



March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

REPUBLIC OF MOLDOVA

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 the Republic of Moldova, which ratified the Revised European Social Charter on 8 August 2001. The deadline for submitting the 17th report was 31 December 2021 and the Republic of Moldova submitted it on 15 February 2022.

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

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

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

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

The Republic of Moldova has accepted all provisions from the above-mentioned group except Articles 4§1, 4§2 and 22.

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

The conclusions relating to the Republic of Moldova concern 20 situations and are as follows:

– 6 conclusions of conformity: Articles 2§3, 2§5, 2§6, 2§7, 6§1 and 29,

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

In respect of the other 5 situations related to Articles 2§1, 6§2, 21, 26§1 and 26§2 the Committee needs further information in order to examine the situation.

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

The next report from the Republic of Moldova 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 the Republic of Moldova.

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

Measures to ensure reasonable working hours

In its previous conclusion, the Committee asked whether, in practice, there might be circumstances where it would be possible for an employee to work more than 60 hours per week, in particular in agriculture, hunting and fish farming, wholesale, retail, hotels and restaurants (Conclusions 2018).

The report does not provide any of the information requested. Therefore, the Committee reiterates its request. The Committee considers that if the requested information is not provided in the next report, there would be nothing to establish that the situation in the Republic of Moldova is in conformity with Article 2§1 of the Charter.

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 information about the amendments of the Labour Code (No. 155 of 20 July 2017) regarding reasonable working time. Article 97 of the Labour Code regulates part-time work and Article 97¹ provides for guarantees for workers on part-time contracts. Article 97² sets the rules for reduced working time which may be set for a period of up to 3 consecutive months but not exceed 5 months per year. Article 100¹ provides for flexible working time during which the daily working time may be divided into two periods: a fixed period when the worker is at work, and a variable period, when the worker chooses the time of arrival and departure. Under Article 107 of the Labour Code, the duration of the daily rest period between two working days may not be less than 11 consecutive hours.

The report further states that between 2017 and 2020, 1,366 inspections were carried out in the agricultural sector and it was found that during harvest periods, the daily and weekly working hours were not observed. In the public sector, 2,088 inspections were carried out; 2,058 inspections in the trade sector, 682 complaints submitted by citizens were also examined, out of which 63 resulted in violations of working time, which were submitted to the courts for examination.

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

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

In reply, the report states that during the inspection visits, seminars, meetings conducted by the State Labour Inspectorate, economic agents are informed about the legal particularities concerning working periods and resting time. During the reporting period, labour inspectors helped conduct 135 outreach meetings with over 7,000 participants. Furthermore, during awareness-raising and training activities held jointly with the local public administration and the Federation of Trade Unions in Education and Science (about 50 meetings with more than 600 participants), the heads of educational institutions address situations related to the definition of working time for guards and operators, taking into account the number of planned units/financial resources available.

Law and practice regarding on-call periods

In its previous conclusion, the Committee asked what rules applied to on-call service and whether inactive periods of on-call duty were considered as a rest period in their entirety or in part (Conclusions 2018).

In the targeted question, the Committee asked for information on law and practice as regards on-call time and service (including as regards zero-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 domestic legislation does not regulate on-call time and zero-hour contracts. The Committee asks for clarification whether it means that on-call time and zero-hour contracts do not exist in the Republic of Moldova or are not regulated by domestic legislation. The Committee notes that periods of on-call duty are periods during which a worker has not been required to perform tasks for the employer and which do not constitute effective working time, irrespective whether this duty is spent at the employer's premises or at home. The Committee notes that it appears from the information provided in relation to Covid-19 that on-call service does exist in the Republic of Moldova; therefore, the Committee asks that the next report contain information about it.

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 in 2020, the operating time of economic units was restricted and limited with the exception of public sanitary-medical institutions. Where physical presence was not possible, remote working procedures were set up with the maintenance of the established working hours. If it was not possible for the workers to work remotely, annual paid leave or unpaid leave was granted.

The report further states that, pursuant to the provisions of the Commission for Exceptional Situations of the Republic of Moldova No. 6 of 26 March 2020, No. 14 of 6 April 2020, No. 21 of 24 April 2020, the periods between 30 March-3 April, 7 April-17 April, 21 April-24 April, 27 April-30 April were declared rest days for budget sector units except for sanitary-medical institutions and administrative authorities in the field of national defence, public order and national security. These days were paid in full salary and the workers had to make up for them in the manner established by the Government, i.e., on certain Saturdays of 2020, by increasing daily working time by one hour and reducing lunch break by 30 minutes.

The report states that the Ministry of Health, Labour and Social Protection published some recommendations on its website to clarify the legal situations related to the employment relationship, as well as to ensure the employees' socio-economic protection, safety and occupational health. These recommendations included examination by the parties of the possibility of working from home; the establishment of individual work schedules with flexible working time; the introduction of part-time work; registration at the on-call unit; technical unemployment with payment of an indemnity; granting of annual leave or unpaid leave to the worker.

Conclusion

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

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

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

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 the Republic of Moldova 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 2018).

The report does not contain any information on this point. Consequently, the Committee reiterates its conclusion of non-conformity.

