



March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

LITHUANIA

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 Lithuania, which ratified the Revised European Social Charter on 29 June 2001. The deadline for submitting the 19th report was 31 December 2021 and Lithuania submitted it on 31 May 2022.

The Committee recalls that Lithuania 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.

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).

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

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

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

– 13 conclusions of conformity: Articles 2§2, 2§3, 2§4, 2§5, 2§6, 2§7, 4§2, 6§1, 6§3, 21, 22, 28 and 29

– 7 conclusions of non-conformity: Articles 4§1, 4§4, 5, 6§2, 6§4, 26§1 and 26§2.

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

The next report from Lithuania 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 Lithuania.

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

In its previous conclusion, the Committee considered that the situation in Lithuania was not in conformity with Article 2§1 of the Charter on the ground that, during the reference period, for certain categories of workers a working day of 24 hours was permitted (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.

Measures to ensure reasonable working hours

The Committee previously found the situation in Lithuania not to be in conformity with Article 2§1 of the Charter on the ground that, during the reference period, a working day of 24 hours was permitted for certain categories of workers (Conclusions 2018).

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

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

The report states that the new Labour Code entered into force on 1 July 2017. As a rule, working time is 40 hours per week (8 hours daily). For teachers and psychologists, the maximum weekly working time is 36 hours, 37 hours for pharmacists. In no circumstances can weekly working time exceed 60 hours (12 hours daily). A daily uninterrupted rest period is 11 hours and at least 35 hours per week. If the length of a shift is more than 12 hours but less than 24 hours, the uninterrupted rest period must last at least 24 hours. The Committee asks whether this information means that a shift for certain categories of workers can still last 24 hours and, if not, whether daily working time for some workers can exceed 16 hours. The Committee notes that if this information is not provided in the next report, there will be nothing to establish that the situation is conformity with Article 2§1 of the Charter.

The report further states that the State Labour Inspectorate pays special attention to the riskiest economic sectors, such as construction, wholesale, manufacturing, agriculture, forestry and fisheries, road freight transport, etc. The report states that, for example, in 2019 the highest number of violations of working and rest time regulations were found in the field of accommodation and catering services, in agriculture, forestry and fishery. In 2020, most violations were found in the same two sectors and in healthcare and social work. The report

states that violations of work and rest organisation in 2020 accounted for 40% of irregularities detected during the inspections and, compared to 2019, they decreased by 5%.

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, while initiating individual disputes over the law, workers applied to the Labour Disputes Commission. In 2017, it examined 16 disputes on work and rest time, 60 in 2018, 59 in 2019 and 122 in 2020.

Law and practice regarding on-call periods

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

In reply, the report states that Article 118 of the Labour Code describes the specifics of working time arrangements while on call. In these cases, the length of the workday/shift shall not exceed 24 hours and the worker's standard working hours over a maximum reference period of 3 months. In case of passive on-call duty, the shift may be as long as 24 hours. However, in case an employee has to work during a shift, the maximum working time cannot be exceeded within the reference period of 2 months. Passive on-call duty is not considered working time except for the time during which the worker actually works. This type of on-call duty may not last longer than a continuous one-week period over 4 weeks. For passive on-call duty at home, the worker shall be paid an allowance of at least 20% of his/her monthly salary. A person may not be assigned to passive on-call duty at home on a day when he/she has already worked continuously for at least 11 consecutive hours.

The Committee reiterates that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for stand-by duty at the employer's premises as well as for on-call time spent at home (*Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Complaint No. 149/2017, decision on the merits of 19 May 2021, §61). The Committee asks whether passive on-call duty in Lithuania is considered as rest. It reserves its position on this point.

The report further states that the legislation in Lithuania does not allow zero-hour contracts.

Covid-19

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

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

The report states that there were no changes in provisions on working time and rest periods during the Covid-19 pandemic. Only amendments related to downtime were adopted by the Parliament. When downtime is declared as a result of an extreme situation or quarantine, the worker cannot be required to come to the workplace and during the idle time the worker shall be paid a salary not lower than a minimum monthly salary. Partial idle time is possible.

The report further states that, on average, teleworking increased from 13% in 2017 to 40% in 2020. In case of remote work, the hours worked shall be calculated in accordance with the procedure established by the employer but working time requirements cannot be breached.

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 Lithuania.

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, the Committee considered that the situation in Lithuania was in conformity with Article 2§2 of the Charter (Conclusions 2018). It also noted that it would examine the provisions of the new Labour Code relating to annual holidays during the next cycle of control.

The previous report indicated that the new Labour Code entered into force on 1 July 2017. According to Article 144, work carried out on that holiday must be paid at least double the usual wage. The remuneration may also be provided as compensatory time-off, in which case it should be at least double the days worked. At the employee’s request, the working time on a holiday may be added to the annual leave.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report indicates that no changes have been introduced regarding the right to public holidays with pay.

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

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

In its previous conclusion, the Committee considered that the situation in Lithuania was in conformity with Article 2§3 (Conclusions 2018). It noted that it would examine the provisions of the new Labour Code relating to annual holidays during the next cycle of control.

