March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

FINLAND

This text may be subject to editorial revision.

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

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

The following chapter concerns Finland, which ratified the Revised European Social Charter on 21 June 2002. The deadline for submitting the 17th report was 31 December 2021 and Finland submitted it on 20 December 2021.

The Committee recalls that Finland was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2014).

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

Comments on the 17th report by the Confederation of Finnish Industries (EK) were registered on 18 February 2022.

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

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

Finland has accepted all provisions from the above-mentioned group except Articles 4§1 and 4§4.

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

The conclusions relating to Finland concern 21 situations and are as follows:

– 13 conclusions of conformity: Articles 2§2, 2§3, 2§4, 2§5, 2§6, 5, 6§1, 6§2, 6§3, 6§4, 21, 22, 29.

– 5 conclusions of non-conformity: Articles 2§1, 4§3, 26§1, 26§2, 28.

In respect of the other 3 situations related to Articles 2§7, 4§2, 4§5, the Committee needs further information in order to examine the situation.

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

The next report from Finland will deal with the following provisions of the thematic group IV "Children, families, migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),

- the right of the family to social, legal and economic protection (Article 16),
- the right of children and young persons to social, legal and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 December 2022.

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

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 2§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Labour rights").

In its previous conclusion, the Committee considered that the situation in Finland was not in conformity with Article 2§1 of the Charter on the ground that the daily rest period could be reduced to 7 hours for some categories of workers (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Measures to ensure reasonable working hours

In its previous conclusion, the Committee notes that it found the situation in Finland not to be in conformity with Article 2§1 of the Charter on the ground that the daily rest period could be reduced to 7 hours for some categories of workers (Conclusions 2014). The Committee also asked that the next report comment on the observations of the Central Organisation of Finnish Trade Unions, Finnish Confederation of Professionals and Akava, the Confederation of Unions for Professional and Managerial Staff in Finland that more than one in ten full-time employees in Finland worked at least 48 hours a week.

In reply, the report states that the new Working Time Act (WTA), which entered into force on 1 January 2020, provides for situations where the daily rest period can be shortened to 7 hours (flexitime and flexible working hours) or temporarily to 5 hours for no more than 3 consecutive daily rest periods at a time in cases strictly limited by law. Under Section 25, subsection 1 of the WTA, during the 24 hours following the start of each shift, workers shall be given an uninterrupted rest period of at least 11 hours except for work performed during standby time. In period-based work as well, the rest period shall, as a rule, be 11 hours in duration, which represents a change from the earlier Working Hours Act. In period-based work, the daily rest period for reasons relating to the organisation of the work may be reduced to 9 hours, although it should not occur repeatedly. A reduced daily rest period may be related to the nature of work and may be necessary in the context of shift changes in order to avoid impractical shifts for workers. Under Section 25, subsection 2 of the WTA, the reduction in the duration of the daily rest period requires an agreement between the employer and the workers and the worker's consent is obligatory.

The report states that daily rest periods can be reduced to 9, 7 or 5 hours and the compensatory rest period shall be combined with the following daily rest period or, when it is not possible, as soon as possible and within 14 days.

The Committee recalls that under no circumstances should daily working time reach the limit of sixteen hours a day. This limit cannot be exceeded even in the context of the types of work mentioned in the report. Therefore, the Committee reiterates its conclusion that the situation in Finland is not in conformity with Article 2§1 of the Charter on the ground that the daily working time can go up to 19 hours for some categories of workers.

The report states that according to the Labour Force Survey, in 2020 around 9% of full-time workers worked over 44 hours a week on average while 4% worked over 49 hours. Finland has a few groups of managerial occupations where regular working time in 2020 was 44-45 hours.

In its targeted question, the Committee asked for updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods, …) and exceptions (including legal basis and justification). It also asked for detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).

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

The report states that under Section 5 of the WTA, regular working time shall not exceed 8 hours a day or 40 hours a week. Alternatively, the average weekly working hours may total 40 hours over a maximum period of 52 weeks, provided that the regular daily working time does not exceed eight hours. Section 7 of the WTA provides an exhaustive list of sectors where period-based work is allowed, and where the nature of work requires continuity of 24 hours or at least most of the day, 7 days a week. In period-based work, working time may not exceed 120 hours over a three-week period or 80 hours over a two-week period. Moreover, regular working time may be organised so that it does not exceed 240 hours for two consecutive three-week periods or three consecutive two-week periods. In this arrangement, regular working time may not exceed 128 hours over the course of either the three-week periods or 88 hours for any of two-week periods.

The report states that under Section 11 of the WTA, an employer and a worker may agree to extend daily working time by no more than two hours unless otherwise provided by the applicable collective agreement. In this case, the average regular weekly working time may not exceed 40 hours over a period of no more than four months. Regular weekly working time may not exceed 48 hours. Section 12 of the WTA allows flexible working hours, which means that the regular daily working hours shall be extended or reduced by a flexible period of no more than four hours. The regular weekly working time should not exceed 40 hours over a four-month reference period and at the end of the follow-up period, the accrued excess hours may not exceed 60 hours; a deficit of hours may not exceed 20 hours.

The report provides information about new provisions on flexitime. In these cases, a worker may independently decide on the placement and place of performance of at least half of the working time. The regular weekly working time may not exceed 40 hours over a four-month period. Flexitime cannot be used for regular night work.

The report states that when the worker's daily working time exceeds 6 consecutive hours and his/her presence at the workplace is not essential to the continuity of the work, the worker shall be given a regular break of at least one hour. When the daily working time exceeds 10 hours, the worker shall additionally have the right to a break of no more than 30 minutes after 8 hours of work. During the 24 hours following the start of each shift, workers shall be given an uninterrupted rest period of at least 11 hours. Once every 7 days, a worker shall be given an uninterrupted rest period of at least 35 hours and the maximum gap between weekly rest periods is 12 working days. The weekly rest period may also be organised to average 35 hours over a period of 14 days. In this case, the weekly rest period must consist of at least 24 consecutive hours over each seven-day period. In continuous shift work, the rest period may be organised to average 35 hours over a period of no more than 12 weeks. However, the rest period shall consist of at least 24 consecutive hours in each seven-day period.

The report states that the Seamen Working Hours Act applies to work performed by persons serving on board a Finnish vessel plying in foreign transport. According to it, the average weekly working time of an employee working on a sea-going fishing vessel may not exceed 48 hours over a 12-month period.

