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EUROPEAN SOCIAL CHARTER

21st National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF ROMANIA

Articles 2, 4, 5, 6, 21, 28 and 29

for the period 01/01/2017 – 31/12/2020

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21 March 2022

CYCLE 2022

THE 21ST NATIONAL REPORT

ON THE APPLICATION

OF THE REVISED EUROPEAN SOCIAL CHARTER

PRESENTED BY

THE GOVERNMENT OF ROMANIA

Regarding the Group 3 of Articles of the Revised European Social Charter,

"The Rights in the work domain:" 2 (paragraphs 1, 2, 4-7), 4, 5, 6, 21, 28 and 29

for the period 1 January 2017 - 31 December 2020

Article 2 - The right to just conditions of work

Paragraph 1

The Committee concludes that the situation in Romania is in conformity with Article 2§1 of the Charter.

For the reference period there are no legislative changes.

Paragraph 2

The Committee asked whether employees working on an exceptional basis on public holidays other than those targeted by Article 140-141 of the Labour Code, may receive additional compensation by virtue of collective agreements. Pending receipt of the information requested, the Committee defers its conclusion.

The compensation modalities for the employees working on public holidays provided for in the Labour Code apply exclusively to the employees working in the workplaces referred to in Articles 140 and 141 (workplaces where work cannot be interrupted because of the nature of production or the specific nature of the activity, health establishments and public food service establishments).

Regarding the question of the European Committee of Social Rights concerning the possibility of receiving additional compensation under collective labour agreements, we would like to point out that Law No. 53/2003 - Labour Code, republished, with subsequent amendments and additions, does not prohibit this possibility.

According to Article 260 of the Labour Code, the following acts constitute contraventions and are punishable as follows:

- letter g) – infringement by the employer of the provisions of Articles139 and 142, with a fine from Lei 5,000 to Lei 10,000;

- letter h) – infringement of the obligation provided for at Article 140, with a fine from Lei 5,000 to Lei 20,000.

During the reporting period, the results of the control actions on the employers' non-compliance with the provisions of Articles 139 and 142 of the Labour Code are as follows:

No.	RESULTS	Year 2017	Year 2018	Year 2019	Year 2020
1.	**No. of fines**	18	18	20	30
2.	**Total amount of the fines imposed (Lei)**	86,500	98,000	116,500	164,500

Paragraph 4

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

For the reference period there are no legislative changes.

The results of control actions regarding the additional work in the period 2017-2020:

No.	INDICATORS	Year 2017	Year 2018	Year 2019	Year 2020
1.	No. of fines	477	240	237	162
2.	Total amount of the fines imposed (Lei)	749500	411,850	458,400	573,600

Paragraph 5

The Committee concludes that the situation in Romania is in conformity with Article 2§5 of the Charter.

For the reference period there are no legislative changes.

During the reference period (1 January 2017 - 31 December 2020), at the level of the territorial labour inspectorates, as shown in the database of the Labour Inspectorate, **117 requests were issued by the employers** for granting weekly rest days after a period of continuous activity that may not exceed 14 calendar days, pursuant to Article 137 paragraph 4 of the Labour Code, as follows:

- Year 2017 - 26 requests/authorisations,
- Year 2018 - 14 requests/authorisations,
- Year 2019 - 32 requests/authorisations,
- Year 2020 - 45 requests/authorisations.

The areas of activity for which the authorisation to grant cumulative weekly rest has been requested are the following: oil platforms, energy, ferrous metallurgy, metallurgy, maritime and river transport, agriculture, trade, etc.

During the reporting period, the results of the control actions regarding the weekly rest period are as follows:

No.	RESULTS	Year 2017	Year 2018	Year 2019	Year 2020
1.	No. of fines	809	622	613	600
2.	Total amount of the fines imposed (Lei)	1.266.250	1.023.350	1.245.500	1.280.800

Paragraph 6

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

In addition to the previous reports, Article 17 paragraph 3 of the Labour Code has been supplemented by adding an element on informing the person selected for employment or the employee, as the case may be, of the procedures for the use of electronic signatures, advanced electronic signatures and qualified electronic signatures.

In this regard, in order to support the teleworking, GEO[1] No. 36/2021 was adopted on the use of advanced electronic signature or qualified electronic signature, accompanied by the electronic timestamp or qualified electronic timestamp and the qualified electronic seal of the employer in the field of labour relations and for the amendment and completion of certain normative acts, amending

[1] Government Emergency Ordinance

and supplementing Law no. 81/2018 on the regulation of teleworking.

The person selected for employment or the employee, as the case may be, shall be informed at least of the following elements:
a) a) the identity of the parties;
b) the workplace or, in the absence of a permanent workplace, the possibility of working in several places;
c) the headquarters or, as appropriate, the domicile of the employer;
d) the position/occupation according to the Romanian Classification of Occupations or other regulatory documents and the job description, specifying the duties of the post;
e) the criteria for assessing the employee's professional activity applicable at the employer's level;
f) the job-specific risks;
g) the date from which the contract is to take effect;
h) in the case of an employment contract of limited duration or of a temporary employment contract, its respective length;
i) the length of the leave the employee is entitled to;
j) the conditions under which the contracting parties may give notice and its length;
k) the basic wage, other components of the earned income, and the frequency of the payment for the wage the employee is entitled to;
l) the normal length of work, expressed in hours per day and hours per week;
m) the reference to the collective labour agreement governing the working conditions of the employee;
n) the length of the probationary period;
o) ***procedures for the use of electronic signatures, advanced electronic signatures and qualified electronic signatures***

The elements in the information provided for in Article 17 paragraph (3) of the Labour Code must also be included in the content of the individual employment contract, with the exception of the job description for the employees of the micro-enterprises with up to 9 employees, defined in Article 4 paragraph (1) letter a) of Law No. 346/2004 for the encouragement of setting up and development of small and medium enterprises, as subsequently amended and supplemented, which will complete a brief characterisation/description of the activity, for which the job description may be verbally performed.

By way of exception, at the written request of the employee, the employer is obliged to communicate to him/her in writing the job description specifying the duties of the post.

Any change in one of the elements referred to in Article 17 paragraph (3) of the Labour Code during the execution of the individual employment contract requires the conclusion of an addendum to the contract, prior to the occurrence of the modification, unless such modification is expressly provided for by the law or in the applicable collective labour agreement.

When negotiating, concluding or modifying an individual employment contract or during the conciliation of an individual labour dispute, either party may be assisted by an external consultant specialising in labour law or by a representative of the trade union of which he/she is a member, according to his/her choice.

Regarding the information provided, a confidentiality agreement may be concluded between the parties prior to the conclusion of the individual employment contract or during its performance, including during the conciliation event.

Paragraph 7

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

For the reference period there are no legislative changes.

For the period 2017-2020 the results of the control actions regarding the night work are as follows:

No.	RESULTS	Year 2017	Year 2018	Year 2019	Year 2020
1.	No. of fines	125	96	105	102
2.	Total amount of the fines imposed (Lei)	199,200	171,700	229,500	220,600

Article 4 - The right to a fair remuneration

Paragraph 1

The Committee concludes that the situation in Romania is not in conformity with Article 4§1 of the Charter on the ground that the national minimum wage is not sufficient to ensure a decent standard of living.

Year	Period of the year concerned	Government Decision (GD)	Minimum **gross** basic wage per country guaranteed in payment (Lei)	Nominal average earnings per economy (gross) - Lei **(annual average)**	*Weight* of the country's guaranteed **gross** minimum basic **wage** in the nominal average **earnings** at the economy's level (gross) (column 3/column 4)
0	1	2	3	4	5
2017	January	GD[2] no. 1017/2015	1250	3223 *)	38.7%
	As of 1st of February	GD no. 1/2017	1450		44.9%
2018	As of 1st of January	GD no. 846/2017	1900	4357 *)	43.6 %
2019	As of 1st of January	GD no. 937/2018	2080	4853 *)	42.8 %
			2350[3]		48,4 %
		GEO no. 114/2018	3000[4]		61,8 %

[2] Government Decision.

[3] *newly introduced* - for the personnel employed in positions for which the level of ***higher education*** is required, with at least one year's seniority in the field of higher education, the minimum gross basic wage per country guaranteed in payment ***was set at Lei 2,350 per month*** (*an increase of 23,6% compared to December 2018*).

[4] *According to* ***GEO No 114/2018****,* by derogation from the provisions of Article 164 paragraph (1) of **Law No 53/2003 - Labour Code**, republished, as subsequently amended and supplemented, ***during the period from 1 January 2019 to 31 December 2019, for the construction sector****,* the minimum gross basic wage per country guaranteed in payment ***is set at Lei 3,000 per month*** *(*applied *exclusively to the areas of activity provided for* in Article 66 paragraph 1 of GEO No 114/2018*)*.

2020	As of 1st of January	GD no. 935/2019	2230	5396 **)	41,3 %
			2350[5]		43,5 %
			3000[6]		55,5 %

Source: National Institute of Statistics

*) annual average, final data; **) provisional data

Year	Period of the year concerned	Minimum basic wage per country (Lei) – **NET** *(dependants - zero)*	Nominal average earnings by economy (Lei) - **NET (annual average)**	*Weight* of the country's **net** minimum basic **wage** *(dependants - zero)* in nominal average **earnings** at the economy's level **NET (annual average)** (column 3/column 4)
0	1	3	4	5
2017	January	925	2338 *)	39.5 %
	As of 1st of February	1065		45.5 %
2018	As of 1st of January	1162	2642 *)	43.9 %
2019	As of 1st of January	1263	2986 *)	42.2 %
		1413[7]		47.3 %
		1774[8]		59.4 %
2020	As of 1st of January	1346	3307 **)	40.7 %
		1413[9]		42.7 %
		1774[10]		53.6 %

Source: National Institute of Statistics

*) annual average, final data; **) provisional data

According to the European Committee of Social Rights' interpretation of the provisions of the European Social Charter, "remuneration" refers to the compensation - either monetary or in kind - paid by an employer to a worker for the time worked or for the work done. It covers, where appropriate, bonuses and special allowances.

In this context, the employees can benefit from a number of rights, namely:

Food vouchers – are granted monthly, as an individual food allowance, used only to pay for meals or for the procurement of food. The employee may use a number of meal vouchers per month **not exceeding the number of days worked**. The nominal value of a meal voucher may not exceed Lei 20.

Gift vouchers – are granted occasionally to the employees for social expenses. The employers, together with the trade union organisations or the employees' representatives, ***establish*** in agreement the frequency ***and amount of such allowances.***

[5] Idem footnote no. 3.
[6] Idem footnote no. 4.
[7] Idem footnote no. 3.
[8] Idem footnote no. 4.
[9] Idem footnote no. 3.
[10] Idem footnote no. 4.

Nursery tickets - are granted monthly to the employees who are not entitled to parental leave and allowance for children up to the age of two, or up to the age of three in the case of disabled children. The maximum level for the reference period was Lei 450 per month for each child in nursery (from October 2021 the maximum level of the nursery allowance was increased to Lei 490). The amount of the nursery tickets is cumulated with the state child allowance.

