



March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

MALTA

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 Malta, which ratified the Revised European Social Charter on 27 July 2005. The deadline for submitting the 15th report was 31 December 2021 and Malta submitted it on 15 September 2022.

The Committee recalls that Malta 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).

Malta has accepted all provisions from the above-mentioned group except Articles 2§4, 2§7, 21 and 22.

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

The conclusions relating to Malta concern 19 situations and are as follows:

- 4 conclusions of conformity: Articles 2§3, 2§5, 2§6 and 29
- 11 conclusions of non-conformity: Articles 2§1, 4§1, 4§3, 4§4, 4§5, 6§1, 6§2, 6§3, 6§4, 26§1 and 26§2

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

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

The next report from Malta 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 Malta.

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 Malta was not in conformity with Article 2§1 of the Charter on the ground that the law did not guarantee the right to reasonable weekly working hours (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 notes that, in its previous conclusion, it found the situation in Malta not to be in conformity with Article 2§1 of the Charter on the ground that the law did not guarantee the right to reasonable weekly working hours (Conclusions 2018).

In reply, the report states that, in practice, there are occasional cases when workers work more than 48 hours per week with their consent. In such cases, the Department of Industrial and Employment Relations (DIER) inspectors monitor the situation to ensure that regulations on working conditions and health and safety regulations are not breached. In cases where there is no written consent, the DIER inspectors investigate the situation separately.

The Committee notes that no information is provided in reply to the conclusion of non-conformity that would allow the Committee to establish that the situation in Malta has been resolved. In the absence of this information, the Committee reiterates its conclusion of non-conformity on the ground that the law does not guarantee the right to reasonable weekly working hours for certain categories of workers.

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

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

The report provides statistical information on the number of investigations relating to the organisation of working time regulations as of 7 September 2021. The Committee notes that this information is outside the reference period for the purposes of the present reporting cycle.

The Committee also notes that no information is provided in reply to the targeted question. Therefore, it repeats its request for this information, in particular for any updates on the legal

framework on reasonable working hours, not only statistics on inspections but also their prevalence by sector of economic activity and sanctions imposed.

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 on-call arrangements cannot be imposed upon the worker. The parties are free to agree upon an on-call arrangement and for the payment of an on-call allowance. Being on-call is not considered working time.

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

The report also states that although zero-hour contracts have become common practice in Malta, they are not regulated by legal regulations. In practice, casual workers are usually given a pro-rata entitlement to sick leave, vacations, statutory bonuses and any other entitlements stipulated by law. Such pro-rata entitlement is calculated on the basis of the average number of hours worked every 13 weeks.

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 no legal amendments were made to facilitate flexible working arrangements as such provisions are already included in telework regulations. On the other hand, the Department of Social Security introduced four Covid-19 related benefits that targeted parents with school-age children who could not work remotely from home because of the nature of their work and who had to stay at home with their children. Around 4,200 such parents were eligible and received the Covid-19 parent benefit from March to October.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 2§1 of the Charter on the ground that the law does not guarantee the right to reasonable weekly working hours for certain categories of workers.

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 Malta.

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 conclusions, the Committee found that the situation in Malta was not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday was not adequately compensated for all workers (Conclusions 2018 and 2016).

In particular, the Committee noted that, in certain sectors, workers were only paid “time-and-a-half”, i.e. an increase of 50%, for work performed on public holidays falling in the period Monday to Friday. Therefore, it considered that a 50% increase could not be regarded as adequate compensation for the purposes of Article 2§2 of the Charter.

The report indicates that overtime rates are regulated by the Wage Regulation Orders, which govern certain employment conditions for workers in specific industry sectors. The Committee notes from the report that 31 Wage Regulations are in force, but only seven of them do not provide for double wage rate. These seven Wage Regulation Orders apply to workers in the following sectors: the beverage industry; cinemas and theatres; printing; public transport; sailors, sextons and employees working in hotels. However, the report clarifies that hotel maintenance staff are paid double for working on public holidays. All the other 24 Wage Regulation Orders provide for double pay for working on public holidays. The Committee asks that the next report explain if there are workers whose work on a public holiday is not covered by the Wage Regulation Orders. It also asks to confirm that payment for work on public holidays is calculated as overtime for all workers (private and public sectors). In the meantime, the Committee reserves its position.

