



March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

LATVIA

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 Latvia, which ratified the Revised European Social Charter on 31 January 2002. The deadline for submitting the 8th report was 31 December 2021 and Latvia submitted it on 30 December 2021.

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

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

Comments on the 8th report by the Free Trade Union Confederation of Latvia were registered on 8 July 2022.

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

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

Latvia has accepted all provisions from the above-mentioned group except Article 4§1.

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

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

- 9 conclusions of conformity: Articles 2§3, 2§4, 2§6, 2§7, 6§1, 6§2, 6§3, 22 and 29
- 3 conclusions of non-conformity: Articles 4§4, 5 and 6§4

In respect of the other 10 situations related to Articles 2§1, 2§2, 2§5, 4§2, 4§3, 4§5, 21, 26§1, 26§2 and 28, the Committee needs further information in order to examine the situation.

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

The next report from Latvia 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 Latvia.

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 found that the situation in Latvia was in conformity with Article 2§1 of the Charter, pending receipt of the information requested (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion, and to the targeted questions.

Measures to ensure reasonable working hours

In its previous conclusion, the Committee asked for details on the maximum permitted working hours, including overtime, for medical personnel (Conclusions 2018).

In reply, the report states that with the amendments to Article 53.1 of the Medical Treatment Law of 2018, the Government has supported the full transition to normal working hours for all medical practitioners from 1 January 2022, which means that the Labour Law will be applicable to them.

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

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

The report states that during the reference period certain amendments were made to the Labour Law concerning overtime work and compensation for it, concerning the break which is not included into working hours unless the worker cannot leave the workplace, concerning administrative violations and penalties.

The report further states that when organising seminars or other information events, the State Labour Inspectorate always focuses on issues relating to the organisation of working time and the interpretation of normal working time in relation to the organisation of aggregated working time. The report provides statistical information on violations detected by the State Labour Inspectorate concerning Labour Law provisions on working time. It appears from the data provided that between 2017 and 2020 the number of violations concerning organisation of working time slightly decreased.

The report provides information on surveys on the organisation of working time. Most surveys were carried out in the following sectors: wholesale and retail trade, repair of motor vehicles and motorcycles; accommodation and food service activities; transportation and storage.

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

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

In reply, the report states that in 2018, the Ombudsperson lodged a constitutional complaint before the Constitutional Court of the Republic of Latvia. It adopted a judgment in a case where 'extended normal' weekly working hours (60 hours per week) were assigned to medical practitioners, and where medical staff received compensation for overtime work only if it exceeded the 60-hour weekly working time, in comparison with workers in other professions whose normal weekly working time was 40 hours per week. A violation of the principle of equality was found and the authorities were obliged to remedy the violation.

The report provides statistical information on surveys, violations, orders and fines in the sectors of healthcare, accommodation and food service, agriculture, forestry and fishing. Most surveys, violations, orders and fines were given in the accommodation and food service sector during the reference period.

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 or not as a rest period (Conclusions 2018).

In the targeted question, the Committee asked for information on law and practice as regards on-call time and service (including as regards zero-hours 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, in Latvia, on-call time and zero-hour contracts are not regulated by legal acts. The Committee notes that periods of on-call duty are periods during which a worker is not required to carry out a task for the employer. Such periods do not constitute effective working time, irrespective, whether this duty is spent at the employer's premises or at home. The Committee asks whether the periods when a worker is at work or at home but does not carry out active work are considered working time or rest periods. In the meantime, it reserves its position on this point.

Covid-19

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

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

The report states that, with regard to Covid-19 pandemic, Order No. 103 was adopted on 12 March 2020 and expired on 10 June 2020. The Order stated that overtime work within the limit of 60 hours per week could be allowed in certain public institutions, in ports and capital companies controlled by ports. Order No. 655, which was valid between 6 November 2020 and 7 April 2021, allowed the continuous employment for more than 24 hours of the staff of the Prisons Administration, the Chief of the State Police and the Chief of the State Fire and Rescue service but remote work was a priority where possible. Supplements of 100%, 50% or 30% of the monthly salary could be allocated to medical practitioners depending on their involvement in solving Covid-19 related issues.

The report states that Covid-19 had no effect on the working hours of the military. With regard to teaching, distance learning was implemented and at the end of 2020, 1.1 million euros was allocated to remunerate the increased workload of teachers.

The report also states that the amendments to the Labour Protection Law supplemented it with a definition of remote work. During the Covid-19 pandemic, many entrepreneurs, as well as local governments and State institutions switched to telework, and the State Labour Inspectorate mainly played an advisory role in providing information on working time arrangements and observance of working time when performing remote work.

The report states that a new sickness assistance benefit was introduced for parents who care for children up to 10 years of age (children with disabilities up to 18) in cases when children could not attend kindergartens, schools or day care centres and the parents could not work remotely. The sickness assistance benefit was initially introduced as a lump sum benefit for 14 calendar days in the period between 30 November and 31 December 2020. Since November 2020, payment of sickness benefit related to Covid-19 has been provided from the first day of incapacity by the State Social Insurance Agency.

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 Latvia.

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

In its previous conclusion (Conclusions 2018), the Committee found that the situation in Latvia was in conformity with Article 2§2 of the Charter, pending receipt of the information requested (see below).

The Committee previously noted that Article 68 of the Labour Law provides that employees who work on public holidays are paid at twice the usual rate; collective agreements or employment contracts may provide for higher supplements. Consequently, the Committee asked whether the compensatory time off granted in lieu of wage compensation was equivalent to or longer than the hours worked on a public holiday. The report does not provide any information on this point. Therefore, the Committee reiterates its question.

In its previous conclusion, the Committee also noted that Article 14§6 of the Law on Remuneration of Officials and Employees of State and Local Government Authorities provides that officials, except officials with special service ranks, who work on public holidays are paid twice the usual rate or are granted rest time on another weekday. Therefore, the Committee asked whether the law provided for restrictive criteria defining the circumstances under which work by officials on public holidays could be allowed and how the authorities controlled the implementation of such criteria. It also asked whether the compensatory time off granted in lieu of wage compensation was equivalent to or longer than the hours worked on a public holiday. The report does not provide any information on this point. Therefore, the Committee reiterates its question.

Moreover, the Committee previously noted that Article 27§2 of the Law on the Career Course of Service of Officials provides that officials with special service ranks with standard working time may not be employed on public holidays. Otherwise, the rules of the Labour Law apply. The Committee asked whether the law provided for restrictive criteria defining the circumstances under which work by officials with special service ranks on public holidays could be allowed and how the authorities controlled the implementation of such criteria.