Holiday vouchers – are granted to the employees in order to cover certain expenses incurred during their holidays in domestic tourism mode. The maximum amount that can be granted to an employee during a tax year in the form of holiday vouchers is of 6 gross basic minimum wages per country guaranteed in payment.

Cultural tickets (as of 2018) - are granted on a monthly or occasional basis to pay for cultural goods and services. The maximum amount of the cultural vouchers may not exceed lei 150 for monthly vouchers and Lei 300 per event for occasional vouchers.

Employers, together with the legally constituted trade union organisations or, where a trade union is not constituted, with the employees' representatives, shall determine by mutual agreement the categories of vouchers to be granted to employees, their frequency and value, where applicable, and the issuing unit.

The personnel in the public sector *receive* ***a food allowance*** of Lei 347 (70 Euros) per month.

Last but not least, the personnel holding ***the scientific title of PhD*** are entitled to a monthly allowance for the scientific title of PhD amounting to 50% of the level of the guaranteed minimum gross basic salary per country, if they work in the field for which they hold the title.

The sum of the benefits, compensations, supplements, bonuses, prizes and allowances, including food and holiday allowances, granted cumulatively per authorising officer per total budget ***may not exceed 30%*** of the amount of basic wages/monthly allowances, as the case may be.

Paragraph 2

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

For the reference period there are no legislative changes.

For the period 2017-2020 the results of the control actions regarding the overtime are as follows:

No.	INDICATORS	Year 2017	Year 2018	Year 2019	Year 2020
1.	No. of fines	477	240	237	162
2.	Total amount of the fines imposed (Lei)	749500	411,850	458,400	573,600

Paragraph 3

The Committee asks for further clarification on whether the law provides for the right to compensation for pecuniary and non-pecuniary damages and whether there is any limit on such compensation.The Committee also reiterates its question on the level of compensation granted to victims of pay discrimination by the courts in practice.

Chapter VI of the Law No 202/2002 on equal opportunities and equal treatment of women and men, entitled "Settlement of complaints and claims regarding discrimination based on sex" contains Article 33, according to which:

"(1) The court having jurisdiction under the law shall order the person at fault to pay compensation to the person discriminated against on the basis of sex, in an amount that adequately reflects the damage he or she has suffered.

(2) The amount of compensation shall be determined by the court in accordance with the law".

With regard to the phrase "according to law" in para. (2) of Art. 33 of the law, the text of the law refers to the provisions of the Civil Code, i.e. Art. 1385, which regulates the principle of full compensation for the damage suffered:

Thus, according to Art. 1.385 of the Civil Code:

(1) Damages shall be fully compensated, unless otherwise provided by law.

(2) Compensation may also be awarded for future damage if its occurrence is not in doubt.

(3) The compensation must include the loss suffered by the injured party, the gain which he could have made under normal circumstances and which he has been deprived of, and the expenses he has incurred in order to avoid or limit the damage.

(4) If the tort/delict also caused the loss of the opportunity to obtain an advantage or to avoid damage, the compensation shall be proportionate to the likelihood of obtaining the advantage or, as the case may be, avoiding the damage, taking into account the circumstances and the specific situation of the victim.

We also consider that the provisions of Article 253 para. (1) of the Labour Code, according to which "The employer is obliged, on the basis of the rules and principles of contractual civil liability, to compensate the employee in the event that he has suffered material or non-material damage as a result of the employer's fault in the performance of his duties or in connection with his work", and Article 27 para. (1) of O.G. no. 137/2000 on the prevention and sanctioning of all forms of discrimination (the act that represents the general regulatory framework on discrimination), according to which "The person who considers himself/herself discriminated against may file a claim before the court for compensation and restoration of the situation prior to the discrimination or annulment of the situation created by the discrimination, according to common law. (...) "

The Committee reiterates this question and asks information on whether the law prohibits discriminatory pay in statutory regulations or collective agreements, as well as, if the pay comparison is possible outside one company, for example, if such company is a part of a holding company and the remuneration is set centrally by such holding company.

In addition to the previous reports, we point out that Article 159 of Law No. 53/2003 - Labour Code, republished, amended and supplemented, stipulates that “in determining and awarding the wages, any discrimination based on gender, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union membership or activity is prohibited.”

According to Article 163 of the Labour Code, the wages are confidential and the employer is obliged to take the necessary measures to ensure their confidentiality.

In order to promote the interests and protect the rights of the employees, the confidentiality of the wages may not be opposed by trade unions or, where appropriate, the employees' representatives, in strict connection with their interests and in their direct relationship with the employer.

Also, Article 9, paragraph 1, letter (d) of Law No. 202/2002 on equal opportunities for women and men, republished, as subsequently amended and supplemented, stipulates that it is prohibited the discrimination by the employer's engagement of practices that disadvantage persons of a particular gender in association with the employment relations, with regard to the determination of remuneration;

In this regard, in order to prevent the discrimination based on gender in the field of employment, both when negotiating the collective labour agreement at the level of sector of activity, group of units and units, the contracting parties shall establish the introduction of clauses prohibiting the acts of discrimination and, respectively, clauses on the way of dealing with the complaints/complaints made by persons harmed by such acts, in accordance with Article 13 of Law No. 202/2002 on equal opportunities between women and men, republished, with subsequent amendments and additions.

We consider useful to mention that there is a unitary salary system for budgetary sector staff paid from the general consolidated state budget, according to Law no. 153/2017 on the salary of staff paid from public funds, which is based on the following principles:

a) the principle of legality, in the sense that rights of a salary nature are established by legal rules with the force of law;

b) the principle of non-discrimination, in the sense of eliminating all forms of discrimination and establishing equal treatment with regard to staff in the budgetary sector who perform the same activity and have the same length of service and seniority;

c) the principle of equality, by ensuring equal basic salaries for work of equal value;

d) the principle of the social importance of work, in that the remuneration of budgetary sector staff shall be related to the responsibility, complexity, risks of the work and level of education;

e) the principle of stimulating the staff from the budgetary sector, in the context of recognising and rewarding their professional performance, on the basis of criteria laid down in accordance with the law and its regulations;

f) the principle of vertical and horizontal hierarchisation within the same area, depending on the complexity and importance of the work carried out;

g) the principle of transparency of the mechanism for establishing salary rights, in order to ensure predictability of salaries for staff in the budgetary sector;

h) the principle of financial sustainability, in the sense of establishing the level of salaries for budgetary staff, in such a way as to ensure compliance with the ceilings on staff expenditure of the general consolidated budget, established by law;

i) the principle of publicity in the sense of transparency of income of a salary nature, as well as other rights in cash and/or in kind for all budget sector functions.

In its Decision No 2/2015, the High Court of Cassation and Justice (HCCJ) examined the situation of alleged discriminatory treatment between employees, who are paid differently because some are entitled to salary entitlements on the basis of court judgments, while the others have either not referred the matter to the courts or their claims have been rejected. The Supreme Court's response

was negative, and there was no question of discriminatory treatment. Tangentially, the decision also touches on the issue of potential discrimination between employees due to pay measures ordered by different employers.
Thus, the decision holds that, in the opinion of the specialists of the Faculty of Law of the University of Bucharest, discrimination by establishing different pay for equal work can also be analysed and established when employees in identical or comparable situations, in terms of the position occupied, have established employment relationships with different employers, in so far as the decision to establish different salary rights comes from the same source. The non-uniform administrative practice whereby different employers provide for different pay arrangements cannot constitute discrimination if the arrangement does not come from the same source. The decision also refers to national practice, which takes the same approach. Although this view is not confirmed by the operative part of the HCCJ decision, we consider that the references to doctrine and practice are helpful in responding to the Committee's request for clarification.
Article 132 of Law 62/2011 clarifies the limits of application of the clauses of collective labour agreements, which may establish rights and obligations only within the limits and under the conditions provided by law. When concluding collective labour agreements, the legal provisions on employees' rights are of a minimum nature. Collective agreements may not contain clauses establishing rights at a lower level than those established by the applicable collective agreement concluded at a higher level.
With regard to the right to compensation, we ask the Committee to take into account the conclusions of the High Court of Cassation and Justice - the competent court to judge the appeal in the interest of the law which, in its Decision No 10/2016, established, with binding effect from the date of its publication in the Official Gazette of Romania, Part I, that "in interpreting and applying the provisions of Art. 27 para. (1) of Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished, the competent court to settle claims for compensation and restoration of the situation prior to the discrimination or the annulment of the situation created by the discrimination is the court or tribunal, as appropriate, as civil law courts, in relation to the subject matter and value of the claim, except for claims where the discrimination occurred in the context of legal relationships governed by special laws and where the protection of subjective rights is carried out before special jurisdictions, in which cases the claims will be judged by these courts, according to special legal provisions".
Regarding the remuneration difference between men and women, according to the data published by EUROSTAT, it represents the difference between the average gross hourly weights of the employees paid by men and women, expressed as a percentage, and Romania is one of the top 3 EU countries with the best score in this respect. Compared to 2010 when the percentage was 8.8, over time it has decreased significantly as follows:

2010	2014	2015	2016	2017	2018	2019
8.8	4.5	5.8	5.2	3.5	3	3.5

Source: EUROSTAT - Romania – the difference between the average gross hourly weights of the employees paid by women and men, expressed as a percentage

Regarding the measures taken by the National Agency for Equal Opportunities for Women and Men (NAEO) in order to pursue the policies aimed at reducing the remuneration difference between women and men, we present in the following some actions related to the reporting period

during which these issues have been addressed, linked to the provisions of the National Strategies on Gender Equality for the periods 2014-2017 and 2018-2021 respectively.

From 28 July to 30 August 2017, NAEO, in collaboration with the Ministry of Youth and Sport, organized in Costinești, Sinaia and Predeal, within the framework of a number of student camps, 20 thematic information sessions on the rights of young people regarding equal opportunities and equal treatment between women and men, as well as raising awareness among the young generation, and also raising awareness upon the rights that women and men have when entering and staying in the labour market.

In 2019, in the context of Romania holding the rotating Presidency of the Council of the European Union, in collaboration with the European Institute for Gender Equality - EIGE and the European Commission, NAEO submitted for discussion a research note on "Approaching the differences in remuneration between women and men: Not without a better balance between the professional, personal and private life," on the basis of which the set of EU Council conclusions "Eliminating the differences in remuneration between women and men: key policies and measures" was adopted.

Also, during the Presidency of Romania, NAEO organized on 29-30 May 2019 at the Palace of Parliament in Bucharest, under the High Patronage of the Prime Minister of the Romanian Government, the High-Level International Conference on "*The Condition of the Modern Woman - between empowerment, leadership and gender discrimination*," attended by 200 persons, Romanian and European officials, representatives of EU institutions, international institutions, civil society and the private sector.

In the context of the COVID-19 pandemic, NAEO, in exercising its role as a state authority in the field of equal opportunities between women and men and the prevention of and fighting against domestic violence, has developed a Plan of Measures on various levels of intervention, including the following:

- Ongoing public communication on the measures, the rights and the ways of approaching situations of gender-based discrimination, using the communication channels accessible to the general public (Facebook and NAEO website) and informing the public about the public services provided both by calling the single telephone number 0800 500 333 for victims of domestic and gender-based violence and by facilitating their access to social services.
- Implementation of the expansion and diversification of the type of information provided on the national hotline 0800 500 333 for victims of domestic violence and gender-based violence (available free of charge, with 24/7 assistance), guidance on: telework, working from home, the possibility to stay at home with children under 12, technical unemployment, information for the Romanian women living abroad, in other countries affected by COVID-19, information on the national safety measures adopted by the military ordinances, etc.