The report also states that the Regional State Administrative Agencies' OSH Divisions carry out enforcement, mostly through inspections, in matters related to OSH as well as in matters related to working hours. In 2020, 11,150 sector-specific inspections were conducted, most of them in such sectors as construction, industry, wholesale and retail trade, transport and warehousing, health and social services, catering and hospitality. The inspections resulted in 26,293 written advice, 4,110 improvement notices, 57 prohibition notices, 160 binding decisions, 31 periodic penalty payments, 102 negligence fees and 371 investigation requests to the police. The Committee asks that the next report specify whether the inspections mentioned concerned working time arrangements and, if necessary, that the statistics be updated.

Authorities' actions to ensure the respect of reasonable working hours and remedial action taken in respect of specific sectors of activity

In the targeted question, the Committee asked for 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; as well as for 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.

In reply, the report states that during the reference period the Labour Council issued a number of opinions on the application of the WTA. For example, in 2020 it held that the work of food delivery workers was subject to the WTA, that no derogation from the weekly working time laid down in the WTA was possible when agreeing on exceptional regular working time in a national collective agreement, that consent to overtime could not be given in advance in a collective agreement. The Labour Court examined a situation where a derogation permit concerning the organisation of working time had been granted for organising the working time of firefighters working in rescue services at Helsinki Airport. According to the permit, the duration of the regular shift was 25 hours and effective working time could not exceed 12 hours, however, it was possible to have an uninterrupted shift of 48 hours. If a worker worked a shift of more than 25 hours, he/she was to be given a period of free time of 144 hours following the shift. The Labour Court held that it was necessary that the conditions of the permit should specify the periods of free time following such shifts. The Supreme Court also examined a situation of relief foster parents and held that such persons' work was within the scope of the WTA.

Law and practice regarding on-call periods

In its previous conclusion, the Committee asked what rules applied to on-call service and whether inactive periods of on-call duty were considered as a rest period in their entirety or in part (Conclusions 2014).

In the targeted question, the Committee asked for information on law and practice as regards on-call time and service (including as regards zero-hour contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration.

In reply, the report states that under Section 3, subsection 1 of the WTA, working time consists of the time spent working and the time the worker is obliged to be present at a workplace at the employer's disposal. The remaining time constitutes rest periods. The time when a worker is present at a workplace, even if no work is done, also constitutes working time. On-call time

is included in working time when the worker is not free to leave the workplace indicated by the employer. Under Section 4 of the WTA, an employer and a worker may agree on on-call periods, and compensation paid for it. Time spent on-call is not regarded as working time unless the worker is required to remain at the workplace or in its immediate vicinity. On-call may not unduly hamper the worker's leisure time. The Labour Council held that the duration of being tied to work based on on-call was excessive when on-call covered just under 50% of all hours worked. The Labour Court held that the ambulance driver's time spent on-call had to be considered as working time.

The Committee reiterates that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for stand-by duty at the employer's premises as well as for on-call time spent at home (*Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Complaint No. 149/2017, decision on the merits of 19 May 2021, §61). From the information provided in the report, it is not clear, whether inactive on-call periods are assimilated to rest periods in their entirety or in part when workers are not required to stay at the workplace. The Committee therefore reiterates its request for information and in the meantime, reserves its position on this point.

The Committee also notes that the report provides no information on zero-hour contracts.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to provide information on the impact of the Covid-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. More specifically, the Committee asked for information on the enjoyment of the right to reasonable working time in the following sectors: healthcare and social work; law enforcement, defence and other essential public services; education, transport.

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

The report states that on 16 March 2020, the Government, in cooperation with the President, declared a state of emergency in Finland due to Covid-19 outbreak. Derogation from certain provisions of the Annual Holidays Act, WTA and Employment Contracts Act was authorised by three Government decrees. The first two decrees allowed derogations to the personnel employed in health and social services, rescue services, emergency services and the last decree allowed derogations in health and social services. In general, the decrees allowed derogations from rest periods and overtime limitations. For example, an employer could require a worker to work overtime without the worker's consent; he/she could also derogate from provisions on daily and weekly rest periods and maximum working time.

The report further states that the Covid-19 pandemic mostly shortened working hours, as working time decreased in the hotel and restaurant sector in the second quarter of 2020 (by 39% compared to the previous year), in the arts and entertainment sector (by 21%). In the health and social services sector working time remained stable and the share of workers working over 44 hours increased by one percentage point. In public administration and defence, working time increased by 4%, in education – by 1%, in transport and warehousing – by 7% in the second quarter of 2020. A survey by the Union of Health and Social Professionals indicates that health and social services professionals were subject to mandatory measures as long as the Emergency Powers Act was in use. Nearly all the respondents in the survey (97%) stated that they did not receive any compensation for the mandatory measures other than that provided for under their ordinary employment terms and conditions.

The report also states that flexible working time arrangements have been in use during the Covid-19 pandemic.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 2§1 of the Charter on the ground that certain workers can be authorised to work for up to 19 hours.

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

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

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

As the previous conclusion found the situation in Finland to be in conformity with the Charter (Conclusions 2014), there was no examination of the situation in 2022 on this point. Therefore, the Committee reiterates its previous conclusion.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report indicates that a state of emergency was declared due to the coronavirus outbreak on 16 March 2020. For this reason, decision was taken to implement the Emergency Powers Act (No. 1552/2011) which lays down provisions on the power of authorities in emergency conditions. Derogation from certain provisions of the Annual Holidays Act (No. 162/2005), the Working Time Act (No. 872/2019) and the Employment Contracts Act (No. 55/2001) was authorised by Government decrees. In total, three such decrees were issued, and they were in force as follows: 1st decree on the application of the Emergency Powers Act, from 18 March to 13 April 2020; 2nd from 14 April to 13 May 2020; 3rd from 14 May to 15 June 2020. According to the report, the first two decrees allowed derogations to be applied to the following sectors throughout the country: health care; social services; rescue services; emergency response centres and police services. The derogations under the final decree could be applied in health care and social services throughout the country, but application to rescue services, emergency response centres and police services was no longer considered necessary.

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

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

As the previous conclusion (Conclusions 2014) found the situation in Finland to be in conformity with the Charter, there was no examination of the situation in 2022 on this point.

Therefore, the Committee reiterates its previous conclusion.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report indicates that a state of emergency was declared due to the coronavirus outbreak on 16 March 2020. For this reason, decision was taken to implement the Emergency Powers Act (No. 1552/2011) which lays down provisions on the power of authorities in emergency conditions. Derogation from certain provisions of the Annual Holidays Act (No. 162/2005), the Working Time Act (No. 872/2019) and the Employment Contracts Act (No. 55/2001) was authorised by Government decrees. In total, three such decrees were issued, and they were in force as follows: 1st decree on the application of the Emergency Powers Act, from 18 March to 13 April 2020; 2nd from 14 April to 13 May 2020; 3rd from 14 May to 15 June 2020. According to the report, the first two decrees allowed derogations to be applied to the following sectors throughout the country: health care; social services; rescue services; emergency response centres and police services. The derogations under the final decree could be applied in health care and social services throughout the country, but application to rescue services, emergency response centres and police services was no longer considered necessary.