As indicated in the part of the report devoted to Article 2§1 of the Charter, the Regulation of the Cabinet of Ministers No. 354 of 30 June 2020 “On Working Days relocation in 2021” is applicable with regard to officials and employees who have a normal working time (Article 27§2 of the Law on the Career Course of Service of Officials). Payment for public holidays is made in accordance with the Remuneration Law and Labour Law. The Committee takes note of the example provided concerning the employees of the State Fire and Rescue Service: those for whom aggregated working time is specified and who perform work on public holiday, receive a supplement of 50% of the established hourly rate; those for whom regular working time does set, do not work on public holidays.

The Committee notes that Article 29(1) of the Law on the Career Course of Service of Officials provides that “taking into account the necessity of the service, an official may, by an order of the head of Institution or an authorised official thereof, be involved in the fulfilment of the duties of the service outside the specified time for the fulfilment of the duties of the service, during week’s days of rest and on the public holidays specified in the law, as well as during week’s time of rest without exceeding 144 hours during a period of four months.”

Since the report only partially answers its questions, the Committee reiterates all the specific questions concerning public holidays with pay. The Committee points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Latvia is in conformity with Article 2§2 of the Charter.

Covid-19

With regard to the question regarding special arrangements related to the pandemic, the Committee understands from the report that the pay provisions continued to apply to the work on public holidays.

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

Conclusion

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

Article 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 Latvia.

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 2018) found the situation in Latvia 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 indicates that the Law on Measures for the Prevention and Suppression of Threat to the State and its Consequences due to the Spread of Covid-19 (“Crisis Law”) was adopted on 20 March 2020. It was in force from 22 March 2020 to 10 June 2020. It defined measures to prevent and eliminate the threat to the State and its consequences, special support mechanisms as well as costs directly related to containing the spread of Covid-19.

According to Section 14 of this law, “until 31 December 2020, an employer who meets the criteria established for participants of the In-depth Cooperation Programme and is affected by the crisis caused by Covid-19 may (...) grant the employee unused annual paid leave without complying with Article 150§2 of the Labour Law”. In this regard, the Committee recalls that under Article 150§2 of the Labour Law, the employer is obliged to take the employee’s wishes into consideration as far as possible when granting the annual paid leave.

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

Conclusion

The Committee concludes that the situation in Latvia 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 Latvia.

The Committee notes that no targeted questions were asked in relation to Article 2§4 of the Charter. For this reason, only those states for which the previous conclusion had been one of non-compliance, deferral or compliance pending 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 as regards the provisions relating to the "Labour Rights" thematic group).

In its previous conclusion (Conclusions 2018), the Committee considered that the situation in Latvia was in conformity with Article 2§4 of the Charter pending receipt of the information requested, particularly on the list of activities regarded as involving exposure to particular risks.

Elimination or reduction of risks

The Committee considered that the situation was in conformity in its previous conclusion regarding Article 2§4 of the Charter. The Committee reiterates therefore the situation of conformity with Article 2§4 of the Charter.

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 had considered the situation to be in conformity but had asked for a list of activities regarded as involving exposure to particular risks to be included in the next report. The report does not contain any information. The Committee reiterates its request and in the meantime it considers that the situation is in conformity with Article 2§4 of the Charter.

Measures related to Covid-19

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

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 2§4 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

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 Latvia was in conformity with Article 2§5 of the Charter, pending receipt of the information requested concerning the safeguards in place to ensure that workers are entitled to a weekly rest period (Conclusions 2018).

The report does not contain any new information. The Committee reiterates therefore its request for information on the safeguards in place to ensure that workers are entitled to a weekly rest period of at least twenty-four hours, that they may not waive this right and that if a weekly rest period is deferred, it may not be deferred for more than twelve consecutive days. In case this information is not provided, there will be nothing to establish that the situation in Latvia is in conformity with Article 2§5 of the Charter in this respect.

Conclusion

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

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 Latvia.

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 Latvia 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 mention any special arrangements relevant to Article 2§6 of the Charter.

Conclusion

The Committee concludes that the situation in Latvia 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 Latvia.

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).

As the previous conclusion found the situation in Latvia 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 notes that Order No. 103 on the Declaration of the Emergency Situation adopted on 12 March 2020 at the outset of the Covid-19 pandemic and ceasing to apply on 10 June 2020 included two provisions that are relevant for the purposes of Article 2§7 of the Charter. Article 4.49 of the Order introduces an exemption applying during the emergency situation from the obligation to provide workers with a mandatory health examination where the health care services required for the performance thereof had been discontinued by order of the Minister of Health. Article 4.50 of the Order provides that once the operation of the health care services in question has resumed, an initial health examination would be provided within one month at the latest, whereas a regular health examination would be provided within three months at the latest.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

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 Latvia was in conformity with Article 4§2 of the Charter, pending receipt of the information requested (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion, and to the targeted question.

Rules on increased remuneration for overtime work

In its previous conclusion, the Committee asked whether the length of time off which may be awarded to replace increased remuneration was itself also increased. It also asked whether the legislation provided for exceptions for increased remuneration for overtime work in certain specific cases (Conclusions 2018).

The report provides no information requested, and the Committee thus reiterates this request for information. The Committee considers that if this information is not provided in the next report, there will be nothing to establish that the situation in Latvia is in conformity with Article 4§2 of the Charter.

Covid-19

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

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

The report states that no specific provisions have been adopted regarding overtime work in case of teleworking.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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 (Conclusions 2018).

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

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

Effective remedies

In its previous conclusion, the Committee asked that the next report to indicate what rules applied in the event of retaliatory dismissal of an employee in connection with a claim for equal pay.

In response, the report states that according to Article 122(1) of the Labour Code, an employee may bring a court action to have a notice of termination declared invalid within one month from the date of receipt of the notice of termination. In other cases, where an employee’s right to continue the employment relationship has been violated, the employee may bring a court action for reinstatement within one month from the date of dismissal. Under Article 124(1), if the notice of termination has no legal basis or if the procedures prescribed for the termination of an employment contract have been violated, the notice will be declared invalid (via a court judgment). In addition, according to Article 124(2), an employee dismissed on the basis of a notice of termination that has been declared invalid or otherwise violates the employee’s right to continued employment must be reinstated in his or her previous position. Employees who are reinstated following unlawful dismissal must be paid their average earnings for the whole period of enforced absence. The Committee considers that the situation is in conformity with Article 4§3 in this respect.

In its previous conclusion, the Committee also asked for information on the number, nature and outcome of equal remuneration complaints addressed by the judicial and administrative bodies. In response, the report states that the courts’ information system does not collect data on the reasons for an employee’s dismissal, including complaints about wage discrimination.