The previous report indicates that the new Labour Code entered into force on 1 July 2017. According to Article 126, employees are entitled to paid annual leave of 20 working days or 24 working days if working six days a week. If the number of working days per week is less or different, the employee must be granted leave of at least four weeks. The working year that annual leave is granted for shall begin on the day that the employee begins working under the employment contract.

According to Article 128 of the New Labour Code, annual leave must be granted at least once per working year. One instalment of annual leave may not be shorter than 10 working days; or shorter than 12 working days (if an employee works 6 days per week).

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report indicates that no changes have been introduced regarding the right to annual holiday with pay.

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

Conclusion

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

As the previous conclusion found the situation in Lithuania 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 Lithuania is in conformity with Article 2§4 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

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

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

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 Lithuania 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 the special arrangements related to the pandemic, the report notes that no special arrangements were made.

Conclusion

The Committee concludes that the situation in Lithuania 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 Lithuania.

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 Lithuania 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 the special arrangements related to the pandemic, the report notes that no special arrangements were made.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

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

In its previous conclusion (Conclusions 2018) the Committee found that the situation was not in conformity with the Charter as the minimum wage did not ensure a decent standard of living.

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

Fair remuneration

The Committee notes from the report that according to Article 141 of the Labour Code the month wage of a worker may not be less than the minimum wage. The minimum hourly and monthly wages are approved by the Government upon receipt of a recommendation of the Tripartite Council. The Council links the level of the minimum wage to specific economic indicators, such as the changes in the average monthly earnings, productivity, consumer price index, GDP growth, annual unemployment rate etc. The Labour Code allows for remuneration at the minimum wage only for unskilled labour.

As regards the amounts of minimum and average wages, according to the report the minimum wage stood at € 607 gross in 2020 and € 437 net. The Committee observes that the minimum wage has considerably risen since 2017 when it stood at € 380 gross. As regards the average wage, according to the report in 2020 it amounted to € 1.428 gross € 913 net. The Committee notes from Eurostat that the gross average earnings amounted to € 1.403 gross and € 898 net in 2020. The Committee notes that despite considerable progress made in raising the minimum wage, it remains below 50% of the average wage and therefore, it cannot ensure a decent standard of living. Therefore, the situation is not in conformity with the Charter.

Workers in atypical employment

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

The Committee notes from the report that for workers in atypical jobs in the gig or platform economy there are two recruitment options: by contract or by agreement. Where an employment contract is concluded, the general provisions of the Labour Code apply and in the case of an agreement, the provisions of the Civil Code apply.

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

working poor, including persons working two or more jobs or full-time workers living in substandard conditions.

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

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

Covid-19

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

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

The Committee notes that according to the Labour Code an employer may impose idle time on an employee or a group of employees during quarantine. An employer may declare partial downtime by reducing the number of working days per week or the number of working hours per day for a certain period. The Committee notes that the Government has provided assistance to employers who declared downtime for employees and therefore, the costs incurred by the employers were reimbursed by the Employment Service through a grant. The report states that the reimbursement of the 'idle time' during the pandemic must be at a level not lower than the minimum wage.

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

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

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

In its previous conclusion, the Committee considered that the situation in Lithuania was not in conformity with Article 4§2 of the Charter on the ground that the exception to the right to increased remuneration applied only to senior officials and management executives (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 question.

Rules on increased remuneration for overtime work

Previously, the Committee found that the situation in Lithuania was not in conformity with Article 4§2 of the Charter on the ground that the exception to the right to increased remuneration applied only to senior officials and management executives (Conclusions 2018).

The report states that Article 144 of the new Labour Code, which entered into force on 1 July 2017, states that work performed on days off and holidays, at night or during overtime by a single-person management body of a legal person has to be recorded but is not paid for unless the parties agree otherwise in the employment contract. Work performed on days off and holidays, at night or during overtime by the managerial employees of a legal person has to be recorded and has to be paid for in the same way as for work done according to the usual working time arrangements unless the parties agree otherwise in the employment contract. There are specific rules on remuneration for overtime for employees of budgetary institutions in accordance with the Law on Remuneration of Employees of State and Municipal Institutions of the Republic of Lithuania and remuneration of Commission Members and it provides for increased remuneration for overtime. In accordance with the Law on Civil Service, civil servants are also paid for overtime.

The Committee notes that the new Labour Code included necessary amendments and that the situation in Lithuania is now 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 it was agreed that additional changes in legal acts were not necessary because the Labour Code regulates overtime with sufficient flexibility. Persons teleworking could freely distribute their working time without breaching the maximum working hours and minimum rest time requirements.

The report also states that in 2020 all healthcare workers combatting Covid-19 received a bonus payment of 15% of their salaries. Also, Government approved a pay rise of 60-100% for healthcare workers who worked in Covid-19 hotspots during the quarantine.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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”).

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

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

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

The Committee deferred its previous conclusion on Article 4§3, pending receipt of the information requested about job comparisons (Conclusions 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 for updated information on the amount of compensation that may be awarded in cases of pay discrimination (Conclusions 2018).

