HUNGARIAN LABOUR LAW
E - J O U R N A L

Decent wages – The right to fair remuneration

The Council of Europe perspective[1]

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Abstract

The right of employees and, at the same time, the obligation of employers in employment matters was regulated by the European Social Charter modified on 3 May 1996. Employees employed in Member States of the Council of Europe were granted, among others, the right to fair remuneration, additional remuneration for overtime work, the right of men and women to equal remunerations for work of equal pay, a reasonable period of notice for termination of employment and deductions from wages. With a view to ensuring the effective use of the above rights in enterprises by employees, the author, a former member and vice-president of the European Committee of Social Rights, analyzes and discusses in this scientific study the implementation and effects of actions taken by member states of the Council of Europe necessary – in the understanding of employees – to achieve the above goal – decent wages.

Keywords: Council of Europe, decent wages, employees, employers, Social Charter, social rights

1. Introduction

Every European worker, without exception, should be entitled to a fair remuneration for his work. Earnings must be adequate to the scope of duties, skills, experience and professional qualifications. In assessing the pursuit of claims regarding remuneration for work, the basic measure introduced by the Committee of experts of the European Charter of Social Rights of the Council of Europe in

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1 From the experience of a Member of the European Committee of Social Rights of the Council of Europe.

Strasbourg are the relations established by the authorities of the Member States between the amount of the minimum wage and the average wage in a given year[2]. Only at least 60% of the average minimum wage set by the authorities of each Member State is considered a sufficient measure of a fair wage in accordance with the mandatory standard set by the European Committee of Social Rights of the Council of Europe in individual Member States. The European Social Charter of 1961 and the Revised European Social Charter of 1996, Article 4, guarantees the protection of the right to fair pay. Five paragraphs of this article present, through the prism of standards established by the European Committee of Social Rights, a catalog of rights and legal mechanisms of supervision over the observance of established rights and standards. The article presented is an in-depth legal study. It deals with the standards of protection of fair remuneration for work. It presents all substantive, legal and selected procedural aspects of protecting a decent standard of living for European citizens. It presents all substantive, legal and selected procedural aspects of protecting a decent standard of living for European citizens.

2. The Right to Fair Remuneration

2.1. Fair pay as a guarantee of the right to work, employment in fair conditions and work in safe and hygienic conditions (Articles 1, 2 and 3 of the European Social Charter – ESC)

Already, during its first supervisory cycle, the Committee was convinced that the right to fair remuneration should be treated as a right ensured by labor rights regulated by three provisions of the Charter: the right to work, the right to appropriate work conditions, the right to safe and healthy working conditions. The above three provisions would be breached if the right to fair remuneration was not ensured. The right to appropriate work conditions in safe and healthy working conditions would lose its significance were there to be no fair remuneration. The text of Article 4 of the Charter does not indicate a significant character to the above standard. The provision in question provides no indication how these standards could be connected to the other three provisions of the regulations in Part II of the Charter. Legal practitioners specializing in labor law consider that the necessary distinguishing element in carrying out work is its remuneration. Remuneration compensates the type of work carried out, the amount and quality of work services provided, as well as the qualifications and occupational skills of the worker. Remuneration varies according to whether the work undertaken is completed as part of relations under civil law or under economic relations regulated by contract law provisions. In this context it is important to note the Committee's view stipulating that remuneration

[2] Press Briefing Element. Document prepared by the Secretariat European Committe of Social Rights – Comité Europeén des Droit Sociaux, 22 March 2023. 10–14.

for work should be treated as a guarantee of the realization of the right to work in appropriately safe and healthy working conditions. In the introduction to the considerations on the level and factors for determining fair wages, an important observation was announced in 2018. Only a few Member States (Austria, Iceland, Luxembourg and Sweden)[3] meet the requirements laid down in the Committee's case law on the concept of the decent standard of living. In the other Member States that have ratified Article 4 of both Charters, the minimum wage cannot be compared with the average wage at all [4] or is too low in relation to the average wage.[5] In some Member States only salaries subsidized by the state or paid to senior government officials[6] can be compared with the average salary in the private sector.

2.2. Protecting the dignity of people in certain mandatory, unpaid or low-paid jobs

Analyzing the employment cases in terms of administrative responsibilities resting on the citizens, i.e. the reserve army, work by prisoners (as part of a prison sentence) – the Committee did not regard this as part of the compulsory work category, as considered by Article 1 of the Charter, but rather work that is not remunerated for even in part, as provided for by Article 4 of the Charter. These matters are considered further below. Matters analyzed here refer to the basic problem of the definition of "fair (decent) compensation".

