Article 2 - The right to just conditions of work

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

1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

2 to provide for public holidays with pay;

3 to provide for a minimum of four weeks' annual holiday with pay;

4 to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

5 to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

6 to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

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

Article 2 of the Charter (ESC, 1961 and ESC (rev), 1996) regulates the right to just working conditions and thus defines the conditions and principles of how citizens earn their living. The right to fair employment conditions is a social right. It remains one of the critical rights shaping the individual relationship between the employee and the employer while guaranteeing the employee safe and healthy employment conditions. The distinctive feature of this legal norm is its interpretative dynamics in relation to the conditions of employment and the obligations imposed on the employer in this respect. The right to "fair" working conditions covers many aspects of an employee's everyday life, and its elements have a significant impact, for example, on the employee's family or social life. It should be seen as a general rule shaping the basic principles of labour law. It creates a legal framework for other principles of labour law, such as The right to safe and healthy working conditions), Article 22 (the right to take part in the determination and improvement of the working conditions and working environment), Article 26 (The right to dignity at work), Article 27 (The right of workers with family responsibilities to equal opportunities and equal treatment). The way in which the employer defines the employee's working conditions will therefore have an impact on the respect of his other rights. Determining the working hours in such a way that the employee does not have time to meet his/her needs, whether in terms of social or family life, therefore violates an employee's right to family, private or social life, even the right to protection and respect for their health. As with other human rights, this right is linked to human dignity. Work cannot be performed in conditions that violate human rights. The conditions must be adapted to the abilities of the person performing the work. The employer should therefore take into account circumstances such as the employee's disability or their need to rest and eat a meal when accommodating the workplace. An employee cannot work in conditions that violate his right to work under adequate conditions and it is the duty of the state to create a legal environment that guarantees respect for the right to work under adequate conditions.

Consequently, States have the duty to protect the worker, by not only enacting a specific law respecting the right of workers to dignified working conditions but also ensuring that this right is enforced by private employers and relevant state bodies/institutions. Interestingly, Article 2 of the Charter is historically the

[*] Article 2 § 1-3 of the Charter.

[*] Article 2 § 4-7 of the Charter. Grant support under project No. reg. 2021/43/D/HS5/01094/Narodowe Centrum Nauki/International.

first regulation resulting from the social revolution of the 19th and the commencement of the 20th century. Despite its importance, it is not a "hard-core" law, however it offers an opportunity for States to be free in its interpretation it and adjusting the internal legal regulations and control mechanism to the social expectations of a given state. This can lead to incompatibility between national and international regulations. Each time, however, Article 2 introduces specific solutions that should be implemented in the workplace to ensure respect for the dignity of workers and their right to family life.

There are a number of legal instruments in international law that form the basis of this right. Some of these international instruments were adopted after the right itself was defined in the revised Charter. Nevertheless, a kind of foundation of this right to adequate working conditions is constituted by conventions adopted within the framework of the International Labour Organization (ILO), such as: the ILO Weekly Rest (Industry) Convention[1], ILO Holidays with Pay Convention (Revised)[2], ILO Hours of Work (Industry) Convention[3] and ILO Reduction of Hours of Work (Glass-Bottle Works) Convention[4]. The conventions in question set standards for the protection of workers and allowed for a clear definition of the right to fair working conditions.

Article 2 of the revised Charter covers the most important demands of employees for protection against exploitation by their employer, i.e. the right to adequate working time, the right to rest and the right to paid vacations. Article 2 of the Charter of 1961 should be read in conjunction with Article I – *Implementation of the undertakings given* of the Charter of 1961 (in the revised version "), according to which compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this Article, to the great majority of the workers concerned.[5]. Article 2 of the revised Charter consists of 7 paragraphs regulating: working time, the right to paid vacations and their duration, the obligation to eliminate the risk of hazardous or unhealthy work, the right to weekly rest (rest break), the right to information about the conditions of employment and the conditions of night work.

I. ARTICLE 1 § 1 - REASONABLE WORKING TIME

The commented legal provisions are largely consistent in their content and scope with similar legal acts adopted by the European Union. One of the examples can be the European Union Charter of Fundamental Rights whose provisions are mostly compatible with the Social Charter[6]. In general Article 2 of the Charter is similar (but not fully compatible) with an Article 151 § 1of the Treaty on the Functioning of the European Union[7]. and Article 31 of the EU Charter of Fundamental Rights[8]. The other example of legal regulation is closed to the Article 2 provisions in the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working. The monitoring procedure of the implementation of the Charter based on national reports prepared by the European Committee of social rights clearly indicated the incompatibility between those provisions.[9] Whereas the

[1] ILO, Weekly Rest (Industry) Convention, 1921, No. C14.
[2] ILO, Holidays with Pay Convention (Revised), 1970, No. 132.
[3] ILO, Hours of Work (Industry) Convention, 1919, No. C1.
[4] ILO, Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935, No. C 49.
[5] *Ibid.*
[6] European Social Charter and European Union law, https://www.coe.int/en/web/european-social-charter/european-social-charter-and-european-union-law, visited: 20 March 2022.
[7] Consolidated version of the Treaty on the Functioning of the European Union, Official Journal C 326, 26/10/2012 P. 0001 - 0390
[8] Charter of Fundamental Rights of the European Union, Official Journal of the European Communities C 364/3 (2000/C 364/01).
[9] "*The Committee refers to its Introductory Observation on the relationship between European Union Law and the European Social Charter in collective complaint No. 55/2009, Confédération Générale du Travail (CGT) v. France, the decision on the merits of 23 June 2010, paragraph 38. It reiterates that the fact that a domestic regulation is based on a European Union Directive does not remove it from the ambit of an assessment under Article 2 of the Charter. Therefore, exceptions expressly provided by Directive 2003/88/EC must be assessed on a case-by-case basis as they are applied by the States Parties. In this respect, the Committee recalls that a weekly working time of more than sixty hours is too long to be considered reasonable under this provision. This is a limit that cannot be exceeded even in the context of flexibility - 42 -*

general merits behind those three provisions are exactly the same the execution and interpretations on the national level is clearly pointing out incompatibility.

