EUROPEAN COMMITTEE OF SOCIAL RIGHTS

COMITÉ EUROPÉEN DES DROITS SOCIAUX

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PRESS BRIEFING ELEMENTS

Conclusions 2018

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Press briefing elements: Conclusions 2018 by the European Committee of Social Rights

I. Introductory remarks: general overview of Conclusions 2018

In 2018, the European Committee of Social Rights examined reports submitted by States Parties on the articles of the Charter relating to labour rights:

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

The reports covered the reference period 1st January 2013 - 31 December 2016.

The following 35 countries were examined:

Andorra, Armenia, Austria, Azerbaijan, Bosnia-Herzegovina, Croatia, the Czech Republic, Denmark, Estonia, Georgia, Germany, Iceland, Latvia, Lithuania, Luxembourg (in part), Malta, Republic of Moldova, Montenegro, the Netherlands, the Netherlands in respect of Aruba, the Netherlands in respect of Curaçao, North Macedonia[1],Norway, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Spain, Sweden, Turkey, Ukraine and United Kingdom.

One State Party (Albania) did not submit its report and the report of Hungary and part of the report of Luxembourg relating to Article 6 of the Charter could not be examined because they were not submitted in time.

The Committee received comments from national trade unions and employers' organisations in respect of the Netherlands and Spain.

The outcome: key figures

At its session in January 2019, the Committee adopted some 580 conclusions including some 206 findings of violations of the Charter.

There were 276 conclusions of conformity. In 98 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 Committee posed a number of questions to states Parties.

Regarding the right of members of the armed forces to organize, the Committee recalled that Article 5, of the Charter allows States Parties to impose restrictions upon the right to organise

[1] At the time of the adoption of the conclusions, the official name was "the former Yugoslav Republic of Macedonia ».

of members of the armed forces 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 (military representative associations should under certain conditions be entitled to affiliate with national employees organisations). It requested all states to provide information on the right of members of the armed forces to organise.

As regards police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it. However, the imposition of restrictions as to the mode and form of such strike action can be in conformity with the Charter.

The Committee asked states Parties to provide information on the right of members of the police to strike and any restrictions.

In light of the rapidly changing world of work and proliferation of contractual arrangements, often with the express aim of avoiding contracts of employment under labour law, which has resulted in an increasing number of workers falling outside the definition of a dependent employee, including low-paid workers or service providers who are de facto “dependent” on one or more labour engagers, the Committee posed a general question on Article 6§2 concerning self-employed workers and collective bargaining

The Committee notes that in establishing the type of collective bargaining that is protected by the Charter, it is not sufficient to rely on distinctions between worker and self-employed, the decisive criterion is rather whether there is an imbalance of power between the providers and engagers of labour. Where providers of labour have no substantial influence on the content of contractual conditions, they must be given the possibility of improving the power imbalance through collective bargaining. The Committee considers that an outright ban on collective bargaining of all self-employed workers would be excessive as it would run counter to the object and purpose of Article 6§2 (see ICTU v. Ireland, Complaint No. 123/2016, decision on the merits of 12 September 2018, §§37-40).

The Committee therefore asked States Parties to provide information on 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 addition the Committee adopted a statement of interpretation on Article 4§4 (right to reasonable notice for termination of employment) where it indicated that the question of the reasonableness of notice periods will no longer be examined in detail on the main basis of criteria setting varied lengths according to specific circumstances. A reasonable notice period is one which takes account of the employees’ length of service, the need not to deprive them abruptly of their means of subsistence and the need to inform them of the termination in good time to enable them to seek a new job, and during which employees are entitled to their regular remuneration. It is for governments to prove that these elements have been taken into account when devising and applying the basic rules on notice periods. The Committee is also concerned about the situation of workers in insecure employment relationships.

- *Progress identified*

The Conclusions 2018 also show a number of positive developments which have taken place during the period under consideration. They appear in Appendix II.

Appendix 1 Summary of main findings

♦ The right to just conditions of work

Under **Article 2** of the Charter the states undertake to provide for reasonable daily and weekly working hours, for public holidays with pay, and for a minimum of four weeks annual holiday with pay. They undertake to eliminate risks in inherently dangerous or unhealthy occupations, to ensure a weekly rest period and to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

As concerns **reasonable daily and weekly working hours (Article 2§1),** the Committee found that the weekly working hours of certain categories of workers (e.g. workers in health services, surveillance of machines, guardianship of goods) may exceed 60 hours in Spain, Cyprus, Norway, the Netherlands and Turkey. Besides this, seamen are allowed to work up to 72 hours a week in Iceland and Estonia. In Norway and the Czech Republic daily working hours can be authorised to go up to 16 hours. Daily working hours of up to 16 hours and weekly working hours of more than 60 hours are excessive and therefore not in conformity with the Charter.