In reply, the report states that the Lithuanian Civil Code provides that victims of gender-based discrimination are entitled to compensation for pecuniary and non-pecuniary damages, with no upper limit set on the amount that they may be awarded. The assessment of damages is left to the discretion of the court. The report states that employees in the private sector have to apply to the ordinary civil courts to bring a claim for gender-based pay discrimination while public servants have to apply to the administrative courts. The Committee notes that the situation is in conformity with the Charter on this point.

Pay transparency and job comparisons

In its previous conclusions, the Committee asked whether pay comparison was possible across companies, particularly if remuneration was set centrally for several companies belonging to a holding company (Conclusions 2018 and 2014).

In reply, the report states that the principle of non-discrimination is enshrined in the Constitution. The new Labour Code of 2017 has introduced a number of obligations for employers to provide information on pay to employees, works councils and trade unions.

The Labour Code provides that the pay system must be set out in a collective agreement. The report states that, in practice, the principle of equal opportunities, including equal pay, is laid down in collective agreements. In the absence of a collective agreement to this effect, in

workplaces where the average number of employees is equal to or greater than 20, the pay system must be approved by the employer and made available to all employees. The pay system must specify:

- the various categories of staff according to their position and qualification, and all of the types of payment they receive;
- the (minimum and maximum) levels of pay;
- the grounds and procedure for awarding additional payments (supplements and bonuses);
- the pay indexation mechanism.

The report states that employers are required to design their pay systems in such a way as to avoid any gender-based discrimination or discrimination on other grounds.

The report also states that in workplaces where the average number of employees is greater than 20, employers must provide employee representatives with updated anonymous data on average earnings by occupational group and gender for non-managerial employees at least once a year, if there are more than two employees in an occupational group.

The Committee reiterates its question as to whether pay comparisons are possible across companies, particularly if remuneration was set centrally for several companies belonging to a holding company.

Statistics and measures to promote the right to equal pay

For information, the Committee takes note of the Eurostat data on the gender pay gap in Lithuania during the reference period, which was 15.2% in 2017, 14% in 2018, 13.3% (provisional figure) in 2019 and 13% (provisional figure) in 2020 (compared with 11.5% in 2011). It notes that the gender pay gap was the same as the average for the 27 EU countries, i.e. 13% (provisional figure) in 2020 (data as of 4 March 2022) and that it narrowed during the reference period.

As Lithuania 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 response to the question about the impact of Covid-19, the report states that, according to the Department of Statistics, the gender pay gap narrowed in almost all economic sectors during the pandemic. The Committee takes note of the examples provided in the report.

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 Lithuania.

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 Lithuania 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 reply to the targeted question, the report states that when a worker is dismissed at the initiative of the employer through no fault of the worker, he or she must be notified in writing one month in advance if the employment relationship has lasted more than one year, and two weeks in advance if the employment relationship has lasted less than a year. The report further states that notice periods are longer (3 months if the employment relationship has lasted more than one year, and 1.5 months if the employment relationship has lasted less than a year) if

the worker has less than five years left until retirement age or if the worker suffers from a disability, raises a child under the age of 14 or a disabled child under the age of 18, or if he or she has less than two years left until retirement.

In addition, the report states that the worker has the right to be given at least 10 per cent of the former standard working hours during the notice period to look for a new job, during which the worker shall retain his or her remuneration.

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 notice periods mentioned above do not acknowledge the length of service by setting out longer periods proportionate to the length of service. The Committee considers that such notice periods are manifestly unreasonable to allow the person concerned a certain time to look for other work before their current employment ends. The Committee therefore considers that the situation in Lithuania is not in conformity with Article 4§4 of the Charter in this respect.

The report also states that the regulation on the right of all workers to a reasonable period of notice for termination of employment has not been changed in response to the Covid-19 crisis and the pandemic.

Notice periods during probationary periods

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

Notice periods with regard to workers in insecure jobs

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

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

The Committee previously found the situation not to be in conformity on the ground that no notice period is given in cases of termination of employment based on a judicial decision which prevents the performance of work; the withdrawal of administrative licences required for the performance of work; the request from bodies or officials authorised by the law; and unfitness for work certified by authorised bodies (Conclusions 2018).

In reply to the previous conclusion of non-conformity, the report states that according to Article 60 of the Labour Code, which came into force on 1 July 2017, the employer must terminate the employment contract within five working days of receiving the document containing the reasons to terminate the employment contract outside the parties' control.

Circumstances in which workers can be dismissed without notice or compensation

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§4 of the Charter on the ground that notice periods do not take into account the length of service in cases of dismissal at the employer's initiative through no fault of the worker.

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 Lithuania.

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 Article 4§5 of the Charter on the ground that after all the authorised deductions, the wages of workers with the lowest pay did not allow for them to provide for themselves or their dependants.

According to the report deductions from wages are regulated by Article 150 of the Labour Code, and their amount is regulated by Article 736 of the Code of Civil Procedure. According to the Labour Code, deductions may only be made from an employee’s wage in the cases established in the Labour Code or other laws. The Committee notes that Article 736 of the Code of Civil Procedure was amended in 2018 and now provides that in the case of wages and salaries not exceeding the official minimum wage the maximum deduction that can be made is 30% (50% before the amendment in question). The Committee notes that lowering the maximum attachable portion of the minimum wage is a positive development.

