EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

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PRESS BRIEFING ELEMENTS

Conclusions 2022

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Press briefing elements: Conclusions 2022 by the European Committee of Social Rights

I. Introductory remarks: general overview of Conclusions 2022

In 2022, in the framework of the reporting procedure, the European Committee of Social Rights (ECSR) examined national reports[1] submitted by 33 States Parties on the articles of the Charter relating to the thematic group "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/Article 2 of the Additional Protocol);
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22/Article 3 of the Additional Protocol);
- 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 national reports cover the period from 1 January 2017 until 31 December 2020.

The following 33 countries were examined:

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Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, North Macedonia, Portugal, Romania, Serbia, the Slovak Republic, and Türkiye.

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Germany, Luxembourg, the Netherlands Curaçao, the Netherlands Caribbean part, Poland, Spain and the United Kingdom.

No report was submitted by Ukraine due to the ongoing armed conflict.

No report was submitted by the Russian Federation, which ceased to be a member of the Council of Europe in March 2022 and, by consequence, ceased to be a Party to the European Social Charter.

No report was submitted by the Netherlands Sint Maarten. The report submitted by the Netherlands Aruba concerned provisions not under examination during the reporting cycle and hence was not examined.

[1] National reports submitted by State parties: Reporting system of the European Social Charter (coe.int)

Denmark and Iceland submitted their reports too late for them to be examined. However, exceptionally, the Committee decided to examine Denmark's report relating to Articles 5 and 6§2 due to the fact that a meeting had been held in March 2022 with the Danish authorities on the topic of the Danish International Shipping Register and the conformity of such with those articles.

Comments from civil society

For its examination of the State reports, the Committee also had at its disposal comments on the reports submitted by different trade unions, national human rights institutions and non-governmental organisations. These comments were often crucial in terms of ensuring that the Committee had a full, accurate understanding of the national situations concerned.

The outcome: key figures

At its session in January 2023, the Committee adopted 611 conclusions in relation to the Charter.

There were 255 conclusions of conformity and 245 conclusions of non-conformity. In 111 cases the Committee was unable to assess the situation due to lack of information ("deferrals").

Main findings

– *Problems identified*

The problems highlighted in respect of the provisions at stake appear in Appendix I.

The ECSR adopted a number of *statements of interpretation (these statements develop and clarify the meaning and scope of the Charter as regards specific issues)*:

- **Statement of interpretation on Article 4§4**

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 the length of service, whether with the same employer or where a worker has been successively employed in precarious forms of employment relations.

The Committee considers that in the event of the death of an employer who is a natural person, there is no obligation to give a notice period. However, it asks if there is a mechanism to

protect the interests of workers employed by an employer who is a natural person in the event of the employer's death (contractual or statutory compensation).

- **Statement of interpretation on Article 4§5**

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.

- **Statement of interpretation on Article 26 - online harassment related to work**

The Committee notes that the Charter applies to harassment in all places and circumstances related to work. These include a worker's usual workplace, as well as in situations in which a worker is working remotely (including at home) or where the worker works at a client's or contractor's workplace or home. It also applies where a worker is engaging in work-related activities such as conferences, training, work trips, work-related corporate events or social activities. The Committee considers that the rights and obligations deriving from Article 26 of the Charter apply to incidents of online harassment. Online harassment may occur through a range of different media, including digital technologies/information and communication technologies ("ICT"), such as e-mails, text messages, chats/instant messages as well as video conference and social media platforms and virtual spaces. Online harassment may result in very speedy propagation of information, mass dissemination and the availability of information for a long period of time.

The Committee recalls that Article 26 of the Charter imposes positive obligations on States Parties to take appropriate preventive measures against online harassment and to take all appropriate measures to protect workers from such conduct. In particular, States Parties should, after consulting employers' and workers' organisations, provide information, carry out awareness-raising and training programmes in order to help workers identify, understand and be aware of online work-related harassment and its manifestation and effects, as well as their rights and responsibilities in this regard. Furthermore, information should be provided to workers on how to report and respond to online harassment (such as reporting the harassment to their employer, the online platform, the labour inspection or the police, or blocking/closing accounts). Moreover, workers should be informed about the procedure to follow and the

remedies available. There must be protection from retaliation where workers report incidents of online harassment.

Furthermore, Article 26 of the Charter requires that victims enjoy effective protection in law and in practice against online harassment. This protection shall include the right to challenge the offensive behaviour before an independent body, the right to obtain adequate compensation and the right not to be retaliated against for having pursued the respect of these rights. Victims of online harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. In addition, the right to reinstatement should be guaranteed to workers who have been dismissed or pressured to resign for reasons linked to online harassment.

Finally, responsible persons should be held accountable with a view to preventing the recurrence of online harassment. It must be possible for employers to be held liable when online harassment occurs in relation to work. States Parties shall ensure that the employer is under a formal obligation to report alleged incidents of online harassment to the competent investigating authorities.

- *Progress identified*

The Conclusions 2022 also show a number of positive developments which have taken place during the period under consideration. They appear in Appendix II.

Appendix: I Summary of main findings

Article 2 - The Right to just conditions of work

By accepting **Article 2§1** of the Charter, States Parties 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 ECSR had addressed targeted questions to States Parties about: the updated legal framework for ensuring reasonable working hours (and exceptions thereto); enforcement measures and monitoring arrangements; actions taken by authorities' to ensure respect for reasonable working hours: remedial action taken in respect of specific sectors of activity; and law and practice on on-call periods.

With regard to Covid-19, States Parties were asked for information on the impact of the Covid-19 crisis on the right to just conditions of work and on the general measures taken to mitigate adverse impact.

Of the 28 conclusions under Article 2§1 of the Charter, the ECSR considered that the situation was in conformity with the requirements of this provision in five cases (**Luxembourg, Andorra, Greece, Portugal, Romania**), out of which three were "pending receipt of the information requested" (**Andorra, Portugal and Romania**).

The ECSR deferred its conclusion for nine countries (**Belgium, Ireland, Italy, Lithuania, Latvia, Republic of Moldova, North Macedonia, Montenegro and Slovak Republic**).

In 14 cases (**Germany, Spain, Poland, Albania, Armenia, Bosnia and Herzegovina, Estonia, Finland, France, Georgia, Hungary, Malta, Serbia and Türkiye**), the ECSR considered that the situation was not in conformity with this provision of the Charter. The grounds of non-conformity were the following:

- the law does not guarantee the right to reasonable weekly working hours for certain categories of workers (**Malta**);
- in some jobs, the working day may exceed 16 hours and even be as long as 24 hours (**Poland, Armenia, Estonia, Hungary**) or 19 hours (**Finland**), while weekly working time may exceed 60 hours (**Spain, Albania, Türkiye**) or be as long as 72 hours (**Hungary**);
- on-call periods during which no effective work is undertaken are considered as rest periods (**Poland, France, Serbia**);
- there are no reference periods (inadequate limits to) in flexible working time arrangements (**Bosnia and Herzegovina**);
- working time for employees under annual working days system is unreasonable (**France**);
- there is no appropriate authority that supervises whether daily and weekly working time limits are respected in practice (**Georgia**);
- the reference period for calculation of average working hours can be extended beyond 12 months (**Hungary**), or (during the pandemic), the reference period for banking of hours could be extended to 24 months upon a unilateral decision of the employer (**Hungary**).

Article 2§2 guarantees the right to public holidays with pay, in addition to weekly rest periods and annual leave. Public holidays may be specified in law or in collective agreements.

