



March 2023

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

GEORGIA

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 Georgia, which ratified the Revised European Social Charter on 28 August 2005. The deadline for submitting the 15th report was 31 December 2021 and Georgia submitted it on 30 December 2021.

The Committee recalls that Georgia 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 2018).

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

Comments on the 15th report by Georgian Trade Unions Confederation were registered on 24 June 2022 and by Public Defender's Office of Georgia and Georgian Young Lawyers' Association, on 30 June 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).

Georgia has accepted all provisions from the above-mentioned group except Articles 2§3, 2§4, 2§6, 4§1, 4§5, 21, 22 and 28.

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

The conclusions relating to Georgia concern 15 situations and are as follows:

- 2 conclusions of conformity: Articles 2§5 and 6§3,
- 11 conclusions of non-conformity: Articles 2§1, 2§2, 2§7, 4§3, 4§4, 6§1, 6§2, 6§4, 26§1, 26§2 and 29.

In respect of the other 2 situations related to Articles 4§2 and 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 Georgia under the Revised Charter.

The next report from Georgia 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 Georgia and in the comments by the Georgian Trade Unions Confederation (GTUC), Public Defender's Office (PDO) and the Georgian Young Lawyers' Association (GYLA).

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 Georgia was not in conformity with Article 2§1 of the Charter on the ground that there was no appropriate authority that supervised that daily and weekly working time limits were respected in practice (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Measures to ensure reasonable working hours

In its previous conclusion, the Committee found the situation in Georgia not to be in conformity with Article 2§1 of the Charter on the ground that there was no appropriate authority to supervise that daily and weekly working time limits were respected in practice (Conclusions 2018). The Committee also asked that the next report confirm that the rest period of 12 hours is observed in practice and thus, a worker may not work more than 12 hours (per shift).

In reply, the report states that the Labour Inspectorate has been authorised to supervise working hours and impose administrative sanctions as of 1 January 2021. The Committee notes that the changes to the Labour Inspectorate's mandate are outside the reference period for the purposes of the present reporting cycle and reiterates its conclusion of non-conformity on the ground that there is no appropriate authority that supervises that daily and weekly working time limits are respected in practice.

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 extensive amendments were made to the Labour Code, including those on the regulation of working time, entitlements to minimum break and rest period, overtime and shift and night work. Article 24 of the Labour Code defines standard working time as any period during which a worker is working at the employer's disposal and is carrying out his/her activities or duties. Standard working time does not include breaks and rest periods. A worker should not work for more than 40 hours a week. However, the duration of standard working

time in enterprises with specific operating conditions requiring more than 8 hours of uninterrupted production/work process shall not exceed 48 hours a week. The Government of Georgia is working on the new resolution on a list of industries with specific operating conditions. The Committee asks to be informed about this process.

The report further states that Article 24 of the Labour Code sets out entitlements to minimum break and rest periods, namely that the duration of uninterrupted rest between working days (or shifts) shall not be less than 12 hours. Where the working day is longer than 6 hours, a worker shall be entitled to a break, the duration of which must be determined by the agreement between the parties. If the working day is shorter than 6 hours, the law states that the break must last for at least 60 minutes. The law requires that employers provide a one hour break for nursing mothers of children under 12 months of age; such breaks must be included in working time and must be paid. Working time for minors aged between 16 and 18 must not exceed 36 hours a week or 6 hours a day, and the working time for minors between 14 and 16 must not exceed 24 hours a week or 4 hours a day. With regard to the public sector, a new paragraph has been added to Article 60 of the Law on Public Service that states that an officer who is a legal representative or supporter of a person with a disability may, in addition to rest days determined by paragraph 3 of this Article, enjoy another paid rest day once a month or agree with a respective public institution on working time other than provided for by its internal regulations.

The report states that violations of the provisions on working hours may result in a warning or a fine.

The report states that no statistics on the observance of the right of workers to reasonable working hours can be provided since the Labour Inspectorate only became authorised to supervise the practical implementation of all labour standards provided for by the legislation on 1 January 2021, which is outside the reference period for the purposes of the present reporting cycle. The Committee therefore asks that the next report provide statistics on inspections and their prevalence by sector of economic activity and sanctions imposed.

In its comments, the GTUC states that there is a difference in the duration of a working week for workers carrying out standard work and for those operating under a specific regime. In the absence of the fields where the latter can be applied, the GTUC thinks that there could be discrimination based on the type of employment. The GTUC also states that working time regulations do not explicitly apply to workers in the mining sector. Moreover, the Labour Code does not set a maximum daily limit of working hours and in practice, there are cases when workers perform their work for 24 hours.

In its comments, the PDO states that Georgian legislation does not determine daily working hours for the private sector and that the report lacks confirmation that the 12-hour rest period is observed in practice.

In its comments, GYLA states that the Law of Georgia on Civil Service does not regulate the issue of breaks during working hours.

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, no cases were brought before the domestic courts concerning reasonable daily and weekly working hours. No information either was received on specific proactive action taken by the national human rights institutions and equality bodies to ensure the respect of reasonable working hours. The report further states that in its Annual Parliamentary reports the Public Defender of Georgia critically assessed the gaps in the Labour Code and stressed the urgent need to expand the powers and the mandate of the labour inspection. The Public Defender's Office actively participated in working groups and parliamentary discussions on the draft law on Occupational Health and Safety and on the labour law reform.

Law and practice regarding on-call periods

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 the definition of on-call time and service and the rules of its application are not regulated so that no information can be provided. The Committee notes that periods of on-call duty are periods during which a worker has not been required to perform for the employer; they do not constitute effective working time, irrespective whether this duty is spent at the employer's premises or at home. The Committee asks whether the periods when a worker is at work or at home but does not carry out active work are considered working time or rest periods, having regard to the definition of working time in the Georgian law. The Committee also reiterates its question on zero-hour contracts. If the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 2§1 of the Charter.

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 the issue was not studied and no measures were taken to mitigate the impact of the Covid-19 crisis during the reference period. The report also states that no agency conducted studies to assess the situation of working time during the pandemic in the specific sectors.

In its comments, the PDO states that during the pandemic, there were several cases when a 12-hour rest period between 24-hour shifts was not observed.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§1 of the Charter on the ground that there is no appropriate authority that supervises that daily and weekly working time limits are respected in practice.

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 Georgia.

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

In its previous conclusion (Conclusions 2018 and 2014), the Committee found that the situation in Georgia was not in conformity with Article 2§2 of the Charter on the ground it had not been established that Georgian law ensured that work performed during public holidays was adequately compensated.

The report indicates that on 29 September 2020, the Parliament of Georgia adopted a labour law reform package, including extensive amendments to the Organic Law of Georgia “Labour Code” (No. 7177).

The Committee notes that Article 30 of the Labour Code provides for public holidays: 1 and 2 January (New Year holidays); 7 January (Christmas Day); 19 January (Epiphany); 3 March (Mother’s Day); 8 March (International Women’s Day); 9 April; Easter holidays (Good Friday, Holy Saturday, Easter Sunday, Easter Monday); 9 May (Victory Day over Fascism); 12 May; 26 May (Independence Day); 28 August (Assumption); 14 October; 23 November (St. George’s Day).

According to Article 30(2), “an employee shall have the right to request other rest days instead of the holidays provided for by this Law, which shall be determined by an employment agreement”. According to Article 30(3), in addition to the holidays provided for by this Law, other days off may be determined by an ordinance of the Government. An employer may request that an employee perform the work on his/her next rest day, instead of the day off determined by an ordinance of the Government (as referred to in Article 24(7) of this Law). The Committee asks that the next report indicate whether work is in principle prohibited on public holidays.

As regards the remuneration, the report indicates that public holidays are paid as part of monthly remuneration; work carried out on public holidays is considered overtime (Article 30(4)) and be paid at a raised hourly rate (Article 27(2)). The amount of the compensation shall be determined by agreement of the parties. According to Article 27(3), the parties may agree to grant the employee an additional proportionate period of rest to compensate for overtime work. An additional rest period shall be granted no later than 4 weeks after the end of work, unless otherwise agreed by the parties.