3. Decent Wages

3.1. Decent pay for good, honest work and appropriate standard of living

Member States, which ratified Article 4 § 1 of the Charter, are obliged to ensure workers are remunerated in a way that will give them and their families a decent standard of living. The Committee from its first supervisory cycle was aware of the ambiguity of terms used within Article 4 of the Charter. As early as the second supervisory cycle, the Committee addressed an important message to Member States who are parties to the Charter. The term decent or fair remuneration has different meanings. All Member States can understand it accordingly. Understanding of this term is directly related to the level of economic development of a particular state.[7] The Committee sees all Member States as

3 Activity Report. European Committee of Social Rights, 2018. 35.

4 Andorra, Azerbaijan, Malta, the Netherlands, Romania, Serbia, United Kingdom, ibid.

5 Germany, ibid.

6 Spain, ibid.

7 The opinions of the European Committee of Social Rights submitted to the Government Committee and the Committee of Ministers of the Council of Europe are cited as "Conclusions". Conclusions II, p. 16.

one entity and does not accept diversity in cases of given states.[8] Fair or decent remuneration is a social policy category, applicable in the exact same manner to all Member States. The rulings of the Committee on defining fair or decent remuneration have had two phases.

3.2. Average salary

In both cases the point of reference for defining the term fair (decent) remuneration was the average national remuneration. Initially the Committee believed remuneration did not differ significantly from the average wage and would be regarded as fair (decent).[9] However this attempt of defining fair (decent) remuneration was not precise enough. It lacked a percentage relation between remuneration paid for a certain job and the average remuneration for this type of job in a given country. The Committee familiarized itself with the studies during the fifth supervisory cycle and utilized them to draft a more precise definition of decent) remuneration.[10] In a study[11] prepared for the Council of Europe it was suggested that 68% might be regarded as measurable criteria of fair remuneration, determining a relation between the remuneration in question and the average remuneration in all of the Member States of the Council of Europe. Therefore remuneration above the 68% rate was considered to be meeting requirements for fair remuneration formulated under Article 4 §1 of the Charter. Any remuneration below this level cannot be qualified as decent. The Committee decided upon utilizing the rate, which allows for distinguishing remunerations into two categories: fair remuneration and not fair remuneration ('decency threshold' approach). Making an attempt to determine measurable criteria of fair remuneration, the Committee took into consideration not only a nominal value of money paid for work but also other benefits employees are provided with by their employer. The Committee considered this only in cases where the real amount of remuneration received was lower than the 68% rate mentioned above. Authorities of Member States had the responsibility to provide a fair rate of remuneration. They had to provide the Committee with details with which the rate was calculated: realistic remuneration amounts as well as the average remuneration. They were instructed that in cases when the latter rate was lower than the 68% rate, they should also provide details concerning the material value of various types of social benefits allocated to workers, to the insured as well as to their family members. Among these various social benefits named, were family benefits, benefits covering part of training/ educational courses, low level of tax or exemptions from it for those earning the lowest wage. Article 4 §1 of the Charter tells authorities of Member States to recognize such legal

8 Conclusions IV, p. 31 (United Kingdom).

9 Conclusions V, pp. 25–26.

10 Conclusions V, p. 25.

11 Reigard Zimmer: Living wages in international and European Law. *Transfer: European Review of Labour and Research,* Vol. 25., N. 3. 2019. 285–299. https://doi.org/10.1177/1024258919873831

remuneration (fair/decent) that will ensure workers and members of their families a decent standard of living.

3.3. Modified Fair Compensation Measurement Factor

Being supported by such guidelines, the Committee prepared separate techniques measuring the rate of remuneration, which were meant to satisfy the material needs of single individuals, married couples, single parents raising one, two or more children, and married couples with children. It measured the value of social benefits and other benefits utilized by families, especially non-nuclear families as well as families with multiple children, to see whether such benefits supplemented the difference between the remuneration received and the average remuneration. Lower wages than the 68% remuneration rate, defining fair remuneration, appeared frequently in reports provided by authorities of Member States. In the Committee's experience there were cases where economically developed nations did not guarantee to keep fair remuneration standards, even when considering the definition as understood by Article 4 §1 of the Charter not only incorporating the nominal amount of the pay, but also the material value of social benefits.[12]

