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EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

NORTH MACEDONIA

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 North Macedonia, which ratified the Revised European Social Charter on 31 March 2005. The deadline for submitting the 9th report was 31 December 2021 and North Macedonia submitted it on 14 April 2022.

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

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

Comments on the 9th report by Confederation of Free Trade Unions of Macedonia were registered on 30 June 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).

North Macedonia has accepted all provisions from the above-mentioned group except Articles 4§1, 4§4 and 22.

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

The conclusions relating to North Macedonia concern 20 situations and are as follows:

– 6 conclusions of conformity: Articles 2§2, 2§3, 2§4, 2§6, 6§2 and 21

– 7 conclusions of non-conformity: Articles 2§5, 2§7, 4§2, 4§3, 6§4, 28 and 29.

In respect of the other 7 situations related to Articles 2§1, 4§5, 5, 6§1, 6§3, 26§1 and 26§2 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 North Macedonia under the Revised Charter.

The next report from North Macedonia 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 North Macedonia and of the comments by the Confederation of Free Trade Unions of Macedonia (KSS).

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”).

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 questions.

Measures to ensure reasonable working hours

In its previous conclusion, the Committee asked for more evidence that in practice, the workers on flexible working time arrangements with long reference periods did not work unreasonable hours or an excessive number of long working weeks. It also asked for information on the absolute limits to daily and weekly hours of work in such cases (Conclusions 2018).

In reply, the report states that Article 124 of the Law on Labour Relations regulates the manner of redistribution of the working hours so that the total working hours of a worker do not exceed 40 hours in a working week in the course of the year. In case of redistribution of the working hours for seasonal work, the working hours shall not exceed 12 hours per day or 55 hours per week for a period of time no longer than four months. Under Article 123 of the Law on Labour Relations, the full working hours may not be distributed to less than four days in a week. The working time arrangements shall take into account the average working hours within a period which shall not be longer than six months.

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

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

The report states that within the reporting period, no amendments were made to the legal framework regarding reasonable working hours. Namely, the Law on Labour Relations determines a 40-hour working week. A collective agreement can provide for a working week of no less than 36 hours. Overtime shall not exceed 8 hours per week and 190 hours a year except for work that cannot be interrupted or when it is not possible to organise shift work. The reference period for overtime work is 3 months.

The report provides information on the amount of fines that can be imposed on the legal entity and on the employer a natural person for failure to observe the requirement for reasonable working hours. They range from €200 to €1,000 depending on the size of the entity.

The report further states that the monitoring and control of the implementation of legal provisions is carried out by the State Labour Inspectorate through regular inspections. The Inspectorate also acts upon written and oral requests from workers in order to protect their employment rights. The report further provides statistics. In 2017, 296 decisions were related to non-compliance with the working hours, 82 motions were filed for initiating misdemeanour proceedings regarding the adopted decisions, 4 of which referred to non-compliance with working hours. In 2018, 241 decisions were related to non-compliance with the working hours, 63 motions were filed for initiating misdemeanour proceedings regarding the adopted decisions, 3 of which referred to non-compliance with working hours. In 2019, 192 decisions were related to non-compliance with the working hours, 49 motions were filed for initiating misdemeanour proceedings regarding the adopted decisions, 6 of which referred to non-compliance with working hours. In 2020, 436 decisions were related to non-compliance with the working hours, 20 motions were filed for initiating misdemeanour proceedings regarding the adopted decisions, 2 of which referred to non-compliance with working hours.

The report also provides information on the decisions of the State Labour Inspectorate related to working hours adopted in different sectors of activity. For example, most decisions adopted regarded the trade sector and accommodation facilities in 2017; trade, accommodation facilities and manufacturing in 2018; again the same three sectors in 2019, and g wholesale and retail trade, accommodation facilities and trade in 2020.

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

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

In reply, the report reiterates that the State Labour Inspectorate conducts regular supervision, acts upon written and oral requests and requests submitted electronically by workers for protection of their employment rights regarding working hours. In addition, fines are provided for employers for non-compliance with legal provisions on working hours. With regard to case-law, there are civil proceedings related to employment rights, initiated following lawsuits filed by natural persons against employers. With regard to compliance with reasonable working hours, a misdemeanour case was filed against a legal entity and a final decision was adopted finding the defendants guilty.