In its previous conclusion, the Committee noted that, in the private sector, there were 326 collective agreements, covering 43,782 employees, whilst in the public sector (including public service), there were 35 collective agreements covering 62,365 employees, and asked to explain how many of those workers were entitled to double time compensation for work performed on public holidays, in addition to compensatory time off. In reply, the report indicates that collective agreements as a rule provide for double pay on public holidays.

The Committee asks the next report to clarify whether work is in principle prohibited on public holidays and where worker obliged to work on a public holiday is paid double or granted additional time off.

Covid-19

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

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

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

As the previous conclusion (Conclusions 2018) found the situation in Malta to be in conformity with the Charter, there was no examination of the situation in 2022 on this point.

Therefore, the Committee reiterates its previous conclusion.

Covid-19

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

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

Conclusion

The Committee concludes that the situation in Malta is in conformity with Article 2§3 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 Malta 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 Malta 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 Malta.

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

Covid-19

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

Conclusion

The Committee concludes that the situation in Malta is in conformity with Article 2§6 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 Malta.

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 concluded that the situation was not in conformity with the Charter as it had not been established that the minimum wage ensured 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

In its previous conclusion the Committee considered that it had not been established that the minimum wage ensures a decent standard of living. The Committee notes that the report does not provide new information. It therefore it considers that 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 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 falsely classified as self-employed and therefore, do not have access to the applicable labour and social protection rights. As a result of the misclassification, such persons cannot enjoy the rights and protection to which they are entitled as workers. These rights include the right to a minimum wage.

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

Covid-19

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

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

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

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

Conclusion

The Committee concludes that the situation in Malta 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 Malta.

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”).

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

Rules on increased remuneration for overtime work

Previously, the Committee asked the next report to clarify whether the fact that overtime payment could not be replaced by time off in lieu meant that all employees, including those covered by Wage Regulations Orders, were entitled to overtime rates calculated at “one and a half” times the normal hourly rates on weekdays (150%) and whether any exceptions applied to certain sectors of activity or categories of workers (notably, as regards senior management staff). It also asked the next report to provide all relevant information on the amendments introduced to overtime legislation (Conclusions 2018).

The report states that SL 452.110 (overtime regulations) was amended by Legal Notice 81 of 2015, under which workers whose overtime rate is not covered by a Wages Council Wage Regulation Order shall be paid one and a half times the normal rate for work carried out in excess of a 40-hour week. This is averaged over a four-week period or over the shift cycle at the discretion of the employer. While there are no applicable exceptions to certain sectors of activity, or categories of workers, in practice, contracts relating to high remuneration packages, including senior management, often stipulate that the remuneration of any hours worked over the standard weekly hours are included in the pay package.

The report also states that the same Legal Notice introduced the banking of hours. In all sectors the employer may introduce schemes to bank hours, whereby up to 376 hours of the normal annual working hours in each calendar year may be banked, thus allowing extra hours over and above the normal weekly working hours to be worked during periods of higher work activity, which would be redeemed during periods of lower activity. However, the average weekly working time, including overtime, shall not exceed an average of 48 hours over the applicable reference period, unless the worker gave his or her consent to work more. The hours of work which may be banked shall be limited to those hours on any day in a week which attract the normal hourly rate of payment. Similarly, any hours of work which have been banked in order to be used during weeks of lower activity, shall only be so used on a weekly day of work where the hours of work are paid at a normal rate. Moreover, the parties may also agree to include hours which attract a special rate of pay, and in this respect the hours to be banked shall reflect such special hourly rate of pay.

