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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions XXII-3 (2022)

UNITED KINGDOM

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 United Kingdom, which ratified the 1961 European Social Charter on 11 July 1962. The deadline for submitting the 41st report was 31 December 2021 and the United Kingdom submitted it on 15 February 2022.

The Committee recalls that the United Kingdom 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 XXI-3 (2018)/XX-3 (2014)).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions XXI-3 (2018)/XX-3 (2014)) found the situation to be in conformity, there was no examination of the situation in 2022.

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

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The United Kingdom has accepted all provisions from the above-mentioned group except Articles 2§1 and 4§3 of the 1961 Charter and the Additional Protocol.

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

The conclusions relating to the United Kingdom concern 13 situations and are as follows:

- 3 conclusions of conformity: Articles 2§3, 6§1, 6§3
- 10 conclusions of non-conformity: Articles 2§2, 2§4, 2§5, 4§1, 4§2, 4§4, 4§5, 5, 6§2, 6§4.

The next report from the United Kingdom 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 (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for submitting that report was 31 December 2022.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

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

In its previous conclusions (Conclusions XXI-3 (2018) et XX-3 (2014)), the Committee found that the situation in the United Kingdom was not in conformity with Article 2§2 of the 1961 Charter on the ground that the right of all workers to public holidays with pay was not guaranteed.

The report repeats the information provided previously. Therefore, the Committee reiterates its previous conclusion of non-conformity.

Covid-19

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

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

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§2 of the 1961 Charter on the ground that the right of all workers to public holidays with pay is not guaranteed.

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 United Kingdom.

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

In its previous conclusion, the Committee found that the situation in the United Kingdom was in conformity with Article 2§3 of the Charter (Conclusions XXI-3 (2018)).

The report indicates that in the United Kingdom in April 2020, the holiday pay reference period was increased for atypical workers to 52 weeks in which they worked to ensure that holiday pay was more fairly reflective of a worker’s actual earnings, particularly for those workers whose working patterns fluctuated seasonally. Previously, where a worker had variable pay or hours, their holiday pay was calculated using an average from the last 12 weeks in which they worked, and thus earned pay. The Committee takes note that in Northern Ireland, the 12-week holiday pay calculation period remains in statute.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report states that in the United Kingdom, in March 2020, the Working Time Regulations 1998 were temporarily amended to allow workers to carry over the four weeks of annual leave (if the impact of coronavirus meant it was not reasonably practicable to take it in the leave year to which it relates). Leave carried over under this exemption can be carried forwards up to two years and must be paid. The Committee notes from the report that the principle prior to the pandemic remained: pay received by a worker while they are on holiday should reflect what they would have earned if they had been at work and working.

As regards the Isle de Man, the report indicates that similar legislation was introduced in June 2020 to allow employees to carry forward untaken annual leave into the following two leave years, because of the potential difficulties with taking leave during the coronavirus pandemic.

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 United Kingdom is in conformity with Article 2§3 of the 1961 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 United Kingdom.

The Committee recalls that no targeted questions were asked for Article 2§4 of the 1961 Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in the United Kingdom was not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual occupational health risks, despite the existing risk elimination policy, are not entitled to appropriate compensatory measures (Conclusions XXI-3 (2018)).

Elimination or reduction of risks

The Committee had previously considered the situation to be in conformity. As there was no question, the Committee reiterates its conformity under Article 2§4 of the 1961 Charter.

Measures in response to residual risks

The Committee concluded previously that the situation was not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual occupational health risks, despite the existing risk elimination policy, are not entitled to appropriate compensatory measures (Conclusions XX-3 (2014), Conclusions XXI-3 (2018)).

According to the report, the approach taken by the United Kingdom is explicitly focused on reducing exposure to occupational health risks in line with a set of principles enshrined in legislation. In the Government’s view, the “goal-setting” approach adopted by the United Kingdom presents the potential for higher levels of risk control than simply focusing on reducing the time of exposure to the risk or by providing additional leave once the workers have been exposed to risks to their safety or health at work. The report further states particularly that with respect to working times, the employer assesses and ensures that the worker has adequate rest breaks. The Committee therefore reiterates its previous conclusion of non conformity, despite the existing risk elimination policy.

