



March 2023

## **EUROPEAN SOCIAL CHARTER (REVISED)**

European Committee of Social Rights

Conclusions 2022

**SLOVAK REPUBLIC**

*This text may be subject to editorial revision.*

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, statements of interpretation, and general questions from the Committee, are contained in the General Introduction to all Conclusions.

The following chapter concerns the Slovak Republic, which ratified the Revised European Social Charter on 23 April 2009. The deadline for submitting the 12<sup>th</sup> report was 31 December 2021 and the Slovak Republic submitted it on 7 February 2022.

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

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

Comments on the 12<sup>th</sup> report by the Slovak National Centre for Human Rights were registered on 28 June 2022.

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

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

The Slovak Republic has accepted all provisions from the above-mentioned group.

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

The conclusions relating to the Slovak Republic concern 23 situations and are as follows:

– 10 conclusions of conformity: Articles 2§2, 2§3, 2§4, 2§6, 2§7, 4§2, 6§2, 6§3, 21 and 22,

– 7 conclusions of non-conformity: Articles 2§5, 4§4, 4§5, 6§4, 26§1, 26§2 and 28.

In respect of the other 6 situations related to Articles 2§1, 4§1, 4§3, 5, 6§1 and 29, the Committee needs further information in order to examine the situation.

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

The next report from the Slovak Republic 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](http://www.coe.int/socialcharter).

## **Article 2 - Right to just conditions of work**

### *Paragraph 1 - Reasonable working time*

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

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 the Slovak Republic was not in conformity with Article 2§1 of the Charter on the ground that the length of the authorised working week was excessive and that the legal guarantees were insufficient (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***

The Committee notes that, in its previous conclusion, it found the situation in the Slovak Republic not to be in conformity with Article 2§1 of the Charter on the ground that the length of the authorised working week was excessive and that the legal guarantees were insufficient (Conclusions 2018). The Committee also asked that the next report contained information on the legal provisions prohibiting employers from asking employees to work an excessive number of overtime hours. It also asked for detailed and precise information on the “public interest” grounds that permit employers to impose overtime work. Finally, it asked for information on the work of the labour inspectorate in monitoring compliance with the regulations on working hours, including overtime, and on the number of violations found and the fines imposed.

In reply, the report provides the same information as in the previous report. However, it adds that if the employer legally reduces the resting time between two shifts, the worker must be provided with an equivalent continuous compensatory rest. It means that after a 12-hour rest period, the worker must be given a rest period between two shifts of 12 hours plus any remaining unassigned rest hours no later than 30 days after the situation occurred. If the employer has to institute overtime work outside the schedule of working hours and beyond the specified weekly working hours, continuous rest between two shifts may not be reduced to less than eight hours (Article 97§5 of the Labour Code). This applies in relation to urgent repair work required to avert a threat endangering the workers’ lives or health and in case of extraordinary events. These urgent cases apply to sudden hazardous situations, e.g. accidents in power plants, malfunction of crucial medical equipment in hospitals, etc.

The report further states that the maximum working week including overtime work is 48 hours and that the employer cannot force the worker to work more than 150 hours overtime per year (Article 97§7 of the Labour Code). Moreover, workers who carry out their functions in hazardous conditions, cannot work overtime. The scope and conditions of overtime work shall be determined by the employer in agreement with the employees’ representatives.

The report also states that even if a rest period should be shortened, due to an urgent hazardous situation, for a worker whose working time is distributed unevenly, the total length of work shifts for such worker cannot exceed 12 hours.

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

(statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).

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

The Committee notes that no information is provided on the activities of the labour inspectorate in monitoring compliance with the regulations on working hours, including overtime, and on the number of violations found and the fines imposed. Therefore, it reiterates its request for information. The Committee considers that if the information on the activities of the labour inspectorate in monitoring compliance with the regulations on working hours, including overtime, and on the number of violations found and the fines imposed is not provided in the next report, there will be nothing to establish that the situation in the Slovak Republic is in conformity with Article 2§1 of the Charter.

### ***Law and practice regarding on-call periods***

In its previous conclusion, the Committee asked for information on the reasons why certain categories of public service employees were excluded from the scope of general rules with regard to on-call 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 in accordance with Article 96§2 of the Labour Code, the time during which the worker stays at the workplace and is ready to perform work is the inactive part of on-call time, which is considered as working time. Article 96§4 of the Labour Code states that the time during which the worker stays at an agreed place outside the workplace and is ready to perform work is not included in the 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 asks for clarification whether the information provided in the report means that the inactive on-call time when the worker is not at his/her workplace is considered as time of rest in its entirety or in part and reserves its position on this point.

The Committee also reiterates its request for information on the reasons for the exclusion of certain categories of public service employees from the scope of general rules with regard to on-call periods. The Committee notes that if this information is not provided in the next report, there will be nothing to establish that the situation is conformity with Article 2§1 of the Charter. Neither is there any information in the report 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 does not provide the information requested.

#### *Conclusion*

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

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

## **Article 2 - Right to just conditions of work**

### *Paragraph 2 - Public holidays with pay*

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

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 previous conclusions (Conclusions 2018, 2014 and XIX-3 (2010)), the Committee concluded that the situation in the Slovak Republic was incompatible with Article 2§2 of the Charter on the ground that work performed on a public holiday was not adequately compensated, when the minimum standards of compensation were applied.

In response, the report indicates that the relevant provision has been amended during the reference period. As of the beginning of 2019, the compensation for work on public holiday has been increased to 100% of the employee’s average wage for everyone. According to the report, this applies to all sectors of the economy, as well as the private and public sphere, all categories of workers and for all types of employment contracts. Each worker performing work during public holidays receives their usual wage and a 100% bonus, at the minimum. The Labour Code also allows for even higher compensation on the basis of collective agreements between the social partners.

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

### **Covid-19**

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

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

### *Conclusion*

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

## **Article 2 - Right to just conditions of work**

### *Paragraph 3 - Annual holiday with pay*

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

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 the Slovak Republic 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 the Slovak Republic is in conformity with Article 2§3 of the Charter.