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 the Republic of Moldova 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 the Republic of Moldova.

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 found that the situation in the Republic of Moldova was not in conformity with Article 2§3 of the Charter during the reference period on the ground that in certain circumstances, the law allowed all annual leave to be carried over to the following year, without guaranteeing the workers’ right to take at least two weeks’ uninterrupted holiday during the year the holidays are due (Conclusions 2018).

The Committee notes that Article 118(3) of the Labour Code has been revised by Law No. 157 of 2017, in order to provide that in case of postponement, at least 14 calendar days of paid annual leave shall be granted to the worker concerned, while the remaining part shall be granted before the end of the following year.

In view of the above, the Committee considers that the situation is now in conformity with the Charter on this issue.

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 the Republic of Moldova 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 the Republic of Moldova.

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 decided to defer its conclusion in 2018 on Article 2§4 of the Charter. The report did not contain any specific information on measures taken to eliminate or reduce the risks associated with dangerous or unhealthy activities and, in particular, information and statistics proving that these measures have been effectively implemented by means including the establishment of an efficient labour inspection system. Even if it considered that, concerning measures in response to residual risks, the situation was in conformity with the Charter, the Committee also asked for further details on the type of compensatory measures applied, specifying wherever possible, what measures apply to the different categories of workers exposed to residual risks, and what the percentage of such workers covered by these compensatory measures at issue is.

Elimination or reduction of risks

The Committee recalls that the first part of Article 2§4 of the Charter requires States to undertake to eliminate risks in inherently dangerous or unhealthy occupations. This part is closely linked to Article 3 of the Charter (right to safe and healthy working conditions), according to which States undertake to formulate policies and adopt measures to improve occupational safety and health and to prevent accidents and injury to health, particularly by minimising the causes of hazards inherent in the working environment.

The Committee refers to its conclusions under Article 3§1 of the Charter (Conclusions 2017, 2021), where it noted that the report did not contain any specific information on the general policy on occupational safety and health. In its Conclusions 2018 on Article 2§4, the Committee had reiterated its request of information and warned that, in the absence of replies, nothing would allow to establish a conformity in this respect. In the present report, there is again no information submitted on this point and no reply provided.

In the light of the persistent lack of information, the Committee therefore concludes that it is not established that the situation in the Republic of Moldova is in conformity with Article 2§4 of the Charter in respect of the elimination or reduction of occupational risks.

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 Committee refers to its previous conclusions (Conclusions 2018) and notes that the request for information on the type of compensatory measures applied, specifying wherever possible, what measures apply to the different categories of workers exposed to residual risks, and what the percentage of such workers covered by these compensatory measures at issue is, is not fulfilled. There is no information submitted. The Committee therefore reiterates the question and if the next report does not provide for an answer, there will be nothing to establish

that the situation in the Republic of Moldova is in conformity with Article 2§4 of the Charter in this respect.

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 the Republic of Moldova is not in conformity with Article 2§4 of the Charter on the ground that it has not been established that risks are reduced or eliminated for workers performing dangerous or unhealthy tasks.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

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

Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in the Republic of Moldova 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 the Republic of Moldova.

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

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

Covid-19

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

Conclusion

The Committee concludes that the situation in the Republic of Moldova 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 the Republic of Moldova.

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

In its previous conclusion, the Committee considered that the situation in the Republic of Moldova was not in conformity with Article 2§7 of the Charter on the ground that the legislation made no provision for a medical examination before being assigned to night work (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity.

The report notes that Article 103 of the Labour Code concerning night work was amended in 2020. First, workers assigned to night work must receive a compulsory medical check-up prior to taking up their duties, at the employers’ expense. Second, if night work is contraindicated for medical reasons, the employee in question must be transferred to suitable day work. These provisions supplemented a pre-existing requirement that employees who had done at least 120 hours of night work over a six-month period be provided with a medical examination at the employer’s expense.

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 the Republic of Moldova is in conformity with Article 2§7 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 the Republic of Moldova.

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

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

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

In its previous conclusion, the Committee found that the situation in the Republic of Moldova was not in conformity with Article 4§3 of the Charter on the grounds that the legal enforcement of the principle of fair remuneration was not guaranteed in practice and that there were no pay comparisons across companies in the private sector (Conclusions 2018).

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

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

Legal framework

In its previous conclusion, the Committee asked for information on whether both direct and indirect discrimination was prohibited, as well as on the definitions of equal pay and pay for work of equal value (Conclusions 2018).

The report notes that workers’ right to equal pay for men and women for equal work or work of equal value is governed by Article 10 (2) (g) and Article 128 (2) of the Labour Code. It states that no amendments to the relevant provisions were made during the reference period.

The Committee also notes that Article 8 of the Labour Code prohibits direct or indirect discrimination against employees on grounds of sex, age, race, nationality, beliefs, political opinions, social background, place of residence, physical, cognitive or mental disability, membership of a trade union or involvement in trade union activities, or on any other ground.

Since the report only partially provides answers to its queries, the Committee reiterates all its specific questions. The Committee points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in the Republic of Moldova is in conformity with Article 4§3 of the Charter.