Article 2 § 1 of the Charter is aimed at protecting the family life, social life, health and safety of employees during their work. At the same time, it emphasizes the need to take into account the more general issue of the employer's economic interest in determining weekly working hours. The question arises as to what is meant by the phrase "reasonable" daily and weekly working time in the provision under consideration, and how should a gradual reduction in weekly working time be made so that it does not affect productivity and other relevant factors? These issues were considered by the European Committee of Social Rights (the Committee) in the *Greek General Confederation of Labour (GSEE) v. Greece*[10]. The European Committee of Social Rights (ECSR) considered then that the compatibility of state regulations with the legal regulations contained in the Charter is met only by those legal standards which "(…) prevent daily or weekly working hours from being unreasonable; be established by a legal framework providing for adequate safeguards (and) provide for reference periods of a reasonable duration for the calculation of the average working time"[11]. Thus, any labour law norm that meets these three criteria ensures that the obligations imposed on States under Article 2 of the Charter are fulfilled.

In earlier decisions, the Committee has also attempted to clarify the meaning of the term "reasonable", and thus in *Confédération générale du travail (CGT) v. France*, it indicated that: "provisions of the revised Charter concerning working time are intended to protect workers' safety and health in an effective manner. Every worker must therefore receive rest periods adequate for recovering from the fatigue of work and of preventive value in reducing risks of health impairment which could result from the accumulation of periods of work without the necessary rest"[12]. The Committee, therefore, took the view that the working time of an employee (including senior managers) depends on the nature of his/her work and the effort he/she puts in to do it. If the rest time is not sufficient and adequate to the fatigue of the employee, the work he/she performs will constitute a direct threat to his/her health. The Committee expressed a similar opinion in the case of *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*[13] explicitly stressing that each employee should be provided with adequate time to recover from the strain of work. In addition, in the Committee's opinion, the weekly working time of 60 hours is too long to be perceived as justified and reasonable under the provisions of Article 2 § 1 of the Charter. In the Committee's view (previously confirmed in the European Committee of Social Rights Conclusions 2010 on Albania[14] "(…) this limit cannot be exceeded even in the context of flexibility schemes, where compensation is granted by rest periods during other weeks"[15]. The Committee has therefore outlined a general framework for defining "reasonable" working time while emphasizing the dynamic nature of this legal standard and the lack of need for any clear-cut clarification.

However, an analysis of the Reports of the Government Committee established on the basis of Article 27 § 3 of the Charter, especially the last report[16], allows us to assume that, for the purposes of Article 2 § 1 of the Charter, any daily working time which exceeds 12 hours and 60 hours per week should be considered "unreasonable". In addition, the Government Committee pointed out that "(…) some collective agreements

schemes, where compensation is granted by rest periods in other weeks, or in specific occupations. It, therefore, finds that Section 18 of Legislative Decree No. 66 of 8 April 2003, which sets working time limits for workers in the fishing industry, does not comply with the Charter" in Working Document of the European Committee of Social Rights on the relationship between EU law and the European Social Charter, 15 of July 2014, p.41, https://rm.coe.int/16806544ec.

[10] ECSR, *Greek General Confederation of Labour (GSEE) v. Greece,* complaint No. 111/2014, decision on the merits of 23 March 2017.

[11] *Ibid.*

[12] *Ibid.*

[13] ECSR, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, complaint No. 91/2013, decision on admissibility and on the merits of 12 October 2015.

[14] ECSR, Conclusions 2010, Albania.

[15] ECSR, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, complaint No. 91/2013, decision on admissibility and on the merits of 12 October 2015.

[16] ECSR, Governmental Committee Report Concerning Conclusions 2018 of The European Social Charter (Revised), Strasbourg, 22 January 2020 GC(2019)28.

on-call time spent at home in readiness for work during which no effective work is undertaken is assimilated to rest period" (Slovenia example), constitutes a violation of the provision of Article 2 § 1 of the revised Charter just as "(…) the exclusion of certain categories of workers from the statutory protection against unreasonable working hours" [the Dutch example]) is considered a violation of Article 2 § 1 of the revised Charter. In the opinion of the Government Committee, a violation of Article 2 § 1 of the revised Charter is also the failure to pay an employee for public holidays or the order to work on such days[17].

In conclusion, it should be pointed out that since the provision itself does not indicate a specific number of hours that should be considered "reasonable" and the Committee itself is ambiguous in its decisions: it is not possible to construct a uniform rule. It is therefore left to the signatory States, which should take into account the social and economic situation, to determine reasonable daily and weekly working hours. However, it is the task of the States to apply the three-point criteria in creating the legal norm, and the Committee to assess whether these requirements have been met. Each case should be assessed individually depending on the social and economic background in which it occurs. While in the case of Italy, a 60-hour working week was not considered appropriate, the Committee considered, monitoring Norway, that a 45-hour working week could be justified[18]. Thus, each country determines individually the reasonable daily and weekly working hours in its territory, and the assessment of whether this criterion is met depends on many socio-economic factors that vary over time[19]. With respect to the issue of a gradual reduction in the weekly working hours of employees, the Committee's guidance is that States' respect of the 45-hour weekly working time should be considered as meeting this requirement[20]. By other factors, we mean such issues as social good, safety and health protection of employees. The need to reduce weekly working hours remains a relevant topic, as the Norwegian experience has shown, changes in the law are so dynamic that the State can once again returns to regulations that are less favorable for the employee. An interesting observation can be made in accordance with France's regulation concerning the call of duty period. According to Article L of the French Labour Code, "a period during which the employee, without being at his workplace and without being at the permanent and immediate disposal of the employer, must be able to intervene to carry out work in the service of the company"[21]. As regulation stands, this period cannot be counted as working time and this is a long-running dispute between France and the European Committee of Social Rights about the annual working day's system. The cases which can be notices is *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France, Complaint No. 149/2017*[22] in which Committee unanimously agreed that France violated Article 2 § 1 of the Charter[23].