As there were no targeted questions on Article 2§2 issues during this reference cycle, the Committee focused its assessment on States Parties for which the previous finding was one of non-conformity, deferral or conformity pending receipt of the information requested.

The ECSR examined **30 countries:** Germany, Spain, United Kingdom, Luxembourg, Albania, Andorra, Armenia, Austria, Belgium, Bulgaria, Bosnia and Herzegovina, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, North Macedonia, Malta, Montenegro, Portugal, Roumania, Serbia, Slovak Republic and Türkiye.

The ECSR considered that the situation was in conformity with the requirements of this provision in 16 countries **(Spain, Luxembourg, Andorra, Austria, Belgium, Bulgaria, Estonia, Finland, Hungary, Ireland, Lithuania, North Macedonia, Montenegro, Roumania, Slovakia and Türkiye).**

In two countries, the situation was found to be in conformity pending receipt of the information requested (**Armenia and Germany**).

The ECSR **deferred** its conclusion for three countries **(Albania, Latvia, Malta).**

In nine cases, the ECSR considered that the situation was not in conformity with this provision of the Charte (**Bosnia and Herzegovina, France, Georgia, Greece, Italy, Republic of Moldova, Portugal, Serbia and United Kingdom**).

Some examples of grounds for non-conformity include:

- work performed on a public holiday is not adequately compensated (**Bosnia and Hergovina, Georgia, Italy, Republic of Moldova, Portugal, Greece.**
- it has not been established that work performed on a public holiday is adequately compensated (**France, Serbia, Greece**
- the right of all workers to public holidays with pay is not guaranteed (**United Kingdom**).

Article 2§3 guarantees the right to a minimum of four weeks (or 20 working days) annual holiday with pay.

As there were no targeted questions on **Article 2§3** issues during this reference cycle, the Committee focused its assessment on States Parties for which the previous finding was one of non-conformity, deferral or conformity pending receipt of the information requested.

The Committee examined **27 countries**: Germany, Spain, United Kingdom, Luxembourg, Albania, Andorra, Armenia, Austria, Belgium, Bulgaria, Bosnia and Herzegovina, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, North Macedonia, Malta, Montenegro, Poland, Portugal, Roumania, Serbia, and Slovak Republic.

In 19 cases, the ECSR considered that the situation was in conformity (**Andorra, Austria, Armanie, Bulgaria, Estonia, Finland, France, Italy, Latvia, Lithuania, Malta Republic of Moldova, North Macedonia, Portugal, Serbia, Slovak republic, Germany, Poland and United Kingdom**).

For **Luxembourg**, the Committee could not assess the situation due to a lack of information.
In seven cases the ECSR considered that the situation was not in conformity with this provision of the Charter (**Albania, Belgium, Bosnia and Herzegovina, Greece, Hungary, Ireland and Spain**).

Examples of grounds for non-conformity include:

- employees may relinquish annual leave in return for increased remuneration (**Albania**, **Greece**);
- employees' right to take at least two weeks of uninterrupted holiday during the year the holidays fall due is not sufficiently guaranteed (**Albania**, **Hungary**);
- workers who suffer from illness or injury while on holiday are not entitled to take the days lost at another time (**Greece**, **Belgium**);
- the law allows all annual leave to be carried over to the following year (**Ireland**);
- not all employees have the right to take at least two weeks of uninterrupted holiday during the year (**Spain**).

Article 2§4 deals with the issue of eliminating the risks inherent in hazardous or unhealthy occupations and, where such risks have not yet been eliminated or sufficiently reduced, ensuring that workers employed in such occupations have either reduced working hours or additional paid holidays. The 1961 Charter was drafted at a time when working hours were longer and occupational health and safety policies were not primarily aimed at preventing and eliminating risk but at compensating for that risk. Since then, weekly and daily working hours have generally decreased and, above all, prevention has become the priority (most often in the form of reducing the duration of exposure to the minimum that is deemed safe for workers' health). The revised Charter reflects this development by providing for two parts of Article 2§4: one obliging States Parties to take the necessary measures to eliminate risks and the other requiring them to take compensatory measures in the event of residual risks.

Therefore, the structure of conclusions prepared by the Committee under this article is devided into two sections:

1. Elimination or reduction of risks
2. Measures taken in case of residual risks

The Committee had asked whether measures related to the Covid-19 pandemic had been adopted during the reference period. A third section therefore deals with this issue, which has not been assessed in terms of conformity with the Charter.

As there were no targeted questions on Article 2§4 issues during this reference cycle, the Committee focused its assessment on States Parties for which the previous finding was a finding of non-conformity, deferral or conformity pending receipt of the information requested.

The ECSR examined 20 countries under the Revised Charter and the Charter of 1961 in respect of this article.

There were three findings of conformity:

- Simple: **Andorra**
- Pending receipt of the information requested: **Latvia**, **Slovak Republic**

There were nine conclusions of non-conformity:

- **Luxembourg** on the ground that workers exposed to tasks involving residual health risks are not entitled to appropriate compensation measures. This was also the case in the **UK**;
- **France** on the ground that it has not been established that all workers exposed to residual risks are entitled to adequate compensatory measures (reduced working hours, additional leave or similar measures). The same ground also arose with regard to **Portugal** and **Greece** in relation to workers in the mining sector.

In the remaining conclusions, the Committee found that conformity could not be established:

- **Bosnia and Herzegovina** on the ground that it has not been established that all workers exposed to residual risks are entitled to adequate compensatory measures (reduced working hours, additional leave or similar measures);
- **Italy** on the grounds, first, that it has not been established that the risks inherent to dangerous or unhealthy occupations have been sufficiently eliminated or reduced and, second, that not all workers performing dangerous or unhealthy work are entitled to appropriate compensation measures, such as reduced working hours or additional paid leave;
- The **Republic of Moldova** on the ground that it has not been established that risks are reduced or eliminated for workers performing dangerous or unhealthy tasks;
- **Spain** on the ground that it has not been established that all workers performing dangerous or unhealthy work are entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

Article 2§5 concerns "weekly" rest, which may be carried over to the following week, being understood that twelve consecutive working days before entitlement to two days of rest are a maximum.

There were no targeted questions in respect of Article 2§5 and therefore previous conclusions of conformity were not reviewed.

The ECSR examined **30 countries** under the Revised Charter and the Charter of 1961 which were the subject of the conclusions under this article.

The Committee considered that the situation was in conformity in three cases (**Germany, Georgia, Italy, Portugal)**. It decided to defer one conclusion (**Latvia**)

In seven cases, the ECSR considered that the situation was not in conformity:

- on the ground that it has not been established that there are sufficient safeguards to prevent all workers from working for more than 12 consecutive days without a rest period (**Bosnia and Herzegovina**);
- on the grounds that, first, on-call periods occurring on Sunday are wrongly regarded as rest periods and that, second, it has not been established that the right to a weekly rest period is sufficiently guaranteed (**France)**;
- on the ground that domestic workers are not covered by the legislation guaranteeing a weekly rest period (**Greece**);
- 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 (**Hungary**);
- on the ground that weekly rest days may be postponed over a period exceeding twelve successive working days (**North Macedonia**);
- 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 (**Slovak Republic**);
- on the ground that there are insufficient safeguards to prevent workers from working for more than twelve consecutive days without a rest period (**United Kingdom**).

Article 2§6 of the Charter guarantees the right of workers to essential written information when starting employment.

As there were no targeted questions for Article 2§6, only States Parties in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of the information requested were required to provide information for this provision in the current reporting cycle.

