to rest when he or she is on-call.

The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France* (§§ 64-65), Complaint No. 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at his or her disposal, could not constitute an adequate criterion for regarding such a period a rest period. The Committee held that the equivalisation of an on-call period to a rest period, in its entirety, constituted a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home. The Committee again asks whether inactive periods of on-call duty not at a workplace are considered or not as rest periods. In the meantime, the Committee reserves its position on this point.

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

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to provide information on the impact of the Covid-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. More specifically, the Committee asked for information on the enjoyment of the right to reasonable working time in the following sectors: healthcare and social work; law enforcement, defence and other essential public services; education, transport.

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

The report also states that remote work was widely used to avoid the spread of the virus, which was a novelty because before 2020 remote work was very occasional. Remote work is defined in the Law No. 81/2017 and when working remotely daily and weekly working hours have to be respected.

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 Italy.

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).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2014).

The Committee previously noted (Conclusions 2014, 2010) that work done on public holidays conferred an entitlement to increased remuneration, the amount of which was determined by collective agreements. In this regard, based on the examples of collective agreements provided, the increase was 50% of the usual rate of pay. The Committee asked to clarify whether such increased remuneration is paid in addition to the normal remuneration due in respect of the public holiday with pay (100%), whether calculated on a daily, weekly or monthly basis.

In addition, the Committee previously noted that compensatory leave may also be granted for work done on a public holiday. In this connection, it asked to indicate whether equivalent compensatory leave was granted in all cases when an employee worked on a public holiday (other than on a Sunday or the usual weekly rest day) and what rate of pay was provided for when an employee worked on a public holiday (other than a Sunday) and was granted a day's compensatory leave.

In response, the report points out that the Italian legal framework does not consider the right to rest on a public holiday as an absolute and inalienable, since it is not expressly provided for in the Constitution. However, the principle recognised by Italian case law is that a worker has the right to abstain from work on public holidays without losing his pay. According to the report, the Court of Cassation, in its ruling No. 16952 of 7 August 2015, confirmed that an employee can work on midweek holidays dedicated to religious or civil holidays only if there is an agreement with the employer, as he/she cannot be forced to perform the service.

The report adds that collective bargaining agreements may provide for *shift work*, which includes an obligation to work on public holidays. In this case, the employee must work on public holidays. Article 5 of Law No. 260 of 27 May 1949 provides that "an extra increase for holiday work (for the hours really worked) shall be paid, in addition to the normal global daily pay, including all additional elements" to workers who work on public holidays. The Committee notes from the report that employees are entitled to increased remuneration in addition to the normal remuneration due in respect of the public holiday with pay. The amount of the increased remuneration is determined by collective agreement.

With regard to *compensatory leave*, the report indicates that, in the silence of the law, it could be provided for by collective agreements in addition to increased pay.

The report provides an example of the National Collective Labour Agreement for Workers Employed in the Private Metalworking and Installation Industry, signed on 26 November 2016. Article 7 of this agreement provides for a 50% increase or the cumulation of compensatory leaves with a 10% increase, in the case of working on a public holiday.

The Committee recalls that Article 2§2 of the Charter guarantees the right to public holidays with pay, in addition to weekly rest periods and annual leave. It recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Accordingly, work carried out on that holiday must be paid at least double the usual wage. The remuneration may also be provided as compensatory time-off, in which case it should be at

least double the days worked (Statement of interpretation on Article 2§2; Conclusions 2014, Article 2§2, Serbia). In view of the above, the Committee requests that information be provided in the next report on all collective agreements that provide for a level of compensation below double (in the form of wage increases and/or compensatory time off, in addition to regular wages paid for work on public holidays. In the meantime, the Committee considers that the situation is not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated.

Covid-19

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

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

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated.

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

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).

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

Therefore, the Committee reiterates its previous conclusion.

Covid-19

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

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

The Committee notes that no targeted questions were asked in relation to Article 2§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in Italy was not in conformity with Article 2§4 of the Charter on the grounds that there was no adequate prevention policy regarding the risks in inherently dangerous and unhealthy occupations, and it was not established that the right to just conditions of work with regard to the risks present in inherently dangerous or unhealthy occupations is guaranteed.

Elimination or reduction of risks

The Committee recalls that the first part of Article 2§4 requires states to eliminate risks in inherently dangerous or unhealthy occupations. This part of Article 2§4 is closely linked to Article 3 of the Charter (right to safe and healthy working conditions), under which the states undertake to pursue policies and take measures to improve occupational health and safety and prevent accidents and damage to health, particularly by minimising the causes of hazards inherent in the working environment.

The Committee refers to its conclusion under Article 3§1 of the Charter (Conclusions 2017), which was deferred, because it needed to be established whether there is an appropriate occupational health and safety policy. It also asked whether all employers must carry out a risk assessment irrespective of the size of the undertaking.

The Government reiterates in the report submitted in 2021 that the policy and strategy in force are fully in line with the EU strategy. It refers to the general protection measures provided for in Article 15 of Legislative Decree No. 81 of 9 April 2008. They include the assessment of all health and safety risks as well as their elimination and, where this is not possible, their reduction to a minimum in relation to the knowledge acquired on the basis of technical progress. In addition, there is provision for reducing risks at source, replacing what is dangerous by what is not or is less dangerous, and limiting to a minimum the number of workers who are or can be exposed to risk.

The Committee notes that there is no new information about any legislation adopted during the relevant period, nor about how this has been applied in practice in particular. It has not been provided with evidence of the effective implementation of the relevant measures, including as regards the labour inspectorate activities in this respect. This had already been requested in 2014. In that occasion, the Committee had noted that a number of measures remain to be introduced and implemented so as to offset the deficiencies noted and ensure effective prevention of the risks linked to dangerous or arduous occupations. The report contains no new information on this point.

The Committee therefore reiterates that it has not been established that the risks inherent in dangerous or unhealthy occupations have been sufficiently eliminated or reduced.