Pay transparency and job comparisons

In its previous conclusion, the Committee asked that the next report indicate whether the methods used to evaluate work were gender neutral and excluded the discriminatory undervaluation of jobs traditionally performed by women.

In response, the report states that the Labour Code does not contain a definition of equal work or work of equal value. The Committee refers here to the country report on gender equality in Latvia prepared by the European Network of Legal Experts in Gender equality and Non-Discrimination (2022), which confirms that neither normative acts nor national case law provide criteria for establishing the equal value of the work performed.

The report states, however, that European and national case law are used for job evaluation. It states for example that EU Member States can use EU documents such as Annex 1 “Gender Neutral Job Evaluation and Classification Systems” to the Commission Staff Working Document attached to the Report from the Commission to the European Parliament and the Council (6 December 2013), and the Report on the application of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

The Committee notes from the said country report on gender equality in Latvia (2022) that there are no company-level job evaluation and classification systems, except for state officials and employees employed in state and municipal institutions.

The Committee notes that, in order to establish whether the work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination (see in this respect collective complaints Nos. 124 to 138, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

In view of the above, the Committee requests that the next report provide more information on the parameters making it possible to establish the equal value of the work carried out (such as the nature of the work, training and working conditions).

In its previous conclusion, the Committee also asked for more information concerning across company comparisons in unequal pay litigation cases. In particular, the Committee asked whether the pay comparisons were possible across companies, for example, where such company was a part of a holding company and the remuneration was set centrally.

In response, the report states that the Labour Code does not prohibit pay comparison across companies for example, where such company is a part of a holding company and the remuneration is set centrally. Pay comparisons depends on each individual case examined in court.

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

Statistics and measures to promote the right to equal pay

The report provides detailed information on the difference in gross monthly and gross hourly earnings of women and men. The Committee notes that the gender pay gap was 30% in finance and 32% in the retail and wholesale trade.

For information, the Committee takes note of the Eurostat data on the gender pay gap in Latvia during the reference period: 19.8% in 2017, 19.6% in 2018, 21.2% in 2019 and 22.3% (provisional figure) in 2020 (compared with 14.1% in 2011). It notes that the gender pay gap was higher than the EU 27 average of 13% (provisional figure) in 2020 (data from 4 March 2022) and that it increased during the reference period.

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

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

In reply to the question about the impact of Covid-19, the report states that the pandemic affected almost everyone and, in particular, during the state of emergency in the spring of 2020, tourism, hospitality and catering services; the wholesale and retail sector; arts and entertainment. According to the report, the government introduced a downtime allowance as one of the main forms of support for improving the situation of employees and self-employed persons. Women applied for downtime benefits almost twice as often as men. The Committee notes from the report that the pandemic has not highlighted any new problems in relation to equal opportunities for women and men but that it has exacerbated existing ones.

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

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

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

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

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

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

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

Reasonable period of notice: legal framework and length of service

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

In its previous conclusion the Committee found that the situation in Latvia was not in conformity with Article 4§4 of the Charter on the grounds that a notice period of ten days, applicable to dismissals on grounds of inability to perform due to the worker’s state of health and temporary incapacity, is not reasonable for workers and civil servants with more than six months of service (Conclusions 2018).

The report states that Article 103, paragraph 1 of the Labour Law was amended in 2019. As a result of the amendment, during the reference period Article 103 of the Labour Law provides that “Unless the collective agreement or the employment contract specifies a longer time period for a notice of termination, an employer, when giving a notice of termination of an employment contract, shall comply with the following time periods: 1) without delay, if the notice of termination of the employment contract is given in the cases specified in Article 101, paragraph 1, clauses 2, 4 or 7 -inability to perform due to the worker’s state of health - of this Law; 2) 10 days, if the notice of termination of the employment contract is given in the cases specified in Article 101, paragraph 1, clauses 1, 3, 5 or 11 - temporary incapacity of the worker to perform work for more than six months- of this Law; 3) one month, if the notice of termination of the employment contract is given in the cases specified in Article 101, paragraph 1, clauses 6, 8, 9 or 10 of this Law”. The report further states that Article 111 of the Labour law still provides that if a notice of termination of an employment contract has been given on the basis of Article 101, paragraph 1, clauses 6, 7, 8, 9 or 10 of the Labour Law, the employer, at the written request of the worker, has the obligation to grant sufficient time to the worker, within the scope of the contracted working time, to seek another job. The collective agreement or the employment contract shall specify the length of such time and the earnings to be maintained for the worker during this time period.

As noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. The Committee notes that the minimum notice period is still the same in case of temporary incapacity of the worker to perform work for more than six months and has been reduced in case of inability to perform due to worker’s state of health. The Committee therefore reiterates its previous conclusion of non-conformity on this point.

In its previous conclusion, the Committee found that the situation in Latvia was not in conformity with Article 4§4 of the Charter on the grounds that the one-month notice period applicable to dismissals on grounds of incompetence, reinstatement of another worker; staff reduction and liquidation, is not reasonable for workers and civil servants with more than three years of service (Conclusions 2018). The report states that no change was made in Article 103 paragraph 3 of the Labour Law, which sets out this notice period. The Committee therefore reiterates its previous conclusion of non-conformity on this point.

As regards civil servants, the report states that State Civil Service Law does not regulate periods of notice for termination of civil servants' contracts. It further states that the period of notice has to be reasonable based on the reason for termination and is set in every case individually by each institution. The report also states that the State Chancellery has been working on amendments to State Civil Service Law. The Committee asks that the next report provide information on the amendments made to State Civil Service Law as regards the periods of notice for termination of contracts in the civil service.

The report informs that no specific arrangements have been made in response to the Covid-19 crisis and the pandemic regarding the right of workers to a reasonable period of notice for termination of employment.

Notice periods during probationary periods

In its previous conclusion, the Committee asked that the next report indicate the statutory maximum duration of probationary periods (Conclusions 2018).

In reply to the question, the report states that according to Article 46 of the Labour Law, a probationary period of a maximum of three months may be specified when signing an employment contract to assess whether a worker is suitable for performance of the work entrusted to him/her.

The Committee takes note that Article 47, paragraph 1 of the Labour Law provides that during the probationary period, the employer and the worker have the right to give a notice of termination of the employment contract in writing three days prior to termination. It also

prescribes that the employer does not have the obligation to indicate the cause for such notice when giving the notice of termination of an employment contract during a probationary period. The Committee notes that a three-day notice period is not in conformity with Article 4§4 of the Charter.

Notice periods with regard to workers in insecure jobs

In its previous conclusion, the Committee asked that the next report confirm that the conditions concerning the notice of termination of employment apply to all workers covered by the Labour Law, including workers hired under fixed-term contracts (Conclusions 2018).