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 in North Macedonia on-call time is not regulated by legal acts but Article 218 of the Law on Health Protection describes hours of readiness as a form of work where the healthcare worker does not have to be present in the healthcare institution but is obliged to be contactable by phone or via other telecommunication means and, if necessary, come to work in order to provide emergency and urgent medical intervention. The hours of readiness are not regarded as working hours, except for hours when actually engaged on

calls. For such hours, a worker is entitled to a salary supplement, which, in case of absence of calls is 8% of the hourly wage and, in case for actual calls, is 113% of the hourly wage.

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 asks whether it is possible for a worker in sectors other than healthcare to be on-call at work or at home and, if so, how this time is treated in terms of rest time. In the meantime, it reserves its position on this point.

The Committee also notes that no information is provided on zero-hour contracts and asks whether they do not exist at all in North Macedonia.

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 between 1 March and 7 July 2020 workers with a minor (under 10 years of age), single parents, pregnant women and the chronically ill were exempted from work and work-related obligations that require physical presence in the workplace. However, this recommendation did not apply to the members of the Army, unless both parents were employed in the Army. Moreover, between 11 March and 9 September 2020 people with certain diseases were exempted from work based on a valid medical certificate from the family doctor.

The report states that in the Ministry of Defence, depending on the possibility, half of the workers had to be physically present at work, and the working hours were adjusted in accordance with the curfew. The return to the normal working hours was implemented on 7 June 2021.

In the field of internal affairs, workers with chronic respiratory and malignant diseases, pregnant women, parents of children under the age of 10 and others were exempted from work. Work in the Ministry of Internal Affairs was organised from 8 a.m. to 2 p.m. with the exception of the organisational units working in shifts.

In the field of transport, working hours were slightly amended and the daily working time was 11 hours and the weekly working time was 60 hours. The total driving time during any consecutive two weeks was 100 hours. After 5 and a half hours driving, the driver was obliged to take a break of at least 45 minutes and the daily rest was 9 hours.

The report states that a number of decrees on the organisation of educational process were adopted; they mostly prescribed learning from home.

In its comments, KSS states that caregivers and educators worked longer hours than prescribed by law during the pandemic.

Conclusion

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

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

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

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

As the previous conclusion found the situation in North Macedonia to be in conformity with the Charter (Conclusions 2018), there was no examination of the situation in 2022 on this point. Therefore, the Committee reiterates its previous conclusion.

Covid-19

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

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

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 North Macedonia 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 North Macedonia is in conformity with Article 2§3 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

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

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

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

In its previous conclusion, the Committee considered that the situation in North Macedonia was not in conformity with Article 2§5 of the Charter on the ground that weekly rest days may be postponed over a period exceeding twelve successive working days (Conclusions 2018).

The report states that the Law on labour relations has been amended in 2021 in order to guarantee a day of weekly rest, when possible on a Sunday and exceptionally on another day of the week. When workers are forced to work on Sunday due to the nature and technological nature of the work, they will be entitled to use weekly rest in the following seven days. The Committee therefore notes that the situation has been amended, but outside the reference period. Therefore, the Committee concludes that the situation during the reference period is not in conformity with Article 2§5 on the ground that weekly rest days may be postponed over a period exceeding twelve successive working days.

Conclusion

The Committee concludes that the situation in North Macedonia is not in conformity with Article 2§5 of the Charter on the ground that weekly rest days may be postponed over a period exceeding twelve successive working days.

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 North Macedonia.

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 North Macedonia 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 North Macedonia is in conformity with Article 2§6 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

The Committee recalls that no targeted questions were asked for Article 2§7 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in North Macedonia was not in conformity with Article 2§7 of the Charter on the ground that employee representatives were not consulted regularly on the conditions relating to night work and on measures taken to reconcile employees’ needs and the special nature of night work (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity.

As the report does not provide any information on the matter in question, the Committee reiterates its previous conclusion of non-conformity.

Covid-19

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

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

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

In its previous conclusion, the Committee considered that the situation in North Macedonia was not in conformity with Article 4§2 of the Charter on the ground that the legislation did not guarantee public officials an increased time off in lieu of remuneration for overtime (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted question.

Rules on increased remuneration for overtime work

In its previous conclusion, the Committee found the situation in North Macedonia not to be in conformity with Article 4§2 of the Charter on the ground that the legislation did not guarantee public officials an increased time off in lieu of remuneration for overtime (Conclusions 2018).

The report provides no information requested, therefore the Committee reiterates that the situation in North Macedonia is not in conformity with Article 4§2 of the Charter on the ground that the legislation does not guarantee public officials an increased time off in lieu of remuneration for overtime.