The Committee asks for clarification whether the information provided in the report related to banking of hours means that overtime hours are not compensated as overtime. In the meantime, it reserves its position on this point.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to 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 the right of fair remuneration as regards overtime was not affected by the Covid-19 pandemic. Claims of breaches of overtime compensation were investigated and action was taken accordingly. From March 2020 to June 2021 there were 142 claims of breaches of overtime compensation. Some 61 of these claims were settled with the assistance of the Department of Industrial and Employment Relations, while another 16 claims led to the issuing of charges against the employer.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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

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

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

In its previous conclusion, the Committee considered that the situation in Malta was not in conformity with Article 4§3 of the Charter, on the ground that it had not been established that the principle of equal pay was effectively guaranteed in practice (Conclusions 2018).

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

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

Effective remedies

In its previous conclusion (Conclusions 2018), the Committee found that the situation was not in conformity with Article 4§3 on the ground that it had not been established that the principle of equal pay was effectively guaranteed in practice.

The report does not provide any information on this issue.

The Committee requests that the next report provide detailed updated information on the remedies available to victims of gender pay discrimination. It asks how the principle of shifting the burden of proof is applied in practice, for example, whether it is systematically applied in the case of pay discrimination. It also asks for examples of compensation awarded by the courts in cases of gender pay discrimination. The Committee also requests the next report to state what rules apply in the event of dismissal in retaliation for a complaint about equal pay.

In view of the above, the Committee concludes that the situation is not in conformity with the Charter on the grounds access to effective remedies in cases of gender pay discrimination is not guaranteed.

Pay transparency and job comparisons

In its previous conclusion, the Committee asked for information on whether the law prohibited discriminatory pay clauses contained in collective agreements, as well as whether pay comparisons were possible across companies. It also asked if there was legislation concerning how jobs "of equal value" can be compared to each other.

In response, the report indicates that the Department of Industrial and Employment Relations acts as registrar of collective agreements and therefore looks at the conditions laid in the applicable agreement. It also asks for pay slips of workers doing the same work. In the absence of a collective agreement, evidence from other employees such as contracts and pay slips are requested, while taking into consideration seniority and other factors. According to

the report, it is not possible to make comparisons of pay and jobs outside the company directly concerned in equal pay litigation cases. However, the Committee has already noted in its previous conclusion (Conclusions 2018), although the law does not provide for comparisons of pay and jobs outside the company concerned, it does not prohibit the Employment Tribunal from making such comparisons.

In addition, the Committee refers to its conclusion on Article 20 (Conclusions 2020); it noted from the country report on gender equality in Malta drawn up by the European Network of Legal Experts in gender equality and non-discrimination (2019) that Article 2 of the Employment and Industrial Relations Act defines a comparable full-time employee as a full-time employee “in the same establishment who is engaged in the same or similar work or occupation, due regard being given to other considerations including seniority, qualification and skills, provided that where there is no comparable full-time employee in the same establishment, the comparison shall be made by reference to collective agreements covering similar comparable full-time employees in other establishments. It further provides that where there is no applicable collective agreement, reference shall be made to law or in default of provision by law to the prevailing practice as may be established by the Employment Relations Board”.

The Committee requests that the next report provide information on the job classification and promotion systems in place as well as on the strategies adopted to ensure pay transparency in the labour market (in particular the possibility for workers to receive information on the pay levels of other workers), including the setting of timelines and measurable criteria for progress. In the meantime, it reserves its position on this issue.

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 Malta during the reference period, which was 13.2% in 2017, 13% in 2018, 11.6% (provisional figure) in 2019 and 10% (provisional figure) in 2020 (compared with 7.7% in 2011). It notes that the gender pay gap was lower than the EU 27 average of 13% (provisional figure) in 2020 (data from 4 March 2022) and decreased during the reference period.

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

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

The report does not provide any information in response to the question on the impact of Covid-19.

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

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 4§3 of the Charter on the ground that access to effective remedies in cases of gender pay discrimination is not guaranteed.

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 Malta.

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 Malta 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 informs that the legal framework on general notice periods has remained the same. The report also informs that no specific arrangements on the notice period were made in response to the Covid -19 crisis.