Measures in response to residual risks

The Committee recalls that where risks have not yet been eliminated or sufficiently reduced despite the application of preventive measures, or where they have not been applied, the second part of Article 2§4 requires States to ensure that workers exposed to such risks are granted some form of compensation. The aim of these measures must be to provide the

persons concerned with sufficient and regular rest periods to recover from the stress and fatigue caused by their activity and thus maintain their alertness or limit exposure to the risk.

In its previous conclusion, the Committee concluded that the situation was not in conformity with the Charter on this issue, as monetary compensation cannot be considered a relevant and appropriate response to the requirements of Article 2§4.

The report refers to previously submitted information. It recalled that workers exposed to ionising radiation were entitled to 15 days' additional leave, already noted in 2007 Conclusions, and that there were additional compensation economic benefits in favour of workers who had contracted asbestos-related diseases due to exposure to asbestos or their heirs. Article 1, paragraphs 356 to 359 of the Budget Law for 2021 (Law No. 178 of 30 December 2020) amended the discipline by providing that, from 1 January 2021, the additional benefit to pension would be 'stabilised' at a total of 15% of the pension enjoyed. The additional benefit is paid monthly together with the pension.

The Committee had already asked for information on the compensatory measures for other categories of workers exposed to risks which had not yet been eliminated or sufficiently reduced in spite of the application of preventive measures or in the absence of their application. The report does not provide new information on this. Therefore, the Committee reiterates its conclusion of non-conformity with Article 2§4.

Measures related to Covid-19

No information was provided on measures taken during the Covid-19 pandemic in this field.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 2§4 of the Charter on the grounds that:

- it has not been established that the risks inherent in dangerous or unhealthy occupations have been sufficiently eliminated or reduced, and
- not all workers performing dangerous or unhealthy work are entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

The Committee recalls that no targeted questions were asked for Article 2§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

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

The report states that the situation which it previously found to be in conformity is unchanged: employees are entitled to a rest period of 24 hours per seven-day period, generally on Sundays, and in sectors in which exceptions to the principle of Sunday rest may be made employees are entitled to a compensatory rest period. The report further states that the consecutive weekly rest period is calculated on average in a period not exceeding 14 days, so the two resting days are granted after a maximum of 12 days (Article 9, paragraph 1 of the Legislative Decree No 66/2003).

The Committee therefore concludes that the situation is in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Italy 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 Italy.

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

Covid-19

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

Conclusion

The Committee concludes that the situation in Italy 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 Italy.

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 Italy 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 whether, apart from the consultation prior to the introduction of night work pursuant to Article 12 of Legislative Decree No. 66/2003, workers’ representatives were regularly consulted on issues relating to night work (Conclusions 2014). In that sense, the Committee recalls that the measures which take account of the special nature of the work pursuant to Article 2§7 of the Charter must include among others regular consultation with workers’ representatives on the introduction of night work, night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work (Conclusions 2003, Romania).

The report notes that Article 14§2 of Legislative Decree 66/2003 provides for information to be given to company trade union representatives on the level of services or means of protection that the employer is required to provide during night work, which must be equivalent to that provided for day work. Article 14§3 of the same decree further states that employers shall provide night workers involved in risky work with appropriate personal and collective protection measures, following consultation with trade union representatives, as required under Article 12. On this basis, the Committee understands that there is no provision for regular and systematic consultation with workers’ representatives on night work-related questions and concludes that the situation is not in conformity with Article 2§7 of the Charter.

Covid-19

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

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 2§7 of the Charter on the ground that employee representatives are not 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 Italy.

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 deferred its position pending receipt of information to establish that the minimum wage makes it possible to ensure a decent standard of living.

The Committee’s assessment will therefore relate to the information provided by the Government in response to the questions raised in the previous conclusion as well as the targeted questions with regard to Article 4§1 of the Charter.

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 wage.

In its previous conclusion (Conclusions 2014) the Committee deferred its conclusion pending receipt of information concerning updated figures on the gross and net minimum wages in low-pay sectors as well as the coverage rate of national collective agreements in the private sector. It also asked for an estimation of the minimum wages paid in sectors which are not covered by such agreements, as well as in the informal economy, which accounted for some 15% of total employment in the country.

The Committee notes from the report that there is still no national law regulating the minimum wage, only provisions contained in national collective labour agreements (CCNL). According to an estimate of the CNEL (National Council for Economy and Labour), there are currently about 888 national collective labour agreements in force; however, collective agreements are not compulsory and do not have *erga omnes* effect, but only for the parties who signed them, so there are undertakings or types of individual employment contracts to which no collective agreement is applicable.

The report refers to the latest Report on “In-work poverty in the EU”, according to which 11.7% of employees in Italy are paid less than the minimum contractual wage. The minimum wage had been envisaged in the Jobs Act (Legislative Decree No. 81/2015), but it then remained excluded from the implementing decrees. Article 1, paragraph 7, letter g) of Law No. 183 of 10 December 2014 provided for the introduction of a “minimum hourly wage” to be applied in sectors not covered by collective bargaining. According to the report, the problem of the ‘working poor’ has become significant in recent years and there is no form of social protection *sine die* for social groups living below the poverty line. After a certain period of coverage through social safety nets, these individuals and families have no support, except for the citizenship income, a measure introduced in 2019 throughout the country and amended by the Budget Law for 2022.

The report provides information about the minimum hourly wage in some sectoral collective agreements, prepared by INPS (National Institute of Social Security). The Committee notes that in tourism the minimum hourly wage is € 7.48; in cooperatives in social-welfare services it is € 7.18; in undertakings in the sectors of public establishments, collective and commercial catering and tourism the minimum hourly contractual wage is € 7.28; in textile and clothing sector the minimum wage was € 7.09; in social-welfare services the minimum hourly wage

was € 6.68; in cleaning and integrated services or multiservice companies the minimum hourly wage was € 6.52; in the security and trust services, not renewed since 2015 the minimum wage was € 4.60 per hour for the trust services sector and just over € 6 for private security services.