II. ARTICLE 2 § 2 - PUBLIC HOLIDAYS WITH PAY

The right to paid public vacations is an added right that exists in addition to the right to daily and weekly rest and the right to paid vacations, which will be discussed below. The commented legal provision does not specify the number of public holidays that must be guaranteed by the state, nor does it specify the rate

[17] *Ibid.*
[18] ECSR, Conclusions I (1969), Norway. See also, ECSR, Conclusions 2007, article 2 § 1, Belgium.
[19] Norway itself can serve as an example. In 2005, a government committee decided that 45 hours per week of work in Norway was reasonable, only to decide in 2020 that 60 hours per week and 16 hours per day constituted a violation of Article 2 § 1 of the revised Charter.
[20] ECSR, Governmental Committee of the European Social Charter, Report Concerning Conclusions 2005, Strasbourg, 30 November 2005 T-SG (2005)25.
[21] Article L. 3121-9 of the French Labour Code.
[22] ECSR, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, complaint No. 149/2017, decision on the merits of 19 May 2021.
[23] *Ibid.*

of remuneration. According to ECSR jurisprudence, violation of Article 2 § 2 of the Charter occurs on the part of the State only in two situations: when adequate remuneration is not guaranteed to employees who must exceptionally perform work on public holidays, and when part-time employees enjoy the protection contained in this provision. With regard to what is to be understood by adequate remuneration, the Committee in its analysis of the German regulations, pointed out as follows: "(…) the Committee recalls that in the previous conclusion it had notably asked whether the base salary is maintained, in addition to the increased pay rate[24]. The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries concerning the forms and levels of such compensation and the lack of convergence between States in this regard, the Committee considered that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday"[25]. The Committee, therefore, assumed that States independently determine the rules of remuneration for work on public holidays and that remuneration can take two forms. The first is monetary compensation, which should correspond to the average wage or salary for the previous 12 months of absence from work during, *inter alia*, public holidays (conclusion in the case of Serbia)[26]. A similar position was taken by the Committee in the case of the Netherlands, indicating that "(…) although there is no law or universal provision governing work during public holidays, this is often regulated in the context of collective agreements. As a rule, employees should not be required to work on public holidays, but, in some sectors, employers' and employees' organisations reach an agreement allowing them to do so"[27]. The other form of compensation may be days off that the employee receives from the employer in exchange for work on public holidays. Both forms of compensation should be regulated in a collective agreement or another legal act in accordance with the provisions of Article 33 of the Charter of 1961.

III. ARTICLE 2 § 3 - ANNUAL HOLIDAY WITH PAY

In contrast to the two provisions commented on above, Article 2 § 3 of the Charter contains specific regulations obliging the States Parties to introduce a minimum period of paid rest in the form of a four weeks' annual holiday with pay which is an improvement from the Charter from 1961 (which specifies two weeks minimum). This provision does not provide any exceptions, even with the consent of the worker, allowing, for example, the right to rest to be converted into financial compensation. This was confirmed by the Committee in its opinion on Albania, where it considered that legal provisions allowing an employee to waive his or her right to annual paid rest with increased remuneration were incompatible with the Charter[28]. In interpreting this provision, therefore, the Committee concluded that employees must take at least two weeks of uninterrupted annual holidays during the year[29]. In the event that a holiday is interrupted due to illness or other unforeseen circumstances[30], an employee is entitled to take the time off at a later date (preferably within the same year). If the employee is unable to take the time off in the same year, the employee shall be entitled to accrue unused paid time off in the following year, which shall be taken no later than eighteen months after the end of the relevant work year (Decision of the Committee for Armenia)[31].

[24] ESCR, Conclusions XX-3 (2014), Germany, article 2 § 2.
[25] *Ibid.*
[26] ECSR, Conclusions 2018, Serbia, Article 2 § 2.
[27] ECSR, Conclusions 2018, the Netherlands, Article 2 § 2.
[28] ECSR, Conclusions 2010, Albania.
[29] ECSR, Conclusions 2018, the Netherlands, Article 2 § 3.
[30] ESCR, Conclusions XXI-3 (2018), Article 2 § 3.
[31] ECSR, Conclusions 2018, Armenia, Article 2 § 3.

It should also be stressed that any legal situation in which the right to annual rest is not guaranteed to all groups of workers or where the duration of rest is less than 4 weeks or 20 days constitutes a violation of Article 2 § 3 of the Charter[32]. The employees have the right to a four-week annual break from work, provided that at least two weeks must constitute an uninterrupted paid break[33]. A violation of this provision consists not only in not guaranteeing all employees the right to paid leave, but also in introducing an overly flexible regulation, which would not provide for any sanction of the employer in case he does not grant this leave[34].

IV. ARTICLE 2 § 4 - REDUCED WORKING HOURS OR ADDITIONAL HOLIDAYS IN DANGEROUS OR UNHEALTHY OCCUPATIONS

The content of Article 2 § 4 of the revised Charter, concerning the protection of workers working in dangerous or unhealthy conditions, is somewhat different than in the Charter of 1961[35]. The original document puts more emphasis on compensating for the effects of hazardous or harmful work than on risk reduction and prevention policies. States have to provide 'additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed'[36]. However, as the average weekly workload was reduced in the second half of the twentieth century and most industries underwent technical progress, the text of Article 2 § 4 in the Charter of 1961 was amended in the revised Charter[37]. The current version of Article 2 § 4 of the revised Charter requires Contracting Parties to eliminate risks in inherently dangerous or unhealthy occupations[38]. The modified provision of 1996 put more emphasis on the aspect of prevention and elimination of hazards than on the elimination of and compensation for the effects of work in hazardous or harmful conditions[39]. Thus, Article 2 § 4 of the revised Charter fully corresponds to the provisions of Article 3 of the Charter (the right to safe and healthy working conditions) and Article 11 of the revised Charter (the right to healthcare). Due to the need for health protection, it is possible to limit working hours in accordance with some of the provisions of the revised Charter[40]. This means that, when assessing the compliance of a given state with Article 2 § 4 of the revised Charter, the Committee also refers to its conclusions regarding the right to safe and hygienic working conditions[41]. The provision expressed in Article 2 § 4 of the revised Charter is also fully compliant with the ILO and WHO standards. It is also in line with the provisions of Directive 2006/123/EC on services in the internal market in EU Member States[42].

[32] ESCR, Conclusions 2018, Bosnia and Herzegovina, article 2 § 3.
[33] ECSR, Conclusions 2018, Cyprus, Article 2 § 3.
[34] ECSR, Conclusions 2018, Moldova, Article 2 § 3.
[35] COE, *Digest of the Case Law of the European Committee of Social Rights* (*Digest of the Case Law of the ECSR*), December 2018, p. 6.
[36] Klaus LÖRCHER, "Article 2 The Right to Just Conditions of Work", in Niklas BRUUN et al (eds.), *The European Social Charter and the Employment Relation*, Oxford, Hart Publishing, 2017, p. 176.
[37] ECSR, Conclusions 2014, Finland; Krzysztof ORZESZYNA, Michał SKWARZYŃSKI and Robert TABASZEWSKI, *International Human Rights Law* (*Prawo międzynarodowe praw człowieka*), C.H. Beck, Warszawa, 2020, pp. 115 ff. (in Polish).
[38] ECSR, Conclusions 2018, Slovakia.
[39] Klaus LÖRCHER, *op. cit.,* p. 175-176; Karin LUKAS, The Revised European Social Charter. An Article by Article Commentary. Elgar Commentaries series, Northampton, Edward Elgar Publishing, 2021, pp. 49-50.
[40] Robert TABASZEWSKI, "The permissibility of limiting rights and freedoms in the European and national legal system due to health protection", *Review of European And Comparative Law*, Vol. XLII, 2020, pp. 62 ff.
[41] ESCR, Conclusions 2005, Statement of Interpretation on Article 2 § 4; ECSR, Conclusions 2017; ECSR, Conclusions 2018, Austria; ECSR, Conclusions 2018, Ukraine.
[42] ECSR, Conclusions 2014, Lithuania.