In its previous conclusion, the Committee found that the situation in Malta was not in conformity with Article 4§4 of the Charter on the ground that the notice periods generally

applied are not reasonable in the following cases: less than six months of service; between six months and two years of service; between three and four years of service (Conclusions 2018).

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 recalls from previous conclusions that the notice periods found unreasonable are the following: one week for workers with less than six months of service, two weeks for a length of service between six months and two years, four weeks for a length of service between three and four years (Conclusions 2018). 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 reiterates its conclusion of non-conformity with Article 4§4 of the Charter in this respect.

The Committee asks what are the notice periods between two and three years of service.

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 employees 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 that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

Circumstances in which employees can be dismissed without notice or compensation

In its previous conclusion, the Committee found that the situation in Malta was not in conformity with Article 4§4 of the Charter on the ground that no notice period is provided for in the event of dismissal in economic, technological or organisational circumstances requiring changes in the workforce (Conclusions 2018).

In reply to the previous conclusion of non-conformity, the report states that the legal framework on general notice periods has remained the same. The Committee therefore reiterates its conclusion of non-conformity with Article 4§4 of the Charter in this respect.

Conclusion

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

- The notice periods generally applied are manifestly unreasonable in the following cases:
 - less than six months of service;
 - between six months and two years of service;
 - between three and four years of service.
- no notice period is provided for in cases of dismissal in economic, technological or organisational circumstances requiring changes in the workplace.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

The Committee notes that the report of Malta does contain any information concerning Article 4§5 of the Charter.

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

The Committee notes that the report does not provide any information in this respect. 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

In its previous conclusion (Conclusions 2018) the Committee considered that it had not been established that the safeguards preventing workers from waiving their right to limits wage deductions were adequate. In the absence of reply in the report, the Committee reiterates its previous finding on this issue.

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

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 4§5 of the Charter on the ground that it has not been established that the safeguards preventing workers from waiving their right to limitations of wage deductions are adequate.

Article 5 - Right to organise

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

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, pending receipt of the information requested, the Committee deferred its conclusion (Conclusion 2018).

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

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

Prevalence /Trade union density

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

In reply the report states that as of 30th June 2021, 106,824 employees were union members, which amounts to about 51% of the workforce.

Personal scope

In its previous conclusion, the Committee requested that all States to provide information on the right of members of the armed forces to organise (Conclusions 2018 – General Question). The report does not provide the information requested. The Committee therefore reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

The Committee recalls that Article 5 of the Charter allows States Parties to impose restrictions on the right members of the armed forces to 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).

In its previous conclusion, the Committee also asked for confirmation that refusals to register a police trade union could be contested before a court (Conclusions 2018). In reply to the Committee’s questions, the report states that up to date, there have been 1,189 members registered with the Malta Police Association, 1,356 members registered with the Police Officers Union and 165 members registered with the Union of Civil Protection. The report states that no requests to form any union have been rejected. The report further explains that a refusal of registration of a police union can be contested as with any other 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 provides no information in this respect. The Committee recalls that it has previously found the situation in conformity with Article 5 of the Charter (most recently, in the 2018 and 2014 Conclusions). Therefore, it considers that the situation remains in conformity in this respect. However, it requests that the next report confirm that there are no 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.

Forming trade unions and employers' organisations

In its previous conclusion, the Committee asked the next report to provide updated information in the event of any development on fees charged for the registration of trade unions and employers' associations (Conclusions 2018).

The report does not provide the information requested. Therefore, the Committee assumes there have been no developments.

Freedom to join or not to join a trade union

In its previous conclusion, the Committee reiterated its request for information on the procedures applicable to the examination of allegations of anti-union dismissals of port workers and public transport workers (Conclusions 2018).