Covid-19 related measures

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

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual occupational health risks are not entitled to appropriate compensatory measures.

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 United Kingdom.

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

In its previous conclusion, the Committee considered that the situation in the United Kingdom was not in conformity with Article 2§5 of the Charter on the ground that there were inadequate safeguards to prevent workers from working for more than twelve consecutive days without a rest period (Conclusions XXI-3 (2018)).

The report states that the situation remains largely unchanged. It highlights that the situation where a person might work more than 12 days between rest periods is where a special case under Regulation 21 of the UK Working Time Regulations applies, e.g. there is a need for business continuity, unusual or unforeseen circumstances etc. In such cases compensatory rest is due under Regulation 24. The Working Time Regulations are quite clear that workers should not normally work for more than 12 consecutive days. Workers are usually entitled to one whole day off a week. There has been no change in the situation and, therefore, the Committee reiterates its conclusion.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§5 of the 1961 Charter, on the ground that there are insufficient safeguards to prevent workers from working for more than twelve consecutive days without a rest period.

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 United Kingdom.

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 XXI-3 (2018)) the Committee found that the situation was not in conformity with the Charter as the minimum wage did not ensure a decent standard of living.

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

Fair remuneration

In its previous conclusion (Conclusions XXI-3 (2018)) the Committee noted that with the introduction of the National Living Wage (NLW), the rate of the minimum wage had increased significantly, much faster than average weekly earnings and the consumer price index. However, the NLW did not ensure a decent standard of living as its level was below 60% of the average wage.

The Committee takes note of the information concerning net wages. In particular, it notes that workers earning the NLW for 40 hours a week for 52 weeks earned a wage of £18,532 in 2020. They only pay income tax on the amount over £12,570 per year at a rate of 20%. Overall, according to the report, a worker in this situation would retain 88% of their wage.

The Committee notes from Eurostat that in 2019 the average earnings amounted to € 46,855 gross (€ 3,904 per month) and to € 35,889 net (€ 2,990 per month). As regards the minimum wage, it amounted to € 1,517 gross per month in 2019. The Committee observes that gross minimum wage represented 39% of the gross average wage. As regards the net values, the Committee notes that the net minimum wage (88% of the gross minimum wage, i.e. € 1,334) represented 44% of the net average earnings.

The Committee notes that according to the report in 2015 the UK Government announced its intention for the NLW to reach 60% of the median earnings by 2020 and therefore, the NLW was increased to £8.72, equivalent to 62.6% of median earnings in 2020. However, as noted above, according to Eurostat information the minimum net wage fell significantly below 60% of the net average earnings in 2019. Therefore, the Committee considers that the situation is not in conformity with the Charter as the minimum wage does not ensure a decent standard of living.

The Committee asks the next report to provide comprehensive information about the entire reference period, as regards gross and net values of both minimum and average wages.

Workers in atypical employment

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

work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).

The Committee notes that according to the report, zero hours contracts provide important flexibility in the labour market, which benefits both employers and workers. Individuals on zero hours contracts represent a very small proportion of the workforce – just 3%. For this small group, a zero hours contracts may work best for them. The flexibility supports workers who want to work part time or need to balance work around other commitments such as childcare or study. For example, around a fifth of people on zero hours contracts are in full-time education compared with 3% of other people in employment. Most workers on zero hours contracts say that this arrangement works for them, with the majority saying they do not want more hours.

According to the report, the Government has taken action to improve fairness for workers on these contracts and to prevent exploitation of vulnerable workers. The use of exclusivity clauses in zero hours contracts have been banned in Great Britain to give workers more flexibility. This means an employer cannot stop an individual on a zero hours contract from looking for or accepting work from another employer. It also prevents an employer from stipulating that the individual must seek their permission to look for or accept work elsewhere. The Government has also introduced rights for all workers to receive a day one written statement of rights and a payslip including number of hours worked to improve clarity and transparency for workers on zero hours contracts.

