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EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

PORTUGAL

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 Portugal, which ratified the Revised European Social Charter on 30 May 2002. The deadline for submitting the 17th report was 31 December 2021 and Portugal submitted it on 13 April 2022.

The Committee recalls that Portugal was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2014).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2014) found the situation to be in conformity, there was no examination of the situation in 2022.

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).

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

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

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

- 14 conclusions of conformity: Articles 2§1, 2§3, 2§5, 2§6, 2§7, 4§2, 4§3, 4§5, 6§2, 21, 22, 26§1, 26§2 and 28,
- 7 conclusions of non-conformity: Articles 2§2, 2§4, 4§4, 5, 6§1, 6§3 and 6§4.

In respect of the other 2 situations related to Articles 4§1 and 29, 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 Portugal under the Revised Charter.

The next report from Portugal 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 Portugal.

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

In its previous conclusion, the Committee found that the situation in Portugal was in conformity with Article 2§1 of the Charter, pending receipt of the information requested (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion, and to the targeted questions.

Measures to ensure reasonable working hours

In the previous conclusion, the Committee asked what the difference was between appointments and labour contracts and what the maximum permitted length of a working day and a working week was in the public sector (Conclusions 2014).

In reply, the report states that the normal daily working time cannot exceed 7 hours and the normal weekly working time cannot exceed 35 hours for public sector workers. The workday is interrupted by a rest period of no less than 1 hour and no more than 2 hours and a worker cannot carry out more than 5 consecutive hours of work.

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

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

The report provides statistical information on infringements of the working time regulations between 2017 and 2019 that were subject to sanctions: in 2017 there were 1,031 violations, in 2018: 1,068 violations, in 2019: 956 violations. The report also supplies information on the number of labour inspectors between 2017 and 2020 who were available to monitor legal provisions regarding the right to adequate working conditions at the workplace. The report informs on the total number of inspections carried out by economic activity: between 2017 and 2019, most inspections were carried out in the sectors of construction and manufacturing industries, accommodation, restaurants, wholesale and retail trade, repair of motor vehicles and motorcycles and administrative and support service. The Committee notes that no statistical information on infringements of the working time regulations and number of inspections carried out by economic activity is provided for 2020, although it falls within the reference period for the purposes of the present reporting cycle.

Law and practice regarding on-call periods

In the previous conclusions, the Committee asked what rules applied to on-call service and whether inactive periods of on-call duty were considered as a rest period in their entirety or in part (Conclusions 2014).

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

In reply, the report states that inactive working time periods which presuppose the worker's permanence and availability are considered working time. The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France*, Complaint No. 55/2009, §§ 64-65, 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 equalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home. The Committee again asks whether inactive periods of on-call duty are considered or not as rest periods.

The Committee also reiterates its request for information on zero-hour contracts.

Covid-19

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

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

The report states that alternative ways of providing work were introduced as a response to the Covid-19 pandemic. The legal limits for overtime were also suspended in certain public entities and were then followed by private social solidarity institutions, non-profit associations, cooperatives and other social economic entities that carry out essential activities in the social and health areas, namely health services, residential or care facilities or home support services for vulnerable persons, elderly persons and persons with disabilities. The Committee asks that the next report clarify what the suspension of legal limits for overtime meant in practice.

The report also states that when teleworking was not compulsory for all workers, at certain times, workers with parental responsibilities could benefit from this regime, whenever their professional duties allowed it. Resolution of the Council of Ministers no. 40-A/2020, extended by the resolution of the Council of Ministers no. 43-B/2020, established teleworking as compulsory, when duties allowed, if requested by a worker with a child or any other dependent under the age of 12, or, regardless of the age, with a disability or chronic illness, due to suspension of school and non-school activities in a school establishment or a social facility for early childhood support or disability, outside the periods of school breaks in the year 2019/2020. Similarly, teleworking was made compulsory when duties allowed, if requested by a worker with a child or any other dependent under the age of 12, or, regardless of age, with a disability or chronic illness that, according to the guidelines of the health authority, was considered a patient at risk.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 2§1 of the Charter.

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 Portugal.

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

In its previous conclusion, the Committee found that the situation in Portugal was not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday was not adequately compensated (Conclusions 2014).

The report recalls that staff regularly working on public holidays at enterprises that are not required to close or suspend operations on those days are entitled to compensatory rest equal to half the hours so worked, or to a 50% pay increase for those hours, with the choice between the two formats pertaining to the employer. However, Article 2 of the Law 93/2019 of 4 September 2019 amended Article 3(3)(j) of the Labour Code to provide that, with regard to the payment of work on public holiday, the legal rules governing the employment contract may be waived by a collective agreement if they are more favourable to the workers.

In view of the above, the Committee considers that the situation has not changed during the reference period and reiterates its previous conclusion of non-conformity on the ground that work performed on a public holiday is not adequately compensated.

Covid-19

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

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

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).

In its previous conclusion, the Committee considered that the situation in Portugal was in conformity with Article 2§3, pending receipt of the information requested (Conclusions 2014).

The report states that the worker is entitled to a minimum of 22 working days’ holiday per year in public sector (previously, a minimum of 25 days) and in private sector.

In its previous conclusion, the Committee asked to clarify whether annual leave may be replaced by financial compensation. It also asked for information on the rules applying to the postponement of annual leave, namely under what circumstances postponement is allowed, what proportion of the annual leave may be postponed and until when the postponed days of leave may be used.

In response, the report indicates that, according to Article 237 of the Labour Code, employees must not have the option of giving up their annual leave and that annual leave may not be replaced by financial compensation, if a minimum of 20 working days are not assured (Article 238). The report points out that this right cannot be derogated from and is irrevocable, and cannot be replaced, even with the worker’s agreement, by any economic or other compensation. However, according to Article 129 of the Labour Code, this legal regime establishes the exceptional nature of the payment of compensation resulting from not taking leave days, which should only occur when there is a total and absolute impossibility to take them, namely due to a prolonged impediment of the worker (illness, for example). The report states that in such a case, according to Article 240§2 of the Labour Code, “annual leave may be taken until 30 April of the following leave year, in accumulation or not with the annual leave from the current leave year, by agreement between employer and employee or whenever the latter wishes to take them with a family member residing abroad”. However, according to Article 240§3, half of the annual leave of the previous leave year may be carried over to the leave year in question, by agreement between the employer and the worker. The Committee considers that this situation is in conformity with the Charter.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report states that Decree-Law No. 10-A/2020 of 3 March established exceptional and temporary measures related to the epidemiological situation of the new Coronavirus – Covid-19. According to its Article 6-E, "health professionals, regardless of the nature of their legal employment relationship, are entitled to one working day of leave for every five days of leave due in 2020, or in 2019, which cannot be taken by the end of 2020, for compelling service reasons".

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

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

The Committee considered in its previous conclusion in 2014 that the situation in Portugal was not in conformity with Article 2§4 of the Charter on the ground that not all workers exposed to residual risks are entitled to adequate compensatory measures such as reduced working hours or additional leave.