In reply to the question, the reports states that paragraph 6 of Article 44 of the Labour Law provides that the same provisions that apply to permanent workers shall apply to workers hired under fixed-term contracts.

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

The Committee takes note that according to Article 103 paragraph 1 (3) of the Labour Law, the notice period for the termination of contract in case of liquidation of the employer's business (legal person or partnership) is one month.

Circumstances in which workers can be dismissed without notice or compensation

The Committee takes note that according to Article 101 of Labour Law, the worker can be dismissed without a notice period in the following cases: when he/she has acted illegally and therefore, has lost the employer's trust; when he/she is under the influence of alcohol, narcotic or toxic substances while performing work; when the worker is unable to perform the contracted work due to his/her state of health and such state is medically certified.

Conclusion

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

- a notice period of ten days, applicable to dismissals on grounds of inability to perform due to the worker's state of health and temporary incapacity, is manifestly unreasonable for workers with more than six months of service;
- a notice period of one month, applicable to dismissals on grounds of incompetence; reinstatement of another worker; staff reduction and liquidation, is manifestly unreasonable for workers with more than three years of service;
- a notice period of three days, in case of dismissal during the probationary period, is manifestly unreasonable.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

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

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

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

Deductions from wages and the protected wage

In its previous conclusion (Conclusions 2018) the Committee found that the situation was not in conformity with the Charter on the ground that on the ground that the attachable amount of wages leaves workers who are paid the lowest wages and their dependents insufficient means of subsistence. The Committee asked the next report to indicate the limits applicable to deductions from wages.

The Committee notes from the report that Article 78 of the Labour Law lists the conditions under which deductions may be made from the wage payable to a worker. Furthermore, under Article 79 of the Labour Law an employer has the right to deduct from the wage the compensation for losses caused to him/her due to an illegal, culpable action of the employee. Such a deduction requires the written consent from the employee. According to Article 80, deductions for compensation for losses caused to the employer cannot exceed 20% of the monthly wage. In any case, the wage shall be maintained for the employee in the amount of minimum monthly wage and funds in the amount equal to State social security benefit for each dependant minor child.

The report further states that the attachable amount of wage is determined in accordance with Civil Procedure Law. According to Article 594 of the Civil Procedure Law 50% of the minimum monthly wage is deducted in case of child maintenance obligations and 30% of the minimum wage in case of losses or compensation for losses arising from personal injuries which have resulted in mutilation or other damage to health.

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

Waiving the right to the restriction on deductions from wage

The Committee reiterates its question as to whether 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 Latvia as well as the comments submitted by the Free Trade Union Confederation of Latvia (FTUCL).

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 Latvia was not in conformity with Article 5 of the Charter on the ground that a minimum of at least 25% of the employees of an undertaking are required to form a trade union in an undertaking, and 50 founding members are required to form a trade union outside an undertaking, which constitutes an excessive restriction on the right to organise (Conclusion 2018).

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

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

Prevalence/Trade union density

The Committee asked in its targeted question for data on trade union membership prevalence across the country and across sectors of activity.

In reply to the targeted question, the report provides the figures on trade union membership in the period 2017-2020. The Committee notes that the level of trade union membership has decreased from 10.2% in 2017 to 8.6% in 2020.

Personal scope

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

In reply to the Committee’s question, the report states that Article 15, Paragraph 1, Clause 1, of the Military Service Law prohibits members of the armed forces to join trade unions. The report explains that this prohibition is due, *inter alia*, to the need to maintain the loyalty of the soldier to the commander and military discipline.

The report further states that, according to Article 10, Paragraph 3 of the Military Service Law, soldiers have the right to nominate a representative in each unit to defend soldiers’ interests and address internal issues. The soldiers’ representative shall exercise his/her powers in accordance with the procedures specified by the Minister of Defence. Moreover, the report states that Article 10, Paragraph 2 of the Military Service Law stipulates that a soldier has the right to be a member of associations and foundations of a non-political nature, as well as to establish military associations and foundations and participate in other non-political activities if such activities do not interfere with service.

The Committee finds that the prohibition on members of the armed forces to organise is not in conformity with Article 5 of the Charter. The Committee also finds that the soldiers’ representative cannot be deemed to have similar characteristics and competences as trade unions. It therefore considers that the situation in Latvia is not in conformity with Article 5 of the Charter on this point.

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

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.

In its previous conclusion, the Committee asked for information on the right of members of state security services (other than the police) to form and join trade unions (Conclusions 2018).

In reply to the targeted question, the report states that Article 18, Chapter 4 of the Law on State Security Institutions of 5 May 1994, as amended in 2018, stipulates that it is prohibited for officials of State security institutions to carry out political activities, to organise strikes, demonstrations, pickets and to participate therein, to establish trade unions and to participate in the operation thereof. The Committee therefore considers that the situation in Latvia is not in conformity with Article 5 of the Charter on the grounds that officials of State security institutions do not have the right to organise.

The report also states that the State Border Guard Law of 5 November 2020 came into force on 1 December 2020. This Law does not maintain the restriction on border guards to form trade unions.

The report further states that the State Chancellery of the Republic of Latvia is working on draft amendments to the State Civil Service Law. The Committee asks the next report to provide updated information on any developments in this area as it relates to the right to form and join trade unions.

Forming trade unions and employers' organisations

In its previous conclusion, the Committee assessed the situation concerning the new Law on Trade Unions of 6 March 2014 (Conclusion 2018). The Committee found that the situation was not in conformity with Article 5 of the Charter on the ground that a minimum of at least 25% of the employees of an undertaking are required to form a trade union in an undertaking, and 50 founding members are required to form a trade union outside an undertaking, which constitutes an excessive restriction on the right to organise (Conclusion 2018).

The report states that this minimum was set with the active participation of the Free Trade Union Confederation of Latvia and follows the guidelines of the ILO convention No 87 "Freedom of Association and Protection of the Right to Organise Convention".

The report does not provide information on change as regards the Law on Trade Unions of 6 March 2014. The Committee therefore reiterates its previous finding of non-conformity.

Conclusion

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

- members of the armed forces and officials of State Security Institutions are prohibited from joining and forming organisations for the protection of their interests;
- a minimum of at least 25% of the employees of an undertaking are required to form a trade union in an undertaking, and 50 founding members are required to

form a trade union outside an undertaking which constitutes an excessive restriction on the right to organise.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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

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

Conclusion

The Committee concludes that the situation in Latvia is in conformity with Article 6§1 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by Latvia as well as the comments from the Free Trade Union Confederation of Latvia (FTUCL).