Article 2 § 4 of the revised Charter consists of two parts[43]. The first part *in principio* requires States Parties to eliminate risks in inherently dangerous or unhealthy occupations[44]. The provision is 'closely linked to Article 3 of the Charter of 1961, under which States undertake to pursue policies and take measures to improve occupational health and safety[45]. The task of every State is to 'prevent accidents and damage to health, particularly by minimizing the causes of hazards inherent in the working environment'[46]. In light of the second part of Article 2 § 4 *in fine* of the revised Charter, when for any reason it is impossible 'to eliminate or reduce sufficiently dangerous or unhealthy occupation', it is up to states 'to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations'. As can be seen, this provision reflects the complex, dualistic obligations of states, as well as the specificity of work performed in conditions that are particularly dangerous or harmful to health. It also establishes the hierarchy of actions of States Parties: first of all, states are obliged to take positive action in the area of establishing preventive policies and only secondly to follow them up. It follows that: "(…) States are required to eliminate risks in inherently dangerous or unhealthy occupations and to apply compensatory measures to workers exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced either despite the effective application of the preventive measures referred to above or because they have not been applied"[47]. As can be seen, this provision introduces a certain sequence of positive actions to be taken by States. It is, therefore, very important for state policies to be individualized with regard to particular groups of workers. For example, workers exposed to ionising radiation should have access to good quality equipment and adequate training, and their exposure time to harmful radiation should be monitored. If the above conditions are met, there is no need to pay compensation in the form of reduced working hours and additional holidays[48].

Article 2 § 4 of the revised Charter does not establish an enumerative catalogue of occupations that should be subject to special protection. In this respect, States have a degree of discretion[49]. The subject of protection is therefore a worker who works in hazardous or health-threatening conditions, if they fulfill this criterion then they are covered by statutory protection. In its legislation, each state should create a list of categories of workers engaged in arduous or dangerous occupations and eligible for measures such as extended annual leave or, if applicable, reduced working time'[50]. The Committee asked States Parties for a list of activities regarded as involving exposure to particular risks to be included in state reports[51]. The ESCR has described the dangerous occupations and the measures taken in this regard in its conclusion under Article 3 of the revised Charter[52]. The ESCR has pointed out that some categories of occupations are manifestly dangerous or unhealthy, such as mining, quarrying, steelmaking and shipbuilding, and those exposing employees to ionising radiation, extreme temperatures and noise[53]. However, many countries, with the approval of the Committee, extended this list[54]. Assigning a given worker to a given group has certain

[43] Klaus LÖRCHER, *op. cit.,* p. 175; Andrzej SWIATKOWSKI, Labour Law: Council of Europe, 2nd édition, Alphen aan den Rijn, Wolters Kluwer, 2019, § 84.
[44] ESCR Conclusions 2005, Statement of Interpretation on Article 2 § 4; ECSR, Conclusions 2016, Italy; ECSR, Conclusions 2018, Latvia; ECSR, Conclusions 2018, Ukraine.
[45] ECSR, Conclusions 2018, Latvia.
[46] ECSR, Conclusions 2010, Lithuania.
[47] ECSR, Conclusions 2014, the Netherlands; ECSR, Conclusions 2018, Austria; ECSR, Conclusions 2018, Armenia; ECSR, Conclusions 2018, Latvia; ECSR, Conclusions 2018, Moldova.
[48] ECSR, Conclusions 2014, Finland.
[49] ECSR, Conclusions II (1971), Statement of Interpretation on Article 2 § 4, p. 9; ECSR, *STTK ry and Tehy ry v. Finland*, complaint No. 10/2000, decision on the merits of 17 October 2001, § 20.
[50] ECSR, Conclusions 2018, Armenia.
[51] ECSR Conclusions 2009; ECSR, Conclusions 2014, Turkey; COE, *Digest of the Case Law of the European Committee of Social Rights*, December 2018, p. 29. According to the ESCR, "the assessment of national situations under Article 2 § 4 takes into account the information provided and the conclusion reached in respect of Article 3 § 2". ECSR, Conclusions 2005, Statement of Interpretation on Article 2 § 4.
[52] ECSR, Conclusions 2018, Latvia; ECSR, Conclusions 2018, Moldova.
[53] ECSR, *STTK ry and Tehy ry v. Finland*, complaint No. 10/2000, decision on the merits of 17 October 2001, § 27; ECSR Conclusions XIV-2 (1998), Norway; ECSR Conclusions XIV-2 (1998), Norway; ECSR, Conclusions 2014, Bosnia and Herzegovina; Klaus LÖRCHER, *op. cit*., p. 176; Karin LUKAS, *op. cit.*, p. 53.
[54] For example, in the last cycle of reports, the ESCR positively responded to Armenia's legislation containing a catalogue of sectors considered to be associated with burdensome or harmful activities. It belongs to them: agriculture, environmental protection, transport and communication,

consequences provided for in the legislation of a given country. In the first place, it gives a worker the right to receive information on occupational risk and the possibility of reducing the hours of harmful work. Where a reduction of working hours is granted on medical grounds, the worker should not suffer any loss of earnings[55]. The reduction in working hours also applies to working in prisons. The content of Article 2 § 4 of the revised Charter requires that all authorised employees (and not just part of or the majority) who in practice are exposed to residual risks, are to be entitled to be given information on work-related risks and appropriate compensatory measures[56].