## **Article 2 - Right to just conditions of work**

### *Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations*

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

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

In its previous conclusion, the Committee found that the situation in the Slovak Republic was in conformity with Article 2§4 of the Charter, pending receipt of the information requested on the effective implementation of measures aimed at eliminating or reducing occupational risks, in particular those related to inherently dangerous or unhealthy sectors and activities (Conclusions 2018).

### ***Elimination or reduction of risks***

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

The Committee notes that, according to the report, there was no change in the legislation over the reference period. The Committee notes that the report provides details of the basic obligations of employers relating to working conditions and protection of occupational health and safety of the workers, as well as the training activities developed in the field of OSH by the Ministry of Labour, Social Affairs and Family and other public authorities and institutions. As for the risks at work, it is for the employer to identify them, assess them and prepare a risk assessment document.

The Committee refers to its examination under Article 3§1 of the Charter, according to which the Committee deferred its conclusion and asked what is done at company level in terms of initial assessment of the risks specific to workstations and the adoption of targeted preventive measures in practice, particularly in small and medium-sized enterprises (Conclusions 2021). In light of this, the Committee asks that the next report to provide information on the practice and measures adopted, particularly those related to inherently dangerous or unhealthy sectors and activities. In the meantime, it considers the situation to be in conformity.

### ***Measures in response to residual risks***

The Committee noted that the situation was considered to be in conformity with the Charter on this point, so it reiterates its previous conclusion of conformity.

### ***Covid-19 related measures***

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

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 2§4 of the Charter.

## **Article 2 - Right to just conditions of work**

### *Paragraph 5 - Weekly rest period*

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

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

The Committee deferred its previous conclusion pending receipt of the information requested on the nature of the exceptional circumstances allowing the deferral of the weekly rest period for more than twelve days, other than public safety (Conclusions 2018). In Conclusions 2014, the Committee found that the situation in the Slovak Republic was not in conformity with Article 2§5 of the Charter on the ground that the weekly rest entitlement could be deferred for a period exceeding twelve consecutive working days.

The report confirms that it is possible, in theory, for a person to work for two weeks, in other words more than twelve days, before being entitled to a rest period. However, it further confirms that the conditions enounced in Article 93 of the Labour Code that govern such adjustments to the weekly rest period are very strict and cumulative in nature, so they are only applicable in limited cases. In practice, exceptions permitted by the Labour Code apply for example in agriculture, harvesting, scientific measurements and experiments, work in a remote and less accessible area. etc. In practice, this situation occurs rarely. Regarding the number of violations of Article 93 par. 5 of the Labour Code found by the National Labour Inspectorate, in 2019 and 2020 there were no violations. In 2021, there were 5 violations of Article 93 par. 5 notified.

The Committee considers that there are situations in which the right to a weekly rest period may be postponed beyond 12 days. Therefore, it considers that the situation in the Slovak Republic is not in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 2§5 of the Charter on the ground that there are insufficient safeguards to prevent workers from working for more than twelve consecutive days before being granted a rest period.

## **Article 2 - Right to just conditions of work**

### *Paragraph 6 - Information on the employment contract*

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

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

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

### ***Covid-19***

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

### *Conclusion*

The Committee concludes that the situation in the Slovak Republic is in conformity with Article 2§6 of the Charter.

## **Article 2 - Right to just conditions of work**

### *Paragraph 7 - Night work*

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

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

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

### **Covid-19**

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

### *Conclusion*

The Committee concludes that the situation in the Slovak Republic is in conformity with Article 2§7 of the Charter.

## **Article 4 - Right to a fair remuneration**

### *Paragraph 1 - Decent remuneration*

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

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 deferred its position pending receipt of information to establish that the minimum wage makes it possible to 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***

The Committee notes from Eurostat that the gross minimum wage in 2020 stood at € 580 per month. The Committee estimates, on the basis of the information provided in the previous report (2018) that the net minimum wage in 2020 stood at € 504. As regards the average wage, according to Eurostat in 2020 the gross annual average earnings stood at € 13,417 and net annual earnings at € 10,250. The Committee notes that the monthly average gross earnings stood at € 1,118 and net average earnings at € 854.

The Committee thus understands that the minimum net wage represented 59% of the net average earnings, which represents a significant improvement compared with the situation in 2018.

The Committee points out that, to ensure a decent standard of living from the standpoint of Article 4§1 of the Charter, earnings must exceed the minimum threshold, set at 50% of the net average wage. This is the case where the net minimum wage is above 60% of the net average wage. Where the net minimum wage is between 50% and 60% of the net average wage, it is for the State party to establish that this wage permits a decent standard of living (Conclusions XIV-2 (1998), statement of interpretation of Article 4§1).

In its previous conclusion the Committee asked what the eligibility criteria for various social assistance benefits were and whether a person earning the minimum wage would be entitled to benefits such as an activation allowance and housing benefit. The Committee notes from the report that the subsistence minimum below which an individual is entitled to the material need allowance stood at € 213 in 2021. The Committee understands that persons in receipt of the minimum wage are not entitled to material need allowance. However, according to the report, a person earning the minimum wage would be entitled to the activation allowance amounting to € 140.80 per month, as well as to housing allowance (€59.40). The Committee considers that the minimum wage, together with additional benefits ensures a decent standard of living.

### ***Workers in atypical employment***

As part of its targeted questions the Committee asks for information on measures taken to ensure fair remuneration sufficient for a decent standard of living, for workers in atypical jobs, those employed in the gig or platform economy, and workers with zero hours contracts. It also asks about enforcement activities (e.g. by labour inspectorates or other relevant bodies) as regards circumvention of minimum wage requirements (e.g. through schemes such as 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 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*

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

## **Article 4 - Right to a fair remuneration**

### *Paragraph 2 - Increased remuneration for overtime work*

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

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

In its previous conclusion, the Committee considered that the situation in the Slovak Republic was not in conformity with Article 4§2 of the Charter on the ground that the time off to compensate overtime work was not sufficient (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted question.