According to the report, the draft law No. 2187 on the minimum wage is being considered by the Senate. This law will, according to the report, enhance the value of 'leading' collective agreements, i.e., those signed by the most representative bodies at the national level. Moreover, as a further guarantee of the recognition of a fair wage, it introduces a minimum wage of € 9 per hour, in line with the adequacy parameters indicated by the European Commission. The Committee wishes to be informed about these legislative developments.

The Committee notes from Eurostat that the gross annual average earnings in 2020 stood at € 32,262 and at € 22,530 net. Eurostat does not provide information about the minimum wage.

The Committee points out 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 further points out that when a statutory national minimum wage exists, its net value for a full-time worker is used as a basis for comparison with the net average full-time wage (if possible calculated across all sectors for the whole economy, but otherwise for a representative sector such as a manufacturing industry or for several sectors) (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1) Otherwise regard is had to the lowest wage determined by collective agreement or the lowest wage actually paid (Conclusions XVI-2, Denmark). This may be the lowest wage in a representative sector, for example, the manufacturing industry.

The Committee notes that the Government has previously (national report for Conclusions 2014) provided information about gross and net values of the minimum wages as stipulated in different collective agreements. The Committee observes that the national report now provides hourly rates of the minimum wage of which € 4 seems to be the lowest. The Committee also recalls that it has previously asked for an estimation of the minimum wages paid in sectors which are not covered by such agreements, as well as in the informal economy.

The Committee observes that the report does not provide information about the monthly net and gross minimum wage as stipulated in collective agreements in the lowest paid sectors. It does not indicate either what would be the minimum wage paid in areas outside the coverage of collective agreements and finally, the situation in the informal economy remains unclear. Therefore, the Committee considers that it has not been established that the minimum wage provides for a decent standard of living. Therefore, the situation is not in conformity with the Charter.

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 subcontracting, 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 that the report does not provide this information.

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

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

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

Covid-19

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

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

The Committee notes that the report does not provide this information. The Committee asks whether the financial support provided for workers through 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 Italy is not in conformity with Article 4§1 of the Charter on the ground that it has not been established that the minimum wage ensures 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 Italy.

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

In its previous conclusion, the Committee found that the situation in Italy was in conformity with Article 4§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 question.

Rules on increased remuneration for overtime work

The report states that concerning increased remuneration for overtime work there were no regulatory changes since the last report of Italy in 2013. The report provides some examples on remuneration for overtime work. The trade national collective labour agreement provides for an 15% increase for overtime work from the 41st to 48th hour of week; a 20% increase for overtime worked for over 48 hours per week; a 50% increase for overtime night work; a 30% increase for holiday overtime work.

The report further states that the individual employment contract may provide for ordinary working hours that are lower than the legal limit of 40 hours or any lower limit provided for by the collective agreement and if the worker works beyond the hours agreed in the individual contract, although he or she does not exceed the legal limits, he or she must be paid the overtime increase. If overtime work is performed continuously, the increase may be paid as a lump sum, but the amount cannot be less than the increase due for overtime work. In addition, when the parties agree on lump sum payment, the maximum number of hours which the worker can be required to perform must be indicated. Also, some collective agreements allow for compensatory leave for overtime work as an alternative or in addition to the increased payment.

Covid-19

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

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

The report states that in total some 250 million euros were allocated to raise the resources for the remuneration for overtime of healthcare workers because of the Covid-19 pandemic.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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

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

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

The Committee deferred its previous conclusion on Article 4§3, pending receipt of the information requested about job comparisons (Conclusions 2014). In addition, the Committee found in its decision on the merits of collective complaint University Women of Europe (UWE) v. Italy No. 133/2016 (§182) that there was a violation of Articles 4§3 and 20.c of the Charter on the ground that pay transparency is not ensured.

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

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

Pay transparency and job comparisons

As regards *pay transparency*, the Committee also refers to its decision on the merits of collective complaint UWE v. Italy No. 133/2016 (§§ 126-127), where it noted that the obligation to ensure pay transparency in practice had not been satisfied: it had not been shown that *job classification systems* were applied and used effectively in practice to prevent gender pay discrimination; there was no evidence that the *notion of ‘equal value’* was adequately defined in domestic case law; it had not been demonstrated that a potential *victim of pay discrimination* might have access to all the necessary information with a view to effectively bringing a case to court. The Committee recalls that the follow-up to this complaint will be carried out in Findings 2023.

The report indicates that new *pay transparency measures* to fight the gender equality gap were implemented through Law No. 162/2021 of 5 November 2021 (in force since 3 December 2021; outside the reference period). It contains provisions on equal opportunities between men and women in employment. The new provision introduces important amendments to the “Equal Opportunities Code” (Legislative Decree No. 198/2006). These include a modification of Article 46, which requires companies with more than 100 employees to draw up a biannual report covering the treatment of men and women in the company (see also the above-mentioned decision on the merits §146 for more details). With the changes introduced by this law, the obligation to draw up the biannual report is extended to companies with more than 50 employees. For companies with up to 50 employees, the report submission is voluntary. Such a report should contain information on the number of male and female employees, the number of men and women hired over the period, differences in pay treatment, level, and role, etc.

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 Italy is not in conformity with Article 4§3 of the Charter on the ground that the obligation to ensure pay transparency in practice has not been respected.

In addition, the report refers to the Recommendation issued in consequence of the collective complaint *University Women of Europe v. Italy* (No. 133/2016), in which the Committee of Ministers recommends that Italy reinforce measures to implement pay transparency legislation in practice as an enabling tool for workers or social partners to take appropriate action, such as to challenge pay discrimination before the courts.

In its previous conclusion, the Committee asked whether in equal pay litigation cases it was possible to make comparisons of pay and jobs outside the company directly concerned. In reply, the report refers to the recent judgement of the European Court of Justice (C-624/2019 – *Tesco stores Ltd*), which, in order to define the concept of "work of equal value" pursuant Article 157 TFEU, has allowed the possibility of a comparison between the remuneration of workers employed in different undertakings, when the pay conditions can be attributable to "a single source" such as, for example, the same employer or the same collective agreement. The Committee therefore understands that in Italy it is possible to make pay comparisons across companies belonging to the same sector/which are part of the same collective labour agreement (see also above-mentioned decision on the merits *UWE v. Italy* No. 133/2016, §150).