In reply to the Committee's request, the report states that, according to the Port Workers Ordinance (Cap. 171) and the Port Workers Regulations (S.L. 171.02), port workers are not considered as employees, so that unfair dismissal, including for trying to organise a union, is not applicable. It states that all licenced Port Workers are represented by the Malta Dockers Union. Under the Ordinance and the Regulations, the Port Workers Board has been established, which also acts as a Disciplinary Board, and is made up of representatives of the Union. The Committee asks that the next report provide information on remedies available in cases in which a port worker considers that they have been dismissed on grounds of union membership or activities.

As regards public transport workers, the report states that scheduled public transport workers are employed by a private company and represented by a Union (UHM). The report further states that any grievances are raised through this union to the company's management. The report does not provide the requested information on the anti-union dismissals of public transport workers. The Committee reiterates its request and consider that, should the information not be provided in the next report, nothing to establish that the situation is in conformity with the Charter.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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).

The Committee deferred its previous conclusion pending receipt of information on joint consultation in the public sector (Conclusions 2018). This question had been carried over from Conclusions 2014, without a satisfactory response being provided.

The information requested is not provided in the current report either. The Committee further recalls that consultation should take place in the private and public sectors, including in the civil service (*Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41). Accordingly, the Committee reiterates its request that the next report indicate whether there are specific consultative bodies in the public sector and, if so, what their structure is and how they operate. It also asks for examples of such consultation giving rise to new rights for workers and/or improving their working conditions. Meanwhile, it concludes that the situation in Malta is not in conformity with Article 6§1 of the Charter on the ground that it has not been established that joint consultative bodies exist in the public service.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 6§1 of the Charter on the ground that it has not been established that joint consultative bodies exist in the public sector.

Article 6 - Right to bargain collectively
Paragraph 2 - Negotiation procedures

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

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.

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.

The Committee previously asked for updated information on the percentage of employees covered by collective agreements. Although the report does not provide this information, the Committee notes from other sources that the proportion of workers covered by collective bargaining ranges between 50 and 61% (www.worker-participation.eu). These figures refer to collective bargaining at the enterprise level, which is predominant in Malta.

The Committee also asked for updated information on the impact of the implementation of the Recognition of Trade Unions Regulations (2016) (2016 Regulations) on minority trade unions. The report notes that the Regulations did not have a bearing on the position of minority trade unions, which could still issue directives for their members or notify the employer in relation to any collective issues affecting the majority of employees. The Committee notes from the text of the 2016 Regulations that a union has the right to request recognition from the employer as the sole collective bargaining union when it has more than 50% of the workers concerned as its members. The Committee further asks for particulars of the collective bargaining process in enterprises lacking a recognised trade union.

The Committee also asked for information on the right to bargain collectively in the public sector, including with regard to police officers, a question that had been carried over without a satisfactory response since 2005 (Conclusions 2005, 2006, 2010, 2014, 2018). The Committee notes that the information requested is not provided. Accordingly, the Committee reiterates its request for detailed and up-to-date information on the right to bargain collectively of all public servants (including police officers) and its implementation in practice. Meanwhile, the Committee concludes that the situation in Malta is not in conformity with Article 6§2 of the Charter on the ground that it has not been established that the legal framework allows for the participation of employees in the public sector in the determination of their working conditions.

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 does not provide any information.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 6§2 of the Charter on the ground that it has not been established that the legal framework allows for the participation of employees in the public sector in the determination of their working conditions.

Article 6 - Right to bargain collectively
Paragraph 3 - Conciliation and arbitration

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

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

In its previous conclusion (Conclusions 2018), the Committee considered that the situation in Malta was not in conformity with Article 6§3 of the Charter on the grounds that:

- decisions of the court of inquiry were binding on the parties even without their prior consent;
- compulsory arbitration was permitted in circumstances which went beyond the limits set by Article G of the Charter.

With regard to the first ground for non-conformity (the decisions of the court of inquiry are binding on the parties even without their prior consent), the Government reports that the Department of Industrial and Employment Relations has proposed that the Employment and Industrial Relations Act (EIRA) be amended with a view to revoking the Minister’s power to appoint such a court of inquiry. It adds that the Maltese authorities have committed to starting the process of making these changes, in consultation with stakeholders. The Committee takes note of these developments. Since the law was not amended during the reference period, however, the Committee reiterates its conclusion of non-conformity on this point.