Concerning the legislative changes during the reference period, we highlight that the Romanian Parliament adopted Law No. 178/2018 amending and supplementing Law 202/2002 on equality of opportunities and treatment between women and men, published in the Official Gazette No. 627 of 19 July 2018.

The main provisions include:

- Regulation of the general regime for the occupation of expert in equality of opportunities and of technician in equality of opportunities and of the main duties for these occupations.

- the introduction of the possibility for legal persons from the public and private sector with more than 50 employees, central and local public, civil and military institutions and authorities to identify an employee to be assigned, by means of the job description, duties regarding the equality of opportunities between women and men.
- the introduction of the possibility for the legal persons from the public and private sector to opt for the employment of an expert/technician in equality of opportunities within the existing budget for the wage costs.

The Labour Inspectorate carries out preventive control actions on the way in which the provisions of Law No. 202/2002 on the equality of opportunities and treatment for women and men are respected.

For the reference period, the results of the control actions are as follows:

		Controls	Penalties
2017		15,426	56
2018		9,835	38
2019		10,257	68
2020		8,166	37

Paragraph 4

The Committee asks the next report to provide examples of longer notice periods applicable. It also asks information on the compensation available in such cases, in particular as regards the amount of such compensation.

Article 75 paragraph (1) of Law No. 53/2003 - Labour Code, as amended, provides that the persons dismissed on the basis Article 61 letters c) and d), Articles 65 and 66 shall be entitled to a notice period of not less than 20 working days.

The provisions referred to stipulate that the same period of notice **to be given to all employees** in the event of termination of the individual employment contract for reasons not related to the employee, irrespective of their length of service.

We highlight that the employees dismissed for reasons unrelated to their person benefit from active measures to combat the unemployment and may receive compensation under the conditions laid down by law and the applicable collective labour agreement.

According to the provisions of labour law, the dismissal may be ordered only under the conditions and in accordance with the procedures laid down by law.

In accordance with the provisions of Article 78 of Law No. 53/2003-Labour Code, republished, with subsequent amendments and additions, **the dismissal ordered in breach of the procedure provided for by the law becomes null and void.**

Thus, if the dismissal has been unjustly or unlawfully performed, the court will order its annulment and will oblige the employer to pay a compensation equal to the indexed, increased and updated wages and other rights that the employee would have benefited from, according to the provisions of Article 80 paragraph (1) of Law No. 53/2003 - Labour Code.

Therefore, in the event of an unlawful dismissal, the person concerned must be entitled to all the rights he or she would have received as an employee.

Article 38 of the Labour Code states that the employees may not waive their rights granted under the law. Any transaction designed to waive or abridge the rights granted under law to the employees shall be void.

Thus, the employer is obliged to recognise and respect everything that the law or the collective agreements grant to the employees in the form of rights, otherwise each employee has the right to take legal action to force his/her employer to respect his/her rights.

We highlight that the obligation to pay the compensation provided for in Article 80 paragraph (1) of Law No. 53/2003 - Labour Code is incumbent on the employer in the event that the dismissal has been carried out unjustly or unlawfully.

We point out that the rule for the conclusion of individual employment contracts is the conclusion of contracts of unlimited duration, while the conclusion of contracts of limited duration is regulated only by way of exception.

According to Article 87 paragraph (2) of the Labour Code, a similar permanent employee is an employee whose individual employment contract has been concluded for an unlimited duration and who performs the same or a similar activity in the same organization, taking into account the qualification/professional skills.

The same article states in paragraph (1) that, regarding the employment and working conditions, the employees with an individual employment contract of limited duration shall not be treated less favourably than the comparable permanent employees solely on the grounds of the duration of the individual employment contract, except for the cases where the differentiated treatment is justified on objective reasons.

Therefore, all employees with an individual employment contract of limited duration cannot be treated less favourably than the comparable permanent employees with an employment contract of unlimited duration carrying out the same or a similar activity, benefiting from the same right to a notice period of not less than 20 working days.

Paragraph 5

The Committee asked for clarification on whether the provision of Article 170 of the Labour Code, according to which the employee's approval of payslips may not be considered equivalent to them waiving their rights under the law or the employment contract, effectively prevents workers, in law or in practice, from waiving the general prohibition of deductions from wages established by the Labour Code. The report does not provide the requested clarification. The Committee, therefore, reiterates its previous question.

Due to difficulties in understanding the request of the Committee, it cannot be answered. Clarification is requested.

The Committee further asked to indicate any "other debts" referred to in Article 169§3 of the Labour Code.

The term *"other debts"* refers to any claim that is due, of a fixed amount and payable and has been determined as such by a final and irrevocable court decision. This category may include bank loans, fines, etc.

The Committee asked whether the "amounts not due" referred to in Article 256§1 of the Code were subject to the limit on the combined amount deductions of 50% of net wages.

"The amounts not due" fall within the category referred to in Article 169§3 letter (d) as part of the deductions for damages caused to the employer.

The Committee reiterated its request for information on the circumstances (such as civil claims, fines, trade union dues) and/or operations (attachment) liable to result in deductions from wages not provided for by the Labour Code.

Only to the extent that the claim is due, of a fixed amount and payable and has been determined as such by a final and irrevocable judgment.

The Committee notes that the Labour Code was amended several times during the reference period and asks the next report to indicate whether national provisions related to Article 4§5 of the Charter were amended.

There were no legislative changes to the provisions of the Labour Code during the reference period that are related to Article 4§5 of the RESC.

According to Article 169 of Law 53/2003-Labour Code, no amount may be withheld from the wages, except for the cases and under the circumstances provided for by the law.

(2) The amounts withhold as damages caused to the employer may be withheld only if the employee's debt is due, of a fixed amount and payable and has been established as such by a final and irrevocable judicial decision.

(3) In the case of multiple creditors of the employee, the following order shall be respected:

a) support obligations, according to the Family Code[11];

b) contributions and taxes due to the state;

c) damages caused to public property by means of illicit actions;

d) covering other debts.

(4) The cumulated amounts withheld from the wages may not exceed half of the net wages every month.

According to Article 273 of the same legislative act, the amount set for the covering of the damages shall be deducted in monthly instalments from the wage rights due to the person concerned from the employer with whom he/she is employed. The instalments may not exceed one third of the net monthly wage, without exceeding, together with the other amounts withheld which the person concerned may have, half of that wage.

The amounts withhold as damages caused to the employer may therefore not exceed one third of the net monthly wage.

[11] The Family Code has been repealed. The provisions of the Family Code have been taken over into the Civil Code.

Article 5 – Union right/The right to organise

The Committee concludes that the situation in Romania is in conformity with Article 5 of the Charter.

For the reference period there are no legislative changes.

In 2019, the average size of an enterprise in industry was of about 22.8 employees, while in trade it was about 5.2 employees, according to the data from NSI's Statistical Yearbook 2020.

The amount of the trade union contribution remained set at the legal tax-deductible amount (1% of gross monthly wage), and amid the pandemic crisis certain unions opted to lower the contribution below 1% of gross wage in order to retain and attract members.

Article 6 - The right to negotiate collectively

Paragraph 1

The Committee concludes that the situation in Romania is in conformity with Article 6§1 of the Charter.

For the reference period there are no legislative changes.

Paragraph 2

The Committee asks the next report to provide information on the total proportion of employees at every level, covered by a collective agreement. Given the low level of collective bargaining coverage at the enterprise level and the very few sectoral level agreements, the Committee asks whether the Government has taken any measures to promote collective bargaining.

Working and employment conditions are established by the Labour Code and the related legislation, and the collective agreements negotiated within the limits and conditions of the law, are applicable hierarchically from the highest level to the enterprise level, with no possibility of derogation at the enterprise level, which reduces the consensus of interest and the margin of negotiation at a level higher than the enterprise level. The legal validity of a collective agreement, regardless of the level of negotiation, is of a maximum of 2 years, with the possibility of extending its effects for 1 year by means of an addendum.

According to the data from the Statistics Bulletin of MoLSS[12]:

At enterprise level, a total of 13,359 new collective agreements were registered in 2017, 10,708 new agreements in 2018, 8,233 new agreements in 2019 and 5,742 new collective agreements in 2020, *in correlation with the measure adopted in the context of the pandemic to extend the validity of all collective labour agreements in force during the state of alert* and for a maximum of 90 days afterwards.

At unit group level, 14 new collective agreements were registered in 2017, 5 new collective agreements were registered in 2018, 10 new agreements were registered in 2019 and only 5 collective agreements were registered in 2020, with the proviso that some collective agreements at

[12] Romanian Ministry of Labour and Social Solidarity

sector level were registered *at unit group level* in order to comply with the legal requirements (e.g., the *Collective Agreement at the level of the civil construction sector*).

At sector level: in 2017 there were 2 collective agreements (health, education) valid until 2019, renegotiated and registered in 2020.

The rate of the coverage of the collective agreements is not methodologically calculated and officially monitored.

The estimates regarding *the national coverage rate* (45% in 2019) take into account *the collective labour agreements* registered annually by the Ministry of Labour under the Social Dialogue Law applicable to all employees, in relation to *the total number of employees* with individual labour contracts, *without taking into account all valid collective agreements and other agreements concluded that are not monitored*, i.e. those negotiated under Article 153 of the Social Dialogue Law, if any, *the collective agreements concluded by the civil servants* under the Administrative Code and GD No. 833/2007 and other *conventions/agreements concluded under the specific legislation* (e.g., the Collective Agreement concluded on the basis of Law No. 145/2019 at the level of the Penitentiary Agency, registered by the Ministry of Justice).

Clarifications related to the application of the collective labour agreements negotiated on a representative basis under the social dialogue law:

The collective employment contracts at the unit level are applicable *erga omnes* to all employees in the unit without distinction regarding the duration of the individual employment contract/assimilated contract.

The collective agreements at unit group level are applicable to all employees in the units forming the group.

The collective labour agreements at sectoral level are applicable to all employees in the units which are members of the employers' organisations signatory to the agreement, with a mechanism provided by law for extending the clauses at the request of the signatory parties and *with the favourable agreement of the National Tripartite Council for Social Dialogue*.

A number of 30 collective negotiation sectors *were established by the social partners* and adopted by the Government by GD 1260/2011. The clauses of the collective agreements are applicable from the top to the bottom level, with no possibility of derogation.

As a *protective measure for the employees*, in 2020 the measure was taken *to extend the validity* of the collective labour contracts for the duration of the state of emergency/alert and for a maximum of 90 days afterwards.

Also for clarification, we underline that, *under the terms of the law on social dialogue*, the collective negotiation is carried out both on the basis of *"representativeness,"* which legitimises *the majority representation* of the employees at the negotiations, the contracts concluded being a *source of law and applied* by extension/erga omnes to all *employees* (in the unit, group of units, units of the signatory members of the contract by sector), and on the basis of *"mutual recognition"* of the parties (Article 153), the voluntary agreements negotiated being *the law of the parties*, with clauses applicable to the members.