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 Italy: 5% (provisional figure) in 2017, 5.5% in 2018, 4.7% (p) in 2019 and 4.2% (provisional figure) in 2020 (compared to 5.7% in 2011). It notes that the gap was lower than the average of the 27 EU countries, namely 14.6% in 2017 or 13% (provisional figure) in 2020 (data as of 4 March 2022).

As Italy 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 Italy's Recovery and Resilience Plan, approved by the European Commission in June 2021, is the largest national plan under the unprecedented EU response to the crisis triggered by the pandemic. This Plan addresses gender inequalities in a transversal way.

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

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 4§3 of the Charter on the ground that 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 Italy.

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

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

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

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

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

Reasonable period of notice: legal framework and length of service

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

The Committee previously found the situation not to be in conformity on the grounds that notice periods are not reasonable in the food-processing and mechanical industries, and in the textile industry for certain workers (Conclusions 2014). The notice periods that were considered not to be in conformity with Article 4§4 of the Charter are the following:

1. food-processing industry: six days for manual workers with up to five years of service; 45 days for intermediate workers with five to ten years of service and 60

- days for those with more; 60 days for employees with fewer than ten years of service and four months for those with more;
2. textile industry: one month for employees in the 2nd, 3rd and 4th categories with up to five years of service; four months for employees in the 7th and 8th categories with more than ten years of service (Conclusions 2014);
 3. in private metal-working and mechanical industries sector, nine days' notice for workers with five to ten years' service; in private metal-working and mechanical industries as well as food-processing sector, twelve days' notice for workers with more than fourteen years' service (Conclusions 2010).

In its previous conclusion the Committee also asked for information on any compensation provided for by the law or by collective agreements in the event of dismissal in the food-processing, mechanical and textile industries (Conclusions 2014).

In reply to the Committee's question, the report states that Article 2118 of the Civil Code does not set notice periods in the event of termination of employment. Article 2118 paragraph 1 of the Civil Code leaves the setting of the notice period of termination of employment to the social partners. Article 2118, paragraphs 2 and 3 of the Civil Code provides that if the notice period is not observed, the worker is due a severance pay equivalent to the amount of wage that would have been due for the period of notice and that this severance pay is also due in the event of the death of the worker. The report adds that as regards the length of the notice period, since there are no changes in the new National Collective Agreements (CCNLs) for the sectors in question (textile, private metalworking and mechanical, and food-processing industries), it is to be considered that the social partners have deemed the periods already established to be adequate.

As noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. The report does not contain specific information on the notice periods or on the severance pay in lieu of. The Committee therefore concludes that notice periods of six days for manual workers with up to five years of service, 45 days for intermediate workers with five to 10 years of service and nine days for workers with five to ten years of service and 12 days for workers with more than 14 years of service are manifestly unreasonable.

In its previous conclusion the Committee asked for information on the notice periods and/or compensation applicable on early termination of fixed-term contracts or on termination of work on request and piece work, secondary jobs and joint ventures employment relationships (Conclusions 2014).

The report does not contain the information requested. The Committee therefore reiterates its request and considers that, should the next report not contain the information requested, there will be nothing to establish that the situation in Italy is in conformity with Article 4§4 of the Charter in this respect.

In its previous conclusion the Committee asked for information on the notice periods and/or compensation applicable to tenured civil servants and contractual staff in the civil service (Conclusions 2014).

The report does not contain the information requested. The Committee therefore reiterates its request and considers that, should the next report not contain the information requested, there will be nothing to establish that the situation in Italy is in conformity with Article 4§4 of the Charter in this respect.

Notice periods during probationary periods

In its previous conclusion the Committee asked for information on the notice periods and/or compensation applicable during probationary periods (Conclusions 2014).

The report does not contain the information requested. The Committee therefore reiterates its request and considers that, should the next report not contain the information requested, there will be nothing to establish that the situation in Italy is in conformity with Article 4§4 of the Charter in this respect.

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 notice periods and/or compensation applicable to grounds for the termination of contracts other than dismissal (transfer of ownership, transformation or liquidation of a company) (Conclusions 2014).

The report does not contain the information requested. The Committee asks for updated information on the notice periods in the event of termination of employment for reasons outside the parties' control and considers that, should the next report not contain the information requested, there will be nothing to establish that the situation in Italy is in conformity with Article 4§4 of the Charter in this respect.

Circumstances in which workers can be dismissed without notice or compensation

In its previous conclusion the Committee asked for clarification on the concept of serious misconduct which constitutes the sole exception justifying immediate dismissal (Conclusions 2014).

In reply to the Committee's question, the report states that according to Article 2119 of the Civil Code, the lawful dismissal for misconduct occurs whenever it is so serious as not to allow the relationship to continue, even temporarily, because the worker's conduct is likely to cause serious harm to the employer or his company, thus irreparably damaging the fiduciary relationship underlying the employment relationship. Such conduct may be intentional on the part of the worker or may depend on his profound inexperience, imprudence, or negligence.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 4§4 of the Charter on the ground that notice periods are manifestly unreasonable for certain workers with up to five years of service, with five to 10 years of service, and with more than 14 years of service.

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 Italy.

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.

Legal framework concerning deductions from wages and the protected wage

In its previous conclusion (Conclusions 2014) the Committee found that the limits on deductions provided for by Article 545 of the Code still allowed situations in which some employees received only 70% or even 50% of the lowest wages – an amount that did not allow them to provide for themselves or their dependants. Hence the Committee concluded that the situation in Italy remained not in conformity with Article 4§5 of the Charter.