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

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

In its previous conclusion, the Committee considered that the situation in Latvia was not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining was not sufficient, considering the low level of collective bargaining coverage of workers at the time, of approximately 24% (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

Both the report, as well as the FTUCL comments, provide information about several substantive measures aimed at promoting collective bargaining, taken during the reference period. In 2018, Article 18 of the Labour Law was amended by introducing a lower representativity threshold for employers’ organizations signing industry-level collective agreements that can be extended to all the employers and employees in that industry. Two industry level collective agreements taking advantage of the more favourable threshold were signed in 2019 (construction) and 2020 (glass fibre), respectively. In 2020, Article 68 of the Labour Law was amended to provide social partners with the possibility to derogate from legal provisions on overtime payment in exchange for a higher minimum wage. This amendment provided some leeway for collective bargaining on the minimum wage, which previously had been an issue regulated exclusively in the law. Two industry-level collective agreements that covered wage issues were signed in 2019 (construction) and 2020 (hospitality) respectively. The report also provides information about other industry-level collective agreements concluded during the reference period in the care and railway sectors.

These amendments have been the result of collaborative work involving the social partners carried out within the scope of a European Union-funded project titled “Development of Social Dialogue to Improve the Business Support Regulation”. The report, as well as the FTUCL comments, provide information about three additional projects implemented during the reference period, with the involvement the social partners, and with collective bargaining components. These projects concerned the issues of occupational safety, active ageing and the work-life balance respectively.

The Committee notes that the report does not provide an updated estimate of the collective bargaining coverage during the reference period, in light of the measures described above, and that the information is not available from other sources either. The Committee asks the next report to provide information on the total proportion of employees covered by a collective agreement at every level.

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 provides information on the manner in which certain issues arising in the context of the pandemic, such as teleworking and income protection, were reflected in the collective agreements adopted during the period in question.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

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

Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Latvia is in conformity with Article 6§3 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

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 (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the general question.

Right to collective action

Restrictions to the right to strike, procedural requirements

In its previous conclusion, the Committee noted that under Article 20§1 of the Law on State Security Institutions, officials of State Security institutions were prohibited, inter alia, from organising and participating in strikes, demonstrations and pickets. It requested information on the right of the police to strike and deferred its conclusion pending receipt of this information.

In its report, the Government states that the Strike Law provides for workers’ right to strike. However, Article 16 of the law lists a number of professional categories in which the right to strike is prohibited; this list includes police officers. Article 23§5 of the Law on Police also provides that police officers are not entitled to call a strike. The Government adds that police officers have the right to apply to the courts to challenge decisions concerning them if they consider that these decisions unduly restrict their rights or powers or violate their dignity.

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

Covid-19

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

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

The Committee points out that in its Statement on Covid-19 and social rights adopted on 24 March 2021, it specified that Article 6§4 of the Charter entails a right of workers to take collective action (e.g. work stoppage) for occupational health and safety reasons. This means,

for example, that strikes in response to a lack of adequate personal protective equipment or inadequate distancing, disinfection and cleaning protocols at the workplace would fall within the scope of the protection afforded by the Charter.

The Government reports that no particular measures have been taken.

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 6§4 of the Charter on the ground that the police are denied the right to strike.

Article 21 - Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Latvia. It also notes comments submitted by the Free Trade Union Confederation of Latvia (FTUCL).

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question 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 2018) pending receipt of the information requested. The assessment of the Committee will therefore concern the information provided by the Government in response to the question raised in its previous conclusion, and 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.

In reply to the request for information on remedies, the report states that in case of a violation of the right to information and consultation, employees or their representatives may resort to the State Labour Inspectorate, responsible for implementation of State supervision and control in the field of employment legal relationships and labour protection. Employees or their representatives have also right to bring an action in a court of general jurisdiction in accordance with the procedures specified in the Civil Procedure Law.

The Committee notes from the comments by the Free Trade Union Confederation of Latvia (FTUCL) that According to Section 11 of Labour Law the representatives of employees, when fulfilling their duties, have the right to request and receive from the employer information regarding the current economic and social situation of the undertaking. The FTUCL alleges that in practice information on pay levels, remuneration system is often treated by the employers as a commercial secret. This creates obstacles for workers representatives in protecting workers right to equal pay. According to the FTUCL, another challenging issue is balancing the right to information and consultation and the General Data Protection Regulation (GDPR). The GDPR cannot prevent worker representatives (trade union) to request information from employer on remuneration system in the enterprise to fulfill their legitimate function – protect interests and defend rights of their members. However, very often there are cases where employers have opposite interpretation on this issue and GDPR is used as a reason not to disclose information. The Committee asks the next report to comment on these observations and to explain how the right to access to information on pay levels works in practice.

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

The report states that all measures taken during the pandemic were discussed with the social partners in working groups and ad-hock working groups. The report further specifies that in 2020, the Law on the Management of the Spread of Covid-19 Infection of (hereinafter – Law on Management) came into force. The Law laid down basic principles for the operation of public authorities and the rights and obligations of public authorities and private individuals for the prevention and management of the threat to the State after the revocation of the

emergency situation created by the spread of Covid-19. According to Article 31 of the Law on Management, the State Employment Agency (hereinafter – SEA) may shorten the time period for notification of collective redundancy. The SEA shall immediately notify in writing an employer and representatives of employees of the shortening of the time period.

The report also provides information on specific measures taken during the pandemic to ensure the respect of the right to information and consultation in particular sectors (in particular, the Internal Security Bureau, public administration, and civil aviation). According to the report, during the pandemic, consultations with trade unions also took place remotely, online, to ensure timely circulation and review of documents. The report also provides information on exchange of information among medical institutions and medical practitioners involved in the mitigation of the consequences of Covid-19, which is, however, not relevant for the assessment under Article 21 of the Charter.

The Committee notes that period of notification of collective redundancy was shortened in the time of emergency. It also notes from the comments by the Free Trade Union Confederation of Latvia (FTUCL) that during Covid-19 pandemic impact, trade unions reported various challenges in practical implementation of information and consultation right. To limit spread of Covid-19 some working conditions were changed without informing or consulting workers' representatives. The Committee asks that the next report provides information on impact of the shortened period of notification of collective redundancy on the rights guaranteed by Article 21 of the Charter.

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

Conclusion

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

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

The Committee takes note of the information contained in the report submitted by Latvia. It also notes comments submitted by the Free Trade Union Confederation of Latvia (FTUCL).

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

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral, and to the targeted question.

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

The Committee has previously requested specific information on the measures adopted or encouraged by authorities in order to enable workers, or their representatives, to contribute to the organisation of social and socio-cultural services within the undertaking. The report states in reply that according to the information received from the Free Trade Union Confederation of Latvia, there is no information available regarding participation of trade unions in the organisation of social and socio-cultural services within the undertakings. The Committee notes that it appears that no specific measures have been adopted or encouraged by authorities in order to enable workers, or their representatives, to contribute to the organisation of social and socio-cultural services within the undertakings.

