



March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

ROMANIA

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 Romania, which ratified the Revised European Social Charter on 7 May 1999. The deadline for submitting the 21st report was 31 December 2021 and Romania submitted it on 21 March 2022.

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

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

Comments on the 21st report by the National Trade Union Block (*Blocul Național Sindical*, BNS) were registered on 3 July 2022. The reply from the Government to the BNS comments was registered on 18 August 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).

Romania has accepted all provisions from the above-mentioned group except Articles 2§3, 22, 26§1 and 26§2.

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

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

- 11 conclusions of conformity : Articles 2§1, 2§2, 2§4, 2§5, 2§6, 2§7, 4§2, 6§1, 6§3, 21 and 29;
- 6 conclusions of non-conformity : Articles 4§1, 4§3, 4§4, 6§2, 6§4 and 28.

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

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

The next report from Romania 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 Romania and of the comments by the National Trade Union Block (BNS).

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 Romania was in conformity with Article 2§1 of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the targeted questions.

Measures to ensure reasonable working hours

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

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

The report states that there have been no legislative changes during the reference period. The report provides statistical information on fines imposed due to failure to respect reasonable working time requirements. In 2017, 477 fines were imposed, in 2018: 240 fines, in 2019: 237 fines and in 2020: 162 fines. Also, the report provides information on fines imposed for failure to respect weekly rest periods. In 2017, 809 fines were imposed, in 2018: 622 fines, in 2019: 613 fines and in 2020: 600 fines.

Law and practice regarding on-call periods

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

In reply, the report states that, in accordance with the Labour Code, working time represents any period during which the worker performs work, is at the employer’s disposal and carries out his or her duties and tasks in accordance with the provisions of the individual employment contract, the applicable collective labour agreement and/or the legislation in force.

The report further states that the Order of the Minister of Health No. 870/2004 approving Regulation on working time, the organisation and on-call service in public units in the health sector has been amended as follows: it is forbidden for the same doctor to carry out two consecutive on-call services, on-call hours as well as the calls from home must be recorded

on an attendance sheet for on-call work, and only hours actually worked in the health facility where the call from home was made shall be considered on-call hours.

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

The report states that zero-hour contracts are not regulated in Romania. The Committee asks whether it means that such contracts do not exist in Romania.

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 under Law No. 19/2020, parents were able to benefit from days off to take care of their children in case of temporary closure of the educational establishments. This measure was valid between September 2020 and June 2021 and was applicable to parents who had children under the age of 12 or children with disabilities under the age of 26 enrolled in an early childhood education or pre-school education establishment; the other parent was not granted days off and the workplace did not allow teleworking. The allowance for each day off was set at 75% of the basic wage corresponding to one working day but not over the daily equivalent of 75% of the average gross wage. However, the provisions in question did not apply to the workers employed in national defence and other personnel defined by law, who received an increase in wage if the other parent did not enjoy the rights provided for in the legislation. Subsequently, the Emergency Ordinance No. 147/2020 was adopted, which provided that the workers employed in national defence, public order and national security could benefit from the days off provided for by the emergency ordinance. With regard to single parents, they could opt either for days off or for an increase in wage, without these rights being cumulative over the same period.

In its comments, the BNS states that telework regulations have not been followed by regulations on control of breaches of law which would provide sufficient mechanisms for action by the Labour Inspectorate.

Conclusion

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

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

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

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).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2018). It asked whether employees working on an exceptional basis on public holidays other than those targeted by Article 140-141 of the Labour Code, may receive additional compensation by virtue of collective agreements.

In reply, the report indicates that the compensation modalities for the employees working on public holidays provided for in the Labour Code apply exclusively to the employees working in the workplaces referred to in Articles 140 and 141 (i.e. workplaces where work cannot be interrupted because of the nature of production or the specific nature of the activity, health establishments and public food service establishments). However, the report clarifies that the Labour Code does not prohibit the granting of additional compensation to employees working on an exceptional basis on public holidays, other than those specified in Articles 140 and 141 of the Labour Code, in collective agreements.

The Committee a previously noted that the prohibition to work on public holidays does not apply to workplaces whose activity may not be interrupted due to the characteristics of the production process or typical features of activity. In that event, the law provides that employees working on public holidays are entitled to compensatory time off to be taken within the following 30 days, which can be replaced by a remuneration that is at least double when, due to justified reasons, the granting of compensatory time off is not possible.

In view of the information provided by the report, the Committee considers that the situation in Romania is now in conformity with Article 2§2 of the Charter.