The ESCR also asked States Parties to provide information concerning any special arrangements related to the pandemic or changes to work arrangements following the pandemic, which come within the scope of Article 2§6.

Of the 25 situations examined during the 2022 monitoring cycle, the ECSR adopted 20 conclusions of conformity, two conclusions of non-conformity, and three conclusions of deferral.

The grounds of non-conformity concerned the absence of certain elements of information from the employment contract or some other document, such as the length of the notice period in case of termination of contract in **Armenia**, or the amount of paid leave in **Serbia**.

Article 2§7 of the Charter guarantees the right of workers performing night work to benefit from measures which take account of the special nature of night work.

As there were no targeted questions for Article 2§7, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of the information requested were required to provide information for this provision in the current reporting cycle.

The ESCR also asked States Parties to provide information concerning any special arrangements related to the pandemic or changes to work arrangements following the pandemic, coming within the scope of Article 2§7.

Of the 23 situations examined during the 2022 monitoring cycle, the ECSR adopted **14 conclusions of conformity**, **seven conclusions of non-conformity**, and **two conclusions of deferral.**

The grounds of non-conformity concerned the absence of certain measures which take account of the special nature of night work, such as providing for initial and/or regular medical examinations (**Albania**, **Andorra, Bosnia and Herzegovina**, **Georgia**), possibilities of transfer to daytime work (**Albania**), consultation with the workers' representatives (**Ireland**, **Italy**, **North Macedonia**), or shortcomings in legal definitions of the concepts of "night worker" and "night work" (**Bosnia and Herzegovina**).

Article 4 – The right to a fair remuneration

Article **4§1** of the Charter guarantees the right to remuneration such as will give workers and their families a decent standard of living. It is the Committee's case law that, in order to ensure a decent standard of living, the minimum net wage or the lowest net wages paid must be above a minimum threshold, set at 50% of the net average wage. There is a presumed conformity when the net lowest wages paid are above 60% of the net average wage, whereas if these wages are between 50% and 60% of the net average wage, it is for the State Party to show that they ensure a decent standard of living. Relatively few States Parties have accepted this provision of the Charter.

The Committee found that even if some States made progress by raising their minimum statutory wages, out of the 19 national situations that it examined in this reporting cycle, it did not make a conclusion of conformity. In the case of 11 States, the Committee found that the

statutory minimum wage or the lowest wages fixed by collective agreements were too low in comparison with the average wage and therefore, did not ensure a decent standard of living. In other cases (e.g. **France, Italy, Spain, Albania)** the Committee considered that the information contained in the national report did not provide enough elements for the Committee to establish that the minimum wage was fair. In other cases, where the Committee had previously found (in 2018) that the situation was in conformity, it noted that the minimum wage now falls below the threshold established by the Committee (**Luxembourg** and **Austria**). As regards Austria, the Committee noted a positive development; that the statutory minimum wage has been applied across the board since 2021.

The Ie also addressed targeted questions to States in relation to Iorkers in atypical employment, such as those working in the gig economy or platform economy. The Committee's conclusionsfocus in particular on 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 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. In relation to Covid-19, the Committee asked whether the financial support was provided for workers through furlough schemes throughout the period of partial or full suspension of activities due to the pandemic.

By accepting **Article 4§2** of the Charter, States Parties unde11ecognizerecognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.

With regard to Covid-19, States Parties were 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 ECSR asked for specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and for an explanation of how the matter of overtime and working hours was addressed in respect of teleworking.

Of the 28 conclusions under Article 4§2 of the Charter, the ECSR considered that the situation was in conformity with the requirements of this provision in 13 cases (**Andorra, Armenia, Austria, Bulgaria, Estonia, Germany, Italy, Lithuania, Luxembourg, Montenegro, Portugal, Romania and Slovak Republic**).

The ECSR deferred its conclusion for eight countries (**Albania, Belgium, Finland, Georgia, Greece, Latvia, Malta and Serbia**).

In seven cases (**France, Ireland, North Macedonia, Poland, Spain, Türkiye** and **United Kingdom**), the ECSR considered that the situation was **not in conformity** with this provision of the Charter. The grounds of non-conformity were the following:

- the right to increased remuneration for overtime work is not guaranteed to all workers (**Ireland, Poland, United Kingdom**);
- public officials are not guaranteed an increased period of time-off in lieu of remuneration for overtime (**North Macedonia, Türkiye**);
- increased remuneration or an increased compensatory period of time-off for overtime work is not guaranteed (**Spain**);
- overtime work performed by ordinary members of the supervision and enforcement corps of the police is not renumerated at an an increased rate (**France**);
- the increase in the command bonus for senior managers only compensates for a very small number of overtime hours. while compensatory time-off provided to

senior police officers working overtime when performing certain duties is only equivalent in length to overtime worked (**France**).

Article 4§3 guarantees the right to equal pay without discrimination on grounds of sex. This is one aspect of the right to equal opportunities in matters of employment guaranteed by Article 20. As a result, the case law under Article 20 applies *also* to Article 4§3.

In a targeted question the ESCR requested information on the impact of the Covid-19 pandemic on the right of women and men to equal pay for work of equal value. In addition it examined the situation in States Parties for which the previous finding was a finding of non-conformity, deferral or conformity pending receipt of the information requested.

The ECSR examined 30 countries under this article: Albania, Andorra, Armenia, Austria, Azerbaidjan, Belgium, Bulgaria, Bosnia and Herzegovina, Germany, Spain, Estonia, Finland, France, Georgia, Greece, Ireland, Italy, Lithuania, Latvia, Luxembourg, Republic of Moldova, North Macedonia, Malta, Montenegro, Poland Portugal, Roumania, Serbia, Slovak Republic and Türkiye.

The ECSR considered that the situation was in conformity with the requirements of this provision in **four cases** (**Austria, France, Portugal, Spain**).

In respect of one country (**Lithuania**) conformity is pending receipt of the information requested.

The ECSR deferred its conclusions for **four countries** (**Albania, Estonia, Latvia, Slovak Republic**).

The Committee adopted **21 conclusions of non-conformity** (**Andorra**, **Armenia**, **Azerbaidjan**, **Belgium**, **Bulgaria**, **Bosnia and Herzegovina**, **Germany**, **Finland**, **Georgia**, **Greece**, **Ireland**, **Italy**, **Luxembourg**, **Republic of Moldova**, **North Macedonia**, **Malta**, **Montenegro**, **Poland**, **Romania**, **Serbia** and **Türkiye**).

The main grounds of non conformity were the following:

- pay comparisons are not possible across companies (**Andorra**, **Azerbaidjan**, **Georgia**, **Republic of Moldova**, **Poland** and **Romania**);
- there is no explicit guarantee of equal pay for work of equal value (**Armenia**, **Azerbaijan**, **Georgia** and **Türkiye**);
- there is no shift in the burden of proof in pay discrimination cases (**Armenia**, **Azerbaidjan**);
- the obligation to ensure pay transparency is not guaranteed (**Belgium**, **Bosnia and Herzegovina**, **Bulgaria**, **Greece and Italy**);
- the existence of predetemined upper limit on compensation for employees who are dismissed as a result of gender discrimination (**Bulgaria**, **Armenia** and **Germany**)

By accepting **Article 4§4** of the Charter, States Parties undertake to recognise the right of all workers to a reasonable period of notice for termination of employment.

The ECSR asked a targeted question 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 pandemic.