### **Rules on increased remuneration for overtime work**

Previously, the Committee found that the situation in the Slovak Republic was not in conformity with Article 4§2 of the Charter on the ground that the time off to compensate overtime work was not sufficient (Conclusions 2018).

The report states that Article 121 of the Labour Code guarantees that a worker receives additional compensation for overtime work, by providing a wage benefit for the work performed, or alternatively, in agreement with the worker, in the form of compensatory leave. If a worker decides to take time off as a compensation for overtime work, he/she is still entitled to their normal rate of pay during the time-off period.

The Committee reiterates that the aim of Article 4§2 is to ensure that the additional occupation of workers during overtime is rewarded. Under this provision such reward must take the form of an increased rate of remuneration. However, the Committee recognises reward in the form of time off, provided that the aim of the provision is met. This means, in particular, that where remuneration for overtime is entirely given in the form of time off, Article 4§2 requires that this time be longer than the additional hours worked (Conclusions 2014, Slovak Republic). The principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who therefore should be paid at a rate higher than the normal wage (Conclusions XIV-2, Statement of Interpretation of Article 4§2).

The Committee also notes that the combination of equivalent time off and an allowance for overtime corresponds to an increased remuneration for overtime hours and is therefore in conformity with the Charter (Conclusions 2014, Slovenia). In view of the information provided by the report, the Committee considers that the situation in the Slovak Republic is now in conformity with Article 4§2 of the Charter.

### **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 provides no information requested.

*Conclusion*

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



## **Article 4 - Right to a fair remuneration**

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

The Committee takes note of the information contained in the report submitted by the Slovak Republic and in the comments submitted by the Slovak National Centre for Human Rights.

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

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

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

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

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

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

#### ***Effective remedies***

In its previous conclusion (Conclusions 2018), the Committee asked for clarification on whether the law gives victims of discrimination the right to compensation for moral damage. It also requested further information on cases concerning fair remuneration, more precisely on the complaints received and the violations detected by labour inspectors. It also asked information on the concrete measures taken by the labour inspectors to address equal pay, including possible warnings or sanctions that can be applied.

In response to the first question, the report indicates that, if a person feels that his or her pay conditions are discriminatory, he or she can take legal action. Where any form of discrimination is involved, the burden of proof lies with the employer. The employer must prove that the person who brought the case to court is not discriminated against. If a court finds that a person has been discriminated against, they are entitled to compensation of up to 36 times their regular salary (depending on the court decision) and any damages (including moral damages –which depends on the court decision and the statement of the employee who believes that he/she has been discriminated against). The Committee asks whether the obligation to compensate for the difference of pay is limited in time or is awarded for entire period of unequal pay.

In response to the second question, the report indicates that the National Labour Inspectorate has been given a new competence related to the regular monitoring of equal treatment between women and men in employment relations. So far, the labour inspectorates have carried out equal pay inspections on the basis of individual applications and complaints. Since 2021 (outside the reference period), the National Labour Inspectorate has conducted nationwide monitoring of compliance with the equal pay legislation and has published annual reports with suggestions for improvement.

The Committee refers here to the country report on gender equality in the Slovak Republic prepared by the European Network of Legal Experts in Gender equality and Non-

Discrimination (2022), which states that the National Labour Inspectorate has been monitoring the implementation of equal pay since 2002. Labour inspectorates carry out their activities in accordance with the annual plans of main tasks, but the plans for 2019 and for 2020 did not contain any specific tasks for the area of equal pay. The same source indicates that the 2018 Report of the Labour Inspectorate on discrimination and gender equality in employment relations states the National Labour Inspectorate identified 39 unequal pay cases (Article 119a of the Labour Code), in the 2019 report it identified 25 unequal pay cases and in the 2020 report 28 unequal pay cases were identified. In addition, the Committee takes note from the same source that all these reports underline the fact that the Labour Inspectorate has little competence in the area of pay inequality (full-time employees are not obliged to provide information, the labour inspector has to conceal the identity of the complainant, the reversed burden of proof for the employer does not apply to complaints handled by the inspectorates, etc.).

### ***Pay transparency and job comparisons***

In its previous conclusion (Conclusions 2018), the Committee asked whether the law prohibited discriminatory pay clauses in collective agreements, as well as whether the pay comparison was possible outside one company.

In response to the first question, the report indicates that the legislation guaranteeing equal remuneration and equal treatment also prohibits discriminatory remuneration arising from collective agreements.

The report does not contain any information in response to the second question. The Committee refers to its conclusion on Article 20 (Conclusions 2020) on this issue. It repeats the question, as to whether it is possible to make pay comparisons across companies in equal pay litigation cases. In order to clarify this issue, the Committee considers that there should be the possibility to challenge unequal remuneration resulting from internal pay system within a company or a holding company, if remuneration is set centrally for several companies belonging to such holding company. In the meantime, the Committee reserves its position on this point.

### ***Statistics and measures to promote the right to equal pay***

For information, the Committee takes note of the Eurostat data on the gender pay gap during the reference period in the Slovak Republic: 20.1% in 2017, 19.8% in 2018, 18.4% in 2019 and 15.8% in 2020 (compared with 20.1% in 2011). It notes that this gap is higher than the average in the 27 countries of the European Union, namely 13% (provisional figure) in 2020 (data as of 4 March 2022). However, it also notes that the gender pay gap, although very high, has a downward trend during the reference period.

The Committee takes note of the statistical data on the gender pay gap provided in the comments submitted by the Slovak National Centre for Human Rights.

As the Slovak Republic 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 does not provide any information.