Article 2 § 4 of the revised Charter *in principio* requires Contracting Parties to eliminate risks in inherently dangerous or unhealthy occupations. In this regard, States are obliged to pursue policies of effective implementation of legislative, judicial and other mechanisms aimed at eliminating or reducing occupational hazards, in particular, working in inherently dangerous or unhealthy sectors[57]. The aim of the above policies is to initiate positive actions, such as raising awareness, prevention and inspection activities[58]. States should base their policies for reducing and eliminating life- and health-threatening factors on the main legal act, which is usually the labour code or the act on health and safety at work. States can also develop specialist strategies[59]. The provision of Article 2 § 4 is thus 'closely linked to Article 3 of the Charter of 1961, under which States Parties undertake to pursue policies and take measures to improve occupational health and safety[60]. In order for the Committee to consider that a State meets its obligations to eliminate the risk of 'inherently dangerous or unhealthy occupations', it must first demonstrate that it implements a 'prevention policy regarding the risks in inherently dangerous and unhealthy occupations'[61]. The ESCR has noted the need for a statutory and regulatory framework in requiring the elimination of agents and other risk factors for the health and safety of workers or, where such cannot be satisfactorily eliminated, a reduction in their impact, in terms of both their level and the length of workers' exposure to them so that they no longer pose any threat to health or safety[62]. Therefore: "(…) when the risks have not been eliminated or sufficiently reduced despite the application of the measures described above, or if such measures have not been applied, the second part of Article 2 § 4 [of the revised Charter] requires States to grant workers exposed to such risks one form or another of compensation"[63].

If States are unable to meet all the requirements concerning the prevention and elimination of factors harmful to health, they are obliged to provide the appropriate compensation measures referred to in Article 2 § 4 *in fine* of the revised Charter[64]. The purpose of this provision is to compensate for and reward stress and physical and mental exertion. The extra time allows workers to rest and 'to recover from the stress'[65] and fatigue caused by their occupation and thus maintain their vigilance[66] or limit their exposure to the risk[67]. This is because certain activities are 'likely to involve the need to preserve the workers' vigilance and mental and physical health through specific measures dealing with the organisation of work (management

energy, mining, chemical production, light industry, mechanical engineering, production of construction materials, policing, emergency situations service, civil aviation, urban development, health care and social security institutions, water supply, printing, archiving, study, measurement, reinforcement, repair and renovation of monuments, film industry and the nuclear power sector, in which a number of activities are identified. ECSR, Conclusions 2018, Armenia.

[55] ECtHR, 9 February 2016, *Meier v. Switzerland*, No. 10109/14.

[56] ECSR, Conclusions 2018, the Russian Federation.

[57] ECSR, Conclusions 2018, Slovakia.

[58] ECSR, Conclusions 2014, Norway.

[59] ECSR, Conclusions 2014, Bulgaria.

[60] ECSR, Conclusions 2018, Latvia; ECSR, Conclusions 2018, Slovakia.

[61] ECSR, Conclusions 2018, Armenia.

[62] ECSR, Conclusions 2014, Finland.

[63] ESCR Conclusions 2005, Statement of Interpretation on Article 2 § 4; ECSR, Conclusions 2016, Italy; ECSR, Conclusions 2018, Latvia; ECSR, Conclusions 2018, Ukraine.

[64] ESCR Conclusions 2005, Statement of Interpretation on Article 2 § 4; ECSR, Conclusions 2016, Italy; ECSR, Conclusions 2018, Latvia; ECSR, Conclusions 2018, Ukraine.

[65] ECSR, Conclusions V (1977), Statement of Interpretation on Article 2 § 4.

[66] ECSR, Conclusions III (1973), Ireland.

[67] ECSR, Conclusions 2018, Latvia.

of working rhythms, in terms of daily, weekly and annual rest periods)'[68]. Therefore, it is the primary duty of States to regulate the forms 'of compensation awarded in case of residual risks inherent in dangerous or unhealthy occupations'[69]. It is an absolute injunction that cannot be replaced by any other means as it directly concerns human rights. Therefore, 'domestic legislation needs to provide for the compensatory measures when workers are exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced[70]. Article 2 § 4 *in fine* of the revised Charter mentions two basic forms of compensation, namely reduced working hours and additional paid holidays[71]. Importantly, the Committee considers reduced hours of work to constitute full-time work[72]. Other suitable measures are possible in addition to additional holidays and reduced working hours as long as they aim to reduce risks in particular occupations[73]. Measures of this type need to be assessed on a case-by-case basis[74]. However, the Committee has pointed out that salary supplements[75], early retirement[76] and/or increased remuneration and other financial rewards[77], provision supplements[78] or financial compensation[79] are not relevant and appropriate measures that should be taken to achieve the aims of Article 2 § 4 of the Charter.

When examining cases pursuant to Article 2 § 4 of the Charter, the Committee investigates not only the formal establishment of compensation measures in the legislation but also the actual nature and purpose of the compensation, which is to take the form of an individualized measure to compensate workers for damages suffered during work[80]. The relevance and adequacy of such measures are assessed on a case-by-case basis[81]. For example, when examining cases in individual countries, the Committee finds that the situation is inconsistent with the Charter when 'workers performing dangerous or unhealthy work was not entitled to appropriate compensation measures, such as reduced working hours or additional paid leave'[82]. The Committee did so in the *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* case, where it found that Article 2 § 4 of the Charter had been violated. In the Committee's view, Greek legislation did not require collective agreements to provide compensation for miners for the onerous nature of their work[83]. Consequently, the Committee recalled that compensation measures such as one additional day as a holiday and a maximum weekly working time of 40 hours were considered inadequate in that they did not offer regular and sufficient time to recover to workers exposed to risks. Financial compensation cannot be considered a relevant and appropriate measure to achieve the aims of Article 2 § 4. Otherwise, all compensatory measures are necessary, which is a complex process requiring the involvement of all interested parties. Due to the complex implementation of Article 2 § 4 of the revised Charter, it is important for the labour inspectorate to be actively involved 'in supervising compliance with the rules on reduced working hours, additional paid holidays or other relevant measures'[84].

[68] ECSR, Conclusions 2014, Belgium.
[69] ECSR, Conclusions 2018, Andorra.
[70] ECSR, Conclusions 2018, Armenia.
[71] ECSR, Conclusions 2014, the Russian Federation 2018.
[72] ECSR, Conclusions 2018, Bosnia and Herzegovina.
[73] ECSR, Conclusions 2018, Latvia.
[74] ECSR, Conclusions 2014, Ukraine.
[75] ECSR, Conclusions 2018, Austria.
[76] ECSR, Conclusions 2003, Bulgaria.
[77] ECSR, Conclusions 2016, Italy.
[78] ECSR, Conclusions 2007, Romania.
[79] ECSR, Conclusions XIII-3 (1995), Greece.
[80] ECSR Conclusions 2014, Finland.
[81] ECSR, Conclusions 2005, Statement of Interpretation on Article 2 § 4; ECSR, Conclusions XX-3 (2014), Germany).
[82] ECSR, Conclusions 2014, the Netherlands; ECSR, Conclusions 2018, the Netherlands.
[83] ECSR, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint No. 30/2005, decision on the merits of 6 December 2006, § 232-236; ECSR, Conclusions 2018, Latvia.
[84] ECSR, Conclusions 2018, the Russian Federation.