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 each worker of the public healthcare institutions whose work was related to the treatment of Covid-19 patients received financial compensation. For the month of December 2020, a one-time cash compensation of €500 was paid. In addition, healthcare workers directly involved in the response to the Covid-19 pandemic, received a 20% salary supplement for a period of two months. Also, healthcare workers in the public healthcare institutions received a bonus of 5% of the gross salary for the period between March and November 2020.

Conclusion

The Committee concludes that the situation in North Macedonia is not in conformity with Article 4§2 of the Charter on the ground that the public officials are not guaranteed an increased time off in lieu of remuneration for overtime.

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 North Macedonia.

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

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

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

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2018).

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

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

Legal framework

In its previous conclusion (Conclusions 2018), the Committee asked how equal work or work of equal value were defined, what methods were used to evaluate work and whether these were gender neutral and excluded discriminatory undervaluation of jobs traditionally performed by women. It also asked whether both direct and indirect discrimination was prohibited. In the meantime, it reserved its position on this issue.

The report does not contain any information in reply to the first question. In this connection, the Committee refers to its previous conclusion on Article 20(c) (Conclusions 2020) on this issue where it noted that the Law on Labour Relations establishes the right to equal pay for women and men. Under Article 108 of this law, employers are required to pay equal wages for equal work and work of equal value, and employees are subject to the same conditions regardless of their gender.

In reply to the second question, the report indicates that women are still more represented in lower paid jobs (education, healthcare, social work, etc.); it presents various measures undertaken during the reference period to improve the situation. Since the report only partially answers its question, the Committee reiterates its request for information on what methods were used to evaluate work and whether they were gender neutral and excluded discriminatory undervaluation of jobs traditionally performed by women.

In response to the third question, the report indicates that a new Law on Prevention and Protection against Discrimination was published in the *Official Gazette* on 30 October 2020 and entered into force on the same day. Article 3 provides that this law applies to “all natural persons and legal entities” (paragraph 1) and that its material scope is even across all areas (paragraph 2). The Committee therefore notes that the law is applicable to both the private and public sectors and applies to all fields. It also notes that Article 8 contains definitions of direct and indirect discrimination.

Effective remedies

In its previous conclusions (Conclusions 2020 on Article 20 and Conclusions 2018 on Article 4§3), the Committee asked what rules applied to cases of unlawful dismissal following an equal pay claim.

The report does not provide any information on this point. Therefore, the Committee finds that the situation is not in conformity with Article 4§3 of the Charter on the ground that it has not been established that unlawful dismissal following the equal pay claim is prohibited.

Pay transparency and job comparisons

In its previous conclusion (Conclusions 2018), the Committee asked whether the law prohibited discriminatory pay clauses in collective agreements, as well as whether pay comparisons were possible across companies.

The report does not contain any information on this point. The Committee refers to its previous conclusion on Article 20(c) (Conclusions 2020) on this issue and reiterates its questions that were asked there.

In addition, the Committee asks that the next report provide information on the specific measures provided for in national legislation concerning pay transparency in the labour market, and in particular, the possibility for workers to receive information on the pay levels of other workers and the information available on pay.

Statistics and measures to promote the right to equal pay

The report states that the gender gap issues in the country are usually analysed and examined by independent studies, researchers, and analysts. The report indicates that gender pay gap was 8.8% in 2018 (compared with 17.9% in 2013).

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

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

In response to the question on the impact of Covid-19, the report presents a publication entitled "Rapid gender assessment: the impact of Covid-19 on women and men in North Macedonia" published in June 2020. It was produced by UN Women North Macedonia to assess the impact of the pandemic on main challenges faced by women and men, and how the changing situation is affecting the socio-economic situation and livelihood of women and men. The Committee notes from this publication that despite the economic and social measures adopted by the government at the beginning of the crisis, including gender-sensitive measures to a certain extent, there was a lack of a more specific focus on women. In addition, the analysis concludes, inter alia, that "given existing gender inequalities in the economy, there is a danger that the consequences of the pandemic will further deepen inequalities and worsen the economic position of women, especially those in vulnerable groups".