Effective remedies

In its previous conclusion, the Committee found that the situation was not in conformity with Article 4§3 of the Charter on the ground that legal enforcement of the principle of equal remuneration was not guaranteed in practice (Conclusions 2018).

The report does not provide any information on this subject. The Committee asks for details of the number of cases specifically related to gender-based pay discrimination brought before the courts, with details of their outcomes, the penalties imposed on employers and the

compensation awarded to the victims. In the meantime, the Committee reiterates its previous conclusion of non-conformity on this point.

Pay transparency and job comparisons

In its previous conclusion, the Committee found that the situation was not in conformity with Article 4§3 of the Charter on the ground that there were no pay comparisons across companies in the private sector.

The report does not provide any information on this subject. The Committee therefore upholds its previous conclusion of non-conformity on this point.

Statistics and measures to promote the right to equal pay

The report does not provide any statistical data on the pay gap during the reference period.

The Committee notes from the Direct Request on the Equal Remuneration Convention (No. 100) in the Republic of Moldova, published by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2021 (109th session of the International Labour Conference), that women earned 13.5 percent less than men in 2017 (compared with 13.2 percent less in 2015).

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

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

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

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

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 4§3 of the Charter on the grounds that:

- the enforcement of the law on equal pay is not guaranteed;
- there are no pay comparisons across companies in the private sector.

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 the Republic of Moldova.

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

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

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

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

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

Reasonable period of notice: legal framework and length of service

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

In its previous conclusion, the Committee found that the situation in the Republic of Moldova was not in conformity with Article 4§4 of the Charter on the ground that some notice periods were not reasonable (for workers with more than 6 months of service notice or severance pay in lieu; in the event of dismissal on health grounds; in the event of the reinstatement of a former worker following a court decision) (Conclusions 2018).

The Committee refers to previous conclusions for a detailed description of the grounds for termination of employment and notice periods applicable (Conclusions 2014 and Conclusions 2018). The report does not contain information of any legal changes as regards the previous conclusion of non-conformity. The Committee considers that the situation concerning applicable notice periods in the Republic of Moldova is unclear and asks that the next report provide clear information on notice periods and/or severance in lieu of. It also asks for specific information on how seniority is taken into account when setting the notice periods. Pending receipt of the information requested, the Committee reserves its position in this respect.

The report does not contain any information as regards specific arrangements on the notice period in response to the Covid-19 crisis.

In its previous conclusion, the Committee asked for information on notice periods or severance payments for dismissal from the public sector (Conclusions 2018). The report does not contain the information requested. The Committee therefore reiterates its request and considers that, should the next report not contain the information requested, there will be nothing to establish that the situation in the Republic of Moldova is in conformity with Article 4§4 of the Charter in this respect.

Notice periods during probationary periods

In its previous conclusion, the Committee asked for information on notice periods or severance payments during the probationary period (Conclusions 2018). The report does not contain the information requested. The Committee therefore reiterates its request and considers that, should the next report not contain the information requested, there will be nothing to establish that the situation in the Republic of Moldova is in conformity with Article 4§4 of the Charter in this respect.

Notice periods with regard to workers in insecure jobs

In its previous conclusion, the Committee requested for information on notice periods or severance payments for dismissal for early termination of fixed term contracts (Conclusions 2018). The Committee takes note of the information provided under Article 184 of the Labour Code, that concerns both permanent and fixed-term contracts.

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

The Committee takes note of the information provided under Article 184 of the Labour Code. The employer has to give a two-month notice period in case of dismissal due to the liquidation of the unit or the termination of the activity of the natural person employer, downsizing of the company; one month in case of dismissal where the worker's qualification does not correspond to the position held or work performed and 14 calendar days in case of dismissal due to the worker's retirement upon reaching pension age. The worker shall be granted at least one working day per week, with the maintenance of the average wage, to look for another job. If a worker breached employment obligations, advance notice is not compulsory.

Circumstances in which workers can be dismissed without notice or compensation

The Committee takes note of the information provided under Article 184 (3) of the Labour Code.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 4§4 of the Charter on the ground that notice periods are manifestly unreasonable in the following cases:

- in the event of dismissal on health grounds;
- in the event of the reinstatement of a former worker following a court order.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

The Committee notes that the report submitted by the Republic of Moldova provides no information concerning this provision.

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 the Committee noted that the limits set by Article 149 of the Labour Code allowed situations to persist in which workers receive only 70% or 50% of the minimum wage. The Committee now asks the next report to demonstrate that the protected wage, i.e. the portion of wage left after all authorised deductions, including for child maintenance, in the case of a worker earning the minimum wage, will never fall below the subsistence level established by the Government. The Committee notes that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Waiving the right to the restriction on deductions from wage

In its previous conclusion (Conclusions 2018) the Committee found that the situation was not in conformity with the Charter as it had not been established that workers could not waive their right to the restriction on deductions from wage. In the absence of any information in the report in this regard, the Committee reiterates its previous finding of non-conformity on this ground.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 4§5 of the Charter on the ground that it has not been established that workers cannot waive their right to the limitation of deductions from wages.