Covid-19

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

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

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

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

As the previous conclusion found the situation in Romania 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 Romania 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 Romania.

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 Romania 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 Romania 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 Romania.

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

As the previous conclusion found the situation in Romania 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 Romania is in conformity with Article 2§7 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

The Committee takes note of the information contained in the report submitted by Romania as well as the comments from the National Trade Union Block (BNS), and the Government's response to those comments.

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

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

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

Fair remuneration

The report provides information concerning the gross and net values of the minimum wage as well as average earnings. According to the report and Eurostat, the gross minimum wage in 2020 stood at RON 2230 (€ 466) per month, while the net minimum wage was € 269. The Committee notes that higher minimum wages are paid to workers with higher educational qualifications as well as in the construction sector. However, the Committee takes into consideration the lowest minimum statutory wage.

As regards the average wage, according to the report and Eurostat the gross annual average earnings amounted to € 1007 per month. The net average earnings stood at € 635 per month. The Committee thus observes that the net minimum wage represents 42% of the net average wage. The Committee considers that the situation which it had previously found not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity.

The Committee notes from the Comments of the National Trade Unions (BNS) on the national report that there is no transparent mechanism for setting the minimum wage. Moreover, Romania does not meet the living wage criterion, with the minimum wage amounting to 38% of the average wage in the economy. In its response to the comments by the BNS, the Government states that the new European Directive on the minimum wage will form the basis for its approach towards the setting and revision of the minimum wage.

Workers in atypical employment

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

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

The Committee considers that the requirement that workers be remunerated fairly to ensure a decent standard of living for themselves and their families applies equally to atypical jobs,

such as part-time work, temporary work, fixed-term work, casual and seasonal work. In some cases, prevailing wages or contractual arrangements lead to a significant number of so-called working poor, including persons working two or more jobs or full-time workers living in substandard conditions.

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

The Committee notes from the Comments of the BNS that as regards vulnerable workers with atypical contracts, such as platform workers, the lack of legal regulation also deprives them of the minimum guarantees. The Committee asks what measures are being taken to ensure fair remuneration of workers in atypical jobs as well as misclassified self-employed persons in the platform economy.

Covid-19

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

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

The Committee notes that the report does not provide this information. The Committee asks whether the financial support provided for workers throughout furlough schemes was ensured throughout the period of partial or full suspension of activities due to the pandemic. It also asks what proportion of workers concerned were covered under such schemes.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

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

In its previous conclusion, the Committee found that the situation in Romania was in conformity with Article 4§2 of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the targeted question.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to explain the impact of the Covid-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. The Committee asked for specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, increased compensation).

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

The report states that in accordance with domestic provisions adopted during the Covid-19 pandemic, the staff of the county public health directorates and the Bucharest municipal directorate, who carry out, lead or coordinate missions and service tasks for the prevention and control of the effects of the Covid-19 pandemic, received a bonus calculated from the basic wage. The executive director and deputy executive directors received a 40% increase of their basic wage and the civil servants in the public health inspection service received an increase of 30% of their basic wage. For the activities performed in the Covid-19 vaccination centres, the medical personnel and the medical registrars, with the exception of delegated or seconded personnel, were paid for the time actually worked. Doctors were paid 90 Romanian Leu (approximately €18) per hour, nurses were paid 45 Romanian Leu (approximately €9) per hour and medical registrars were paid 20 Romanian Leu (approximately €4) per hour.

The report states that with regard to teleworking, people teleworking have to organise their working hours in agreement with their employer, in accordance with the provisions of their individual employment contract, internal rules and/or the applicable collective labour agreement, in accordance with the law. Failure to comply with provisions on overtime results in a fine of 5,000 Romanian Leu (approximately €1,110). The same amount of fine is imposed for the conclusion of an individual employment contract without stipulating the clauses on teleworking.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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

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

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

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

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

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

Effective remedies

In its previous conclusion (Conclusion 2018), the Committee asked for clarification on whether the law provided for the right to compensation for pecuniary and non-pecuniary damages and whether there was any ceiling on such compensation. In its previous conclusions (Conclusions 2018 and 2014), the Committee also asked for information in practice on the level of compensation granted to victims of pay discrimination by the courts in Committee pointed out that, should the necessary information not be provided in the following report, nothing would enable the Committee to establish that the situation in Romania was in conformity with Article 4§3 of the Charter in this respect.