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

Conclusion

The Committee concludes that the situation in North Macedonia is not in conformity with Article 4§3 of the Charter on the ground that it has not been established that adequate remedies are available in the event of dismissal following a claim for equal pay.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

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

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

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

Deductions from wages and the protected wage

In its previous conclusion (Conclusions 2018) the Committee found that as regards limits applicable to authorised deductions, in some situations deductions could go up to 50% of the wage. The Committee considered that the situation was not in conformity with the Charter on the ground that the attachable amount of wages leaves workers who are paid the lowest wages and their dependents insufficient means of subsistence.

The Committee 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.

Waiving the right to the restriction on deductions from wage

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

Conclusion

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

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by North Macedonia as well as the information provided by the Confederation of Free trade unions of Macedonia.

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

In its previous conclusion, the Committee concluded that the situation in North Macedonia was in conformity with Article 5 of the Charter.

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 the targeted questions and to the general question.

Prevalence/Trade union density

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

In reply to the targeted question, the report states that the union density rate at the national level is 17.29%. The Committee takes note of the activities referred to in the report that were implemented during the reporting period with a view to modernising the services of trade unions and employers associations and to increasing their membership.

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 in North Macedonia 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 of members of the armed forces to organise 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 asked whether there are any specific restrictions on the right to organise for member of the police (Conclusions 2018). The report does not contain

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 consider that the situation in North Macedonia is in conformity with the Charter on this point.

Restrictions on the right to organise

The Committee asked in its targeted question for information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations.

In reply to the targeted question, the report states that according to the legal framework, information and data from practice that are available in all activities within the private and public sectors, workers are able to establish or join organisations to protect and promote their economic and social interests.

However the Committee notes from an Observation of the ILO (Freedom of Association and protection of the Right to Organise Convention No.87) that Article 37 of the Constitution allows the law to restrict the right to organise in administrative bodies. The Committee asks that the next report provide information on this issue.

Trade union activities

The Committee previously found the situation to be in conformity in this respect (Conclusions 2018). However the Committee notes that the Confederation of Free trade unions of Macedonia alleges harassment of members of affiliated trade unions, including allegations of members being forcibly moved to other trade unions. The Committee asks what measures have been taken to prevent the harassment of trade union members.

Representativeness

The Committee previously found the situation to be in conformity in this respect (Conclusions 2018).

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 North Macedonia.

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

In its previous conclusion, the Committee concluded that the situation in North Macedonia was in conformity with Article 6§1 of the Charter, pending receipt of the information requested (Conclusions 2018). Namely, the Committee reiterated its question as to whether joint consultation in the public sector was institutionalised (Conclusions 2014, 2018).

The Committee notes that the information requested is not provided. It, therefore, reiterates its request for information as to whether there are specific consultative bodies in the public sector and, if so, what their structure is and how they operate. Should the next report not provide the requested information, there will be nothing to establish that the situation of North Macedonia is in conformity with Article 6§1 of the Charter.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

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

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

In its previous conclusion, the Committee found that the situation in North Macedonia was in conformity with Article 6§2 of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the general question.

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 provides information on the work of the Economic and Social Forum, which provided a forum for discussing the challenges arising in the context of the pandemic in a tripartite format. According to the report, the social partners generally reviewed positively the Government’s efforts to ensure collective bargaining rights during the pandemic.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

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, the Committee found that the situation in North Macedonia was in conformity with Article 6§3 of the Charter pending receipt of the information requested. It asked for information on conciliation procedures in the public sector (Conclusions 2018).

The Committee notes that the Government's report does not provide the requested information. It therefore reiterates its request and asks for detailed information in the next report on conciliation procedures for the settlement of collective labour disputes in the public sector. The Committee points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§3 of the Charter.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

The Committee takes note of the information contained in the report submitted by North Macedonia and of the comments from the Confederation of Free Trade Unions (KSS).

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

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

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

Right to collective action

Restrictions to the right to strike, procedural requirements

In its previous conclusion the Committee noted that the sectors in which the right to strike could be restricted were extensive and asked for it be demonstrated in the next report that the restrictions met the conditions laid down in Article G of the Charter. In the meantime it reserved its position on this point.

The Government does not provide the information requested. The Committee asks for the next report to list the sectors in which the right to strike may be restricted and to provide detailed information on these restrictions. The Committee points out that should the next report not provide the information requested, there would be nothing to show that the situation is in conformity with Article 6§4 in this respect.

In its previous conclusion, the Committee noted that in most of the public sector, minimum service was settled by collective agreement. It asked whether in practice, trade unions were consulted by the relevant minister before determining the minimum service to be provided.