Elimination or reduction of risks

The Committee noted that the situation was in conformity with the Charter in this respect in its last Conclusion. It therefore reiterates its conclusion of conformity.

Measures in response to residual risks

When the risks have not been eliminated or sufficiently reduced despite the application of the measures described above, or if such measures have not been applied, the second part of Article 2§4 requires States to grant workers exposed to such risks one form or another of compensation. The aim of these compensatory measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk.

The report reiterates previous information submitted and which is reflected in Law No. 102/2009. The situation has not changed as there is no provision for reduced working hours, additional paid holidays or another form of compensation in dangerous and unhealthy occupations. On this issue, the report points out that breaks and interruptions for health and safety reasons are included in the working time.

The Committee notes therefore that the situation has not changed and reiterates its finding of non-conformity with Article 2§4 of the Charter insofar as not all workers exposed to residual risks are entitled to adequate compensatory measures (reduced working hours, additional leave or similar measures).

Covid-19 related measures

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

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 2§4 of the Charter on the ground that not all workers exposed to residual risks are entitled to adequate compensatory measures such as reduced working hours or additional leave.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

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

In its previous conclusion, the Committee found that the situation in Portugal was in conformity with Article 2§5 of the Charter, pending receipt of the information requested on several points (see below) (Conclusions 2014).

The report indicates that, in reply as to whether the law guarantees that the right to a weekly rest period may not be replaced by compensation, Article 232 of the Labour Code guarantees that this right cannot be waived. As regards to whether all workers are entitled to a weekly rest period, even when, under the existing derogations, this might not fall on a Sunday, the report states that all workers are entitled to it in any circumstance.

As to whether a worker might work more than 12 consecutive days before being granted a rest period, in cases where overtime work must be performed on a compulsory weekly rest day, the report states that this is not the case. The report further states that a worker who has to work on the weekly rest day is entitled to a compensatory paid weekly rest day, to be taken on one of the following 3 working days, in accordance with Article 229(4) of the Labour Code. The scheduling of the compensatory weekly rest day is carried out by agreement between the worker and the employer or, in the absence of agreement, by the employer, as per no. 5 of the same Article 229. However, Article 230(1) of the Labour Code provides that overtime work performed on a compulsory weekly rest day that does not exceed two hours, due to the unforeseen absence of a worker who should occupy the workplace on the following shift, gives rise to the right to paid compensatory rest equivalent to the missing hours of rest, to be taken on one of the three following working days.

In the light of the information submitted, the Committee considers that the situation is in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 2§5 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

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).

In its previous conclusion, the Committee found that the situation in Portugal was in conformity with Article 2§6 of the Charter, pending receipt of the information requested (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the question raised in its previous conclusion.

The Committee previously distinguished the situation of workers by appointment and that of workers by contract engaged in the public sector respectively (Conclusions 2014). As regards workers by appointment, there was no legal obligation to inform them in writing of the essential content of their labour relationship, which however was publicly available in the relevant legislation. In this context, the Committee asked for clarifications with regard to workers by appointment, namely the percentage of the public function they represented, and whether they received, upon starting of the employment relationship or soon thereafter, written information referring to the applicable legislative provisions and including, therefore, the elements of information required under Article 2§6 of the Charter.

The report notes that, as of December 2020, contracts by appointment represented approximately 10% of the public service. Under Article 8 of the General Labour in Public Functions Law (LTFP), the public employment relationship is established by appointment with regard to the following responsibilities, competencies, and activities:

- generic and specific missions of the Armed Forces in permanent structures;
- external representation of the State;
- security intelligence;
- criminal investigation;
- public safety, both in a free environment and in an institutional environment;
- inspection.

The report further refers to Article 41 of the LTFP, which provides that employment by appointment in the public service involves an order followed by a declaration of agreement with the proposal or information that is an integral part of the act. The order in question refers to the enabling legal norms and the existence of an adequate budget allocation. Workers by appointment receive the elements of information required under Article 2§6 of the Charter through the information and order received prior to their appointment.

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 Portugal 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 Portugal.

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

In its previous conclusion, the Committee found that the situation in Portugal was in conformity with Article 2§7 of the Charter, pending receipt of the information requested (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the question raised in its previous conclusion.

The Committee previously asked whether public sector night workers (whether by contract or by appointment) were also entitled to regular medical examinations and possibilities for transfer to daytime work, in the same manner as other categories of workers (Conclusions 2014). In reply, the report refers to Article 101 of the General Labour in Public Functions Law (LTFP), which provides that the Labour Code provisions regarding organisation and working time, and previously ruled by the Committee to be in compliance with Article 2§7 (Conclusions 2014), apply equally to public sector workers, whether by contract or by appointment.

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 Portugal is in conformity with Article 2§7 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

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

In its previous conclusion (Conclusions 2014) the Committee concluded that the minimum wage for private sector workers does not ensure a decent standard of living.

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

Fair remuneration

In its previous conclusion the Committee considered that the situation was not in conformity with the Charter on the ground that the minimum wage for private sector workers does not ensure a decent standard of living. In particular, the Committee noted that the net minimum wage represented 45.93% of the net average earnings.

The Committee notes from Eurostat that in 2020 the minimum gross wage stood at € 740 per month. Considering that the minimum wage is exempt from income tax but subject to social contributions of 11.00%, the Committee estimates that the net minimum wage stood at € 658. As regards the average annual gross earnings, they stood at €19,959 and at €14,439 net (or €1,203 per month). The Committee thus notes that in 2020 the minimum wage amounted to 53% of the average wage.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage lies between 50% and 60% of the net average wage, it is for the State Party to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). The Committee asks the next report to provide information about any additional benefits that a worker earning the minimum wage would be entitled to, with a view to establishing that the minimum wage, together with these benefits can ensure a decent standard of living.

According to the report, the increase in the National Monthly Minimum Wage (RMMG) is an instrument capable of improving living conditions and cohesion and promoting the sustainability of economic growth, and is an important benchmark for the labour market, both in terms of decent work and social cohesion, and in terms of the competitiveness and sustainability of companies. According to the report, in 2020 the RMMG stood at € 635.

According to the report, failure to pay remuneration or payment of an amount lower than stipulated in the law establishing the national minimum wage or in a collective labour regulation instrument can lead to the intervention by the labour inspection bodies. The report provides information about violations for which penalties were imposed as well as amounts owed to employees due to violations related to wages.

As regards the public sector, according to the report the gradual increase in the national minimum wage also applied to public sector workers. In January 2020, workers earning the Public Administration basic salary or whose monthly basic salary was up to the value of the monetary amount of level 5 of the Single Remuneration Table (TRU) had a salary increase of

€10.00, and the salaries of workers who were not in this bracket were increased by 0.3%. The Committee asks the next report to indicate what is the minimum statutory wage for public sector workers.

In the meantime, the Committee reserves its position as regards whether the minimum wage can enable a decent standard of living.