V. ARTICLE 2 § 5 - WEEKLY REST PERIOD

The provision of Article 2 § 5 of the revised Charter concerning a weekly rest period is addressed to national authorities. States have been committed to providing 'a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest'. The provision of Article 2 § 5 of the revised Charter fully implements the postulates of the Memorandum of 1953[85], as well as corresponding to the postulates of the ILO contained in the ILO Weekly Rest (Industry) Convention[86] and the ILO Weekly Rest (Commerce and Offices) Convention relating to weekly rest[87]. Pursuant to Article 2 of the 1921 ILO Convention, weekly rest refers to a minimum break of 24 consecutive hours from work within a seven-day period. Article 2 § 5 of the Charter guarantees a weekly rest period, which insofar as possible shall coincide with the day traditionally or normally recognised as a day of rest in the country or region concerned[88]. As can be seen, the revised Charter does not provide an exact definition of a non-working day, leaving this to the discretion of national authorities. In practice, it can be any day of the week. In most countries, all employees are entitled to a weekly rest period, usually Sundays[89]. However, the rest period can be taken on a day other than the traditional day, either when the type of activity requires it, or for the reason of an economic nature. In all events, another day of rest during the week must be provided for[90].

Pursuant to Article 2 § 6 of the revised Charter, information about a weekly rest period, as an important element of the employment relationship, is *essentialia negotii* of an employment contract or labour agreement, however, the conditions of rest time may be defined according to the preferences of the parties[91]. The right to weekly rest is absolute, which means that 'workers could not waive their right to weekly rest or have it replaced by financial compensation'[92]. The right to weekly rest, however, can never be replaced by other benefits because in the Committee's opinion 'employees may not forfeit their weekly rest period or have it replaced by financial compensation'[93]. However, in certain strictly stipulated national laws, the parties may agree to postpone the scheduled weekly rest. Although the rest period should be 'weekly', it may be deferred to the following week, as long as no worker works more than twelve days consecutively before being granted a two-day rest period[94].

In practice, the provision of Article 2 § 5 of the revised Charter means that employees have 'at least one full day of rest per week'[95]. The Committee has pointed out that: "(…) the safeguards are in place to ensure that workers are entitled to a weekly rest period of at least twenty-four hours, that they may not waive this right and that if a weekly rest period is deferred, it may not be deferred for more than twelve consecutive days"[96]. Waiving or postponing the weekly rest period shall be provided for by the legislation[97]. Periods of on-call duty during a weekly rest period and during which an employee has not been required to work cannot be regarded as a weekly rest period[98]. The right to weekly rest periods may not be replaced by compensation

[85] CM, Memorandum by the Secretariat-General concerning the activities which the Council of Europe could properly carry out in the social sphere, 11 May 1953, Doc. 140, pt. 29 § 36.
[86] ILO, Weekly Rest (Industry) Convention, 1921, No. C14.
[87] ILO, Weekly Rest (Commerce and Offices) Convention, 1957, No. C106.
[88] COE, *Digest of the Case Law of the European Committee of Social Rights*, 2018, p. 69.
[89] ECSR, Conclusions 2018, Russian Federation.
[90] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2 § 5; CoE, *Digest of the Case Law of the European Committee of Social Rights*, 2018, p. 70.
[91] ECSR, Conclusions 2018, Georgia.
[92] ECSR, Conclusions 2018, Bosnia and Herzegovina; Conclusions 2018, Turkey.
[93] Karin LUKAS, *op. cit.*, p. 54.
[94] COE, *Digest of the Case Law of the European Committee of Social Rights*, 2018, p. 69.
[95] ECSR, Conclusions 2018, Moldova.
[96] ECSR, Conclusions 2018, Latvia.
[97] ECSR, Conclusions 2018, Armenia.
[98] COE, *Digest of the Case Law of the European Committee of Social Rights*, 2018, p. 70; ESCR, *Confédération Générale du Travail (CGT) v. France*, complaint No. 22/2003, decision on the merits of 7 December 2004, §§ 35-39.

and employees may not be permitted to give it up[99]. Derogations to this rule might be in conformity with Article 2 § 5 of the revised Charter when the postponement is truly exceptional and surrounded by strict safeguards[100]. Among such derogations are: the authorisation of the labour inspectorate; the agreement of the trade union or, as the case may be, the representatives of the employees; or the possibility for the safety representative to react if the employer does not respect the relevant rules[101]. States should report periodically whether it is legally possible to waive or extend the weekly rest period under an individual or collective agreement[102].

VI. ARTICLE 2 § 6 - INFORMATION ON THE EMPLOYMENT CONTRACT

Article 2 § 6 of the revised Charter is a new provision that guarantees workers the right to be informed in writing about their terms of employment. Information in this regard 'can be included in the employment contract or another document'[103]. The fact that this regulation has been introduced to the revised Charter should be assessed very positively because it concerns the issue of certainty of working conditions, which is important to every worker, and the Charter of 1961 did not in any way refer to the question of the form of a contract between an employer and an employee. Although the provision is undoubtedly very necessary, its very placement in Article 2 § 6 of the revised Charter is criticised in the literature. Some believe that perhaps this provision should be placed at the very end of Article 2 the revised Charter, right after the regulation of night work[104]. Article 2 § 6 the revised Charter is in full compliance with the provisions of Article 2 of the Council Directive on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship[105]. According to this, in EU Member States, there is an 'initial obligation to provide information, which can also extend to the title, grade, nature or category of the work for which the employee is employed'[106]. Article 2 § 6 of the revised Charter, therefore, corresponds to the current standards for States to establish the minimum rules for the terms and conditions of employment of each employee, as expressed in the law, a collective agreement or an employment contract[107].