In its report the Government states that collective bargaining is a process in which the two parties voluntarily undertake to negotiate a collective agreement with the result that minimum service is decided on jointly. The Committee asks for information in the next report on how minimum service is determined where there are no collective agreements.

The Committee notes that in its Observation adopted in 2019 and published in 2021 on Convention No. 87 on freedom of association and protection of the right to organise (North Macedonia), the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) gave its views on the requirement for principals of primary and secondary schools to replace striking workers so that educational activities are not interrupted. The CEACR pointed out in particular that teachers and the public education services could not be considered an essential service in the strict sense of the term and that provisions allowing for the replacement of striking workers were a serious impediment to the legitimate exercise of the right to strike. The Committee asks for detailed information in the next report on the replacement of striking workers in the education sector.

Right of the police to strike

In reply to the general question, the Government states that, save in two situations (war and state of emergency), police officers may exercise the right to strike under certain conditions.

In particular, the relevant legislation mentions tasks and activities which must be performed during a police strike, which include prevention, detection and documentation of criminal offences; arrests; regulation and control of road traffic; protection of people and property; border control and; prevention and handling of incidents at borders (Article 107 of the Law on the Police). The Committee considers that the list of tasks and activities which the police must perform during strikes is excessively long and restricts the right to strike so as to render it ineffective. Therefore, the restrictions to the right of the police to strike go beyond those permitted by Article G of the Charter.

The Committee also notes that under the Law on the Police, in the event of a complex security situation, broader public order offences or breaches of the public peace, natural disasters or broader threats to persons' life or health and property, the number of police officers permitted to take part in strikes is limited to 10% of the total police force and strikes cannot run for more than three days. The Committee asks what should be understood by a "complex security situation" and "broader" breaches or threats.

Consequences of strikes

The Committee takes note of the comments by KSS according to which, between 2017 and 2020, trade union members who took an active part in union activities, mainly in the public sector, were downgraded, transferred away from their place of residence or dismissed. The Committee points out that strikes should not be considered a violation of the contractual obligations of the striking employees entailing a breach of their employment contract and should be accompanied by a prohibition of dismissal. The Committee asks for information in the next report on the consequences workers face in practice if they are actively involved in trade union activities and any measures taken to prevent such consequences.

Covid-19

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

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

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

In its report, the Government states that there has been no change in the legal framework governing the right to strike and that no measures have been taken to restrict the right to strike. In the healthcare sector, the legislation includes the right of workers to strike during the pandemic provided that this does not threaten the life or health of citizens.

Conclusion

The Committee concludes that the situation in North Macedonia is not in conformity with Article 6§4 of the Charter on the ground that the restrictions on the right of the police to strike go beyond the limits set by Article G of the Charter.

Article 21 - Right of workers to be informed and consulted

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

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

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

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

In its previous conclusion, the Committee reiterated its request for detailed information on the matters which are subject to the right to be informed, and the decisions which are subject to the right of workers and other representatives to be consulted within the undertaking (Conclusions 2018). The report states in reply that according to Article 94-a of the Law on Labour Relations, informing the workers means the transfer of data by the employer to the representatives of the employees so that they can appraise them and examine them. Consultation shall mean an exchange of opinion and establishment of a dialogue between them. Information and consultation shall include information about the imminent and likely trends relating to the activities of the company, public enterprise and other legal entity and their economic situation, status, structure and likely trends of recruitment, planned measures or decisions that may lead to substantial changes in the organisation of the work or contractual obligations.

In its previous conclusion, the Committee also asked whether there was a judicial procedure available to employees, or their representatives, who consider that their right to information and consultation within the undertaking had not been respected (Conclusions 2018).

The Committee notes from the report that disputes regarding violation of the right to information and consultation may be initiated before competent courts, as it is provided as an obligation for the employer in the envisaged cases, in compliance with the Law on Labour Relations. The report states, however, that in the reference period no such dispute was initiated. Neither has the State Labour Inspectorate received any complaints relating to the right to information and consultation of employees. Furthermore, Article 265 paragraph 1 of the Law on Labour Relations provides for fines, depending on the size of the employer and ranging from 200 to 1,000 EUR in denar counter, if the employer does not provide information and consultation to the employee within the meaning of this Law. The Committee requests the next report to provide information on effectiveness of these provisions in practice.