The ECSR decided that the question of the reasonableness of notice periods would no longer be addressed, except where notice periods were manifestly unreasonable.

Of the 24 conclusions examined under Article 4§4, the ECSR considered that the situation was in conformity with the requirements of this provision in one case (**Estonia**).

The ECSR deferred its conclusion for one country (**France)**.

In 22 cases (**Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Georgia, Greece, Ireland, Italy, Latvia, Lithuania, Malta, Republic of Moldova, Poland, Portugal, Romania, Serbia, Slovak Republic, Spain, Türkiye and United Kingdom**), the ECSR considered that the situation was not in conformity with this provision of the Charter.

The main grounds of non-conformity were the following:

- there is no notice period for workers on probation (**Andorra, Bulgaria, Greece, Romania, Spain, Türkiye**) or it is u manifestly nreasonable (**Azerbaijan Latvia, Portugal, Serbia, Slovak Republic**);
- no notice period is provided where the termination of an employment contract is due to the initiation of liquidation proceedings in situations in whichthe employer is a legal entity (**Georgia, Romania**), in cases of dismissal due to minor disciplinary offences (**Armenia**), or for statutory employees in the public sector (**Belgium**);
- There is no notice period in cases of dismissal due to long-term illness or occupational accident (**Poland**);
- in general, no notice periods are provided for by legislation in case of dismissal (**Serbia**).

Also, some notice periods were found to bemanifestly unreasonable:

- in cases of termination of employment on account of long-term illness or disability, beyond ten years of service (**Azerbaijan**) or on account of grounds stipulated in the employment contract, in cases of more than three years of service (**Azerbaijan**);
- the notice periods applicable to workers and civil servants in general (**Ireland**), or for certain workers with up to five years of service, with five to 10 years of service, and with more than 14 years of service (**Italy**);
- a notice period of ten days, applicable to dismissals on grounds of inability to perform due to the worker's state of health and temporary incapacity, for workers with more than six months of service (**Latvia**);
- a notice period of one month, where the dismissal is based on grounds of incompetence; or caused by the reinstatement of another worker; staff reductions or liquidation of the business, for workers with more than three years of service (**Latvia**);
- notice periods applicable to r workers with less than six months of service, between six months and two years of service and between three and four years of service (**Malta**) and for workers with less than three years of service (**United Kingdom**);
- notice periods applicable in the event of dismissal on health grounds or caused by the reinstatement of a former worker following a court order (**Republic of Moldova**); for dismissal for physical or mental incapacity or for professional inadequacy or as a result of the removal of positions (**Romania**);
- the notice period applicable to dismissal on grounds of underperformance, for workers with more than three months of service (**Serbia**).

The other grounds for non-conformity were the following:

- collective agreements may provide for a minimum notice period of one month in the case of workers with five or more years' service (**Albania**);
- the relevant national legislation does not set out different notice periods for the termination of contracts nor severance pay proportionate to the length of service (**Georgia**);
- severance pay granted to manual workers during the reference period is inadequate (**Greece**);
- notice periods do not take into account the length of service in cases of dismissal at the employer's initiative through no fault of the worker (**Lithuania**).

Article 5 - The right to organise

Article 5 guarantees workers' and employers' freedom to organise and includes the right to form trade unions and employers organisations, the right to join as well as not to join trade unions, protection against discrimination on grounds of trade union membership, and trade union autonomy.

States were asked targeted questions on trade union membership prevalence, as well as on sectors in which workers were excluded from forming or joining organisations for the protection of their interests. In addition it examined the situation in States for which the previous finding was a finding of non-conformity, deferral or conformity pending receipt of the information requested. The right of members of the armed forces to organise was also examined.

The ECSR examined **34** situations and adopted **five conclusions of conformity** pending receipt of the information requested (**Andorra**, **Austria**, **Germany**, **Finland**, and **Luxembourg**) as well as **15 deferrals** (**Belgium**, **Bosnia and Herzegovina**, **Bulgaria**, **Estonia**, **Georgia**, **Greece**, **Hungary**, **Malta**, **Montenegro**, **Netherlands Curaçao**, **Netherlands Caribbean part**, **North Macedonia**, **Romania**, **Slovak Republic** and **Spain**).

The ECSR adopted **14 conclusions of non-conformity** (**Albania**, **Armenia**, **Azerbaijan**, **Denmark**, **France**, **Ireland**, **Italy**, **Latvia**, **Lithuania**, **Republic of Moldova**, **Poland**, **Serbia** and **United Kingdom**),

The main grounds of non-conformity were the following:

- police officers do not enjoy the right to organise (**Albania**, **Armenia**, **Republic of Moldova**);
- members of the armed forces do not enjoy the right to organise (**Armenia**, **France**, **Italy**, **Latvia**, **Lithuania** and **United Kingdom**);
- a high number of civil servants do not enjoy the right to organise (**Albania**, **Poland**);
- minimum membership requirements for forming a trade union/ employer association are too high (**Armenia**, **Latvia** and **Serbia**).

Article 6 – The right to Bargain collectively

Article 6§1 of the Charter concerns the obligation to promote joint consultation between workers and employers.

As there were no targeted questions for Article 6§1, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending

receipt of the information requested were required to provide information for this provision in the current reporting cycle.

Of the 32 situations examined during the 2022 monitoring cycle, the ECSR adopted 20 conclusions of conformity, six conclusions of non-conformity, and six conclusions of deferral.

Most findings of non-conformity concerned the absence of joint consultative bodies in the public sector (**Albania**, **Armenia**, **Georgia**, **Malta**). Other grounds of non-conformity related to the absence of judicial review with respect to decisions to deny trade unions representative status (**Albania**), joint consultation not being sufficiently promoted (**Bosnia and Herzegovina**), joint consultation not covering all matters of mutual interest to workers and employers and not taking place at differentlevels (**Georgia**), and inadequate criteria for determining representative status (**Portugal**).

Article 6§2 of the Charter concerns the obligation to promote, where necessary and appropriate, machinery for voluntary negotiations between employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

As there were no targeted questions for Article 6§2, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of the information requested were required to provide information for this provision in the current reporting cycle.

In the last cycle (Conclusions 18), the ESCR included a general question under Article 6§2 asking States to provide 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. As most States Parties failed to answer this question, the ESCR reiterated it

The ESCR asked States Parties to provide information specific measures taken during the pandemic to ensure the respect of the right to bargain collectively.

Of the 33 situations examined during the 2022 monitoring cycle, the ECSR adopted **13 conclusions of conformity, 17 conclusions of non-conformity, and three conclusions of deferral.**

Most findings of non-conformity concerned the insufficient promotion of collective bargaining (**Albania**, **Armenia**, **Azerbaijan**, **Bosnia and Herzegovina**, **Bulgaria**, **Estonia**, **Georgia**, **Hungary**, **Lithuania**, **Romania**). Other grounds of non-conformity concerned the fact that employers may unilaterally disregard a collective agreement (**Georgia**, **Spain**) or that the right to collective bargaining of behalf of certain categories of workers is unduly restricted (**Albania**, **Denmark**, **France**, **Italy**, **Malta**).

Under the terms of **Article 6§3** of the Charter, States must institute conciliation and arbitration procedures to facilitate the settlement of collective labour disputes, in the private and public sectors. These procedures may be established by legislation, by collective agreements or by practice.

For this review cycle, there was no targeted question concerning Article 6§3. For this reason, only those States for which the previous conclusion had been one of non-compliance, deferral or compliance pending receipt of the information requested had to provide information for this provision (i.e. about half of the States).