The Committee notes from the report that there have been legislative amendments during the reference period. Decree-Law No. 83 of 27 June 2015 Urgent measures on bankruptcy, civil and civil procedure and on the organisation and functioning of the judicial administration – converted into Law No. 132 of 6 August 2015 – has introduced essential changes on the attachment of pensions, wages, and other sums assimilated to them (severance pay, compensation for damages for unlawful dismissal, retirement allowances, wages, other indemnities related to the employment relationship). Article 13, paragraph 1 has revised Articles 545 and 546 of the Code of Civil Procedure, modifying the limits of attachment of wages and pensions to consider a minimum subsistence income based on the social allowance (the so-called unattachable minimum subsistence income). Any attachment that violates the new legal limits is inoperative for the part exceeding these values. Ineffectiveness may also be detected *ex officio* by the enforcement court.

The Committee understands that with the new legislation the deductions from wages are limited to the minimum subsistence income. Therefore, it considers that the situation has been brought into conformity with the Charter. The Committee asks however whether the

subsistence level established by the Government can guarantee that the subsistence needs are met.

Waiving the right to the restriction on deductions from wage

The Committee reiterates its question as to whether the workers may be authorised to waive the conditions and limits to deductions from wages imposed by law. The Committee notes that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Conclusion

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

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by Italy as well as the information provided by the *Sindacato Italiano Lavoratori Finanziari*, the response of the Government and by the European trade union federations-EPSU, EuroCOP and EUROMIL.

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

In its previous conclusion, the Committee concluded that the situation in Italy was in conformity with Article 5 of the Charter (Conclusion 2014).

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

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

Prevalence/Trade union density

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

Personal scope

The Committee recalls that in complaint *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, it concluded that there was a violation of Article 5 of the Charter on the ground that the restrictions on the right to organise of members of the *Guardia di Finanza* were excessive, as the establishment of trade unions or professional organisations by its members were subject to the prior consent of the Minister of Defence, and there were no administrative and judicial remedies against arbitrary refusal of registration.

The Committee also held, with regard to freedom to join or not to join organisations, that the absolute prohibition on members of *Guardia di Finanza* under Article 1475(2) of the Military Code, to join "other trade unions", where the *Guardia* is functionally equivalent to a police force or to an armed force, is disproportionate since it deprives its members of an effective means to claim their economic and social interests and is not necessary in a democratic society in breach of Article 5 of the Charter. In its follow up to this complaint (Findings 2021) the Committee found that the situation had not been brought into conformity during the reference period.

The Committee notes from the information provided by the *Sindacato Italiano Lavoratori Finanziari*, the response of the Government and by the European trade union federations-EPSU, EuroCOP and EUROMIL that new legislation entered into force in 2022 (outside the reference period) which permits military staff to form and join a trade union. The Committee asks that the next report provide detailed information on the new legislation. Meanwhile it concludes that the situation is not in conformity with the Charter.

The Committee recalls that Article 5 of the Charter allows States Parties to impose restrictions upon the right to organise of members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as

through the imposition of a blanket prohibition of professional associations of a trade union nature and prohibition of the affiliation of such associations to national federations/confederations (European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, Decision on the merits of 27 January 2016, §§80 and 84).

Restrictions on the right to organize

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

The report does not reply to the targeted question. The Committee therefore reiterates its request and considers that if the next report does not provide the information requested, there will be nothing to establish that the situation in Italy is in conformity with the Charter in this point.

Conclusion

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

- the restriction on the right to organise of members of the *Guardia di Finanza* is excessive;
- there is absolute prohibition on members of *Guardia di Finanza* from joining “other trade unions”.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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

In its previous conclusion, the Committee found that the situation in Italy was in conformity with Article 6§1 of the Charter, pending receipt of the information requested (Conclusions 2014). Namely, the Committee recalled that the most recent detailed information on the situation dated from 2000 and reiterated its request that the following report contained a complete up-dated description of the situation in law and in practice with regard to joint consultation between employees and employers at national, regional and sectoral level in the private as well as the public sector, including the civil service.

The Committee notes that the current report, similarly to the previous report, provides a description of a series of framework agreements relating to collective bargaining and that it does not contain specific information on joint consultation.

The Committee recalls that within the meaning of Article 6§1 of the Charter, joint consultation is consultation between employees and employers or the organisations that represent them (Conclusions I (1969), Statement of Interpretation on Article 6§1). Such consultation can take place within tripartite bodies provided that the social partners are represented in these bodies on an equal footing (Conclusions V (1977), Statement of Interpretation on Article 6§1). If adequate consultation already exists, there is no need for the state to intervene. If no adequate joint consultation is in place, the state must take positive steps to encourage it (*Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41).

The Committee also recalls that consultation must take place on several levels: national, regional/sectoral. It should take place in the private and public sector (including the civil service) (Conclusions III (1973), Denmark, Germany, Norway, Sweden and *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41). Consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.) (Conclusions I (1969), Statement of Interpretation on Article 6§1 and Conclusions V (1977), Ireland).

The Committee wishes to receive confirmation that the above-mentioned principles are fulfilled in Italy and asks that the next report provide a detailed description of the situation in law and in practice with regard to joint consultation between employees and employers at national, regional and sectoral levels in the private as well as the public sector, including the civil service, on all questions of mutual interest. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Italy is in conformity with Article 6§1 of the Charter.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by Italy, as well as the information provided by the *Sindacato Italiano Lavoratori Finanziari*, the response of the Government and by the European trade union federations - the European Federation of Public Service Unions (EPSU), European Confederation of Police (EuroCOP) and European Organisation of Military Associations and Trade Unions (EUROMIL).

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 found that the situation in Italy was in conformity with Article 6§2 of the Charter (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the general question.

However, the Committee also recalls that in *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, it held that there was a violation of Article 6§2 of the Charter on the ground that the representative bodies of *Guardia di Finanza* were not provided with means to effectively negotiate the terms and conditions of employment, including remuneration.