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

Waiving the right to the restriction on deductions from wage

The Committee asks whether the workers may be authorised to waive the conditions and limits to deductions from wages imposed by law.

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 Lithuania.

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 Lithuania was in conformity with Article 5 of the Charter (Conclusions 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 by the Government in response to the deferral, the targeted questions and general question.

Prevalence/Trade union density

The Committee asked in its targeted question for data on trade union membership prevalence across the country and across sectors of activity. In reply to the targeted question, the report states that data on trade union membership prevalence across the country and across sectors of activity are not available. According to the report, “Statistics Lithuania” collects only the total number of trade union members and does not detail how many members belong to national, branch, territorial or employer level trade unions. According to the report the number of trade union members in 2017 was 92,100, it fell in 2018 to 86,600 but in 2020 increased to 99,300

Personal scope

In its previous conclusion, the Committee requested that all States provide information on the right of members of the armed forces to form / join a union (Conclusions 2018 – General question).

In reply to the Committee’s question, the report states that Article 36 of the Law on the Organisation of the National Defence System of the Republic of Lithuania and Military Service prohibits soldiers in professional military service from being members of a trade union

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).

The Committee recalls that it has previously considered that the complete suppression of the right to organise (which involves freedom to establish organisations/trade unions as well as freedom to join or not to join trade unions) is not a measure which is necessary in a democratic society for the protection of, inter alia, national security (*Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, §92).

The Committee therefore considers that the situation in Lithuania is not in conformity with the Charter in this respect on the ground that soldiers in professional military service may not be members of a trade union.

Restrictions on the right to organise

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

The report states that the Statute of the Internal Service contains the main provisions governing the activities of trade unions in internal affairs bodies (including the police), as well as the rights and characteristics of trade union representatives. Articles 61 to 62 of the Statute of the Internal Service provide that officials may, in accordance with the procedure laid down by law and by this Statute, form or join trade unions for the protection of their interests. The head of the statutory body and the deputy heads may not be members of a trade union operating in the statutory body.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 5 of the Charter on the ground that soldiers in professional military service are prohibited from joining and forming organisations for the protection of their interests.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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 Lithuania 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 Lithuania 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 Lithuania.

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 Lithuania was not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining was not sufficient, as evidenced by its relatively low collective bargaining coverage of approximately 15-20% of all workers (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.

The report provides limited quantitative information regarding collective bargaining during the pandemic. On 12 October 2021 (outside the reference period), there were 328 collective agreements, including one at the national level, four at the regional level, 12 at the sector level, and 311 at the company level. Of the aforementioned 328 collective agreements, 104 were concluded in the private sector (one at the sector and 103 at the company level) and 224 in the public sector (one at the national, four at the territorial, 11 at the sector, and 208 at the company level). On 15 November 2021 (outside the reference period), a collective agreement has been adopted at the national level covering healthcare workers.

The Committee notes that a new Labour Code came into force on 1 July 2017, during the reference period, which has fundamentally amended the existing regulations concerning collective bargaining. The Committee further refers to the latest estimates from Eurofound, to the effect that the overall collective bargaining coverage in Lithuania might be less than 15–20%. The Committee asks that the next report provide a comprehensive review of the relevant amendments introduced under the new Labour Code, their practical impact on collective bargaining coverage, and any other measures taken with a view to promoting collective bargaining. Meanwhile, the Committee reiterates its finding of non-conformity on the ground that the promotion of collective bargaining is not sufficient.

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

Covid-19

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

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

The Committee 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 Lithuania 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 Lithuania 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 Lithuania.

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

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

The Committee deferred its previous conclusion pending receipt of 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 general question.

Right to collective action

Entitlement to call a collective action, restrictions to the right to strike and procedural requirements

The Committee deferred its previous conclusion pending receipt of information on the establishment of works councils and the criteria used to determine whether a minimum service should be introduced in a particular sector.

In its report, the Government provides detailed information on the establishment and the functions of works councils.

With regard to the criteria used to determine whether a minimum service should be introduced in a particular sector, the Government stated in its previous report that Article 247 of the new Labour Code (which came into force in 2017) regulates strikes in undertakings and sectors where vital or emergency services are provided. These sectors are as follows: healthcare; electricity, water, heating and gas supply; waste and wastewater disposal; civil aviation; telecommunications; rail services; and urban public transport. In the event of a strike, these services must provide the public with minimum provision. The minimum services to be provided are determined by the parties to the collective labour dispute. Their agreement on this subject must be negotiated within the three days following the strike notice. If there is no agreement between the parties on the provision of minimum services, they are decided by the authority to which the labour dispute has been referred. Provision of minimum services is ensured by the strike committee, the employers and the designated workers.

In reply to the question put in the General Introduction to Conclusions 2018, the Government states that it is prohibited for trade unions operating within statutory bodies – including the police – to organise and take part in strikes.

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.

From the information provided by the Government it is clear that the strike ban covers bodies other than the police, and other professions (Article 248 of the Labour Code). The Committee asks for clarification in the next report as to which bodies and professions do not have the right to strike in Lithuania.

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 states that no specific measures were taken during the pandemic with regard to the right to strike.

Conclusion

The Committee concludes that the situation in Lithuania 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 Lithuania.