In certain states, more flexibility was introduced in the management of working time, allowing for longer working weeks in some periods to be offset by shorter working weeks in others. Flexibility arrangements as such are not contrary to the Charter. However, their impact on the overall observance of the rights guaranteed by Article 2§1 is assessed in the light of the criteria established by the Committee. In particular, it assesses whether under flexible working time regimes the maximum limits to daily and weekly working time are maintained, whether or not the employer may unilaterally impose flexibility measures and whether the reference periods for calculating the average working time are excessive. In line with this, in respect of Spain and Turkey, the Committee found that the situations was not in conformity as the maximum weekly working time may exceed 60 hours in flexible working time arrangements.

In Iceland, Poland, Serbia and Slovenia, on-call periods during which no effective work is undertaken are assimilated to rest periods. Periods of on-call duty (“périodes d’astreinte”) during which the employee has not been required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as a rest period in the meaning of Article 2 of the Charter The absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period both for the stand-by duty at the employer’s premises as well as for the on-call time spent at home.

The right to **public holidays with pay, guaranteed by Article 2§2**, is generally respected by the member states, with the notable exception of the United Kingdom, where there is no specific entitlement to leave on public holidays. Different approaches apply on the other hand in different countries as regards the forms and levels of compensation awarded for work performed on public holidays. In this respect, the Committee considered that compensation corresponding to the regular wage increased by 50%-75% was not adequate (Bosnia and Herzegovina, Malta, the Netherlands, Norway, the Slovak Republic).

As regards **the right to paid annual holidays (Article 2§3)**, the Committee found certain situations of non-conformity on the ground that not all employees have the right to take at least two weeks of uninterrupted holiday during the year (Cyprus, Luxembourg, the Netherlands, Spain).

The Committee noted the efforts made by many states **to eliminate risks in inherently dangerous or unhealthy occupation** (**Article 2§4).** This is the case, for example, of Austria and the Russian Federation, for which the Committee has concluded conformity. The Committee considered however that Bosnia and Herzegovina and Armenia had no

[adequate] prevention policy. Even where such a policy existed, the Committee found in certain cases that not all workers exposed to residual risks were entitled to adequate compensatory measures, such as reduced working hours or additional paid leave (Luxembourg, the Netherlands, the United Kingdom).

Most of the non-conformity **findings under Article 2§5** relate to **the excessive postponement of the weekly rest day**, namely the lack of adequate safeguards to ensure that workers may not work for more than twelve consecutive days without a rest period (the Czech Republic, Georgia, the Netherlands, the Russian Federation, North Macedonia[2], the United Kingdom, Ukraine).

Workers' right to be provided, when starting employment, with written information covering the essential aspects of the employment relationship or contract (**Article 2§6)** appears to be in general well respected in the member states, with the notable exception of Bosnia and Herzegovina, where the Labour Code of the Republika Srpska does not require employers to inform employees in writing of the key aspects of the employment relationship or of the employment contract.

The lack of free compulsory medical examination for all **night workers** remained the principal ground of non-conformity with **Article 2§7** in a few states (Andorra, Bosnia and Herzegovina, Georgia, Republic of Moldova, Serbia, Ukraine).

♦ The right to a fair remuneration

Article 4 guarantees the right to a fair remuneration, such as remuneration that will give workers and their families a decent standard of living, or an increased remuneration for overtime work. The right to fair remuneration also encompasses equal pay for the work of equal value without discrimination on the ground of gender as well as a reasonable period of notice of termination of employment. Moreover, under Article 4, States Parties undertake to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

Relatively few States in Europe have ratified **Article 4§1** of the Charter **on 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 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. The Committee found that, whilst some States in Europe meet the minimum threshold in the sector (Luxembourg and Sweden) or in the industries covered by collective agreement (Austria and Iceland), most fail.

Reasons are either that the statutory minimum wage (Andorra, Azerbaijan, Lithuania, Malta, the Netherlands, Romania, Serbia, Spain and the United Kingdom), or the lowest wages paid (Germany), are too low in comparison with the average wage. This is *a fortiori* the case where subsidised employment or reduced rates of the statutory minimum wage exist (the Netherlands and the United Kingdom). As for the public sector, the Committee found that the minimum threshold is mostly met for tenured civil servants, whereas problems remain concerning contractual staff (Spain).