The Committee notes from the information provided by the *Sindacato Italiano Lavoratori Finanziari*, by the Government in its response and by the European trade union federations (EPSU, EuroCOP and EUROMIL), that new legislation entered into force in 2022 (outside the reference period) which permits military staff to form and join a trade union. The Committee asks the next report to provide detailed information on the new legislation. Meanwhile it concludes that the situation is not in conformity with the Charter.

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

Covid-19

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

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 6§2 of the Charter on the ground that the representative bodies of *Guardia di Finanza* are not provided with means to effectively negotiate the terms and conditions of employment, including remuneration.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

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).

The Committee deferred its previous conclusion (Conclusions 2014) pending receipt of information on conflicts which concern the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in a collective agreement. The Committee noted that the Government’s report only contained information on conflicts relating to the application of collective agreements, which are not covered by Article 6§3 of the Charter. The Committee underlined that if the requested information was not provided in the next report there would be nothing to show that the situation was in conformity with Article 6§3 of the Charter.

In its report, the Government states that the legislative framework has not changed. In particular, it refers to Article 410 of the Code of Civil Procedure (as amended by Law No. 183/2010), which deals with conciliation in labour disputes in the private and public sectors, and to Law No. 92/2012, under which conciliation is compulsory in cases of dismissal on justified grounds.

The Committee notes that this information does not relate to conflicts which concern the conclusion or modification of a collective agreement.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 6§3 of the Charter on the ground that it has not been established that there are any conciliation, mediation and/or arbitration machinery for the settlement of labour disputes in the collective bargaining process.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

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.

The Committee deferred its previous conclusion pending receipt of detailed information on any decrees prohibiting or restricting strikes issued during the reference period, in order to assess whether the restrictions imposed were in conformity with Article G of the Charter (Conclusions 2016). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the general question.

Right to collective action

Restrictions to the right to strike, procedural requirements

In its report, the Government recalls that the right to strike is guaranteed by the Constitution and that it shall be exercised “within the scope of the laws governing it” (Article 40 of the Constitution), in this case Law No. 146 of 1990 (as amended by Law No. 83 of 2000) laying down provisions on the exercise of the right to strike in essential public services. The purpose of this Law is to strike a balance between the right to strike and other constitutionally protected rights (including the right to life, health, liberty and security, freedom of movement, etc.). To achieve this, it requires, among other things, that a minimum service be provided during strikes in essential public services. The operation of minimum services is determined by agreements between the administrations or companies providing essential services and the trade unions concerned. The agreements are submitted to an independent body, the Guarantee Board, which ensures they comply with the law. The agreements are binding on the parties following their approval by the Guarantee Board.

The Government submits that the restrictions on the right to strike are in conformity with Article G of the Charter, as they are provided for by law and seek to ensure respect for the rights and freedoms of others. In addition, the executive may only issue an injunction limiting the right to strike under certain conditions. Specifically, the Government states that under Law No. 146 of 1990, as amended by Law No. 83 of 2000:

- the Prime Minister or a Minister delegated by him (if the strike is of national interest) and the Prefect (in other cases) may issue a decree limiting the right to strike where “there is a well-founded threat of serious and imminent harm to the constitutionally protected human rights referred to in Article 1 [of the Law]”;
- the body issuing the decree does so on the recommendation of the Guarantee Board. It may do so on its own initiative only in “cases of necessity and urgency”;
- the decree must be preceded by an attempt at conciliation with the administrative authority, to enable all interested parties to defend their interests and put forward their points of views;
- the terms of the decree are determined by law. In particular, the following may be ordered: postponing the strike, shortening its length and taking measures to ensure the functioning of services;
- the decree may be challenged before the competent court.

The Government provides a table showing, by sector of activity, the number of strikes announced and the number of strikes carried out in 2019 (2,345 and 1,462 respectively) and in 2020 (1,472 and 894 respectively). Another table shows more detailed information for 2020, including that the Guarantee Board took “preventive actions” on 277 occasions (i.e. for about 19% of the strikes announced) and that 224 strikes were postponed or not carried out as a result of such actions. The Government adds that the Board’s preventive decisions are taken up in approximately 90% of cases, proving that the system established by Law No. 146 of 1990 (as amended) enjoys solid and widespread public support.

Right of the police to strike

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

Covid-19

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

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

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

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

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Italy is in conformity with Article 6§4 of the Charter.

Article 21 - Right of workers to be informed and consulted

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

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

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions 2016). The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions.

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

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

It appears from the report that no specific measures were taken during the pandemic in this respect.

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

Conclusion

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

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

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

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

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

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions 2016). The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions.

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

The report states that the pandemic had no impact on the enjoyment of this right by workers and/or their representatives. The social partners have signed, following in-depth discussions, several shared protocols on measures to tackle and contain the spread of the Covid-19 pandemic in public and private workspaces.

Conclusion

The Committee concludes that the situation in Italy is in conformity with Article 22 of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

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 Italy was in conformity with Article 26§1 of the Charter, pending receipt of the information requested (Conclusions 2014).

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

Prevention

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

In its previous conclusion, the Committee asked whether specific prevention and awareness-raising measures, other than of a legislative nature, are taken by the national authorities to inform workers about sexual harassment and the remedies available and to what extent the social partners are involved in the development and implementation of any such measures (Conclusions 2014).

The report provides detailed information on the prevention and awareness measures taken since the last report. This includes: the National Strategic Plan on male violence against women 2017-2020, the adoption of codes of ethics and/or conduct in public administration and in private companies, the work of equality advisers, and information, counselling and training measures.

Regarding the Committee’s specific request concerning the involvement of the social partners in the development and implementation of prevention and awareness-raising measures, the report indicates that the Framework Agreement on harassment and violence in the workplace was signed on 25 January 2016 by the three Italian trade union confederations, CGIL, CISL, UIL, and Confindustria (in order to transpose the Framework Agreement on Harassment and Violence in the workplace reached on 26 April 2007 by Business Europe, CEEP, UEAPME, and ETUC). The report further states that trade unions and employers’ organisations at national level are committed to the prevention of mobbing and harassment in the workplace, and that many national collective agreements take these phenomena into account. The report provides examples of national and regional agreements in this regard.