In its comments, the Slovak National Centre for Human Rights states that a survey done in 2020 by the Institute for Labour and Family Research assessed trends in impacts of the pandemic on the life situation of Slovak families, especially changes in the labour patterns and domestic unpaid work. The survey underlined that during the pandemic, women had to work more during non-standard working hours (early in the morning or in the evening, 42,1% of

respondents), had difficulty concentrating on work due to family responsibilities (30.6%) or experienced changes in the workload (36.7%). According to the survey, “many women had to “juggle” to secure unpaid work, while their income was reduced and in some cases, they tried to work full time in a crowded household.” While the amount of hours of domestic unpaid work (childcare and household care) increased for both men and women during the pandemic, women were affected much more.

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

*Conclusion*

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

## **Article 4 - Right to a fair remuneration**

### *Paragraph 4 - Reasonable notice of termination of employment*

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

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

In its previous conclusion, the Committee considered that the situation in the Slovak Republic was not in conformity with Article 4§4 of the Charter (Conclusions 2018).

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

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

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

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

### ***Reasonable period of notice: legal framework and length of service***

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

The Committee previously found the situation not to be in conformity with the Article 4§4 of the Charter on the ground that notice periods for dismissal on account of conduct and performance and certain others (termination of employment for reasons other than the dissolution or relocation of the business; redundancy arising from changes in duties, technical

equipment, organisation, or downsizing or health or fitness inability to work ) are not reasonable for employees with more than five years of service (Conclusions 2018).

In reply to the targeted question and to the previous conclusion of non-conformity, the report states that, according to Article 62 paragraph 3 b) of the Labour Code, the notice period for the concerned workers has been changed and is now at least 3 months. The report also states that additional periods may be provided by a collective agreement.

The Committee takes note of this development. As noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. The Committee considers that the new notice period set out in Article 62 paragraph 3 letter b) of the Labour Code acknowledges the length of service and is set out in proportion with the period of employment, allowing the person concerned a certain time to look for other work before his or her current employment ends. The Committee therefore considers that the situation in the Slovak Republic is in conformity with Article 4§4 of the Charter in this respect.

### ***Notice periods during probationary periods***

In its previous conclusions the Committee considered that the situation 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).

The report states that the regulation of notice periods during probationary periods has remained unchanged since 1965. Pursuant to Article 72 paragraph 2 of the Labour Code, notice of termination of employment during the probationary period is to be notified to the other person concerned at least three days before the day on which the employment is to end. The report further states that failure to comply with this period does not mean that termination of the probationary period is invalid. However, this may result in penalties for non-compliance with labour law by the supervisory authorities. At the same time, the worker who suffers damage as a direct result of the non-compliance with the rule of the three-day notice period before termination of the employment relationship during the probationary period, could claim compensation for the damage.

The Committee takes note of the information provided and reiterates its previous conclusion of non-conformity.

### ***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***

In its previous conclusion, the Committee asked that the next report indicate the notice periods and/or severance pay applying to termination of employment on grounds other than dismissal, such as death of the employer and bankruptcy (Conclusions 2018).

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

***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 the Slovak Republic is not in conformity with Article 4§4 of the Charter on the ground that the notice period during probation is manifestly unreasonable for workers with more than three months of service.

## **Article 4 - Right to a fair remuneration**

### *Paragraph 5 - Limits to deduction from wages*

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

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***

The Committee further recalls that deductions from wages must be subject to reasonable limits and should not *per se* result in depriving workers and their dependents of their means of subsistence (Conclusions 2014, Estonia). In its previous conclusion (2018) the Committee found that the situation was not in conformity with the Charter as after all the authorised deductions, the wages of workers with the lowest pay did not enable them to provide for themselves or their dependants.

In particular, the Committee noted that the employer may not deduct more than the portion of the wage which is attachable under Government Regulation No. 268/2006 on the amount of wage deductions in execution of a decision, which sets the following limits:

- A basic unattachable portion of 60% of the subsistence minimum for an adult person;
- An additional unattachable portion of 25% of the subsistence minimum for each dependant person;
- An additional unattachable portion of 25% of the subsistence minimum if deductions are made from the payrolls of both spouses;
- An additional unattachable portion of 25% of the subsistence minimum for persons in whose favour the enforcement of a decision for recovering a maintenance claim is under way.

The Committee has previously considered that these limits were not in conformity with the Charter. The Committee notes that the report does not provide any information in this respect.

The Committee understands that the protected wage amounts to 60% of the subsistence minimum. The Committee considers that as long as the portion of wage left after all authorised deductions falls below the subsistence level established by the Government, the situation is not in conformity with the Charter. Therefore, the Committee reiterates its previous finding on this ground.

### ***Waiving the right to the restriction on deductions from wage***

In its previous conclusion (Conclusions 2018, 2014) the Committee found that the situation was not in conformity with Article 4§5 of the Charter on the ground that workers could waive their right to limitations on deductions from wages. Namely, the Committee noted that under Article 131§3 of the Labour Code the employer could make further deductions from the employee's wage upon the latter's written consent or when required by other regulations.

The report indicates that Article 131§1 of the Labour Code establishes the so-called priority deductions and Article 131§2 establishes a range of other deductions that the employer may make from the employee's salary unilaterally. The consent of the employee is not required in these latter cases. In addition to these deductions made unilaterally by the employer without the consent of the employee, the employer may, in accordance with Article 131§3 of the Labour Code make additional deductions only on the basis of a written agreement with the employee on deductions from wages. If such an agreement is not concluded, the employer is not entitled to make any further deductions from the employee's salary. At the same time Article 131§3 of the Labour Code imposes an obligation on the employer to make deductions from the employee's wages and other income in the event that such an obligation arises from a special regulation.

The Committee notes that according to Article 20§2 of the Labour Code, settlement of an employer's claim may be secured by an agreement on wage deductions between an employer and employee. The agreement must be concluded in writing, otherwise it shall be invalid. The report also indicates that Article 131§4 of the Labour Code stipulates that not only deductions from wages according to Article 131§1 and 2 but also deductions from wages according to Article 20§2 can be executed only to the extent provided by a special regulation, which is the Regulation of the Government of the Slovak Republic No. 268/2006 Coll. on the Extent of Wage Deductions in the Execution of a Decision. It follows that the agreed amount of deductions from wages may not exceed the amount laid down in the special regulation mentioned above.

