



March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

SERBIA

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 Serbia, which ratified the Revised European Social Charter on 14 September 2009. The deadline for submitting the 11th report was 31 December 2021 and Serbia submitted it on 17 May 2022.

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

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

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

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

Serbia has accepted all provisions from the above-mentioned group except Article 2§4.

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

The conclusions relating to Serbia concern 22 situations and are as follows:

- 5 conclusions of conformity: Articles 2§3, 2§5, 6§1, 6§2 and 6§3
- 14 conclusions of non-conformity: Articles 2§1, 2§2, 2§6, 2§7, 4§1, 4§3, 4§4, 5, 6§4, 21, 22, 26§1, 26§2 and 29.

In respect of the other 3 situations related to Articles 4§2, 4§5 and 28, the Committee needs further information in order to examine the situation.

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

The next report from Serbia 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 Serbia.

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

In its previous conclusion, the Committee considered that the situation in Serbia was not in conformity with Article 2§1 of the Charter on the ground that on-call periods during which no effective work was undertaken were assimilated to rest periods (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Measures to ensure reasonable working hours

In its previous conclusion, the Committee asked for information on any violations of working time regulations identified by the labour inspectorate. The Committee considered that if the requested information was not provided in the next report, there would be nothing to establish that the situation in Serbia was in conformity with Article 2§1 of the Charter (Conclusions 2018).

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 the provisions on working hours have not been changed since the last report. The report provides statistical information about inspections carried out between 2018 and 2020. Each year, most inspections were carried out in the sectors of trade, catering and hospitality and industry. In 2018, the Labour Inspectorate adopted 183 decisions related to irregularities regarding working hours; in 2019: 107 decisions and in 2020: 86 decisions.

Law and practice regarding on-call periods

Previously, the Committee found the situation in Serbia not to be in conformity with Article 2§1 of the Charter on the ground that on-call periods during which no effective work was undertaken were assimilated to rest periods (Conclusions 2018).

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

In reply, the report states that inactive on-call time is not considered working time. The Committee reiterates 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 stand-by duty at the employer's premises as well as for on-call time spent at home (*Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Complaint No. 149/2017, decision on the merits of 19 May 2021, §61). The Committee notes that there has been no change in the situation and reiterates its conclusion of non-conformity on the ground that on-call periods during which no effective work is undertaken are considered as rest periods.

The report provides no information on zero-hour contracts.

Covid-19

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

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

The report states that, since the beginning of the Covid-19 crisis, several regulations have been passed limiting working hours in certain activities, such as hospitality and tourism, food and beverages, travel agencies. The report further states that remote work was introduced.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 2§1 of the Charter on the ground that on-call periods during which no effective work is undertaken are considered as rest periods.

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 Serbia.

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

In its previous conclusion, the Committee considered that the situation in Serbia was in conformity with Article 2§2 of the Charter, pending receipt of the information requested (Conclusions 2018).

In its previous conclusion, the Committee noted that employees working on public holidays were entitled to a minimum of 110% of the basic salary, as determined by normal company practice, or the relevant collective agreement or employment contract, for each hour worked. It asked for clarification as to whether this meant that the increased pay, which is not less than 110% of basic pay, was in addition to the remuneration normally payable for working on a public holiday. In the meantime, the Committee reserved its position on this point.

In response, the report recalls information provided previously and indicates that the law prescribes the minimum rights, while the general act (collective agreement and rulebook) may prescribe the exercise of rights in a higher amount than the statutory minimum amount of increase.

The Committee recalls that Article 2§2 of the Charter guarantees the right to public holidays with pay, in addition to weekly rest periods and annual leave. It recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Accordingly, work carried out on that holiday must be paid at least double the usual wage. The remuneration may also be provided as compensatory time-off, in which case it should be at least double the days worked (Statement of interpretation on Article 2§2; Conclusions 2014, Article 2§2, Serbia).

In the light of the above, the Committee asks again that the next report explain whether the base salary is maintained in addition to the 110% increased pay, according to Article 108 of the Labour Code. In the meantime, it concludes that it has not been established that work performed on a public holiday is adequately compensated.

Covid-19

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

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

Conclusion

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

Article 2 - Right to just conditions of work
Paragraph 3 - Annual holiday with pay

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

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

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

Therefore, the Committee reiterates its previous conclusion.

Covid-19

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

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

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

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).

The Committee deferred its previous conclusion pending receipt of information as to whether the length of paid leave was specified in writing in the contract or some other document (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral.

As the report does not provide the information requested, the Committee concludes the situation in Serbia is not in conformity with Article 2§6 of the Charter on the ground that it has not been established that the amount of paid leave is specified in the employment contract or some other document.

It was previously reported that employment contracts did not have to include information on the termination of a contract or employment relationship (Conclusions 2018). As the current report does not mention any changes in that respect, the Committee concludes that the situation in Serbia is not in conformity with Article 2§6 of the Charter on the ground that the length of the periods of notice in case of termination of the contract or the employment relationship is not specified in the employment contract or some other document.

Covid-19

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

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 2§6 of the Charter on the grounds that:

- it has not been established that the amount of paid leave is specified in the employment contract or some other document.
- the length of the periods of notice in case of termination of the contract or the employment relationship is not specified in the employment contract or some other document.

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 Serbia.

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

In its previous conclusion, the Committee considered that the situation in Serbia was not in conformity with Article 2§7 of the Charter on the ground that there was no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter (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 any other question raised in its previous conclusion.

The report does not provide any information under Article 2§7 of the Charter. Therefore, the Committee reiterates its previous conclusion.

In its previous conclusion, the Committee asked under what circumstances other than health grounds, if any, employers should consider and explore the possibilities of a transfer to daytime work and indicated that a finding of non-conformity may ensue should the requested information not be provided (Conclusions 2018).