The ECSR examined 33 national situations of which **19 were found to be in conformity.** There were **five deferrals** pending receipt of the information requested.

In **eight cases**, the ECSR concluded that the national situation was **not in conformity**.The most frequent reason for non-conformity was the compulsory recourse to arbitration for the settlement of labour disputes in the framework of collective bargaining (arbitration must be voluntary, according to the Committee's case law) (**Albania, Azerbaijan, Malta, Portugal**).

The other situations of non-conformity mainly concerned the absence of conciliation and/or arbitration procedures (in the private and/or public sector) to facilitate the settlement of labour disputes in the framework of collective bargaining.

Article 6§4 guarantees the right of workers and employers to bargain collectively, including the right to strike in the event of conflicts concerning the negotiations of a collective agreement (conclusion or amendment).

For this review cycle, particular attention was paid to the right to strike of members of the police and any restrictions on this right. In order to have an overview, the Committee had asked States, in its General Introduction to the Conclusions 2018, to provide information on this subject in the next report.

The ECSR examined 29 country situations, of which **24 were found not to be in conformity**. **Three situations were found to be in conformity** pending additional information (Belgium, Finland and Italy) and **two situations were deferred** pending the requested information (Greece and the Caribbean part of the Netherlands).

Excessive restrictions on the right to strike are the most frequent reason for non-conformity (some 20 findings of non-conformity). These situations mainly concern States where the range of sectors in which the right to strike can be restricted is too wide and/or these restrictions are too extensive (e.g. **Armenia, Azerbaijan, Bosnia and Herzegovina, Republic of Moldova, Montenegro, Serbia**), and States where the right to strike is prohibited in certain sectors (e.g. **Albania**) or not recognised for certain categories of persons, e.g. civil servants (**Azerbaijan, Estonia, Germany**) and members of the police.

With regard to the *right to strike of members of the police*, the Committee was not able to examine the situation for all States because the vast majority of States did not reply (or replied incompletely) to the question posed in the General Introduction to the Conclusions 2018. However, on the basis of the information available, the situation appears unsatisfactory. The Committee concluded that there were 12 situations of non-conformity on the grounds, either that members of the police services do not have the right to strike (**Armenia, Georgia, Germany, Hungary, Ireland, Latvia, Lithuania, Malta, Romania, Spain**) or that the restrictions on the right to strike of members of the police are too extensive (**North Macedonia, Montenegro**).

The other main reasons for non-conformity were:

- the groups entitled to bargain collectively are too small, e.g. the percentage of workers required in order to be able to take strike action is too high or the right to strike is reserved only for certain trade unions (**Armenia, France, Germany, Hungary, Ireland, Montenegro, Portugal, Romania**);

- the objectives of collective action are too limited, e.g. collective action is limited to conflicts between workers and their direct employer (**UK)** or strikes are only allowed if they aim at the conclusion of a collective agreement (**Germany**);

- the consequences of strikes are excessive, e.g. workers can be dismissed for taking part in a strike (**Ireland, Malta** and **UK**) or the deductions from the wage of strikers can be higher than the wage corresponding to the period of the strike (**France**);

- the procedural requirements are excessive (obligation to announce the duration of a strike before it starts, **Bulgaria**).

Article 21 – The right to information and consultation

Article 21 of the Charter guarantees the right of workers to be regularly informed concerning the economic and financial situation of the undertaking employing them, and to be consulted in good time on proposed decisions which could substantially affect their interests, particularly those decisions which could have an important impact on the employment situation in the undertaking.

The ECSR examined 21 national situations in 2022, of which **12 were found to be in conformity, five not in conformity** and the ECSR **deferred its position in respect of four national situations**.

With regard to this provision, the ECSR had put a targeted question to all States on protection of the right to information and consultation during the Covid-19 pandemic. States were requested to provide information on specific measures taken during the pandemic to ensure the respect of the right to information and consultation, with a specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis,.

With regard to Article 21, four out five situations of non-conformity resulted from a repeated lack of information. In particular the Committee held that it had not been established that all workers enjoy the right to information and consultation and that legal remedies were available to workers in the event of infringements of their right to be informed and consulted (**Albania**, **Bosnia and Herzegovina**, **Serbia and Türkiye**). In one situation, the ECSR concluded that the situation was not in conformity on the ground that some employees are excluded from the calculation of staff numbers which is carried out to determine the minimum thresholds beyond which staff representative bodies must be set up to ensure the information and consultation of workers (**France**).

Two deferrals were due to States' failure of reply to the Committee's previous questions (**Hungary, Republic of Moldova**). The ECSR has deferred its conclusion in one situation, in which a law had been introduced during pandemic, allowing employers to introduce measures for the whole duration of the crises without consultations with trade unions. The ECSR has requested more explanations on the scope and impact of such measure (**Bulgaria**). Similarly, in one situation it requested further clarifications on the situation in which a period of notification of collective redundancy was shortened in the time of emergency (**Latvia**).

Article 22 – The right to take part in the determination and improvement of working conditions

Article 22 of the Charter requires States Parties to adopt or encourage measures to enable workers to contribute to the determination and improvement of working conditions, work organisation and working environment, the protection of health and safety in the undertaking, the organisation of social activities in the undertaking, and the supervision of these matters. All of these matters are equally vital to the maintenance of a healthy and productive working environment which respects the human rights of the employees.

The ECSR examined 20 national situations in 2022, of which **11 were found to be in conformity**, **six not in conformity** and the ECSR deferred its position in respect of **three** situations.

With regard to this provision, the ECSR had put a targeted question to all states on the protection of the right to participation in the shaping and improvement of the working environment during the Covid-19 pandemic. States were requested to provide information on specific measures taken during the pandemic to ensure respect of the right to take part in the determination and improvement of the working conditions and working environment, with a specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis.

In three countries the situation was found not to be in conformity with the Charter (**Azerbaijan, Bosnia and Herzegovina, Serbia**) because employees are not granted an effective right to participate in the decision-making process within the undertaking with regard to working conditions, work organization and working environment. Further legal remedies are not available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

The ECSR found two situations of non-conformity which resulted from failure to provide information requested when the Committee had previously deferred its conclusion (**Hungary, Türkiye**).

Further deferrals were due to a lack of reply to the Committee's previous questions (**Ireland, Spain, France**).

Article 26 – The right to dignity at work

Under Article 26 of the Charter, all workers have the right to dignity at work. By accepting Article 26 of the Charter, States Parties undertake, in consultation with employers' and workers' organisations, to protect workers from sexual harassment (Article 26§1) and moral (psychological) harassment (Article 26§2), by taking appropriate preventive and remedial measures.

During 2022, the ECSR examined the information provided by states in response to targeted questions, as well as, where applicable, previous conclusions of non-conformity, deferrals or pending receipt of the information requested. The ECSR had asked several targeted questions as follows.

The ECSR 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 ECSR 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. It asked whether any limits apply to the compensation that might be awarded to the victim of sexual and moral (psychological) harassment for moral and material damages. Finally, the ECSR asked for information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards sexual, and moral harassment. The ECSR 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.

In respect of **Article 26§1**, of the 23 situations examined in 2022, the ECSR considered that the situation was in conformity with the requirements of this provision in six cases (**Estonia**, **France**, **Greece**, **Ireland**, **Italy and Portugal**).

The ECSR deferred its conclusion in respect of seven countries (**Andorra**, **Austria**, **Belgium**, **Bulgaria**, **Latvia**, **Republic of Moldova**, **North Macedonia**).