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

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions 2018). The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions.

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

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

The report provides that the Labour Code ensures that employees are informed and consulted in accordance with Section 3 of the Labour Code. No specific measures were taken during the pandemic in this regard. The report further specifies that no information is available on particular situations in the sectors of activity hit worst by the pandemic.

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

Conclusion

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

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

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

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

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

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions XX-3 (2018)). The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions.

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

The Committee notes that the report does not provide information on this aspect.

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

The Committee concludes that the situation in Lithuania 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 Lithuania.

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 Lithuania was not in conformity with Article 26§1 of the Charter on the ground that it has not been established that, in relation to the employer’s responsibility, there are sufficient and effective remedies against sexual harassment in relation to work (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.

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 reiterated its request for explanations on how, in practice, employers carry out their obligation to prevent sexual harassment. It asked for information on prevention measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) undertaken during the reference period in order to combat sexual harassment specifically. It also asked for information on how and to what extent the social partners are involved in the adoption and implementation of such measures. The Committee outlined that in the absence of information in the next report there will be nothing to establish that the situation is in conformity with the Charter in these respects (Conclusions 2018).

The report indicates that employers in both the private and public sectors have a duty to implement the principles of gender equality and non-discrimination in all areas of employment, which includes the duty not to discriminate and to ensure that no employee is instructed to discriminate, harass or sexually harass. Employers with more than 50 employees must take additional steps to adopt and publish the company’s or organisation’s equal opportunities policy and its implementing measures, as well as information on how this policy will be monitored. The report also provides information on the measures taken in the field of gender equality in general by the authorities and the Office of the Equal Opportunities Ombudsperson, such as the Interinstitutional Action Plan for Promotion of Non-discrimination 2017-2019 and the Gender Equality Ruler Questionnaires.

With regard to the involvement of the social partners, the report indicates that the Minister of Social Security and Labour and four trade unions signed the National Collective Agreement for 2022 (outside the reference period). The agreement establishes, among other obligations, that special attention is paid to information about psychological violence, harassment or discrimination suffered by an employee. The trade union has the right to propose to the employer the creation of a commission to investigate possible cases of psychological violence, harassment or discrimination. The investigation must begin within 7 working days from the date of the commission’s formation. The report also indicates that the Office of the Equal Opportunities Ombudsperson is already working with the social partners in this area. A dedicated website for employers has been developed for this purpose.

Liability of employers and remedies

As regards the employers' liability, the Committee noted previously that the report did not clarify, as it had requested, whether any liability of the employer applies under the Equal Opportunities Act when a third party (an independent contractor, a self-employed worker, a visitor, a client, etc.) is victim of harassment by a person under the employer's responsibility (Conclusions 2018). In its previous conclusion, in view of the lack of information available, the Committee considered that the situation was not in conformity with Article 26§1 of the Charter on the ground that it had not been established, in relation to the employer's responsibility, that there are sufficient and effective remedies against sexual harassment in relation to work (Conclusions 2018).

The current report does not clarify the situation. The Committee therefore reiterates its request for clarification. Meanwhile, it concludes that the situation is not in conformity with Article 26§1 of the Charter on the ground that the existing framework in respect of employers' liability does not provide for sufficient and effective remedies against sexual harassment in relation to work.

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

The Committee notes that, according to Article 26 § 1 of the Labour Code, the employer must implement the principles of gender equality and non-discrimination on other grounds. This means that in an employer's relations with employees, any direct or indirect discrimination, harassment, sexual harassment or instruction to discriminate on the grounds of gender (...) shall be prohibited. Article 26 § 2 (5) of the Labour Code provides that the employer must take measures to ensure that at the workplace, the employee does not experience harassment or sexual harassment and no instructions are given to discriminate, and also that the employee is not subject to persecution and is protected from hostile treatment or adverse consequences if he or she files a complaint concerning discrimination or is involved in a case concerning discrimination.

The report provides information on two cases heard by the Labour Disputes Commission. In one case, the plaintiff challenged the lawfulness of the dismissal on grounds of sexual harassment (Article 58 § 3 (4) of the Labour Code "sexual harassment at work or in the workplace"). The Labour Disputes Commission ruled that the employer had rightly classified the plaintiff's misconduct, which manifested itself in sexual harassment of other employees, as serious misconduct and had dismissed the plaintiff (employee). The plaintiff's application for a declaration that the dismissal was unlawful was rejected by the Labour Disputes Commission. Following the transfer of the case to the court, the claim of the plaintiff was also dismissed. The report indicates that, in another application received by the Labour Disputes Commission, the applicant referred, *among other things*, to circumstances concerning the manager's inappropriate conduct, which showed signs of sexual harassment. The plaintiff's claim was not precisely formulated, her rights were clarified and the information was forwarded to the State Labour Inspectorate for inspection.