Workers in atypical employment

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

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

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

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

Covid-19

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

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

According to the report, despite the COVID-19 disease pandemic having significantly changed the economic and social context, the promotion of adequate wages and decent incomes remain fully relevant. In fact, from a historical point of view, experience shows that the response to a crisis should not be based on a strategy of lowering salary costs, at the risk of limiting aggregate demand and worsening the at-risk-of-poverty rate for workers, compromising not only social cohesion but also domestic consumption variables, factors which play a critical role in times of decreasing external demand. On the contrary, it is important to ensure that the recovery path of the economy and employment takes place within a framework of reinforced resilience, safeguarding, from the start, the quality of employment and affirming the central importance of wages and income as an unavoidable dimension of a broad and consistent strategy of economic recovery. Thus, while maintaining the objective of reaching € 750 in 2023 and creating the conditions to achieve this goal, the Government

believes that the objective of promoting the increase of the national minimum wage should be considered in the light of the current economic and social context, through an adjustment to the trajectory that would be foreseeable for the year 2021.

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

Conclusion

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

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 Portugal.

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 Portugal was not in conformity with Article 4§2 of the Charter on the ground that police officers on active prevention (*prevenção activa*) duties and shift duties (*serviço de piquete*) did not receive increased remuneration as required, or even remuneration equivalent to their basic hourly pay (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted question.

Rules on increased remuneration for overtime work

In its previous conclusion, the Committee found the situation in Portugal not to be in conformity with Article 4§2 of the Charter on the ground that police officers on active prevention (*prevenção activa*) duties and shift duties (*serviço de piquete*) did not receive increased remuneration as required, or even remuneration equivalent to their basic hourly pay. The Committee also asked whether the flexible working time regimes (adaptability or hour bank regimes) satisfied the conditions laid down in Article 4§2 of the Charter. The Committee pointed out that the right of employees to an increased rate of pay for overtime may be subject to exceptions in certain specific cases, but certain limits had to apply, especially on the number of overtime hours not paid at a higher rate and asked whether national legislation met this standard (Conclusions 2014).

The report states that in accordance with Article 162(2) of the General Labour Law in Public Functions, overtime work performed on a compulsory or complementary weekly rest day or on a public holiday entitles the worker to an additional 50% of remuneration for each hour worked. If the worker so wishes and if the public employer agrees, overtime pay may be replaced by compensatory rest time, under the terms of Article 162(7) of the General Labour Law in Public Functions. For this purpose, the same calculation formula shall be used. Moreover, workers are also entitled to compensatory rest for overtime work in Accordance with Article 229 of the Labour Code in certain situations, such as when overtime work is carried out and it prevents them from taking their daily rest, or when workers work on a compulsory weekly rest day.

The Committee notes that in its assessment of the follow up to the decision on the merits of 17 October 2011, the European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 60/2010, it noted that, as a result of new legislation, the remuneration of the police officers on active prevention (*prevenção activa*) duties and shift duties (*serviço de piquete*) were higher than their ordinary remuneration. The Committee also considered that the supplements payable in situations of active prevention and shift duties ensured the right to an increased rate of remuneration for overtime work as provided by Article 4§2 of the Charter. The Committee considered that the situation had been brought into conformity with the Charter. The Committee considers that the situation in Portugal is now in conformity with Article 4§2 of the Charter on this point.

The report states that Article 218 of the Labour Code establishes that workers in one of the following situations may be excluded from the scope of the limits on working time, by written agreement: holding an administrative or managerial position, or a position of trust, supervision

or support for the holder of such positions; execution of preparatory or complementary work which, due to its nature, can only be carried out outside working hours; teleworking and other cases of performing regular work outside the establishment, without immediate control by the hierarchical superior. Also, the employer and the employee may agree on other forms of unmeasured working time. Article 265(1) of the Labour Code states that workers who are exempt from any work schedule are entitled to a specific additional remuneration determined by a collective labour regulation instrument. If there is no such instrument, then this remuneration cannot be less than one hour of overtime per day and two hours of overtime per week. Under Article 265(2) of the Labour Code, a worker, who holds an administrative or management position may waive the remuneration for unmeasured working time.

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 Committee notes that no relevant information is provided in reply to this question.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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 therefore every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”).

The Committee deferred its previous conclusion on Article 4§3 of the Charter, pending receipt of the information on effective remedies (Conclusions 2014).

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

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

Effective remedies

In its previous conclusion, the Committee noted that in the area of salary discrimination, the Commission for Equality at Work and in Employment (CITE) plays an important role as the national mechanism for equality. Its competences include pursuing equality and non-discrimination between women and men at work, in employment and in vocational training, and in this respect it receives and analyses complaints linked to breaches of labour and employment legislation and issues formal opinions on the subject. Therefore, the Committee asked how court decisions have dealt with CITE opinions.

In response, the report indicates that the opinions issued by CITE are merely administrative, non-binding decisions, and that their non-compliance does not constitute an unlawful act. Therefore, according to the report, legal action must be taken so that the existence of possible discrimination can be recognised. Furthermore, although CITE’s opinion concludes that there are indications of discrimination, this Commission has no intervention in any legal proceedings that may be brought, nor does it have any knowledge of whether or not the complaining worker has filed the appropriate legal action.

The Committee notes that according to Article 9 of the Law No. 60/2018 of 21 August 2018, the courts shall immediately inform the competent authority in the area of equal opportunities between men and women (i.e. the Commission for Equality in Labour and Employment – CITE) of final judgments condemning pay discrimination on the grounds of sex.

In its previous conclusion, the Committee also asked for details about remedies available to victims of gender pay discrimination in employment, the compensation awarded in cases of gender pay discrimination, the burden of proof and retaliatory dismissal.

In response, the report indicates that the legislation defines an unlawful dismissal as a dismissal when the employer does not respect any of the termination clauses for just cause. According to Article 381 of the Labour Code, dismissal on the employer’s initiative shall be unlawful:

- (a) if it is for political, ideological, ethnic or religious reasons;
- (b) if the reason for dismissal is declared unfounded;
- (c) if it is not preceded by the relevant procedure; or
- (d) in the case of a pregnant worker, a worker who has recently given birth or is breastfeeding or a worker on initial parental leave (in any of its forms), if the prior opinion of the competent entity in the area of equal opportunities between men and women has not been requested.

The illegality of the dismissal can only be established by a court. An employee may object to his or her dismissal by filing an application in the appropriate form with the competent court within 60 days counting from the date of receipt of the notice of dismissal or from the date of termination of his or her contract (Article 387 of the Labour Code).

According to Article 389 of the Labour Code, if the dismissal is declared unlawful, the employee is entitled to a severance pay or, the employer is required to reinstate the employee at work, without prejudice to his category and seniority. The report indicates that the worker shall be entitled to receive the wage he or she has ceased to earn since the dismissal until the court decision declaring the dismissal to be unlawful has become final (Article 390). In lieu of reinstatement, the worker may choose compensation, until the end of the discussion at the final hearing, and the court shall determine the amount, between 15 and 45 days of basic salary and seniority for each full year or fraction of time worked, taking into account the value of the salary and the degree of unlawfulness arising from the terms of Article 381. The compensation in such a case shall not be less than three months' basic salary and seniority payments.