In response, the report indicates that according to Article 33(2) of the Law No. 202/2002 on equal opportunities and equal treatment of women and men, the amount of compensation shall be determined by the court in accordance with the law. The report explains that the phrase "in accordance with the law" refers to Article 1385 of the Civil Code which regulates the principle of full compensation for the damage suffered:

- (1) Damages shall be fully compensated, unless otherwise provided by law.
- (2) Compensation may also be awarded for future damage, if its occurrence is beyond doubt.
- (3) Compensation must include the loss suffered by the injured party, the gain which he/she could have made under normal circumstances and which he/she has been deprived of, and the expenses he/she has incurred in order to avoid or limit the damage.
- (4) If the tort also caused the loss of the opportunity to obtain an advantage or to avoid damage, the compensation should be proportionate to the likelihood of obtaining the advantage or, as the case may be, avoiding the damage, given the circumstances and the specific situation of the victim.

The report also refers to Article 253(1) of the Labour Code according to which "an employer is obliged, on the basis of the rules and principles of contractual civil liability, to compensate

the employee in the event that he has suffered material or non-material damage as a result of the employer's fault in the performance of his duties or in connection with his work". The Committee also refers to its conclusion under Article 1§2 (Conclusions 2020 and 2008), in which it noted that the courts had not set an upper limit on the amount of compensation that could be awarded in gender-based pay discrimination cases.

In reply to the second question, the report provides some examples showing how the situation of alleged discriminatory treatment between employees who are paid differently, has been interpreted by the High Court of Cassation and Justice. The Committee observes however that there are no examples of the level of compensation granted to victims. In the light of the above, the Committee requests updated information in the next report on cases of gender pay discrimination in employment dealt with by courts with specific indications regarding their nature and outcome, the sanctions imposed on the employers and compensation granted to the employees. In the meantime, the Committee considers that the situation in Romania is not in conformity with Article 4§3 of the Charter on the ground that it has not been established that the obligation to ensure access to effective remedies in cases of pay discrimination is fulfilled.

Pay transparency and job comparisons

In its previous conclusions (Conclusions 2018 and 2014), the Committee asked whether the law prohibited discriminatory pay clauses collective agreements, as well as whether the pay comparisons were possible across companies. The Committee pointed out that, should the necessary information not be provided in the following report, nothing would enable the Committee to establish that the situation in Romania was in conformity with Article 4§3 of the Charter in this respect.

The Committee notes from the report that labour legislation which includes the principle of equal remuneration for work of equal value applies to all workers and employers whether or not they are covered by collective agreements. Under Law No. 62/2011 on social dialogue, terms of collective labour agreements may establish rights and obligations only within the limits and conditions provided by law (Article 132(1)). Under Article 132 of Law No. 62/2011, clauses in collective agreements which breach the law are deemed null and void.

In response to the second question, the report indicates that according to Article 163(1) of the Labour Code, salaries are confidential; the employer has a legal obligation to take measures to ensure confidentiality. Article 9(1)(d) and (e) of Law No. 202/2002 explicitly prohibits discrimination in employment by the employer through practices that disadvantage people based on gender with respect to remuneration, other benefits than the salary, as well as social security. Moreover, Article 159(3) of the Labour Code prohibits discrimination in the establishment and provision of salaries.

The Committee notes that such confidentiality provisions make it difficult to compare wages across companies. In this context, it notes from the country report on gender equality in Romania prepared by the European Network of Legal Experts in Gender equality and Non-Discrimination (2022), that "the law stipulates only one exception – trade unions or the representatives of employees may access information regarding salaries in order to promote the employees' interests and defend their rights. This is a possibility for trade unions, not a right of employees. This exception from the confidentiality rule applies in strict cases if two cumulative conditions are met: the request of information is in strict connection with the employees' interests and the request is made in the framework of the direct relationship between the trade union or employees' representative and the employer."

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the

European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender (see in this respect collective complaints Nos. 124 to 138, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

In view of the above, the Committee asks again whether it is possible to make pay comparisons across companies in equal pay litigation cases, in particular when there is no trade unions or the representatives of employees. In order to clarify this issue, the Committee considers that provision should be made for the right to challenge unequal remuneration resulting from legal regulation and collective agreements. In addition, there also should be the possibility to challenge unequal remuneration resulting from internal pay system within a company or a holding company, if remuneration is set centrally for several companies belonging to such holding company. In the meantime, the Committee considers that the situation in Romania is not in conformity with Article 4§3 of the Charter on the ground that it has not been established that pay comparisons across companies in equal pay cases are possible.