The Committee notes that the Government recognises that some workers on zero hours contracts would like more stability in their working hours. According to the report, the Government is committed to taking forward a key measure to include a new right for all workers in Great Britain to request a more predictable contract. Those who would like more certainty will be able to request a more fixed working pattern from their employer after 26 weeks of service. Those who are content to work varied hours each week will be able to continue to do so.

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. Furthermore, the Committee considers that the situation of workers on zero hours contracts is of particular concern given their heightened vulnerability due to their precarious contractual situation.

The Committee asks what measures are being taken to ensure fair remuneration of workers in atypical jobs, including workers engaged on zero hours contracts, 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 from the report that the Coronavirus Job Retention Scheme (CJRS) was set up in March 2020 to support employers in retaining their employees through the Covid-19 pandemic. From the inception of the scheme, all UK employers could apply for a grant to cover 80% of furloughed employees' usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and pension contributions. Since then, the amount covered by the Government grant has been gradually tapered as restrictions were lifted, and employers were required to top up the amount so that employees have consistently received 80 per cent of their usual salary for hours not worked, up to a maximum of £2,500 per month, throughout the duration of the scheme.

The Committee takes note of the information regarding the timeline of grant tapering of the scheme. It notes that as of 16 August 2021, there have been 11.6 million unique jobs supported by the CJRS since its inception. A total of 1.3 million employers have made a claim through the CJRS since it started in March 2020, totalling £68.5 billion in claims. Any entity with a UK payroll could apply, including businesses, charities, recruitment agencies and public authorities, and employees could be on any type of employment contract, including full-time, part-time, agency, umbrella, flexible or zero-hour contracts.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§1 of the 1961 Charter on the ground that the minimum wage does not ensure a decent standard of living.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

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 1961 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 1961 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 United Kingdom was not in conformity with Article 4§2 of the 1961 Charter on the ground that workers had no adequate legal guarantees to ensure them increased remuneration for overtime (Conclusions XXI-3 (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 United Kingdom was not in conformity with Article 4§2 of the 1961 Charter on the ground that workers had no adequate legal guarantees to ensure them increased remuneration for overtime (Conclusions XXI-3 (2018)).

The report states that the United Kingdom’s national minimum wage is a legal minimum which must be paid for all hours worked. There are no requirements for increased remuneration for overtime work as part of minimum wage regulations. However, where a worker’s overtime meant their hourly rate dropped below the national minimum wage rate within a single pay reference period, the employer would be required to make additional payments. The report adds that in the United Kingdom, legislation does not set normal working hours. The working time regulations that determine the restrictions on working time provide flexibility for employers and workers to determine what counts as overtime through individual contracts and collective agreements. If overtime is provided for in a contract, it may be at a higher rate of pay or the worker may be entitled to time off in lieu.

The report further states that although the minimum wage regulations do not stipulate the requirements for increased remuneration for overtime work, any worker with these arrangements in their work contract has legal protection so that they will receive increased remuneration for overtime. Agreements for contracts to include increased pay for overtime work is standard practice in a number of sectors, many of which agree remuneration through collective bargaining. There are no legal requirements for pay in different sectors, and there is no sector-specific legal minimum wage since the single national rate is clear and easy for employers to understand. All workers must be paid the correct national living wage or national minimum wage rate, without exceptions. According to the report, introducing any further complexity within the regulations also increases the risk of non-compliance and therefore the risk that workers could be underpaid. This risk is considered in any change to the regulations.

The Committee notes that the situation remains unchanged with regard to legislation and that the remuneration for overtime is dependent on the conditions in individual contracts and collective agreements. The Committee therefore reiterates its previous conclusion of non-conformity on the ground that workers had no adequate legal guarantees to ensure them increased remuneration for overtime.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to explain the impact of the Covid-19 crisis on the right to a fair remuneration as regards overtime and

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

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

The report states that in the United Kingdom the Government did not amend the rules governing general working time or fair remuneration in response to the pandemic.