As regards the remuneration for work on public holidays in public service, the report indicates that, in accordance with Article 58 (salary increment) of the Law on Public Service, an official shall be paid supplement for overtime work performed at the direction of a superior official. In addition, the official is paid a wage supplement when he/she is assigned additional duties, including for performing work on a public holiday. The report indicates that the total amount of the salary increment is determined by the Law on the Remuneration in Public Institutions. Pursuant to Article 26 (total amount of salary increments) of this law, the lump-sum salary increment may not exceed the monthly salary of the relevant post/position, and the total increments received during the year may not exceed 20% of the annual salary. The report adds that in public institutions, according to Article 27 of the aforementioned law, weekend/holiday work shall be paid in accordance with the working hours and the official salary in the manner prescribed by the public institution concerned, within the limits laid down in the Law on the Remuneration in Public Institutions.

The Committee notes that the report fails to reply to the question raised in its previous conclusions (Conclusions 2018, 2016 and 2014) concerning the situation in practice, including examples of the level of the increased pay rate in different sectors and branches, both public and private.

The Committee recalls that Article 2§2 of the Charter guarantees the right to public holidays with pay, in addition to weekly rest periods and annual leave. It recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Accordingly, work carried out on that holiday must be paid at least double the usual wage. The remuneration may also be provided as compensatory time-off, in which case it should be at least double the days worked (Statement of interpretation on Article 2§2; Conclusions 2014, Article 2§2, Serbia).

The Committee considers that the relevant legal provisions as described (both in the private and public sectors) are not sufficiently precise so as to ensure that work performed during public holidays is compensated in an adequate manner. Therefore, the Committee considers that the situation is not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated.

With regard to the monitoring and penalties, the report indicates that the Labour Inspection Service checks and monitors the proper application of Article 30. Violation of this provision may result in a warning or a fine. The amount of the fine is from GEL 200 (€50) to GEL 800 (€200) for an employer who is a natural person; and from GEL 200 (€50) to GEL 1000 (€250) for an employer who is a legal entity. The imposition of fines depends on income.

Covid-19

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

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

Le Comité renvoie à sa déclaration sur la covid-19 et les droits sociaux du 24 mars 2021.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee takes note of the information contained in the report submitted by Georgia. It also takes notes of the information contained in the comments by the Georgian Trade Unions Confederation (GTUC) as well as the Public Defender's Office of Georgia.

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

The Committee concluded in 2014 that the situation was not in conformity with Article 2§5 of the Charter on the ground that the right to a weekly rest period was not adequately guaranteed in the whole labour market. In 2018, it reiterated the conclusion of non-conformity because it considered that it was not established that a weekly rest period is guaranteed.

The report indicates the contents of the Labour Code, and particularly Article 24, paragraph 7, which guarantees a weekly rest period of 24 hours. The same Article provides that, by agreement between the parties, the employee may enjoy a rest period of 24 hours twice in a row within not more than 14 days. In reply to the request of information of the practice, the report refers to a letter of information submitted by GTUC, which stated that workers generally enjoy 1 to 2 days of weekly rest period. In the comments submitted by GTUC to the present report, GTUC highlights the difference between private workers, which follow the Labour Code, and public servants, for which the legal framework limits their working time to 5 days maximum per week.

The report also states that it cannot provide statistics on the monitoring activities of the Labour inspectorate, as it can only carry inspections on all labour issues since January 2021. The Public Defender Office also states that before 2021 there was no appropriate authority, such as the labour Inspectorate, to supervise the respect of this rule.

Finally, no specific measures relating to COVID-19 and concerning this provision were set in place during the reference period.

In the light of the explanation submitted by the report, the Committee concludes that the situation is now in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Georgia is in conformity with Article 2§5 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 Georgia, as well as in the comments submitted by the Georgian Trade Unions Confederation (GTUC), and by the Public Defender's Office of Georgia (PDO) respectively.

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 considered that the situation in Georgia was not in conformity with Article 2§7 of the Charter on the ground that it had not been established that night workers were effectively subject to compulsory regular medical examination (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity.

The Committee recalls that its previous finding of non-conformity was based on the lack of full and updated information on the frequency of medical examinations and whether these regular examinations were carried out in practice (Conclusions 2010, 2014, 2016, 2018). The current report does not offer updated information regarding the situation during the reference period. Instead, the report reiterates that under Article 28 of the Labour Code night workers are entitled to ask for pre-employment and regular medical examinations at their employers' expense. In addition, the report notes that a ministerial order adopted on 7 September 2021, outside the reference period, specifies the frequency of medical examinations that are provided pursuant to Article 28 of the Labour Code – once a year in ordinary circumstances, or every six months for justified medical reasons. The report further notes that the Labour Inspectorate only received the mandate to monitor the implementation of provisions related to night work as of 1 January 2021, and that the information gathered would be provided at the earliest opportunity.

The third-party comments consider that the provisions invoked by the Government make medical examinations conditional on an explicit request from the night worker concerned. The GTUC additionally notes that in practice employees refrain from requesting medical examinations for fear of retaliation.

The Committee further recalls that Article 2§7 of the Charter requires compulsory medical examinations prior to employment on night work and regularly thereafter (see for example Conclusions 2018, Ukraine). In that sense, the Committee asks for the following report to clarify whether, under the terms of the above-mentioned ministerial order, medical examinations prior to the beginning of night work and regularly thereafter are compulsory or, on the contrary, conditional on night workers having requested them. The Committee further reiterates the request for information demonstrating that medical examinations are carried out in practice. Meanwhile, the Committee concludes that the situation in Georgia is not in conformity with Article 2§7 of the Charter on the ground that night workers are not effectively subject to compulsory regular medical examination.

Covid-19

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

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 2§7 of the Charter on the ground that night workers are not effectively subject to compulsory regular medical examination.

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 Georgia and in the comments by the Georgian Trade Unions Confederation (GTUC), Public Defender's Office (PDO) and the Georgian Young Lawyers' Association (GYLA).

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").

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.

Rules on increased remuneration for overtime work

In its previous conclusion, the Committee asked whether time-off for overtime work was of an increased duration. It also asked for examples of increased hourly rates at which overtime was paid. Also, the Committee asked whether there were any exceptions to the increased remuneration for overtime work and if so, what categories of workers were concerned (Conclusions 2018).

The report states that the Labour Code provides for an increased hourly rate of remuneration for overtime work but notes that the amount of the payment is determined by the agreement of the parties. The Labour Code also envisages that the parties may agree on granting an additional proportionate rest period to compensate for overtime work. The Committee asks the next report to clarify how this rest period is calculated.

The report further states that as a part of Labour Reform 2020 Georgia has a daily registry of a worker's working hours. Pursuant to Article 24(11) of the Labour Code, employers shall, in writing and/or electronically, keep a record of the hours worked by workers in the working day, and shall make available to the worker the monthly records of the working time (hours worked), unless this is impossible due to the specific nature of the work organisation.

The report notes that under Article 61(1) of the Law on Public Service overtime work shall be performed by an officer only on the basis of a written instruction by a superior and it shall be remunerated either by paying an increased salary (one-off increase shall not exceed the amount of one month's salary for a specific position, and the total amount of increases shall not exceed 20% of the annual salary) or by granting additional rest time proportionate to the overtime work. The Committee asks the next report to clarify how the additional rest period for overtime work is calculated.

The report states that some cases were brought before the domestic courts that concerned the issue of the exercise of the right to an increased remuneration for overtime work. In a judgment of 16 December 2019, the Supreme Court of Georgia considered a case involving the determination of remuneration for overtime work in the absence of a remuneration agreement. The court stated that since the parties did not agree on the remuneration work overtime rate, these conditions had to be determined on the basis of fairness, in accordance with Article 352(2) of the Civil Code. The remuneration was determined on the basis of the rate set by the parties for overtime work in subsequent contracts, namely the coefficient of 1.5. In another judgment of 3 June 2019, the Supreme Court dismissed a plaintiff's claim for the compensation for overtime work. According to the court, the staying at workplace outside of the working hours could not in itself prove that additional time was needed to complete the work.