However, based on an agreement with a third party, the employee may have deductions from wages made in favour of the third party (which is made possible by the existing wording of the Civil Code – Article 551, which regulates the agreement on deductions from wages). In such a case, the employer to whom such an agreement has been submitted makes deductions from the wage of the employee concerned in favour of the third party (e.g. creditor, bank, etc.). In this case, the employer is not a party to the wage deduction agreement.

Thus, according to the report, the Labour Code does not provide for the possibility of the employer to deduct from the wage of the employee beyond the restriction imposed in a special regulation, even with their consent. In addition, according to Article 17§1 of the Labour Code a legal act by which an employee waives his rights in advance is invalid. Therefore, according to the report, an employee may not waive their right to the limit deductions from their wage.

The Committee considers, on the basis of the information provided by the report, that employees may not waive the conditions and limits to deductions from wages imposed by law and therefore, the situation is in conformity with the Charter.

### ***Conclusion***

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4§5 of the Charter on the ground that the protected wage which is left after all the deductions may deprive workers of their means of subsistence.



## **Article 5 - Right to organise**

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

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

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

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

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

### ***Prevalence/Trade union density***

The Committee asked in its targeted question for data on trade union membership prevalence across the country and across sectors of activity. The report does not provide the information requested.

### ***Personal scope***

In its previous conclusion, the Committee requested all States to provide information on the right of members of the armed forces to organise (Conclusions 2018 – General question). The report does not provide the information requested. The Committee therefore reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the Slovak Republic is in conformity with the Charter on this point.

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

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

### ***Restrictions on the right to organise***

The Committee asked in its targeted question for information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations. The report does not contain the information requested. The Committee therefore reiterates its request and considers that

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

### ***Representativeness***

In its previous conclusion, the Committee asked for confirmation that apart from not being members of the Economic and Social Council, minority trade unions may still exercise all other trade union functions (Conclusions 2018). It also asked whether minority trade unions may conclude company-level collective agreements.

In reply to the Committee's question, the report states that all trade unions that are not members of the national organizations of employees and employers are free to perform their activities and duties without any restrictions. This includes the concluding of company level collective agreements and other rights and obligations provided to employee representatives.

### *Conclusion*

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

## **Article 6 - Right to bargain collectively**

### *Paragraph 1 - Joint consultation*

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

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

In its previous conclusion, the Committee found that the situation in the Slovak Republic was in conformity with Article 6§1 of the Charter, pending receipt of the information requested on consultation in the public sector (Conclusions 2018).

The report notes that consultation in the public sector takes place at the level of the Economic and Social Council. Trade unions representing civil servants, such as the Trade Union of Workers in Education and Science of Slovakia, Trade Union of Public Administration and Culture, Slovak Trade Union of Health and Social Services, Trade Union of the Police Forces, Trade Union of Justice of the Slovak Republic or the Trade Union of Defence Employees, are members of the Confederation of Trade Unions of the Slovak Republic and take active part in collective bargaining and joint consultation concerning relevant public sector issues.

The Committee notes that the information received in response to questions asked repetitively since 2006 regarding the operation of the Economic and Social Council (formerly the Council of Economic and Social Partnership of Slovakia – CESP) in particular, and joint consultation in the public sector in general (Conclusions 2006, 2010, 2014, 2018), has not been sufficiently detailed. The Committee recalls that joint consultation should take place in the public sector including the civil service (Conclusions III (1973), Denmark, Germany, Norway, Sweden and *Centrale générale des services publics, CGSP v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41). Within the meaning of Article 6§1 of the Charter, joint consultation is consultation between employees and employers or the organisations that represent them (Conclusions I (1969), Statement of Interpretation on Article 6§1). Joint consultation must cover all matters of mutual interest, particularly: productivity, efficiency, other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.) (Conclusions I (1969), Statement of Interpretation on Article 6§1 and Conclusions V (1977), Ireland). The Committee reiterates its previous request for detailed information on the structure and activities of the Economic and Social Council in particular, as well as on joint consultation in the public sector in general, by reference to these criteria. The Committee asks the next report to include examples of such consultation giving rise to new rights for workers and/or improving their working conditions. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the Slovak Republic is in conformity with Article 6§1 of the Charter.

### *Conclusion*

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

## **Article 6 - Right to bargain collectively**

### *Paragraph 2 - Negotiation procedures*

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

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 the Slovak Republic was in conformity with Article 6§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 question raised in its previous conclusion and to the general question.

In its previous conclusion, the Committee asked for an approximate indication of the total proportion of workers covered by a collective agreement (Conclusions 2018). The report refers to data from third-party sources indicating that, as of 2021, 54,5% of the total number of employees were covered by company level collective agreements, and 14,3% were covered by multi-sectoral higher level collective agreements.

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

### ***Covid-19***

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

### *Conclusion*

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

**Article 6 - Right to bargain collectively**

*Paragraph 3 - Conciliation and arbitration*

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

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

Therefore, the Committee reiterates its previous conclusion.

*Conclusion*

The Committee concludes that the situation in the Slovak Republic 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 the Slovak Republic.

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

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

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

### ***Right to collective action***

#### ***Restrictions to the right to strike, procedural requirements***

In its previous conclusion, the Committee considered that the situation in the Slovak Republic was not in conformity with Article 6§4 of the Charter on the grounds that strikes were prohibited for a large number of state/public sector employees and that the restrictions went beyond the limits set by Article G of the Charter. This affected employees of health care or social care facilities; employees operating nuclear power plant facilities, facilities with fissile material and oil or gas pipeline facilities; judges and prosecutors; air traffic controllers; members of the fire brigade; members of rescue teams set up under special regulations; and employees working in telecommunications operations.

In its report, the Government states that the majority of public sector employees may take part in strikes. However, Article 37§4 of the Constitution restricts the right to strike for certain categories of people, including judges, prosecutors, members of the armed forces, the fire brigade, and rescue services, nuclear power plant operators and certain occupations related to telecommunications. Article 54 of the Constitution states that this restriction must be prescribed by law.