In 10 cases (**Albania**, **Azerbaijan**, **Finland**, **Georgia**, **Lithuania**, **Malta**, **Montenegro**, **Serbia**, **Slovak Republic**, **Türkiye**), the ECSR considered that the situation was not in conformity with this provision of the Charter. The grounds of non-conformity were the following:

- it has not been established that there is adequate prevention of sexual harassment in relation to work (**Azerbaijan**, **Serbia**, **Türkiye**);
- it has not been established that employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace or in relation to work (**Türkiye**);
- the legislative framework does not provide for a shift in the burden of proof in cases of sexual harassment (**Azerbaijan**);
- the existing framework in respect of employers' liability does not provide for sufficient and effective remedies in cases of sexual harassment when third parties are involved (**Finland**, **Georgia, Azerbaijan**);
- it has not been established that, in relation to employee protection, there are sufficient and effective remedies against sexual harassment in the workplace or in relation to work (**Albania**, **Azerbaijan**);
- victims of sexual harassment are not guaranteed sufficient and effective remedies against sexual harassment in relation to work (**Slovak Republic**);
- the existing framework in respect of employers' liability does not provide for sufficient and effective remedies against sexual harassment in relation to work (**Lithuania**);
- it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of sexual harassment (**Azerbaijan**, **Malta**, **Montenegro**, **Serbia and Slovak Republic**);
- the law does not guarantee the right to reinstatement to employees who have been unfairly dismissed or have been pressured to resign for reasons related to sexual harassment (**Finland**).

In respect of **Article 26§2**, of the 21 situations examined in 2022, the ECSR considered that the situation was in conformity with the requirements of this provision in five cases (**Estonia**, **France**, **Ireland**, **Italy**, **Portugal**).

The ECSR deferred its conclusion in respect of eight countries (**Andorra**, **Belgium**, **Bulgaria**, **Greece**, **Latvia**, **Republic of Moldova**, **North Macedonia and Türkiye**)

In eight cases (**Albania**, **Azerbaijan**, **Finland**, **Georgia**, **Lithuania**, **Malta**, **Serbia**, **Slovak Republic**), the ECSR considered that the situation was not in conformity with this provision of the Charter. The grounds of non-conformity were the following:

- it has not been established that there is adequate prevention of moral (psychological) harassment in relation to work (**Albania**, **Azerbaijan**, **Slovak Republic**).
- it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work (**Malta**);
- the existing framework in respect of employers' liability does not provide for sufficient and effective remedies against moral (psychological) harassment in relation to work (**Lithuania**);

- the Labour Code does not provide for a shift in the burden of proof in cases of moral (psychological) harassment (**Azerbaijan**);
- it has not been established that, in relation to the employees' protection, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work (**Azerbaijan**);
- the existing framework in respect of employers' liability does not provide for sufficient and effective remedies in cases of moral (psychological) harassment when third parties are involved (**Finland**, **Georgia, Azerbaijan**);
- it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment (**Malta**, **Serbia**, **Slovak Republic**);
- appropriate and effective redress (compensation and reinstatement) is not guaranteed in cases of moral (psychological) harassment in relation to work (**Azerbaijan**)
- the law does not guarantee the right to reinstatement to employees who have been unfairly dismissed or have been pressured to resign for reasons related to moral (psychological) harassment (**Finland**).

The ECSR also adopted a **Statement of interpretation on online harassment related to work**, stressing that the rights and obligations deriving from Article 26 of the Charter apply to incidents of online harassment (see General Introduction to Conclusions 2022).

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

This provision guarantees the effective exercise of the right of workers' representatives to carry out their functions. To this end, it is established that workers' representatives must enjoy effective protection against acts prejudicial to them, including dismissal based on their status. They must also be afforded necessary facilities to carry out their functions promptly and efficiently. This provision complements Article 5, which sets out similar rights in respect of trade union representatives.

In 2022, the ECSR examined the situation regarding Article 28 in 24 countries. The ECSR examined the protection granted to workers' and trade union representatives against dismissals and against prejudicial acts other than dismissal (e.g., denial of certain benefits, training opportunities, promotions or transfers; discrimination when implementing lay-offs or re-assignment retirement options; being subjected to a reduction in shifts; or any taunts or abuse. In order to ensure that such protection is effective, the Charter requires that it extends for a reasonable period (at least six months) after the expiry of the representatives' mandate.

The ECSR also examined the situation in countries concerned with regard to the facilities granted to workers' and trade union representatives to allow them to carry out their functions effectively. Those facilities include, for instance, granting paid time off to represent employees, financial contributions to work councils, the use of premises and materials for work councils,

In 2022, out of 24 countries whose situation was examined by the ECSR, there were 13 countries with non-conformity conclusions (**Albania**, **Armenia**, **Austria**, **Azerbaijan**, **Bosnia and Herzegovina**, **Bulgaria**, **Finland**, **Republic of Moldova**, **Montenegro**, **North Macedonia**, **Romania**, **Slovak Republic** and **Türkiye**), six countries with deferral conclusions (**Belgium**, **Greece**, **Ireland**, **Latvia**, **Malta** and **Serbia**) and five countries with conformity conclusions (**Estonia**, **France**, **Italy**, **Lithuania**, **Portugal**).

The non-conformity conclusions were based on:

- the protection granted to workers' and trade union representatives is not extended for a reasonable period after the end of their mandate;
- a lack of sufficient protection against prejudicial acts short of dismissal;
- a lack of legal remedies to allow workers' and trade union representatives to contest their dismissal and other prejudicial acts short of dismissal;
- a lack of legal provision for the reinstatement of workers' and trade union representatives unlawfully dismissed;
- it is not established that facilities granted to workers' and trade union representatives are adequate
- it not esablished that facilities identical to those afforded to trade union representatives are not made available to other workers' representatives.

The most common ground of non-conformity was that the protection granted to workers' and trade union representatives is not extended for a reasonable period after the end of their mandate (nine countries) (**Albania**, **Armenia**, **Azerbaijan**, **Bosnia and Herzegovina (Brcko District)**, **Bulgaria**, **North Macedonia**, **Romania** and **Türkiye**). In many countries, the protection is limited to the duration of the mandate of workers' or trade union representative and is not extended at all after the expiry of their mandate. In **Romania**, the new Law on Social Dialogue which recently came into force did not extend the protection beyond the end of the mandate of workers' and trade union representatives and did not bring the situation into conformity with the Charter Concerning Austria, the period of three months beyond the mandate during which the protection is afforded is not reasonable and hence is not in conformity with the Charter.

Concerning the protection of workers against acts short of dismissal, in some Sates this protection is not afforded outside the period of collective bargaining activity (**Azerbaijan**); or workers' representatives other than trade union representatives are not granted such protection (**Republic of Moldova** and **Montenegro**).

In some countries, legal remedies available to workers' representatives to contest their dismissals and other prejudicial acts were deemed to be ineffiective sometimes this is due to a total lack of legal remedies to contest dismissals (**Bosnia and Herzegovina (Brcko District)**), and sometimes it is due to the inadequacy of the compensation afforded in case of unlawful dismissal (**Bulgaria** and **Slovak Republic**).

In one conclusion (**Finland**), the non-conformity was due to the lack of possibility of reinstatement in case of unlawful dismissal. The Committee reiterated its case-law that ordering reinstatement is an important element of the protection afforded to workers' representatives against unlawful dismissals.