As the report does not provide the information requested, the Committee concludes that the situation in Serbia is not in conformity with Article 2§7 of the Charter on the ground that it has not been established that possibilities of transfer to daytime work are sufficiently provided for.

The Committee further asked if, in addition to the consultation to be held before introducing night work, legislation was in place providing for regular consultation with workers' representatives on the use of night work and referred specifically to the Occupational Health and Safety Law in this regard (Conclusions 2018). As the report does not provide this information, the Committee reiterates its question. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Serbia is in conformity with Article 2§7 of the Charter in this regard.

Covid-19

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

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 2§7 of the Charter on the grounds that:

- there is no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter;
- it has not been established that possibilities of transfer to daytime work are sufficiently provided for.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

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

In its previous conclusion (Conclusions 2018) the Committee concluded that the situation was not in conformity with the Charter as the minimum wage did not ensure a decent standard of living.

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

Fair remuneration

According to the report Article 111 of the Labour Law stipulates that an employee is entitled to a minimum salary for standard performance and time spent at work. The minimum salary is determined on the basis of the minimum price of labour established in accordance with the law, time spent at work and taxes and contributions paid from salary. The employer is obliged to pay the minimum salary to an employee in the amount which is determined on the basis of the decision on the minimum price of labour which is valid for the month in which payment is made.

The Committee notes that the report does not provide any information about the minimum and average wages, in response to the Committee’s previous conclusion of non-conformity.

The Committee notes from Eurostat that the monthly minimum wage as a proportion of average monthly earnings amounted to 49% in 2020. The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the average net wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage lies between 50% and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). It notes from Statistics Serbia that the average wage in 2020 amounted to 82,984 Serbian dinar (€ 706) and to 60,073 Serbian dinar (€ 512) net. However, in the absence of information concerning the minimum wage, the Committee considers that it has not been established that the minimum wage enables a decent standard of living.

Workers in atypical employment

As part of its targeted questions the Committee asks for information on measures taken to ensure fair remuneration sufficient for a decent standard of living, for workers in atypical jobs, those employed in the gig or platform economy, and workers with zero hours contracts. It also asks for 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 takes note of the information provided in the report concerning the activities of the labour inspectors as regards monitoring labour relations as well as measures taken to reduce undeclared work.

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

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

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

Covid-19

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

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

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

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 4§1 of the Charter on the ground that it has not been established that the minimum wage ensures 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 Serbia.

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 Serbia was in conformity with Article 4§2 of the Charter, pending receipt of the information requested (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion, and to the targeted question.

Rules on increased remuneration for overtime work

Previously, the Committee asked whether Serbian legislation provided for exceptions to the right to an increased rate of remuneration for overtime work in categories such as senior public officials and private sector managers. It also asked whether employees were entitled to time off in lieu of financial remuneration for overtime work and, if so, whether it was of increased duration. The Committee also asked whether the Labour Inspectorate had identified cases of overtime worked without remuneration in the context of flexible working time arrangements (Conclusions 2018).

The report states that in accordance with the law on Salaries of Civil Servants and State Employees, senior civil servants are only entitled to a salary supplement for the time spent in employment (years of service). Moreover, officials in the bodies of the autonomous province and local self-government units are not entitled to an increase of salary in case of overtime work. The Committee asks whether those officials only include senior officials or all officials in those authorities. In the meantime, it reserves its position on this point.

The report states that civil servants are entitled to time off in lieu of financial remuneration for each hour of overtime worked, at a rate of 1.5 hours per hour worked. The Committee asks whether a similar rule exists in the private sector.

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 does not provide any relevant information in reply to the targeted question.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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

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

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

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

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

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

Legal framework

In its previous conclusion (Conclusions 2018), the Committee asked to specify what was the definition of equal work or work of equal value.

In reply, the report indicates that Article 34 of the Law on Gender Equality (as amended) guarantees the right to equal remuneration for the same work or work of equal value in accordance with the Labour Law, for all employees regardless of their sex. It also explains that work of equal value means work that requires the same level of education, knowledge, and skills, in which the same contribution to work has been achieved with equal responsibility. The Committee also refers to its previous conclusion on Article 20 (Conclusions 2020) where it noted that Article 16(3) of the Labour Code defines work of equal value as work for which the same levels of education, working ability, responsibility and physical and intellectual work are needed.

Effective remedies

In its previous conclusions (Conclusions 2020 and 2016 on Article 20 and Conclusions 2018 on Article 4§3), the Committee asked whether the legislation established any ceiling to compensation that might be awarded in pay discrimination cases. It also asked for information regarding unequal pay cases decided by the courts. In the meantime, it reserved its position on this issue (Conclusions 2018). The Committee also recalls that in its previous conclusions on Article 20 (Conclusions 2020 and 2016), it found that the situation was not in conformity with the Charter on the ground that it had not been established that adequate compensation was provided for in gender pay discrimination cases.

Once again, the report provides no information regarding compensation. Therefore, the Committee asks again whether there is an upper limit on the amount of compensation which can be granted in the case of gender pay discrimination. In particular, it asks whether the obligation to compensate for the difference of pay is limited in time or is awarded for the entire period of unequal pay is provided for, and if there is the right to compensation for pecuniary

and non-pecuniary damages. In the meantime, the Committee finds that the situation is not in conformity with Article 4§3 of the Charter on the ground that that it has not been established that the right to compensation is provided for in gender pay discrimination cases.