The Collective Bargaining Act of 1991 governs restrictions of the right to strike. Initially, those working in the above-mentioned categories faced a blanket ban on exercising their right to strike. The Act has since been amended, however. In particular, a paragraph was added to Article 20, stating that these employees may strike as long as their industrial action does not put the life and health of any person or national security at risk. The Act also provides that a minimum service must be in place to ensure an appropriate level of damage limitation.

The Committee recalls that prohibiting strikes in sectors deemed essential to the community is considered to serve a legitimate purpose since such strikes could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. “energy” or “health” – is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4. The Committee notes that to date, the Government has not provided specific information on the minimum service requirement. It asks for detailed information in the next report on minimum service levels during industrial action (i.e. texts of the regulations governing minimum service levels and the relevant organisational arrangements).

The Committee also recalls that the right to strike of certain categories of public officials (for example, members of the armed forces) may be restricted. However, under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc. The Committee asks for clarification in the next report on whether the restrictions on the right to strike in the public service are limited to managers who are involved in the exercise of public authority at the highest level.

Pending receipt of the information requested, the Committee reiterates its conclusion of non-conformity.

### ***Right of the police to strike***

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

### ***Covid-19***

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

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

The Government has not provided the requested information.

The Committee recalls 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 the Slovak Republic is not in conformity with Article 6§4 of the Charter on the grounds that strikes are prohibited for a large number of state/public sector employees and that the restrictions on the right to strike go beyond the limits set by Article G of the Charter.

## **Article 21 - Right of workers to be informed and consulted**

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

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

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

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

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

The report recalls that employee representatives may enforce the right to consultation and information, as enshrined in Articles 237 and 238 of the Labour Code.

It appears from the report that no specific measures had been taken at the time of the pandemics. 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.

### *Conclusion*

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



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

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to a 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 found the situation to be in conformity with the Charter (see Conclusions 2018). The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions.

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 recalls that employee representatives may enforce the right to consultation and information, as enshrined in Articles 237 and 238 of the Labour Code.

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

### *Conclusion*

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

## **Article 26 - Right to dignity in the workplace**

### *Paragraph 1 - Sexual harassment*

The Committee takes note of the information contained in the report submitted by the Slovak Republic and in the comments submitted by the Slovak National Centre for Human Rights.

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

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

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

### **Prevention**

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

The Committee previously noted the measures and information campaigns conducted in the context of the national action plan for 2014-2019 on the prevention and elimination of violence against women (Conclusions 2018). The report provides information on the new national action plan for the prevention and elimination of violence against women (2022-2027) which was drawn up in consultation with civil society and the social partners and was adopted in 2022 (outside the reference period). The report also mentions other campaigns and educational activities undertaken by the Coordination and Methodological Centre for the Prevention of Violence against Women (“KMC”).

The Committee notes in the comments provided by the National Centre for Human Rights that its 2017 report concluded that the media had dedicated more time than in previous years on covering cases of sexual harassment of women, including in the workplace, partially due to the global advancement of the #metoo movement. During the reference period, the Centre conducted two specific training sessions for state authorities on sexual harassment in the workplace.

The same comments indicate that another report dating from 2020 and conducted by the Institute for Labour and Family Research proposed a separate methodology for labour inspectorates to identify cases of discrimination with a focus on gender discrimination. The report underlined the need to increase awareness of discrimination and increase victims’ confidence in institutional protection and possibilities of redress.

The Committee notes that the Government did not respond to these comments. The Committee asks that the next report provide information on steps taken to increase awareness of discrimination and to increase victims’ confidence in institutional protection and possibilities of redress.

### **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 does not mention any amendments to the regulatory framework.

The Committee previously requested detailed information on the indirect liability of employers, if any, when sexual harassment occurs in relation to work, or on premises under their responsibility, but is suffered or perpetrated by a third party, not employed by them, such as an independent contractor, a self-employed worker, a visitor, a client, etc. (Conclusions 2014).

In its previous conclusion, the Committee asked that the next report provide information on the legal basis of such action (Conclusions 2018). In response to this question, the report states that everyone can claim their right before an independent and impartial court and, in cases established by law, before other bodies.

With regard to the situation in practice, the Committee notes in the information submitted by the Slovak National Centre for Human Rights that sexual harassment is difficult to prove, if the victim of discrimination has no further means of proof other than her/his allegations, e.g. the unwanted conduct did not occur in front of witnesses or was in verbal form only.

The Committee also notes in the information submitted by the Slovak National Centre for Human Rights that according to a study conducted in 2020 by the Institute for Labour and Family Research identifying the barriers and challenges in accessing justice in the cases of sexual harassment in the workplace, the main barrier is the “corporate/work culture that downplays sexual harassment, approaches it as a common part of relations between employees, respectively as a personal/private dispute”. Other challenges concern the work of labour inspectorates such as the lack of staff and financial capacity; prioritising cases of other violations of the Labour Code, such as breaches of occupational safety obligations; the difficulty in proving discrimination or sexual harassment; and lack of resources for prevention and for pro-active case search.

In its comments, the National Centre for Human Rights refers to the concluding observations on the third periodic review of Slovakia adopted in 2019 by the United Nations Committee on Economic, Social and Cultural Rights (UN CESCR). UN CESCR expressed its concern about the high incidence of violence against women, including sexual harassment and domestic violence. The UN CESCR made a series of recommendations to the Slovak Republic such as to develop specific legislation addressing violence against women, to ensure full protection to victims and improve their access to justice, to ensure the systematic collection of disaggregated data on violence against women and to ratify the Istanbul Convention. The Slovak Republic signed the Istanbul Convention in 2011, but the Parliament approved a resolution calling on the Government not to pursue the ratification process in 2019.