The first intentions of the Committee, to construct objective measurable rates of remuneration to assist in assessing the standard of living of a worker and his/her families, were not realized. During the 13th supervisory cycle, the Committee abandoned the technique of measuring fair remuneration. Because it did not create an alternate method of measuring the standard of living of a worker and his/her families, in that supervisory cycle it did not attempt to assess the national labor law standards in matters of remuneration, social benefits ensured by national social security schemes as well as social policies carried out by particular authorities of Member States to create the possibility for the fair remuneration of workers and to provide them with a decent standard of living.[13]

3.4. Techniques of measuring the level of remuneration

The method incorporated by the Committee during the next 14th supervisory cycle is based on a percentage rate, used for differentiating the categories of fair remuneration from remuneration which does not ensure workers and their families with a decency threshold approach (an appropriate standard of living).[14] The difference between the new and the former technique establishing the level or

12 Conclusions XII-1, pp.92 et seq. (United Kingdom)

13 Conclusions XIII-3, pp. 215 et seq.

14 Conclusions XIV-2, pp.49 et seq.

remuneration is based on the lowering from 68% to 60% rate as well as constructing a broad definition of remuneration. Currently remuneration encompasses all cash and non-cash benefits provided to workers by their employers. The level of remuneration comparable to the average rate is the net payable, after the worker makes tax and other insurance payments. To this cash remuneration, with the added non-cash benefits provided by the employer for the worker for work carried out, there are also added benefits from national social security schemes. A comparison basis with the average wage is the payment and value of social security benefits calculated according to the different technique. The important *novum* when comparing real wages to the average remuneration in a given Member State is the abandonment of calculating the profits per family member. The Committee analyses whether the remuneration is fair based purely on the remuneration received by one family member in employment. It is of no importance how many people within the family are employed and how many family members there are. The basis for this new method of analyzing the level of remuneration is the net wage, non-cash benefits and the value of social benefits. If the remuneration of one family member, usually the main bread winner, crosses the 60% of the average domestic remuneration, the Committee claims that the given Member State is fulfilling its obligations under Article 4 §1 of the 5. Charter.

Even if the remuneration is less than the 60% of the average domestic remuneration, authorities of Member States may prove that the real wages earned enable workers and their families to fulfill their requirements and provide a decent standard of living. Free education, free medical services, discounts for public transport use and other benefits associated with payable non-cash benefits provided for by the employer for workers, are all taken into consideration by the Committee in the supervisory process of fulfilling obligations under Article 4 §1 of the Charter.[15] If the material value of the above-mentioned benefits supplements the real wages earned, which is less than the 60% of the average remuneration within a given country, the Committee is of the view the authorities should fulfill the obligations set by the Charter.[16]

15 Conclusions XIV-2, p.52.

16 The Committee concluded that it has not been established that a decent standard of living is guaranteed for a single worker earning the minimum wage. Conclusions 2007, vol. 2, p. 602, (Ireland), p. 683 (Italy), p. 917 (Norway), p. 964 (Romania), p. 1067 (Sweden). The Committee concludes that either the minimum age is manifestly unfair or too low and does not guarantee a decent standard of living. Conclusions 2010, vol. 1, p. 25 (Albania), p. 111 (Azerbaijan), p. 317 (Italy), vol. 2, p. 446 (Netherlands), p. 495 (Portugal), p. 524 (Romania), p. 556 (Slovenia). Conclusions XIX-3, p. 96 (Germany), p. 137 (Iceland), p. 189 (Slovakia), p. 214 (Spain), p. 253 (United Kingdom).