As regards the second question, the report does not provide any relevant information. The Committee notes from the national report on gender equality in Serbia drawn up by the European Network of Legal Experts in Gender Equality and Non-Discrimination (2022), that relevant case law is lacking in this area. It adds that there are many difficulties in relation to the application of the principle of equal pay for equal work and work of equal value in practice and that, even if female employees are aware of inconsistencies in their salaries compared to male workers, they do not initiate any available proceedings.

Pay transparency and job comparisons

In its previous conclusions (Conclusions 2018 and 2014 on Article 4§3 and Conclusions 2020 and 2016 on Article 20), the Committee asked whether the pay comparison was possible across companies. It also asked (Conclusions 2018) whether the law prohibited discriminatory pay clauses in collective agreements.

The report does not contain any information on this point. The Committee refers to its previous conclusion on Article 20(c) (Conclusions 2020) on this issue and reiterates its questions that were asked there. In the meantime, it considers that the situation is not in conformity with Article 4§3 of the Charter on the ground it has not been established that, in disputes on equal pay, the legislation authorises comparisons of remuneration between companies.

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

Statistics and measures to promote the right to equal pay

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

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

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

In response to the question on the impact of Covid-19, the report states that women have endured a disproportionate burden due to exposure to the risks of infection during the pandemic, both as a result of the work they do and the degree of engagement in the daily care of the household and family.

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

Conclusion

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

- it has not been established that the right to adequate compensation is provided for in gender pay discrimination cases,
- 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 Serbia.

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

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

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

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

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

Reasonable period of notice: legal framework and length of service

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

In its previous conclusion, the Committee concluded that the situation in Serbia was not in conformity with Article 4§4 of the Charter on the grounds that: (i) in general, the law does not provide for any notice period in case of dismissal; (ii) the notice period applicable to dismissal on grounds of underperformance (at least 8 days and a maximum of 30 days) is not reasonable for workers with more than three months of service (Conclusions 2018).

In reply to the Committee's question and to the previous conclusion of non-conformity, the report states that pursuant to Article 189 of the Labour Law, a worker whose employment contract is terminated because of his failure to achieve the required results, i.e., because he has not the necessary knowledge and skills in terms of Article 179, paragraph 1, item 1) of the Labour Law, shall be entitled to a notice period defined by a general act or employment contract, depending on the length of insurance, which may not be shorter than eight days or longer than 30 days. The notice period starts on the day following the notification of the decision to terminate the employment contract. The worker may, in agreement with the competent authority referred to in Article 192 of this Law, cease work before the expiration of the notice period, provided that during that time he is provided with salary in the amount determined by the general act and employment contract.

As noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. In the light of the information at its disposal, the Committee notes that there have been no changes as regards the notice period applicable to dismissal on grounds of underperformance. The Committee recalls from previous conclusions that the situation in Serbia has never been found to be in conformity with Article 4§4 of the Charter because the notice period applicable to dismissal on grounds of underperformance is not reasonable for workers with more than three months of service. The Committee considers that the notice period applicable to dismissal on grounds of underperformance for workers with more than three months of service is not sufficient to allow the person concerned some time to look for another job before the end of their current employment, and is therefore manifestly unreasonable. The Committee therefore reiterates its conclusion of non-conformity with Article 4§4 of the Charter in this respect.

The Committee notes that there have been no changes as regards the lack of notice periods applicable in case of dismissal. The Committee therefore reiterates its conclusion of non-conformity with Article 4§4 of the Charter in this respect.

The report adds that during the health emergency declared to contain the epidemic caused by the Covid-19 virus, the dismissal of workers was prohibited.

In its previous conclusion, the Committee requested that the next report provide information on the severance pay awarded pursuant to Article 158 of the Labour Code (dismissal on grounds of technological, economic or organisational changes or decrease in workload) (Conclusions 2018).

The report does not contain the information requested. The Committee therefore reiterates its request and considers that, should the requested information not be provided in the next report, there will be nothing to establish that the situation in Serbia is in conformity with Article 4§4 of the Charter in this respect.

In its previous conclusion, the Committee reiterated its request for information on notice periods applicable to civil servants and state workers and on any other grounds for termination of employment referred to in Articles 175 and 176 of the Labour Code (Conclusions 2018).

In reply to the Committee's question, the report states that if due to organisational reasons some job positions are abolished or the number of necessary civil servants is reduced, surplus civil servants shall be transferred to other corresponding job positions of the same ranking, with the preference given to those who have the best average grades in the last three consecutive evaluations. If the civil servant does not agree with the assignment/transfer, the manager shall terminate employment without the right to severance pay.

In the event that there is no corresponding job position, the employment of an unassigned civil servant shall be terminated within two months from the day when the ruling determined that the civil servant was unassigned, and he or she shall be entitled to severance pay according to the law governing salaries in government bodies. The Committee notes that this two-month notice period for all civil servants does not acknowledge the length of service. The Committee asks that the next report provide information on whether severance pay takes into account the

length of service. Pending receipt of the information requested, the Committee reserves its position on this point.

The report states that a civil servant's employment may be terminated when he or she has been disciplined for a grave breach of duty. Grave breaches of duty in the employment relationship are regulated by Article 109 of the Law.

The report does not contain the information requested as regards notice periods that are applied to grounds for termination of employment referred to in Articles 175 and 176 of the Labour Code (grounds or termination other than mutual consent, termination by the worker, termination by the employer). The Committee therefore reiterates its request and considers that, should the requested information not be provided in the next report, there will be nothing to establish that the situation in Serbia is in conformity with Article 4§4 of the Charter in this respect.

In its previous conclusion, the Committee asked for information on the notice period applicable in case of bankruptcy of the employer (Conclusions 2018).

The report does not contain the information requested. The Committee therefore reiterates its request and considers that, should the requested information not be provided in the next report, there will be nothing to establish that the situation in Serbia is in conformity with Article 4§4 of the Charter in this respect.