While the situation as regards an increased remuneration for overtime work (Article **4§2)** is in conformity in the majority of states, the Committee has observed that a number of states fail to guarantee the right to increased time off in lieu of overtime pay (Armenia, Estonia, the Czech Republic, Spain, the Netherlands, the Slovak Republic, Turkey, Poland, North Macedonia[2], the United Kingdom).

As regards **the right to equal pay for work of equal work (Article 4§3)**, the Committee has examined the national situations of 25 States Parties. In respect of those States which are currently bound by the collective complaints procedure and against whom there is currently a complaint on equal pay pending, namely the Czech Republic, the Netherlands, Norway, Slovenia and Sweden, the Committee has deferred its conclusion, pending its decisions on the merits.

In assessing the compliance of national situations with the requirements of Article 4§3, the Committee has considered several issues:

- whether there is an express legal basis for equal pay (Georgia was found not to be in conformity for lack of statutory guarantee of equal pay in the private sector).
- whether there are adequate guarantees of enforcement of the right to equal pay and whether the domestic law of states provides for appropriate and effective remedies in the event of alleged wage discrimination. In this regard, the Committee found situations of non-conformity in Armenia, where there is an upper limit on the amount of compensation that may be awarded in gender discrimination cases, as well as in Iceland, where there is no possibility for reinstatement following unlawful dismissal in relating to equal pay claims, and in the Russian Federation and Ukraine, where there is no shift in the burden of proof in favour of the plaintiff in discrimination cases.
- whether States have sound job classification systems in place and whether they ensure pay transparency so that jobs can be compared with a view to facilitating the detection of the cases of unequal pay for equal work or work of equal value. In this regard, the Committee has found that Moldova fails to meet the requirements of this provision as long as it does not allow pay comparisons across companies in the private sector, even where these companies are part of the same holding.
- whether the enforcement of the right to equal pay is effective, as regards the measures taken to reduce the gender pay gap in practice. The Committee observed that in some States Parties (Armenia, Azerbaijan, Estonia) the gender pay gap is persistently high, above 25%, demonstrating that the enforcement of the right to equal pay is not effective.

♦ 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, protection against discrimination on grounds of trade union membership, and trade union autonomy.

Concerning the forming of trade unions and employers' organisations, the Committee found that the minimum membership requirements in order to form a trade union or employers organisationto be too high and therefore to undermine the freedom to organise (Armenia, Latvia, Serbia).

One state was found not to be in conformrity on the grounds that the right not to join a trade union was not adequately protected (Iceland).

The Committee found in several cases excessive restrictions on the personal scope of the right to organise for example police personnel do not enjoy the right to join trade unions or restrictions on the right to be excessive (Armenia, Azerbaijan, the Czech Republic, Georgia and the Republic of Moldova).

Interference in the autonomy of trade unions was also a problem in one state (United Kingdom)

♦ The right to bargain collectively

The exercise of the right to bargain collectively and the right to collective action laid down by Article 6 represents an essential basis for the fulfillment of other fundamental rights guaranteed by the Charter.

Under **Article 6§2 of the Charter**, the States Parties **undertake to promote machinery for voluntary negotiations** between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee found that the situation is not in conformity with Article 6§2 of the Charter in 7 countries on the ground that collective bargaining is sufficiently promoted machinery for voluntary negotiations is not adequately promoted. These countries are: Armenia Azerbaijan, the Czech Republic, Estonia, Georgia, , Latvia, Lithuania, .

In respect of Spain, the Committee concluded that the situation is not in conformity with Article 6§2 of the 1961 Charter as legislation allows employers unilaterally not to apply conditions agreed in collective agreements

Under **Article 6§3** of the Charter, the States Parties undertake **to promote the establishment and use of appropriate machinery for conciliation** and voluntary arbitration for the settlement of labour disputes. In respect of other countries like Malta the republic of Moldova the Committee concluded that the situation is not in conformity because compulsory recourse to arbitration is permitted in circumstances which go beyond the conditions set out in Article G of the Charter.

With respect to **the right to strike, under Article 6§4** the States Parties undertake to guarantee the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike.

A high number of states are in breach of the right to strike.