The voluntary agreements are not administratively registered and monitored and as such, only the texts published/publicised by the parties can be analysed, such as the reported example of *the Collective Agreement in the construction sector,* concluded/renegotiated periodically from 2012 to 2020, between non-representative federations per sector. The agreement established renumeration coefficients and an extension mechanism through *the voluntary affiliation* of companies.

In 2020, *the signatory federations* obtained in court *the recognition of their representativeness at the level of the construction sector* and concluded *the Collective Labour Agreement in the civil engineering sector*, registered and administratively reported *at unit group level* in compliance with the law.

The measures *to promote and support the collective negotiation*, bringing together *the European and ILO*[13] practices in this area, *are contained/provided for in the applicable legislation (Labour Code, social dialogue law and the specific legislation)* respectively:

- the recognition of the union rights and freedoms, the right of *free and voluntary* association and affiliation, prohibition of discrimination, of the adverse treatment and of the dismissal on the grounds of exercising union rights and activity, facilities for the organization of unions and the establishment of the *prohibition of waiving the legal rights or the rights brought by the collective agreements.*
- *The establishment of the obligation to initiate the collective negotiation in all units with more than 21 employees* in order to encourage the joint negotiation and consultations
- *Regulation of procedures and rules for collective negotiation in the absence of an agreement between the social partners on the matter* (stages, deadlines for negotiation, obligation to inform, legitimacy of the negotiating parties, conflict resolution, etc.).
- *Recognition by regulation at the request of the social partners of the collective negotiation sectors established/agreed by them.*
- Regulation of the *amicable settlement* mechanisms and procedures with the *institutional* support *for conciliation and mediation* in order to facilitate the conclusion of collective agreements and to mitigate the conflicts and collective actions.
- The establishment of the *erga omnes* application of the collective agreements negotiated at unit and group level in order to directly extend the protection of the clauses to *all employees*, and *the regulation of a mechanism to extend the application of the collective agreements concluded at the sector level* in order *to include the employees in all units in the sector* (at the request of the signatory parties and with *the favourable agreement* of the National Tripartite Council for Social Dialogue)
- Supporting *the involvement of all union organisations* in the negotiations and eliminating the possible drawbacks linked to *the recognition of the organisations' representativeness*, by the possibility of negotiation on the basis of *mutual recognition of the parties*, the agreements/texts concluded being the law of the parties, with clauses applicable exclusively to the members.
- Establishment of sanctions and remedies, with facilities for the access to court.
- Since 2009 *the sectoral social dialogue committees* have been regulated, with funding from the state budget and from their own sources, as a measure of encouraging *the sectoral dialogue*

[13] International Labour Organization

between the union and employers' federations in the field of employment, vocational training and in order to identify the shared interest in sectoral negotiation. (GEO No. 28/2009).

Another supportive measure was linked to the social partners' access to European funds to increase their capacity for expertise, participation in dialogue and collective negotiation.

The Government intends to continue to support the enhancement of the capacity of action of the sectoral committees for social dialogue and the organisational and action capacity of the social partners through the 2021-2027 European funding programmes.

Paragraph 3

The Committee concludes that the situation in Romania is in conformity with Article 6§3 of the Charter.

For the reference period there are no legislative changes.
The conciliation of the *collective* labour disputes actually involves the continuance of the dialogue and negotiations between the parties, in the presence of a labour inspector with a neutral and inactive role in the process.

From *the Statistics Bulletin of MoLSS*:

In 2017, 21 collective labour disputes were recorded, with 17,887 employees involved, of which 3 were closed (conciliation and 1 company mediation) and 4 partially closed.

In 2018, 26 collective labour disputes were registered, with 14,253 employees involved, of which 8 closed and 2 partially closed.

In 2019, 26 collective labour disputes were registered, with 22,461 employees involved, of which 12 were closed.

In 2020, 6 collective labour disputes were registered, with 2,219 employees involved, of which 3 closed and 1 partially closed, given the fact that the validity of the collective labour contracts was extended during the state of emergency/alert.

With regard to unresolved collective labour disputes, the Social Dialogue Law no. 62/2011, republished, with subsequent amendments and additions, stipulates that, if the collective dispute has not been resolved following conciliation, being open or partially closed, only the parties to the dispute may decide to continue negotiations/dialogue, initiate mediation and arbitration procedures or strike, under the terms of the law.

The law does not provide for other reporting obligations to the administration, collective disputes are recorded to the extent that the registration of the dispute and/or institutional amicable settlement is requested, as provided by law.

Paragraph 4

The Committee concludes that the situation in Romania is not in conformity with Article 6§4 of the Charter on the ground that a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union's members.
Furthermore, the Committee asks for clarification on several issues:

- what does it mean in fact that persons employed in air, road or water transport cannot strike whilst on duty
- whether members of the prison service and of the police have the right to strike
- whether there are sectors where the provision of a minimum service is required and if so whether the social partners are involved in the discussions on the minimum service to be provided on an equal footing.

There have been no legislative developments in this area, but in response to the conclusion and requirements we reiterate that, *although the right to collective action is recognised at European and international level*, the exercise of *the right to strike* remains a matter for the national law.

The national regulation on *the exercise of the right to strike* (a constitutional right) takes into account ILO recommendations on the minimum exercise requirements, including *the promotion of amicable settlement* as a means of *limiting collective action and strike action*.

In clarification, we mention that according to the law on social dialogue, *the right of collective action* is exercised through *the right of all union organisations to rally, protest, demonstrate* (Articles 27, 28), the right to *initiate and conduct collective labour disputes* in connection with the initiation, negotiation and conclusion of collective agreements, guaranteed to the legal *parties* to collective negotiation, as well as *the right to strike*, recognized only to the employees (unregulated lockout), exercised as *an extreme form of conducting collective labour disputes, the parties to the strike being also the parties to the collective dispute*.

Thus, in *exercising the right to strike* provided for in Articles 181 to 207, *the representative unions* may, *under the conditions laid down by law*, initiate a strike *with the written consent of at least half the number of union members* and, in their absence, *the elected representatives of the employees with the written consent of at least one quarter of the number of employees of the unit or, where appropriate, of the sub-unit or compartment*. [Article 183 paragraphs (1) and (2)].

In the absence of a collective labour agreement, the law does not condition the exercise of the right to strike.

The law on social dialogue does not regulate the exercise of the forms of collective protest (protest, rally, etc.) nor the spontaneous strikes, Japanese strikes, etc., which are ways of freely exercising the unions' right to collective action/strike.

Specific restrictions

The law on social dialogue establishes the obligation *to set up a mandatory minimum service* with the provision of one third of the activity in the event of *a strike* in the national security sectors, *the organisation and setting of the minimum service* in practice *being left to the consultation and negotiation in each unit*.
The seafarers exercise the right to strike under the terms of the international conventions to which Romania is a party. The social dialogue law *prohibits the seafarers' right to strike "from the moment of departure on mission until the end of the mission"* (Article 203), the duration of the mission being determined by *the embarkation/mission contract*.
The aviators are prohibited from striking during the *"duration of the flight mission,"* as defined in Article 3 paragraph (1) of the Romanian Air Code, as "the activity of a crew member from the moment he/she enters service, after an appropriate rest period, but before the start of a flight or

series of flights, until the moment that crew member leaves the service after the end of that flight or series of flights."

Prison officers *have the right to strike* recognized by their own Statute - Law No. 154/2019.

The police officers are forbidden the right to protest and strike according to the Police Officers' Statute - Law No. 330/2002, the regulation being in line with Article 6 of the Charter, ECHR[14] case law and Article 5 of the ILO Convention No. 98/1949. In practice, the police unions exercised in 2017-2020 the right to collective action (rally, "strike"-type protest by suspending the police service) in defence of their professional, social and economic interests (swage rights, restructuring, organisation of work).

Article 21

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

For the reference period there are no legislative changes.

Article 28

The Committee concludes that the situation in Romania is not in conformity with Article 28 of the Charter on the ground that:

- the protection against dismissal granted to trade union representatives and other elected workers' representatives does not extend beyond the end of their mandate,

- it has not been established that facilities afforded to workers' representatives are adequate.

Law 53/2003 - Labour Code has been amended to strengthen the protection against discrimination, harassment and intimidation of the workers' representatives. (Article 5).

As previously reported, *the legal provisions* guarantee the union representatives and the representatives elected by the employees *the protection against adverse treatment and dismissal during their term of office* in the exercise of union rights and activity, as well as *legal facilities and facilities collectively negotiated, as well as facilities directly negotiated with the employer*, so that *the operation of the company is not affected*.

We consider that the national provisions are consistent with the *explicit* provision of *Article 28 of the Charter* which refers to *protection against dismissal on the grounds of their status or activities as the workers' representatives in the undertaking*, as well as with the guarantees of Articles 1 and 2 of Convention No. 135/1971 and Article 4 of ILO Convention No. 98/1949 which provide facilities and *protection against the dismissal for carrying out union activities outside the working hours and with the consent of the employer within the working hours*.

The decisions of the Constitutional Court of Romania no. 681/2016 and no. 814/2015 *are binding "erga omnes:" "the normative provision whose unconstitutionality has been demonstrated can no longer be applied by any subject of law (least of all by public authorities and institutions), ceasing to have effects for the future, namely from the date of the publication of the decision of the*

[14] European Court of Human Rights

Constitutional Court in the Official Gazette of Romania, according to the second sentence of the first phrase of Article 145 paragraph (1) of the Constitution."

Thus, one of the arguments in Constitutional Court Decision No 681/2016 states that in situations where the grounds for dismissal provided for in Articles 61 and 65 of the Labour Code are related to the reason of fulfilling the mandate within the trade union body, the differentiated legal treatment of persons holding eligible positions in a trade union body, by regulating special and more effective measures to protect the stability of employment relations, is objectively and reasonably justified. However, where there is no link between trade union activity and dismissal for one of the reasons set out in Articles 61 and 65 of the Labour Code, the establishment of different legal treatment of persons holding eligible posts in a trade union body, namely the prohibition of their dismissal, is not objectively and reasonably justified and establishes a privilege for such persons in relation to other employees, in terms of guarantees of the right to work, which is contrary to the provisions of Article 16 of the Constitution (paragraphs 29 to 30).

Also, if after the termination of the mandate as trade union leader or representative the person is dismissed without justification, he or she may take the matter to court to have the dismissal declared illegal.

In this context, we mention, for example, the ECHR decision Dumitrean v. Romania in which the Court held that the applicant had brought an action before the national courts challenging the dismissal decision, inter alia, under Article 60 para. (1) letter h) of the Labour Code, which limits the possibilities for dismissal of employees holding an eligible position in a trade union body. In so far as the applicant criticises the domestic law basis of the contested measure, the Court recalls that the interpretation and application of domestic law is primarily a matter for the national authorities, in particular as regards the clarification of doubtful aspects (Rekvényi v Hungary (MC), no. 25390/94, paragraph 60, ECHR 1999-III). Thus, having been called upon to verify the conditions of the applicant's dismissal, the national courts considered that the dismissal was based solely on the defendant company's financial difficulties and that it was part of a wider action in the course of which the company made redundant a significant number of employees, starting with those who, like the applicant, had retired and whose pension income was added to their salary income.