The Committee notes from the report that the said three Government decrees authorised employers to derogate from the annual leave notifications provisions, to postpone annual leave already requested and to interrupt annual leave for staff in the aforementioned sectors. According to the report, this was subject to the condition that any action taken could not be allowed to jeopardise occupational safety and health or the health of employees. Forfeited leave was to be given to the employee as soon as possible.

The Committee takes note of the information provided by the central employee organisation, which states that the introduction of the powers under the Emergency Powers Act has impacted the health and social services sector in particular: the powers have provided the basis for rescheduling or cancelling annual leave or altering its duration. In a survey commissioned by the Union of Health and Social Care Professionals *Tehy*, almost all respondents replied that they had not received any compensation for compulsory measures beyond their normal employment terms and conditions.

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

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 2§3 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

The Committee recalls that no targeted questions were asked for Article 2§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle.

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

Therefore the Committee reiterates its previous conclusion.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee recalls that no targeted questions were asked for Article 2§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle.

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

Therefore, the Committee reiterates its previous conclusion.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

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

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

Covid-19

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

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

In its previous conclusion, the Committee found that the situation in Finland was in conformity with Article 2§7 of the Charter, pending receipt of the information requested (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion.

The Committee previously asked for information as to whether night workers were entitled to regular medical examinations, including a check prior to employment on night work, and whether there was continuous consultation with workers' representatives on the introduction of night work, night work conditions, and measures taken to reconcile the needs of workers with the special nature of night work (Conclusions 2014).

The report does not provide any information in response to the questions raised by the Committee. However, the report notes, in connection with other provisions of the Charter, that a new law governing working time and rest periods, including night work, entered into force during the reference period, on 1 January 2020 (the Working Time Act). The Committee asks the next report to indicate if the provisions of the Working Time Act alter the existing protections available to night workers. The Committee also reiterates its request for information as to whether night workers are entitled to regular medical examinations, including a check prior to employment on night work, and whether there is continuous consultation with workers' representatives on the introduction of night work, night work conditions, and measures taken to reconcile the needs of workers with the special nature of night work. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Finland is in conformity with Article 2§7 of the Charter.

Covid-19

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

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

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

In its previous conclusion, the Committee considered that the situation in Finland was not in conformity with Article 4§2 of the Charter on the ground that the legislation did not guarantee the right to an increased time off in lieu of remuneration for overtime (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted question.

Rules on increased remuneration for overtime work

Previously, the Committee found that the situation in Finland was not in conformity with Article 4§2 of the Charter because the legislation did not guarantee the right to an increased time off in lieu of remuneration for overtime (Conclusions 2014).

The report states that Section 20, subsection 4 of the new Working Time Act (WTA) or the collective agreement or the derogation authorisation shall stipulate the criteria for calculating the premium payable for overtime and it must be higher than the pay for regular working time. Under Section 21 of the WTA, pay due for additional work or overtime, as well as the Sunday work, may be converted either in part or in full into equivalent time off during the worker's regular working time. The duration of time off corresponding to overtime shall be calculated according to the provisions laid down in Section 20 concerning remuneration for overtime. One hour of overtime, that is compensated by paying additional 50% of regular pay, for example, would result in giving 1.5 hours of time off.

The Committee notes that time off of increased duration for overtime is in accordance with the provisions of the Charter and considers and the situation in Finland is now in conformity with Article 4§2 of the Charter.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to explain the impact of the Covid-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. The Committee asked for specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, increased compensation).

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

The report states that according to derogations adopted in 2020, the employer could require the worker to work overtime without the latter's consent, to derogate from the provisions concerning daily and weekly rest periods and maximum working time. A survey by the Union of Health and Social Professionals indicates that health and social services professionals were subject to mandatory measures while the Emergency Powers Act was in use. Nearly all the respondents of the survey (97%) stated that they received no compensation beyond their ordinary employment terms and conditions for the mandatory measures. The Committee asks whether that means that the workers received no compensation for overtime and reserves its position on this point.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

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

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

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

In its previous conclusion, the Committee found that the situation in Finland was not in conformity with Article 4§3 of the Charter on the ground that the law did not provide for reinstatement in cases where an employee is dismissed in retaliation for bringing an equal pay claim (Conclusions 2014). In addition, the Committee found in its decision on the merits of collective complaint University Women of Europe (UWE) v. Finland No. 129/2016 (§187) that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that the law does not provide for reinstatement in cases where a worker is dismissed in retaliation for bringing an equal pay claim.

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

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

Effective remedies

In its previous conclusion, the Committee found that the situation in Finland was not in conformity with Article 4§3 of the Charter on the ground that the law did not provide for reinstatement in cases where an employee is dismissed in retaliation for bringing an equal pay claim (Conclusions 2014).

In response, the report indicates that the Finland's labour legislation does not provide for the possibility of reinstatement of employment. According to the report, the continuity of an employment relationship and the position of a dismissed person are safeguarded by other means, such as a high threshold for dismissal, liability for compensation for groundless termination of employment, compensation for breaching the Act on Equality between Women and Men, the unemployment security system, and public services. A significant percentage of disputes relating to termination of employment are settled in a negotiation system based on collective agreements. According to the report, introducing the possibility of reinstatement would require a more comprehensive review of the entire employment security system.

The Committee notes that the situation has not changed. Therefore, it reiterates it previous conclusion of non-conformity on this point.

Statistics and measures to promote the right to equal pay

For information, the Committee takes note of the Eurostat data on the gender pay gap in Finland during the reference period, which was 17.1% in 2017, 16.9% in 2018, 16.6% in 2019

and 16.7% in 2020 (compared with 19.1% in 2011). It notes that the gender pay gap was higher than the EU 27 average of 13% (provisional figure) in 2020 (data from 4 March 2022).

As Finland has accepted Article 20.c, the Committee examines policies and other measures to reduce the gender pay gap under Article 20 of the Charter.

The impact of Covid-19 on the right of men and women workers to equal pay for work of equal value

In reply to the question regarding the impact of Covid-19, the report indicates that in the entire labour market, women earned 84.2% of men's earnings in 2020. The Committee takes note from the report that to date, no more detailed analysis is available of the impact of the Covid-19 pandemic on the gender pay gap.