Statistics and measures to promote the right to equal pay

For information, the Committee takes note of the Eurostat data on the gender pay gap during the reference period in Romania: 2.9% in 2017, 2.2% in 2018, 3.3% in 2019 and 2.4% in 2020 (compared with 9.6% in 2011). It notes that this gap is lower than the average in the 27 countries of the European Union, namely 13% (provisional figure) in 2020 (data as of 4 March 2022).

As Romania 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 Romania is not in conformity with Article 4§3 of the Charter on the grounds that:

- it has not been established that the obligation to ensure access to effective remedies in cases of pay discrimination is fulfilled;
- it has not been established that in equal pay cases domestic law allows for pay comparisons to be made across companies.

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 Romania.

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 Romania 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.

The Committee previously found that the situation in Romania was not in conformity with Article 4§4 of the Charter on the grounds that the notice period for dismissal for physical or mental incapacity, for professional inadequacy or as a result of the removal of positions is insufficient (Conclusions 2018). The report does not contain any information as regards the previous conclusion of non-conformity. The Committee asks for updated information on these issues and in the meantime reiterates its previous conclusion of non-conformity.

In its previous conclusion, the Committee asked for examples of longer notice periods applicable in the event of dismissal on grounds not related to the worker (Conclusions 2018).

In reply to the Committee's question, the report states that according to Article 75 paragraph (1) of Law No. 53/2003 (Labour Code), as amended, in the event of termination of the individual employment contract for reasons not related to the worker, all workers shall be entitled to a notice period of 20 working days at least, irrespective of their length of service. The Committee asks when the notice periods are longer.

In its previous conclusion, the Committee asked for confirmation of its understanding that the notice period provided for by Article 75 of the Labour Code is applicable in cases of early termination of fixed-term contracts (Conclusions 2018).

In reply to the Committee's question, the report states that according to Article 8 of the Labour Code, all workers hired under a fixed-term contract cannot be treated less favourably than workers hired under an indefinite contract carrying out the same or a similar activity, benefiting from the same right to a notice period of not less than 20 working days.

Notice periods during probationary periods

The Committee previously found that the situation in Romania was not in conformity with Article 4§4 of the Charter on the ground that the legislation makes no provision for notice periods during probationary periods (Conclusions 2018).

The report does not contain any information as regards the previous conclusion of non-conformity. The Committee therefore reiterates its previous conclusion of non-conformity in this respect.

Notice periods with regard to workers in insecure jobs

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

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

The Committee previously found that the situation in Romania was not in conformity with Article 4§4 of the Charter on the ground that the legislation makes no provision for notice periods in the event of the death of the employer who is a natural person or the liquidation of an employer's business (legal person) (Conclusions 2018).

The Committee has decided to reassess its case law as regards the notice period in the event of termination of employment due to death of the employer who is a natural person, given that such a notice period could not be given by the deceased employer. Therefore, the Committee no longer considers that the situation is not in conformity with Article 4§4 of the Charter on the ground that there is no notice period in the event of death of the employer who is a natural person.

The report does not contain any information as regards the previous conclusion of non-conformity on the ground that the legislation makes no provision for notice periods in the event of the liquidation of an employer's business (legal person). The Committee therefore reiterates its previous conclusion of non-conformity in this respect.

Circumstances in which workers can be dismissed without notice or compensation

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

Conclusion

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

- the notice period for dismissal for physical or mental incapacity or for professional inadequacy or as a result of the removal of positions is manifestly unreasonable;
- the legislation makes no provision for notice periods (i) during probationary periods, and (ii) in the event of the liquidation of an employer's business (legal person).

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

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

According to the report, there were no legislative amendments during the reference period. According to Article 169 of Law 53/2003-Labour Code, no amount may be withheld from the wages, except for the cases and under the circumstances provided for by the law. The amounts withheld as damages caused to the employer may be withheld only by a final and irrevocable judicial decision. In the case of multiple creditors of the employee, the following order shall be respected: a) support obligations; b) contributions and taxes due to the state; c) damages caused to public property by illicit actions; d) covering other debts.

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). In its previous conclusion the Committee found that the situation in Romania was not in conformity with Article 4§5 of the Charter on the ground that after the deduction of the combined amount of all the authorised deductions, the wages of workers with the lowest pay did not allow them to provide for themselves or their dependents.

The report states that according to paragraph 4 of Article 169 of the Law 53/2003-Labour Code, the accumulated amounts withheld from the wages may not exceed half of the net wages every month. According to Article 273, the amount fixed to cover the damages is deducted in monthly instalments from the wage. The instalments may not exceed one third of the net monthly wage. Nor may they exceed, when added to the other deductions imposed on the person concerned, half of that wage.