In its comments, the GTUC states that in practice there are many cases where the overtime rate is unreasonable and unfair. It provides an example from the national case-law where overtime work was remunerated at 0.01% of the hourly wage. Moreover, unpaid or otherwise uncompensated overtime has become a norm in Georgia.

In its comments, GYLA states that unlike the Labour Code of Georgia, the Law on Remuneration of Labour in Public Institutions does not stipulate that overtime must be remunerated at an increased rate. Also, there is no unified approach in public institutions on the registration and remuneration for overtime.

The Committee notes that no information is provided on whether there are any exceptions to the increased remuneration for overtime work and what categories of workers are concerned. The Committee reiterates this request for information and in the meantime reserves its position on this point.

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 no studies were conducted to assess the impact of the Covid-19 crisis on the right to a fair remuneration as regards overtime. The report only states that under the Covid-19 State Management Programme, the salaries of medical personnel directly involved in the fight against Covid-19 have been increased by 50% since November 2020.

In its comments, the PDO expresses its regret that the authorities did not study and assess the impact of the Covid-19 crisis on the right to a fair remuneration as regards overtime.

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 Georgia, and in the comments by the Georgian Trade Unions Confederation (GTUC) and Public Defender's Office (PDO).

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 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 Georgia was not in conformity with Article 4§3 of the Charter, on the ground that the statutory guarantee of equal pay was inadequate (Conclusions 2018).

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

Legal framework

In its previous conclusion, the Committee found that the situation in Georgia was not in conformity with Article 4§3 of the Charter, on the ground that the legislation guaranteeing equal pay was inadequate (Conclusions 2018). It asked for information concerning new legislative developments in this regard.

The Committee refers to its previous conclusion under Article 20 (Conclusions 2020) where it noted that, in spite of the legislative changes adopted during the reference period, the situation has not changed whether in the private or the public sector and considered that the obligation to recognise the right to equal pay has still not been complied with.

The report indicates that the recently amended Labour Code (Organic Law of Georgia No. 7177 of 29 September 2020, the Labour Reform 2020) establishes a set of principles that serve to eliminate and prohibit discrimination in labour and pre-contractual relations and to guarantee the principle of equal pay for equal work. Article 4§4 of the Labour Code provides that employers shall ensure equal remuneration of female and male employees for equal work performed. The Committee observes that this Article provides for equal pay for women and men for "equal work performed", not for "work of equal or comparable value". According to the Committee, this wording is narrower than the principle in the Charter.

In addition, the report indicates that a new provision was added to the Law on the Elimination of All Forms of Discrimination, according to which the principle of equal treatment is guaranteed in access to job promotion, terms of termination of labour contract and remuneration, membership and activity of employer and employee organisations, etc.

Further the report states that Article 56§3 of the Law on Public Service defines the duty of a public institution to take measures to ensure equal treatment of persons working in the

institution, including the duty to include anti-discrimination provisions in the bylaw and other documents of the public institution and to ensure compliance with them.

The report recalls that Article 57§1 of the Law on Public Service provides that the public service remuneration system must be based on the principles of transparency and fairness, which means equal pay for equal work. According to Article 57§3, the remuneration of an officer includes an official salary, a class-based increment, salary increments and a monetary reward.

The report also indicates that Article 3 of the Law on Remuneration in the Public Service, which came into force on 1 January 2018, lays down the principle of equality and transparency in the remuneration system, which means “equal pay for the performance of equal work”. Pursuant to the said law, the determination of functions for specific positions is based on the assessment of specific features such as the level of responsibility, stress, relevant competencies, qualification and work experience. According to the report, the coefficients are assigned to specific positions, and not to individuals, which means that gender and other personal qualities have no effect on the coefficient scale.

In this regard, the Committee points out that under Articles 4§3 and 20 of the Charter (and Article 1 (c) of the 1988 Additional Protocol), the right of women and men to equal pay for work of equal value must be expressly provided for in legislation. The equal pay principle applies both to equal work and to work of equal or comparable value.

The Committee observes again that the new Law on Remuneration in the Public Service provides for equal pay for women and men for “equal work”, not for “work of equal or comparable value”. According to the Committee, this wording is narrower than the principle in the Charter.

In view of this, the Committee observes that, in spite of all legislative changes adopted during the reference period, the situation is not in conformity with the Charter on the ground that there is no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value.

In its comments, the PDO states that despite changes, the Labour Code did not take into account the obligation to determine the minimum wage by the relevant state institutions. The PDO specifies that in order to effectively enforce the principle of equal pay, the regulation of the minimum wage is critical in ensuring decent work and eliminating labour discrimination against women.

The Committee previously asked whether the law prohibited discriminatory pay clauses in collective agreements. The report provides no information on this issue. The Committee reiterates its question.

Effective remedies

In reply to the Committee’s question on ceiling to compensation, the report indicates that the legislation does not establish any ceiling to compensation for pecuniary and non-pecuniary damage that may be awarded to a victim of pay discrimination. The Committee considers that the situation is in conformity with the Charter on this issue.

The report also indicates that according to Article 77§1 of the Labour Code, violation by the employer of the principle of prohibition of discrimination provided for by the Code, including ensuring equal remuneration for equal work, may result in a warning or a fine.

Pay transparency and job comparisons

In its conclusions under Articles 20 and 4§3 (Conclusions 2016, 2018 and 2020), the Committee asked whether pay comparisons were possible across a company, for example, where such company is a part of a holding, and the remuneration is set centrally.

The report does not contain any information on this issue.

In its comments, the GTUC states that despite changes, there is still no methodology for measuring / evaluating the value of equal work, which is why the regulations remain just formal.

In view of the foregoing, the Committee notes that it has not been established that, in disputes on equal pay, the legislation authorises comparisons of remuneration between companies. The Committee therefore concludes that the situation is not in conformity in this respect.

The Committee asks that the next report provide information on the specific measures provided for in national legislation concerning pay transparency in the labour market, and in particular, the possibility for workers to receive information on the pay levels of other workers and the information available on pay.

Statistics and measures to promote the right to equal pay

The report presents the data by gender and sector of activity concerning workers' average monthly earnings for 2017. In general, men's average monthly earnings were 1,197.4 GEL (482 €), as against 770.2 GEL for women (246 €). The Committee notes from the report that the gender pay gap was 35.7% in 2017. It observes that the gender pay gap remains high in almost all sectors (it varies from 19.4%, for operators and assemblers of machines and equipment, to 51.1% for artisans and related workers).

The Committee also notes from the report of the GTUC that the average monthly nominal salary of employed women in the country was 952.2 GEL (234 €) in 2020, while the average monthly nominal salary of employed men was 1407.7 GEL (347 €). Accordingly, the gender pay gap of the average monthly nominal wage of hired employees is 32.31%. The GTUC explains this difference by the fact that women in Georgia have less opportunity to hold high-paying managerial positions. However, there is also a difference in pay between women and men employed in the same positions, which cannot be explained by objective reasons. The Committee takes note of the examples provided in the report.

As Georgia has accepted Article 20.c, the Committee will examine 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 this issue has not been studied and that there are no furlough schemes in Georgia.

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

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 4§3 of the Charter on the grounds that:

- there is no explicit legislative guarantee of equal pay for women and men for equal work or work of equal value;
- it has not been established that, in disputes on equal pay, the legislation authorises comparisons of remuneration across companies.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by Georgia and in the comments by the Georgian Trade Unions Confederation (GTUC).

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 4§4 of the 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 Georgia was not in conformity with Article 4§4 of the Charter (Conclusions 2018).

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

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

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

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

Reasonable period of notice: legal framework and length of service

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

The report provides detailed information on the grounds for terminating employment contracts (Article 47 of the Labour Code), the procedural guarantees for dismissal (Article 48 of the Labour Code), and the judicial practice on the termination of employment (Court of Cassation and Supreme Court of Georgia).

With regard to the notice period for termination of employment, the report states that according to Article 48 of the Labour Code, in the event of termination of an employment agreement by an employer on any of the grounds referred to in Article 47(1) (circumstances requiring downsizing; lack of qualifications/skills for the position in question; long-term incapacity; or other objective circumstances), the employer must notify the worker thereof in writing at least 30 calendar days in advance. In such a case, the worker must be granted severance pay in the amount of at least 1 month's remuneration. The report further states that in the event of termination of an employment contract by an employer on any of the grounds referred to in Article 47(1) above, the employer may notify the worker thereof in writing at least 3 calendar days in advance. In this case, the worker must be granted severance pay in the amount of at least 2 months' remuneration.