Notice periods during probationary periods

In its previous conclusion, the Committee concluded that the situation in Serbia was not in conformity with Article 4§4 of the Charter on the ground that the notice period applicable to dismissal during the probationary period is not reasonable for workers with more than three months of service (Conclusions 2018).

In reply to the previous conclusion of non-conformity, the report states that pursuant to Article 36, paragraph 3 of the Labour Law, the employer or worker may terminate the employment contract before the expiration of the probationary period with a notice period of at least five working days. The Committee notes that there have been no changes as regards the notice period during probationary periods. The Committee therefore reiterates its previous conclusion of non-conformity with Article 4§4 of the Charter 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 was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

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 Serbia is not in conformity with Article 4§4 of the Charter on the grounds that:

- in general, no notice periods are provided for by legislation in case of dismissal;
- the notice period applicable to dismissal on grounds of underperformance, is manifestly unreasonable for workers with more than three months of service;

- the notice period is manifestly unreasonable for workers on probation with more than three months' seniority.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

The Committee notes that there is no information concerning Article 4§5 in the report of Serbia.

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

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

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

Deductions from wages and the protected wage

In its previous conclusion (Conclusions 2018) that the Committee noted that under Article 123 of the Labour Code, the employer may collect any monetary claim from workers only upon valid decision of the court in cases stipulated by the law or with the agreement of the worker. Deduction may be up to one third of the salary, unless the law stipulates otherwise.

The Committee asks next report to demonstrate that the protected wage, i.e. the portion of wage left after all authorised deductions, including for child maintenance, in the case of a worker earning the minimum wage, will never fall below the subsistence level established by the Government.

Waiving the right to the restriction on deductions from wage

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

Conclusion

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

Article 5 - Right to organise

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

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 Serbia was not in conformity with the Charter on the ground that the conditions imposed by legislation to form an employers' organisation constitutes an obstacle to the freedom to organise (Conclusions 2018).

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

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, 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 contain the information requested. The Committee therefore reiterates its request.

Personal scope

In its previous conclusion, the Committee requested that all States provide information on the right of members of the armed forces to organise (Conclusions 2018 – General Question). In its previous conclusion, the Committee also asked Serbia for information on the Government regulations on the right of professional military personnel to trade union organization (Conclusions 2018).

In reply, the report states that Article 17, paragraph 3, of the Law on Serbian Armed Forces ("Official Gazette of the RS", No. 116/07, 88/09 and 101/10) provides that a professional member of the Serbian Armed Forces can be a member of a trade union and participate in its activities, in accordance with law, general regulations and rules. The report further states that collective bargaining in the Serbian Armed Forces cannot relate to the composition, organisation and formation of the Serbian Armed Forces; the operational and functional capacity, use and staffing of the Serbian Armed Forces; mobilisation, the supply of weapons and military equipment, command and control in the Serbian Armed Forces based on the principles of subordination and unanimity; decisions on the appointment, transfer, deployment and promotion of professional members of the Serbian Armed Forces, as well as participation in multinational operations.

In its previous conclusion, the Committee asked for information on any restrictions in practice on the right of police officers and other staff to form and join trade unions, occupational or any other organization (Conclusions 2018).

In reply to the Committee's question, the report states that the Ministry of Interior has concluded cooperation agreements with key trade unions such as Independent Police Union, Serbian Police Union, Police Union of Serbia, Independent Police Union of Serbia, and the branch union of police. The Committee asks whether these police trade unions can affiliate to trade union confederations.

Restrictions on the right to organise

In its targeted question, the Committee asked for information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations. In reply to the targeted question, the report states that according to Article 6, Article 206 and Article 215 of the Labour Law, all employees are allowed, without restrictions, to form or join a trade union to protect their rights.

Forming trade unions and employers' organisations

In its previous conclusion, the Committee asked for information about whether there had been cases in which a trade union had been refused registration (Conclusions 2018). The report does not contain the information requested. The Committee therefore reiterates its request.

Article 216 of the Labour Law stipulates that in order to form an employers' organisation, the founding members must employ no less than 5% of the total number of employees in a given branch of industry, group, sub-group, or a line of business or in a territory of a given territorial unit. The Committee previously considered that this condition constitutes an obstacle to the freedom to organise, notably in the case of very small, small and medium-sized undertakings. The Committee therefore considered that the situation was not in conformity with Article 5 of the Charter on this point (Conclusions 2018). According to the report there has been no change to this situation. The Committee therefore reiterates its previous conclusion of non-conformity.

Freedom to join or not to join a trade union

In its previous conclusion, the Committee reiterated its request for information on the number of complaints of anti-union discrimination lodged with the competent authorities (labour inspectorate and judicial bodies), the results of any investigation or legal proceedings, and their average duration (Conclusions 2018). The report does not provide the information requested. The Committee therefore reiterates its request and considers that if the next report does not provide the information requested, there will be nothing to establish that the situation in Serbia is in conformity with the Charter on this point.

In its previous conclusion, the Committee reiterated its request for information on the compliance with the rules of the Committee on the right not to join a trade union (Conclusions 2018). The report does not provide the information requested. The Committee therefore reiterates its request and considers that if the next report does not provide the information requested, there will be nothing to establish that the situation in Serbia is in conformity with the Charter on this point.

Representativeness

In its previous conclusion, the Committee asked for clarification on the procedure for reviewing or re-examining decision on representativeness. It also asked whether trade unions and employers' associations may only seek review of a decision not to be deemed representative after the expiry of three years following the original decision. The Committee also asked for clarification that when employers' or workers' organisations do not fulfil the representativeness requirements, they can conclude an association agreement with another organization which does and thereby become party to a collective agreement and that this possibility is not restricted to company level trade unions and collective agreements. The Committee further reiterated its request for information that minority trade unions, *i.e.*, those not deemed representative, may still exercise fundamental trade union prerogatives (Conclusions 2018).