Facilities

The responsibilities of the *elected* representatives of the employees*, the manner in which they are fulfilled, as well as the duration and limits of their mandate, are established at the general meeting of the employees,* in accordance with the law *(Article 224 of the Labour Code).* As employees, *the elected representatives of the employees* have at their disposal *technical and communication means,* which can be used to carry out the union activity, *under the conditions agreed with the employer, including by the collective labour agreement* and/or *direct negotiation, depending on the needs, importance and possibilities of the company.*

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

The Committee concludes that the situation in Romania is in conformity with Article 29 of the Charter.

The regular information and consultation of the union/employees' representatives on the economic and financial situation, the intention of restructuring and collective dismissals is required both by the Framework Law No. 467/2006 establishing a general framework for informing and consulting

the employees (Article 5) and by Article 68-74 of the Labour Code - Collective dismissals. Information, consultation of employees and procedure of collective dismissals.

The Labour Code establishes the obligation for the employer to give prior notification of the intention of collective dismissal to the workers' representatives (union/employees' representatives) and to the Labour Inspectorate/TLI[15] and to comply with the procedures for consulting and informing the union/employee representatives, with the guarantee of nullity in case of non-compliance.

The dismissal ordered in breach of the procedure provided for by the law is subject to absolute nullity, as provided for in Article 78 of the same legislative act.

[15] Territorial Labour Inspectorate

Appendix

Questions on Group 3 provisions (Conclusions 2022)

Labour rights

Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. 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;

a) Please provide updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods, ...) and exceptions (including legal basis and justification). Please provide detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).

There are no legislative changes for the reference period. For detailed information regarding the compliance with Article 2 paragraph 1 of the Revised European Social Charter see the information provided in the 2013 and 2017 national reports (Reports 13 and 17).

*The results of the control actions on **weekly rest** during 2017-2020 are as follows:*

No.	***RESULTS***	***Year 2017***	***Year 2018***	***Year 2019***	***Year 2020***
1.	*Number of fines*	*809*	*622*	*613*	*600*
2.	*Total amount of fines imposed (Lei)*	*1,266,250*	*1,023,350*	*1,245,500*	*1,280,800*

b) The Committee would welcome specific information on proactive action taken by the authorities (whether national, regional, local and sectoral, including national human rights institutions and equality bodies, as well as labour inspectorate activity, and on the outcomes of cases brought before the courts) to ensure the respect of reasonable working hours; please provide information on findings (e.g. results of labour inspection activities or determination of complaints by domestic tribunals and courts) and remedial action taken in respect of specific sectors of activity, such as the health sector, the catering industry, the hospitality industry, agriculture, domestic and care work.

According to Article 260, paragraph 1, letters i) and j) of the Labour Code, non-compliance with the provisions on overtime work is punishable by a fine of Lei 1,500 to Lei 3,000 for each person identified as performing overtime work and non-compliance with the legal provisions on the granting of weekly rest is punishable by a fine of Lei 1,500 to Lei 3,000;

*The results of the control actions on **the overtime** in the period 2017-2020:*

No.	***INDICATORS***	***Year 2017***	***Year 2018***	***Year 2019***	***Year 2020***
1.	*Number of fines*	*477*	*240*	*237*	*162*

2.	*Total amount of fines imposed (Lei)*	*749,500*	*411,850*	*458,400*	*573,600*

c) Please provide information on law and practice as regards on-call time and service (including as regards zero-hours contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration.

For detailed information regarding the compliance with Article 2 paragraph 1 of the Revised European Social Charter see the information provided in the 2013 and 2017 national reports (Reports 13 and 17).

As mentioned in the previous reports, according to the Labour Code, working time represents any period during which the employee performs work, is at the employer's disposal and carries out his/her duties and tasks, in accordance with the provisions of the individual employment contract, the applicable collective labour agreement and/or the legislation in force, the period during which the employee is at the employer's disposal representing working time, regardless of whether the employee has actually worked or not.

The Order of the Minister of Health no. 870/2004 approving the Regulation on working time, the organisation and on-call service in public units in the health sector has been amended as follows (Articles 41-45 and 48):

It is forbidden for the same doctor to carry out two consecutive on-call services.

On-call hours are carried out outside the basic working hours and are carried out on the basis of an individual part-time employment contract and constitute seniority in the job and in the speciality.

In addition, on-call hours as well as the calls from home must be recorded on an attendance sheet for on-call work.

The calls from home are recorded in the attendance book for on-call activity, are considered as on-call hours and are paid according to the law.

Only hours actually worked in the health facility where the call from home was made shall be considered on-call hours.

Regarding the zero-hours contract, this type of contract is not regulated in Romania.

d) Please provide information on the impact of the COVID-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. As regards more specifically working time during the pandemic, please provide information on the enjoyment of the right to reasonable working time in the following sectors: health care and social work (nurses, doctors and other health workers, workers in residential care facilities and social workers, as well as support workers, such as laundry and cleaning staff); law enforcement, defence and other essential public services; education; transport (including long-haul, public transport and delivery services).

Measures to prevent occupational hazards, ensure health and safety at work for the staff of the Ministry of Internal Affairs.

- ✓ frequent training of the staff on the symptoms of SARS Cov-2 infection, as well as on the obligation to inform the immediate supervisor and the unit doctor as soon as they are observed, and on the obligation to wear the correct personal protective mask at all times;
- ✓ organising the working hours in such a way as to limit, as far as possible, the simultaneous presence of all members of staff using the same workspace, while ensuring optimal operational capacity to manage the missions according to their competencies;
- ✓ limiting/reducing the institutional meetings/reunions (working meetings, training meetings, etc.) and any professional meetings, in the attendance format, rescheduling the controls/workshops and other planned activities and limiting the schedule for the public relations;
- ✓ holding the reunions/meetings/working groups in video conference format;
- ✓ training the staff in the transmission of service documents, as far as possible, by electronic means and/or telecommunications, in compliance with the legal provisions in force and the security of information.

By the provisions of the Decree of the President of Romania no. 195/2020 on the establishment of the state of emergency on the territory of Romania, it was regulated the possibility, for the MIA[1] structures, **to hire without competition**, if necessary, for a fixed period of 6 months, personnel from external sources or members of the personnel who have been discharged/put no reserve and whose employment relationships have ended.

Also, under the same conditions, the possibility has been established for the health units to employ contractual medical personnel, auxiliary personnel, pharmacists, laboratory personnel and other necessary contractual personnel.

In order to implement the established measure, at the level of the MIA, the Ministry of Interior has issued a Ministerial Order[2] approving the procedure for occupying, without competition, the vacant posts in the Ministry of Interior's units, for a fixed period of 6 months, in the context of the establishment of the state of emergency in Romania.

In addition, two other Ministry Orders[3] were issued on the establishment of measures for the recruitment without competition of personnel on the basis of *Law no. 55/2020 concerning certain measures to prevent*

[1] Ministry of Internal Affairs

[2] *Order no. 46 of 19 March 2020 approving the Procedure for filling, without competition, the vacancies in the units of the Ministry of Internal Affairs, for a fixed term of 6 months, in the context of the establishment of the state of emergency in Romania*

[3] *Order no. 86 of 26 May 2020 on the establishment of measures for the employment without competition of personnel, under the terms of Article 27 para. (1) of Law no. 55/2020 concerning certain measures to prevent and control the effects of the COVID-19 pandemic and Order no. 165 of 18 November 2020 concerning the establishment of measures for the employment without competition of personnel, in accordance with Article 21 para. (1) of Law no. 136/2020 on the establishment of measures in the field of public health in situations of epidemiological and biological risk)*

and control the effects of the COVID-19 pandemic[4] and of *Law no. 136/2020 on the establishment of measures in the field of public health in situations of epidemiological and biological risk*[5].

In fact, the following issues have been identified in the above-mentioned legislation:

- the units where the procedure applies;
- the positions to which the procedure applies, i.e., those intended for police officers, military personnel, civil servants and contract personnel, and
- the conditions for the opening of the procedure for filling vacant posts.

At the same time, with reference to the specific regulations applicable to the category of personnel to be recruited, the legal conditions and specific criteria to be met by the personnel to be recruited were identified and the recruitment procedure was simplified, namely:

- the file shall be in electronic format only;
- the psychological assessment is carried out only for the person selected, prior to the employment, and
- the MIA medical file is completed only for the person selected, as soon as possible after employment.

Measures concerning the granting of rights to the MIA personnel

By *Law no 19 of 14 March 2020*[6], at national level, parents have been given the possibility to benefit from days off to supervise their children in case of temporary closure of the educational establishments. However, it has been provided that the provisions in question do not apply to the employees of the national defence system and other categories of personnel expressly provided for in the law, who will receive an increase in the wage if the other parent does not enjoy the rights provided for in the legislation.

In order to implement the established measure, two Ministerial Orders[7] were issued at the level of the Ministry of Internal Affairs (MIA), establishing the categories of MIA personnel to which, during the state of emergency instituted on the territory of Romania by Presidential Decree no. 195/2020, the provisions of Law no. 19/2020, as subsequently amended and supplemented, as well as the procedure for

[4] as subsequently amended and supplemented

[5] republished, as subsequently amended and supplemented

[6] On the granting of days off to the parents for the supervision of children in the event of temporary closure of educational establishments.

[7] *According the Order no. 51 of 24 March 2020 for the determination of the categories of personnel of the Ministry of Internal Affairs to which, during the state of emergency instituted on the territory of Romania by Decree no. 195/2020,* the categories of personnel to which the provisions of Law no. 19/2020 on the granting of days off to parents for the supervision of children, in the event of temporary closure of educational establishments, do not apply, and for the determination of the necessary measures for granting the wage increase provided for in Article 32 para. (2) of Annex no. 1 to Decree no. 195/2020 and Article 3^1 of Law no. 19/2020 and *Order no. 78 of 22 May 2020 for determining the categories of personnel of the Ministry of Internal Affairs* to which the provisions of Law no. 19/2020 on granting days off to parents for the supervision of children in the event of temporary closure of educational establishments do not apply, and the measures necessary for granting the wage increase, under the terms of Article 7 of the Government Emergency Ordinance no. 70/2020 on the regulation of certain measures, starting from 15 May 2020, in the context of the epidemiological situation caused by the spread of the SARS-CoV-2 coronavirus, for the extension of certain deadlines, for amending and supplementing Law no. 227/2015 on the Fiscal Code, National Education Law no. 1/2011, and other normative acts.

granting the wage increase provided for in Article 32 paragraph (2) of the Decree of the President of Romania no. 195/2020 and Article 31 of Law no. 19/2020.

Subsequently, the Emergency Ordinance no. 147 of 2020[8] was adopted, which, according to the latest amendment of 09/04/2021, provides that the employees of the national system of defence, public order and national security benefit from the days off provided for by the emergency ordinance, upon request, only with the approval of the employer, otherwise they shall be granted the increase in their wage rights. Regarding the single-parent families, they may opt either for the granting of days off or for the granting of an increase in their wage rights, without these rights being cumulative for the same period.