In its comments, GTUC states that the employer has the obligation to notify the employee 30 days prior to dismissal only in some cases, and according to GTUC, this falls short of the requirements of Article 4§4 of the Charter.

The Committee previously found the situation not to be in conformity on the grounds that some periods of notice were unreasonable. As noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. The Committee notes that Article 47(1) of the Labour Code does not set out notice periods for the termination of contracts of workers in proportion to their length of service. This creates the possibility of short notice periods for long-term employment. The Committee also notes that severance pay is not proportionate to the duration of service. Therefore, the Committee considers that the situation is not in conformity with Article 4§4 of the Charter on the grounds that the Labour Code does not provide for different notice periods for the termination of contracts nor severance pay proportionate to the length of service.

In addition, the Committee asks that the next report provide information on the other notice periods set out in Article 48 of the Labour Code. The Committee considers that, should the requested information not be provided in the next report, there will be nothing to establish that the situation in Georgia is in conformity with Article 4§4 of the Charter in this respect.

As regards grounds for dismissal of civil servants, in its previous conclusion the Committee asked that the next report provide information on the severance pay, if any, applicable in cases where the notice period is not respected (Conclusions 2018).

In reply to the Committee's question, the report indicates that during the reference period there were no amendments to the Law "On Public Service" of Georgia in terms of Article 4§4 of the Charter. The report further indicates that the Labour Code of Georgia applies to persons recruited for public service under an employment agreement, unless otherwise provided for by the legislation of Georgia, so the issue of compensation for termination of the employment contract of a person employed in the public service is regulated in accordance with the rules established by the Labour Code of Georgia.

As to the targeted question on any specific arrangements made in response to the Covid-19 crisis and the pandemic in relation to the realisation of the right of all workers to a reasonable notice for termination of employment, the report states that no specific arrangements were made by the Government of Georgia regarding this issue.

Notice periods during probationary periods

The Committee previously found the situation to be in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

Notice periods with regard to workers in insecure jobs

The Committee previously found the situation to be in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

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

In its previous conclusion, the Committee found that the situation in Georgia was not in conformity with Article 4§4 of the Charter on the grounds that no notice period is provided where the termination of the employment contract is due to the death of the employer or where it is due to the initiation of liquidation proceedings when the employer is a legal entity (Conclusions 2018).

The Committee has decided to reassess its case law as regards notice periods in the event of termination of employment due to the death of the employer who is a natural person, given that the deceased employer could not give the notice period. Therefore, the Committee no longer considers that the situation is not in conformity with Article 4§4 of the Charter on the ground that there is no notice period in the event of death of the employer who is a natural person.

The report does not contain information regarding the second ground of non-conformity; therefore, the Committee reiterates its conclusion of non-conformity in this respect.

Circumstances in which workers can be dismissed without notice or compensation

The Committee previously found the situation to be in conformity with Article 4§4 of the Charter in this respect (Conclusions 2018).

Conclusion

The Committee considers that the situation in Georgia is not in conformity with Article 4§4 of the Charter on the grounds that:

- the Labour Code does not set out different notice periods for the termination of contracts nor severance pay proportionate to the length of service;
- no notice period is provided where the termination of the employment contract is due to the initiation of liquidation proceedings when the employer is a legal entity.

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by Georgia as well as the comments submitted by the Georgian Trade unions Confederation, the Public Defender's office of Georgia, and the Georgian Young Lawyers Association.

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

In its previous conclusion (Conclusions 2018), the Committee concluded that the situation in Georgia was not in conformity with Article 5 of the Charter on the grounds that that it has not been established that:

- employees are adequately protected against discrimination on grounds of trade union membership in practice,
- trade unions are entitled to perform and indeed perform their activities without interferences from authorities and/or employers;
- the conditions possibly established with respect to representativeness of trade unions are not detrimental to the right to organise;
- members of the police and those employed in internal affairs, customs and taxation, in judicial bodies and the office of the public prosecutor enjoy the right to organise.

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 in the report in response to the conclusion of non-conformity, to the targeted questions and to the general question.

Prevalence/ Trade union density

According to the report, the state does not possess data on trade union membership; however, according to the information provided to the Government by the Confederation of Trade Unions of Georgia (GTUC), as of December 2020, there were 138.845 workers who were members of trade unions affiliated to the GTUC.

According to ILOSTAT, the trade union density rate was 17.9% in 2019.

The report states that no measures were taken to promote union membership during the reference period.

Forming trade unions and employers' organisations

The Committee previously requested information on the formalities for forming a trade union, i.e. the registration procedure and fees payable (Conclusions 2018).

According to the report, the Law on Trade Unions No 617 of 2 April 1997 provides that trade unions and employers organisations must be registered in the Register of non-commercial entities, the only requirement is the payment of a fee of 100 GEL (200 GEL for accelerated registration). The report also states that following the Labour Reform 2020 (outside the reference period) the minimum number of members required for the formation of a trade union was reduced from 50 to 25 members.

Freedom to join or not to join a trade union

The Committee previously concluded that it had not been established that employees were adequately protected against discrimination on grounds of trade union membership in practice (Conclusions 2018).

The report states that discrimination on grounds of trade union membership or activities is comprehensively prohibited by the Labour Code 2020 and the Law on the Elimination of all forms of discrimination.

The report provides information on cases of alleged discrimination on grounds of trade union membership before the superior courts. According to a study by the Supreme Court between 2017 and 2018, discrimination on grounds of trade union membership was alleged in 17% of all labour disputes. The report states that it is not possible to provide information on findings by the Labour Inspectorate relating to the right to organise as the Labour Inspectorate only became competent in 2021 to supervise all labour standards. The report states that such information can be provided for the next reference period.

According to the comments submitted by the Public Defender's Office, it has identified discrimination on grounds of trade union membership in cases involving platform workers. The Committee asks the next report to provide what measures have been taken to ensure that platform workers enjoy the right to organise and are protected against discrimination on grounds of trade union membership.

Trade union activities

The Committee previously concluded that it has not been demonstrated that trade unions have the right to carry out their activities without interference from the authorities and/or employers (Conclusions 2018). In response, the report states that the Law on Trade Unions requires that an employer create the necessary conditions for the activities of a trade union within the existing material and financial conditions. In addition, under the newly amended 2020 Labour Code, an employer is obliged to allocate a suitable place for meetings called by a trade union; sanctions for failure to do so are provided for.

The report further states that the above-mentioned Law on Trade Unions and the Criminal Code prohibit interferences by employers in the activities of a trade union.

Representativeness

The Committee previously concluded that the situation in Georgia was not in conformity with Article 5 of the Charter on the grounds that that it had not been established that the representativeness criteria were in conformity with the Charter (Conclusions 2018).

The report states that no criteria apply for determining representativeness of a trade union for the purposes of collective bargaining, nor are there any representativeness criteria for the purposes of participating in tripartite bodies at the national level. In practice, the Government follows the position of the most representative organisation implied in the ILO Convention No.144 (Tripartite Consultation).

Personal scope

The Committee previously concluded that it had not been demonstrated that members of the police, those employed in internal affairs, customs and taxation, in judicial bodies and the office of the public prosecutor enjoy the right to organise (Conclusions 2018).

From the information contained in the report, the Committee understands that the Law on Trade Unions provides that the 'specific features of these sectors must be taken into account when establishing trade unions within these bodies', which in effect means that there may be restrictions on the establishment of trade unions in these sectors. However, the report states that no restrictions on the establishment or right to join a trade union apply, and therefore members of the police, persons employed in internal affairs, customs and taxation, in judicial bodies and the office of the Public Prosecutor enjoy the right to organise.

The Committee asks whether in practice workers in the abovementioned sectors have established trade unions or have joined other trade unions.

The Committee refers to its general question on the right of members of the armed forces to organise and requests the next report to provide comprehensive information in this respect.