The report states that healthcare staff benefited from the provisions on premium rates of pay for work during unsocial hours or through agreed overtime. Non-medical staff (nurses, healthcare assistants, paramedics, senior managers), receive unsocial hours payments when they work in the evening, after 8 p.m. and before 6 a.m., at night, over weekends, and on public holidays.

The report states that with regard to Scotland, healthcare staff who work beyond their contracted hours are entitled to overtime payments. Certain senior staff are not routinely eligible for overtime, but a temporary variation to standard terms and conditions was agreed to facilitate overtime payments in situations where these persons worked additional hours, with regard to Covid-19 pandemic. Also, Specialty, Associate Specialist and Specialist Doctors are remunerated for work done between 7 p.m. and 7 a.m., or on the weekend, at a rate of time and a third. For Junior Doctors an enhancement of between 20% and 100% of basic pay is paid for hours worked between 7 p.m. and 7 a.m., or during the weekend.

The report also states that in Northern Ireland all doctors have the right to enhanced pay for additional work under their terms and conditions of employment. During the Covid-19 pandemic, doctors working additional hours were remunerated at enhanced rates.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§2 of the 1961 Charter on the ground that workers do not have adequate legal guarantees to ensure increased remuneration for overtime.

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 United Kingdom.

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 1961 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 1961 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 United Kingdom was not in conformity with Article 4§4 of the 1961 Charter (Conclusions XXI-3 (2018)).

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

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

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

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

Reasonable period of notice: legal framework and length of service

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

In reply to the targeted question, the report states that the position remains largely as described in previous reports. As regards the specific arrangements made in response to the Covid-19 crisis and the pandemic, the report states that the UK Government introduced legislation, which commenced on 31 July 2020, which ensures that statutory redundancy pay, statutory notice pay and unfair dismissal compensation are based on a worker’s normal pay,

rather than their furlough pay (potentially 80% of their normal wage). These protections were extended for the duration of the furlough scheme (end of September 2021).

In its previous conclusion, the Committee found that the situation in the United Kingdom was not in conformity with Article 4§4 of the 1961 Charter on the ground that notice periods (at least a week's notice period after one month's service up to a maximum of 12-week notice period) were not reasonable for workers with less than three years of service (Conclusions XXI-3 (2018)).

In reply to the previous conclusion of non-conformity, the report states that the UK Government has not put into place new measures since the previous conclusion. Under the Employment Rights Act 1996, workers are entitled to receive at least a week's notice from their employer after one month's service, increasing to at least two weeks after two years' service. For each year of service over two years and up to twelve years a worker is entitled to an extra week's notice for each year of service. For example, if they have four years of service, their minimum notice shall be four weeks; for service of 12 or more years, the minimum notice is 12 weeks.

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 notes that there has been no change to the situation that was previously found not to be in conformity with Article 4§4 of the 1961 Charter. The Committee considers that the minimum notice periods provided for in the Employment Rights Act 1996 do not allow the workers with less than three years of service a certain time to look for other work before his or her current employment ends. The Committee therefore reiterates its previous conclusion of non-conformity in this respect.

In its previous conclusion the Committee reiterated its request for information on notice periods and/or severance pay applicable to early termination of fixed-term contracts and to civil servants. (Conclusions XXI-3 (2018)).

In reply to the Committee's question, the report states that fixed-term contracts in Great Britain will end automatically when they reach the agreed end date without any notice period, for the termination date is known to and agreed by the worker at the start of the contract. The report further states that fixed-term employment contracts may stipulate that they can be ended early and specify longer notice periods than the minimum notice periods set out in the Employment Rights Act 1996 (one week if they have worked continuously for at least one month, one week for each year they have worked, if they have worked continuously for two years or more). As regards early termination of fixed-term contracts in Northern Ireland, the report states that early termination of a fixed term contract may be a breach of contract.