The report does not contain any of the information requested. The Committee therefore reiterates its request and considers that if the next report does not provide the information

requested, there will be nothing to establish that the situation in Serbia is in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 5 of the Charter on the ground that the conditions imposed by legislation in order to form an employers' organisation constitutes an obstacle to the right to organise.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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 Serbia 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 Serbia 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 Serbia.

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

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

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

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

Covid-19

In reply to the question regarding the special arrangements related to the pandemic, the report provides information on collective bargaining that took place at the sectoral level during the pandemic. The existing collective agreement of the Post of Serbia public company had been extended at the beginning of the pandemic and subsequently, a new collective agreement was concluded on 20 January 2022. A new collective agreement regarding the conditions of employment at the public company "Broadcasting Equipment and Communications" was concluded on 11 July 2019, covering compensatory pay for Covid-19 related sick leave among other issues. An annex with similar contents to the existing collective agreement concerning the working conditions at the Ministry of Interior was concluded in 2020.

Conclusion

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

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

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

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

In its previous conclusion, the Committee found that the situation in Serbia was in conformity with Article 6§3 of the Charter pending receipt of the information requested. It sought confirmation that arbitration was always voluntary, i.e. that both sides had to agree to arbitration and agree to be bound by the decision of the arbitration body (Conclusions 2018).

In its report, the Government states that under Article 11 of the Law on Peaceful Settlement of Labour Disputes, arbitration is voluntary and may be initiated only if both parties agree.

Conclusion

The Committee concludes that the situation in Serbia 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 Serbia.

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 Serbia was not in conformity with Article 6§4 of the Charter on the grounds that i) the restrictions on the right to strike in some sectors were too extensive and ii) workers were not involved on an equal footing with employers in decisions on the minimum service to be provided during strikes (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 asked who was entitled to call a strike. It stressed that should the next report not provide the information requested, there would be nothing to show that the situation was in conformity with the Charter.

The report does not provide any information on this point. The Committee notes, however, that under Article 3§1 of the Law on Strikes, the decision to strike or to issue a strike notice lies with the trade union body indicated by the union’s constitution or with a majority of the workers concerned. The Committee therefore considers that the situation is in conformity with Article 6§4 of the Charter on this point.

Restrictions to the right to strike, procedural requirements

In its previous conclusion, the Committee considered that the situation was not in conformity with the Charter on the ground that the restrictions to the right to strike in some sectors were too extensive and went beyond the limits permitted by Article G. In this respect, the Committee noted that the range of sectors where strike action could be restricted was extensive (including electricity generating, water management, transport, radio and television, postal services, production of staple foodstuffs, healthcare and veterinary services, education, childcare, social protection, national defence and security and a number of industries (such as the metallurgy and chemical industries)). It considered that there was no information enabling it to conclude that sectors such as postal services, education or childcare or the other “general interest” services referred to in the law, could be regarded as “essential services” in the strictest sense of the term and requested further information on the reasons for restrictions in these sectors.

During discussions before the Governmental Committee on Conclusions 2018, it was stated that it was planned to shorten the list of sectors in which the right to strike could be restricted and to amend the provisions on restrictions to the right to strike in some sectors and on minimum service (document GC(2019)28, 22 January 2020). The report does not provide any information on this. As no changes occurred during the reference period, the Committee reiterates its conclusion of non-conformity on this point.

In its previous conclusion, the Committee considered that the situation was not in conformity with the Charter on the ground that when establishing a minimum service to be provided during a strike workers (or their organisations) were not involved on an equal footing with employers in the decision on the nature or degree of the minimum service to be provided; employers had the power to determine minimum service unilaterally. As there has been no change in this situation the Committee reiterates its conclusion of non-conformity on this point.

Right of the police to strike

In reply to the general question on the right of the police to strike, the Government states that under Article 170§1 of the Law on the Police (as amended in 2018), employees of the Ministry of the Interior including the police forces have the right to strike, and this right is governed by the law and by collective agreement. Under Article 170§2 police officers may not strike in the following cases: (1) a state of war, emergency or increased risk; (2) violent threat to the constitutional order of the Republic of Serbia; (3) natural disaster or imminent danger on all or part of the territory of the Republic of Serbia; (4) “other accidents or disasters that interfere with the normal course of life and impair the safety of people or property”; and (5) where officers are employed in “jobs where there are no conditions for ensuring a minimum work process”. The Committee asks what is meant by “other accidents or disasters that interfere with the normal course of life and impair the safety of people or property” and “jobs where there are no conditions for ensuring a minimum work process”.

Article 170§3 of the Law on the Police states that employees of the Ministry of the Interior (apart from police officers in the cases described above) may strike if a minimum service which guarantees the safety of persons and property or is essential to preserve the life and work of citizens is provided. Strike notices must include information on the employees’ demands, the start date of the strike, where the participants intend to gather (if anywhere) and the strike committee. Notice must be given 10 days before the beginning of the strike (or 5 days before for warning strikes). It must be accompanied by a statement by the strike organisers on the arrangements for providing minimum services. On this subject, Article 170§5 states that the chair of the organising committee must indicate at least 10 days before the beginning of the strike which employees will be required to work during the strike (no less than 60% of the total). The Committee asks what should be understood by a minimum service which is “essential to preserve the life and work of citizens”.

Pending receipt of the information on the Police Act, the Committee reserves its position on this point.

Covid-19

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

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

The Committee notes that the Government has not provided the information requested.