The report also indicates that the Finnish labour market is strongly segregated by gender. At the very beginning of the pandemic, the sectors most affected by the Covid-19 crisis were the female-dominated accommodation, restaurant sector and retail trade. During the Covid-19 crisis, jobs have also been lost in male-dominated industries and construction, but the change there has been clearly smaller. In 2020, 20% of women and 10% of men were employed part time. The percentage of part-time employees is the highest (40%) in the hospitality sector. As employment decreased sharply in this sector, the share of part-time employees among female wage earners also decreased.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 4§3 of the Charter on the ground that the law does not provide for reinstatement in cases where an employee is dismissed in retaliation for bringing an equal pay claim.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

The Committee recalls that no targeted questions were asked for Article 4§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information, were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

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

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

Deductions from wages and the protected wage

In its previous conclusion (Conclusions 2014) the Committee found that the situation was not in conformity with the Charter on the ground that the attachable amount of wages defined by the Enforcement Code was too high in comparison to the lowest wages paid in sectors that are not covered by collective agreement and left workers who are paid those wages and their dependants insufficient means for subsistence.

The Committee notes from the report of the Governmental Committee (2015) that according to the Representative of Finland those workers who are paid the lowest wages and part timers in some sectors are protected by the Enforcement Code stipulating that if wages are less than the protected portion, there will be no garnishment. Finally these persons may have the right to social assistance, including preventive social assistance granted by municipalities, and the insufficient means for subsistence are thus covered.

As regards the attachment of wage, according to the Representative of Finland as a general rule, one third of wages, salaries, pensions, unemployment benefits and maternity benefits can be garnished. In this context, holiday pay, perquisites, commissions and various fees are also considered as wages. The garnished amount is calculated from the debtor's income net of tax. Social subsidies, such as rent support and child subsidies, cannot be garnished. When effecting a garnishment, it is always required that a protected portion, that is the amount needed for the livelihood of the debtor and his or her family, is exempt from seizure. In the calculation of the protected portion, due note is taken of the persons the debtor supports, including the spouse and the minor children and adopted children of the debtor or the spouse, if residing in the same household. If the spouse or the children have an income of their own

exceeding the protected portion, €690,70 per month as of 1 January 2015, they are disregarded in the determination of the protected portion. The protected portion, which is the monthly amount of money that the debtor is left with in order to be able to pay for his or her necessary living expenses, is always taken into account in the garnishment of wages and salaries as well as in the schedules of payment. The protected portions are adjusted annually in accordance with the national pension index. The debtor may appeal against the garnishment in a District Court.

The report also states that Chapter 2, Section 17 of the Employment Contracts Act is a peremptory norm. Under Chapter 13, Section 6, Subsection 1 of the Employment Contracts Act, any agreement reducing the rights of and benefits due to employees under this Act shall be null and void unless otherwise provided in this Act. In 2021 (outside the reference period) the protected portion in attachment in Finland was € 22.71 per day for a single person, or € 681.30 per month. The Committee asks the next report to demonstrate that the protected wage, i.e. the portion of wage left after all authorised deductions, including for child maintenance, in case of a worker earning the minimum wage, will never fall below the subsistence level established by the Government. In the meantime, the Committee reserves its position on this point.

Waiving the right to the restriction on deductions from wage

In its previous conclusion (Conclusions 2014) the Committee asked what conditions and limits are laid down by the law on the liquidation by bailiffs, pursuant to Chapter 3, section 46 of the Enforcement Code, of future salary attached to the payment of claims under Chapter 2, section 17 of the Employment Contracts Act. It also asked whether the workers may be authorised to waive the conditions and limits imposed by the Enforcement Code. The Committee notes that the report does not provide this information. It notes that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Conclusion

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

Article 5 - Right to organise

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

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

In its previous conclusion, the Committee concluded that the situation in Finland was in conformity with Article 5 of the Charter (Conclusion 2014).

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

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

Prevalence/Trade union density

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

The report states that according to the "Working Life Barometer" survey, union membership has increased from 67% of the employees belonging to a trade union in 2019 to 69% in 2020. It further states that the rate of organisation in 2020 was higher among women (77%) than among men (61%), and higher among the 45–64 age group (76%) than among the 18–34 youngest age group (61%)..

The report also states that according to the Working Life Barometer, union membership was clearly more commonplace in the public sector, i.e. in local government (86%) and central government (83%) than in industry (72%) or private services (58%). Since 2019, union membership has become more prevalent among industry employees in particular (62% in 2019, 72% in 2020).

Personal scope

In its previous conclusion, the Committee requested that all States to provide information on the right of members of the armed forces to organise (Conclusions 2018 – General question). The report does not provide the information requested. However the Committee notes from other sources (EUROMIL) that members of the armed forces in Finland have the right to form and join trade unions. The Committee asks for further information on the prerogatives of these trade unions.

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

Restrictions on the right to organise

In its targeted question, the Committee asked for information on public or private sector activities in which workers are denied the right to form organisations for the protection of their

economic and social interests or to join such organisations. In reply, the report states that employment legislation imposes no restrictions on the workers' right to organise in any sector.

Freedom to join or not to join a trade union

According to the report the Federation of Finnish Enterprises claims that the prohibition of local bargaining for non-organised employers (*i.e.* not members of that employer organisation which is a contractual party to a collective agreement) on the issues mentioned in section 7 of the Employment Contracts Act violates the negative right to organise as set out in Article 5 of the Revised European Social Charter. The Committee asks that the next report provide information on this prohibition of local bargaining for non-organised employers.

Trade union activities

The report refers to the claims of the Central Employee Organisations about the need to adopt specific legislation to clarify whether an employer may not accept the shop steward elected by the employees. The Central Employee Organisations claim that, according to the case law of the Supreme Court, trade union local branches, and workers in general should have the right to elect a shop steward also in non-organised workplaces where a collective agreement containing a shop steward agreement is applied because of universal applicability. The Committee asks that the next report provide information on the legal developments in this regard.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 5 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

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

In its previous conclusion, the Committee found that the situation in Finland was in conformity with Article 6§1 of the Charter, pending receipt of the information requested on joint consultation arrangements at industry or inter-industry level (Conclusions 2014). The report notes that social partners engage routinely in joint consultation at the sector level on a variety of issues of mutual interest, and that collective agreements contain clauses on joint consultation. At the national level, employees’ and employers’ organisations engage in joint consultation on different issues pertaining to working conditions, including measures taken in response to the pandemic, or the impact of new technologies at the workplace. The report further states that the legislation on employment and pensions is drafted in a tripartite procedure, and that advisory bodies operating at ministerial level include representatives of employees’ and employers’ organisations.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

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

The Committee also recalls that in the General Introduction to Conclusions 2018, it posed a general question under Article 6§2 of the Charter and asked States to provide, in the next report, information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

In its previous conclusion, the Committee found that the situation in Finland was in conformity with Article 6§2 of the Charter (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the general question.

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

Covid-19

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

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

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

Therefore, the Committee reiterates its previous conclusion.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

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

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

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the general question.