Excessive Restrictions on certain categories of persons from striking is a problem in many states; Armenia, the Czech Republic, Malta, the Republic of Moldova (police), the Czech Republic (prison service),

The situation is not in conformity with the Charter in Azerbaijan, Denmark Germany and Ukraine on the ground civil servants are denied the right to strike.

Public servants excerising authority in the name of the state in Estonia are prohibited from striking.

The Committee considered that the restrictions on the right to strike of employees working in various sectors such as the energy supply services, telecommunication, nuclear facilities, transport, are not justified in 9 countries: Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Republic of Moldova, the Russian Federation, Serbia Slovak Republic and Ukraine.

As regards the entitlement to call a strike, the Committee concluded that the requirements for calling a strike are excessive Armenia, Czech Republic, Germany, and Romania .the Russian Federation.The Committee considered that the requirement to notify an employer of a ballot on strike action in addition to the strike notice that must be prior to strike action is excessive in the United Kingdom.

The Committee concluded that the situation in the United Kingdom is not in conformity with the Charter as workers are not adequately protected against dismissal in the event of participating in a strike.

In respect of Iceland the Committee concluded that the situation was not in conformity as the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the 1961 Charter. Likewise the situation in Spain was found not to be in conformity as legislation authorises the Government to impose compulsory arbitration to end a strike in cases which go beyond the conditions permitted by Article 31 of the 1961 Charter.

♦ The right to information and consultation

Article 21 protects 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 on those decisions which could have an important impact on the employment situation in the undertaking.

The Committee has examined 21 national situations as regards Article 21 and has found that 18 Countries are in conformity with the Charter. In 2 countries the decision has been deferred (the "former Yugoslav Republic of Macedonia" and Serbia) because the countries failed to provide sufficient information concerning both the scope of national law and its practical application and the legal remedies available when these rights are not respected. In 1 country the situation has been found in non-conformity (Bosnia and Herzegovina) which 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 are available to workers in the event of infringements of their right to be informed and consulted.

♦ The right to take part in the determination and improvement of working conditions

Under Article 22 States Parties must 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 to 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 Committee has examined 20 national situations as regards Article 22 and found that 14 countries are in in conformity with the Charter. In 3 countries the decision has been deferred (Croatia, Latvia and Turkey) because of a failure to provide sufficient information on working conditions, work organization and working environment as well as on health and safety and on socio-cultural activities; there was also a lack of information concerning the legal remedies available when the measures put in place to ensure the abovementioned rights are violated. In 3 countries the situation have been found in non-conformity with the Charter (Azerbaijan, Bosnia and Herzegovina and 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, and 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 right to dignity at work

Under Article 26§1 and 26§2 of the Charter, States are required to protect workers respectively from sexual and moral harassment, by taking appropriate preventive and remedial measures. In particular, employers must be liable for harassment involving their employees or occurring on premises under their responsibility, even when third persons are involved. Victims of harassment must be able to seek reparation before an independent body and, under civil law, a shift in the burden of proof should apply. Effective judicial remedies must furthermore allow for adequate reparation for pecuniary and non-pecuniary damage and, where appropriate, reinstatement of the victims in their post, including when they resigned because of the harassment.

On the basis of these criteria, the Committee considered that, in several countries, employees did not enjoy adequate protection from sexual harassment (Azerbaijan, Georgia, Lithuania, Ukraine) or from moral harassment (Azerbaijan, Georgia, Lithuania, Malta,

Ukraine). In most cases, however, this finding was based on the lack of relevant information in response to the questions previously raised.

♦ The right or workers' representatives to protection in the undertaking

Article 28 protects workers' representatives in undertakings from dismissal or other prejudicial acts and requires that they are afforded appropriate facilities to carry out their functions. All forms of employee representation, not exclusively trade unions, should benefit from the rights guaranteed by this Article.

In order to ensure that such protection is effective, the Charter requires that it extends for a reasonable period (according to the case-law of the ECSR, for at least 6 months) after the expiry of the representative's mandate. The most frequent ground of non-conformity with the Charter under this provision was the absence of such extended protection (Austria, Azerbaijan, Bosnia and Herzegovina, Lithuania, Norway, Romania, Russia, "Former Yugoslav Republic of Macedonia", Turkey).

In several cases the Committee found that workers representatives were not adequately protected from prejudicial acts, which may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts cut-down or any other taunts or abuse (Azerbaijan, Armenia, Turkey, Ukraine, Moldova, "Former Yugoslav Republic of Macedonia"). In addition, in Ukraine, workers' representatives other than trade union members were also insufficiently protected against dismissal.