3.5. Function of the minimum wage

The most reliable evidence for fulfilling obligations under Article 4 §1 of the Charter is the establishment of a minimum wage.[17] The following Member States did just that: France, the United Kingdom, Ireland, Luxembourg, Malta, the Netherlands, Poland, Portugal, and Spain. This method enabled the comparison of the level of minimum wages (net) with the average wage (net) of a given country. If the minimum wage is 40% of the average wage, the Committee claims the Member State in question is not fulfilling its obligations under Article 4 §1 of the Charter. A 20% difference between a minimum wage and an average may be supplemented by the material value of benefits and services provided by the employer for the worker. As of 2014 the Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4 §1 of the Charter, wages must not be lower than the minimum threshold, which is set at 50% of the net average. This is the case when the net minimum wage is more than 60% of the net average wage.[18] When the net minimum wage is between 50% and 60% of the net average wage, it is for the state party to establish whether this wage is sufficient to ensure a decent standard of living.[19] The Committee noted that in the cycle for 2014,[20] the situation in the following countries was considered not in conformity with Article 4 §1 of the Charter, due to the fact that the minimum inter-professional wage does not ensure a decent standard of living: Andorra (47.5%), Azerbaijan,[21] Austria (50%), Belgium (50% of wages of young workers under the age of 21), Germany (20.60% of workers in establishments with ten or more employees earned less than 66.67% of the national gross median wage,[22] Ireland (adult workers in their first employment and those following a course of studies were below the minimum threshold),[23] the Netherlands (45.50% for 18-year-olds, and 52.50% for 19-year-olds),[24] Romania (34.20%),[25] Slovak Republic (45.60%).[26] The Committee further concluded that the situation in the following countries: Greece, Lithuania, Luxembourg, Portugal, Spain, United Kingdom was not in conformity with Article 4 §1 of the Charter, on the grounds that the minimum wage applied to private-sector workers does not ensure a decent standard of living.[27] In addition the Committee concluded that in Greece and Spain, the minimum

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17 D. Harris – J. Darcy: *European Social Charter*. (The Procedural Aspects of International Law Monograph Series, vol. 25) New York, Ardsley, 2001. 76.

18 Conclusions 2014 (Ireland).

19 Conclusions XIV-2, 1998. Statement of Interpretation of art. 4 § 1.

20 Conclusions 2014.

21 The Committee notes that the monthly minimum wage (MMW) net of social contributions and trade union dues is lower than the minimum thresholds, and hence does not amount to a decent remuneration within the meaning of Art. 4 §1 of the Charter. Conclusions 2014.

22 Conclusions XX-3.

23 Conclusions 2014.

24 Ibid.

25 Ibid.

26 Ibid.

27 Ibid.

wage applicable to contractual staff in the civil service is also not sufficient and does not guarantee a decent standard of living.[28]

3.6. Responsibilities of the European Committee of Social Rights over the adherence by Member States to the standards set out in the Charter

The above standard obliges Member States to fulfill the requirements provided by this provision of the Charter either when completing agreements concerning collective bargaining are being made with stakeholders or legally when deciding upon the work contracts in accordance with domestic regulations. Minimum wages established by the authority of a Member State is one of three above-mentioned techniques to standardize domestic labor law regulations with Article 4 §1 of the Charter. When establishing the minimum wage, authorities of Member States take into consideration the costs involved in satisfying basic needs. Identifying a minimum wage with a fair wage, which ensures a decent standard of living, creates uncertainty and questions the Committee's technique in analyzing remuneration within Member States. It is possible to view that the method utilized by the Committee in assessing remuneration has been accepted by those bodies taking part in the process of abiding by the Charter, namely the Governmental Committee and the Committee of Ministers. The Council of Europe has failed to provide a decisive critique, authorized to partake in the supervisory process of fulfilling obligations under the Charter. During the debates of the Governmental Committee two major points were considered: to reduce the real wages rate from 68% to 60% which is comparable to the average pay, and to move away from the earlier applicable notion of measuring the level of remuneration according to the requirements of a family, and not just the bread winner. It was also pointed out that the newly reduced remuneration rate of 60%, similarly to the 68% rate, is arbitrary in its nature.[29] The approval of the new technique is undoubtedly caused by the fact that the majority of Member States fulfill the obligations under Article 4 §1 of the Charter, because they recognize workers' rights to minimum wages.

The special case of non-compliance with the obligation to guarantee the right to fair remuneration is Austria. In 2014, the Committee took note of the information submitted by Austria in response to the conclusion that it had not been established that the lowest wage paid was sufficient to ensure a decent standard of living.[30] The Austrian report analyzed in 2016 refers to the net value of the average wage of manual workers which was EUR 22,484 in 2013 and increased to EUR 22,777 in 2014. The report does not provide explicit information on the monthly average wage, but the aforementioned 2014