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

Conclusion

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

- the range of sectors in which the right to strike may be restricted is too extensive and the restrictions on the right to strike go beyond the limits set by Article G of the Charter;
- workers are not involved on an equal footing with employers in decisions on the minimum service to be provided during strikes.

Article 21 - Right of workers to be informed and consulted

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

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

The Committee deferred its previous conclusion pending receipt of the information requested on remedies in cases of alleged breach of the right of workers to information and consultations (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted questions.

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

In its previous conclusion (Conclusions 2018) the Committee has requested information concerning the administrative and/or judicial procedures available to employees or their representatives who consider that their right to information and consultation within the undertaking has not been respected. It also asked for clarification whether fines applied in case when the employer did not respect the right of workers to be informed and consulted. The report does not provide the requested information. The Committee considers that its has not been established that effective remedies are available to employees or their representatives who consider that their right to information and consultation within the undertaking has not been respected.

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

The report states that various awareness-raising measures, containing information on the spread of the Covid-19 and its prevention, were adopted during the pandemic by the respective Ministries, such as flyers, lectures, dedicated websites, etc.

The Committee notes that the information provided in the report concerns mainly measures of general nature and does not refer to the respect of the right to information and consultation. The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers’ organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers’ representatives in terms of Article 21 of the Charter.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 21 of the Charter on the ground that it has not been established that effective remedies are available to

employees or their representatives who consider that their right to information and consultation within the undertaking has not been respected.

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

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

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

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

In its previous conclusion, the Committee considered that the situation in Serbia was not in conformity with Article 22 of the Charter (see Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted question.

The Committee has concluded in its previous conclusion (Conclusions 2018) concluded that the right to participate in the decision-making process within undertakings with regard to working conditions, work organization and working environment, was not effectively guaranteed. The report provides that the rights, duties and responsibilities arising from employment, i.e., on the ground of work, are regulated by the Labour Law and a special law, and in conformity with ratified international conventions. It also provides details on these rights, as well as on collective agreements. The Committee notes that the information provided is not relevant to the assessment of issues covered by Article 22. It thus reiterates its conclusion of non-conformity.

The Committee has requested in its previous conclusion to be informed on the existence of any thresholds, established by national legislation or practice, in order to exclude undertakings that employ less than a certain number of workers. Workers and/or their representatives (trade unions, worker’s delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision, including: the determination and improvement of the working conditions, work organisation and working environment; and the organisation of social and socio-cultural services within the undertaking. It recalls that this information had already been requested in 2014 and not provided since then (see Conclusions 2014 and 2018). It considers that should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with the Charter in this respect.

The Committee has also previously concluded (Conclusions 2018) that the right of workers and/or their representatives to participate in the organization of social and socio-cultural services within an undertaking was not guaranteed. The report does not provide any reply to this finding of non-conformity. The Committee recalls that according to the Appendix, the terms social and socio-cultural services and facilities in Article 22 are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children’s holiday camps, etc. In the absence of the relevant information in the state report, the Committee reiterates its conclusion of non-conformity in this regard.

Finally, the Committee concluded in its previous conclusion (Conclusions 2018) that legal remedies were not available to workers in the event of infringement of their right to take part in the determination and improvement of working conditions and the working environment, in the light of lack of information on the existence of means to appeal where the right of workers to take part in the determination and improvement of working conditions and the working environment has been breached, as well as on the penalties that can be imposed on employers if they have failed to respect this right. It had also asked if workers or their

representatives were entitled to compensation in case of violation of this right. The report does not provide any information on these points. The Committee therefore reiterates its conclusion.

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

The report states that with regard to compliance with measures during the Covid-19 pandemic, as well as specific measures taken to improve working conditions to protect the health and safety of both employees and parties to the administrative line of work, all measures have been taken to install protective barriers and mandatory use of disinfectants, including disinfection of acquisition points for receiving requests for the issuance of personal documents. The report further specifies measures taken to prevent and control the spread of the pandemic, including specifically in transport, railway and aviation sectors.

The Committee notes that the information provided in the report concerns mainly measures of general nature rather than the specific right to take part in the determination and improvement of the working conditions and working environment. 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 participation of workers' representatives in terms of Article 22 of the Charter.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 22 of the Charter on the grounds that it has not been established that:

- the right of workers and/or their representatives to participate in the decision-making process within undertakings with regard to working conditions, work organization and working environment, is effectively guaranteed;
- the right of workers and/or their representatives to participate in the organization of social and socio-cultural services within an undertaking is guaranteed, and
- legal remedies are available to workers in the event of infringement of their right to take part in the determination and improvement of working conditions and the working environment.

Article 26 - Right to dignity in the workplace
Paragraph 1 - Sexual harassment

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

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

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

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

Prevention

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

In its previous conclusion (Conclusions 2018), the Committee reiterated its previous questions (Conclusions 2014). It asked the next report to provide information on awareness-raising measures regarding sexual harassment, in particular as regards public education programmes, campaigns, cooperation with NGOs and employers’ organisations, the provision of online sources of information on sexual harassment, etc., and on the extent to which employers’ and workers’ organisations are consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace (see Conclusions 2018 and Conclusions 2014). The Committee pointed out that in the absence of such information in the next report there will be nothing to establish that the situation is in conformity with the Charter in this respect (Conclusions 2018).

The report provides no information in response to the above-mentioned questions. Given the absence of information, the Committee concludes that the situation is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that there is adequate prevention of sexual harassment in relation to work.

Liability of employers and remedies

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

The report states that there have been no relevant amendments to the Labour Law and the Law on Prevention of Harassment at the Workplace since the last monitoring cycle.