In its case-law, the Committee set examples of facilities which workers' representatives should be afforded and which entail, i.a. access to premises and office equipment, authorisation to distribute information or financial contributions. The Committee found that the situation was not in conformity in this respect in Armenia, Bosnia and Herzegovina, Moldova, Romania, "Former Yugoslav Republic of Macedonia" and Russia.

♦ The right to information and consultation in collective redundancy procedures

Under **Article 29** the Parties undertake **to establish an information and consultation procedure** which should precede the process of collective redundancies. The obligation to inform and consult is not just an obligation to inform unilaterally, but implies that a process (of consultation) be set in motion, meaning that there is sufficient dialogue between the employer and the worker's representatives on ways of avoiding redundancies or limiting their number and mitigating their effects through support measures.

The Committee found that the situation in the majority of States Parties was in conformity with this requirement, an exception being Georgia, where the legislation does not guarantee the rights of workers and their representatives to be consulted in good time before the redundancies take place, and Azerbaijan, where it has not been established that there are measures that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled.

Appendix II : Positive Developments

Conclusions 2018: examples of progress in the application of the European Social Charter with respect to labour rights

In its Conclusions 2018/XXI-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 (thereby reducing the number of conclusions deferred for lack of information). Below follows a selection of examples:

ARTICLE 2

Bosnia and Herzegovina

- **Federation of Bosnia and Herzegovina** – The new Labour Code that came into force on 14 April 2016 provides for a minimum of twenty working days [of annual holiday with pay], which may be increased under the provisions of the collective agreement or the relevant internal company rules or employment contract. Employees may not waive their right to annual leave, or be denied that right, and they may not be granted financial compensation instead of taking unused days of annual leave (Articles 47-52 of the Labour Code).
- In the **Republika Srpska**, the new Labour Code has been enacted and came into force on 20 January 2016. Articles 78-80 entitle employees to annual leave of at least 20 working days after six months of uninterrupted work. Employed minors are entitled to a minimum of 24 working days of holiday and persons working in certain specific conditions to a minimum of 30 working days. **(Article 2§3)**

The Russian Federation

- The federal laws Nos. 426-FZ of 28 December 2013 on special assessment of working conditions and 421-FZ on amendments to certain legislative acts of the Russian Federation entered into force on 1 January 2014. As a result, the procedure for certifying workplaces based on working conditions has been replaced by a procedure governing the special assessment of working conditions ("SOUT"). This procedure applies to all workers irrespective of their official occupation and position except for homeworkers, teleworkers and employees working for a private individual.
- Under Article 3 (1) and (2) of Federal Law No. 426-FZ, a SOUT is a set of sequentially implemented measures to identify harmful and dangerous factors related to the working environment and labour process, and the degree to which they affect the employees, taking into account the extent to which their actual values deviate from the norms established by the government regarding working conditions and the use of individual and collective protection for workers. Conditions in the workplace are divided into various classes and subclasses (optimal, acceptable, harmful – including 4 subclasses – and hazardous working conditions) according to the degree of harmfulness and hazard, based on the results of the SOUT (Article 14). The procedure for establishing which class working conditions fall into is determined by the Methodology for assessing working conditions approved by the Ministry of Labour (Order No. 33 of 24 January 2014).
- Federal Law No. 421-FZ amends certain articles of the Labour Code in order to ensure the implementation of a differentiated approach when providing workers with

guarantees for working in harmful and hazardous working conditions, depending on how the conditions are classified following the special assessment. Workers employed in harmful and hazardous working conditions are entitled to a wage premium equivalent to at least 4% of the base wage rates established for various jobs with standard labour conditions (Article 147 of the Labour Code). Extra paid leave of at least 7 calendar days is granted to workers employed in working conditions classified as harmful (in at least the 2nd degree) or hazardous, based on the results of the SOUT (Article 117). The specific duration of this leave is determined in accordance with the industry agreement, collective agreement and labour contract, and there is no upper limit on the amount of additional paid leave which may be granted. A reduced working week (36 hours maximum) is granted to workers employed in working conditions which have been classified as harmful (in at least the 3rd degree) or hazardous (Article 92). **(Article 2§4**)