As regards the shift of the burden of proof, the Committee refers to its decision on the merits of collective complaint No.136/2016 (University Women of Europe (UWE) v. Portugal, §141), where it noted that the Labour Code provides for a shift of the burden of proof in gender discrimination cases. Retaliatory dismissals are prohibited and there are no ceilings on compensation.

In view of the foregoing, the Committee considers that the obligation to ensure access to effective remedies in this field is satisfied.

Statistics and measures to promote the right to equal pay

For information, the Committee takes note of the Eurostat data on the gender pay gap in Portugal during the reference period, which was 10.8% in 2017, 8.9% in 2018, 10.9% (provisional figure) in 2019 and 11.4% (provisional figure) in 2020 (compared with 12.9% in 2011). It notes that the gender pay gap was lower than the EU 27 average of 13% (provisional figure) in 2020 (data from 4 March 2022).

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

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

In response to the question regarding the impact of Covid-19, the report does not contain 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 Portugal is in conformity with Article 4§3 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

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

In its previous conclusion, the Committee considered that the situation in Portugal was not in conformity with Article 4§4 of the Charter (Conclusions 2014).

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

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

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

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

Reasonable period of notice: legal framework and length of service

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

In reply to the targeted question, the report states that during the reference period, there were no changes regarding the notice periods of 15, 30 or 75 days in the case of dismissal due to individual redundancy or inadequacy. The report adds that Article 363(4) of the Labour Code provides that, if the minimum notice period is not observed, the contract terminates after the missing notice period following the communication of dismissal, and the employer must pay the remuneration corresponding to this period. In addition, during the notice period, the worker

is entitled to time credit corresponding to two working days per week, without loss of pay. Under the terms of Article 365, during the notice period, the worker may terminate the employment contract, by giving at least three working days' notice, maintaining the right to compensation, calculated in accordance with Article 366.

In its previous conclusion, the Committee asked for information reflecting the changes in legislation on dismissal (Conclusions 2014). In reply to the Committee's question, the report states that changes concern compensation in the case of collective dismissal, compensation and requirements for dismissal by individual redundancy, and dismissal for unsuitability, and consultations in the event of dismissal by redundancy. The report further states that these changes do not deal with notice periods.

In its previous conclusion, the Committee requested information on whether the two days of paid leave per week of notice for the purpose of seeking new employment provided for in Article 364, paragraph 1 of the Labour Code are also due in case of dismissal for unsuitability or where redundancies are made (Conclusions 2014). In reply to the Committee's question, the report states that according to the terms of Article 372, the provisions of Article 364 are applicable to the worker dismissed due to redundancy, and according to the terms of Article 379(1), the provisions of Article 364 are applicable to the worker dismissed due to inadequate adaptation.

In its previous conclusion, the Committee asked for information on the notice periods and/or compensation applicable to fixed-term or performance contracts outside probationary periods, to the early termination of such contracts, to temporary service contracts governed by Articles 163 *et seq.* of the Code, and to temporary work contracts governed by Articles 180 *et seq.* of the Code (Conclusions 2014).

In reply to the Committee's question, the report states that according to Article 400 (3) of the Labour Code, in the case of fixed-term employment contracts, termination can be made with a minimum notice period of 30 or 15 days, depending on whether the duration of the contract is at least six months or less. According to Article 344 of the Labour Code, the fixed-term employment contract expires at the end of the stipulated period, or at its renewal, if the employer or the worker communicates to the other party the desire to terminate it, in writing, respectively, 15 or 8 days before the end of the contract. If a fixed-term employment contract terminates due to the end of its term, the worker shall be entitled to compensation corresponding to 18 days of basic salary and seniority for each full year of seniority, calculated in accordance with Article 366, unless the termination is the result of a declaration by the worker under the terms of the preceding paragraph.

Notice periods during probationary periods

In its previous conclusion, the Committee found that the situation in Portugal was not in conformity with Article 4§4 of the Charter on the grounds that (i) the notice periods applicable to probationary periods in the private sector are insufficient below four months of service; (ii) the notice periods applicable to probationary periods for fixed-term or seasonal contracts in the private sector are insufficient; (iii) no provision is made for notice of the termination of duties during probationary periods for tenured civil servants (Conclusions 2014).

The Committee notes that the report does not contain specific information as regards the previous conclusion of non-conformity on the grounds that notice periods applicable to probationary periods in the private sector are insufficient below four months of service and that the notice periods applicable to probationary periods for fixed-term or seasonal contracts in the private sector are manifestly unreasonable. The Committee asks what those notice periods are in the private sector below four months' service. It also reiterates its conclusion of non-conformity on the grounds that the notice periods applicable to probationary periods for fixed-term or seasonal contracts in the private sector are manifestly unreasonable.

The report does not contain information on the previous conclusion of non-conformity as regards notice of the termination of duties during probationary periods for tenured civil servants. The Committee therefore reiterates its previous conclusion of non-conformity in this respect.

Notice periods with regard to workers in insecure jobs

The Committee previously found the situation to be in conformity with Article 4§4 of the Charter (Conclusions 2014).

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

In its previous conclusion, the Committee asked for information on the notice periods and/or compensation applicable to grounds for termination of employment other than dismissal (such as bankruptcy; death of the employer; transfer of ownership) (Conclusions 2014).

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

Circumstances in which workers can be dismissed without notice or compensation

The Committee previously found the situation to be in conformity with Article 4§4 of the Charter (Conclusions 2014).

Conclusion

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

- the notice periods applicable to probationary periods for fixed-term or seasonal contracts in the private sector are manifestly unreasonable;
- there is no notice period for permanent civil servants on probation.

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 Portugal.

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

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

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

Legal framework concerning deductions from wages and the protected wage

In its previous conclusion (Conclusions 2014), the Committee noted that Article 280 of the Code restricted the transfer or attachment of wages to the seizable portion, and asked for information on the non-seizable portion in the event of simultaneous deductions on competing grounds (such as social contributions; maintenance claims; trade union dues; tax deductions; and bank loans). The Committee notes from the report that the total amount of deductions cannot exceed one sixth of the worker’s remuneration. In this connection, the report quotes the judgement of the Oporto Court of Appeal of 10 May 2018 in which the Court held that the legislator’s option to establish a limit for the attachment of amounts paid as a salary, pension, social benefit or other benefit of a similar nature that ensures the subsistence of the debtor is provided for in Article 738 of the Civil Procedure Code in a way that respects the principle of human dignity inherent to a State governed by the rule of law, as enshrined in the Constitution. Furthermore, according to the report, Article 738 (1) to (3) of the Civil Procedure Code establishes a legal amount that should not be seized, which, at most, corresponds to the equivalent to the minimum wage.