Article 5 - Right to organise

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

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 the Republic of Moldova was not in conformity with Article 5 of the Charter on the grounds that it had not been established that: (i) protection against acts of anti-union discrimination and interference is effectively ensured; (ii) the right of the police to organise is guaranteed (Conclusions 2018).

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

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

Prevalence/Trade union density

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

In reply to the targeted question, the report states that the Government does not have statistics on trade union membership .

Personal scope

The Committee previously found the situation not to be in conformity with the Charter on the grounds that it had not been established that the right of the police to organise was guaranteed (Conclusions 2018). No information is provided in the report on this issue therefore the Committee reiterates its previous conclusion of non conformity.

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 considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Restrictions on the right to organise

The Committee asked in its targeted question for information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations. The report does not contain any information on the targeted question. The Committee therefore reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to consider that the situation is in conformity with the Charter on this point.

Forming trade unions and employers' organisations

In its previous conclusion, the Committee asked to be kept informed of all future refusals to register a trade union and the grounds upon which any refusal was based (Conclusions 2018). The report does not contain the information requested. Therefore the Committee reiterates its

request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Trade union activities

In its previous report, the Committee asked for information on any measures taken to review the fines and sanctions set out for acts of interference by the Government and employers in the trade unions' internal affairs (Conclusions 2018). The report does not contain the information requested. The Committee reiterates its request and its previous conclusion of non conformity.

Representativeness

In its previous conclusion, the Committee reiterated its request for information on how the plurality of trade unions is ensured so that the economic, social and professional rights of workers are best protected in the Republic of Moldova (Conclusions 2018). In reply to the Committee's request the report states that according to Article 8 of the Law on Trade Unions, trade unions are voluntarily founded.

The Committee takes note of the information provided in the report and reiterates its request.

Conclusion

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

- the right of the police to organise is not guaranteed;
- protection against acts of anti-union discrimination and interference is not effectively ensured.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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

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

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

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

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

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

The report only provides a table indicating the number of collective agreements concluded during the reference period, broken down by year and sector of activity, but without stating the level concerned, or the number and share of workers covered. The report does not otherwise provide the information requested by the Committee. Accordingly, the Committee reiterates the request for information on the measures taken to promote collective bargaining. The Committee further asks for information on the number of collective agreements signed and in force during the reference period, indicating the sector and level concerned, as well as the number and share of workers covered. Should the next report not provide the requested information, there will be nothing to establish that the situation is in conformity with Article 6§2 of the Charter.

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

Covid-19

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

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

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 the Republic of Moldova was not in conformity with Article 6§3 of the Charter on the ground that compulsory arbitration was permitted in circumstances which went beyond the limits set by Article G of the Charter (Conclusions 2018).

The Committee notes that the Government’s report does not include any information concerning Article 6§3 of the Charter.

The previous reports and the discussions held with the Governmental Committee on the Conclusions 2018 (document GC(2019)28, 22 January 2020) indicate that, if the conciliation procedure provided for in the Labour Code for the resolution of labour disputes fails, either party may ask the courts to settle the dispute. To date, the Government has not yet answered the Committee’s questions, and in particular has not clarified whether this court procedure is a judicial procedure for resolving labour disputes or an arbitration procedure, nor indicated which types of arbitration procedures are available for resolving collective labour disputes.

In the light of the above, the Committee requests detailed information in the next report on the legal framework applicable to arbitration for the resolution of collective labour disputes in the public and private sectors, and in particular as to whether arbitration proceedings are voluntary or compulsory. In the meantime, the Committee considers that it has not been established that arbitration machinery is available for the settlement of collective labour disputes.

In its previous conclusion, the Committee requested information in the next report on conciliation in the public sector.

The Committee notes from the discussions with the Governmental Committee on the Conclusions 2018 (aforementioned document) that the conciliation procedure provided for in the Labour Code for the settlement of labour disputes applies to all sectors, including central and local public administration.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 6§3 of the Charter on the ground that it has not been established that arbitration machinery is available for the settlement of labour disputes in the collective bargaining process, 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 the Republic of Moldova.

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

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

In its previous conclusion, the Committee considered that the situation in the Republic of Moldova was not in conformity with Article 6§4 of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

Right to collective action

Entitlement to call a collective action

In its previous conclusion, the Committee sought clarification as to who may call a strike at every level. The Government provides no information in the report. The Committee therefore reiterates its question and points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§4 of the Charter.

Restrictions to the right to strike, procedural requirements

In its previous conclusion, the Committee considered that the situation was not in conformity with Article 6§4 of the Charter on the grounds that i) the restrictions on the right to strike for public officials and employees in sectors such as the public administration, state security and national defence went beyond the limits set by Article G of the Charter, ii) the right to strike was denied to all employees in electricity and water supply services, telecommunication and air traffic control, iii) the restrictions on the right to strike of the employees of the customs authorities went beyond the limits set by Article G of the Charter and iv) the obligation imposed on workers on strike to protect enterprise installations and equipment went beyond the limits set by Article G of the Charter.

The report provides no new information, therefore the Committee reiterates its conclusion of non-conformity in its entirety.