The Government did not respond to these comments. The Committee recalls that workers must be afforded an effective protection against sexual harassment (Conclusions 2003, Bulgaria; Conclusions 2005, Republic of Moldova). In view of the above, the Committee considers that the situation is not in conformity with Article 26§1 of the Charter on the ground that victims of sexual harassment are not guaranteed sufficient and effective remedies against sexual harassment in relation to work.

### ***Damages***

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

The report does not respond to the above-mentioned targeted question. The Committee reiterates its question and points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

As regards the right to reinstatement, the Committee noted previously that this right is guaranteed by Article 79 of the Labour Code to all victims of unfair dismissals, whatever the reason (Conclusions 2018). The Committee asked if this also applied when the person has not been formally dismissed but is pressured to resign in the context of sexual harassment

(Conclusions 2018). In reply to this question, the report states that such a person may initiate a lawsuit and claim their rights, and the court could order the employer to reinstate the person.

In its previous conclusion, the Committee reiterated its request for information, with examples of case law on sexual harassment, including the damages awarded, with a view to assessing whether the amount of the damages is sufficiently reparatory for the victims and sufficiently deterrent for the employers (see Conclusions 2018 and Conclusions 2014). The report provides no information on this point.

The Committee notes in the information submitted by the Slovak National Centre for Human Rights that, so far, there have been only a low number of discrimination lawsuits in Slovak courts, and there is thus a general “absence of interpretative practice with regard to sexual harassment as a form of discrimination.” Most often, the courts decide cases where they assess sexual harassment in the workplace in the context of a sexual violence offence. The Government did not respond to these comments.

The Committee further notes from the *Country report on gender equality* of the European network of legal experts in the field of gender equality and non-discrimination that in 2020 there were no cases concerning the harassment or sexual harassment of women in the workplace reported by the Slovak National Centre for Human Rights, and the Slovak National Labour Inspectorate reported only one case of sexual harassment, but without providing any other detailed information.

In view of the lack of information on any examples of case law in the field of sexual harassment, including the damages awarded, 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 appropriate and effective redress is guaranteed in cases of sexual 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.

Since no information is provided in the report, the Committee reiterates its questions.

### ***Conclusion***

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

- victims of sexual harassment are not guaranteed sufficient and effective remedies against sexual harassment in relation to work;
- it has not been established that appropriate and effective redress is guaranteed 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 the Slovak Republic and in the comments submitted by the Slovak National Centre for Human Rights.

The Committee recalls that for the purposes of the present report, 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 requested updated information on initiatives aimed at promoting awareness and prevention of moral (psychological) harassment in the workplace and the extent to which employers’ and workers’ organisations were consulted in the context of such activities (Conclusions 2014). In its previous conclusion, the Committee noted that no information was provided on any broader preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) that had been taken during the reference period, in consultation with social partners (Conclusions 2018). It therefore reiterated its previous questions and pointed out that in the absence of information in the next report there will be nothing to establish that the situation is in conformity with the Charter in this respect (Conclusions 2018).

The national report provides information with regard to awareness-raising and prevention campaigns related only to sexual harassment and violence against women (under the heading Article 26, paragraph 2). No information is provided with regard to initiatives aimed at promoting awareness and prevention of moral (psychological) harassment in the workplace.

Given that the national report fails to address the Committee’s previous questions on initiatives aimed at promoting awareness and prevention of moral (psychological) harassment in the workplace and the extent to which employers’ and workers’ organisations were consulted in the context of such activities, 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 adequate prevention of moral (psychological) 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 moral (psychological) harassment in the framework of work or employment relations.

The report does not indicate any amendment to the regulatory framework.

The Committee requested previously detailed information on the indirect liability of employers, if any, when moral (psychological) harassment occurs in relation to work, or on premises under their responsibility, but it is suffered or perpetrated by a third party, not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. (Conclusions 2014). In its previous conclusion, the Committee noted that, according to the national report,

employers are liable for such harassment if it is committed by independent contractors or self-employed persons working for them. In the case of harassment committed by clients, the report stated that victims may bring proceedings against the perpetrators in the local courts (Conclusions 2018). The Committee asked that the next report provide information on the legal basis of such action (Conclusions 2018). In response to this question, the report states that everyone can claim their right before an independent and impartial court and, in cases established by law, before other bodies.

With regard to the situation in practice, the Committee notes in the information submitted by the Slovak National Centre for Human Rights that the labour inspection authorities had received a total of 252 submissions alleging violation of the Anti-discrimination Act or other provisions of labour law in relation to the principle of equal treatment and non-discrimination. The submissions included alleged cases of bossing, bullying, slander, threats, intimidation, humiliation, arrogant, or inappropriate or vulgar behaviour, verbal insults and sexual harassment in the workplace. The Government did not respond to these comments.

### **Damages**

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

The report does not respond to the above targeted question. The Committee reiterates its question. It states that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

The report does not respond to the above targeted question. The Committee reiterates its question. It states that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

The Committee previously noted (Conclusions 2014) that, under the Anti-Discrimination Act, victims of moral (psychological) harassment could seek redress before a court, including compensation for non-pecuniary damages, the amount of which would be set by the court taking into account the severity of the non-pecuniary damages incurred and all circumstances in which the damage was incurred. It also noted that in the event of a breach of the employment regulations, the Labour Inspectorate could sanction the employer by imposing a fine of up to €33 000.

As regards the right to reinstatement, the Committee noted previously that Article 79 of the Labour Code guarantees this right to all victims of unfair dismissals, whatever the reason (Conclusions 2018). The Committee asked if this also applied when the person has not been formally dismissed but pressured to resign in the context of moral (psychological) harassment (Conclusions 2018). In reply to this question, the report states that such a person may initiate a lawsuit and claim their rights, and the court could order the employer to reinstate that person.

The Committee has repeatedly asked for information on examples of case law on moral (psychological) harassment, including on the damages awarded, with a view to assessing whether they are sufficiently reparatory for the victims and sufficiently deterrent for the employers (Conclusions 2014 and Conclusions 2018). The report does not provide any information in response to the Committee's question.