The Committee thus notes that 50% of the wage is the protected amount. It 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

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

Conclusion

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

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by Romania as well as the comments provided by the National Trade Union Block (BNS), and the Government's response to those comments.

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 Romania was in conformity with Article 5 of the Charter.

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

The assessment of the Committee will therefore concern the information provided in the report in response to the 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. The report does not provide the information requested.

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

According to BNS there is a limited and restrictive list of categories of workers who may form and/or join a trade union as set out in Article 3, paragraph (1) of Law 62/2011 which provides that "Persons working under individual employment contracts, civil servants and civil servants with special status under the terms of the law, cooperative members and employed farmers have the right, without any restriction or prior authorization, to form and/or join a trade union." There are other categories of workers who have an employment relationship or who carry out self-employed activities or work on the basis of atypical work contracts who are not recognized as having the right to form trade unions. In essence, the current law restricts the right to organise to the categories of workers listed by the legislator.

In response the Government states that national legislation Law 62/2011, and the Labour Code guarantee to all workers and to persons in an employment relationship the right to organise. The Committee asks the Government to confirm in its next report that self employed persons and persons who work on the basis of atypical work contracts have the right to organise.

Personal scope

In its previous conclusion, the Committee requested all States to provide information on the right of members of the armed forces to organise (Conclusions 2018 – General Question). The report does not provide the information requested. The Committee therefore reiterates its request and considers that if the requested information is not provided in the next report, there

will be nothing to establish that the situation in Romania is in conformity with the Charter on this point.

The Committee recalls that Article 5 of the Charter allows States Parties to impose restrictions upon the right of members of the armed forces to organise and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as through the imposition of a blanket prohibition of professional associations of a trade union nature and prohibition of the affiliation of such associations to national federations/confederations (*European Council of Trade Unions (CESP) v. France*, Complaint No.101/2013, Decision on the merits of 27 January 2016, §§80 and 84).

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

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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 Romania 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 Romania 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 Romania, as well as the comments from the National Trade Union Block (BNS), and the Government's response to those comments.

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

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

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

In its previous conclusion, the Committee noted that the Law on Social Dialogue passed in 2011 resulted in considerably reduced levels of collective bargaining at the company and sector levels (Conclusions 2018). Consequently, the Committee asked for information on the total proportion of employees covered by a collective agreement at every level, and on the measures taken to promote collective bargaining. The Committee further asked for further information on the "voluntary agreements" concluded pursuant to Article 153 of the Law on Social Dialogue.

The report notes that the number of new collective agreements concluded at the company level has decreased during the reference period. Thus, there were 13 359 new agreements in 2017, 10 708 in 2018, 8 233 in 2019, and 5 742 in 2020. At the level of a group of companies, 14 new collective agreements were adopted in 2017, five in 2018, 10 in 2019, and five in 2020. At the sector level, two collective agreements were adopted in 2017, both in the public sector (healthcare and education), and both were renegotiated and extended in 2020. Although the report notes that coverage rates are not monitored, it advances a 45% estimate for 2019, without stating the bargaining level concerned. The report further notes that the collective agreements expiring in 2020 were automatically renewed until up to 90 days after the state of emergency occasioned by the pandemic was over. The report is silent on the subject of measures to promote collective bargaining adopted during the reference period.

The BNS states that certain legal provisions enabled employers to privilege engagement with elected workers' representatives at the company level, to the detriment of trade unions. It referred specifically to the requirement that trade unions represent at least 50% plus one of the employees of the company in order to be representative and entitled to negotiate. Furthermore, even where trade unions are involved in negotiations along with elected workers' representatives, collective agreements are considered valid based on the latter's signature alone. The BNS indicates that although only a minority of employers have signed collective agreements (15204 out of 734507), the majority thereof were negotiated with elected workers' representatives (12835 out of 15204, or 85%). It further asserts that in practice most contracts signed with elected workers' representatives do not represent a real negotiation and are generally used to ensure social peace, as the existence of a valid collective agreement pre-empts any collective action. This notwithstanding, the BNS notes that the total proportion of employees covered by a collective agreement at the company level in 2021 was 33%. Finally, the BNS indicates that collective bargaining at the sector level is severely hampered by the

high representativeness threshold for trade unions, such that only six out of 29 sectors have potentially representative trade unions that could engage in collective bargaining.