Right to collective action

Definition and permitted objectives

In its previous conclusion, the Committee noted that it was possible for civil servants to call a strike whose aim was not to conclude a collective agreement if the issue to which the strike related i) was not stipulated in a valid collective agreement; ii) was to do with the conditions of employment of civil servants; or iii) could be "the subject of a collective agreement according to the Act on Collective Agreements for State Civil Servants". It asked what was meant by "can be the subject of a collective agreement according to the Act on Collective Agreements for State Civil Servants". In the meantime, it reserved its position.

The previous report clarified what was meant by contractual questions and non-contractual questions. Strikes cannot be called on non-contractual issues to do with the right of political bodies and administrative authorities to decide on the general and specific objectives of public authorities, their organisations, structures and field of action, and the number and profile of their employees. On the basis of the information provided, the Committee considers that the situation is in conformity with Article 6§4 of the Charter on this point.

Restrictions to the right to strike, procedural requirements

In its previous conclusion, the Committee noted that in 2012, the Helsinki District Court ordered Finnair's technical workers to stop their industrial action and fined them €2.8 million. The case was pending before the Supreme Court. The Committee asked for information in the next report on the Supreme Court's judgment.

In its report, the Government states that the Supreme Court has given its judgment (KKO 2016:14), finding that the District Court did not have jurisdiction to issue the injunction and order the fine.

Right of the police to strike

The Committee notes that the Government does not provide any information in reply to the general question put in the General Introduction to Conclusions 2018. It therefore repeats its question and asks for information in the next report on the right of the police to strike and any restrictions on this right.

Covid-19

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

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

The Committee notes that the Government has not provided the information requested.

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

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 6§4 of the Charter.

Article 21 - Right of workers to be informed and consulted

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

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

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions 2014), pending receipt of the information requested. The assessment of the Committee will therefore concern the information provided by the Government in response to the questions raised in its previous conclusion, and to the targeted questions.

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

The Committee has previously requested information on the scope of application of the legislation on the right to information and consultation, particularly as regards the calculation of the minimum thresholds. The Committee also asked to indicate precisely the categories of workers included in the calculation of these minimum thresholds, including temporary workers, workers with other status, non permanent workers, etc. The report states that the Act on Co-operation within Undertakings (334/2007) applies to undertakings normally employing at least 20 persons, subject to certain exceptions when a few provisions apply to undertakings employing at least 30 persons. When calculating the number of employees, all persons in an employment relationship with the undertaking are to be included, amongst which employees with part-time and a fixed-term employment contract.

The report further states that co-operation in the public sector is governed by the Act on Co-operation within Government Agencies and Public Services and the Act on Co-operation between the Employer and Employees in Municipalities and Well-being Services Counties. Unlike the Act on Co-operation within Undertakings, the aforementioned Acts contain no provision on supervision of compliance with the Act. The Committee asks the next report to provide information on legal remedies available to workers in the public sector in case of allegations that employers failed to fulfill their obligations under this Article.

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

The report states that the Occupational Safety and Health Act and the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces require cooperation between employers and employees. Cooperation on occupational safety and health addresses matters and measures affecting the safety, health and work ability of employees as well as the monitoring of their accomplishment and impacts. These provisions applied also in emergency conditions, yet, according to the report, Covid-19 has caused problems in the workplace, according to the report. In the healthcare sector, for example, not all employers included employee representatives in the drafting of emergency measures. The report states that, according to a survey commissioned by the Central Organisation of Finnish Trade Unions (SAK), employee representatives were genuinely included in managing the crisis ensuing from Covid-19 only in 50% of workplaces.

Noting the difficulties encountered, the Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers' organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers' representatives in terms of Article 21 of the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 21 of the Charter.

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

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 22 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral, and to the targeted question.

The Committee recalls that Article 22 secures the right of workers to participate, by themselves or through their representatives, in the shaping and improvement of their working environment.

The Committee asked in its previous conclusion how the Enforcement Act intended to ensure the right of employees to participate in decisions on protection of health and safety is implemented. The report states that employees can participate in decisions in this field on the basis of the Occupational Safety and Health (OSH) Enforcement Act (44/2006). The goal of the cooperation is to improve the interaction between the employer and the employees, and to make it possible for the employees to participate in and influence the handling of matters concerning safety and health at the workplace. At workplaces where at least ten employees work regularly, the employees shall choose from among themselves an occupational safety and health representative and two vice-representatives to represent them in the OSH cooperation. At workplaces where at least 20 employees work regularly, an occupational safety and health committee shall be established for a period of two years at a time. Both the employer and the employees of the workplace are represented on the committee.

The Committee has also requested in its previous conclusion (Conclusions 2018) information on sanctions for employers who fail to fulfill their obligations under Article 22. The report provides in reply that the Occupational Safety and Health authority may impose a fine for certain omissions. As a rule, the imposition of a fine requires that the party concerned be given an opportunity to be heard before a decision is made. A payment decision can be appealed to the Administrative Court. The report further provides information on different ways for employers, employees and other parties to act if they feel that the supervision has not been carried out in accordance with OSH Enforcement Act. The Committee notes that the situation in this respect has not changed since its previous assessment and that it has already previously considered that the remedies in Finland in case of alleged violation of the right which falls in the scope of Article 22 of the Charter, are in conformity with the Charter (see Conclusions 2018).

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

The report states in reply that no particular changes have taken place during the pandemic related to ensuring the respect of the right to take part in the determination and improvement of the working conditions and working environment. Therefore, these matters have been inspected in the same way as before the pandemic. It further states that central organisations emphasised during the pandemic, that the employer’s statutory occupational safety and health obligation applied also in emergency conditions, yet in practice Covid-19 has caused problems

in the workplace. In the healthcare sector, for example, not all employers included employee representatives in the drafting of emergency measures, which is highly problematic vis-à-vis the employees. Likewise, according to a survey commissioned by the Central Organisation of Finnish Trade Unions (SAK), in the first year of the pandemic, in 2020, employee representatives were genuinely included in managing the crisis ensuing from Covid-19 only at half of all workplaces.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers' organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers' representatives in terms of Article 22 of the Charter.

Conclusion

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

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

The Committee takes note of the information contained in the report submitted by Finland, as well as of the remarks of the central employee organisations, the views of the Non-Discrimination Ombudsman and the remarks of the National Council of Women of Finland which were included in the national report.

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

In its previous conclusion, the Committee concluded that the situation in Finland was in conformity with Article 26§1 of the Charter, pending receipt of the information requested (Conclusions 2014).

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

Prevention

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

In its previous conclusion, the Committee noted that under the Act on Equality between Women and Men (Act on Equality 609/1986), the employer has a positive duty to promote equality and prevent discrimination, including sexual harassment (Conclusions 2014).