In view of the absence of information on any examples of case law related to moral (psychological) harassment, including the damages awarded, 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 appropriate and effective redress is guaranteed in cases of moral (psychological) 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 moral (psychological) harassment. The Committee welcomed specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers. The report provides no information. The Committee reiterates its questions.

### *Conclusion*

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 26§2 of the Charter on the grounds that:

- it has not been established that there is adequate prevention of moral (psychological) harassment in relation to work;
- it has not been established that appropriate and effective redress is guaranteed 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 the Slovak Republic.

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 deferred its conclusions pending receipt of information requested. 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 deferral.

### ***Protection granted to workers' representatives***

In Conclusions 2018, the Committee recalled that it previously (Conclusions 2016) found the situation not to be in conformity with Article 28 of the Charter on the ground that in the event of illegal dismissal based on trade union activities, damages were capped at an amount equivalent to 36 months wages. It noted that according to the report, there had been no change to the situation in this respect, but that in addition to this amount, the court may grant the victim additional compensation. The Committee therefore asked on what grounds additional compensation may be awarded. It reserved its position on this point.

In reply, the report indicates that according to Article 79 of the Labour Code, in case of an invalid notice given by the employer to the employee, or if the employment relationship was terminated immediately or during the probationary period, and if the employee informed the employer that they insist on continuing the employment relationship, their employment shall not be terminated, unless the court decides that the employer cannot be fairly required to continue to employ the employee concerned. According to the report, in this case, the employer is obliged to provide the employee with wage compensation (in amount of his/her average earnings from the day s/he informed the employer that s/he insists on further employment until the time when the employer allows him/her to continue working or when the court decides to terminate the employment). The report confirms that wage compensation can be granted for a maximum period of 36 months (according to Article 79§2 of the Labour Code).

As to the question raised by the Committee as to the grounds of "additional compensation" mentioned by the previous report, the report states that if a subjective right is violated or jeopardised, the holder may exercise their right to judicial protection by bringing an action before the courts in civil proceedings. With regard to the right to reinstatement, the report indicates that where persons have not been formally dismissed but have been pressured to resign, such a person is able to initiate a lawsuit in this respect, and the courts could order the employer to reinstate such a person.

The report does not provide any information as to the scope, grounds and amount of the "additional compensation" mentioned in the previous report. It is not clear in the report, whether or not the capping at an amount of 36 months wages which is provided in Article 79§2 of the Labour Code, is also applicable in the context of "additional compensation" in civil proceedings which, according to the report, can be awarded in case of illegal dismissal based on trade union activities.

The Committee requests that the next report provide detailed and up-to-date information on the grounds and amount of the "additional compensation" mentioned in the report and on whether the capping at an amount of 36 months wages is also applicable in the context of the "additional compensation" in civil proceedings. It concludes that the situation in the Slovak



Republic is not in conformity with Article 28 of the Charter on the ground that in the event of illegal dismissal based on trade union activities, damages are capped at an amount equivalent to 36 months wages.

***Facilities granted to workers' representatives***

In Conclusions 2018, the Committee maintained its previous conclusion (2016) that the situation was in conformity with the Charter with regard to the facilities granted to workers' representatives.

*Conclusion*

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 28 of the Charter on the ground that adequate protection is not provided for in the event of an unlawful dismissal based on trade union activities.

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

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

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 2018, the Committee took note that where employers fail to fulfil their obligations with regard to information and consultation of employees’ representatives prior to collective redundancies, employees have a right under the Labour Code, to additional compensation of at least double their average monthly wage in addition to usual compensation for termination of employment. It also noted that the labour inspectorate can initiate administrative proceedings in the event of non-compliance while employees can also take their case to court. The Committee asked what sanctions exist if the employers fail to notify workers’ representatives about planned redundancies. It also asked what preventative measures exist to ensure that redundancies do not take effect before the employers’ obligation to inform and consult workers’ representatives has been fulfilled.

In reply, the report indicates that according to Article 68a§1 a) of the Employment Services Act, the Central Office of Labour, Social Affairs and Family shall impose a fine on the employer for breach of duties regarding collective redundancies in the amount of EUR 33,193.91. When imposing a fine, the Office takes into account the seriousness of the identified deficiencies and the seriousness of their consequences and the repeated finding of the same deficiency. The report also provides that the Office found 3 breaches in 2019, 5 in 2020 and 1 in 2021.

The Committee notes that the report does not provide any answer as regards to preventative measures aiming at ensuring that the redundancies are not put into effect before the consultation requirement is met. It recalls that where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met (Conclusions 2007, Article 29, Sweden). The Committee reiterates its question and defers its conclusions. It considers that if the next report does not provide the required information, there will be nothing to establish that the situation is in conformity with the Charter on this point.

In their submissions regarding the 12<sup>th</sup> National Report on the Implementation of the Charter, the Slovak National Centre for Human Rights (hereinafter, “the Centre”) asserts in particular that the National Labour Inspectorate does not collect data on the measures applied to employers in case of negative findings of inspection. According to the Centre, a fine is issued rarely and in a small amount in case of breach of obligations by the employers concerning collective redundancies. The Centre states that in the period of 2017-2021, only one fine of

an amount of EUR 300 was applied. In case of breach of obligations related to information and consultation, labour inspectors order the employers either to “refrain from similar action in the future” or “to implement correction”.

The Committee requests that the next report comment on these submissions. In particular, the Committee requests that the next report provide explanations on the inconsistencies between the number of breaches found mentioned in the Government’s submissions (9 breaches between 2019-2021), and the number of fines imposed (one fine in total in the period 2017-2021), provided by the Centre. The Committee also requests explanations on the discrepancy between the amount of fine, provided in the report, which can be imposed in case of breach of obligations by the employer with regard to collective redundancies (EUR 33,193.91) and the information provided by the Centre that the amount of the only fine applied in the period of 2017-2021 is EUR 300. Pending receipt of the information/explanations requested concerning the sanctions imposed in case of breach of obligations, the Committee reserves its position on this point.

#### *Conclusion*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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