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 crisis, the Committee asked all States to provide information on:

- specific measures taken during the pandemic to ensure the right to strike;

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

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

The report states that the rules on the right to strike did not change during the pandemic.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 6§4 of the Charter on the grounds that:

- the restrictions on the right to strike for public officials and employees in the sectors of the public administration, state security, national defence and customs authorities go beyond the limits set by Article G of the Charter;
- all employees in electricity and water supply services, telecommunication and air traffic control are denied the right to strike;
- the obligation imposed on workers on strike to protect enterprise installations and equipment goes beyond the limits set by Article G of the Charter.

Article 21 - Right of workers to be informed and consulted

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

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

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

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

In its previous conclusion, the Committee asked what categories of employees (such as temporary workers, full-time workers, part-time workers, apprentices, etc.) were taken into account when calculating the number of employees covered by the right to information and consultation). The report does not provide any information in response. The Committee thus reiterates its request and considers that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

The Committee also requested information whether there were remedies available to employees, or their representatives, who considered that their right to information and consultation within the undertaking had not been respected, including examples, on how such remedies are provided by the legislation and are enforced in practice. The report does not reply to this question. The Committee thus reiterates its request and considers that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter as regards the available remedies.

The Committee notes from the report that in 2017 the Labour Code has been amended, to bring it in line with the Directives 2002/14/EC on informing and consulting employees and Directive 2001/23/EC on safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses were transposed. The report provides information on the amended material scope of the right to information and consultation. The Committee notes that it remains in conformity with the Charter (see also Conclusions 2018).

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 Committee notes from the report that it appears that no specific measures were taken during the pandemic. It refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers’ organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in

the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers' representatives in terms of Article 21 of the Charter.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

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

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

In its previous conclusion, the Committee concluded that the situation in the Republic of Moldova was in conformity with Article 26§1 of the Charter.

The assessment of the Committee will therefore concern the information provided in the report in response 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 does not provide any information on this point. The Committee requests that the next report provide information on awareness-raising and prevention campaigns, as well as on measures taken to ensure that the right to dignity at work is fully respected in practice.

In its previous conclusion, the Committee noted that, according to a study conducted in 2018, every fifth woman employed in the Republic of Moldova experiences subtle forms of sexual harassment at work (stares, inappropriate gestures, sexual remarks, etc.) and four out of every 100 women face serious forms of harassment (Conclusions 2018).

The Committee recalls that Article 26§1 requires States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment. In particular, in consultation with social partners (Conclusions 2005, Lithuania), they should inform workers about the nature of the behaviour in question and the available remedies (Conclusions 2003, Italy).

The Committee further asks whether, and to what extent, employers’ and workers’ organisations are consulted on measures to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work, including in the context of online/remote work (see also Conclusions 2018).

The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the Republic of Moldova is in conformity with Article 26§1 of the Charter on this point.

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 indicates that during the reference period 2017-2020, the legal norms on combating sexual harassment and abuse at work or in employment relationships remained unchanged.

The Committee asks for updated information on the number of sexual harassment complaints submitted to the competent authorities and the courts, as well as their outcome.

Damages

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

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

Covid-19

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

The report indicates that during the Covid-19 pandemic, the legal norms on combating sexual harassment and abuse at work or in employment relationships remained unchanged.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

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

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

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

Prevention

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

The report does not provide any information on this point. The Committee reiterates its request for information on awareness-raising and prevention campaigns, as well as on measures taken to ensure that the right to dignity at work is fully respected in practice.

In its previous conclusion, the Committee noted that the Law on equal opportunities and the Labour Code were amended in 2016, with the introduction of an obligation on the employer to inform the employees that all acts of discrimination are prohibited at work (Conclusions 2018). It also noted that under Articles 10§2 and 199§1 of the Labour Code, as amended in 2016, the internal regulations of each employment unit must henceforth provide for the respect of "the principle of non-discrimination, the elimination of sexual harassment and any form of denial of work" (Conclusions 2018). Under Article 48§2 of the same Code, the employee must be provided, for information purposes, with a set of documents that are applicable to him/her, including the internal regulations of the unit (Conclusions 2018). The Committee asked that the next report clarify whether this obligation also applies in respect of moral (psychological) harassment and whether the State Labour Inspectorate monitors its implementation (Conclusions 2018). Given the absence of information in the report, the Committee reiterates its question. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the Republic of Moldova is in conformity with Article 26§2 of the Charter on this point.

In its previous conclusion, the Committee also asked that the next report clarify whether and to what extent the social partners are consulted or involved in the implementation of measures aimed at preventing moral (psychological) harassment at work. It also asked for updated information about further prevention measures, awareness-raising campaigns, etc. that have been implemented (Conclusions 2018). Given the lack of information in the report, the Committee reiterates its questions. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the Republic of Moldova is in conformity with Article 26§2 of the Charter on this point.

Liability of employers and remedies

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

The report indicates that, during the reference period 2017-2020, the legal norms on combating abuse at work or in employment relationships remained unchanged.

In its previous conclusion, the Committee asked what remedies are available in cases of moral (psychological) harassment perpetrated against the employer, occurring between employees or involving third parties (contractors or self-employed workers, visitors, clients, etc.) as perpetrators or victims (Conclusions 2018). The report does not provide the requested information.