The Committee notes that, according to the comments from the central employee organisations, workplaces having at least 30 employees were required to have prepared an equality and non-discrimination plan by 1 January 2017. The same comments indicate that the central employee organisations were involved in the drafting of the legislation.

The report does not provide information on the awareness-raising and prevention measures and campaigns undertaken during the reference period to combat sexual harassment. The Committee asks that the next report provide information on awareness-raising and prevention campaigns on sexual harassment, as well as on action to ensure that the right to dignity at work is fully respected in practice.

Liability of employers and remedies

In a targeted question, the Committee asked for information on the regulatory framework and any recent changes introduced to combat sexual harassment and abuse in the framework of work or employment relations.

The report states that the Non-Discrimination Act (1325/2014) remains in force, but is currently under review.

The report indicates that the Occupational Safety and Health Act (738/2006) prohibits all forms of harassment that put employees' health at risk or in danger. Harassment refers to systematic and persistent offensive conduct or behaviour. Such conduct or behaviour is likely to be harmful to employees' health. Employers have a duty to monitor their employees and proactively intervene if there are any signs of harassment.

In its previous conclusion, the Committee asked whether employers may be held liable when sexual harassment occurs in relation to work, or on premises under their responsibility, but it is suffered or perpetrated by a third party, not employed by them, such as an independent

contractor, a self-employed worker, a visitor, a customer, etc. It also asked whether the victims' right not to be retaliated against is guaranteed (Conclusions 2014).

The report indicates that Section 28 of the Occupational Safety and Health Act (738/2002) provides that if harassment or other inappropriate treatment of an employee occurs at work and causes hazards or risks to the employee's health, the employer, after becoming aware of the matter must, by available means, take measures to remedy the situation. The report adds that the employer exercising the main authority over a shared workplace must, among other duties, ensure that the working conditions and working environment are safe and healthy in general. In the case of harassment at a shared workplace, the employer exercising the main authority must intervene. This includes situations where an employee harasses a self-employed worker in a shared workplace.

The Committee further notes that Section 8(d) of the Act on Equality stipulates that the conduct of an employer is considered discriminatory if they do not take all the available measures to remove harassment when they have been informed of it.

The Committee notes that the report provides an example of a specific situation of a "shared workplace" where one employer exercises the main authority. The report does not provide information on legislation defining the employer's responsibility in situations of sexual harassment where the victims or perpetrators are persons not employed by them, such as visitors, clients, independent contractors.

In this respect, the Committee recalls that it must be possible for employers to be held liable when sexual harassment occurs in relation to work, or on premises under their responsibility, and it is suffered or perpetrated by a third person, not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. (Conclusions 2014, Finland, Article 26§2). The Committee therefore considers that the situation is not in conformity with Article 26§1 of the Charter on the ground that the existing framework in respect of employers' liability does not provide sufficient and effective remedies in cases of sexual harassment when third parties are involved.

The report does not reply to the Committee's question on whether the victims' right not to be retaliated against is guaranteed (Conclusions 2014). The Committee notes that under Section 8(a)(1) of the Act on Equality, it is discriminatory if an employer dismisses an employee or disadvantages an employee in some other manner when the employee has invoked the rights and obligations under the Act on Equality, or has been party to handling a case of discrimination.

Damages

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

In its previous conclusion, the Committee asked for updated information to be provided on relevant case-law and damages actually awarded (Conclusions 2014). It also asked whether the right to reinstatement is guaranteed to employees who have been unfairly dismissed or pressured to resign for reasons related to sexual harassment (Conclusions 2014).

The report does not provide any information on relevant case-law or on damages awarded. The Committee notes from the *Country report on gender equality 2021* of the European network of legal experts in the field of gender equality and non-discrimination that there is no upper limit to compensation under the Act on Equality. It reiterates its request for information on the case-law on sexual harassment and on the amounts actually awarded as compensation in such cases.

With regard to the Committee's previous question on reinstatement, the report states that Finland's labour legislation does not provide for the possibility of reinstatement of employment

where employees have been unfairly dismissed or pressured to resign for reasons related to sexual harassment.

The Committee recalls that under Article 26§1 of the Charter, victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage (Conclusions 2005, Republic of Moldova). In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or have been pressured to resign for reasons related to sexual harassment (Conclusions 2003, Bulgaria).

The Committee considers that the situation is not in conformity with 26§1 of the Charter on the ground that the law does not guarantee the right to reinstatement to employees who have been unfairly dismissed or have been pressured to resign for reasons related to sexual harassment.

Covid-19

In a targeted question, the Committee asked for information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards sexual harassment. The Committee welcomed specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

The report indicates that no particular changes were made during the pandemic with regard to the risk of harassment at work. Therefore, harassment issues were dealt with in the same way as before the pandemic.

Conclusion

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

- the existing framework in respect of employers' liability does not provide for sufficient and effective remedies in cases of sexual harassment when third parties are involved;
- the law does not guarantee the right to reinstatement to employees who have been unfairly dismissed or have been pressured to resign for reasons related to sexual harassment.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

The Committee takes note of the information contained in the report submitted by Finland, as well as of the remarks of the central employee organisations, the views of the Non-Discrimination Ombudsman and the remarks of the National Council of Women of Finland which were contained by the national report.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 26§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Labour rights").

In its previous conclusion, the Committee concluded that the situation in Finland was not in conformity with Article 26§2 of the Charter on the ground that employers cannot be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them is the victim or the perpetrator (Conclusion 2014).

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

Prevention

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

The Committee notes that according to the comments from the central employee organisations, workplaces having at least 30 employees were required to have prepared an equality and non-discrimination plan by 1 January 2017. The same comments indicate that the central employee organisations were involved in the drafting of the legislation.

The report does not provide information on the awareness raising and prevention measures and campaigns on moral (psychological) harassment effectively carried out during the reference period. The Committee asks that the next report provide information on awareness raising and prevention campaigns on moral (psychological) harassment as well as on action to ensure that the right to dignity at work is fully respected in practice.

Liability of employers and remedies

In a targeted question, the Committee asked for information on the regulatory framework and any recent changes introduced to combat moral (psychological) abuse in the framework of work or employment relations.

In its previous conclusion, the Committee concluded that the situation in Finland was not in conformity with Article 26§2 of the Charter on the ground that employers cannot be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them is the victim or the perpetrator (Conclusion 2014).

The report states that the Non-Discrimination Act (1325/2014) remains in force, but is currently under review.