In its response, the Government reiterates the applicable legal provisions which, in its view, promote social dialogue, most of which predate the reference period. It recalls that pursuant to the Law on Social Dialogue, collective bargaining takes place with entities that are representative of employees in the undertaking in question, or on the basis of “mutual recognition” between the parties involved. With regard to the former, the response emphasised that workers’ representatives can only be elected in the absence of representative trade unions, and that they possess a strong negotiation capacity. With regard to the latter, the Government reiterates that pursuant to Article 153 of the Law on Social Dialogue, social partners are entitled to regulate working conditions in “voluntary agreements” that are neither declared publicly nor recorded in official registries.

Based on these submissions, the Committee understands the relevant provisions of the Law on Social Dialogue to be as follows. A trade union representing over half of a company’s workers is entitled to represent all workers of the undertaking in question, and the resulting collective agreement would apply to all of those workers. A representative industry federation is entitled to negotiate company-level agreements, where a union belonging to that federation was present in the company but did not have representative status at the company level. In all other cases, negotiations must be undertaken by elected employee representatives. Where an industry federation carries out negotiations as described above, it must do so alongside elected employee representatives.

The Committee refers to the comments and direct request raised by the International Labour Organization’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2022 (110th International Labour Conference session) on the Right to Organise and Collective Bargaining Convention No. 98 (1949), which raised two main issues in consideration of the persistent indications of a very low level of collective bargaining coverage in Romania. First, it suggested that the elected workers’ representatives often undermined the position of the workers’ organisations involved in collective bargaining at the company level. Second, it expressed concern about the level of collective bargaining at sectoral and national levels and reiterated its request to the Government to revise, in consultation with the representative social partners, the relevant thresholds and conditions to ensure that collective bargaining was effectively possible at all levels.

The Committee notes that the relevant provisions of the Law on Social Dialogue affording non-unionised workers’ representatives the possibility to intervene in the collective bargaining process and conclude valid collective agreements risks weakening the position of trade unions, and thus undermining collective bargaining in a manner that is not compatible with Article 6§2 of the Charter. The Committee further recalls that meaningful collective bargaining is by its nature a free and voluntary procedure, but that the publicity of collective agreements is an indispensable pre-condition for ensuring that the negotiating parties engage with each other in good faith, and that the binding nature of the resulting agreements is respected.

The Committee notes from other sources that while considerable uncertainty over actual collective agreement coverage levels in Romania subsists, there is a general agreement that these levels are relatively low, especially when contrasted with the levels of up to 100% that prevailed before the Law on Social Dialogue had been adopted in 2011. The 2022 Eurofound report quotes figures from the Labour Inspectorate, indicating that 32% of the total number of employees were covered by company-level collective agreements in 2020.

The Committee recalls that it has repeatedly expressed concern regarding the falling collective bargaining levels following the adoption of the Law on Social Dialogue in 2011 and asked for information on the measures taken to promote collective bargaining, which has not so far been provided (Conclusions 2014, 2018). Consequently, the Committee reiterates its request for information on the total proportion of employees covered by a collective agreement at every

level, in the public and private sector, respectively. The Committee further asks for full and up-to-date information on the operation of collective bargaining at all levels, the operation of representativeness thresholds and the share of collective agreements concluded with elected workers' representatives, and representative trade unions respectively. Finally, the Committee reiterates its request for information on the measures taken to promote collective bargaining. Meanwhile, the Committee concludes that the situation in Romania is not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining is not sufficient.

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

Covid-19

In reply to the question regarding the special arrangements related to the pandemic, the report notes that existing collective agreements were automatically renewed after the onset of the pandemic and that social partners were able to use online communication platforms for engaging in dialogue.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

As the previous conclusion found the situation in Romania 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 Romania is in conformity with Article 6§3 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

The Committee takes note of the information contained in the report submitted by Romania as well as of the comments from the National Trade Union Block (BNS) and the Government's response.

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 Romania 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 considered that the situation was not in conformity with Article 6§4 of the Charter on the ground that a trade union could only take collective action if it met representativeness criteria and if the strike was approved by at least half of the respective trade union's members.

In its report, the Government states that there have been no developments in this area. In its comments, the BNS criticises the representativeness criteria.

Since the situation has not changed, the Committee reiterates its conclusion of non-conformity on this point.

Restrictions to the right to strike, procedural requirements

Previously, the Committee asked what it meant that persons employed in air, road or water transport could not strike whilst on duty. It also asked whether members of the prison service had the right to strike. Finally, it asked whether there were sectors where the provision of a minimum service was required and if so whether the social partners were involved in the discussions on the minimum service to be provided on an equal footing.