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

The report provides information on awareness raising measures adopted during the Covid-19 pandemic, such as publications, conferences or dedicated websites. According to the report, the Federation of Trade Unions of Macedonia states that informing and consulting companies

in conditions of a pandemic was difficult, however, efforts were made to ensure communication, also through telecommunication means. Furthermore, measures were initiated to include employees in decision-making.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in North Macedonia is in conformity with Article 21 of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

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

In its previous conclusion, the Committee concluded that the situation in North Macedonia was in conformity with Article 26§1 of the Charter, pending receipt of the information requested (Conclusions 2018).

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

Prevention

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

The Committee had previously noted that under Article 11 of the Law on Protection against Harassment at the Workplace, the employer is required to inform employees of the rights and obligations of employers and employees as regards harassment, and of the relevant protective measures and procedures available. Compliance with this obligation is monitored by the Labour Inspectorate (Conclusions 2018).

The report does not provide information on the concrete preventive measures and campaigns carried out during the reference period, with the exception of actions related to the Covid-19 pandemic. The Committee asks for information on awareness-raising and prevention campaigns on sexual harassment, as well as on measures taken to ensure that the right to dignity at work is fully respected in practice.

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 abuse in the framework of work or employment relations.

The report indicates that no amendments were made to the relevant provisions on harassment and sexual harassment of the Law on Labour Relations and the Law on Protection against Harassment in the Workplace.

The report further indicates that in October 2020, the new Law on the Prevention of and Protection against Discrimination was adopted. Article 10(2) of this Law defines sexual harassment as: “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect of violating the dignity or creating a threatening, hostile, humiliating or intimidating environment, approach or practice.”

The report further indicates that the Law on the Prevention of and Protection against Discrimination provides for new competences and the professionalisation of the Commission for protection against discrimination.

As regards the employer’s responsibility, the Committee noted in its previous conclusion that the Law on Protection against Harassment in the Workplace covers employees or persons “*under contract that participate in the work with the employer*” (Conclusions 2018). It also

noted that when third parties are involved, as victims or perpetrators of harassment, employers can be subject to criminal proceedings, if the requirements of the Criminal Code are met (Conclusions 2018). The Committee asked that the next report provide further information on the relevant provisions which would apply in such cases (Conclusions 2018). The report does not provide any information on this matter.

The Committee recalls that it must be possible for employers to be held liable in cases of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them (an independent contractor, a self-employed worker, a visitor, a client, etc.) is the victim or the perpetrator (Conclusions 2014, Finland). The Committee reiterates its request for information on the employer's liability in cases of sexual harassment involving third parties (independent contractors, visitors, clients) as victims or perpetrators. It points out that 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 this respect.

The Committee asked for updated data on cases alleging sexual harassment, in the light of the available examples of case-law (Conclusions 2018). The report indicates that, during the reference period, there were no disputes recorded relating to sexual harassment at work according to the information received from the courts of first instance. Since the absence of cases may indicate a serious failure to effectively protect workers against sexual harassment, the Committee asks for information to be provided in the next report on cases relating to sexual harassment in relation to work and their outcome. Meanwhile, it reserves its position on this point.

Damages

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

In its previous conclusion, the Committee noted that no information was provided with regard to the scale of the pecuniary and non-pecuniary damages which are available and those which are effectively awarded to victims of sexual harassment, in the light of the relevant case-law (Conclusions 2018). The Committee reiterated its request for information and 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 this respect (Conclusions 2018).

The report indicates that Article 34 of the Law on the Prevention of and Protection against Discrimination provides that the victim may apply to the court for compensation for material and non-material damage resulting from the violation of the rights protected by this law. The report does not indicate any limits applicable to the compensation that might be awarded to the victim of sexual harassment for moral and material damages. The Committee asks for confirmation that no limits apply to the compensation that might be awarded to the victim of sexual harassment for moral and material damages. Meanwhile, it reserves its position on this point.

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 provides detailed information on the awareness-raising and prevention measures taken during the pandemic with regard to promoting mental health of workers, including of health professionals. The report further indicates that a "Guide for employers to workplace management during Covid-19" was prepared in cooperation with the International Labour

Organisation and an employer's organisation. The guide provides instructions and recommendations to employers on how to organise work processes and workplaces in pandemic conditions, on how to avoid discrimination against workers and the obligations of employers in relation to discrimination and harassment of workers, including due to Covid-19.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

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

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 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 questions raised in its previous conclusion, and to the targeted questions.

Prevention

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

The Committee had previously noted that, under Article 11 of the Law on Protection against Harassment at the Workplace, the employer is required to inform employees of the rights and obligations of employers and employees as regards harassment, and of the relevant protective measures and procedures available. Compliance with this obligation is monitored by the Labour Inspectorate (Conclusions 2018).