The Committee considers that Article 5 of the Charter allows States Parties to impose restrictions on the right of members of the armed forces to organise and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as the blanket prohibition of professional associations of a trade union nature and of the affiliation of such associations to national federations/confederations, see *CESP v. France*, Complaint No.101/2013, §84,

The Committee notes from the comments submitted by the Georgian Young Lawyers Association that while civil servants have the right to form and join trade unions, there are no trade unions active within the civil service. The Committee requests that the next report provide comprehensive information in this respect.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

The Committee takes note of the information contained in the report submitted by Georgia, as well as the comments from the Georgian Trade Unions Confederation (GTUC).

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 considered that the situation in Georgia was not in conformity with Article 6§1 of the Charter on the grounds that joint consultation did not take place at several levels, did not cover all matters of mutual interest of workers and employers, and did not take place in the public sector including the civil service (Conclusions 2018).

The report notes that the Tripartite Social Partnership Commission (TSPC) operating at the national level has met five times in plenary and 16 times at working group level during the reference period. In 2018, the TSPC adopted a decision establishing the Territorial Tripartite Social Partnership Commission in the Autonomous Republic of Adjara, which met twice in 2019. In 2018, Georgia ratified the International Labour Organization’s Convention on Tripartite Consultation N°144. In 2020, a ministerial decree established a TSPC sub-committee charged with holding tripartite consultations on the implementation of international labour standards in Georgia. The report also notes there has been no joint consultation in the public sector during the reference period. The report does not otherwise provide any information pertaining to the grounds of non-conformity, therefore concerning tripartite and bipartite joint consultation at several levels, or the scope of joint consultation processes already in place.

From the comments submitted by the GTUC, the Committee notes that no tripartite consultation mechanisms are in place at the regional level other than the above-mentioned pilot project in Adjara. The TSPC has not played an active role as a forum for consultation around issues raised by trade unions or in the settlement of labour disputes. Furthermore, the TSPC does not hold regular meetings, at the intervals specified in the law. Finally, while Articles 70-73 of the Labour Code lay down the rules for the exchange of information between employers and employees at the enterprise level, the implementation of these rules in practice is deficient.

Considering the above, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 6§1 of the Charter on the grounds that:

- joint consultation does not take place at several levels;
- joint consultation does not cover all matters of mutual interest of workers and employers;
- joint consultation does not take place in the public sector including the civil service.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by Georgia, as well as the comments from the Georgian Trade Unions Confederation (GTUC).

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 considered that the situation in Georgia was not in conformity with Article 6§2 of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

The previous conclusion of non-conformity was grounded on the fact that the promotion of collective bargaining was not sufficient; that it had not been established that an employer may not unilaterally disregard a collective agreement; and that it had not been established that the legal framework allows for the participation of employees in the public sector in the determination of their working conditions (Conclusions 2018).

The report provides a copy of the collective bargaining provisions in the Labour Code, which has been amended extensively on 29 September 2020. However, while these provisions (Articles 56-57 of the new Labour Code) are presented as new additions, the Committee cannot discern any differences from the corresponding provisions in the previous version of the Labour Code (Articles 41-43). The Committee asks for clarifications on this point and on the practical impact of the relevant amendments on collective bargaining rights. In any event, the Committee notes that the amended Labour Code came into force at the very end of the reference period. The Committee asks for information in the next report on the measures taken to promote collective bargaining, including through legislative amendments.

The report notes that one sector level collective agreement is currently in place, involving the Educators and Scientists Free Trade Union and the Ministry of Education, branching out into 2315 enterprise-level collective agreements. Other than in the education sector, the report notes that 59 enterprise-level collective agreements were signed or extended during the reference period, covering 105098 employees, or approximately 15% of their total number. The Committee points out that this level is still low and asks for information in the next report on the number of collective agreements at every level and the total proportion of employees covered by a collective agreement. Meanwhile, the Committee reiterates that the situation in Georgia is not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining is not sufficient.

Regarding the binding nature of collective agreements, the report further indicates that it is established by virtue of Article 75 of the amended Labour Code 2020. The provision in question, which is a new addition to the Code, provides the Labour Inspection Service with a mandate to ensure the effective application of collective agreements, along with that of other legal acts. The Committee notes from other sources that concomitantly with the Labour Code reform, a Law on the Labour Inspection Service was approved in September 2020, extending the Labour Inspectorate’s mandate to include labour rights and conditions (in addition to health and safety issues) and changing its status to a more independent agency under the

supervision of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs (European Commission Association Implementation Report on Georgia, 2021). However, the law in question only applied beginning with 1 January 2021, so postdating the reference period. In any event, the principle that collective agreements are binding on the parties involved does still not appear to be clearly stipulated in Georgian law. The Committee asks for the next report to provide examples of the Labour Inspection Service enforcing the provisions of collective agreements in the case of unilateral infringements by employers. While the GTUC in its comments welcomes the legislative amendments providing the Labour Inspection Service with increased supervisory powers, it also notes that their effect in practice has been limited due to the low number of collective agreements. The GTUC further notes that employers routinely refuse to engage in collective bargaining and cites cases of public officials encouraging employees to circumvent trade unions by agreeing on terms with their employers directly. In view of the above, the Committee reiterates that the situation in Georgia is not in conformity with Article 6§2 of the Charter on the ground that an employer may unilaterally disregard a collective agreement.

Regarding the public sector, the report notes that employees in the public sector have the right to join trade unions and engage in public bargaining. The Committee further notes in this context the above-mentioned collective agreement concluded in the public education sector and asks if civil servants are also able to participate in the determination of their working conditions.

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

Covid-19

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

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 6§2 of the Charter on the grounds that:

- the promotion of collective bargaining is not sufficient;
- an employer may unilaterally disregard a collective agreement.

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 Georgia 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 Georgia 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 Georgia and of the comments from the Georgian Trade Unions Confederation (GTUC).

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.

In its previous conclusion, the Committee considered that the situation in Georgia was not in conformity with Article 6§4 of the Charter (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

Right to collective action

Entitlement to call a collective action

In its previous conclusion, the Committee considered that the situation was not in conformity with Article 6§4 of the Charter on the ground that it had not been established that in general the right to collective action of workers and employers, including the right to strike, was adequately recognised.

The Government states that Article 48¹ of the Labour Code entitles trade unions and a group of at least 20 employees to call a strike. The Committee notes that such entitlement is in conformity with Article 6§4 of the Charter.

In its comments, the GTUC states that the right to an individual strike is not explicitly established in the Labour Code.

Restrictions to the right to strike, procedural requirements

In its previous conclusion, the Committee considered that the situation was not in conformity with Article 6§4 of the Charter on the ground that restrictions on the right to strike in certain sectors were too extensive and went beyond the limits permitted by Article G of the Charter. The Committee also asked what were the practical circumstances in which courts actually postponed or suspended a strike.

The Government states that according to Article 66(1) of the Labour Code, employees cannot fully exercise their right to strike if they perform work which, if completely interrupted, would pose an obvious and imminent threat to the life, personal safety or health of the society. The sectors concerned are: emergency assistance medical service; production, distribution, transmission and control of electricity; work for the transportation and distribution of natural gas; work for water and drain system; telephone communication system; services securing the safety of aviation, railway, marine and road movement; work for services securing state defence, rule of law and justice; work for the court organs; work for municipal cleaning service; work for the firefighting and rescue services. In these sectors, a minimum service is required. The Committee notes that the situation in Georgia is now in conformity with Article 6§4 of the Charter.

The Government further states that in the case of a collective dispute, the right to strike arises 21 days after the Minister is notified in writing or after the Minister appoints a dispute mediation.

Under the Labour Code, if one of the parties avoids participating in conciliation procedures, the strike must be declared illegal. Moreover, with regard to the practical circumstances in which the courts actually postpone or suspend a strike, the report states that in 2018 the Tbilisi Civil Court prohibited subway drivers to strike during working hours; nevertheless, the drivers went on strike and it lasted for three days.

In its comments, the GTUC states that the inclusion of municipal cleaning among the essential services is unjustified and that compulsory mediation hinders the right to strike.

Right of the police to strike

In response to the general question, the Government states that police officers are prohibited from striking.