28 Ibid.

29 Governmental Committee XIV-2, pp. 220 et seq.

30 Conclusions 2014.

annual amount for all dependent workers. The report provides little information on the lowest wages paid in the labor market. It reiterates information already noted by the Committee according to which approximately 98% Austrian employees are covered by collective agreements and indicates that the lowest wage rate foreseen by these agreements ranges between EUR 1,200 and EUR 1,400 as of March 2015. The Committee notes that a gross monthly wage of EUR 1,200 corresponds to only about 51% of the net average monthly wage based on micro-census data and to 47% net average monthly wage based on social security data. On the basis of the information at its disposal, the Committee considers that the lowest wages are too low to meet the requirement of the Charter. Finally, the Committee takes note of the explanation regarding Article of the General Civil Code which provides for 'appropriate remuneration' where the employer is not bound by an existing collective agreement. In such cases an appropriate wage has to be determined on the basis of collective agreements for comparable activities, with factors such as wage level in the geographical area being considered. The Committee considers the *modus operandi* which is reasonable under Article 4 §1 of the Charter; however it requires a proper assessment of the situation in the next report in order to receive information on the lowest wages actually paid to full-time workers not covered by collective agreements. It concludes that the situation in Austria is not in conformity with Article 4 §1 of the Charter on the basis that the lowest wage paid is too low to ensure a decent standard of living for all workers.

4. Additional Remuneration for Overtime Work

4.1. Overtime work

Overtime work should have additional remuneration. Article 4 §2 of the Charter deals with the workers' right to an increased rate of remuneration for overtime work. The Committee did not define work in overtime. It claimed that work above the standard of working hours (it did not provide those standards, therefore there is a basis to believe that it deals with the hours above the daily standard) is work carried out outside the normal working hours or in addition to normal working hours.[31] Overtime work, according to the understanding of Article 4 § 2 of the Charter, is work carried out at night. According to the Committee, carrying out such work requires additional effort from the workers which should be additionally remunerated. Article 4 §2 of the Charter is generally applicable.[32] It is applicable to workers in full-time employment based on a work agreement not defined by a period as

[31] Conclusions XIV-2, p. 35.

[32] In Malta, all time worked as overtime must be paid. The Committee recalls that overtime must not only be paid but also paid at an increased rate and it asks again for information on how and to what extent this is guaranteed to all workers, whether by statute, collective agreement, individual employment contract and/or any other means. In the absence of such information, the Committee concludes that the situation in Malta is not in conformity with Art. 4 §2 of the Charter on the basis that it has not been established that the right to increased remuneration for overtime work is guaranteed to all workers.

well as to workers temporary periodical employment in an unidentifiable period of time. Additional work for this last category of workers is work carried out beyond the shortened daily and working-hour standards. To fulfill the obligation of increased remuneration for overtime work, there is no actual place for the carrying out of such work. The right to additional remuneration for overtime hours have workers who are carrying out work outside the workplace of the employer. The above argument refers to people working from home.[33] The obligation to additional remuneration is applicable to persons employed in agriculture,[34] the public sector,[35] and domestic services hired by individuals.[36]

4.2. Exceptions to the obligation to pay additional remuneration

Member States are allowed to adopt a general approach to the obligations set in Article 4 §2 of the Charter. The legal basis for this is to be found in this provision. It is applicable in certain cases which the Charter does not specify. In 2014, the Committee concluded that an exception to the right to increased remuneration could apply to senior officials and managerial executives.[37] The exceptions refer to situations other than those specified in Article 33 ESC. The Committee takes care so the authorities of Member States do not use the rights provided in Article 4 §2 of the Charter *in fine* excessively. The Committee has accepted in practice excluding additional remuneration paid for overtime to those employed in managerial positions from the obligations [38] as well as those employed in executive organizational units of power and national administration.[39] For the 2014 cycle, however, the Committee concluded that the situation in some countries (France, Portugal and Turkey) was not in conformity with Article 4 §2 of the Charter, on the following grounds: (1) the flat rate compensation for overtime work performed by ordinary members of the supervision and enforcement corps of the police did not guarantee an increased rate of remuneration; (2) the increase in the command bonus could only compensate for a very small number of overtime hours, and compensatory time off provided to senior police officers working overtime when performing certain duties was equivalent in length to the overtime worked;[40] (3) police officers on active prevention and shift duties did not receive increased remuneration as required, nor even remuneration equivalent to their basic hourly pay;[41] (4)