The Committee asks for the next report to confirm that the protected wage, i.e., the portion of the wage left after all authorised deductions, including for child support, 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

In its previous conclusion (Conclusions 2014), the Committee noted that Article 219 of the Act of 11 September 2008 establishing civil service employment contract rules (RCTFP), by authorising deductions at the express request of permanent civil servants or civil service contractual staff, precisely left the salary at the disposal of the parties to the employment contract, without providing for adequate guarantees against the deprivation of the means of subsistence. Therefore, the Committee considered that the situation was not in conformity with the Charter.

The Committee notes from the report of the Governmental Committee (2015) that, according to the General Labour Law on Public Functions (LTFP) No. 35/2014, workers cannot authorise the deduction of an amount higher than one sixth of their remuneration. The worker can only authorise the public employer to make discounts or deductions from the wage for meals in the workplace, telephone use, supply of foodstuffs, fuels or materials, at the worker's request, as well as other expenses incurred by the organisation on behalf of the worker with his/her prior approval. However, these deductions can never exceed one sixth of the remuneration. That limit does not include deductions for the State, Social Security or other entities, required by law. Furthermore, the work regime included in the LTFP must be seen in the light of the Code of Civil Procedure (approved by Law No. 41/2013 of 26 June 2013) which establishes that two thirds of the net amount of the salary is not seizable. The law establishes as a maximum limit the amount equivalent to three times the national minimum wage (decided on the date of each seizure and, as a minimum limit, when the person concerned has no other income, equivalent to one national minimum wage (RMMG).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 4§5 of the Charter.

Article 5 - Right to organise

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

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 Portugal was not in conformity with Article 5 of the Charter on the ground that the criteria used to determine representativeness were not adequate (Conclusions 2014).

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

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

Prevalence/Trade union density

In its targeted question, the Committee asked 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 Constitution of the Portuguese Republic (Article 35(3)) does not allow the collection of such information (on trade union membership), unless (i) consent of the owner or trade union authorisation has been provided, and (ii) compliance with certain legal guarantees such as Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, whose Article 9(1) prohibits the processing of personal data revealing trade union membership, is guaranteed. As regards the public sector, the report further states that trade unions must communicate annually the respective number of members (under the terms of Article 345(7)(a) of the General Labour in Public Functions Law) if they wish to benefit from time credits for members of their management bodies, which is not always the case.

The Committee takes note of the information provided as regards the trade unions and employers' associations formed during the reference period.

Personal scope

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

The report does not contain the information requested. The Committee therefore reiterates its request and its previous conclusion that there is nothing to establish that the situation in Portugal is in conformity with the Charter on this point.

The Committee recalls that Article 5 of the Charter allows States Parties to impose restrictions upon 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).

Restrictions on the right to organise

In its targeted question, the Committee asked for information on public or private sector activities in which workers are 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 both private and public sector workers are entitled to form and join trade unions, as provided in the Labour Code and the General Labour Law in Public Functions. The General Labour Law in Public Functions and the Labour Code (applicable to the public employment contract by reference to the General Labour Law in Public Functions) also guarantee several aspects of trade union freedom, namely: (i) autonomy and independence; (ii) freedom to decide the organisation and internal regulations; (iii) the right of workers to engage in trade union activities at their public sector employer; (iv) the right to collective bargaining; (v) the right to declare and manage a strike.

Representativeness

In its previous conclusion, the Committee concluded that the situation was not in conformity with Article 5 of the Charter on the ground that the criteria used to determine representativeness were not adequate (Conclusions 2014).

In reply to the previous conclusion of non-conformity, the report only contains information regarding the General Labour in Public Functions Law. The Committee notes that there has been no change in this area. The Committee therefore concludes that the situation is not in conformity with Article 5 of the Charter on the ground that the criteria used to determine representativeness are not clear, predetermined, and objective.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 5 of the Charter on the ground that the criteria used to determine representativeness are not clear, predetermined and objective.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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 considered that the situation in Portugal was not in conformity with Article 6§1 of the Charter on the ground that there were no adequate criteria used to determine representativeness in respect of joint consultation at the level of the Economic and Social Council (CES) and the Permanent Commission for Social Partnership (CPCS) (Conclusions 2014).

As the report states that the relevant legal provisions remained the same during the reference period, the Committee reiterates its conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 6§1 of the Charter on the ground that the criteria used to determine representativeness in respect of joint consultation are not adequate.

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

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

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

The report provides an update of measures taken that strengthened collective bargaining rights, as well as quantitative information on the number of collective agreements concluded during the reference period, which reveal a broadly positive trend.

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

Covid-19

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

Conclusion

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

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 considered that the situation in Portugal was not in conformity with Article 6§3 of the Charter on the ground that – in the private and public sectors – the circumstances in which compulsory arbitration was permitted went beyond the limits set by Article G of the Charter (Conclusions 2014).

In its report, the Government does not provide any information on compulsory arbitration in the private sector when the Standing Committee for Social Dialogue adopts a recommendation (in favour of this arbitration) approved by a majority of workers and employers (Article 508 of the Labour Code). The Committee therefore reiterates its conclusion of non-conformity on this point.

With regard to compulsory arbitration in the private sector where no new collective agreement has been adopted twelve months after the expiry of the previous one and no other agreement is applicable to at least half of the workers covered by the expired agreement (“necessary arbitration”), the Government states that no “necessary” arbitration awards were issued during the reference period. In addition, the Government gives a detailed description of the conditions and procedure governing necessary arbitration (Articles 510 and 511 of the Labour Code). Since there has been no change, the Committee reiterates its conclusion of non-conformity on this point.

As to compulsory arbitration in the public sector to negotiate a (new) collective labour agreement, the Government report provides no further relevant information. The Committee therefore reiterates its conclusion of non-conformity on this point.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 6§3 of the Charter on the ground that the circumstances in which compulsory arbitration is permitted go beyond the limits set by Article G of the Charter, in the private sector and the public sector.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

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

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

In its Conclusion 2014, the Committee considered that the situation in Portugal was not in conformity with Article 6§4 of the Charter on the grounds that i) the right to call a strike was primarily reserved to trade unions, and the establishment of a trade union was subject to an excessive timeframe and ii) it had not been established that recourse to compulsory arbitration to define minimum services in the case of a state-owned company fell within the limits set by Article G of the Charter.

In its Conclusion 2016, which dealt solely with the question of recourse to compulsory arbitration to define minimum services in the case of a state-owned company, the Committee found that the situation in Portugal (on this point) was in conformity with Article 6§4 pending receipt of the information requested. It asked to be kept informed of any decision taken by bodies other than the parties to the dispute concerning the definition of the level of minimum services to be guaranteed.

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

Right to collective action

Entitlement to call a collective action

From the information provided by the Government, it appears that the situation has not changed: the decision to call a strike is primarily reserved to trade unions. Only in situations where the majority of workers in an enterprise are not represented by trade unions, provision is made for the workers themselves to decide to call a strike (Article 531 of the Labour Code; *mutatis mutandis*, Article 395 of the General Labour Law in Public Functions).