The report states that Section 28 of the Occupational Safety and Health Act (738/2002) provides that if harassment or other inappropriate treatment of an employee occurs at work and causes hazards or risks to the employee's health, the employer, once becoming aware of the matter must, by available means, take measures to remedy the situation. The report also

indicates that the employer exercising the main authority at a shared workplace must, among other duties, ensure that the working conditions and working environment are safe and healthy in general. In the case of harassment at a shared workplace, the employer exercising the main authority must intervene. This includes situations where an employee harasses a self-employed worker at a shared workplace.

The Committee notes that the information provided in the report does not demonstrate that the situation has been remedied with regard to the liability of employers in cases of harassment when persons not employed by them, such as visitors, clients, or independent contractors, are the victims or the perpetrators. The report only provides an example of a specific situation of a "shared workplace" where one employer exercises the main authority. The report does not provide information on legislation setting out the employer's liability in situations of moral (psychological) harassment where persons not employed by them, such as visitors, clients, independent contractors, are the victims or the perpetrators.

The Committee recalls, in this respect, that it must be possible for employers to be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibilities, when a person not employed by them (an independent contractor, a self-employed worker, a visitor, a client, etc.) is the victim or the perpetrator. Therefore, the Committee considers that the situation is still not in conformity with Article 26§2 of the Charter on the ground that the existing framework in respect of employers' liability does not provide sufficient and effective remedies in cases of moral (psychological) harassment when third parties are involved.

The Committee previously asked where the burden of proof lies when those concerned are seeking legal protection in cases of moral (psychological) harassment (Conclusions 2014 and 2007). The report does not provide the requested information. The Committee notes that Article 28 of the Non-Discrimination Act provides that the person instituting the proceedings concerning discrimination or victimisation before a court or other authority must present an account of the facts on which the claim is based. If it can be assumed on the basis of the clarification provided in the proceedings of the matter that there has been a violation of the prohibition of discrimination or retaliation, then the onus is on the other party to disprove this assumption.

Damages

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

In its previous conclusion, the Committee asked for the next report to provide further examples of relevant case law related to moral (psychological) harassment and to specify the range of compensation awarded (Conclusions 2014). It also reiterated its question as to whether the right to reinstatement is guaranteed for employees who have been unfairly dismissed or pressured to resign for reasons related to moral (psychological) harassment (Conclusions 2014).

The Committee notes in the *Country report on non-discrimination* of the European network of legal experts in the field of gender equality and non-discrimination that there is no minimum or maximum amount of compensation under the Non-Discrimination Act. In Section 24(1) of the Non-Discrimination Act, it is stated that the amount of compensation must be in line with the severity of the act and that consideration will be given to the type and extent of the discrimination and its duration. The Committee reiterates its request for examples of relevant case law and information on the range of compensation awarded.

With regard to the Committee's previous question on reinstatement, the report states that Finland's labour legislation does not provide for the possibility of reinstatement of employment

where employees have been unfairly dismissed or pressured to resign for reasons related to moral (psychological) harassment.

The Committee recalls that, under Article 26§2 of the Charter, victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or have been pressured to resign for reasons related to moral (psychological) harassment (Conclusions 2014, Azerbaijan).

In light of the above, the Committee considers that the situation is not in conformity with 26§2 of the Charter on the ground that the law does not guarantee the right to reinstatement to employees who have been unfairly dismissed or have been pressured to resign for reasons related to moral (psychological) harassment.

Covid -19

In a targeted question, the Committee asked for information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards moral (psychological) harassment. The Committee welcomed specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

The report indicates that no particular changes were made during the pandemic with regard to the risk of harassment at work. Therefore, harassment issues were dealt with in the same way as before the pandemic.

Conclusion

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

- the existing framework in respect of employers' liability does not provide for sufficient and effective remedies in cases of moral (psychological) harassment when third parties are involved;
- the law does not guarantee the right to reinstatement to employees who have been unfairly dismissed or have been pressured to resign for reasons related to moral (psychological) harassment.

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

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

The Committee recalls that no targeted questions were asked in relation to Article 28 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

In previous conclusion (Conclusions 2016), the Committee considered that the situation in Finland was not in conformity with Article 28 of the Charter on the ground that the relevant national legislation makes no provision for reinstatement of representatives who have been unlawfully dismissed. In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity.

Protection granted to workers' representatives

In its previous conclusion (Conclusions 2016), the Committee concluded that the situation in Finland was not in conformity with Article 28 of the Charter on the ground that the relevant national legislation makes no provision for reinstatement of representatives who have been unlawfully dismissed.

In reply, the report confirms that Finland's labour legislation does not provide for the possibility of reinstatement and that this also applies in the context of the dismissal of workers' and trade union representatives. The report states that the continuity of an employment relationship and the position of a dismissed person are safeguarded by other means, such as high threshold for dismissal, liability for compensation for groundless termination of employment, compensation for breaching the legislation, including the unemployment security system and public services. The Government refers in this respect to the recommendation in the collective complaint University Woman of Europe v. Finland (No. 129/2016), in which the Committee of Ministers acknowledged that Finland, by demonstrating the existence of sufficient safeguards in labour legislation, has provided acceptable justification for the absence of the possibility of reinstatement under Finish Law.

The Confederation of Finish Industries (EK) , in their comments on the 17th National Report on the implementation of the Charter (in the context of Article 4§3 of the Charter) agrees with the Government's view on reinstatement of employment. According to the EK, the amount of compensation provided in the law in cases of unlawful termination of employment are sufficient, and they are also conducive to ensuring compliance with the legislation. The minimum level of compensation is set by the legislation, and the compensation covers both material and immaterial damage suffered by the employee. Moreover, any future financial losses of the employee must be taken into consideration. According to the EK, dismissed employees are not deprived of financial security because they are covered by the employment security system.

The Central Employee Organisations, in their comments on the 17th National Report, consider that although the legislation contains elements seeking to ensure workers' representative the right to protection against action harmful to them, it does not provide for the reinstatement of an unlawfully dismissed employee, including the workers' representatives. They assert that further efforts should be made to strengthen the status of workers' representatives through legislation.

The Committee underlines the importance of placing the unlawfully dismissed workers' representative back into an employment situation no less favourable than the one that they previously enjoyed. The Committee therefore held that the possibility of ordering reinstatement

was an important element of the protection afforded to workers' representatives against unlawful dismissals (see, Conclusion 2016, Finland). Whether reinstatement is appropriate in a particular case should be a matter for the domestic courts to decide.

In view of the information provided in the report that domestic law does not provide for the possibility of reinstatement of workers' and trade union representatives unlawfully dismissed, the Committee reiterates its previous conclusion that the situation in Finland is not in conformity with Article 28.