As regards the second ground for non-conformity (under Article 74§1 and §3 of the EIRA, a party may refer a dispute to the Industrial Tribunal for arbitration without the agreement of the other party in order to obtain a decision that is binding on both parties), the Government stands by its position. It points out that (i) the Industrial Tribunal was set up by the EIRA to hear and decide all cases falling under its exclusive jurisdiction, including trade disputes, (ii) this mechanism is to be used when conciliation under Article 69 of the EIRA fails and (iii) the purpose of the Industrial Tribunal would be gravely undermined if a party could not bring a dispute to the Tribunal unless the other party agreed. Furthermore, given that the Tribunal has exclusive jurisdiction over trade disputes, the parties cannot seek recourse through other means (such as the civil courts).

The Committee recalls that any form of compulsory recourse to arbitration is contrary to Article 6§3 of the Charter, whether domestic law allows one of the parties to refer the dispute to arbitration without the consent of the other party or allows any authority to refer the dispute to arbitration without the consent of one party or both. Such restriction is only allowed within the limits set by Article G of the Charter, namely: it must be prescribed by law, pursue a legitimate aim (i.e. the protection of the rights and freedoms of others, of public interest, national security, public health or morals) and be necessary in a democratic society to achieve these aims (i.e. the restriction must be proportionate). The Committee notes that the situation has not changed and that the circumstances in which compulsory arbitration is permitted go beyond the limits set out in Article G of the Charter. Accordingly, the Committee reiterates its conclusion of non-conformity on this point.

In its previous conclusion, the Committee also asked for updated information in the next report on the ad hoc conciliation mechanism which had been established through the public service collective agreement.

The Committee notes that the Government’s report provides no information in this regard. Consequently, the Committee repeats its question on this point.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 6§3 of the Charter on the grounds that:

- decisions of the court of inquiry are binding on the parties even where they have not given their prior consent;
- the circumstances in which compulsory arbitration is permitted go beyond the limits set by Article G 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 Malta.

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

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

In its previous conclusion, the Committee considered that the situation in Malta was not in conformity with Article 6§4 of the Charter on the ground that the total ban on strike action by the police goes beyond the limits permitted by Article G 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 general question.

Right to collective action

Right of the police to strike

In reply to the previous conclusion of non-conformity and the general question, the Government states that there was no change in the situation during the reference period: police still do not have the right to strike (for reasons of public safety). The Committee therefore reiterates its conclusion of non-conformity on this point.

Restrictions to the right to strike, procedural requirements, consequences of strikes

In its previous conclusion, the Committee noted that Article 64§6 of the Employment and Industrial Relations Act provided for restrictions to the right to strike for certain categories of worker (air traffic controllers, members of the Assistance and Rescue Force, port emergency staff) or when this was necessary to ensure a minimum service (essential services, import of certain products, transport, water, energy). The Committee asked for the next report to explain in detail what restrictions could be imposed on the right to strike in the light of the requirements of Articles 6§4 and G of the Charter. It pointed out that should the next report fail to provide the requested information, there would be nothing to show that the situation was in conformity with the Charter in this respect. In the meantime, the Committee reserved its position.

According to the report, the legislation establishes immunity for breach of contract for striking workers and provides that workers cannot be dismissed for striking. However, the Committee notes that this legislation is not applicable: (a) to persons employed as air traffic controllers or in the firefighting services at Malta International Airport; (b) to members of the Assistance and Rescue Force set up by virtue of Section 8 of the Civil Protection Act; (c) to persons employed to provide piloting, mooring and tug services, firefighting, medical health services and pollution control who may be called in the event of a port emergency. A minimum service is also required in some sectors and must be agreed on by the employer and the recognised trade union or decided on by the appropriate supervisory body or the Industrial Tribunal.