The provision of Article 2 § 6 the revised Charter guarantees workers the right to written information at the start of their employment relating to the 'essential aspects of the contract or employment relationship'. Workers should be informed in writing as soon as possible and in any event no later than two months after they start work[108]. Article 2 § 6 the revised Charter thus specifies not only the form and time limit in which to confirm the concluded contract with an employee but also requires *essentialia negotii*, that is, the necessary components of an employment contract or employment relationship[109]. According to the Committee, when starting employment, workers are entitled to written information covering at least the following elements: the identities of the parties; the place of work; the date of commencement of the contract or employment relationship; in the case of a temporary contract or employment relationship, the expected duration thereof;

[99] COE, *Digest of the Case Law of the European Committee of Social Rights*, 2018, p. 70.
[100] *Ibid.*
[101] ECSR Conclusions 2010, Romania; ECSR Conclusions 2014, Sweden; ECSR Conclusions XX-3 (2014), Denmark.
[102] ECSR, Conclusions 2018, Armenia.
[103] ECSR, Conclusions 2014, Republic of Moldova.
[104] Klaus LÖRCHER, *op. cit.,* p. 178.
[105] Council Directive of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, No. 91/533/EEC, OJ L 288, 18.10.1991, p. 32–35.
[106] ECSR, *Syndicat de défense des fonctionnaires v. France*, complaint No. 73/2011, decision on the merits of 6 December 2006, § 18.
[107] The Community Charter of the Fundamental Social Rights of Workers, adopted on 9 December 1989 by a declaration of all Member States, COM(89) 471 final.
[108] COE, *Digest of the Case Law of the European Committee of Social Rights*, 2018, p. 70.
[109] ECSR, *Syndicat de défense des fonctionnaires v. France*, complaint No. 73/2011, decision on the merits of 6 December 2006, § 17; ECSR, Conclusions 2003, Bulgaria; ECSR, Conclusions 2010, Andorra; ECSR, Conclusions 2010, Portugal.

the amount of paid leave; the length of the periods of notice in case of termination of the contract or the employment relationship; the remuneration; and the length of the employee's normal working day or week[110]. This provision is not absolute because the Appendix to Article 2 § 6 of the revised Charter provides that States Parties "may provide that this provision shall not apply a) to workers having a contract or an employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours" or "b) where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations'.

Due to the necessity for guaranteeing an employee's right to confirm essential elements of a contract or employment relationship, certain obligations have been imposed on States. It is the primary responsibility of States to ensure in their legislation that all measures have been implemented to ensure that workers are informed in writing, as soon as possible, of the essential aspects of the contract or employment relationship[111]. Therefore, if the law imposes specific requirements for a contract or employment relationship, the documents submitted to employees for signing should refer to the appropriate point in the law[112]. Employers cannot ignore this requirement. When establishing legislative measures, States should also take into account the specificity of given groups of employees to confirm working and employment conditions. This applies to seafarers' contracts[113], civil servants[114], contractual public-sector employees[115], and members of the armed forces and defence forces[116]. States should inform in their periodical reports submitted to the Committee about any 'amendments made to the legal framework and on what is done by the Labour Inspectorate to ensure compliance with the terms of the work contract'[117]. A situation in a given country is inconsistent with the provision when the provisions of the national labour law do not 'require employers to inform employees in writing of the key aspects of the employment relationship or of the employment contract'[118]. The Committee also reviews new regulations introduced by States in their labour codes, unless a given regulation entered into force during the period under review. Then the Committee will examine the provisions during the next cycle of control[119].

VII. ARTICLE 2 § 7 - NIGHT WORK

The provision of Article 2 § 7 of the revised Charter is a new regulation regarding night work for all employees, which was not included in the Charter of 1961, although the postulates to include nightwork as one of the working conditions were included in the 1953 Memorandum[120]. This document recognises that Member States should strive to achieve higher standards for night work than those imposed by legislation, national practice and the ILO. The need to regulate night work, in particular the work of women and young people, results from the fact that work at night is currently not prohibited in any of the CoE member States[121]. Regulations on night work contained in Article 2 § 7 of the revised Charter are much more

[110] ECSR, Conclusions 2018, Ukraine.
[111] ECSR, Conclusions 2018, Austria.
[112] ECSR, Conclusions 2018, Moldova.
[113] ECSR, Conclusions 2018, Estonia.
[114] ECSR, Conclusions 2018, Turkey; ECSR, *Syndicat de défense des fonctionnaires v. France*, complaint No. 73/2011, decision on the merits of 6 December 2006, § 12-21.
[115] ECSR, Conclusions 2018, Austria.
[116] ECSR, Conclusions 2014, Hungary.
[117] ECSR, Conclusions 2018, Andorra; ECSR, Conclusions 2018, Malta.
[118] ECSR, Conclusions 2018, Bosnia and Herzegovina.
[119] ECSR, Conclusions 2018, Lithuania.
[120] Memorandum by the Secretariat-General concerning the activities which the Council of Europe could properly carry out in the social sphere, 11 May, 1953, Doc. 140.
[121] ECSR, Conclusions 2016, Belgium.

elaborate than those in the basic version, where only Article 8 § 4 (a) of the revised Charter dealt with the night work of pregnant women, women immediately after giving birth or nursing women[122]. At present, Article 8 § 4 (a) is to be regarded as a *lex specialis* to Article 2 § 7 of the revised Charter, which applies to all employees working at night, and not only women during maternity. Night work is not defined in the revised Charter or any other CoE document[123]. According to the logical interpretation, night work is work performed at night, which is not during the day. According to the CoE Staff Regulations, 'night work is any work done in this way between 10 p.m. and 7 a.m. on the instructions of the competent superior authority'[124]. The revised Charter has pointed out that domestic law or practice must define what is considered to be 'night work' within the context of this provision, namely what period is considered to be 'night' and who is considered to be a 'night worker'[125]. In light of the 1953 Memorandum, national authorities should use the terminology proposed in the ILO Night Work Recommendation[126]. According to this, night work is: "(…) all work which is performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m., to be determined by the competent authority after consulting the most representative organisations of employers and workers or by collective agreements". Moreover, 'this work should have an obvious justification and should be indispensable'.

The addressee of Article 2 § 7 of the revised Charter is the national authorities that are obliged to provide adequate means of access to protective clothing, breaks during work and additional days off in exchange for night work, as well as other arrangements of rest periods for night workers[127]. The measures which take account of the special nature of the work must at least include the following: (1) regular medical examinations, including a check-up prior to assignment to nightwork; (2) the possibility of transferring to daytime work; and (3) regular consultation with workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work[128]. The measures can be compensatory, preventive or corrective. Legislative solutions should concern the establishment of statutory guarantees for all employees working only at night (bakers, security guards, wardens, public servants, persons working in the ritual sector of churches), shift workers and workers with special needs (women, young people and the elderly)[129]. States are obliged to regulate the admissibility of night work for the disabled and others who require additional breaks from night work. The regulations should include measures for remote night work or telework. According to the ECtHR, such regulations should be defined in advance at the statutory level by national authorities or in the work regulations by the employer[130]. There shall be a legal requirement to consult worker representatives on such matters on a regular basis[131].