As the Committee has emphasized since Conclusion XVI-1 (2002), workers who are not affiliated to an existing trade union, where the majority of workers are union members, may exercise the right to call a strike only through a trade union that they have constituted for that purpose. However, it can take up to 30 days to set up a trade union – a period that the Committee considered excessive.

The Committee therefore reiterates its conclusion of non-conformity on this point.

Restrictions to the right to strike, procedural requirements

In its report, the Government states that there were 11 arbitrations on the minimum service in 2017, 19 in 2018, 27 in 2019 and 8 in 2020.

Right of the police to strike

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

Covid-19

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

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

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

In its report, the Government states that under Article 19 of the Constitution, certain rights, freedoms and guarantees may be suspended in the event of a state of emergency. In this context, the exercise of the rights to strike, assemble and demonstrate were restricted in 2020 in connection with the pandemic. In particular, Presidential Decree No. 14-A/2020 of 18 March 2020 suspended the exercise of the right to strike insofar as it could jeopardise the functioning of critical infrastructure or health care units, as well as in economic sectors vital to the production and supply of essential goods and services to the population. The decree also provided for the possibility, on the basis of the opinions of the National Health Authority, of imposing the restrictions necessary to implement measures to prevent and combat the pandemic, including by limiting or prohibiting the holding of meetings or protest demonstrations which, due to the number of people involved, could increase the transmission of the new coronavirus. Other measures (e.g. mandatory lockdowns and teleworking) have been enacted which certainly have contributed to the fact that strikes were not called.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 6§4 of the Charter on the ground that the right to call a strike is primarily reserved to trade unions, and the establishment of a trade union is subject to an excessive timeframe.

Article 21 - Right of workers to be informed and consulted

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

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

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions (2014), pending receipt of the information requested. The assessment of the Committee will therefore concern the information provided by the Government in response to the question raised in its previous conclusion, and the targeted questions.

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

In reply to the Committee’s request regarding the amount of administrative fine, the report refers to Article 554 of the Labour Code making the level of the fine dependent on the seriousness of the offense and of the company’s turnover. The amount ranges from 2 to 600 unit counts (UC). The maximum amounts of the fines for very serious administrative offenses are doubled in situations involving breaches of norms governing the rights pertaining to organisational structures that represent workers, and the right to strike. The report also provides statistics on number of violations regarding workers’ representation activities that have been sanctioned.

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

The report states that no specific legislative measures were taken with respect to the right to information and consultation during the pandemic period. Some measures of general application were adopted that facilitated the functioning of collective bodies during the crisis, as is the case of the provisions of Article 5 of Law 1-A/2020, of 19 March, which determined that the participation by electronic means of members of collective bodies of public or private entities in the respective meetings would not hinder the regular functioning of the body.

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

Conclusion

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

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

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

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

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions 2014). The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted question.

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

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

The Committee notes from the report that no specific measures appear to have been taken during the pandemic. The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers’ organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers’ representatives in terms of Article 22 of the Charter.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

The Committee recalls that for the purposes of the present report, 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 Portugal was in conformity with Article 26§1 of the Charter, pending receipt of the information requested (Conclusions 2014).

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

Prevention

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

The report indicates that the Commission for Equality at Work and in Employment (CITE) promoted the preparation of the publication "Guide for the preparation of a code of good conduct to prevent and combat harassment at work", a support tool to assist companies in complying with the new rules on harassment that were introduced in the Labour Code by Law No. 73 of 16 August 2017. The Law No. 73/2017 established the mandatory adoption of a code of good conduct on combating and preventing harassment at work, and is applicable once a company has seven or more employees (new subparagraph (k) of Article 127(1) of the Labour Code).

The report also mentions the cooperation and joint initiative of CITE and the Working Conditions Authority (ACT) to promote National Action for the Promotion of Gender Equality at Work.

In addition, the report indicates that, under Article 4 of Law No. 73/2017, the ACT and the General Inspectorate for Finance must provide e-mail addresses for the receipt of harassment complaints, both in the private and public sectors, and must include information on their respective websites relating to the identification of harassment practices and on measures to prevent and combat such practices, and react to harassment situations.

The Committee asks whether, and to what extent, employers' and workers' organisations are consulted on measures to promote awareness, information and prevention of sexual harassment at the workplace or in relation to work, including in the context of online/remote work.

Liability of employers and remedies

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

The report outlines the amendments brought to the Labour Code by Law No. 73 of 16 August 2017 and by Law No. 93 of 4 September 2019 in relation to harassment practices in employment relations. It states that Law No. 73/2017 has reinforced the protection of harassment victims by granting them accrued rights to damages, imposing upon the employer the duty to approve a code of conduct in relation to harassment practices in companies with more than seven employees, as well as the obligation to initiate a disciplinary procedure

against harassment perpetrators, and by extending the protection against dismissal to witnesses of harassment practices who report such practices (Article 29(4), (5) and (6) and Article 127(1)(k) and (l)). Under the Labour Code, violation of the obligations to approve a code of conduct (Article 127 (1) k)) and to initiate disciplinary proceedings once the employer becomes aware of alleged harassment (Article 127 (1) l)), constitutes a serious administrative offence (Article 127(7) of the Labour Code). Moreover, Article 29 (5) of the Labour Code now states that the practice of harassment constitutes a very serious administrative offence, without prejudice to possible criminal liability under the law.

The report further indicates that additional amendments to the Labour Code were introduced by Law No. 93 of 4 September 2019. Following these amendments, Article 127 (1) (a) now reads: “The employer must respect and treat the worker with courtesy and probity, avoiding any acts that may affect the worker’s dignity, that are discriminatory, harmful, intimidating, hostile or humiliating for the worker, including harassment.”

Moreover, following the amendments introduced in both Law No. 73/2017 and Law No. 93/2019, the practice of harassment is expressly included in the list of behaviours adopted by the employer or other employees that may constitute a valid reason for the employee to terminate the employment contract, with the latter being entitled to compensation (Article 394(2)(b)(f) and Article 396 of the Labour Code).

The Committee took note previously of the remedies and the procedures available to victims of harassment (see Conclusions 2014). It asked to be kept regularly updated about the cases of sexual harassment and about the measures taken to improve reporting (Conclusions 2014). The report indicates that during the reference period (2017–2020), CITE received 24 complaints regarding sexual and moral harassment as follows: one complaint related to sexual harassment, 19 related to moral harassment and four related to both sexual and moral harassment. The report also provides information on the number of cases in which sanctions were imposed by ACT during the period 2017-2019.