The Committee recalls that the right to take part in the organisation of social and socio-cultural services and facilities only applies in undertakings where such services and facilities are planned or have already been established. Article 22 of the Charter does not require that employers offer social and socio-cultural services and facilities to their employees but requires that workers may participate in their organisation, where such services and facilities have been established (Conclusions 2007, Italy; Conclusions 2007, Armenia).

The Committee has also previously reserved its position concerning the existing remedies, pending detailed information on the administrative and/or judicial procedures available to employees, or their representatives, who consider that their right to take part in the determination and improvement of the working conditions and working environment has not been respected. In this framework, the Committee also asked to be informed concerning the penalties which can be imposed on the employers if they fail to meet their obligations and whether employees, or their representatives, are entitled to damages. Finally, it requested updated information on decisions taken by competent judicial bodies with respect to the implementation of the right to take part in the determination and improvement of the working conditions and working environment.

The report states in reply that in case of violation of the right to take part in the determination and improvement of the working conditions and working environment, a person (employees or their representatives) may apply to the State Labour Inspectorate. Employees or their representatives have also right to bring an action to court of general jurisdiction in accordance with the procedures specified in the Civil Procedure Law.

Pursuant to Article 162 of the Labour Law, a warning or a fine from seven to seventy units of fine shall be imposed on the employer if it is a natural person, and a fine from fourteen to two hundred and twenty units of fine – if it is a legal person, for the violation of the laws and regulations governing the employment. Every wrongful act *per se*, as a result of which harm has been caused (also moral injury), shall give the person who suffered the harm therefrom the right to claim satisfaction from the offender, insofar as he/she may be held at fault for such

act. By moral injury is understood physical or mental suffering, which is caused as a result of unlawful acts committed to the non-financial rights of the person who suffered the harm. The amount of compensation for moral injury shall be determined by a court at its own discretion, taking into account the seriousness and the consequences of the moral injury, pursuant to the Civil Law. The report also provides statistics on violations identified by the State Labour Inspectorate regarding the Labour Protection Law.

Finally, 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 no specific measures have been taken and that all measures taken during the pandemic were discussed with the social partners in working groups and ad-hock working groups.

The report further states that in 2020 the Law on the Management of the Spread of Covid-19 Infection came into force, by which the period of notification of collective redundancy was shortened in the time of emergency. The Committee also notes from the comments by the Free Trade Union Confederation of Latvia (FTUCL) that during Covid-19 pandemic various changes of working conditions were introduced without informing or consulting workers' representatives. The Committee requests the next report to provide more exhaustive information on the scope and implementation of the shortening of the period of notification of collective redundancy, as well on the impact it had on the workers rights guaranteed by Article 22 of the Charter.

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

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Latvia 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 Latvia and of the comments submitted by the Free Trade Union Confederation of Latvia (FTUCL).

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 Latvia was in conformity with Article 26§1 of the Charter, pending receipt of the information requested (Conclusions 2018).

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

Prevention

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

In its previous conclusion, the Committee asked for information on any preventive measures taken during the reference period with the aim of raising awareness of the problem of sexual harassment in the workplace. It also asked whether and to what extent employers’ and workers’ organisations are consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace (Conclusions 2018).

The report provides detailed information with regard to the awareness-raising and information campaigns carried out during the reference period such as public information campaigns, reports, discussions, studies and surveys, with the involvement of the social partners. For example, in 2020 the Ministry of Welfare asked for the opinion of the social partners, namely the Free Trade Union Confederation of Latvia (FTUCL) and the Employers’ Confederation of Latvia (ECL), on the possibility of ratification of the ILO Convention 190 on the elimination of violence and harassment in the world of work. The report indicates that FTUCL called for ratification of the ILO Convention 190, while the ECL dispatched public information on the same Convention on their website, social networks and to their members.

The report also indicates that, in 2018, the Ombudsman issued informative material to employees and employers entitled "Unwanted sexual behaviour in the work environment". Moreover, in 2019, the Ombudsman conducted training of employees of public administration institutions (four lectures) on sexual harassment at work.

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 information on the Regulation No. 1 of the Cabinet of Ministers of 21 November 2018 on “Values of State Administration and Fundamental Principles of Ethics”. It indicates that every institution has its own Code of Ethics. For example, the State Police has developed the internal regulations of 5 February 2020 No. 3 “Code of Ethics of the State Police”, which sets out ethical values and basic principles, as well as rules of general conduct.

The report indicates that, on 17 October 2019, amendments were made to the Labour Law in order to incorporate in it the description of administrative violations and the penalties for such violations. Until 1 July 2020, the violations and penalties were regulated by the Latvian Administrative Violations Code. According to Article 161 of the Labour Law (Violation of Prohibition of Differential Treatment in the Field of Employment Relationship), where there has been a violation of prohibition of differential treatment in the field of employment relationship, a warning or a fine of twenty-eight to seventy units shall be imposed on the employer as a natural person, and a fine of seventy to one hundred and forty units in the case of a legal person (one unit represents €5).

In its previous conclusion, the Committee asked whether the legal framework provides for the protection of victims of sexual harassment against retaliation and whether employers can be held liable when sexual harassment occurs in relation to work, or on premises under their responsibility when the perpetrator or the victim is a third party not employed by them, such as an independent contractor, a self-employed worker, a visitor, a client, etc. (Conclusions 2018).

The report does not provide the requested information. The Committee notes from the *Country report on gender equality* (2021) of the European network of legal experts in gender equality and non-discrimination, that Latvian law provides protection against victimisation in the case of discrimination or in general (in the case of a breach of the provisions of the Labour Law).

The report provides no information on whether employers can be held liable when sexual harassment occurs in relation to work, or on premises under their responsibility when the perpetrator or the victim is a third party not employed by them, such as an independent contractor, a self-employed worker, a visitor, a client, etc. The Committee reiterates its question. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Latvia is in conformity with Article 26§1 of the Charter on this point.

Damages

In a targeted question, the Committee asked whether any limits apply to the compensation that might be awarded to the victim of sexual harassment for moral and material damages. The Committee reiterates its question. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Latvia is in conformity with Article 26§1 of the Charter on this point.

The Committee asked that the next report should provide information on any example of case-law regarding compensation (Conclusions 2018). The Committee also asked for confirmation that the right to reinstatement is provided to employees that have been unfairly dismissed or have been pressured to resign for reasons related to sexual harassment and for information to be provided on this matter (Conclusions 2018).