Liability of employers and remedies

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

The report provides detailed information on changes to the relevant regulatory framework introduced since the date of the last report (2013). The Committee refers to the national report for a detailed description.

The report indicates that, through Law No. 4 of 15 January 2021, Italy ratified the ILO Convention 190 on the elimination of violence and harassment in the world of work. The ILO Convention 190 entered into force on 29 October 2021 (outside the reference period).

The report further indicates that amendments were made to Article 26 of the Code of Equal Opportunities through Law No. 205 of 27 December 2017 (State Budget for the financial year 2018 and multi-year budget for the three-year period 2018-2020, Article 1, paragraph 218, letter b)). The new paragraph 3-bis of Article 26 of the Code of Equal Opportunities (Legislative Decree No. 198 of 11 April 2006) introduced in 2017 strengthens the protection of workers who take legal action for having suffered harassment or sexual harassment against retaliation. It provides that a worker who takes legal action for discrimination, harassment, or sexual harassment in the workplace cannot be sanctioned, demoted, dismissed, transferred, or subjected to other organisational measures having direct or indirect adverse effects on working conditions as a result of the complaint. Any retaliatory or discriminatory dismissal of the complainant worker is null and void. A change of job and any other retaliatory or discriminatory measure taken against the complainant shall also be null and void.

The new paragraph 3-ter of Article 26 of the Code of Equal Opportunities introduced in 2017 provides that employers are obliged, pursuant to Article 2087 of the Civil Code, to ensure working conditions that guarantee the physical and moral integrity and dignity of workers, including by agreeing with workers' trade unions on the most appropriate information and training initiatives to prevent sexual harassment in the workplace.

The report also indicates that by means of Law No. 69 of 19 July 2019, on "Amendments to the Criminal Code, the Code of Criminal Procedure and other provisions on the protection of victims of domestic and gender-based violence" (known as "Code Red"), sanctions for some offences were increased. For example, for the offence of stalking, the minimum sanction is increased from six months and a maximum of five years' imprisonment to a minimum of one year and a maximum of six years and six months. The report indicates that maltreating and harassing conduct against workers is punishable not only under Article 612-bis of the Criminal Code (persecutory acts-stalking), but also under Articles 609-bis of the Criminal Code (sexual violence in cases of more serious harassment, and Article 572 of the Criminal Code (ill-treatment against family members and cohabitants). The report provides examples of case law of Court of Cassation in this sense.

Damages

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

The report states that, under the case law, a victim of sexual harassment is entitled to compensation for all kinds of damage suffered, including non-pecuniary damage, in the various components of biological, moral and existential damage. The report indicates that the amount of damages awarded in sexual harassment proceedings may vary from case to case and, except in cases where the law provides for a fixed amount, damages are personalised and must be proven by the person seeking compensation.

The Committee notes in the *Country report on gender equality 2022* of the European network of legal experts in gender equality and non-discrimination that an upper limit for compensation does not exist in the Italian system.

The Committee asks that the next report confirm that an upper limit does not apply to compensation that may be awarded to victims of sexual harassment in relation to work. It also asks in which situations/cases the law provides for a fixed amount.

In its previous conclusion, the Committee asked that the next report give more detailed information on the amounts of compensation awarded in sexual harassment proceedings (Conclusions 2014).

The Committee takes note of the case-law examples illustrated in the report, which indicate that, for example, in two cases, the courts have awarded victims of sexual harassment compensation of more than €105 000 and €300 000 respectively.

Covid-19

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

No information on specific measures taken during the pandemic to protect the right to dignity in the workplace and, notably as regards sexual harassment, is provided in the report.

Conclusion

The Committee concludes that the situation in Italy 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 Italy.

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

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

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

Prevention

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

In its previous conclusion, the Committee asked that the next report provide information on the tangible measures taken to prevent moral (psychological) harassment and the extent to which the social partners are involved in them (Conclusions 2014).

The report provides detailed information on prevention and awareness measures taken since the last report, including the adoption of codes of ethics and/or conduct in public administration and in private companies, the work of equality advisers, and information, counselling and training measures.

Regarding the Committee’s specific request concerning the involvement of the social partners, the report indicates that the Framework Agreement on harassment and violence in the workplace was signed on 25 January 2016 by the three Italian trade union confederations, CGIL, CISL, UIL, and Confindustria (in order to transpose the Framework Agreement on Harassment and Violence in the workplace reached on 26 April 2007 by Business Europe, CEEP, UEAPME, and ETUC). The report further states that trade unions and employers’ organisations at national level are committed to the prevention of mobbing and harassment in the workplace and that many national collective agreements take these phenomena into account. The report provides examples of national and regional agreements in this sense.

Liability of employers and remedies

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

The report provides detailed information on changes to the relevant regulatory framework intervened since the date of the last report (2013). The Committee refers to the national report for a detailed description.

The report indicates that Italy ratified the ILO Convention 190 on the elimination of violence and harassment in the world of work through Law No. 4 of 15 January 2021. The ILO Convention entered into force on 29 October 2021.

The report further indicates that amendments were brought to Article 26 of the Code of Equal Opportunities through Law No. 205 of 27 December 2017 (State Budget for the financial year 2018 and multi-year budget for the three-year period 2018-2020, Article 1, paragraph 218,

letter b)). The new paragraph 3-bis of Article 26 of the Code of Equal Opportunities (Legislative Decree No. 198 of 11 April 2006) strengthens the protection of workers who take legal action for having suffered harassment or sexual harassment against retaliation. It provides that a worker who takes legal action for discrimination, harassment, or sexual harassment in the workplace cannot be sanctioned, demoted, dismissed, transferred, or subjected to other organisational measures having direct or indirect adverse effects on working conditions as a result of the complaint. Any retaliatory or discriminatory dismissal of the complainant worker is null and void. A change of job and any other retaliatory or discriminatory measure taken against the complainant shall also be null and void.