In its previous conclusion, the Committee asked whether the employer’s liability applies in cases where a worker under the employer’s authority sexually harasses, on premises under the employer’s responsibility, a person who is not under the employer’s authority (Conclusions 2014). The report indicates that if the employer, in the exercise of his or her disciplinary functions, becomes aware that the employee has violated any of the legal provisions set out in Article 128 of the Labour Code, he/she may initiate the disciplinary procedure set out in Articles 328 et seq. of the Labour Code. Article 128 of the Labour Code requires, among other things, that the worker respects and treats the employer, hierarchical superiors, work colleagues and persons who collaborate with the company with courtesy and honesty.

Damages

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

The report indicates that a victim of work harassment is entitled to compensation for both material and non-material damage suffered (Article 29(4) of the Labour Code). The Committee notes from the *Country report on non-discrimination* of the European network of legal experts in gender equality and non-discrimination that there are no statutory limits for pecuniary or non-pecuniary (moral) damages.

The report also states that following amendments introduced by Law no. 73/2017, Article 283 (8) of the Labour Code now provides that the responsibility for the compensation of damages arising from occupational diseases resulting from the practice of harassment lies with the employer. For this purpose, the social security system shall bear the costs of compensating the damage, and is entitled to claim reimbursement from the employer, plus interest (Article

283(8) and (9) of the Labour Code). The employer is also entitled to claim reimbursement from a harassing employee under certain circumstances.

In its previous conclusion, the Committee asked whether a worker can obtain compensation or be reinstated when they have been pressured to resign for reasons related to harassment (Conclusions 2014). The report explains that, following amendments introduced by Law no. 73/2017, Article 331 (2)(b) of the Labour Code now provides that dismissal or another sanction allegedly applied to punish an offence is presumed to be abusive, when it takes place up to one year after the complaint or any other form of exercise of rights relating to equality, non-discrimination and harassment. Furthermore, Law no. 93/2019 also amended Article 331(1)(d) of the Labour Code, which now provides that a disciplinary sanction is considered abusive if the employee claims to be a victim of harassment or is a witness in judicial and/or administrative proceedings for harassment.

The report further indicates that Article 396 of the Labour Code states that, in the event of termination of the contract by the employee due to a violation of his or her legal or contractual guarantees (i.e. the harassment by the employer or other workers), the employee is entitled to compensation, which must be between 15 and 45 days of their basic pay and seniority bonuses for each full year of seniority, taking into account the value of the remuneration and the degree of unlawfulness of the employer's behaviour; compensation cannot be less than three months of basic remuneration and seniority. According to Article 396 (3) of the Labour Code, the value of the compensation may be higher if the worker suffers material and non-material damage of a higher amount.

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 no information on this point. The Committee reiterates its question.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 26§1 of the Charter.

Article 26 - Right to dignity in the workplace
Paragraph 2 - Moral harassment

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

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

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

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

Prevention

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

The report indicates that the Commission for Equality at Work and in Employment (CITE) promoted the preparation of the publication "Guide for the preparation of a code of good conduct to prevent and combat harassment at work", a support tool to assist companies in complying with the new rules on harassment that were introduced in the Labour Code by Law No. 73 of 16 August 2017. The Law No. 73/2017 established the mandatory adoption of a code of good conduct on combating and preventing harassment at work, and is applicable once a company has seven or more employees (new subparagraph (k) of Article 127(1) of the Labour Code).

In addition, the report indicates that, under Article 4 of Law No. 73/2017, the Working Conditions Authority (ACT) and the General Inspectorate for Finance must provide e-mail addresses for the receipt of harassment complaints, both in the private and public sectors, and must include information on their respective websites relating to the identification of harassment practices and on measures to prevent and combat such practices, and react to harassment situations.

The Committee asks whether, and to what extent, employers' and workers' organisations are consulted on measures to promote awareness, information and prevention of moral harassment at the workplace or in relation to work, including in the context of online/remote work.

Liability of employers and remedies

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

The report outlines the amendments brought to the Labour Code by Law No. 73 of 16 August 2017 and by Law No. 93 of 4 September 2019 in relation to harassment practices in employment relations. It states that Law No. 73/2017 has reinforced the protection of harassment victims by granting them accrued rights to damages, imposing upon the employer the duty to approve a code of conduct in relation to harassment practices in companies with more than seven employees, as well as the obligation to initiate a disciplinary procedure against harassment perpetrators, and by extending the protection against dismissal to witnesses of harassment practices who report such practices (Article 29(4), (5) and (6) and

Article 127(1)(k) and (l)). Under the Labour Code, violation of the obligations to approve a code of conduct (Article 127 (1) k)) and to initiate disciplinary proceedings once the employer becomes aware of alleged harassment (Article 127 (1) l)), constitutes a serious administrative offence (Article 127(7) of the Labour Code). Moreover, Article 29 (5) of the Labour Code now states that the practice of harassment constitutes a very serious administrative offence, without prejudice to possible criminal liability under the law.

The report further indicates that additional amendments to the Labour Code were introduced by Law No. 93 of 4 September 2019. Following these amendments, Article 127 (1) (a) now reads: “The employer must respect and treat the worker with courtesy and probity, avoiding any acts that may affect the worker’s dignity, that are discriminatory, harmful, intimidating, hostile or humiliating for the worker, including harassment.”

Moreover, following the amendments introduced in both Law No. 73/2017 and Law No. 93/2019, the practice of harassment is expressly included in the list of behaviours adopted by the employer or other employees that may constitute a valid reason for the employee to terminate the employment contract, with the latter being entitled to compensation (Article 394(2)(b)(f) and Article 396 of the Labour Code).

The Committee took note previously of the remedies and the procedures available to victims of harassment (see Conclusions 2014). It asked to be kept regularly updated about the cases of sexual harassment and about the measures taken to improve reporting (Conclusions 2014). The report indicates that during the reference period (2017–2020), CITE received 24 complaints regarding sexual and moral harassment as follows: one complaint related to sexual harassment, 19 related to moral harassment and four related to both sexual and moral harassment. The report also provides information on the number of cases in which sanctions were imposed by ACT during the period 2017-2019.

In its previous conclusion, the Committee asked whether the employer’s liability applies in cases where a worker under the employer’s authority sexually harasses, on premises under the employer’s responsibility, a person who is not under the employer’s authority (Conclusions 2014). The report indicates that if the employer, in the exercise of his or her disciplinary functions, becomes aware that the employee has violated any of the legal provisions set out in Article 128 of the Labour Code, he/she may initiate the disciplinary procedure set out in Articles 328 et seq. of the Labour Code. Article 128 of the Labour Code requires, among other things, that the worker respects and treats the employer, hierarchical superiors, work colleagues and persons who collaborate with the company with courtesy and honesty.

Damages

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

The report indicates that a victim of work harassment is entitled to compensation for both material and non-material damage suffered (Article 29(4) of the Labour Code). The Committee notes from the *Country report on non-discrimination* of the European network of legal experts in gender equality and non-discrimination that there are no statutory limits for pecuniary or non-pecuniary (moral) damages.