The report does not provide information on the concrete preventive measures and campaigns carried out during the reference period, with the exception of actions related to the Covid-19 pandemic. The Committee asks for information on awareness-raising and prevention campaigns on moral (psychological) harassment, as well as on measures taken to ensure that the right to dignity at work is fully respected in practice.

Liability of employers and remedies

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

The report indicates that no amendments were adopted to the relevant provisions on harassment and sexual harassment of the Law on Labour Relations and of the Law on Protection against Harassment in the Workplace.

The report also indicates that, in October 2020, the new Law on the Prevention of and Protection against Discrimination was adopted. Article 10(1) of this Law defines harassment as: "unwanted treatment of a person or group of persons on any discriminatory grounds, whose purpose or effect is to violate the dignity or to create a threatening, hostile, humiliating or intimidating environment, approach or practice."

The report further indicates that the Law on the Prevention of and Protection against Discrimination provides for new competences and professionalisation of the Commission for protection against discrimination.

As regards the employer's responsibility, the Committee noted in its previous conclusion that the Protection against Harassment in the Workplace covers employees or persons "*under contract that participate in the work with the employer*" (Conclusions 2018). It also noted that when third parties are involved, as victim or perpetrator of harassment, employers can be

subject to criminal proceedings, if the requirements of the Criminal Code are met (Conclusions 2018). The Committee asked the next report to clarify this point (legal basis and examples of case-law, if any). The report does not provide any information on this matter.

The Committee recalls that it must be possible for employers to be held liable in cases of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them (independent contractor, self-employed worker, visitor, client, etc.) is the victim or the perpetrator (Conclusions 2014, Finland). The Committee reiterates its request for information on the employer's liability in cases of moral (psychological) harassment involving third parties (independent contractors, visitors, clients) as victims or perpetrators. It points out that in the absence of such information in the next report, there will be nothing to establish that the situation is in conformity with the Charter in this respect.

Damages

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

In its previous conclusion, the Committee noted that no information was provided with regard to the scale of the pecuniary and non-pecuniary damages which are available and those which are effectively awarded to victims of moral (psychological) harassment, in the light of the relevant case-law (Conclusions 2018). The Committee reiterated its request for information and 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 this respect (Conclusions 2018).

The report indicates that Article 34 of the Law on the Prevention of and Protection against Discrimination provides that the victim may request compensation in court for the material and non-material damage caused by the violation of the rights protected by this Law. The report does not indicate any limits applicable to compensation that might be awarded to the victim of moral (psychological) harassment for moral and material damages. The Committee asks for confirmation that no limits apply to the compensation that might be awarded to the victim of moral (psychological) harassment for moral and material damages. Meanwhile, it reserves its position on this point.

In its previous conclusion, the Committee asked for updated data on cases specifically concerning moral (psychological) harassment, in the light of the available examples of case-law (Conclusions 2018). The Committee takes note of the statistical data presented in the report concerning the decisions of the Labour Inspectorate demanding employers to act in accordance with the Law on Protection against Harassment in the Workplace (223 decisions in 2017, 163 in 2018, 133 in 2019 and 51 in 2020). With regard to case-law, the report indicates that based on the information provided by the courts of first instance, a total of 50 claims of psychological harassment at work were submitted during the reference period (43 cases only with the court of first instance of Skopje and seven cases with other courts of first instance). The report does not provide information on any examples of material and non-material damages effectively awarded to victims of moral (psychological) harassment. The Committee reiterates its request for information on pecuniary and non-pecuniary damages actually awarded to victims of moral (psychological) harassment, in the light of the relevant case-law.

Covid -19

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

The report provides detailed information on the awareness-raising and prevention measures taken during the pandemic with regard to promoting mental health of workers, including of health professionals. The report further indicates that a "Guide for employers to workplace management during Covid-19" was prepared in cooperation with the International Labour Organisation and an employer's organisation. The guide provides instructions and recommendations to employers on how to organise work processes and workplaces in pandemic conditions, on how to avoid discrimination against workers and the obligations of employers in relation to discrimination and harassment of workers, including due to Covid-19.

Conclusion

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

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

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

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

In previous conclusions (Conclusions 2018), the Committee concluded that the situation in North Macedonia was not in conformity with Article 28 of the Charter on the grounds that it had not been established that protection of trade union representatives against dismissal extends for a reasonable period after the expiry of their mandate; it had not been established that workers' representatives enjoy protection from prejudicial acts short of dismissal, and that it had not been established that facilities afforded to workers' representatives are adequate. In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity.