By Ministerial Order[9] the Methodological rules on the conditions for granting the increase referred to in Article 4 paragraph (3) of the Government Emergency Ordinance no. 147/2020 have been approved.

Also, the Centre for Psychosociology of the Ministry of Internal Affairs has sent to the structures that include psychologists a plan of measures to intensify their actions on the component of **psychological assistance** for the personnel, with a priority for those confirmed positive COVID-19, respectively for those in quarantine or isolation at home.

Thus, measures have been ordered for:

- identification, as a matter of urgency, by the unit psychologists of the personnel who are potential beneficiaries of psychological support measures in the context of the pandemic;
- design and implementation of assistance and psychological approaches for the above-mentioned personnel; provision of individualised psychological assistance programmes;
- formulation/development of specific prophylactic guidelines for the psychological preparation of the operational missions in the context of the pandemic;
- regular assessment of the measures taken by the unit psychologists.

e) The Committee would welcome additional general information on measures put in place in response to the COVID-19 pandemic intended to facilitate the enjoyment of the right to reasonable working time (e.g., flexible working hours, teleworking, other measures for working parents when schools and nurseries are closed, etc.). Please include information on the legal instruments used to establish them and the duration of such measures.

I. <u>Measures for the protection of the families with children:</u>

The allowance for the days off for the parents caring for and supervising the children during the temporary suspension of the operation of the educational establishments.

[8] *on the granting of days off to parents for the supervision of children in the event of limitation or suspension of teaching activities involving the actual presence of children in educational establishments and pre-school early education establishments due to the spread of the SARS-CoV-2 coronavirus*

[9] According to *Order no. 20 of 8 February 2021 approving the Methodological Rules on the conditions for granting the increase provided for in Article 4 para. (3) of Government Emergency Ordinance No 147/2020 on the granting of days off to parents for the supervision of children*, in the event of limitation or suspension of teaching activities involving the actual presence of children in educational establishments and pre-school early education establishments, due to the spread of SARS-CoV-2 coronavirus.

- governed by ***GEO[10] no. 147/2020 on the granting of days off to parents for the supervision of children in the event of limitation or suspension of teaching activities involving the actual presence of children in educational establishments and early pre-school education establishments as a result of the spread of the SARS-CoV-2 coronavirus, as subsequently amended and supplemented;***
- implementation period: **applicability September 2020-30 June 2021**
- the days off were granted to a parent for the supervision of children in the event of limitation or suspension of teaching activities involving the actual presence of children in educational establishments and pre-school early education establishments,
- The provisions were applicable to parents who cumulatively met the following conditions:

  a) have had children up to the age of 12 or have had children with disabilities up to the age of 26 enrolled in an early childhood education or pre-school education establishment;

  b) the other parent has not also been granted days off or, where applicable, the parent applying for days off is in one of the situations referred to in Article 3 of Law no. 277/2010 on family support allowance, republished, as subsequently amended and supplemented;

  c) the place of work does not allow homework or teleworking.
- Individuals were entitled to paid days off for the entire period during which it was decided to limit or suspend teaching activities involving the actual presence of children in educational establishments and pre-school early education establishments. The days off were granted at the request of the parent.
- The allowance for each day off has been set at 75% of the basic wage corresponding to one working day, but not more than the daily equivalent of 75% of the average gross wage used to calculate the state social security budget. This measure was applied until the end of the 2021 school year. The employers request the recovery of these amounts from the wage guarantee fund. The allowance is subject to taxation and payment of social security and health insurance contributions, as well as the payment of the work insurance contribution, under the conditions laid down in Law no. 227/2015, as subsequently amended and supplemented, for the incomes from wages and assimilated to these.

This measure is implemented by ANOFM[11] and statistical data can be provided by this structure.

II. Support measures supported by the State budget for other categories of workers who have suspended their activity due to the effects of SARS-CoV-2 coronavirus, other than the employees:

- **Support, according to GEO 30/2020, as subsequently amended and supplemented, for persons who have who stopped their activity as a result of the effects of SARS-CoV-2 coronavirus, other than the employees**, i.e. professionals (certified natural persons, sole proprietorships, family businesses, etc.), persons who have concluded individual employment agreements under Law no. 1/2005 (cooperatives), lawyers, persons working under a sports activity contract, natural persons who derive income exclusively from copyright and related rights as regulated by Law no. 8/1996, **by**

[10] Government Emergency Ordinance
[11] Romanian National Employment Agency

granting from the state budget of allowances set at a maximum of 75% of the average gross earnings. These allowances were granted both during a state of emergency and during a state of alert for those working in areas where the restrictions are maintained.

- **Support, under GEO no. 132/2020, as subsequently amended and supplemented, for professionals** regulated by Article 3 paragraph (2) of Law no. 287/2009 on the Civil Code, republished, as subsequently amended, whose activity is reduced as a result of the establishment of a state of emergency/alert/curfew. For them, during the period of the state of emergency/alert/ martial law and 3 months after the end of the state of emergency/alert/martial law, a monthly allowance of 41.5% of the average gross wage is granted from the state budget.
- **Support, under GEO no. 132/2020, as subsequently amended and supplemented** of the employers - beneficiaries of works - who use day labourers by paying 35% of the day labourer's daily remuneration from the state budget.

The detailed situation of the rights granted under GEO no. 30/2020 and 132/2020 from the introduction of the measures to date is as follows:

COVID allowances/support	**2020**		**January-May 2021**	
	No. of beneficiaries	**Amounts paid (Lei)**	**No. of beneficiaries**	**Amounts paid (Lei)**
Total allowances		**1,054,571,148**		**427,821,943**
Allowance granted for the interruption of work due to the effects caused by the SARS-CoV-2 coronavirus, according to GEO No 30/2020, of which:	103,988	922,126,654	8,586	165,570,015
Persons with income from copyright and related rights	5,565	90,217,292	4.303	83.451.089
Lawyers	6,027	46,303,191	2	2,036
Co-operators	8,044	52,721,478	81	851,757
Other professionals	77,770	697,159,675	4.070	80,796,081
Persons with sports contracts with public sports structures	4,056	20,951,792	93	309,854
Persons with a sports activity contract with private sports structures	2,526	14,773.226	37	159,198

Allowance granted for the interruption of work due to the effects caused by the SARS-CoV-2 coronavirus, according to GEO no. 132/2020, of which:	33,776	132,444,494	27,501	262,251,928
Lawyers	996	4,579,305	680	6,927,334
Co-operators	1,065	3,683,956	1,138	10,853,225
Other professionals	22,807	117,320,253	23,500	241,004,702
Day labourers	8,908	6,860,980	2,183	3,466,667

In order to carry out the activity in teleworking mode, in accordance with the provisions of Law no. 81/2018 on the regulation of teleworking activities, the employers could benefit, only once, for each teleworker, from a financial support of 2,500 Lei for the purchase of technological goods and services necessary for the teleworking activities. The amount is granted, in the order of the submission of the application, until 31 December 2020, from the unemployment insurance budget, within the limit of the funds allocated for this purpose, to the employers, for the employees who have worked in teleworking mode during a state of emergency or a state of alert for at least 15 working days.

Also, in order to support teleworking, GEO no. 36/2021 was adopted on the use of advanced electronic signature or qualified electronic signature, accompanied by the electronic timestamp or qualified electronic timestamp and qualified electronic seal of the employer in the field of labour relations, and for the amendment and completion of certain normative acts, amending and supplementing Law no. 81/2018 on the regulation of teleworking.

f) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- *conclusion of compliance.*

2. to provide for public holidays with pay;
3. to provide for a minimum of four weeks' annual holiday with pay;
4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

a) No information is requested on these provisions, except insofar as they concern special arrangements related to the pandemic or changes to work arrangements following the pandemic: public holidays (Article 2§2), annual holiday (2§3), reduced working time in inherently dangerous or unhealthy occupations, in particular health assessments, including mental health impact (2§4), weekly rest period (2§5), written information or worktime arrangements (2§6), measures relating to night work and in particular health assessments, including mental health impact (2§7).

- see information provided for Article 2 paragraph (1) of the Appendix.

b) However, if the previous conclusion concerning provisions in Article 2, paragraphs 2 through to 7, was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- see information provided for Article 2 paragraphs 2, 4 - 7 of the report.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

The exercise of [this right] shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

a) Please provide information on gross and net minimum wages and their evolution over the reference period, including about exceptions and detailed statistics about the number (or proportion) of workers concerned by minimum or below minimum wage. Please provide specific information about furlough schemes during the pandemic, including as regards rates of pay and duration. Provide statistics both on those covered by these arrangements and also on categories of workers who were not included.

Regarding the information on the changes in net and gross minimum wages during the reference period, this can be found in Article 4 paragraph (1) of the report.

Concerning the evolution of the number of active employment contracts registered with the value of the gross monthly basic wage at the level of the gross minimum basic wage per country guaranteed in payment in the period 2017 - 2020, we provide, in the table below, the information from the General Register of Employees (hereinafter referred to as the Register) submitted by the employers in the REGES information system. In order to put the data provided into context, the evolution of the number of full-time contracts and the total number of active contracts over the period considered are also presented.

Reference date	Gross Minimum Wage (Lei)	No. of contracts active on the reference date		
		Full time rate and the value of the wage at the level of the minimum wage	Full time rate Total	Total
31.12.2017	1450	1,597,648	5,318,065	6,272,016
31.12.2018	1900	1,728,591	5,454,893	6,372,710
31.12.2019	2080	1,325,751	5,545,950	6,466,975
	2350[12]	115,278		
	3000[13]	304,082		
31.12.2020	2230	1,186,943	5,365,100	6,455,633
	2350[14]	110,847		
	3000[15]	318,930		

Regarding the technical unemployment, the first legislative act issued with the aim of providing real support to employers and employees, as well as other professional categories, whose activity has been affected as a result of the spread of COVID 19 was Government Emergency Ordinance no. 30/2020 for the amendment and supplementation of certain legislative acts and for the establishment of measures in the field of social protection in the context of the epidemiological situation caused by the spread of the SARS-CoV-2 coronavirus, approved by Law no. 59/2020, as subsequently amended and supplemented, which provides for the granting of technical unemployment allowance.

For the entire period of suspension of work, but no later than 30 June 2021, in accordance with the provisions of GEO no. 120/2020, the technical unemployment allowance is also granted to employees whose work has been suspended (for the number of days during which work has been suspended) as a result of the epidemiological investigation carried out by the territorial public health institutions (it does not apply to employees on sick leave who receive the related social security allowance).

The measure was intended as a support in order to maintain the jobs and prevent the levels of unemployment from rising in this period of health crisis. The measures adopted were taken in line with the developments in the national situation and the needs of the labour market and could also be financed from European funds, within the limits of the amounts allocated and in accordance with the applicable provisions and rules for funding granting.