In reply to the Committee's question as regards notice periods and/or severance pay applicable to civil servants, the report states that civil servants have the same legal rights to notice periods and pay as other workers in the UK. In addition to these general legal rights, civil servants have access to the Civil Service Compensation Scheme (CSCS). The report further states that civil servants can be dismissed on grounds of performance, conduct or attendance. Due to the constitutional position of the Crown and the prerogative power to dismiss at will, civil servants cannot demand a period of notice as of right. In practice though, Government departments do provide the right to periods of notice in line with those set out in the Civil Service Management Code (CSMC). For monthly paid staff who are not subject to a probationary period and who have less than 4 years continuous service, 5 weeks is the standard level of notice applicable. For those with more than 4 years' service, their notice is calculated as 1 week plus 1 week for every year of continuous service to a maximum of 13 weeks.

Notice periods during probationary periods

In its previous conclusion the Committee reiterated its request for information on notice periods and/or severance pay applicable to workers during probationary period (Conclusions XXI-3 (2018)).

In reply to the Committee's question, the report states that probationary periods are not defined in law in the UK. They are not linked to statutory rights. As such, they are solely a provision of a contract (or collective agreement). It is not possible to derogate from the statutory minimum provisions in an individual contract or collective agreement and therefore if a contract provides for a probationary period, it is in order to provide additional or greater rights and protection to those who complete probation.

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 1961 Charter in this respect (Conclusions XXI-3 (2018)).

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

In its previous conclusion the Committee reiterated its request for information on notice periods and/or severance pay applicable to grounds for termination of employment other than dismissal (bankruptcy and employer's invalidity or death) (Conclusions XXI-3 (2018)).

Concerning bankruptcy, in reply to the Committee's question, the report states that in Great Britain, an insolvency does not automatically terminate a contract of employment. The person who is dealing with the insolvency must inform workers about how their job is affected and what to do next. Individuals can apply to the UK Government (up to certain limits) for redundancy payments, holiday pay, outstanding payments (like unpaid wages, overtime, and commission), money that would have been earned during the notice period (statutory notice pay). However, unless the business is to be continued, the insolvency office-holder will in practice dismiss the workers. In Northern Ireland, in order to qualify for a redundancy payment, a worker must have completed a minimum of 2 complete years of service with an employer, with a redundancy payment worked out by determining age and the number of complete years of service an individual has had on the date employment ended.

Concerning the employer's invalidity or death, the report states that as a general rule, the death of an employer automatically terminates personal employment contracts and counts as a redundancy dismissal. An affected worker can claim Statutory Redundancy Pay unless the Personal Representative of the deceased employer offers to renew the employment contract or re-employ the worker within eight weeks of the death (in accordance with section 174(2)(b) Employment Rights Act 1996).

The Committee has decided to reassess its case law as regards 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 is not in conformity with Article 4§4 of the 1961 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 1961 Charter in this respect (Conclusions XXI-3 (2018)).

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§4 of the 1961 Charter on the ground that notice periods are manifestly unreasonable for workers with less than three years 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 United Kingdom.

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).

In its previous conclusion (Conclusions 2016) the Committee found that the situation was not in conformity with the Charter on the ground that the absence of adequate limits on deductions from wages equivalent to the National Minimum Wage may result in depriving workers who are paid the lowest wage and their dependents of their means of subsistence.

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

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

Deductions from wages and the protected wage

In its previous conclusion the Committee considered that the absence of adequate limits to deductions that could be made to wages paid at the level of the national minimum wage (deductions related to penalties, advance of wages, purchase of shares or securities, accidental overpayment, etc.) was contrary to the Charter as it could result in depriving workers and their dependents of their means of subsistence.