The Committee notes that the legislation which protects strikers from termination of their employment contract excludes the above-mentioned categories, meaning that persons employed in these sectors may be dismissed for striking. The Committee recalls that a strike should not be considered a violation of a striking worker’s contractual obligations entailing a breach of their employment contract and must be accompanied by a prohibition of dismissal.

It therefore considers that the situation is not in conformity with Article 6§4 of the Charter in this respect.

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 notes that the Government has not provided the information requested.

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

Conclusion

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

- the police are denied the right to strike;
- employees in some sectors may be dismissed for taking part in a strike.

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 Malta.

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 deferred its conclusion, pending receipt of the information requested (Conclusions 2018).

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

Prevention

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

The Committee previously asked whether social partners are consulted on measures to promote knowledge and awareness of, and prevent, sexual harassment in the workplace (Conclusions 2014 and Conclusions 2018).

The report provides information on the awareness-raising and prevention measures taken by the National Commission for the Promotion of Equality (NCPE) during the reference period, such as: social media posts, participation in TV and radio programmes, articles and press statements, newsletters and training sessions provided to both public and private sector organisations. The report further indicates that, in 2018 (on International Women’s Day), NCPE organised a conference on ‘Sexual Harassment at the Workplace and in the Social Context’. According to the report, social partners formed part of the panel on sexual harassment at the workplace to discuss the respective rights and obligations emanating from law. Furthermore, the NCPE continued awarding the Equality Mark to companies that foster gender equality in their work policies and practices. By December 2020, 108 organisations with over 26,250 employees were Equality Mark Certified.

Liability of employers and remedies

In a targeted question, the Committee asked for information on the regulatory framework and any recent changes introduced to combat sexual harassment and abuse in the framework of work or employment relations. The report does not indicate any recent changes in the regulatory framework.

In its previous conclusion, the Committee asked the next report to provide updated information on sexual harassment cases (Conclusions 2018). The report indicates that the NCPE continued investigating complaints of alleged sexual harassment in the workplace. It is reported that during the reference period 2017-2020 there were 2 complaints of sexual harassment at the workplace submitted by women.

With regard to the burden of proof, the report indicates that the Equality for Men and Women Act, Chapter 456, Article 19(2) specifies that in any proceedings concerning the application of the principle of equal treatment, it is the defendant who has to prove that there has been no breach of such principle.

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 does not provide the information requested concerning the amounts of compensations actually awarded and the right to reinstatement to all victims of sexual harassment, including when the employee has been pressured to resign on account of the sexual harassment, in the light of relevant examples of case law. The Committee accordingly reiterated its request for more detailed and updated information on these issues. It pointed out 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 does not provide the information requested both in the previous conclusion and in the targeted question. Given the absence of information, the Committee concludes that the situation in Malta is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of sexual harassment in relation to work.

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 the NCPE undertaken various initiatives in relation to the pandemic such as: an online survey “The Covid-19 Pandemic: Research on the Distribution of Work in Households”; a newsletter on equality and the Covid-19 pandemic giving an overview of the pandemic’s impact on different grounds of discrimination including gender; articles and press statements outlining the importance of equality during and after the pandemic; social media posts related to the pandemic, some of which focus on women’s rights, gender-based violence, gender equality, and the role of equality bodies.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of 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 Malta.

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 found that the situation in Malta 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 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 to ensure that the right to dignity at work is fully respected in practice.

The report provides information on the awareness-raising and prevention measures taken by the National Commission for the Promotion of Equality (NCPE) during the reference period, such as: social media posts, participation in TV and radio programmes, articles and press statements, newsletters, training sessions provided to both public and private sector organisations and the awarding of the Equality Mark Certification.

In its previous conclusion, the Committee asked whether and to what extent social partners are consulted on measures to promote knowledge and awareness of, and prevent moral (psychological) harassment in the workplace (Conclusions 2018).

The Committee asks whether, and to what extent, employers’ and workers’ organisations are consulted on measures to promote awareness, knowledge and prevention in relation to moral (psychological) harassment at the workplace and when working online/remotely.