The Committee recalls that in the previous conclusion (Conclusions 2016), it considered, as regards compensation in case of unlawful dismissals, that there is in Finland a general ceiling on compensation (24 months' pay for all employees and 30 months' pay in the case of workers' representatives) and that this ceiling may result in situations where compensation awarded is not commensurate with the loss suffered. The Committee therefore asked for further information on compensation which may be claimed under other pieces of legislation, including Non-Discrimination Act and Tort Liability Act, in case of unlawful dismissal of workers' representatives. It considered that it could not conclude, on the basis of the information available, that adequate alternative other legal avenues are available to provide a remedy in such cases.

In reply, the report indicates, firstly, that the employer is entitled to terminate the employment contact of a workers' representatives on financial and production related grounds in the context of dept restructuring, or because of the employer's bankruptcy only if the work of the workers' representative ceases completely and the employer is unable to arrange work that corresponds to the person's professional skills or to train the person for some other work. According to the report, the employer is entitled to terminate the employment contact of a workers' representative on the basis of grounds related to the employee's person only if a majority of the employees whom the workers representative represents, agree.

With regard to compensation, the report indicates that under the provisions of the Employment Contracts Act, if the employer has terminated an employment contract contrary to the grounds laid down in the legislation, they must be ordered to pay compensation for unjustified termination of the employment contract. The compensation must be equivalent to the wage due for a minimum of three months or a maximum of 24 months (30 months in the case of workers' representatives). The following factors must be taken into account in determining the amount of compensation: estimated time without employment and estimated loss of earnings, the remaining period of a fixed-term contract, the duration of the employment relationship, the employee's age and chances of finding employment corresponding to the employee's vocation and training. According to the report, equivalent provisions are also laid down in the Seafarer's Employment Contracts Act.

The report further indicates that work discrimination is criminalised under the Criminal Code, and if an employer puts an applicant for a job or an employee in an inferior position without an important and justifiable reason, on the basis of reasons including political or industrial activity, they shall be sentenced for work discrimination to a fine or to an imprisonment for at least six months. Moreover, an employer who without a justification based on the law, dismisses, discharges or puts on compulsory unpaid leave an employee representative, shall be sentenced to a fine for violation of the rights of an employee representative.

The report also mentions compensation which can be accorded under the Non-Discrimination Act and the Seafarers' Employment Contracts Act in case of unlawful dismissal of workers' representatives but does not provide any further information on the upper limits, nor on the factors which can be taken into account by the courts in determining the amount of compensation under these pieces of legislation.

The Committee still considers that the upper limits on compensation in the Employment Contracts Act, may result in situations where compensation awarded is not commensurate with the loss suffered. The information submitted concerning the compensation which may be

accorded under the Non-Discrimination Act and Seafarers' Employment Contracts Act is not sufficient for the Committee to conclude that adequate alternative legal avenues are available to provide a remedy in case of unjustified dismissal of workers' representatives.

The Committee asks for detailed and updated information on compensation which can be awarded under the domestic legislation, including Non-Discrimination Act, and the factors which are taken into account by the courts in determining the amount of compensation. The Committee wishes to receive information on any case law on this issue, examples of cases where the courts have held that dismissal of workers' representatives was unfair under the Employment Contracts Act and information on the level of damages awarded in such cases. Pending receipt of the information requested, the Committee reserves its position on this point.

In the previous conclusion, the Committee asked for information on the protection of employee representatives against prejudicial acts other than dismissal. In reply, the report limits its submission to state that the employer may not by unilateral decision change the material terms and conditions of the employment contract, concerning for instance, remuneration, job duties, working hours and place of work. Albeit positive, this information is not sufficient for the Committee to conclude that the protection of workers' representatives from any forms of detrimental treatment is sufficient and effective. The report still does not provide a comprehensive picture of the situation. In particular, it does not explain how workers' representatives are protected in practice from prejudicial acts, which may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts cut-down or any other taunts or abuse.

The Committee requests that the next report provide updated and detailed information on the protection of workers' representatives against prejudicial acts other than dismissal. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Finland is in conformity with the Charter in this respect.

Facilities granted to workers' representatives

The report indicates that under the Employment Contracts Act, the employer must allow employees and their organisations to use suitable facilities free of charge during breaks and outside working hours in order to deal with employment issues and matter forming part of the function of trade unions. Elected representatives are entitled to any information that they need to carry out the duties referred to in law and to sufficient release from work obligations. The employer must compensate for any loss of earnings caused thereby.

Also, according to the provisions of the Act on Co-operation within Undertakings, a representative of a personnel group is entitled to be released from work for such time as is required to carry out the duties and for co-operation training. The employer and the representative have to agree upon the times for the co-operation training. The workers' representative are also entitled to consult and request information from experts within the undertaking when preparing for the co-operation procedure. The representatives have the right to examine the materials on any issue related to employment conditions.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 28 of the Charter on the ground that domestic law makes no provision for the reinstatement of workers' representatives unlawfully dismissed.

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

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

The Committee recalls that no targeted questions were asked in relation to Article 29 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

In the previous conclusions (Conclusions 2014), the Committee concluded that the situation in Finland was in conformity with Article 29 of the Charter, pending receipt of the information requested. The assessment of the Committee will therefore concern the information provided in the report in response to the question(s) raised in its previous conclusion.

In the previous conclusion, the Committee asked that the next report indicate whether there have been any legislative amendments, during the reference period, concerning the definition and scope of collective redundancies. It also asked what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has been fulfilled.

In reply, the report indicates that a temporary amendment caused by the Covid-19 pandemic was made to the Act on Co-operation within Undertakings. This amendment was in force from 1 April to 31 December 2020. The aim was to allow employers to adapt their activities more quickly in a situation where the Covid-19 pandemic has suddenly and dramatically weakened the demand for products and services. Section 51 of the Act was temporarily amended determining that when an employer considered the lay-off of one or more employees, the employer was deemed to have fulfilled the duty to negotiate when at least five days had elapsed since the commencement of the negotiations (instead of six weeks or 14 days as is the case in the current legislation). The report further explains that the aim of these temporary amendments was to prevent the further deterioration of the operational capacities of undertakings due to prolonged negotiations in the Covid-19 context.

In their submissions on the national report, the central employee organisations add that the temporary amendment did not apply to situations where the undertaking was considering measures concerning the reduction of full-time contracts to part-time contracts.

In reply to the question previously raised by the Committee, the report provides for detailed information on the procedure with which the employer must comply in situations of redundancies. It indicates that under the Act on Co-operation within Undertakings, an employer, who has deliberately or negligently failed to observe the provisions with regard to termination of contracts, lay-offs or reduction of full-time contracts to part-time contracts of one or several employees shall be liable to pay to the employee a maximum indemnification of € 30,000. When determining the amount of the indemnification, consideration shall be given to the degree of neglect in respect of the co-operation obligation, the general circumstances of the employer, the nature of the measure applied in respect of the employee and duration of his employment relationship.

Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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