The report reiterates that the minimum wage legislation is robustly enforced in the United Kingdom. Employers who fail to comply with minimum wage legislation are required to pay all arrears to workers, including former workers. The report further reiterates that there are a limited number of deductions set out in law. The Committee has previously (2016) noted in this regard that under the National Minimum Wage Regulations 1999, there are certain other limited situations where deductions from wages can be made even where these would bring wages below the level of the minimum wage. Unlike the accommodation offset, these deductions do not have a limit for how much can be deducted.

The Committee recalls in this regard that deductions from wages must be subject to reasonable limits and these limits must be well-defined in a legal instrument. It observes that

the situation which it has previously found not to be in conformity with the Charter, has not changed as long as no limits have been established on deductions from wages. Therefore, the Committee reiterates its previous finding of non-conformity on the ground that the absence of adequate limits on deductions from wages equivalent to the National Minimum Wage may result in depriving workers who are paid the lowest wage and their dependents of their means of subsistence.

Waiving the right to the restriction on deductions from wage

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

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§5 of the 1961 Charter on the ground that the absence of adequate limits on deductions from wages equivalent to the National Minimum Wage may result in depriving workers who are paid the lowest wage and their dependents of their means of subsistence.

Article 5 - Right to organise

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

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 found that the situation in the United Kingdom was not in conformity with Article 5 of the 1961 Charter on the ground that legislation which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and which severely restricts the grounds on which a trade union may lawfully discipline members, represents an unjustified incursion into the autonomy of trade unions (Conclusions XXI-3 (2018)).

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

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

Prevalence/Trade union density

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

In reply to the targeted question, the report states that after many years of steady decline since 1980, trade union membership in the UK has increased slightly over the reporting period (2017-2020), having increased from 23.3% of all employees in 2017 to 23.7% in 2020.

The Committee takes note of the information provided as regards the percentage of total employees' trade union membership by sector and industry. The Committee notes the difference of trade union membership between the public sector (51.9%) and the private sector (12.9%) and the rate of trade union membership in accommodation and food service activities (4.3%), professional, scientific, and technical activities (8.3%), and information and communication (8.5%).

Personal scope

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

In reply to the Committee's question, the report states that armed forces personnel are permitted to join civilian trade unions and professional associations that enhance their trade skills and knowledge. The report further states that despite this, the UK's trade union legislation specifically excludes armed forces personnel from collective labour relations. Armed Forces personnel are therefore not permitted to join an independent trade union for collective bargaining purposes. The Committee notes that members of the Armed Forces do not have the right to form or join a body that represents them on a permanent and established basis on issues that fall within the scope of the right to organise such as housing and accommodation, conditions of service, pay and pensions, and after service employment and care. The Committee therefore considers that the situation in the United Kingdom is not in conformity with Article 5 of the 1961 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).

Restrictions on the right to organize

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.

In reply to the Committee's question, the report states that in the UK, all workers have the right to join a trade union and to be represented by that union in collective bargaining with employers. Where an employer refuses to recognise a union voluntarily, that union can apply on behalf of the workers to the Central Arbitration Committee (CAC) in Great Britain, or the Industrial Court in Northern Ireland, for statutory trade union recognition. Where that union can demonstrate it has majority support in a workplace, the CAC will grant statutory union recognition. Where an individual working in the gig economy is classified as a worker (*i.e.*, meets the definitions of worker in the UK's legislation), then they have full union rights.

Trade union activities

In its previous conclusion, the Committee concluded that the situation in the United Kingdom was not in conformity with Article 5 of the 1961 Charter on the ground that legislation which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and which severely restricts the grounds on which a trade union may lawfully discipline members, represents an unjustified incursion into the autonomy of trade unions (Conclusions XXI-3 (2018)).

The report states that there have been no legislative changes in this regard since the last report. The Committee therefore reiterates its previous conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 5 of the 1961 Charter on the grounds that:

- the right to organise is not guaranteed to members of the armed forces;
- legislation which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and which severely restricts the grounds on which a trade union may lawfully discipline members, represents an unjustified incursion into the autonomy of trade unions.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee recalls that no targeted questions were asked for Article 6§1 of the 1961 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 1961 Charter in respect of the provisions relating to the “Labour rights” thematic group).