The Government states that the Law on Social Dialogue establishes the obligation to set up a minimum service requirement of one third of activity in the event of a strike in the national security sectors. The seafarers are prohibited from striking from the moment of departure on a mission until its end. The aviators are prohibited from striking during the flight mission. Prison officers have the right to strike. The Committee considers that these rules are in conformity with Article 6§4 of the Charter.

Right of the police to strike

In response to the general question, the Government states that police officers are prohibited from striking. However, in practice, police unions exercised the right to collective action during the reference period (2017-2020).

The Committee points out with regard to the regulation of the collective bargaining rights of police officers, that states must demonstrate compelling reasons as to why an absolute prohibition on the right to strike is justified in the specific national context in question, as distinct from the imposition of restrictions as to the mode and form of such strike action (European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on admissibility and the merits of 2 December 2013, §211). According to the report the police are denied the right to strike. The Committee considers therefore that the situation is not in conformity with Article 6§4 of the Charter on the ground that this absolute prohibition on the right to strike for the police goes beyond the limits set by Article G of the Charter.

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 report does not provide any information.

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

Conclusion

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

- a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union's members;
- the police are denied the right to strike.

Article 21 - Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Romania. It also notes comments submitted by the National Trade Union Block (BNS) and the response by the Romanian government.

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

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

The Committee also refers to the comments made by the BNS (Romania), which asserted that the relevant legislation concerning the right to information and consultation, namely the Law 467/2006, has often proved ineffective in terms of consultation of employees. It is alleged that most of the time the consultation is merely formal or, possibly, equivalent to information and that there is no real dialogue between the social partners that would lead to a negotiated solution. In the BNS’ view, simple implementation by means of copying the text of the Directive 2002/14/EC has proved to be ineffective in achieving the objectives regulated by the Directive.

In reply the government confirms that the right to information and consultation as guaranteed by the Law 467/2006 is accompanied by dissuasive sanctions provided by the labour legislation for non-compliance with this legal obligation. It further states that in 2018-2020, the social partners, the business environment and the Ministry of Labour were consulted in the legislative procedure for the adoption of the parliamentary draft law amending the social dialogue law (L567/2018). The adoption was not supported by consensus, the employers’ confederations requesting the Parliament to continue consultations. The legislative project is pending before the Plenary of the Chamber of Deputies. The Committee requests the next report to provide an updated information on the legal framework.

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

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

The report provides that no derogation from the employer’s legal obligation to inform and consult the employees has been adopted, however the practical management of the crisis has favoured the unilateral decision of the employer in the organisation of the activity and labour. In order to protect the employees, the validity of the collective labour contracts was extended during the state of emergency, as requested by the trade unions. The sectors most affected were those with direct interaction: tourism, events and culture, transport, but also the public social and health care system, education and the poorly digitised public administration.

The government further states that information and consultation proved effective in the management of the Covid-19 crisis, in particular due to the extension of the validity of collective labour contracts. Other measures adopted in support, in consultation with the social

partners, were predominantly general in nature and aimed at supporting employees and employers.

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

Conclusion

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

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

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

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 Romania was not in conformity with Article 28 of the Charter on the grounds that the protection against dismissal granted to trade union representatives and other elected workers' representatives did not extend beyond the end of their mandate, and that it had not been established that facilities afforded to workers' representatives were adequate. In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity.

Protection granted to workers' representatives

In Conclusions 2014, the Committee found that the situation in Romania was not in conformity with the Charter since the protection against dismissal offered to workers' representatives did not extend beyond the duration of their mandate.

In the previous conclusion (Conclusions 2018), the Committee noted that the legal framework in this respect had not changed in the reference period. It noted that during the term of their mandate, the employees' representatives are protected by law against any forms of conditioning and constraint or limitation to exercising their duties and cannot be discharged for reasons related to their fulfilment. The Committee observed that under the previous regulation, this protection extended for trade union representatives for 2 years after the termination of their mandate. However, the Constitutional Court, in its judgment No 681/2016, found unconstitutional the protection against dismissal of a trade union representative after the expiry of the mandate, as establishing a privilege comparing to employees in an analogous situation who did not hold union positions.

Consequently, the Committee considered that the protection against dismissal related to the exercise of duties by workers' representatives shall be extended for a reasonable time after the effective end of period of their office and found that the situation in Romania remained in non-conformity with the Charter in this respect (Conclusions 2018).