Serbia

- Under Article 68 of the amended Labour Code (came into force on 29 July 2014), employees are entitled to annual leave and cannot waive that right. Under Article 114, during annual leave employees are entitled to be paid at the rate of their average salary for the preceding twelve months. (**Article 2§3**)
- Under the amended Article 66 of the Labour Code, employees are entitled to a minimum of 12 hours of uninterrupted rest within each 24 hour period, unless otherwise specified in the Code. Employees who agree to flexible working time arrangements (Article 57) are entitled to a minimum of 11 hours' uninterrupted rest within each 24 hour period. Under Article 67, if employees are required to work on their weekly rest day their employer must grant them an uninterrupted rest period of at least 24 hours in the following week, before their next scheduled weekly rest period. (**Article 2§5**)

Slovenia

- Following the adoption of the new Labour Relations Law which came into force in 2014, the obligatory elements of an employment contract have been expanded to include, in addition to all the elements listed in the previous law (see Conclusions 2014) the reason for temporary employment in a fixed-term contract. (**Article 2§6**)

North Macedonia[2]

- Preventive measures aimed at eliminating or reducing the risks related to work feature in the Occupational Safety and Health Act, which was amended in 2014. Article 11 requires employers to prepare a risk assessment statement for each workplace, with appropriate instructions and measures to be introduced. They are required, in particular, to conduct risk assessments for the entire workplace and eliminate all the risks and hazards identified, in accordance with an official rulebook on the preparation of safety statements, their contents, and the data on which risk assessments should be based. **(Article 2§4)**

Germany

- In the public service sector trainees are now entitled to leave with continued payment of their training allowance, with the provision that the entitlement to leave amounts to 29 days per calendar year if the weekly working time is spread over five days in the calendar week. **(Article 2§3**)

Spain

- The Royal Decree 299/2016 on the protection of health and safety for workers who face the risks of exposure to electromagnetic fields, further strengthened the specific

protection, in addition to the general Law No. 31/1995 on the prevention of occupational risks. **(Article 2§4**)

ARTICLE 4

Austria

- Teaching and educational staff in private teaching and education institutions are also covered by a separate scheme, falling either under the Ordinance of 17 November 2016 (M 21/2016/XXIII/97/1, Federal Law Gazette III, no. 327/2016), or the collective agreement for employees of private educational institutions (S 5/2016/XXIII/97/1), as amended, depending on whether the employer belongs to the professional association of private education institution employers (BABE). Teaching staff who have worked overtime receive a 50% overtime supplement in addition to basic hourly remuneration. **(Article 4§2)**

Iceland

- The level of the minimum wage improved in the reference period and is in the process of an ongoing reform which will further continue to raise it. The gradual raise of the minimum wage was agreed in the reference period in two rounds of collective negotiations facilitated by the government. The government committed, in exchange, to adopt measures that would benefit the citizens, i.a. review of the tax system, education reform, reforms in economic policy and the management of public finances, limits for tariffs charged by the state and further measures concerning welfare and housing systems. Moreover, a minimum earnings insurance shall cover the instances for those employees who do not attain the minimum income. **(Article 4§1)**

Montenegro

- In 2014, the Government and the social partners signed a general collective agreement (OG No. 14/14 of 22 March 2014), valid for two years. The contracting parties are responsible for overseeing its application. In 2016, an agreement was signed to extend it for two years (OG No. 39/16 of 29 June 2016). According to this new general collective agreement, employees' wages must be increased by at least 40% per hour of overtime worked. **(Article 4§2)**

ARTICLE 5

Luxembourg

- The Committee previously found the situation not to be in conformity with Article 5 of the1961 Charter, on the ground that the national legislation does not enable trade unions to choose their candidates for joint works council elections freely, regardless of nationality. i.e. candidates for joint works councils had to be an EU national. According to the report, the Law of 23 July 2015 amended the situation and candidates no longer have to be EU nationals.

Iceland

- Parliament passed an Act in 2010 to repeal the Act on the industry charge. Consequently, the industry charge has not been collected since Act No. 124/2010 entered into force in 2011.

Latvia

- On 6 March 2014 the Parliament of Latvia adopted the new "Law on Trade Unions" (hereinafter – the law) which entered into force on 1 November 2014 and accordingly the previous "Law on Trade Unions" of 13 December 1990, was repealed.