[12] *newly introduced* - for the personnel employed in positions for which the level of ***higher education*** is required, with at least one year's seniority in the field of higher education, the minimum gross basic wage per country guaranteed in payment ***was set at Lei 2,350 per month*** (*an increase of 23.6% compared to December 2018*)

[13] *According to* ***GEO no. 114/2018****,* by derogation from the provisions of Article 164 paragraph (1) of **Law no 53/2003 - Labour Code**, republished, as subsequently amended and supplemented, ***during the period from 1 January 2019 to 31 December 2019, for the construction sector****,* the minimum gross basic wage per country guaranteed in payment ***is set at Lei 3,000 per month*** *(*applied *exclusively to the areas of activity provided for* in Article 66 paragraph 1 of GEO no. 114/2018*).*

[14] Idem footnote 12.

[15] Idem footnote 13.

The categories of beneficiaries of the technical unemployment allowance during and after the state of emergency until 30 June 2021 for areas where restrictions have been laid down in accordance with the legislation in force are:

- employees whose individual employment contract has been suspended, at the employer's initiative, according to Article 52 paragraph (1) letter c) of Law no. 53/2003 - Labour Code*, republished, as subsequently amended and supplemented*;
- other professionals as regulated by Article 3 paragraph (2) of Law no. 287/2009 on the Civil Code, republished, as subsequently amended;
- persons who have concluded individual employment conventions on the basis of Law no. 1/2005 on the organisation and functioning of cooperatives*, republished, as subsequently amended*;
- the persons provided for at Article 67^1 paragraph (1) let. a) - c) of *Law on Physical Education and Sport no. 69/2000, as subsequently amended and supplemented*;
- the natural persons who have earned income exclusively from copyright and related rights as regulated by *Law no. 8/1996 on copyright and related rights, republished, as subsequently amended and supplemented*.

We highlight that during the state of emergency, the lawyers whose activity was reduced due to the effects of the SARS-CoV-2 coronavirus were entitled to the same technical unemployment allowance if in the month for which they claimed the allowance they earned at least 25% less than the monthly average for the year 2019, without exceeding the average gross earnings provided for by *Law no. 6/2020*.

The modality of granting this allowance during and after the state of emergency until 30 June 2021 for the areas where the authorities have maintained restrictions were as follows:

- sustaining from the unemployment insurance budget, for the period of the suspension of the individual employment contract at the initiative of the employer, in case of temporary interruption or reduction of activity according to Article 52 paragraph (1) letter c) of the *Law no. 53/2003 - Labour Code*, *as subsequently amended and supplemented,* of an allowance granted to the employees, of 75% of the basic wage corresponding to the job occupied, but not more than 75% of the average gross wage provided for by *Law no. 6/2020 on the State Social Insurance Budget for the year 2020*;
- other categories of professionals defined by *Law no. 287/2009 on the Civil Code, republished, as subsequently amended and supplemented*, who are not employers and who interrupt all or part of their activity on the basis of the decisions issued by the authorities, shall receive an allowance equal to 75% of the gross minimum wage per country guaranteed in payment for the year 2020, from the general consolidated budget;
- for persons benefiting from a sports activity contract, according to *Law no. 69/2000 as subsequently amended and supplemented*, whose activity is suspended at the initiative of the sports structure, an allowance of 75% of the rights in money related to the consideration for the sports activity is granted, but not more than 75% of the average gross wage;

- the natural persons who derive income exclusively from copyright and related rights and are unable to carry out their activity receive a monthly allowance of 75% of the average gross wage;
- the persons who have concluded individual labour agreements on the basis of *Law no. 1/2005 on the organisation and functioning of cooperatives, republished, as subsequently amended*, shall receive an allowance equal to 75% of the gross national minimum wage guaranteed in payment for the year 2020. In order to grant the sums necessary for the payment of the allowance, the cooperative with which the persons have concluded individual agreements shall take the necessary steps to grant the rights.

Also, as mentioned above, the lawyers could benefit during the state of emergency, under the terms of GEO 30/2020, from the same technical unemployment allowance of 75% of the average gross wage provided for by the 2020 State Social Insurance Budget Law no. 6/2020.

The payment of the allowances from the unemployment insurance budget was executed no later than 15 days after the submission of the documents and the payment of the allowances to the employees within 3 working days after the employer received the amounts from the unemployment budget.

The results of the implementation of this measure in 2020 are as follows:

	TEHNICAL UNEMPLOYMENT	
Payments made during	Number employees covered	Value payment - RON -
April 2020	491,403	312,762,868
May 2020	1,197,770	1,996,167,327
June 2020	986,309	1,405,270,806
July 2020	191,604	243,786,109
August 2020	32,950	47,921,124
September 2020	51,255	90,878,430
October 2020	12,462	22,845,935
November 2020	32,387	36,478,520
December 2020	44,716	100,389,505
Total		**4,256,500,624**

As of June 2020, the employers who have registered employment contracts suspended for a period of at least 15 days during the state of emergency or alert due to the technical unemployment, whether or not they have received the technical unemployment allowance from the budget, shall be entitled for a period of 3 months, under the terms of the law, to the payment of a part of the wage representing 41.5% of the gross basic wage, corresponding to the job occupied, but not more than 41.5% of the gross average wage on the level of the country.

The National Agency for Payments and Social Inspection (NAPSI) administered the aid schemes provided for by GEO no. 30/2020 and GEO no. 132/2020 on the granting of support allowances for other professionals, as regulated by Article 3 paragraph (2) of Law no. 287/2009, for persons who have concluded individual employment agreements on the basis of Law no. 1/2005 regarding the organisation

and functioning of cooperatives, lawyers, sports structures, individuals who earn income exclusively from copyright and related rights, and for day labourers.

The amount of the monthly allowances provided for by GEO no. 30/2020 and GEO no. 132/2020 is 75%, i.e., 41.5% of the average gross wage provided for by the Social Insurance State Budget Law.

Between March 2020 and June 2021, 365,994 the professionals benefited from the allowance provided for by GEO no. 30/2020, i.e., 250,521 professionals benefited from the allowance provided for by GEO no. 132/2020.

b) The Committee also requests information on measures taken to ensure fair remuneration (above the 60% threshold, or 50% with the proposed explanations or justification) sufficient for a decent standard of living, ***for workers in atypical jobs, those employed in the gig or platform economy****, and workers with zero hours contracts. Please also provide information on fair remuneration requirements and enforcement activities (e.g. by labour inspectorates or other relevant bodies) as well as on their outcomes (legal action, sanctions imposed) as regards circumvention of minimum wage requirements (e.g. through schemes such as sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).*

According to Article 164 of the Labour Code, if the normal working hours are, according to the law, less than 8 hours per day, the minimum gross basic hourly wage is calculated by comparing the minimum gross basic wage per country to the average number of hours per month according to the approved legal working hours.

The employer, **irrespective of the type of individual employment contract**, may not negotiate and establish basic wages in the individual employment contract below the minimum gross basic hourly wage in the country.

From 1 January 2022, the guaranteed gross national minimum basic wage may be applied to an employee for a maximum of 24 months from the date of the conclusion of the individual employment contract. After the expiry of that period, he/she will be paid a basic wage higher than the guaranteed gross national minimum wage. This provision also applies to an employee who is paid the guaranteed gross national minimum basic wage and who already has an individual employment contract, with the maximum period of 24 months being calculated starting with 1st of January 2022.

The employer is obliged to guarantee a gross monthly wage at least equal to the minimum gross basic wage at the country's level. These provisions also apply if the employee is present at work during working hours but is unable to work for reasons not attributable to him/her, except for a strike action.

c) Please also provide information on the nature of the measures taken to ensure that this right is effectively upheld as regards the categories of workers referred to in the previous paragraph (b) or in other areas of activity where workers are at risk of or vulnerable to exploitation, making in particular reference to regulatory action and to promotion of unionisation, collective bargaining or other means appropriate to national conditions.

According to Article 164 of the Labour Code, the minimum gross basic wage guaranteed in payment, corresponding to the normal working hours, is established by Government decision, after the consultation with the trade unions and the employers' associations.

At the same time, according to Article 3 paragraph 1 of the Social Dialogue Law no. 62/2011, republished, as subsequently amended and supplemented, the persons employed under individual employment contracts, the civil servants and the civil servants with special status under the terms of the law, the cooperative members and the employed farmers have the right, without any restriction or prior authorisation, to form and/or join a trade union.

d) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- see the information provided for Article 4 paragraph (1) of the report.

2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

a) Please provide up to date information on the rules applied to on-call service, zero-hour contracts, including on whether inactive periods of on-call duty are considered as time worked or as a period of rest and how these periods are remunerated.

According to the provisions of Article 111 of Law no. 53/2003 - Labour Code, republished, as subsequently amended and supplemented, working time is any period during which the employee performs work, is at the employer's disposal and performs his/her duties and tasks, according to the provisions of the individual employment contract, the applicable collective labour agreement and/or the legislation in force.

In view of the above, we consider that, according to the national law, the period during which the employee is at the employer's disposal constitutes working time, regardless of whether or not the employee has actually worked.

b) Please 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. Please include specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, remuneration, increased compensation).

According to GEO no. 131/2020 of 7 August 2020 on the regulation of certain measures during the state of alert established by the Government Decision no 394/2020 on the establishment of the state of alert and the measures applied during it to prevent and combat the effects of the COVID-19 pandemic, approved with amendments and additions by the Decision of the Romanian Parliament no. 5/2020, as subsequently amended and supplemented, and extended by Government Decision no. 476/2020, as subsequently amended and supplemented, and by Government Decision no. 553/2020, as subsequently amended and supplemented, in order to prevent and combat the effects of the COVID-19 pandemic, the

personnel of the county public health directorates and the Bucharest municipal directorate which carry out, lead or coordinate missions and service tasks for the prevention and control of the effects of the COVID-19 pandemic shall receive a bonus calculated on their basic wage as follows:

(a) the Executive Director and Deputy Executive Directors shall receive an increase of 40% of their basic wage;

(b) the civil servants in the public health inspection service shall receive an increase of 30% of their basic wage.

The amount of the bonus shall not be taken into account in determining the limit provided for in Article 25 of the Framework Law no. 153/2017 on wages of the personnel paid from public funds, as subsequently amended and supplemented, and shall be paid together with the wage rights for August 2020.

At the same time, according to GEO no. 3/2021, concerning certain measures for the recruitment and payment of the personnel involved in the vaccination process against COVID-19 and establishing certain measures in the field of health, certain measures have been established for the recruitment and payment of the personnel involved in the vaccination process against COVID-19 working in vaccination centres organised in accordance with the provisions of the COVID-19 Vaccination Strategy in Romania, approved by Government Decision no. 1.031/2020, as amended, as well as other measures in the field of health.

Thus, by way of derogation from the provisions of Article 383 paragraph (1) of Law no. 95/2006, republished, as subsequently amended and supplemented, as well as Article 11 of Government Emergency Ordinance no. 144/2008, approved with amendments by Law no. 53/2014, as subsequently amended and supplemented, the medical personnel performing activities in the vaccination centres against COVID-19 may conclude service contracts as natural persons.

The health units and the authorities of the local public administration organising COVID-19 vaccination centres are obliged to provide the medical personnel and the medical registrars necessary for their operation in one of the following ways: a) delegation; b) secondment; c) contract for provision of services.