The Committee points out with regard to the regulation of the collective bargaining rights of police officers, that states must demonstrate compelling reasons as to why an absolute prohibition on the right to strike is justified in the specific national context in question, as distinct from the imposition of restrictions as to the mode and form of such strike action (European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on admissibility and the merits of 2 December 2013, §211). According to the report the police are denied the right to strike. The Committee considers therefore that the situation is not in conformity with Article 6§4 of the Charter on the ground that this absolute prohibition on the right to strike for the police goes beyond the limits set by Article G of the Charter.

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 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.

The Government states that no specific measures were introduced in connection with the Covid-19 pandemic.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 6§4 of the Charter on the ground that the police are denied the right to strike.

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 Georgia, of the comments submitted by the Public Defender's Office and of the comments submitted by the Georgian Trade Unions Confederation (GTUC).

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 Georgia was not in conformity with Article 26§1 of the Charter on the grounds that:

- it had not been established that there is adequate prevention of sexual harassment in relation to the workplace;
- it had not been established that the existing framework in respect of employers' liability provides sufficient and effective measures against sexual harassment in relation to work;
- it had not been established that a shift in the burden of proof applies in sexual harassment cases before civil courts;
- it had not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment (Conclusions 2018).

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

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 the situation it had previously found not to be in conformity with Article 26§1 of the Charter (Conclusions 2014) had not changed, as the report did not reply to the Committee's request for information on any preventive measures effectively taken to raise awareness about the problem of sexual harassment in the workplace (Conclusions 2018). The Committee reiterated its request for information and considered that it had not been established that the situation was in conformity with Article 26§1 of the Charter on this point (Conclusions 2018).

The report indicates that Georgia actively started to disseminate information through social media and by campaigns on Georgian TV channels to raise awareness about the protection of dignity at work. The report mentions an awareness-raising campaign called "Labour Dictionary" initiated by the Labour Inspection Service as of 2021 (outside the reference period), aimed at disseminating information about the updated Labour Code, providing information on the activities and role of labour inspection and promoting the adoption of new standards in labour culture.

The report also provides detailed information on the activities conducted by the Office of the Public Defender of Georgia (PDO) to raise awareness of equality issues, including sexual harassment. These activities include training and information meetings, videos for employees, private companies, labour inspectors, representatives of employers' associations, trade unions and various public agencies.

In its comments, the PDO provides detailed information on its awareness-raising activities. It states that that awareness about protection mechanisms and legislation prohibiting sexual harassment has been increased. Moreover, private entities have shown their willingness to receive expert assistance from the PDO in ensuring the compliance of their internal regulations with the principle of equality, as well as in raising awareness among their employees through training. The PDO, however, states that despite these positive developments, challenges still remain in terms of awareness-raising and action to ensure that the right to dignity at work is fully respected in practice.

The Committee notes that the national report fails to provide information on prevention and awareness-raising activities carried out by authorities/institutions, other than the PDO. The Committee therefore asks that the next report provides information on actual preventive measures taken by other governmental authorities/institutions to raise awareness about the problem of sexual harassment in relation to work.

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.

In its previous conclusion, the Committee concluded that the situation in Georgia was not in conformity with Article 26§1 of the Charter on the grounds that:

- it had not been established that the existing framework in respect of employers' liability provides sufficient and effective measures against sexual harassment in relation to work;
- it had not been established that a shift in the burden of proof applies in sexual harassment cases before civil courts (Conclusions 2018).

The report indicated that in 2019 the Law on Gender Equality and the Law on the Elimination of All Forms of Discrimination were amended. The Labour Code was also amended in 2020 (with Article 4 containing provisions on labour discrimination).

The report indicates that sexual harassment is defined as the conduct of a sexual nature towards a person, with the purpose and/or effect of violating the dignity of the person concerned and creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her. Discrimination in labour relations and pre-contractual relations (including when publishing a vacancy and at a selection stage), and in employment and occupation, shall be prohibited. The enforcement of labor legislation is supervised by the Labour Inspection Service in accordance with the Law on Labour Inspection of 2020.

In its previous conclusion, the Committee took note of the detailed information provided in the report concerning the mandate of the Public Defender in respect of discrimination issues. It asked the next report to provide more detailed information on how the legislative framework is actually implemented, in particular as regards the violations found in relation to sexual harassment and the measures taken in response to such violations (Conclusions 2018).

The report indicates that in the context of the implementation of the Law on the Elimination of All Forms of Discrimination, the Public Defender of Georgia has examined 31 cases of harassment in the workplace during the 2017-2020 period. In response to the identified violations, 5 recommendations were issued and 3 *amicus curiae* opinions were submitted. Employers were recommended to take specific measures to end/eliminate harassment, to create an equal work environment for employees that respects human dignity, and to prevent similar incidents arising in the future. The report states that employers have had to implement the following recommendations: regulation of the terms of disciplinary action and dismissal and the establishment of a supervisory and monitoring service that ensures a timely and effective response to both employee misconduct and employee grievances.

The Committee notes in the PDO's comments, that the Public Defender has received 10 complaints on sexual harassment in the workplace in 2017-2022. In six of the cases, the fact of sexual harassment was established; one case was terminated due to lack of evidence; in one case, the Public Defender submitted an *amicus curiae* to the Tbilisi City Court; and two of the applications were still pending.

In its previous conclusion, the Committee asked the next report to clarify the scope of the employer's liability in cases of sexual harassment at work, including when third parties are involved as victims or perpetrators; it also asked what protection victims of harassment have against possible reprisals (Conclusions 2018).

The report indicates that the amendments made in 2020 provide for sanctions in the event of the employer not complying with the principle of non-discrimination. Thus, failure to comply with the principle of non-discrimination, including the rules on direct and indirect discrimination, harassment and sexual harassment in the workplace, is punishable by a warning or a fine of three times the amount of the fine prescribed by law.

The report states that in case of harassment and/or sexual harassment, the liability of an employee who has breached labour law does not absolve the employer from any other relevant liability. Employers may be held liable if they were aware of the harassment and/or sexual harassment and did not report this to the Labour inspectorate and/or did not take appropriate measures to prevent such conduct (Labour Code, Article 78).

In respect of protection from reprisals, the report indicates that under the Labour Code, it is prohibited to terminate an employee's employment agreement, and/or to treat an employee in a negative manner, and/or to attempt to influence him/her, because the employee has filed an application or a complaint with an appropriate body, or has cooperated with such a body, in order to protect himself/herself from discrimination.

In its previous conclusion, the Committee considered that the situation in Georgia was not in conformity with Article 26§1 of the Charter on the ground that it had not been established that the existing framework in respect of employers' liability provided sufficient and effective remedies against sexual harassment in relation to work.

The report does not provide information on employers' liability in cases of sexual harassment where third parties are involved. The Committee recalls that it must be possible for employers to be held liable in cases of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them (independent contractor, self-employed worker, visitor, client, etc.) is the victim or the perpetrator (Conclusions 2014, Finland). The Committee concludes that the situation in Georgia 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.

In its previous conclusion, the Committee reiterated its question on the applicable rules in terms of the burden of proof (Conclusions 2018). Given the lack of information, it considered that it has not been established that the situation is in conformity with Article 26§1 on this point (Conclusions 2018).

The report indicates that in the event of a dispute alleging discrimination under the Labour Code, the burden of proof lies with the employer, if the job applicant or employee points to the facts and/or circumstances which give rise to a reasonable presumption that the employer has failed to fulfil the obligation to prohibit discrimination. The report provides examples of cases where this principle was applied by the courts. The Committee notes that, in its comments, the Georgian Trade Unions Confederation (GTUC) states that the burden of proof in court remains heavy for the victim. The same comments state that while the law does impose the burden of proof on the perpetrator of harassment if the alleged victim meets the standard of reasoned presumption, case law illustrates the opposite. The Committee asks that information is provided in the next report on examples of case law where the courts have applied the shift

of the burden of proof from the plaintiff to the defendant in sexual harassment cases. Meanwhile, it reserves its position on this point.