ARTICLE 6

The Netherlands

- The Netherlands revoked the restrictions with respect to the right to strike regarding civil servants. This means civil servants now have a right to strike (Kingdom Act of 3 December 2014, published in the Bulletin of Acts and Decrees on 15 January 2015, No. 11). **(Article 6§4)**

ARTICLE 21 OF THE REVISED CHARTER/ ARTICLE 2 DU PROTOCOLE ADDITIONNEL OF THE 1961 CHARTER

Spain

- In the field of public administrations, Spain signed on 21 December 2015 the "Framework Agreement on information and consultation rights for central governments administrations". The Sectorial Social Dialogue Committee for Central Government Administrations signed a social partner agreement on common minimum standards of information and consultation rights for central administration workers in matters of restructuring, work-life balance, working time and occupational health and safety.

Croatia

- In 2014 entered in to force the Labour Act 93/2014 that regulates employment relationships in Croatia. The Labour Act 93/2014 contains provisions on the right to information and consultation and enables participation of workers in decision-making through three legal mechanisms: 1. works council, 2. workers' assemblies and 3. employers' bodies.

The Netherlands

- The report indicates that the Works Council Act was amended during the reference period and modified the provisions governing the right to information. The funding of the system for training works council members has been changed. The Act now provides that training must be of a proper standard and that training costs should be directly borne by the undertaking. Further the duty to provide information has been expanded. An undertaking that forms part of an international group of undertakings must in future provide all contact information so that workers' representatives in the Netherlands can contact the parent company abroad in good time about decisions that affect the Dutch undertaking. The rules for holding works council elections have been changed. The requirement that a list of independent candidates can be submitted only if accompanied by a given number of signatures has been scrapped. The dispute settlement rules have been changed. The statutory obligation to present workers' participation disputes for mediation to a joint sectorial committee (consisting of representatives of central employers' and employees' organisations) before taking legal action before the courts has been dropped. However, a joint sectorial committee can still be consulted on a voluntary basis. The Social and Economic Council is now explicitly responsible for promoting worker participation. The Committee for the Promotion of Worker Participation (CBM) has been established by the SER for this purpose. The key function of the CBM is broadly to promote worker participation and the standard of such participation in undertakings. It is also responsible for disseminating information in this regard.

The Russian Federation

- The report indicates that in 2013, under Federal Law No. 95-FZ of 7 May 2013 amending Article 22 of the Labour Code, a new system for the consultation of employees on productivity and efficiency was set up. The law establishes the right of

employers to set up “production councils” – advisory bodies formed on a voluntary basis by their employees to draft proposals to improve production activities and processes, increase workforce productivity and improve employees’ skills. The powers, membership and functioning of such councils and their interaction with employers are established by a local by-law.

ARTICLE 22 OF THE REVISED CHARTER/ ARTICLE 2 DU PROTOCOLE ADDITIONNEL OF THE 1961 CHARTER

Denmark

- The report provides information on the progress concerning the new strategy relating to the working environment up to 2020 aimed at reducing the number of serious accidents, the number of employees who are psychologically overloaded and the number of employees who experience musculoskeletal disorders and states the creation of a midterm study supporting the achievement of the goals. It further states that an expert committee on how to enhance the undertaken efforts has been established.

Spain

- The report indicates that the Royal Decree 1084/2014 of 19 December 2014 amending the Royal Decree 67/2010 of 29 January 2010 on the adaptation of the legislation on the prevention of occupational risks to the general administration of the State has intervened to amend the legislation on the participation of workers in the determination and improvement of working conditions. This amendment is essentially in response to the decision of the General Bargaining Committee of the General State Administration, adopted on October 29, 2012, regarding the allocation of resources to the bargaining and participation structures and the streamlining of these structures. The decision concerns on the one hand the election of the delegates to the prevention and the credits of hours which they benefit and, on the other hand, the committees of safety and health at work, which must adapt, except in the cases provided for in the said royal decree, to the new definition of "workplace" according to which it constitutes the new electoral unit.
- The agreement of the General Negotiating Committee of the General State Administration is also at the origin of the provisions contained in Royal Decree-Law 20/2012 of 23 July 2012 adopting measures to guarantee budgetary stability and to encourage competitiveness. Specifically, Article 10 of this text designates the General Negotiating Committees as the responsible bodies for agreements in this area, in particular as regards the exercise of representational and negotiating functions.

Slovenia

- The Employment Relationship Law (No. 21/2013) entered in to force in 2013. Under the new law, the employer is obliged to submit organisational general acts to the trade unions to obtain their opinion. If there is no trade union present, the workers may take part through their directly elected worker’s representatives in the adoption of general acts governing workers’ rights. Prior to the adoption of such a general act, an employer must submit the proposition to the works council and/or the worker’s representative to obtain their opinion. The respective body then must submit its opinion within eight days and the employer must examine and take a relevant position on the submitted opinion prior to adopting the act in question. If no works council or worker’s representative is organized, the employer must inform the workers directly about its content prior to adopting the act.