Article 2 § 7 of the revised Charter requires regular medical examinations, including a check-up prior to the assignment of night work[132]. The law shall provide for a medical examination prior to beginning night work[133]. This is because the efficiency of night work is much lower than that of daytime work. Night work causes employees to tire more quickly, which increases the number of accidents at work. National regulations should take into account that night work disturbs employees' circadian rhythm, preventing recuperation[134], and also disturbs their family and social life, making contact with their household members

[122] Explanatory Report, ETS 163, p. 3 § 27.
[123] *Ibid.*, p. 3 § 28.
[124] COE, Staff Regulations of the Council of Europe, Appendix VIII: Regulations on extra duties and night work.
[125] ECSR, Conclusions 2014, Bulgaria; ECSR, Conclusions 2018, Georgia.
[126] ILO, Night Work Recommendation Convention, 1990, No. C178.
[127] Klaus LÖRCHER, *op. cit.,* p. 179.
[128] ECSR, Conclusions 2003, Romania; ECSR, Conclusions 2018, Estonia; ECSR, Conclusions 2018, Latvia.
[129] ECSR, Conclusions 2018, Cyprus; ECSR, Conclusions 2018, Georgia.
[130] ECtHR, 24 September 2002, *Nerva and Others v. The United Kingdom,* Final, No. 42295/98.
[131] ECSR, Conclusions 2018, North Macedonia.
[132] ECSR, Conclusions 2014, Slovak Republic.
[133] ECSR, Conclusions 2018, Moldova.
[134] Andrzej SWIATKOWSKI, *op. cit.* § 89.

and household duties difficult. It has an impact on the development of non-communicable diseases[135]. States should also not be indifferent to the issue of the admissibility of employing both legal guardians of a child at night, as well as the compensatory measures to which they are entitled[136]. In the event of documented health problems, an employee should, as far as possible, have the right to change nighttime work to daytime work[137]. Therefore, the free compulsory medical examination shall be provided by law to all workers about to take up night work[138]. A night worker may, in certain circumstances, be reassigned to day work, on an occasional or permanent basis, if that is expressly provided for in the contract of employment or after the worker in question has voluntarily agreed to it[139].

Information about night work belongs to essential aspects of the contract or employment relationship. The provisions should provide an employer with an opportunity to specify the exact hours of night work applicable to their employees in the contract or work regulations. However, an employer does not have to lay down the rules for night work in the same way for all employees if this is not provided for by law. An important measure is a financial compensation and other benefits for night work[140]. States should provide additional statutory remuneration to workers for night work. They should also offer proportionately higher wages for overtime work during night hours than for overtime during the day.

CONCLUDING REMARKS

This chapter discussed the practical aspects of the right to fair working conditions as exercised by the ESC States Parties. It has been shown that the obligations expressed in Article 2 § 1–7 of the revised Charter constitute the fundamental human right to work. The implementation of this provision is in the interest of the Member States, which are, after all, bound by other standards of international labour laws, resulting from the ILO and WHO conventions, EU law and, above all, from Article 7 of the ICESC.

The analysis leads to the following conclusions. Firstly, the Committee's examination of the States' reports shows that a large number of States have some problems with the complete implementation of all the provisions of Article 2 § 1–7 of the ESC (rev). The Committee has positively assessed only two countries, Romania and Latvia, in all seven points, as implementing all aspects of the right to fair working conditions. This means that unlike in the case of complaints to the ECtHR, the division into the 'new' and 'old' CoE Member States is irrelevant.

Secondly, States do not deal with all obligations under Article 2 equally well. The biggest problem is fully implementing their obligations under Article 2 § 1 of the revised Charter. In 2018 the Committee has noted that the national legislation did not comply with this provision in as many as 12 countries. These are Armenia, Cyprus, Estonia, Georgia, Lithuania, Malta, the Netherlands, Norway, Serbia, Slovakia, Slovenia and Turkey while the Committee in 2014 has accused twenty States of non-performance: Andorra, Armenia, Czech Republic, Estonia, Finland, France, Georgia, Hungary, Iceland, Ireland, Italy, Lithuania, Malta, Norway, Poland, Slovak Republic, Slovenia, The former Yugoslav Republic of Macedonia., the Netherlands and Turkey. In the case of Article 2 § 2 of the revised Charter, the Committee has concluded that the

[135] Robert TABASZEWSKI, "The role of local and regional authorities in prevention and control of NCDs: the case of Poland", *BMC Int Health Hum Rights*, Vol. 20, No. 17, 2020.
[136] COE, *Digest of the Case Law of the European Committee of Social Rights*, 2018, p. 71.
[137] ECSR, Conclusions 2018, Georgia.
[138] ECSR, Conclusions 2018, Bosnia and Herzegovina.
[139] ECSR, Conclusions 2018, Andorra.
[140] Karin Lukas, *op. cit.*, p. 50.

situation in 2018 was inconsistent in seven countries: Bosnia and Herzegovina, Georgia, Malta, Moldova, the Netherlands, Norway and Slovakia. In 2014 the Committee concluded that the situation in the United Kingdom, Greece, Georgia, Malta, the Netherlands, Portugal, Slovakia was not in conformity with Article 2 §. Another problematic provision is Article 2 § 3 of the revised Charter, the Committee in 2018 has accused four States of non-performance: Bosnia and Herzegovina, Cyprus, The Russian Federation, Moldova and the Netherlands (In 2014 it was 4 countries: Belgium, the Netherlands, Moldova and Hungary).

Thirdly, it is relatively easy for States to comply with the standards that have been introduced by the provisions of the revised version of the Charter. This applies, in particular, to the provisions of Articles 2 § 4 and § 6 of the revised Charter. When examining the latter provision, the Committee has found that as many as 18 countries meet their obligations, and only three have violated them. The only exception is the full implementation of Article 2 § 7 of the ESC (rev), which, according to the Committee, has been failed by eight countries: Andorra, Bosnia and Herzegovina, Estonia, Georgia, Moldova, North Macedonia, Serbia and Ukraine. Therefore, the precise method of examining the actual fulfilment of States' obligations adopted by the Committee, as well as the progressive and social nature of the right to work, and not only the formal regulation of the right to fair working conditions in the legislation of a given country, should be positively assessed.

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