Damages

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

In its previous conclusion (Conclusions 2014), the Committee had asked whether employees who were unfairly dismissed or pushed to resign for reasons related to sexual harassment were entitled to reinstatement; it furthermore had requested updated information on relevant examples of compensation cases in relation to sexual harassment (Conclusions 2014). In its previous conclusion, given the absence of information on these issues, the Committee considered that it had not been established that the situation was in conformity with Article 26§1 on this point (Conclusions 2018).

The report indicates that under Article 10 of the Law on the Elimination of All Forms of Discrimination, any person who considers himself or herself a victim of discrimination has the right to file a lawsuit against the person/institution who allegedly discriminated against him/her, and to claim moral and/or material compensation for damage suffered. According to Article 413 of the Civil Code, monetary compensation for non-pecuniary damage may only be claimed in cases defined by law in the form of reasonable and fair compensation. The report states that, according to the case law, the victim has no obligation to prove psychological and moral harm as a result of the harassment, such harm being considered the essence of harassment. In assessing non-pecuniary damage, the courts take into account the victim's subjective attitude to the severity of such damage, as well as the objective circumstances by which it can be assessed. Finally, the report states that no restrictions apply when determining the amount of compensation.

The report indicates that in one case, a common law court of Georgia (Judgment of the Tbilisi Court of Appeal of 12 December 2018, case N28 / 1609- 18), awarded compensation of GEL 2,000 (€735) as moral damages to the victim of sexual harassment. The court found that in determining the fair amount of non-pecuniary damage to be paid by the offender, account should be taken of the fact that the defendant had placed the plaintiff in an unfavorable situation, resulting in the employee's resignation.

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 states that, during the pandemic, the Public Defender's Office actively pursued its educational activities, holding online meetings on sexual harassment issues with students, private companies and other stakeholders. However, in order to protect the right to dignity in the workplace during the pandemic, the Public Defender actively disseminated information about the possibility of contacting the Office's hotline in the event of violations.

The Committee notes in the comments submitted by the Public Defender, a survey conducted by the PDO entitled "The impact of the pandemic on the rights of women working in the healthcare sector" revealed a low level of awareness among women working in this sector of the concept of sexual harassment and the mechanisms for reporting and the remedies available.

Conclusion

The Committee concludes that the situation in Georgia 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 for sufficient and effective remedies in cases of sexual harassment when third parties are involved.

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 Georgia, of the comments submitted by the Public Defender's Office and of the comments submitted by the Georgian Trade Unions Confederation (GTUC).

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 Georgia was not in conformity with Article 26§2 of the Charter on the grounds that:

- it has not been established that there is adequate prevention of moral (psychological) harassment in relation to the workplace;
- it has not been established that the existing framework in respect of employers' liability provides sufficient and effective measures against moral (psychological) harassment in relation to work;
- it has not been established that a shift in the burden of proof applies in moral (psychological) harassment cases before civil courts;
- it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment (Conclusions 2018).

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

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 the situation it had previously found not to be in conformity with Article 26§2 of the Charter (Conclusions 2014 and 2016) had not changed, as the report did not contain any of the requested information concerning preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) which would have been taken in order to combat moral (psychological) harassment in the workplace, in consultation with social partners (Conclusions 2018). The Committee reiterated its request for information and maintained its conclusion of non-conformity on the ground that it had not been established that there was adequate prevention of moral (psychological) harassment in relation to the workplace (Conclusions 2018).

The report indicates that Georgia actively started disseminating information through social media and by campaigns on Georgian TV channels in order to raise awareness about the protection of dignity at work. The report mentions an awareness-raising campaign called "Labour Dictionary" initiated by the Labour Inspection Service as of 2021 (outside the reference period), which aimed at disseminating information about the updated Labour Code, providing information on the activities and role of labour inspection and promoting the establishment of new standards in labour culture.

The report provides detailed information on the activities conducted by the Office of the Public Defender (PDO) to raise awareness of equality issues, mostly on sexual harassment, including training and information meetings, videos directed at employees and private companies, labour inspectors, representatives of employers' associations, trade unions and various public agencies.

In its comments, the PDO provides detailed information on their activities of awareness-raising. According to the PDO, private entities have shown more willingness to receive expert assistance from the PDO in ensuring compliance of their internal regulations with the principle of equality, as well as to raise awareness among their employees through training. The PDO states that, however, despite the aforesaid positive developments, challenges still remain in terms of awareness-raising and measures to ensure that the right to dignity at work is fully respected in practice.

The Committee notes that the national report fails to provide information on prevention and awareness-raising activities carried out by authorities/institutions other than the PDO, during the reference period (2017-2020). The Committee asks that the next report provides information on any awareness-raising and prevention measures/campaigns on moral (psychological) harassment in relation to work effectively carried out by other governmental authorities/institutions.

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 harassment in the framework of work or employment relations.

In its previous conclusion, the Committee concluded that the situation in Georgia was not in conformity with Article 26§2 of the Charter on the grounds that:

- it had not been established that the existing framework in respect of employers' liability provides sufficient and effective measures against moral (psychological) harassment in relation to work;
- it had not been established that a shift in the burden of proof applies in moral (psychological) harassment cases before civil courts (Conclusions 2018).

The report indicated that, in 2019, the Law on Gender Equality and the Law on the Elimination of All Forms of Discrimination were amended. The Labour Code was also amended in 2020 (with Article 4 containing provisions on labour discrimination).

The report indicates that harassment in the workplace is a form of discrimination, in particular, unwanted behaviour towards a person on any of the grounds referred to in paragraph 1 of Article 4, with the purpose or effect of violating the dignity of the person concerned, and creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her. The report states that discrimination in labour relations and pre-contractual relations (including when publishing a vacancy and at the selection stage), and in employment and occupation, shall be prohibited. The enforcement of labour legislation is supervised by the Labour Inspection Service in accordance with the Law on Labour Inspection, adopted in 2020.

In its previous conclusion, the Committee asked that the next report provide more detailed information on how the legislative framework is actually implemented, in particular as regards the violations found and the measures taken in response to such violations (Conclusions 2018).

The report indicates that in the context of the implementation of the Law on the Elimination of All Forms of Discrimination, the Public Defender examined 31 cases of harassment in the workplace during the period 2017-2020. In response to the identified violations, 5 recommendations were issued and 3 *amicus curiae* opinions were submitted. The employers were recommended to take specific measures to end/eliminate harassment, to create an equal work environment for employees in accordance with human dignity, and to prevent similar incidents recurring in the future. The report further states that the Labour Inspection Service has not detected any cases of moral (psychological) harassment through its inspection activities.

The Committee notes that, according to the information submitted by the Public Defender, a large number of cases of discrimination in labour relations in 2020 were related to harassment

against employees in public or private companies. Discriminatory actions that constituted harassment in the workplace included the use of unethical and abusive forms of communication, the non-awarding of monetary rewards, and the creation of obstacles in the performance of official rights and duties. The PDO issued recommendations to employers in cases of harassment on the basis of different opinions.

In its previous conclusion, the Committee asked that the next report clarify the scope of the employer's liability in cases of moral (psychological) harassment at work, including when third parties are involved as victims or perpetrators. It further asked what protection was granted to victims of harassment against possible reprisals (Conclusions 2018). In view of the lack of information, the Committee considered that the situation was not in conformity with Article 26§2 on the ground that it has not been established that the existing framework in respect of employers' liability provides for sufficient and effective measures against moral (psychological) harassment in relation to work (Conclusions 2018).

The report indicates that, through the amendments made in 2020, sanctions were provided by legislation for violations of the principle of non-discrimination by employers. It was also established that violations of the principle of discrimination should result in a warning or a fine in the amount of three times the fine prescribed by law.

The report further indicates that in cases of harassment and/or sexual harassment, the imposition of liability on an employee who is violating labour law does not relieve the employer of any other relevant liability. The employer may be held liable if he/she became aware of the harassment and/or sexual harassment and did not report this fact to the labour inspectorate and/or did not take appropriate measures to prevent such acts (Labour Law, Article 78).

In respect of protection from retaliation, the report indicates that under the Labour Law, it is prohibited to terminate an employment agreement with an employee, and/or to treat an employee in a negative manner, and/or to attempt to influence him/her, because the employee has filed an application or a complaint with an appropriate body, or has cooperated with such a body, in order to protect himself/herself from discrimination.