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 noted previously that victims of sexual harassment could claim compensation for pecuniary and non-pecuniary damages under the Equal Opportunities Act (Article 13) and the Civil Code (Articles 6.245-6.253) and that, in cases of unfair dismissal, the law provided for the employee's reinstatement or the award of an additional compensation (Conclusions 2014). In its previous conclusion, the Committee asked that the next report provides information on whether any limits apply to the compensation that might be awarded to the victim of sexual harassment for moral and material damages (Conclusions 2018)

The report indicates that no limits to compensation are prescribed by law, but the assessment has to be done by a labour dispute resolution body, i.e., either the labour dispute commission or the court. The report adds that, under Article 151 of the Labour Code, a party to an employment contract who has committed a fault and thereby failed to fulfil his/her professional obligations must compensate the other party for the material and non-material damage caused to him/her. Article 152 of the Labour Code specifies that the compensation amount for material damage shall consist of direct losses and lost income.

With regard to non-pecuniary (non-material) damage, the report states that according to Article 6.250 (1) of the Civil Code, non-material damage shall be deemed to be a person's suffering, emotional experiences, inconveniences, mental shock, emotional depression, humiliation, deterioration of reputation, diminution of possibilities to associate with others, etc. According to Article 6.250(2) of the Civil Code, when assessing the amount of compensation for non-pecuniary damage, the court shall take into consideration the consequences of such damage, the gravity of the fault of the person by whom the damage is caused and his/her financial status, the amount of pecuniary damage sustained by the aggrieved person, any other circumstances of importance for the case, as well as the criteria of good faith, justice and reasonableness. Labour dispute commissions are also bound by these provisions.

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, in 2020, the State Labour Inspectorate (SLI) prepared and published on the SLI website and on social networks the recommendations for employees and employers on the prevention of psychological violence in the work environment and the improvement of psychosocial working conditions. To promote the prevention of psychological violence at work, the SLI also amended the General Control Questionnaire of the Undertaking Inspection and the Control Questionnaire with regard to the identification of psychological violence in the work environment. Training was also provided to strengthen the capacity of SLI inspectors to identify occupational risk factors in the workplace, including psychological violence, and to assess the effectiveness of risk reduction or mitigation measures.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 26§1 of the Charter on the ground that the existing framework in respect of employers' liability does not provide for sufficient and effective remedies against sexual harassment in relation to work.

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 Lithuania.

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 Lithuania was not in conformity with Article 26§2 of the Charter on the grounds that:

- it has not been established that, in relation to the employer’s responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work;
- it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment (Conclusions 2018)

The assessment of the Committee will therefore concern the information in the report in response to the conclusion of non-conformity, 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 prevention measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) undertaken during the reference period in order to combat moral (psychological) harassment specifically. It also asked for information on how and to what extent the social partners are involved in the adoption and implementation of such measures. The Committee outlined that in the absence of information in the next report there will be nothing to establish that the situation is in conformity with the Charter in these respects (Conclusions 2018).

The report indicates that Article 30(2) of the Labour Code provides for an obligation of the employer to take all necessary measures to ensure the prevention of psychological violence in the work environment and to provide assistance to persons who have experienced psychological violence in the work environment.

The report further indicates that the State Labour Inspectorate has developed Methodological Guidelines for Employers for the prevention of psychological violence in the work environment and the improvement of psychosocial working conditions. The recommendations must be followed by employers in order to improve psychosocial conditions in the workplace and to prevent psychological violence in the work environment. The recommendations aim to address both violence by co-workers/managers and violence by third parties against the person at work and they are available online.

With regard to the involvement of the social partners, the report indicates that the Minister of Social Security and Labour and four trade unions signed the National Collective Agreement for 2022 (outside the reference period). The agreement establishes, among other obligations, that special attention is paid to information about psychological violence, harassment or discrimination suffered by an employee. The trade union has the right to propose to the employer to form a commission to investigate possible cases of psychological violence, harassment or discrimination. The investigation must begin within seven working days from the date of formation of the commission. The report also states that the Office of the Equal

Opportunities Ombudsperson is already working with the social partners in this area. A dedicated website for employers has been developed for this purpose.

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 indicates that Article 30(1) of the Labour Code imposes an obligation on the employer to create a work environment in which the employee, or a group of employees, does not suffer hostile, unethical, degrading, aggressive, abusive, insulting, physical or psychological intimidation or intimidation, degrading treatment or removal. Article 30(2) provides for obligation of the employer to take all necessary measures to ensure the prevention of psychological violence in the work environment and to provide assistance to persons who have experienced psychological violence in the work environment. The report states that the employer is thus required: 1) to create a safe environment for employees with their managers, with each other and with third parties; 2) to take preventive measures (information on intolerance of psychological violence, education, and conflict prevention); 3) to protect and assist victims in the event of psychological violence.

In all cases, the employee has the right to refer the matter to the employees' representatives, the State Labour Inspectorate, the Labour Disputes Commission, a court or the prosecutor's office.

In its previous conclusion, the Committee noted that, under the Equal Opportunities Act (Article 11), employers or their representatives are only directly responsible for acts of discrimination committed by them; no liability applies in cases of harassment between colleagues or involving third parties. The Committee asked that the next report clarify this point (Conclusions 2018). In the light of the available information, the Committee considered that the situation was not in conformity with Article 26§2 on the ground that it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in relation to work (Conclusions 2018).

The current report does not clarify the situation. The Committee therefore reiterates its request for clarification. Meanwhile, it concludes that the situation is not in conformity with Article 26§2 of the Charter on the ground that the existing framework in respect of employers' liability does not provide for sufficient and effective remedies against moral (psychological) harassment in relation to work.