Liability of employers and remedies

In a targeted question, the Committee asked for information on the regulatory framework and any recent changes in order to combat harassment in the framework of work or employment relations. The report does not indicate any recent changes in the regulatory framework.

In its previous conclusion, the Committee noted that the report did not provide any information in reply to the Committee’s question concerning the liability of employers towards persons employed or not employed by them who have suffered moral (psychological) harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors or clients. The Committee accordingly reiterated its question (Conclusions 2018).

In view of the absence of information, it considered that it had not been established that, in relation to the employer’s responsibility, there were sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work and considered

therefore that the situation was not in conformity with Article 26§2 of the Charter on this point (Conclusions 2018).

The report does not provide any information in response to the conclusion of non-conformity and previous questions (see Conclusions 2018). The Committee reiterates its questions. Meanwhile, it concludes that the situation is not in conformity with Article 26§2 of the Charter on the ground that, in relation to the employer's responsibility, there are no 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 harassment for moral and material damages.

In its previous conclusion, the Committee reiterated its request for updated and comprehensive information on the kinds and amount of compensation which is awarded in cases of moral (psychological) harassment, in the light of relevant examples of this type of cases. It also asked whether the right to reinstatement is guaranteed to persons who have been unfairly dismissed or pressured to resign for reasons linked to harassment (Conclusions 2018). In view of the absence of information, the Committee considered that it had not been established that appropriate and effective redress (compensation and reinstatement) was guaranteed in cases of moral (psychological) harassment and considered therefore that the situation was not in conformity with Article 26§2 of the Charter on this point (Conclusions 2018).

The current report does not provide any information in response to the conclusion of non-conformity or in response to the targeted question. The Committee reiterates its questions – both the targeted questions and those in the previous conclusion. Meanwhile, it concludes that the situation is not in conformity with Article 26§2 of the Charter on the ground that appropriate and effective redress (compensation and reinstatement) is not guaranteed in cases of moral (psychological) harassment in relation to work.

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. 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 the NCPE carried out various initiatives in relation to the pandemic such as: an online survey "The Covid-19 Pandemic: Research on the Distribution of Work in Households"; a newsletter on equality and the Covid-19 pandemic giving an overview of the pandemic's impact on different grounds of discrimination; articles and press statements outlining the importance of equality during and post pandemic; social media posts related to the pandemic, some of which focus on women's rights, gender-based violence, gender equality, and the role of equality bodies.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 26§2 of the Charter on the grounds that:

- in relation to the employer's responsibility, there are no sufficient and effective remedies against moral (psychological) in relation to work;
- appropriate and effective redress (compensation and reinstatement) is not guaranteed in cases of 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 Malta.

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

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

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

Protection granted to workers' representatives

In Conclusions 2018, the Committee noted that workers enjoy protection against dismissals and prejudicial acts other than dismissal, even after their function as employees' representatives has ceased. The Committee asked that the next report to specify how long the protection for workers' representatives lasts after the cessation of their functions and reserved its position on this point.

The report does not provide any information in this respect. The Committee reiterates its question in this respect and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Malta is in conformity with Article 28.

Facilities granted to workers' representatives

Previously (Conclusions 2018), the Committee noted that according to the domestic law (Regulation 8 of the Employee (Information and Consultation) Regulations (S.L.452.96)), workers' representatives are entitled to take reasonable time off with pay during their working hours in order to perform their functions. It asked that the next report provide information on whether workers' representatives are entitled to participate without costs to training courses on economic, social and union issues (Conclusions 2010, Statement of Interpretation on Article 28).

The report does not provide any information in this respect. The Committee reiterates its question and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 28 of the Charter in this respect.

Conclusion

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

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

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

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 the situation in Malta was in conformity with Article 29 of the Charter.

Since no targeted questions were asked under Article 29, and the previous conclusion found the situation in Malta to be in conformity with the Charter without requesting any information, there was no examination of the situation in 2022

Conclusion

The Committee concludes that the situation in Malta 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.