ARTICLE 26

Andorra

- The Equality Unit, which was set up in January 2016 within the Department of Social Affairs (...) includes a Specialised Unit for the Care of Victims of Violence, which provides cross-sectoral assistance (social, psychological and legal) for women who are victims of sexual harassment in the workplace. **(Article 26§1)**
- Article 149bis of the Criminal Code, as amended by the Decree-Law of 29 April 2015, henceforth defines sexual harassment as "verbal, non-verbal or physical behaviour of a sexual nature towards another without their consent with the aim or effect of compromising their dignity, particularly when this behaviour creates an intimidating, hostile, degrading, humiliating or offensive environment (...)". **(Article 26§1)**

Lithuania

- A specific prohibition of moral (psychological) harassment has been introduced in the new Labour Code, adopted in September 2016, but entered into force in July 2017, out of the reference period. **(Article 26§2)**

The Republic of Moldova

- Legislative amendments of 2016 (Law No. 71 of 14 April 2016) (…) have introduced the obligation for the employer to inform the employees that all acts of discrimination and sexual harassment are prohibited at work. Such an obligation is henceforth provided in the Law on equal opportunities (Law No. 5 of 9 February 2006, Article 10§2d) and the Labour Code: pursuant to Articles 10§2 and 199§1 of the Labour Code, as amended in 2016, the internal regulations of each employment unit shall provide for the respect of "the principle of non-discrimination, the elimination of sexual harassment and any form of denial of work". Under Article 48§2 of the same Code, employees shall be provided, for informational purposes, with a set of documents that are applicable to them, including the internal regulations of the unit. (…) (Article 26§1, 26§2) In addition, the State Labour Inspectorate shall monitor the observance of the legal provisions regarding the prevention and elimination of cases of discrimination and cases of sexual harassment at the work place (Article 1§113.k of Law No. 140 of 10 May 2001, as amended in 2016). (…) the Law on equal opportunities (Article 19§32), as amended in 2016, provides henceforth that gender coordinating groups shall examine cases of discrimination based on sex, and cases of sexual harassment, at the branch level and in the decentralized structures; the law also provides that the materials accumulated in such cases be forwarded to the law enforcement bodies. **(Article 26§1)**

North Macedonia[2]

- Pursuant to Article 11 of the Law on Protection against Harassment at Workplace (PHW Law), adopted in 2013, the employer has the obligation to inform employees of their and the employer's rights and obligations as regards harassment and of the relevant protective measures and procedures available. The respect of this obligation is monitored by the Labour Inspectorate. **(Article 26§1, 26§2)**

Turkey

- Pursuant to the Turkish Human Rights and Equality Authority Law (enacted in April 2016), harassment is considered as a type of discrimination and is defined as "*Any painful, degrading, humiliating and disgraceful behaviour which intend to tarnish human dignity or lead to such consequence based on one of the grounds cited in this*

[2] At the time of the adoption of the conclusions, the official name was "the former Yugoslav Republic of Macedonia. »

Law including psychological and sexual harassment". The Supreme Court has clarified that actions performed by workers outside their workplace and working hours may also be considered as harassment. **(Article 26§1)**

- In 2014, the Ministry of Labour and Social Security, jointly with the Human Rights Association, the State Personnel Department and trade unions issued the *"Guideline on Psychological Harassment in Workplaces"*, which contains the definition of moral (psychological) harassment, as well as information on the relevant legislation and how to deal with moral (psychological) harassment. **(Article 26§2)**

Ukraine

- A publication-manual for employers "Adherence to the principle of equal treatment and non-discrimination in the work place in the public and private sectors of Ukraine" was developed and distributed. This manual contains in particular a section on "Sexual harassment" and covers a range of issues related to employer's policies and norms of conduct, as well as recommendations on how to act and respond to possible complaints, etc. **(Article 26§1)**

ARTICLE 29

Ukraine

- The Law on Employment of Population, as amended, imposes on the employer an obligation to consult trade unions and to take measures to prevent collective redundancy or minimize the dismissals and / or their negative consequences. In this respect, the employer is required to submit information to the competent territorial bodies, two months in advance, about a planned redundancy of workers for reasons of economic, technological, structural or similar nature or because of liquidation, reorganisation, or change in the form of ownership of an enterprise, institution or organisation (Article 50).