In reply, the report explains that according to the Constitutional Court judgment, in situations where the grounds for dismissal provided for in the Labour Code are related to the reason of fulfilling the mandate within the trade union body, the differentiated legal treatment of persons holding eligible positions in a trade union body is objectively and reasonably justified. However, according to the Constitutional Court, where there is no link between trade union activity and dismissal for one of the reasons set out in the Labour Code, different legal treatment of persons holding eligible posts in a trade union body, namely the prohibition of their dismissal, is not objectively and reasonably justified and establishes a privilege for such persons in relation to other employees, in terms of guarantees of the right to work, which is contrary to the Constitution.

The report underlines that if, after the termination of the mandate as trade union leader or representative, the person is dismissed without justification, s/he may take the matter to court to have the dismissal declared illegal. The report specifies that the decisions of the Constitutional Court are binding *erga omnes* and that the normative provisions whose unconstitutionality have been established by the Court can no longer be applied and cease to have effects from the date of publication of the Court's decision.

The Committee understands from the submissions in the report, that the Constitutional Court considered that the protection granted to workers' representatives must operate exclusively in relation to the exercise of duties by workers' representatives and during their mandate. It reiterates that the rights must be effectively guaranteed and that, to this end, the protection against dismissal related to the exercise of duties by workers' representatives shall be extended for a reasonable time after the effective end of period of their office (Conclusions 2010, statement of interpretation of Article 28).

The Committee takes note, from the information provided by the Government representative at the Governmental Committee concerning conclusions 2018 (GC(2019)28), that there was a legislative initiative for amending the Law on Social Dialogue in the Romanian Parliament, with the involvement of employees' and workers' representatives, in order to extend the protection beyond the end of the mandate of workers' representatives. The Committee also notes that the new Law on Social Dialogue No. 367/2022, which entered into force on 25 December 2022 (outside the reference period), did not extend the protection beyond the end of the mandate of workers' representatives. According to Article 10§2 of the new Law on Social Dialogue, it is forbidden, throughout the entire term of their mandate, to amend or to terminate the employees' representatives' employment contract on grounds related to carrying out the mandate conferred by the employees.

In their comments concerning the 21st National Report on the implementation of the European Social Charter, the National Trade Union Bloc (*Blocul National Sindical*) states that a decision to terminate the employment contract of a trade union or employees' representative' would never state that the dismissal is due to the activities of the representative. In this respect, they point at the difficulties in proving discrimination in such cases. In their reply, the Government states that the relevant domestic legislation imposed on the employer the obligation to provide reasons for the dismissal under the penalty of legal nullity, and violations are resolved by the courts, which assess the evidence and establish legal nullity, reinstatement, and grant compensation accordingly.

The Committee reiterates its conclusion of non-conformity in this respect on the ground that the protection against dismissal granted to workers' and trade union representatives does not extend beyond the end of their mandate.

Facilities granted to workers' representatives

In the previous conclusion (Conclusions 2018), the Committee noted that the Law on Social Dialogue provided that trade union representatives may negotiate, through the collective agreement at company level, to have access to the premises and other facilities necessary for carrying out their activities and that the labour legislation left the collective negotiation with the employer to establish the facilities for workers' representatives. In the absence of a reply to its previous question raised in Conclusions 2014, on whether other workers' representatives, such as the elected employees' representatives, have the right to use the premises, means of communication and other facilities in order to perform their duties, the Committee considered, in Conclusions 2018, that it had not been established that the situation was in conformity with the Charter in this respect.

In response, the report indicates that the elected representatives of the employees have at their disposal technical and communication means, which can be used to carry out their activities, under the conditions agreed with the employer, including by the collective labour agreement and/or direct negotiation, depending on the needs and possibilities of the company. The Committee considers that the information at its disposal is not sufficient to establish the conformity with the requirements of the Charter. It reiterates its requests for information on facilities granted to workers' representatives such as access to premises, use of materials, distribution of information, support in terms of benefits, training costs, etc. (Conclusions 2010, Statement of interpretation). The Committee therefore concludes that facilities afforded to workers' representatives are not adequate.

Conclusion

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

- the protection against dismissal granted to workers' and trade union representatives does not extend beyond the end of their mandate;
- facilities afforded to workers' representatives are not adequate.

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

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

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).

Moreover, the Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 only in relation to the developments that took place in 2020.

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

The Committee notes from the report that no changes were made to the regulation since the last report.

Covid-19

The report also indicates that during the pandemic there were no derogations from the legal provisions applicable in the case of collective dismissal and from the obligation to inform and consult the trade union/employee representatives in the context.

Since no targeted questions were asked under Article 29, and the previous conclusion found the situation in Romania 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 Romania 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.