The report does not provide information in respect to the liability of employers in cases of moral (psychological) harassment when third parties are involved. The Committee recalls 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 responsibility, 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 (Conclusions 2014, Finland). The Committee considers that the situation 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 sufficient and effective remedies in cases of moral (psychological) harassment when third parties are involved.

In its previous conclusion, the Committee considered that it had not been established that the situation is in conformity with Article 26§2 with regard to the applicable rules in terms of burden of proof (Conclusions 2018).

The report indicates that in the event of a dispute alleging discrimination under the Labour Code, the burden of proof rests with the employer in situations in which a job applicant or an employee points to the facts and/or circumstances from which it may reasonably be presumed that the employer has failed to fulfil his or her obligation to prohibit discrimination. The report provides examples of cases where this principle was applied by the courts. The Committee notes that in their comments, the Georgian Trade Unions Confederation (GTUC) state that the burden of proof in court remains heavy for the victim. The same comments state that, while the law does impose the burden of proof on the perpetrator of harassment if the alleged victim meets the standard of reasoned presumption, case law illustrates the opposite. The Committee asks that information is provided in the next report on examples of case law where the courts have applied the shift of the burden of proof from the plaintiff to the defendant in moral (psychological) harassment cases. Meanwhile, it reserves its position on this point.

Damages

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

In its previous conclusion, the Committee noted the absence of information in response to the question on how the right of persons to effective reparation for pecuniary and non-pecuniary damage is guaranteed. The Committee reiterated its request and asked in particular for examples of relevant case-law awarding damages in cases of moral (psychological) harassment in relation with the workplace (Conclusions 2018). In the meantime, in view of the absence of information, it concluded that it had not been established that the situation was in conformity with Article 26§2 on this point (Conclusions 2018).

The report indicates that, under Article 10 of the Law on the Elimination of All Forms of Discrimination, any person who considers themselves a victim of discrimination has the right to file a lawsuit against the person/institution who allegedly discriminated against him/her, and to claim moral and/or material compensation for damage. According to Article 413 of the Civil Code, monetary compensation for non-pecuniary damage may be requested only in cases defined by law in the form of reasonable and fair compensation. The report states that, according to the case law, the victim has no obligation to prove psychological and moral harm during the harassment because the latter is considered as the essence of the harassment. In assessing non-pecuniary damage, the courts take into account the victim's subjective attitude towards the severity of such damage, as well as the objective circumstances by which the damage can be assessed. Lastly, the report states that no ceilings apply when determining the amount of compensation.

The report provides information on a case involving discrimination on political grounds where the court admitted the claim of the victim for moral damage in part and granted GEL 500 (€185) as compensation for moral damage (Tbilisi City Court decision, Case N2.15615-16 of 6 April 2017). The Court noted that moral damage can be directly related to discriminatory treatment and unlawful dismissal. Furthermore, moral damage can occur later, with long-term unemployment, an inability to live an active life, lifestyle changes, depression, uncertainty, or diminished joy of life due to stress, an inferiority complex and other factors. The Court considered that imposing the full compensation for moral damage (2000 GEL) on the employer would not be commensurate with the damage, particularly since in this case the employee had been restored all violated rights which was also, to some extent a moral satisfaction.

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 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 during the pandemic, the Public Defender's Office actively pursued educational activities, during which online meetings on sexual harassment issues were held with students, private companies and other stakeholders. In order to protect the right to dignity in the workplace during the pandemic, the Public Defender actively disseminated information about the possibility of contacting the hotline of the Office in the case of violations.

The Committee notes from the national report, as well as from the comments submitted by the PDO, that on November 6, 2020, the Public Defender of Georgia filed an *amicus curiae* brief with Rustavi City Court relating to a case of alleged discrimination on the grounds of health condition. In the *amicus curiae* brief, the Public Defender focused on the criteria for detecting harassment as one of the forms of discrimination in labour relations and the distribution of the burden of proof in the discrimination cases. In addition, she highlighted the impact of the pandemic on equality at work.

Conclusion

The Committee concludes that the situation in Georgia is 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 for sufficient and effective remedies in cases of moral (psychological) harassment when third parties are involved.

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 Georgia.

The Committee points out 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 2018), the Committee concluded that the situation in Georgia was not in conformity with Article 29 of the Charter on the ground that the right of workers to be consulted in collective redundancy procedures was not effectively secured.

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 (Conclusions 2018).

Prior information and consultation

In Conclusions 2014, the Committee took note that even though Section 11 of the Trade Union Act stipulates the obligation of the employer to notify about collective redundancies, it does not guarantee the right of workers and their representatives to be consulted in good time before the redundancies take place. It therefore concluded, in Conclusions 2014, that the situation was not in conformity with Article 29.

In Conclusions 2018, the Committee noted that the relevant legislation in respect of the prior consultation of workers and their representatives before the redundancies take place had not been amended during the reference period and reiterated its previous conclusion of non-conformity on this issue.

In reply, the report indicates that the provisions of the Labour Code with regard to collective redundancies were amended in 2020. According to the amended provisions, if the employer plans a mass dismissal, they are obliged to start consultations with the employees’ union or workers’ representatives, within a reasonable time. Consultations should, at least, include ways and means of preventing mass dismissals or reducing the number of employees to be dismissed, and the possibility of supporting laid-off employees to continue their employment or training.

The report further indicates that the employer is obliged to send a written notification to the relevant ministries including the Ministry of Labour, Health and Social Affairs and to the employees whose employment contracts are terminated, at least 45 calendar days prior to the mass dismissal. The employer is also obliged to send copy of the notification sent to the Ministry, to the employees’ union (or to the workers’ representative). The mass dismissal shall take effect 45 calendar days after the notification to the Ministry.

According to the report, the employer is obliged to inform the employees’ union (or workers’ representatives) in writing of the following information: reasons for the planned mass dismissal, number and category of employees to be dismissed, total number and categories of employees in the organisation, the period of time during which the mass dismissal will take place, the criteria by which the dismissed employees will be selected and compensation will be paid to them. This information is also sent in writing to the relevant ministries.

Sanctions and preventative measures

In conclusions 2014, the Committee asked what sanctions exist if the employer fails to notify the workers’ representative about the planned 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.

The report indicates that in case of non-fulfilment of the obligation imposed by law to the employer, the employees can apply to the court. However, the report also indicates that the law does not provide for any sanctions for employer's non-compliance with these requirements.

In their submissions on the 15th National Report on the implementation of the Charter, the Georgian Trade Unions Confederation ("GTUC") states that the legal provisions concerning prior information and consultation in procedures of collective redundancy are rendered ineffective by the absence of provisions of liability for breach of obligations by the employer. They also submit that the labour Inspectorate does not have the mandate to inspect and apply a sanction to the employer in the event of breach of those obligations.

The Committee recalls that States Parties must introduce guarantees that the right of workers' representatives to be informed/consulted can be effectively exercised in practice (Conclusions 2014, Georgia). Therefore, when employers fail to comply with their obligations, there should be some possibility of recourse to administrative or judicial proceedings before the redundancies take place, to ensure that they are not put into effect before the consultation requirement is met (Conclusions 2003 and 2007, Sweden). The Committee also recalls that provisions must be made for sanctions after the event and these must be effective, i.e., sufficiently deterrent for employers. (Conclusions 2003, Statement of Interpretation on Article 29).

In view of the information available, the Committee concludes that the situation in Georgia is not in conformity with Article 29 on the ground that domestic law makes no provisions for sanctions in case of non-compliance by the employer with their obligations in procedures of collective redundancies.

The Committee asks that the next report provide detailed information concerning measures that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled by the employer. The Committee asks in this respect whether collective redundancies can take effect if an employer has not fulfilled the duty to consult and to negotiate. It also asks whether in practice, there have been complaints before the courts from trade unions (or employees) alleging insufficient consultation and negotiation.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 29 of the Charter on the ground that domestic law makes no provisions for sanctions in case of non-compliance by the employer with their obligations in procedures of collective redundancies.

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:

1°. 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.

2°. 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.