Types of workers' representatives

In previous conclusions (Conclusions 2018), the Committee took note that in North Macedonia, trade union is the main form of employee representation. It recalled that Article 28 is not intended to impose an obligation to introduce any specific types of workers' representatives but to ensure that adequate forms of representation are available to all employees, both within and outside the scope of collective bargaining with the employer. In Conclusions 2018, the Committee reiterated its previous request for information (see, Conclusions 2014) concerning the recognition in law and in practice of other forms of workers' representatives.

The report does not provide any answer in this respect. The Committee therefore reiterates its question and concludes that it has not been established that adequate forms of representation are available to all employees, both within and outside the scope of collective bargaining.

Protection granted to workers' representatives

In Conclusions 2018, in the absence of any answer to the questions the Committee raised in Conclusions 2014 (on whether (i) the protection afforded to trade union representatives against dismissal is extended for a reasonable period after their termination of the mandate, (ii) the protection covers prejudicial acts other than dismissal and (iii) if it is equally afforded to other forms of workers' representatives), the Committee reiterated its questions and concluded that it had not been established that the situation was in conformity with the Charter in this respect.

The report does not provide any answer in this respect and limits its submission to indicating that during the reference period, no amendments were made to the legislation and practice with regard to Article 28 of the Charter. Therefore, the Committee reiterates its questions and considers that the situation is not in conformity with the Charter on the grounds that the protection afforded to trade union representatives against dismissal is not extended for a reasonable period after the termination of their mandate and that trade union and workers' representatives do not enjoy adequate protection from prejudicial acts short of dismissal.

Remedies

In Conclusions 2018, the Committee took note that if a court finds that an employment contract was illegally terminated, the employee shall be entitled to reinstatement to work and compensation in the amount of the lost salary. According to Article 77 of the Law on Labour Relations, membership of a trade union or participation in its activities are considered unfounded reasons for dismissal of an employee. In Conclusions 2018, the Committee asked whether this protection extends to all workers' representatives.

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

Facilities granted to workers' representatives

In previous Conclusions (Conclusions 2018), in the absence of any answer to its request (see Conclusions 2014) for detailed information on facilities afforded by the employer in order to enable workers' representatives to carry out their functions efficiently and promptly, the Committee concluded that it was not established that the facilities afforded to workers' representatives meet the requirements of Article 28.

The report still does not provide any answer in these respects. The Committee reiterates its request for information on facilities mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971, including access to premises, use of materials, distribution of information, support in terms of benefits, training costs (Statement of Interpretation, Conclusions 2016).

The Committee concludes that facilities granted to workers' representatives are not adequate.

Conclusion

The Committee concludes that the situation in North Macedonia is not in conformity with Article 28 of the Charter on the ground that:

- it has not been established that adequate forms of representation are available to all employees, both within and outside the scope of collective bargaining;
- the protection of trade union representatives against dismissal does not extend for a reasonable period after the expiry of their mandate;
- trade union and workers' representatives do not enjoy adequate protection from prejudicial acts short of dismissal;
- facilities afforded to workers' representatives are not adequate.

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 North Macedonia

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

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

Sanctions and preventative measures

In Conclusions 2018, the Committee took note of the applicable sanctions provided in Article 265 of the Labour Relations Law, in case employers fail to inform and consult employees about collective layoffs. However, in the absence of any information with regard to preventative measures to ensure that redundancies do not take effect until employers have met their obligation to inform and consult employee representatives, the Committee reiterated its question and deferred its conclusions.

The report refers to the information provided under Article 21 of the Charter with regard to “the right to information and consultation” which, however, do not contain any specific answer to the previous question of the Committee concerning preventative measures to ensure that redundancies do not take effect until employers have met their obligation to inform and consult employee representatives. The Committee recalls that where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met (Conclusions 2007, Article 29, Sweden).

The Committee reiterates its question and concludes that it has not been established that there are preventative measures to ensure that redundancies do not take effect until employers have met their obligation to inform and consult employee representatives.

Conclusion

The Committee concludes that the situation in North Macedonia is not in conformity with Article 29 of the Charter on the ground that it has not been established that there are preventative measures to ensure that redundancies do not take effect until the employers have met their obligation to inform and consult employee representatives.

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.