The Committee recalls that it must be possible for employers to be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them (independent contractor, self-employed worker, visitor, client, etc.) is the victim or the perpetrator (Conclusions 2014, Finland). The Committee reiterates its question on what remedies are available in cases of moral (psychological) harassment perpetrated against the employer, occurring between employees or involving third parties (contractors or self-employed workers, visitors, clients, etc.) as perpetrators or victims. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the Republic of Moldova is in conformity with Article 26§2 of the Charter on this point.

Damages

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

The report does not provide any information in response to the targeted question. The Committee reiterates its question on whether any limits apply to the compensation that might be awarded to the victim of moral (psychological) harassment for moral and material damages.

The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the Republic of Moldova is in conformity with Article 26§2 of the Charter on this point.

Covid -19

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

The report indicates that during the Covid-19 pandemic, the legal norms on combating abuse at work or in employment relationships remained unchanged.

Conclusion

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

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

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

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

In the previous conclusions (Conclusions 2018), the Committee concluded that the situation in the Republic of Moldova was not in conformity with Article 28 of the Charter on the grounds that it had not been established that workers' representatives other than trade union representatives were afforded protection against dismissal and other prejudicial acts when exercising their functions outside the scope of collective bargaining and that facilities identical to those afforded to trade union were made available to other workers' representatives. In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the previous grounds of non-conformity.

Protection granted to workers' representatives

In previous conclusions (Conclusions 2018, 2016 and 2014), the Committee noted, as regards the protection granted to workers' representatives, that they benefit from the same protection and guarantees as trade union representatives only when they carry out collective negotiations (Article 29 of the Labour Code). The Committee therefore found the situation to be in non-conformity with Article 28 of the Charter, as it had not been established that workers' representatives other than trade union representatives were guaranteed protection against dismissal and prejudicial acts short of dismissal when exercising their functions outside the scope of collective bargaining.

In Conclusions 2018, the Committee noted from other sources (2018 ITUC Global Rights Index) that the legal framework was amended in 2017 and asked the next report to provide an update on all the developments in this respect. In addition, the Committee asked, in the previous conclusion (2018), for detailed explanation on the existing types of workers' representatives and their functions, including outside collective bargaining.

In reply, the report limits its submission to state that both during the reporting period and the crisis caused by the Covid-19 pandemic, the rules regulating the right of workers' representatives to protection have not been amended.

The Committee reiterates its request that the next report provide information on the existing types of workers' representatives and their functions, and on measures taken or envisaged in order to guarantee to all workers' representatives protection against dismissal and prejudicial acts when exercising their functions including those outside the framework of collective negotiations.

The Committee concludes that workers' representatives, other than trade union representatives, are not guaranteed protection against dismissal or prejudicial acts other than dismissal where they exercise their functions outside the scope of collective bargaining, extended for a reasonable period after the effective end of their functions.

Facilities granted to workers' representatives

In previous conclusions (Conclusions 2018, 2016 and 2014), the Committee, observing that the facilities listed in the relevant reports refer explicitly to trade union representatives and that the reports did not contain information on any facilities granted to other workers'

representatives (other than trade union representatives), concluded that the situation was not in conformity with the Charter on this point.

No new information was submitted in this respect and thus the Committee reiterates its previous conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 28 of the Charter on the grounds that:

- workers' representatives other than trade union representatives are not afforded protection against dismissal and other prejudicial acts when exercising their functions outside the scope of collective bargaining, extended for a reasonable period after the effective end of their functions;
- facilities identical to those afforded to trade union representatives are not made available to other workers' representatives.

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 the Republic of Moldova.

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

In the previous conclusions (Conclusions 2018), the Committee concluded that the situation in the Republic of Moldova was in conformity with Article 29 of the Charter.

The Committee notes from the report that in May 2018, the Parliament of the Republic of Moldova adopted Law No. 85 on amending and supplementing the Labour Code. The new Article 185¹ of this Code provides for new guarantees in case of collective dismissals. Accordingly, in cases where measures involving collective dismissals are planned, the employer is obliged to notify, three months in advance, the employees’ representatives and to enter into consultation with the employees’ representative with a view to reaching an agreement. At least five working days before the consultations begin, the employer is obliged to provide to the employees concerned with all the available necessary information on the reasons of the dismissal, the number and categories of employees to be dismissed, the period during which the dismissals will take place and the criteria for selecting the employees to be dismissed and the method of calculation of allowances. According to this provision, the consultations shall last until the conclusion of an agreement, but in any case, not more than 30 calendar days from the moment of informing the employees’ representatives about the planned dismissals. If no agreement is reached, the collective dismissal decision shall be facilitated by notifying the employees’ representatives.

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

Conclusion

The Committee concludes that the situation in the Republic of Moldova is in conformity with Article 29 of the Charter.

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

Article 2§1 of the 1961 European Social Charter, and the Revised European Social Charter provides that the Contracting Parties, with a view to ensuring the effective exercise of the right to just conditions of work, undertake "to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit".