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.

In its previous conclusion, the Committee noted that the report did not contain the information repeatedly requested (Conclusions 2010, 2014, 2016) regarding examples of cases concerning dismissals which occurred in the framework of moral (psychological) harassment complaints and the amounts actually awarded as compensation in such cases. The absence of this information did not allow the Committee to find that the redress granted in practice is adequate and effective. It accordingly considered that it has not been established that the situation is in conformity with Article 26§2 on this point (Conclusions 2018).

The Committee also asked whether any limits apply to the compensation that might be awarded to the victim of harassment for moral and material damages and whether the right to reinstatement also applies when the victim of harassment has not been formally dismissed but has been pressured to resign (Conclusions 2018).

The report indicates that no limits to compensation are prescribed by law, but that the assessment has to be done by a labour dispute resolution body, i.e., either the labour dispute commission or a court. The report adds that, under Article 151 of the Labour Code, a party to an employment contract who has committed a fault and thereby failed to fulfil his/her professional obligations must compensate the other party for the material and non-material damage caused to him/her. Article 152 of the Labour Code specifies that the compensation amount for material damage shall consist of direct losses and lost income.

With regard to non-pecuniary (non-material damage), the report indicates that Article 6.250 (1) of the Civil Code specifies that non-pecuniary damage shall be deemed to be a person's suffering, emotional experiences, inconveniences, mental shock, emotional depression, humiliation, deterioration of reputation, diminution of possibilities to associate with others, etc. According to Article 6.250(2) of the Civil Code, when assessing the amount of non-pecuniary damage, the court must take into consideration the consequences of such damage, the gravity of the fault of the person by whom the damage is caused and his/her financial status, the amount of pecuniary damage sustained by the aggrieved person, any other circumstances of importance for the case, as well as the criteria of good faith, justice and reasonableness. Labour dispute commissions are also bound by these provisions.

According to the State Labour Inspectorate data, in 2019, the Labour Disputes Committees ("LDC") examined only 1 application concerning psychological violence at work, which was resolved by an amicable settlement.

In 2020, 34 applications were examined, of which 16 were rejected, nine ended in an amicable settlement, a hearing was refused for three applications because the plaintiffs withdrew their claims before the hearing, three applications were not examined due to the LDC's' lack of jurisdiction, two cases were closed because the plaintiff waived all claims during the hearing, and one was dismissed due to missing the deadline for referral to the LDC. In this category of labour disputes, the defendants (employers) were mostly from the personal health care and social work sectors, as well as from the wholesale and retail trade and vehicle repair sectors.

The report also states that a violation of Article 30 of the Labour Code may result in the administrative liability of the perpetrator under Article 96 of the Code of Administrative Offences. In 2020, the State Labour Inspectorate received 12 complaints regarding psychological violence at work, of which four were upheld. From 1 January 2021 to 1 October 2021 (outside the reference period), the State Labour Inspectorate received 51 complaints on the issue "Ensuring the Prevention of Psychological Violence in the Work Environment", of which 19 were upheld. The State Labour Inspectorate issued four requests for elimination of violations.

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 in 2020, the State Labour Inspectorate (SLI) prepared and published on the SLI website and on social networks the recommendations for employees and employers on the prevention of psychological violence in the work environment and the improvement of psychosocial working conditions. To promote the prevention of psychological violence at work, the SLI has also amended the General Control Questionnaire of the Undertaking Inspection and the Control Questionnaire the issues of identification of psychological violence in the work environment. Training was also provided to strengthen the capacity of SLI inspectors in identifying occupational risk factors in the workplace, including psychological violence in the workplace, and to assess the effectiveness of risk reduction or mitigation measures.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 26§2 of the Charter on the ground that the existing framework in respect of employers' liability does not provide for sufficient and effective remedies against moral (psychological) harassment in relation to work.

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 Lithuania.

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

In previous conclusions (Conclusions 2018), the Committee concluded that the situation in Lithuania was not in conformity with Article 28 of the Charter on the ground that the protection granted to workers' representatives was not extended for a reasonable period after the expiration of their mandate. In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity.

Protection granted to workers' representatives

In Conclusions 2014, the Committee concluded that the situation in Lithuania was not in conformity with Article 28 of the Charter on the ground that the protection granted to workers' representatives was not extended for a reasonable period after the expiration of their mandate. In Conclusions 2018, the Committee noted that there was no change to the situation during the reference period and maintained its previous conclusion.

In reply, the report indicates that the new Labour Code which entered into force in June 2017, establishes restrictions on termination of employment contract and deterioration of employment contract conditions without the consent of the head of the territorial division of the State Labour Inspectorate. These regulations are aimed at ensuring that persons exercising employee representation functions do not suffer discrimination or other negative consequences due to their role. The report specifies that the restrictions apply for the period for which the persons representing the employees are elected and for six months after the end of the term of office.

According to the report, the head of the territorial division of the State Labour Inspectorate gives the consent if the employer provides information that the termination of the employment contract or change in the employment conditions is not related to the employee representation activities and if the employer does not discriminate against them on the basis of employee representation activities or trade union membership. The employees' representative shall have the right to submit an opinion on the application submitted by the employer.