The report indicates that Article 32 of the Law on Gender Equality (Official Gazette No. 52/21) prohibits harassment, sexual harassment and sexual blackmail in the workplace or in connection with work based on sex or gender, whether by employers, employees or other persons engaged in work towards other employees or other persons engaged in work. Gender-based harassment and sexual harassment are prohibited not only in the workplace, but also during the processes of recruitment, professional development and promotion.

In its previous conclusion, the Committee asked for information on employers’ liability in cases of harassment at work involving third parties, such as visitors, customers and clients (Conclusions 2018). The report does provide the requested information. The Committee reiterates its question. It points out that in the absence of such information in the next report

there will be nothing to establish that the situation is in conformity with the Charter in this respect.

The Committee notes that, in its *Concluding observations on the fourth periodic report of Serbia*, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern about the absence of measures to address sexual harassment in employment, specifically with regard to young women and lesbian, bisexual and transgender women, including a disproportionately low number of convictions for sexual harassment, that adversely affected women's possibilities for employment and promotion (see CEDAW, *Concluding observations on the fourth periodic report of Serbia*, § 35 (e)). The CEDAW urged Serbia to take the following measures: (i) undertake a comprehensive survey to assess the prevalence of sexual harassment at the workplace; (ii) encourage reporting of sexual harassment at the workplace and raise public awareness about its discriminatory nature, its negative impact on women's employment and potential sanctions; (iii) strengthen the mechanism to effectively address cases of sexual harassment, including in court; and (iv) collect disaggregated statistics on the number and nature of complaints of sexual harassment at the workplace, in the public and private sectors. (CEDAW, *ibid*, § 36 (f))

The Committee also notes that in her activity report, the Commissioner for the Protection of Equality found that women are often exposed to sexual harassment in the workforce and called on labour inspectors to intensify their work in order to identify all such situations and to sanction employers (see Commissioner for the Protection of Equality (2022) Regular Annual Report for 2021, 23).

The Committee asks for information to be provided on the situation in practice, namely information on the supervision carried out by the Labour Inspection and the measures taken in cases of sexual harassment, as well as on any complaints alleging sexual harassment that have been submitted to the competent authorities and the courts and their outcome. Pending receipt of the information requested, the Committee reserves its position on this point.

Damages

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

The Committee noted previously that the victim of harassment could seek remedial actions, including compensation of material and moral damage (Conclusions 2014). It also noted that pursuant to Article 191 of the Labour Code, where during the course of proceedings the court establishes that there are no legal grounds for the termination of employment, and the employee requests reinstatement, it will decide to reinstate the employee. If the employee does not request to be reinstated, a compensation may be awarded, amounting up to 18 months' salary, determined on the basis of several factors (period of service in the undertaking, employee's age and the number of dependents) (see Conclusions 2018, Article 26; Conclusions 2016, Article 24).

The Committee has repeatedly asked for examples of case law regarding compensation for sexual harassment (Conclusions 2014 and 2018). In its previous conclusion, the Committee noted that the report did not provide information on the applicable rules and examples of case law concerning compensation for sexual harassment (Conclusions 2018). The Committee, therefore, reiterated its question and pointed out that in the absence of information in the next report there will be nothing to establish that appropriate and effective redress (compensation and reinstatement) is available in cases of sexual harassment (Conclusions 2018). It also asked for information on additional legal grounds for compensation, if any, and in particular whether victims of sexual harassment are entitled to compensation, other than in relation to instances of unfair dismissal (Article 191 of the Labour Code), notably in respect of non-pecuniary damage (Conclusions 2018).

Given the absence of information in the report on rules and examples of case law regarding compensation in cases of sexual harassment, the Committee considers that the situation is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment in relation to work.

Covid-19

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

No specific information is provided with regard to protection against sexual harassment.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 26§1 of the Charter on the grounds that:

- it has not been established that there is adequate prevention of sexual harassment in relation to work;
- it has not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment in relation to work.

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

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

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

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

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

Prevention

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

The Committee previously noted that the Law Prohibiting Bullying in the Workplace of 2010 (Official Gazette No. 36/10) provides for the employer’s obligation to take measures to prevent and minimise the incidence of harassment in the workplace, *inter alia* by training employees and their representatives to recognise the causes, forms, and consequences of harassment, with the aim of identifying and preventing such behaviour (see Conclusions 2014). It also noted the adoption of a Code of Conduct for Employers and Employees Regarding the Prevention of and Protection from Bullying in the Workplace (No. 62/10). Under these instruments, the employer must notify employees in writing of the rights, obligations and responsibilities of both the employee and the employer in relation to the prohibition of harassment and may request the opinion of a trade union in appointing a trusted person to provide information, guidance, support and advice to the complainant employee (Conclusions 2014).

In its previous conclusion, the Committee asked for the next report to provide information on how the employer’s compliance with the obligation to take harassment-prevention measures is monitored, and what specific measures – if any – have been adopted by the state to raise awareness about harassment in the workplace (public education programmes, campaigns, cooperation with NGOs and employers’ organisations, provision of online sources of information on harassment, etc.). It also reiterated its question as to what extent employers’ and workers’ organisations are consulted in the promotion of awareness, information and prevention of harassment in the workplace, apart from the involvement of trade unions in the designation of support persons (Conclusions 2018).

The report provides no information on this point. The Committee reiterates the above-mentioned questions. The Committee points out that, in the absence of such information in the next report, there will be nothing to establish that the situation is in conformity with the Charter in this respect.

Liability of employers and remedies

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

The report indicates that there have been no relevant amendments to the Labour Law and the Law on Prevention of Bullying in the Workplace since the last reporting cycle.

In its previous conclusion, the Committee asked for information on employers' liability in case of harassment at work involving third parties, such as visitors, customers and clients (Conclusions 2018). The report does not provide the requested information. The Committee reiterates its question. It points out that, in the absence of such information in the next report, there will be nothing to establish that the situation is in conformity with the Charter in this respect.