The inadequacy of the facilities granted to workers and trade union representatives was a ground of non-conformity in respect of eight countries. In some countries, this was due to a total lack of information in this respect (**Albania**, **Bosnia and Herzegovina (Brcko District)**, **Republic of Moldova**, **Montenegro**, and **North Macedonia**). In other States, it was due to insufficient information being provided (**Armenia**, **Romania** and **Türkiye**), as it did not cover facilities such as access to premises, use of materials, distribution of information, support in terms of benefits, training costs.

In conclusion, in the majority of the countries examined (13 out of 24), the situation is not in conformity with Article 28, with the most common problem being the lack of extension of the protection afforded for a reasonable period after the end of mandate.
The ECSR noted a few positive developments in some countries, although those positive developments was not always enough to result in a conclusion of conformity.

Article 29 - The right to information and consultation in collective redundancy procedures

Article 29 addresses the right of workers to be informed and consulted in situations of collective redundancies. To this end, it establishes that States Parties must ensure that employers inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences.

Beside the consultation procedure, States Parties must guarantee that the right of workers' representatives to be informed can be effectively exercised. Therefore, when employers fail to comply with their obligations, there should be 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.

Provision must be made for sanctions after the event, and these must be effective, i.e. a sufficient deterrent for employers.

In 2022, the ECSR examined the situation regarding Article 29 of the Charter in 22 countries.

Amongst the 22 countries, four countries were found to be in non-conformity (**Azerbaijan**, **Georgia**, **North Macedonia**, and **Serbia**).**The conclusion was deferred for ive countries** (**Albania**, **Bulgaria**, **Greece**, **Portugal** and **Slovak Republic**), **13 countrieswere found to be in conformity**.

The non-conformity conclusions were all based on the absence of preventive measures and sanctions in domestic law such as to ensure that redundancies do not take effect before employers' obligation to inform and to consult the workers has been fulfilled.

The five conclusions of deferral are based on the absence of sufficient information as regards applicable sanctions and/or preventive measures with regard to. Concerning **Albania**, **Bulgaria** and **Portugal**, the state reports did not provide any answer to the questions previously asked by the Committee on whether there are any preventive measures to ensure that employers do not fail in their duty to consult the employers' representatives in the event of collective redundanciesThe Committee therefore reiterated its questions and deferred its conclusions in respect of these countries.

Concerning the **Slovak Republic**, the report did not provide any answer on preventative measures aiming at ensuring that redundancies are not put into effect before the consultation requirement is met. Third party submissions indicated that sanctions in cases of breach of the obligation to consult prior to the redundancies taking place are not efficiently applied. The Committee therefore requested furter information in this respect and deferred its conclusion.

Concerning **Greece**, it was the first time that the Committee examined the situation regarding Article 29. The questions raised by the Committee soughtclarifications concerning the redundancy procedures and on the existence of preventive measures, as well as on sanctions for employers who fail to fulfil the information and consultation duties.

In 13 countries, the situation is in conformity with the Charter. Concerning **Latvia** and **Montenegro**, the previous conclusions were a deferral pending receipt of the information requested. In view of the information submitted in the current reports, it was concluded that the situation in these countries was in conformity with Article 29. In the other 11 countries, the Committee maintained its previous conclusions that the situations were in conformity with the Charter. Concerning **Belgium** and **Lithuania**, the Committee asked for additional and updated

information on preventive measures and applicable sanctions in cases where an employer fails to notify, inform and consult about planned redundancies.

In the majority of the countries under examination, the national situations were in conformity with Article 29. The most important problem, in countries with a non-conformity conclusion, was the absence of preventive measures aimed at ensuring that redundancies do not take effect before employers' obligation to inform and to consult has been fulfilled (such as recourse to administrative and judicial proceedings) and the absence of effective sanctions applicable in cases where employers fail to fulfil their obligations under Article 29.

Appendix II : Positive Developments

Conclusions 2022: examples of progress in the application of the European Social Charter relating to "Labour Rights":

In its Conclusions 2022/XXII-3, the European Committee of Social Rights noted a number of positive developments in the application of the Charter, either through the adoption of new legislation or changes to practice in the States Parties or in some cases on the basis of new information clarifying the situation as regards issues raised in previous examinations.

Article 2§1

Armenia:
On 29 April 2020, Law No. HO-237-N was adopted, whereby the Code on Administrative Offences of the Republic of Armenia was supplemented by Article 230.1. Pursuant to this provision, the Inspection Body was granted the power to investigate cases of administrative offences and to impose administrative penalties.

Latvia:
It appears from the data provided that between 2017 and 2020 the number of violations concerning the organisation of working time decreased slightly.

Article 2§2

Slovak Republic:
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. This applies to all sectors of the economy (in both the private and public sectors), all categories of workers and for all types of employment contracts. Each worker performing work during public holidays receives their usual wage and a bonus of at least 100%. The Labour Code also allows for higher compensation on the basis of collective agreements between the social partners.

Article 2§4

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

Luxembourg:
The Law of 8 April 2018 amending the Labour Code introduced a new provision in the Labour Code. New Article L. 233-8 provides that "leave may be taken in a single period, unless the needs of the department or the justified wishes of the employee require that it be divided up, in which case one of the fractions of the period of leave taken must be at least two calendar weeks" (previously 12 consecutive days).

Article 2§7

The ESCR took note of new legislation adopted in the **Republic of Moldova** that introduced compulsory medical examinations prior to being assigned to night work.

Article 4§2

Armenia:
The bonuses envisaged for overtime work and those envisaged for work performed on rest days, non-working days prescribed by law are irreplaceable guarantees defined by the Labour Code. Thus if work is performed on rest days and non-working public holidays and commemoration days defined by law also constitutes overtime work for the workers, the employer shall pay the worker both the bonuses prescribed for overtime work and for work performed on rest days and non-working public holidays and commemoration days defined by law. Also, where, upon the consent of the parties, the bonus for work performed on non-working public holidays and commemoration days defined by law takes the form of rest time, the worker shall be granted both the additional rest time as compensation for work performed on rest days and non-working days of holidays and commemoration days and the bonus envisaged for overtime work.

Estonia:
Article 44 of the Employment Contracts Act (ECA) provides for a mixed system of compensation for overtime. Overtime may be compensated in two ways – with money or with time off. According to Article 44(6) of the ECA, employer must compensate for overtime by time off equal to the overtime, unless it has been agreed that overtime is compensated for in money. Article 44(7) of the ECA provides that if overtime is compensated in money, it has to be done at 1.5 rate. When time off is granted instead of monetary compensation, this time off cannot be deducted from standard rest periods and must be paid as working hours. Thus the employer has to pay the regular wage for overtime and give time off in the same amount as overtime worked.

Lithuania:
Article 144 of the new Labour Code, which entered into force on 1 July 2017, states that work performed on days off and holidays, at night or during overtime by a single-person management body of a legal person has to be recorded but is not paid for unless the parties agree otherwise in the employment contract. Work performed on days off and holidays, at night or during overtime by the managerial employees of a legal person has to be recorded and has to be paid for in the same way as for work done according to the usual working time arrangements unless the parties agree otherwise in the employment contract. There are specific rules on remuneration for overtime for employees of budgetary institutions in accordance with the Law on Remuneration of Employees of State and Municipal Institutions of the Republic of Lithuania and remuneration of Commission Members and it provides for increased remuneration for overtime. In accordance with the Law on Civil Service, civil servants are also paid for overtime.