The report provides detailed information on the number of court proceedings at all levels of jurisdiction regarding violation of Article 29 of the Labour Law prohibiting differential treatment and discrimination in employment. For example, during the relevant period, the court of first instance upheld the plaintiff's claim in two cases where the plaintiff in a labour dispute alleged a violation of Article 29 of the Labour Law, and awarded non-pecuniary compensation of €3 787.44 in favour of the applicant. The report does not provide any example of sexual harassment cases dealt with by the courts.

The Committee reiterates its request for information on case-law on sexual harassment, including compensation awarded. It also reiterates its question as to whether the right to reinstatement is provided to employees that have been unfairly dismissed or have been pressured to resign for reasons related to sexual harassment and to provide information on this matter (Conclusions 2018). The Committee considers that if the requested information is

not provided in the next report, there will be nothing to establish that the situation in Latvia is in conformity with Article 26§1 of the Charter on this point.

The Committee notes from the *Country report on gender equality* (2021) of the European network of legal experts in gender equality and non-discrimination, that in employment disputes, individuals may ask for non-discriminatory employment conditions, reinstatement (except in discriminatory recruitment cases) and compensation, including moral damages.

Covid-19

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

The report indicates that no specific measures have been taken during the pandemic.

Conclusion

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

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 Latvia and of the comments submitted by the Free Trade Union Confederation of Latvia (FTUCL).

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 Latvia was in conformity with Article 26§2 of the Charter, pending receipt of the information requested (Conclusions 2018).

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

Prevention

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

In its previous conclusion, the Committee asked for information on any preventive measures taken during the reference period with the aim of raising awareness of the problem of moral (psychological) harassment in the workplace. It also asked whether and to what extent employers’ and workers’ organisations are consulted in the promotion of awareness, information and prevention of moral (psychological) harassment in the workplace (Conclusions 2018).

The report provides detailed information with regard to the awareness raising and information campaigns carried out during the reference period such as public information campaigns, reports, discussions, studies and surveys, with the involvement of the social partners. For example, in 2020 the Ministry of Welfare asked for the opinion of the social partners, namely the Free Trade Union Confederation of Latvia (FTUCL) and the Employers’ Confederation of Latvia (ECL) on the possibility of ratification of the ILO Convention 190 on the elimination of violence and harassment in the world of work. The report indicates that FTUCL called for ratification of the ILO Convention 190, while the ECL disseminated public information on the same Convention on their website, social networks and to their members.

The report further indicates that, for the first time, in September and October 2019, the State Labour Inspectorate carried out a thematic inspection on psycho-emotional risks in the work environment. The report also indicates that in 2019/2022, the Ombudsman conducted training sessions on situations of mobbing or bossing to civil servants and private sector employees.

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 information on the Regulation No. 1 of the Cabinet of Ministers of 21 November 2018 on “Values of State Administration and Fundamental Principles of Ethics”. It indicates that every institution has its own Code of Ethics. For example, the State Police has developed the internal regulations of 5 February 2020 No. 3 “Code of Ethics of the State Police”, which sets out ethical values and basic principles, as well as rules of general conduct.

The report indicates that, on 17 October 2019, amendments were made in order to incorporate the description of administrative violations and the penalties for such violations into the Labour Law. Until 1 July 2020, the violations and penalties were regulated by the Latvian Administrative Violations Code. According to Article 161 of the Labour Law (Violation of Prohibition of Differential Treatment in the Field of Employment Relationship), where there has been a violation of prohibition of differential treatment in the field of employment relationship, a warning or a fine of twenty-eight to seventy units shall be imposed on the employer as a natural person, and a fine of seventy to one hundred and forty units in the case of a legal person (one unit represents €5).

In its previous conclusion, the Committee asked whether the legal framework provides for the protection of victims of moral (psychological) harassment against retaliation and whether employers can be held liable when harassment occurs in relation to work, or on premises under their responsibility when the perpetrator or the victim is a third party not employed by them, such as an independent contractor, a self-employed worker, a visitor, a client, etc. (Conclusions 2018).

The report does not provide the requested information. The Committee notes from the *Country report on gender equality* (2021) of the European network of legal experts in gender equality and non-discrimination that Latvian law provides protection against victimisation in the case of discrimination or in general (in the case of a breach of the provisions of the Labour Law).

The report provides no information on whether employers can be held liable when moral (psychological) harassment occurs in relation to work, or on premises under their responsibility when the perpetrator or the victim is a third party not employed by them, such as an independent contractor, a self-employed worker, a visitor, a client, etc. The Committee reiterates its question. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Latvia is in conformity with Article 26§2 of the Charter on this point.

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.

In its previous conclusion, the Committee noted that pursuant to Article 29§8 of the Labour Law, in the event of discrimination, the employee may claim compensation for pecuniary and non-pecuniary damage. Furthermore, under Article 1635 of the Civil Law, persons who suffered moral injury as a result of illegal acts, may claim compensation before the civil courts. The amount of compensation awarded for non-pecuniary damage is determined by the court, taking into account the seriousness and the consequences of the moral injury (Conclusions 2018).

The Committee asked the next report to provide information on any examples of case-law regarding compensation (Conclusions 2018). It also asked whether the right to reinstatement is granted to employees who have been unfairly dismissed or have been pressured to resign for reasons related to moral (psychological) harassment (Conclusions 2018).

The report provides detailed information on the number of court proceedings at all levels of jurisdiction regarding violation of Article 29 of the Labour Law prohibiting differential treatment and discrimination in employment. For example, during the relevant period, the court of first instance upheld the plaintiff's claim in two cases where the plaintiff in a labour dispute alleged only a violation of Article 29 of the Labour Law, and awarded non-pecuniary compensation of €3 787.44 in favour of the applicant. The report does not provide any example of moral harassment cases dealt with by the courts.

The Committee notes from the *Country report on gender equality* (2021) of the European network of legal experts in gender equality and non-discrimination, that in employment

disputes, individuals may ask for non-discriminatory employment conditions, reinstatement (except in discriminatory recruitment cases) and compensation, including moral damages.

Covid -19

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

The report indicates that no specific measures have been taken during the pandemic.

Conclusion

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

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

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

The Committee recalls 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 previous conclusions (Conclusions 2018), the Committee deferred its conclusions. In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to its previous questions.

Types of workers' representatives

In previous conclusions (Conclusions 2018), the Committee noted that according to the Labour Code, there are two types of workers' representation: trade union representatives and other elected workers' representatives. The Committee asked that the next report provide more details on the types of workers' representatives other than trade union members.

In reply, the report indicates that within the meaning of the Labour Code, the "employees' representative" means: (1) trade union representatives, or (2) other employee representatives who are elected for a specified term of office by a simple majority vote at a meeting in which at least half of the employees employed by an undertaking participate. The report further indicates that within the labour protection system there is a "trusted representative" who is a person elected by employees and who is trained in accordance with the procedures indicated by the Cabinet of Ministers and who represents the interests of employees regarding labour protection.