As the previous conclusion found the situation in the United Kingdom 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 United Kingdom is in conformity with Article 6§1 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The Committee recalls that no targeted questions were asked for Article 6§2 of the 1961 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 1961 Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee also recalls that in the General Introduction to Conclusions XXI-3 (2018), it posed a general question under Article 6§2 of the 1961 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 considered that the situation in the United Kingdom was not in conformity with Article 6§2 of the 1961 Charter on the ground that workers and trade unions did not have the right to bring legal proceedings in the event that employers offered financial incentives to induce workers to exclude themselves from collective bargaining (Conclusions XXI-3 (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.

The Committee recalls that following the judgment of the European Court of Human Rights in *Wilson & the National Union of Journalists (and Others) v. the United Kingdom*, Application nos. 30668/96, 30671/96 and 30678/96 of 2 July 2002, the Employment Relations Act (ERA of 2004) made it unlawful for employers to offer financial incentives to induce workers to exclude themselves from the scope of collective bargaining. However, the ERA of 2004 does not provide workers who did not receive such an offer with the right to complain about the making of offers to co-workers. Additionally, the ERA of 2004 does not create a free-standing right for a trade union to complain about infringement of its own right to collective bargaining. As according to the report there has been no change to this situation, the Committee reiterates its previous conclusion.

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

Covid-19

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

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 6§2 of the 1961 Charter on the ground that workers and trade unions do not have the right to bring legal proceedings in the event that employers offer financial incentives to induce workers to exclude themselves from collective bargaining.

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 1961 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 United Kingdom 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 United Kingdom is in conformity with Article 6§3 of the 1961 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 United Kingdom.

The Committee recalls that no targeted questions were asked for Article 6§4 of the 1961 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 XXI-3 (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 United Kingdom was not in conformity with Article 6§4 of the 1961 Charter (Conclusions XXI-3 (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

In its previous conclusion, the Committee considered that the situation was not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- the scope for workers to defend their interests through lawful collective action was excessively circumscribed; lawful collective action was limited to disputes between workers and their employer, thus preventing a union from taking action against a *de facto* employer if this was not the immediate employer;
- the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, was excessive;
- the protection of workers against dismissal when taking industrial action was insufficient.

In its report, the UK Government firstly states, in general, that it still believes that the situation is in conformity with Article 6§4 of the Charter. It then addresses the three grounds for non-conformity.

Definition and permitted objectives

The information provided by the Government indicates that no changes occurred during the reference period: lawful collective action is still limited to disputes between workers and their employer (with the exception of lawful picketing). The Committee therefore reiterates its conclusion of non-conformity on this point.

Restrictions to the right to strike, procedural requirements

The Government reiterates that the legal requirements with regard to giving notice of a ballot are not excessive; they are proportionate. The law gives employers the chance to respond to the prospect of a strike ballot.

The Committee notes that the requirement to give an employer notice of a ballot on collective action, in addition to the notice that trade unions must give before commencing such action, is still in force. The Committee therefore reiterates its conclusion of non-conformity on this point.

Consequences of strikes

The law protects workers who participate in lawful collective action from dismissal for 12 weeks. The Committee previously held that this period of 12 weeks was arbitrary. Since the situation has not changed, it reiterates its conclusion of non-conformity on this point.

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 XXI-3 (2018). It therefore reiterates its question and requests that the next report provide information on the right of members of the police to strike and any restrictions.

Covid-19

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

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

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

In its report, the Government states that no specific measures were taken in the United Kingdom during the pandemic with regard to the right to strike or minimum or essential services. Trade union rights, including the right to strike, were not curtailed but the exercise of these rights had to be compliant with health regulations, such as social distancing rules. On the Isle of Man, no specific measures were taken during the pandemic to ensure the right to strike or restrict the right of workers and employers to take industrial action.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- lawful collective action is limited to disputes between workers and their employer;
- the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive;
- the protection of workers against dismissal when taking industrial action is insufficient.