Article 2.4

The situation in **North Macedonia** changed in 2021 in order to guarantee a day of weekly rest, where possible on a Sunday and exceptionally on another day of the week. The Committee noted that the situation has been amended, but outside the reference period.

Article 4§4

Belgium:
The regime which allowed notice periods to be disregarded no longer applies from 1 January 2018.

Estonia:
The regulation and notice periods set for officials are the same as those provided for in Article 97§2 of the Employment Contracts Act (ECA). Article 97§2 ECA provides for notice

periods that acknowledge the workers' length of service and that are not manifestly unreasonable.

Article 6§4

Georgia:
Regarding the entitlement to call a collective action, according to Article 48 of the Labour Code, trade unions and a group of at least 20 employees have right to call a strike.

Article 26

Estonia:
Amendments were introduced to the Occupational Health and Safety Act (OHSA) in 2019 to strengthen the protection of workers against psychosocial hazards, including harassment at work, and specify employers' obligations to prevent such psychosocial risks.

The Green Book on Mental Health was created in cooperation with the social partners. The Working Life Portal has a dedicated web page on mental health that provides useful information on psychosocial hazards for both employers and employees.

France:
The definition of sexual harassment in the Labour Code was amended by Law No. 2021-1018 of 2 August 2021, and now includes the notion of "group harassment" (mobbing). Moreover, under Law No. 2021-1018 of 2 August 2021, sexism now falls within the scope of sexual harassment.

Ireland:
The Harassment, Harmful Communications and Related Offences Act 2020 ("Coco's Law") created two separate image-based criminal offences and broadened the scope of the existing offence of harassment to cover all forms of persistent communications about a person.

Italy:
In 2017, amendments were made to the Code of Equal Opportunities (Legislative Decree No. 198 of 11 April 2006) with a view to strengthening the protection against retaliation for workers who take legal action for having suffered harassment or sexual harassment (new paragraph 3-bis of Article 26).

Montenegro:
Under the new Labour Law (*Official Gazette of Montenegro*, No. 74/19, which entered into force on 6 January 2020), the prohibition of harassment and sexual harassment at work and in relation to work applies now also in relation to access to vocational guidance, vocational training and advanced vocational training, promotion at work and termination of employment, as well as to other aspects of employment (Article 10(1) of the Labour Law).

North Macedonia:
In October 2020, a new Law on the Prevention of and Protection against Discrimination was adopted which defines harassment and sexual harassment (Article 10) and provides for new competences and the professionalisation of the Commission for protection against discrimination.

Portugal:
Amendments were made to the Labour Code by means of Law No. 73 of 16 August 2017 and Law No. 93 of 4 September 2019 in relation to harassment practices in employment relations in order to reinforce the protection of victims of harassment and persons witnessing harassment, and impose the obligation on employers to have a code of conduct on harassment practices in companies with more than seven employees.

Article 28

Armenia:
The ECSR noted that according to the draft amendments to the Labour Code prepared by the Ministry of Labour and Social Affairs, workers' representatives may not be dismissed from work within six months after the expiry of their mandate without the preliminary consent of the representative body of workers. Moreover, with regard to facilities, the same draft law provides that workers' representatives shall be exempt from the performance of working duties and that they shall be paid two-thirds of their average hourly salary for these periods. The ECSR asked for information on the adoption of this draft law.

Lithuania:
The new Labour Code which entered into force in June 2017, establishes restrictions on termination of employment contract and deterioration of employment contract conditions of workers' representatives without the consent of the head of the territorial division of the State Labour Inspectorate. These regulations are aimed at ensuring that persons exercising workers' representation functions do not suffer discrimination or other negative consequences due to their role. The restrictions apply for the period for which the persons representing the employees are elected and for six months after the end of the term of office.

Portugal:
Within the scope of the adoption of measures necessary to combat the Covid-19 pandemic, in addition to the regime of protection afforded to workers' representatives described in the report, measures were taken to strengthen the protection of workers against unlawful dismissal in the difficult economic and business environment, including the prohibition of redundancy imposed on employers benefiting from the "simplified" lay-off and the other support measures provided for and regulated in Decree-Law no. 10-G/2020, which cover all workers, are also applicable to workers' representatives.

Türkiye:
In order to ensure that the Covid-19 pandemic is not used as an excuse for dismissal, temporary restriction on the termination of employment contracts by employers has been introduced for all the workers including trade union and workers' representatives in the Temporary Article 10 of Labour Law No. 4857.

Article 29

France
The Government has deployed a protective device precisely to prevent the pandemic from leading to layoffs. The Partial long-term activity (APLD) (provided by Decree n°2020-325 of 25 March 2020) was adopted to support economic activity under the France Relance Plan and offers the possibility for a company – faced with a lasting reduction in its activity – to reduce the working hours of its employees, and for the employees to receive an allowance for the hours not worked in return for commitments, particularly in terms of job retention. In 2020, companies made massive use of the partial activity scheme. This massive recourse to partial activity has made it possible to quickly and fully cover employees unable to work, and thus to avoid their dismissal. According to the report, since the establishment of the APLD in the

summer of 2020, 68 professional branch agreements have been concluded, of which 63 have been extended. More than 6.9 million employees are covered by these branch agreements.

Georgia:
The provisions of the Labour Code with regard to collective redundancies were amended in 2020. According to the amended provisions, if the employer plans a mass dismissal, they are obliged to start consultations with trade union or workers' representatives, within a reasonable time. Consultations should, at least, include ways and means of preventing mass dismissals or reducing the number of employees to be dismissed, and the possibility of supporting laid-off employees to continue their employment or training. Further, the employer is obliged to send a written notification to the relevant ministries including the Ministry of Labour, Health and Social Affairs and to the employees whose employment contracts are terminated, at least 45 calendar days prior to the mass dismissal. The employer is also obliged to send copy of the notification sent to the Ministry, to the trade union (or to the workers' representative). The mass dismissal shall take effect 45 calendar days after the notification to the Ministry.

Lithuania:
Article 207 of the new Labour Code (June 2017) regulates the information and consultation procedures in case of collective redundancy. Accordingly, prior to adopting a decision on a collective redundancy, the employer shall inform and consult the work councils. The employer shall provide the following information to the work councils in writing no later than seven working days prior to the planned start of the consultations: 1) reasons for the planned redundancy; 2) total number of employees and number of employees being made redundant, by categories; 3) time limit within which employment contracts will be terminated; 4) criteria for the selection of employees for redundancy; 5) conditions of termination of employment contracts and other important information.

Moreover, Article 209 of the new Labour Code regulates employers' liability for failure to fulfil the information and consultation duties. In case the employer has violated his duties of information and consultation, the work council or the trade union shall be entitled to initiate a labour dispute, thought which the employer's decisions can be cancelled and liability provisions under the Labour Code or the Code of Administrative Offences can be applied.

Republic of Moldova:
In May 2018, the Parliament of the Republic of Moldova adopted Law No. 85 on amending and supplementing the Labour Code. The new Article 185 of this Code provides for new guarantees in case of collective dismissals. Accordingly, in cases where measures involving collective dismissals are planned, the employer is obliged to notify, three months in advance, the employees' representatives and to enter into consultation with the employees' representative with a view to reaching an agreement. At least five working days before the consultations begin, the employer is obliged to provide to the employees concerned with all the available necessary information on the reasons of the dismissal, the number and categories of employees to be dismissed, the period during which the dismissals will take place and the criteria for selecting the employees to be dismissed and the method of calculation of allowances.