The report further indicates that the decision of the head of the territorial office of the State Labour Inspectorate may be appealed against before the courts according to the procedure established by the Law on Administrative Proceedings. The employment contract of an employee representative may not be terminated until the labour dispute is settled by the courts.

The Committee recalls that if a dismissal on the ground of being a workers' representative or based on trade union membership activities takes place, there must be adequate compensation proportionate to the damage suffered by the employee concerned. It recalls that the compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement (Conclusions 2018, Montenegro). The Committee asks that the next report provide information on whether the relevant legislation provide for compensation in the event of discriminatory dismissal based on trade union/workers' representatives' activities, proportionate to the damage suffered by the victim.

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with the Charter in this respect.

Facilities granted to workers' representatives

The report indicates that workers' representatives shall be released from work at least 60 working hours per year for the performance of their duties and shall receive their remuneration. Moreover, the employer shall create conditions for the training and education of employees who are persons carrying out employee representation. They must be granted at least five working days per year for this purpose at a time agreed with the employer.

The Committee requests for information on facilities mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971, including access to premises, use of materials, distribution of information, support in terms of benefits, training costs (Statement of Interpretation, Conclusions 2016).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 28 of the Charter.

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

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

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

In the previous conclusions (Conclusions 2018), the Committee concluded that pending receipt of the information requested, the situation in Lithuania was in conformity with Article 29 of the Charter.

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

Prior information and consultation

In Conclusions 2014, the Committee asked what rules apply in Lithuania with regard to the right to information and consultation in procedures of collective redundancy. In Conclusions 2018, the Committee stated that it will examine the information provided in the report concerning the provisions of the new Labour Law in the next cycle of assessment.

The Committee notes that Article 207 of the new Labour Code regulates the information and consultation procedures in case of collective redundancy. Accordingly, prior to adopting a decision on a collective redundancy, the employer shall inform and consult the work councils. The employer shall provide the following information to the work councils in writing no later than seven working days prior to the planned start of the consultations: 1) reasons for the planned redundancy; 2) total number of employees and number of employees being made redundant, by categories; 3) time limit within which employment contracts will be terminated; 4) criteria for the selection of employees for redundancy; 5) conditions of termination of employment contracts and other important information.

The Committee also notes that where an enterprise, institution or another organisation has no work council, the employer must provide the information, within the same time limits, to the relevant trade union and to the employees, either directly or at a general meeting of employees. The trade union operating in the establishment shall be entitled to express its opinion concerning the employer's future decisions about collective redundancies.

According to the report, consultations between the employer and the work council shall start on the basis of the information provided, no later than within five working days from the date of receipt of the information. The aim of the consultations shall be to agree on the methods and means of avoiding the collective redundancy or reducing the number of employees being made redundant and mitigating the consequences of the redundancy by additional social measures intended, among other things, for the requalification or reemployment of the redundant employees. The trade union shall be kept informed about progress of the consultations and shall be entitled to express its opinion on such information to the employer. The employer shall conduct consultations during at least ten working days from the first day of the consultations unless the work council agrees with another term.

According to the report, companies have also the obligation to notify the Employment Service (under the Ministry of Social Security and Labour) of any changes in the organisation of work. Upon receiving of a notification from the enterprise about the planned collective dismissal, the Employment Service shall take preventative measures to mitigate the consequences of the dismissal by providing services to employees who have been given notice of dismissal. The

Employment Service organises meetings aiming to provide general information and consultations in the premises of the company or the Employment Service.

During the meeting, vacant job positions in the region are announced as well as information and consultation regarding employment or retraining opportunities, consultation on job search are provided. In case of the planned collective redundancy, a program of preventative measures shall be concluded to mitigate the consequences of the redundancies, which includes effective assistance to the redundant workers and efforts to reintegrate the dismissed employees into the labour market and provide opportunities to participate in employment support measures.

Sanctions and preventative measures

In Conclusions 2014, the Committee requested information on applicable sanctions in case the employer fails to notify the workers' representative about the planned redundancies. It also asked what preventative 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. In Conclusions 2018, the Committee stated that it will examine the information provided in the report concerning the provisions of the new Labour Law in the next cycle of control.

The report indicates that Article 209 of the new Labour Code regulates employers' liability for failure to fulfil the information and consultation duties. In case the employer has violated his duties of information and consultation, the work council or the trade union shall be entitled to initiate a labour dispute, through which the employer's decisions can be cancelled and liability provisions under the Labour Code or the Code of Administrative Offences can be applied.

The Committee recalls that sanctions applicable in case the employer fails in their duties of prior information and consultation, should be sufficiently deterrent (Conclusions 2003, Statement of Interpretation on Article 29). The Committee asks that the next report provide detailed information on applicable sanctions provided in the Labour Code and the Code of Administrative Offences in case the employer fails to notify/consult the workers' representatives about the planned redundancies.

The Committee asks whether the new Labour Code (or any other legislation) provides for preventative measures to ensure that redundancies did not take effect before employers' obligation to inform the workers' representatives had been fulfilled.

Conclusion

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