The Committee asks for information on the situation in practice, namely information on the supervision carried out by the Labour Inspection and measures taken in cases of moral harassment, information on any complaints alleging moral harassment submitted to the competent authorities and the courts, and their outcomes. Pending receipt of the requested information, it reserves its position on this point.

Damages

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

The Committee noted previously that the victim of harassment could seek remedial actions, including compensation of material and moral damage (Conclusions 2014). It also noted that pursuant to Article 191 of the Labour Code, where during the course of proceedings the court establishes that there are no legal grounds for the termination of employment, and the employee requests reinstatement, it will decide to reinstate the employee. If the employee does not request to be reinstated, a compensation may be awarded, amounting up to 18 months' salary, determined on the basis of several factors (period of service in the undertaking, employee's age and the number of dependents) (see Conclusions 2018, Article 26; Conclusions 2016, Article 24).

The Committee has repeatedly asked for examples of case law regarding compensation for moral harassment (Conclusions 2014 and 2018). In its previous conclusion, the Committee noted that the report did not provide information on the applicable rules and examples of case law concerning compensation for moral (psychological) harassment (Conclusions 2018). The Committee, therefore, reiterated its question and pointed out that in the absence of information in the next report there will be nothing to establish that appropriate and effective redress (compensation and reinstatement) is available in cases of moral (psychological) harassment (Conclusions 2018). It also asked for information on additional legal grounds for compensation, if any, and in particular whether victims of moral (psychological) harassment are entitled to compensation, other than in relation to instances of unfair dismissal (Article 191 of the Labour Code), notably in respect of non-pecuniary damage (Conclusions 2018).

Given the absence of information in the report on rules and examples of case law regarding compensation in cases of moral harassment, the Committee considers that the situation is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of moral (psychological) harassment.

Covid -19

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

The report provides information on the initiatives and recommendations by the Commissioner for the Protection of Equality in relation to the situation of certain vulnerable groups, in particular on the organisation of telework of single parents during the state of emergency in

order to provide care for their children. No specific information is provided with regard to protection against moral (psychological) harassment.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of moral (psychological) harassment in relation to work.

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

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

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

In previous conclusions (Conclusions 2018), the Committee concluded that pending receipt of the information requested, the situation in Serbia was in conformity with Article 28 of the Charter. In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the questions asked in the previous conclusion of conformity.

Protection granted to workers' representatives

In Conclusions 2018, the Committee noted that workers' representatives enjoy protection against dismissal, which extends for one year after the expiry of their term of office. It further notes that according to the Labour Code, workers' representatives may not be called in to account or put into less favourable position due to their status or activity, if they comply with the law or the terms of a collective agreement.

Facilities granted to workers' representatives

In Conclusions 2018, the Committee took note from the report that under the provisions of the Labour Code, the employer has an obligation to provide trade unions with necessary technical support, office space and paid time off to carry out the activities. It asked whether the provisions on afforded facilities apply to all types of workers' representatives.

In reply, the report limits its submission to indicating that the obligation of the employer to provide the trade union with technical conditions and space in accordance with the spatial and financial capabilities, as well as to enable access to the data and information necessary for performing trade union activities, is not dependent on whether or not the trade union is representative. The Committee reiterates its question and asks for detailed and updated information on the protection granted to workers' representatives other than trade union representatives. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 28 of the Charter in this respect.

Previously, the Committee noted that outside sources including NGO reports and scholar articles raised concern about a marginalisation of trade unions, accompanied by the tarnishing of their public confidence and deterioration of their relations with the Government since the 2008 economic crisis. It asked that the next report provide the Government's views on that matter, together with explication on any measures planned or adopted to raise awareness about the trade unions' rights and their importance. It also asked for information on how the supervision of the implementation of the legal framework in practice is conducted; what actions are taken in case of discerned irregularities and whether any reporting in this respect is carried out by governmental bodies.

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

Conclusion

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

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

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

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

In the previous conclusions (Conclusions 2018), the Committee deferred its conclusions pending receipt of the information requested.

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

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.

Sanctions and preventative measures

In Conclusions 2014, the Committee had asked for information on preventative measures to ensure that redundancies did not take effect before employers had met their obligation to inform and consult employee representatives. In Conclusions 2018, the Committee, in the absence of an answer, reiterated its question and deferred its conclusions.

In reply, the report indicates that the Labour Law stipulates that dismissal of workers without any grounds and sending employees on unpaid leave, without their consent, is a violation of the Labour Law and sanctions are applicable to employers who do so. According to the report, the Labour Law clearly defines the rights of workers, and dismissal of workers without any grounds and without prior written warning is a violation of the law. The report indicates that this does not only apply to permanent employees, but also to employees with fixed-term employment contracts and contracts for temporary and periodical jobs who have the same rights.

The Committee recalls that it has stated that under the Charter, consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met (Conclusions 2007, Article 29, Sweden).

In the absence of an answer concerning preventative measures aiming at ensuring that the redundancies are not put into effect before the consultation requirement is met, the Committee reiterates its question and concludes that it is not established that the situation in Serbia is in conformity with the Charter on this point.

Covid-19

The report indicates that there was no change in labour legislation due to the Covid 19 pandemics. In order to protect the rights of workers in pandemic conditions, the Government adopted a number of recommendations to employers concerning the transfer of annual leaves that were not used in 2020 to the following year or concerning the salary compensation for employees who were absent from work due to confirmed infectious disease of Covid-19. The Government also adopted decisions on the basis of which employees in health and social protection were on several occasions paid cash benefits for working in the conditions of the Covid 19 epidemics.

Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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