The report also indicates that through Law No. 69 of 19 July 2019, on "Amendments to the Criminal Code, the Code of Criminal Procedure and other provisions on the protection of victims of domestic and gender-based violence" (known as "*Code Red*"), the sanctions have been increased. For example, as regards the offence of stalking, the minimum sanction is increased from six months and a maximum of five years' imprisonment to a term of a minimum of one year and a maximum of six years and six months. The report indicates that maltreating and harassing conduct against workers is punishable not only under Article 612-bis of the Criminal Code (persecutory acts-stalking), but also under Articles 609-bis of the Criminal Code (sexual violence in cases of more serious harassment, and Article 572 of the Criminal Code (ill-treatment against family members and cohabitants). The report provides examples of case law of Court of Cassation in this sense.

In its previous conclusion, the Committee asked for clarification of the rules applicable with regard to the burden of proof in cases of moral harassment (Conclusions 2014). The report indicates that Article 28 (4) of the Legislative Decree No. 150/2011 (which reformed the legislative Decree No. 216/2003) provides that: "*Where the plaintiff provides facts, including statistical data, from which the existence of discriminatory acts, agreements or conduct may be presumed, the burden of proving the absence of discrimination shall lie with the defendant.*"

Damages

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

The report indicates that the amount of compensation to which the victim of moral harassment is entitled depends on several factors: the damages awarded depend on the circumstances of the individual case and must be proved, distinguishing between pecuniary and non-pecuniary damage. The Committee notes from the *Country report on non-discrimination 2021* of the European network of legal experts in gender equality and non-discrimination that no ceiling to the amount of compensation applies in cases of alleged discrimination.

In its previous conclusion, the Committee asked that the next report provide more detailed information on the amounts of compensation awarded in moral harassment proceedings (Conclusions 2014).

The Committee takes note of the case law examples illustrated in the report which indicate that compensation for pecuniary and non-pecuniary damage is being granted to victims of moral (psychological) harassment. The Committee requests that the next report include information on examples showing the amount of compensation actually awarded to victims in cases of moral (psychological) harassment.

Covid -19

In a targeted question, the Committee asked for information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards moral (psychological) harassment. The Committee welcomed specific information about categories

of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

No information on specific measures taken during the pandemic to protect the right to dignity in the workplace is provided in the report.

Conclusion

The Committee concludes that the situation in Italy 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 Italy

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 conclusions (Conclusions 2014), the Committee concluded that the situation in Italy was in conformity with Article 28 of the Charter.

In the previous conclusions, the Committee asked confirmation that under the relevant domestic legislation, protection was granted to the leaders of the unitarian trade unions which are the main form of workers' representation in Italy, because it is the leader who assumes responsibility for union decisions. It also asked for up-to-date description of the facilities granted to members of the unitarian trade union in the light of the Committee's case-law.

The report indicates that the legislative framework remained unchanged during the reference period. In response to the Committee's question, the report indicates that the leader of a unitarian trade union is the person who concretely and effectively carries out the trade union activity within a specific production unit of an undertaking. The legislative framework therefore provides for a set of guarantees for the leader to ensure that they are protected when carrying out their duties and functions.

Concerning facilities granted to workers' representatives, the report provides detailed and up-to-date information on the right of the workers' representatives to call assemblies both outside and during working hours, their right to paid leaves for the performance of their functions, their right to post publications, texts and communications on matters of labour interests in the work place, and their right to use premises for their activities, either on a permanent basis (workplace with at least 200 employees) or on request (workplace with less than 200 employees).

Conclusion

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

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

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

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 2018), the Committee concluded that the situation in Italy was in conformity with Article 29 of the Charter.

In the previous conclusions, the Committee asked for further information regarding the social measures proposed to mitigate the effects of redundancies. It asked in particular information on the employers’ obligation to cooperate with public agencies for the retraining of employees who are made redundant or for providing them with other forms of assistance with a view to obtaining a new job.

In the previous conclusion, the Committee also asked for information on sanctions provided where an employer fails to notify the workers’ representatives about the planned redundancies and for information on preventive measures to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers’ representatives has not been fulfilled.

The report indicates that the legislative framework concerning collective redundancies remained unchanged during the reference period. According to the report, during the joint examination of a collective dismissal procedure, the trade unions and employers can discuss to identify “non-traumatic” solutions to manage redundancy, such as launching active labour policies including requalification, training pre-retirement. The report also provides information on public entities that deal with the requalification of redundant workers, including the Job Centres which supply and promote active labour policy actions, the National Agency of Active Policies which promotes training programmes addressed to employed and unemployed people, and on online tools and procedures for the rapid integration of redundant employees into the labour market.

In response to the Committee’s question concerning sanctions and preventive measures, the report indicates that the regulatory framework does not envisage any individual sanction where an employer fails to communicate to the workers’ representatives that a collective dismissal procedure was launched. However, the regulatory framework envisages a possible invalidation of a collective dismissal in case the procedures set forth by law are not complied with. The meeting between the parties aims to ensure fair and joint consultations between workers’ and employers’ trade union. If the employer does not comply with the procedure defined by law, including performing all its stages and implementation measures the collective dismissal will be deemed invalid. The report also specifies that in order for the collective dismissal to be valid, it should be in written form, discussions with trade unions should be carried out and the criteria used for the collective dismissal should not be discriminatory.

Moreover, the report provides detailed information on several regulatory actions that were implemented and a series of measures introduced to face the Covid-19 epidemiological emergency and to protect workers by providing in particular income support to mitigate the reduction or suspension of work following the emergency. A series of emergency decrees were adopted and introduced a prohibition of individual dismissal for objective reasons and collective dismissals for several months, and subsequent decrees extended the prohibition of dismissal further, until 30 June 2021. In this context, additional measures were taken to support business including the payment of wage subsidy allowances and the allocation of standard fund to supplement earning scheme, and exemption from the payment of social

security contributions for employers hiring workers under a permanent or reoccupation contract.

Conclusion

The Committee concludes that the situation in Italy 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.