The report also states that following amendments introduced by Law no. 73/2017, Article 283 (8) of the Labour Code now provides that the responsibility for the compensation of damages arising from occupational diseases resulting from the practice of harassment lies with the employer. For this purpose, the social security system shall bear the costs of compensating the damage, and is entitled to claim reimbursement from the employer, plus interest (Article 283(8) and (9) of the Labour Code). The employer is also entitled to claim reimbursement from a harassing employee under certain circumstances.

In its previous conclusion, the Committee asked whether a worker can obtain compensation or be reinstated when they have been pressured to resign for reasons related to harassment (Conclusions 2014). The report explains that, following amendments introduced by Law no. 73/2017, Article 331 (2)(b) of the Labour Code now provides that dismissal or another sanction allegedly applied to punish an offence is presumed to be abusive, when it takes place up to one year after the complaint or any other form of exercise of rights relating to equality, non-discrimination and harassment. Furthermore, Law no. 93/2019 also amended Article 331(1)(d) of the Labour Code, which now provides that a disciplinary sanction is considered abusive if the employee claims to be a victim of harassment or is a witness in judicial and/or administrative proceedings for harassment.

The report further indicates that Article 396 of the Labour Code states that, in the event of termination of the contract by the employee due to a violation of his or her legal or contractual guarantees (i.e. the harassment by the employer or other workers), the employee is entitled to compensation, which must be between 15 and 45 days of their basic pay and seniority bonuses for each full year of seniority, taking into account the value of the remuneration and the degree of unlawfulness of the employer's behaviour; compensation cannot be less than three months of basic remuneration and seniority. According to Article 396 (3) of the Labour Code, the value of the compensation may be higher if the worker suffers material and non-material damage of a higher amount.

Covid -19

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

The report provides no information on this point. The Committee reiterates its question.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 26§2 of the Charter.

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

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

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 2014), the Committee concluded that pending receipt of the information requested, the situation in Portugal was in conformity with Article 28 of the Charter. In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the questions asked in the previous conclusion of conformity.

Protection granted to workers' representatives

In the previous conclusions (Conclusions 2014), the Committee recalled that where a dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. It noted that Article 410 § 6 of the Labour Code determines the rate of compensation payable in such case and requested that the next report provide information on the operation in practice of the calculation method detailed in the Labour Code.

In reply, the report indicates that in the event of unlawful dismissal of an employee who is a member of a collective representation structure, the latter has the right to choose between reinstatement in the body or service and compensation calculated in accordance with the terms of the law or established in a collective bargaining agreement, never less than the basic salary corresponding to six months (Article 317§6 of the Labour Code).

The report states, in response to a previous question, that the dismissal of a member or a candidate member of any of the trade union governing bodies is considered an unfair dismissal or dismissal without justifiable reason according to Article 317§3 of the Labour Code. Moreover, in case the dismissed worker is a union representative or a member of the workers' committee, and a restraining order has been filed to suspend the dismissal, the dismissal authorisation is only granted if the court concludes that there is a serious probability that the just cause or justification invoked exists (Article 317§4 of the Labour Code).

The report also states that whenever a labour inspector verifies evidence of a dismissal in violation of the provisions of the Labour Code, a minute is drawn up and the employer is notified to rectify the situation. The Labour Code also establishes that with the aforementioned notification to the employer and until the employee's situation has been rectified or judicial decision has become final, the employment contract in question does not terminate and all the rights of the parties are maintained, namely the right to remuneration as well as the inherent obligations before the general social security scheme.

As regards the protection from prejudicial acts other than dismissal, the report indicates that Article 318§1 of the Labour Code guarantees that workers elected to collective representation structures, as well as candidates, until two years after the end of respective mandate, cannot be transferred to another place of work without their express consent and without hearing the structure to which they belong. The Committee asks whether those guarantees are also applicable to workers' representatives other than workers elected to collective representation structures.

The report lastly indicates that the guarantees of equality and non-discrimination provided for in the Labour Code are applicable to public sector workers as well.

Facilities granted to workers' representatives

In the previous conclusions (Conclusions 2018), the Committee requested information on the facilities mentioned by the R143 ILO Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971.

In reply, the report indicates that the legal framework described in the previous national report has been maintained. According to the report, numerous articles of the Labour Code ensure that the structures of collective representation of workers can exercise and develop their activity within the company. The right to hold workers' meetings in the workplace convened by the workers' committees, the procedures to hold workers' meetings in the workplace, supports to the workers' committees and dissemination of information, the time credits granted to the committees' members, and the elections of committee and subcommittee' members are guaranteed by the Labour Code.

The report further indicates that the workers' committee may call general meetings of workers to be held in the workplace (Article 419). The workers' committee has the right to assemble and to display information and a notice in the company for a workers' meeting in the workplace and must inform the employer at least forty-eight hours in advance of the date, time, foreseeable number of participants and the place where the meeting is to take place (Article 420(1)). For its part, the employer shall provide to the workers' commission or sub-commission an adequate place for the meeting, as well as the material and technical means necessary for the exercise of its functions.

An employer that prohibits a workers' meeting at the workplace or the access of a union board member to company premises where workers' meetings are being held commits a very serious administrative offence (Article 461§4 of the Labour Code). The trade union representative has the right to post, in the company's premises and in an appropriate place provided by the employer, notices, communications, information or other texts related to union life and to the socio-professional interests of the workers, as well as to distribute them, without prejudice to the normal functioning of the company (Article 465(1) of the Labour Code).

The report indicates that absences by workers elected to collective representation structures in the performance of their duties and which exceed the time credit, are considered justified absences and count, except with regard to pay, as effective working time (Article 316§1). The report further specifies that in the case of trade union representatives, in addition to the absences corresponding to the use of time credit, only absences due to the practice of necessary and unavoidable acts in the performance of their functions are considered as justified and count, except for the purposes of pay, as effective working time (Article 316§2).

Covid-19

According to the report, within the scope of the adoption of measures necessary to combat the Covid-19 pandemic, in addition to the regime described above, measures were taken to strengthen the protection of workers against unlawful dismissal in the difficult economic and business environment, including the prohibition of redundancy imposed on employers benefiting from the "simplified" lay-off and the other support measures provided for and regulated in Decree-Law no. 10-G/2020, which cover all workers, are also applicable to workers' representatives.

Conclusion

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

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

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

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 2014), the Committee concluded that pending receipt of the information requested, the situation in Portugal was in conformity with Article 29 of the Charter.

In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the questions asked in the previous conclusion of conformity (Conclusions 2014).

Sanctions and preventative measures

In the previous conclusions (Conclusions 2010 and 2014), the Committee asked a list of sanctions that are applicable in case where the employer fails to notify the workers’ representatives about the planned redundancies.

The Committee also asked (Conclusions 2014) what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers’ representatives has not been fulfilled.

In reply, the report states that there were no changes to the legal provisions that regulate the right to information and consultation in collective redundancy procedures. But the report does not provide any specific answer to the questions previously raised by the Committee. The Committee therefore reiterates its questions and defers its conclusions. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 29 of the Charter.

Conclusion

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

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.