The European Committee of Social Rights has ruled in the past on this provision and in particular on the guarantees provided for on-call duty, those periods during which the employee, without being at his place of work and without being at the permanent and immediate disposal of the employer, must be contactable and able to intervene in order to carry out work for the company.

The Committee examined their legal regime through the two systems for monitoring the compliance with the European Social Charter. On the one hand, four decisions on the merits, under the collective complaints procedure have been adopted: decision on the merits of 12 October 2004, *Confédération française de l'Encadrement CFE-CGC v. France*, Collective Complaint No. 16/2003; decision on the merits of 8 December 2004, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No. 22/2003; decision on the merits of 23 June 2020, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No 55/2009; decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No 149/2017.

On the other hand, directly or indirectly, 68 conclusions on the reporting system, of which 35 were of non-conformity, have been adopted (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3, Conclusions 2013, Conclusions 2011, Conclusions 2010, Conclusions XVIII-2, Conclusions 2007, Conclusions XVII-1, Conclusions XVI-2, Conclusions XVI-1).

As a result of this consolidated case law, the Committee has focused its attention on on-call periods, in order to decide whether or not article 2§1 of the European Social Charter has been complied with, or violated, on two specific points that it has clearly identified in this respect:

1°. On one hand, on the payment to the on-call employee of a compensation, either in financial form (bonus) or in the form of rest, in order to compensate for the impact on his/her ability to organise his private life and manage his personal time in the same way as if he/she was not on call.

2°. On the other hand, on the minimum duration of the compulsory daily and/or weekly rest period which all States must respect and which all workers must enjoy. It is common for employees to start their on-call period, totally or partially, at the end of their working day and end it at the beginning of the next working day. Even if the employee is not required to carry out actual work, the consequence is that he/she will not have had his/her rest time at his/her disposal in full freedom or without any difficulty, i.e. the conditions and purpose of the minimum rest period are difficult to achieve *stricto sensu*.

In this perspective, I would like to emphasise the two effects mentioned which impact on two different elements of the employment relationship (salary and minimum rest period). States often integrate them together into one, so that the payment of a bonus is the most usual (only) remedy (compensation for the first effect) and the legal assimilation of the on-call period without carrying out actual work to rest time (i.e. it has no consideration for the second effect).

The case law that the ECSR has adopted in recent years has considered both effects separately. Both must be valued and respected at the same time. On one hand, the availability of the employee to intervene must be compensated. On the other hand, the consequences for the minimum period of compulsory rest must be considered. For this reason, in the four

decisions on the merits mentioned above, France was condemned for the violation of article 2§1 of the revised European Social Charter. As far as France is concerned, even though Article L3121-9 of the Labour Code provides that "the period of on-call duty shall be compensated for, either financially or in the form of rest", it should be noted that considering on-call duty without intervention for the calculation of the minimum daily rest period undermines the second condition. Indeed, it is necessary to point out that the ECSR specified in the last decision on the merits that this considering will involve a violation of the provision if it is "in its entirety" (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017).

In the 2022 conclusions, on-call duty was specifically examined. The Committee requested information on the legislation and practice regarding working time, on-call duty and how inactive periods of on-call duty were treated in terms of working time and rest and their remuneration.

It should be noted that most responses did not answer in the affirmative. In other words, the State reports did not inform the Committee simply that "on-call time is working time or rest time". However, the answers had a negative meaning, i.e., the responses stated verbatim that on-call duty "is not considered as working time".

The majority of the Committee felt that this information did not answer the question asked and decided to defer most of the conclusions.

I regret that I am unable to agree with these conclusions. I will explain my reasons below. Firstly, I consider that the negative responses from the Member States provide sufficient information on the legislative frameworks in place regarding the inclusion of on-call duty in daily or weekly rest periods. In my opinion, it is meaningless not to examine or value the replies, because the sentence "on-call duty is rest time" is not transcribed positively, but "on-call duty is not working time" is transcribed negatively. I believe that the Committee has sufficient information to assess conformity or non-conformity.

In my view, the consequences of not assessing this information are remarkable. Firstly, it encourages States not to provide the information within the time limits set by the Committee and to take advantage of an attitude that, in addition, does not comply with an obligation that they know perfectly well and that they have become accustomed to not fulfilling.

Secondly, it should be remembered that the legal interpretation of the European Social Charter goes beyond a textual interpretation. It is a legal instrument for the protection of human rights which has binding force. A treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Art. 31 Vienna Convention on the Law of Treaties). In the light of the Charter, it means protecting rights that are not theoretical but effective (*European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia*, Collective Complaint No. 53/2008, decision on the merits of 8 September 2009, §28). As such, the Committee has long interpreted the rights and freedoms set out in the Charter in the light of current reality, international instruments and new issues and situations, since the Charter is a living instrument (*Marangopoulos Foundation for Human Rights v. Greece*, Collective Complaint No. 30/2005, decision on the merits of 6 December 2006, §194; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Collective Complaint No. 39/2006, decision on the merits of 5 December 2007, §64 and *ILGA v. Czech Republic*, Collective Complaint No. 117/2015, decision on the merits of 15 May 2018, §75).