For the activity performed in the COVID-19 vaccination centres, the medical personnel and the medical registrars, with the exception of delegated or seconded personnel, are paid for the time actually worked at a differentiated hourly rate under the service contract as follows: a) Lei 90 /hour for doctors; b) Lei 45 /hour for nurses; c) Lei 20 /hour for medical registrars.

Regarding **teleworking**, Law no. 81/2018, as subsequently amended and supplemented, provides:

Teleworking activity is based on the parties' agreement of will and is expressly provided for in the individual employment contract upon its conclusion for newly employed personnel or by an addendum to the existing individual employment contract [Article 3 paragraph (1)].

The employee's refusal to consent to teleworking cannot constitute grounds for the unilateral amendment of the individual employment contract and cannot constitute grounds for disciplinary action [Article 3 paragraph (2)].

In order to carry out their duties, the teleworkers shall organise their working hours in agreement with their employer, in accordance with the provisions of their individual employment contract, internal rules and/or the applicable collective labour agreement, in accordance with the law [Article 4 paragraph (1)].

At the employer's request and with the full-time tele-employee's written agreement, the employee may perform overtime work [Article 4 paragraph (2)].

According to Article 5 paragraph 2, in the case of teleworking, the individual employment contract shall contain, in addition to the elements referred to in Article 17 paragraph (3) of Law no. 53/2003, republished, as subsequently amended and supplemented, the following:

a) an express statement that the employee works on teleworking mode;

b) the period and/or days during which the teleworker works at a job organised by the employer;

*c) *** Repealed*

d) the schedule under which the employer is entitled to check the work of the teleworker and the practical arrangements for carrying out the check;

e) the way of recording the hours worked by the teleworker;

(…)

The teleworker enjoys all the rights recognised by the law, internal regulations and collective agreements applicable to the employees working at the employer's place of business or domicile [Article 6 paragraph (1)].

Other specific conditions relating to telework may be laid down in the applicable collective labour agreements and/or individual employment contracts and internal regulations in accordance with Law no. 53/2003, republished, as subsequently amended and supplemented, and Social Dialogue Law no. 62/2011, republished, as subsequently amended and supplemented [Article 6 paragraph (2)].

Article 11 sets out the contraventions and their sanctions as follows:

- failure to comply with Article 4 paragraph (2) concerning the overtime, with a fine of Lei 5,000;

- conclusion of the individual employment contract without stipulating the clauses provided for in Article 5 paragraph (2) letters b) - j), with a fine of Lei 5,000;

According to Article 12 para. 1, the contraventions and the application of the sanctions provided in Article 11 are carried out by labour inspectors.

Also, according to GEO no. 192/2020 for the modification and completion of Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic, as well as for the modification of letter a) of art. 7 of Law no. 81/2018 on the regulation of telecommuting, during the state of alert, employers shall arrange work at home or in telecommuting, where the specifics of the activity allow, in compliance with the provisions of Law no. 53/2003 - Labour Code, republished, as amended and supplemented, and Law no. 81/2018 on the regulation of telecommuting. During the state of alert, by derogation from the provisions of Art. 118 para. (1) of Law no. 53/2003 - Labour Code, republished, with

subsequent amendments and additions, employers in the private system, central and local public authorities and institutions, regardless of the method of financing and subordination, as well as autonomous regions, national companies, national companies and companies in which the share capital is wholly or majority owned by the state or by an administrative-territorial unit, with a number of more than 50 employees, organize the work schedule so that the staff is divided into groups that start and end work at a difference of at least one hour.

c) The Committee would welcome information on any other measures put in place intended to have effects after the pandemic which affect overtime regulation and its remuneration/compensation. Provide information on their intended duration and the time frame for them to be lifted.

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d) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- see the information provided for Article 4 paragraph (2) of the report.

3. to recognise the right of men and women workers to equal pay for work of equal value;

a) Please provide information on the impact of COVID-19 and the pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.

- see the information provided for Article 4 paragraph (3) of the report.

In addition to the information provided in Article 4 paragraph 1 question a) of the Appendix we note that the measure was applied to both men and women without any discrimination. The National Employment Agency does not have information on beneficiaries by gender.

b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- see the information provided for Article 4 paragraph (3) of the report.

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

a) Please provide information on the right of all workers to a reasonable period of notice for termination of employment (legal framework and practice), including any specific arrangements made in response to the COVID-19 crisis and the pandemic.

- see the information provided for Article 4 paragraph (4) of the report.

b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- see the information provided for Article 4 paragraph (4) of the report.

5. 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.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non-conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.

- see the information provided for Article 4 paragraph (5) of the report.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

a) Please provide data on trade union membership prevalence across the country and across sectors of activity, as well as information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations. Also provide information on recent legal developments in these respects and measures taken to promote unionisation and membership (with specific reference to areas of activity with low level of unionisation, such as knowledge workers, agricultural and seasonal workers, domestic workers, catering industry and workers employed through service outsourcing, including cross border service contracts).

The unionisation rate is not officially calculated and monitored, but is estimated at national level at a value of 25% of the data extracted from the trade union organisations' affidavits on the number of members, in the context of the organisation's registration or at the request of representativeness.

In compliance with the guarantees of the Charter, the national legislation (Law no. 62/2011, GO no. 26/2000 on the associations and foundations, the professional statutes) guarantees all workers and employers/companies the right of free and voluntary association and membership in associative structures

for the defence of economic, social and professional interests in the employment relationship, before the authorities and the courts (trade unions, employers' associations/professional associations).

b) Also provide information on measures taken or considered to proactively promote or ensure social dialogue, with participation of trade unions and workers organisations, in order to take stock of the COVID-19 crisis and pandemic and their fallout, and with a view to preserving or, as the case may be, restoring the rights protected under the Charter after the crisis is over.

During the pandemic, there were no changes/constrictions to the right of association and affiliation. As the European data (Eurofound, ETUI) show, new forms of work and the evolution of new economies have affected the interest of employees and companies/employers in associating in traditional structures OF collective representation, and the pandemic crisis and its effects on the work tend to accentuate the challenges of trade union organisation.

With a view to increasing the organisational capacity and the collective representation, the measures discussed with the social partners concerned the modification of the legal framework and support for the access to funding for the development and modernisation of organisations, as prerequisites for the adaption to change.

c) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- see the information provided for Article 5 of the report.

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;

No information requested. If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- see the information provided for Article 6 paragraph (1) of the report.

2. to promote, where necessary and appropriate, 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;

Please provide information on specific measures taken during the pandemic to ensure the respect of the right to bargain collectively. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity

or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

As support and/or derogatory measures for the duration of the pandemic, at the request of the trade unions, the measure of extending the collective labour contracts for the duration of the state of alert and for a maximum of 90 days after its end has been adopted.

In 2020, in the context of the measure, 5,000 new company collective agreements were concluded and 1,358 new collective agreements were registered in the first quarter of year 2021.

Along the same liners, working and inter-ministerial groups have been set up with the involvement of business environment and of the social partners and online consultations have been promoted to support the management of health measures and of the measures for assisting the companies, employees and employers, including within the structures of tripartite dialogue at central (ministries) and local (prefectures) level and to facilitate the administrative formalities for the submission of registration and representativeness files of the trade union organisations and employers' organisations.

From the monitoring of the permanent structures of tripartite dialogue established by law, we note that in 2020 there were 6 meetings of the National Tripartite Council, as well as 227 meetings of the social dialogue committees at the level of ministries, of which 40 at the level of the Ministry of Labour and 107 meetings of the CDS at the territorial level.

In Romania, the rights and conditions for labour, health and safety at work and the national minimum wage, which is the basis for the payment of wages, are regulated by law and not by collective negotiation, with the collective agreements being complementary to the law and in compliance with it.

The measures and the legislative changes with an impact in the field of labour aimed at subsidising the technical unemployment, at making the work and the working hours more flexible, at supporting the working parents, at strengthening the protection in the case of telecommuting and tax and financial measures and incentives in supporting the entrepreneurs and the SME[16]s, with certain measures targeted at the most affected sectors (tourism, HoReCa[17], culture and events, transport, construction).

The social partners concluded in March 2020 a Joint Declaration of Cooperation in order to assume mutual responsibilities in the context of the pandemic crisis and actively responded to the call for cooperation with the authorities in managing the challenges induced by the COVID crisis.

3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

No information requested. If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

[16] Small and medium enterprises
[17] Hotel/Restaurant/Café, the food service and hotel industries.

- see the information provided for Article 6 paragraph (3) of the report.

and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

a) Please provide information on specific measures taken during the pandemic to ensure the right to strike (Article 6§4). As regards minimum or essential services, please provide information on any measures introduced in connection with the COVID-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.

During the state of emergency/alert, the prohibition of the initiation and conduct of collective labour disputes was introduced in the units of the national energy system, in the operational units of the nuclear sectors, in the continuous-fire units, in the health and social assistance, telecommunications, public radio and television units, in the railway transport units, in the units providing the public transport and sanitation, as well as the supply of gas, electricity, heat and water to the population, by derogation from Law no. 62/2011. In the case of collective actions (protests, rallies, etc.) the number of participants in the collective actions/protests was limited depending on the evolution of the pandemic.

b) If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- see the information provided for Article 6 paragraph (4) of the report.

Article 21 – The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

a) Please provide information on specific measures taken during the pandemic to ensure the respect of the right to information and consultation. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline

nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

No derogations from the employer's legal obligation to inform and consult the employees have been adopted, but the practical management of the crisis has favoured the unilateral decision of the employer in the organisation of the activity and labour.

The activity of the companies has been affected by the national restrictions and a lack of crisis management plans. The sectors most affected were those with direct interaction: tourism, HoReCa, events and culture, transport, but also the public social and health care system, education and the poorly digitised public administration.

The measures adopted in support, in consultation with the social partners, were predominantly of a general nature and aimed at supporting the employees and employers, including through fiscal and financing measures and facilities. The measures adopted in the labour field aimed at subsidising the technical unemployment, the home working, adapting the legislation on teleworking, introducing subsidised short-time working. In order to protect the employees, the validity of the collective labour contracts was extended during the state of emergency, as requested by the trade unions.

b) If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- see the information provided for Article 21 of the report.

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

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a. they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

b. they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

a) With the objective of keeping this reporting exercise focussed, the Committee asks for no specific information in respect of Article 28. Nonetheless, it would welcome information about the situation in practice concerning this right during the pandemic and about measures taken to ensure that the COVID-19 crisis was not used as an excuse to abuse or circumvent the right of workers' representatives to protection, especially protection against dismissal.

- see the information provided for Article 28 of the report.

b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- see the information provided for Article 28 of the report.

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

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall 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, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

a) With the objective of keeping this reporting exercise focussed, the Committee asks for no specific information in respect of Article 29. Nonetheless, it requests information about the situation in practice as regards the right to information and consultation in collective redundancy procedures during the pandemic, and about any changes introduced in law modifying or reducing its scope during the COVID-19 crisis.

During the pandemic there were no derogations from the legal provisions applicable in the case of collective dismissal and from the obligation to inform and consult the trade union/employee representatives in the context.

b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

- see the information provided for Article 29 of the report.