Protection granted to workers' representatives

In previous conclusions (Conclusion 2018), the Committee noted that according to the provisions of the Labour Code and Trade Union Law, trade union members cannot be dismissed without prior consent of the relevant trade union, except for in situations defined by law. It asked more information about these exceptions. The Committee also asked information on how workers' representatives other than trade union members are protected against dismissals in the undertakings in which no trade union is active and for how long the protection extends.

In reply, the report indicates that an employer is prohibited from giving notice of termination of an employment contact to a trade union representative without prior consent of the relevant trade union, except in cases where the trade union representative is on a probationary period or in cases where the termination of the employment contract is based on circumstances related to the conduct of the employee concerned (such as being under the influence of alcohol or narcotics when performing work) or is due to the liquidation of the undertaking. The report further indicates that this protection is granted if the trade union representative concerned has been a member of the trade union for more than six months. The Committee requests for information concerning protection against dismissal granted to trade union representatives who are trade union members since less than six months.

The report does not provide information on whether or not the protection against dismissal granted to trade union representatives is extended for a reasonable period after the expiration of their mandate. The Committee requests this information.

As for the protection against dismissal granted to workers' representatives other than trade union representatives, the report indicates that according to Article 11(6) of the Labour Code,

performance of the duties of an employee representative may not serve as a basis for termination of an employment contract or for otherwise restricting the rights of the employee. However, the report does not provide any answer to the question on whether the protection against dismissal granted to workers' representatives is extended for a reasonable period after the end of their mandate. The Committee therefore reiterates this question and considers that if the next report does not provide any answer in this respect, there will be nothing to establish that the situation is in conformity with Article 28 of the Charter. It defers its conclusion in this respect.

As regards protection against prejudicial acts other than dismissal, the Committee previously asked that the next report should exhaustively explain how workers' representatives (both trade union representatives and other elected representatives) are protected from prejudicial acts short of dismissal.

According to the report, affiliation of an employee with trade unions may not serve as a basis for restricting the rights of an employee. In addition, Article 29 of the Labour Code prescribes prohibition of differential treatment based on trade union affiliation. According to the report, for the violation of prohibition of differential treatment in the field of employment relationship, a warning or a fine from twenty-eight to seventy units (1 fine unit is equal to 5 €) shall be imposed on the employer if it is a natural person, and a fine from seventy to one hundred and forty units of fine if it is a legal person.

The Committee recalls that the protection afforded to workers' representatives shall be extended for a reasonable period after the effective end of period of their office (Conclusions 2010, Statement of Interpretation on Article 28). The report does not provide any information on whether the protection of workers' and trade union representatives against prejudicial acts short of dismissal is extended or not for a reasonable period after the expiration of their mandate. The Committee therefore requests this information.

In previous conclusions (Conclusions 2018), the Committee asked whether workers' and trade union representatives have also a right to compensation in case of a violation of their rights by the employer. The report indicates that in case of a legal dispute concerning the employers' obligations in this respect, the employer has an obligation to prove that the employee has not been punished or adverse consequences have not been directly or indirectly caused for them due to the fact that the employee exercises their rights in a permissible manner. According to the report, under Article 29 of the Labour Code, if the prohibition of differential treatment and the prohibition against causing adverse consequences is violated, an employee has the right to request compensation for losses and compensation for moral harm. The courts have the discretion to determine the amount of compensation for moral harm.

The report also provides that cases of dismissals of trade union representatives are treated as regular cases of unfair dismissals which give rise to the right of the employee to be reinstated at work. In addition, if it is concluded that the employee has been dismissed due to being trade union representative, they can claim non-pecuniary damage compensation. The Committee asks whether these rules on compensation are also applicable in the context of cases concerning dismissal of workers' representatives other than trade union representatives. It also asks whether the legislation provides any upper limit concerning the amount of compensation which might be granted in case of unjustified dismissals or prejudicial acts short of dismissal.

In their submissions, the Free Trade Union Confederation of Latvia states that the protection granted to trade union and workers' representatives is not provided for civil servants. The Government did not comment on this submission. The Committee therefore asks that the next report provide specific information on the protection granted to trade union and workers' representatives of civil servants.

Facilities granted to workers' representatives

In previous conclusions (Conclusions 2018), the Committee noted that according to Article 13§4 of the Trade Union Law, authorised trade union representatives are entitled to paid time off, not exceeding a half of the contacted working time. It asked how this limitation is calculated. It also asked that the next report elaborate on facilities afforded to workers' representatives, including all those mentioned in its Statement of Interpretation on Article 28 (Conclusions 2010).

The report indicates that according to Article 13 of the Trade Union Law, the authorised official of a trade union has the right to fulfil their duties and to participate in the training organised by the trade union during the working hours in accordance with the provisions laid down in the collective agreement or another agreement between the employer and the trade union, but not exceeding half of the agreed working time.

According to the report, under Article 11 of the Labour Law, workers representatives (other than trade union representatives) have the right to have access to the workplace to fulfil their duties and to hold meetings of employees on the premisses of the undertaking.

The Committee asks that the next report provide information on whether paid-time off is also granted to workers' representatives other than trade union representatives to allow them to fulfil their duties to represent the employees.

Conclusion

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

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

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

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), pending receipt of the information requested, the Committee deferred its conclusions.

In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the questions asked in the previous conclusion (Conclusions 2018).

Prior information and consultation

In previous conclusions (Conclusions 2018), the Committee concluded that the situation in Latvia concerning prior information and consultation in procedures of collective redundancies was in conformity with Article 29 of the Charter. The report further provides that following the amendments made to the Labour Code, the procedure concerning the collective redundancies are now also applicable to crews of sea-going ships.

Sanctions and preventative measures

In previous conclusions (Conclusions 2018), the Committee noted that in the event of breaches of the provisions of the law on information, consultation and notification, Article 41§1 of the Administrative Violations Code provides for warnings to be issued or fines imposed on employers -natural persons or officials of legal persons. The Committee asked what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers’ representatives has been fulfilled.

The report indicates that according to Article 124 of the Labour Code, if a notice of termination by an employer has no legal basis or the procedures prescribed for termination of an employment contract have been violated, such notice shall be declared invalid in accordance with a court judgment. In addition, an employee who has been dismissed from work on the basis of a notice of termination by an employer which has been declared invalid or also otherwise violating the rights of the employee to continue employment relationship, shall, in accordance with a court judgment, be reinstated in their previous position.

Conclusion

The Committee concludes that the situation in Latvia 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.