Finally, in the event that the Committee does not have all the relevant information, in my view it should take the most favourable meaning for the social rights of the Charter. In other words, States must provide all the information, which becomes a more qualified obligation when this information has been repeatedly requested. Furthermore, I would like to point out that this

information was requested in previous Conclusions (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3). Therefore, the States were obliged to provide all the information that the Committee has repeatedly requested.

In view of the above arguments, my separate dissenting opinion concerns, firstly, those deferred conclusions by the majority of the Committee members regarding the States which, on one hand, replied that on-call duty "is not working time", and then that they take it into account in the minimum rest period which every employee must enjoy. These include Belgium, Bosnia and Herzegovina, Finland, Germany, Italy, Lithuania, North Macedonia, Malta, Montenegro, Slovak Republic and Spain. Similarly, on the other hand, it concerns States that did not respond or did so in a confused or incomplete manner. These are Albania, Estonia, Georgia, Hungary, Ireland, Latvia and the Republic of Moldova. It follows from all the above considerations that the conclusions in relation to all these States should be of non-conformity.

Secondly, my separate dissenting opinion also concerns the "general" findings of conformity with Article 2§1 of the Charter reached by the majority of the Committee in respect of four States. More specifically, with regard to Andorra, the report informs about the on-call time. It "is not considered as actual working time for the purposes of calculating the number of hours of the legal working day, since it does not generate overtime. Nevertheless, it is not considered as rest time either, it being understood that in order to comply with the obligation to benefit from at least one full day of weekly rest, the worker must be released from work at least one day in the week - of course from actual work, but also from the situation of being available outside of his working day-". The document expressly states that one day of weekly rest is respected in relation to on-call duty, but it does not communicate anything about the respect of daily rest (except for a mention of the general minimum duration of 12 hours). In relation to Greece, the report informs that the provisions of labour law do not apply to on-call duty without intervention since, even if the worker has to remain in a given place for a certain period of time, he/she does not have to be physically and mentally ready to work. As regards Luxembourg, the document informs that on-call duty is not working time. Finally, as regards Romania, the report informs, first of all, that Article 111 of the Labour Code, considers the period of availability of the worker as working time. However, immediately, on the organisation and on-call services in the public units of the health sector, informs that on-call duty is carried out on the basis of an individual part-time work contract. On-call hours as well as calls received from home "must be recorded on an on-call attendance sheet, and 'only' the hours actually worked in the health facility where the call is received from home will be considered as on-call hours". Consequently, on the basis of this information, if there are no hours worked or calls, this time is not work. It follows from all the above considerations that the conclusions in relation to these four states should also be of non-conformity.

Thirdly, in coherence, my separate dissenting opinion also concerns the finding of non-conformity with regard to Armenia. This State has informed that the time at home without intervention should be considered as at least half of the working time (Art. 149 of the Labour Code). This legal regulation is in line with the latest case law of the Committee (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017). In my view, a positive finding on this point should be adopted expressly, independently of the finding of non-conformity on the daily working time of certain categories of workers.

Finally, I would like to raise two important questions following some of the answers contained in the reports. The first question relates to the governmental reports that have justified the national legal regime of on-call duty or non-compliance with previous findings of non-conformity on the basis of the judgments of the Court of Justice of the European Union, including some responses that challenge the Committee's ruling on "misinterpretation" of the Charter. These are Bosnia and Herzegovina, Spain, Italy, Ireland and Luxembourg. It is necessary to recall that the European Committee of Social Rights has affirmed that "the fact that a provision complies with a Community Directive does not remove it from the ambit of the Charter and from the supervision of the Committee" (*Confédération française de*

l'Encadrement (CFE-CGC) v. France, Collective Complaint No. 16/2003, decision on the merits of 12 October 2004, §30). Furthermore, it stressed that, even if the European Court of Human Rights considered that "there could be, in certain cases, a presumption of conformity of European Union law with the Convention, such a presumption - even if it could be rebutted - is not intended to apply in relation to the European Social Charter". On the relationship between the Charter and European Union law, it pointed out that "(...) they are two different legal systems, and the principles, rules and obligations which form the latter do not necessarily coincide with the system of values, principles and rights enshrined in the former; (...) whenever it is confronted with the latter, the European Union will have to take account of the latter.) whenever it is confronted with the situation where States take account of or are constrained by European Union law, the Committee will examine on a case-by-case basis the implementation by States Parties of the rights guaranteed by the Charter in domestic law (*General Confederation of Labour of Sweden (LO) and General Confederation of Executives, Civil Servants and Clerks (TCO) v. Sweden*, Collective Complaint No. 85/2013, decision on admissibility and merits of 3 July 2013, §§72-74).

The second issue is that the Charter sets out obligations under international law which are legally binding on the States Parties and that the Committee, as a treaty body, has "exclusive" responsibility for legally assessing whether the provisions of the Charter have been satisfactorily implemented (*Syndicat CFDT de la métallurgie de la Meuse v. France*, Collective Complaint No. 175/2019, decision on the merits of 5 July 2022, §91).

These are the reasons for my different approach to the conclusions of Article 2§1 of the European Social Charter in relation to on-call duty.