33 Conclusions XIII-5, p.54 (Finland).

34 Conclusions XIV-2, p.479 (Luxembourg).

35 Conclusions 2007, vol. 1, p. 172 (Belgium).

36 Conclusions XIII-5, p.168 (Portugal).

37 Conclusions 2014 (Lithuania).

38 Conclusions IX-1, p.41 (Netherlands).

39 Conclusions XIV-2, pp.479–480 (Luxembourg).

40 Conclusions 2014 (France).

41 Conclusions (Portugal).

civil servants were not entitled to increased time off in lieu of remuneration for overtime hours.[42] In 2016, although the Committee concludes that the situation in Lithuania is not in conformity with Article 4 §2 of the Charter on the basis that it has been not established that the exception to the right to increased remuneration only applies to senior officials and management executives.[43]

4.3. Methods of introducing additional work and remuneration

Article 4 § 2 of the Charter does not define methods for introducing this provision into the domestic labor law system. The regulation within the last paragraph of Article 4 of the Charter instructs Member States as to how to fulfill their obligations under Article 4 §1-5 of the Charter and is applicable to all of the five regulations and paragraphs which are part of the provision in question. Carrying out the obligations of additional remuneration for overtime work should be guaranteed either during collective bargaining agreements or through other legal means of establishing remuneration (e.g. statutes, decrees, regulations) or with the help of other sources in accordance with domestic conditions. In the United Kingdom the usual custom is to establish all obligations according to standard processes. The Committee analyzed a report filed by the British authorities, which compiled in its part concerning the implementation of Article 4 §2 of the Charter a notion of 'very widespread expectations among workers that additional work will be remunerated with the higher rates', and concluded that a custom can be regarded as a source of workers' entitlement to additional remuneration for additional work, creating, as a consequence, enough legal grounds to impose on employers a duty of greater remunerating for the extra hours of work, on the condition that custom law embraces all employed and their employers and that state authorities efficiently supervise abiding of the obligation determined by a customary standard.[44] Notions used in the report presented by British authorities do not create enough legal basis to admit that 'widespread expectations among workers', interpreted by the Committee lawyers as expectations, do not legally enable workers to litigate for additional remuneration for extra hours work. In connection with the above the Committee concluded that British authorities did not fulfill the obligation formulated in Article 4 §2 of the Charter.

The notion of 'other measures adequate to national conditions', which can be used in order to grant workers employed for extra time greater remuneration, also embraces work agreements. Work agreements are considered to be sources of mutual obligations between the parties in an individual working relationship. Work agreements can regulate the rendering of work done at extra time, beyond

42 Conclusions 2014 (Turkey).

43 Conclusions 2016, p. 217. The Committee examined the new draft Labor Code which proposes a narrowing of the special cases where overtime is not reimbursed. The special cases would henceforth apply to senior managers such as heads of companies and managers of branches and executive offices.

44 Conclusions XIV, p. 773.

the common daily or weekly standards, work during night hours as well as employer's obligation of paying remuneration calculated at higher rates for additional work. The obligations of one party in a work relation answer the entitlements of the other. The worker's right to carry out work in extra time answers the employer's right to employ workers in extra time. The employer's obligation of paying remuneration calculated on higher rates for additional work answers the worker's right to demand to be paid additional (greater) remuneration for the work done. A freedom of work agreement guaranteed by labor law cannot be utilized to regulate rules of additional employment other than those prescribed under Article 4 § 2 of the Charter. If the content of a work agreement makes it stand against labor law regulations or makes an employee's situation less advantageous than predicted by labor law regulations, such an agreement has no legal force. The rule of employee's privilege commonly accepted by Member States orders the regulation of matters of additional employment according to a greater rate and forbids parties to work relations from making exceptions to this rule in work agreements. This is why the Committee regarded the conduct of Spanish authorities as violating Article 4 §2 of the Charter when Spain decided to depart from the rules of remunerating workers employed in extra time and leaving this issue for the interested parties of a work relation. The Committee concluded such conduct is evident of not abiding by regulations set by Article 4 §2 of the Charter by Spanish authorities, even though the changed provisions of Spanish labor law compiled clauses guaranteeing that work in extra time should not be remunerated according to lower rates than the ones, used for accounting wages of workers employed full time on a regular basis.[45]

The Committee claims that Article 4 §2 allows Member States to regulate the rules of remunerating additional work in a most adequate way, according to the practices in a given country. Despite the fact that Member State authorities may allow the regulation of the rules of remuneration for workers employed above daily and weekly standards by stakeholders in collective agreements or parties to individual work relations guaranteed by work agreements, the authorities are still responsible for any non-fulfillment of the obligations stipulated under Article 4 of the Charter. They may also leave the regulations of the above-mentioned issues to be dealt with in other ways, by all interested parties mutually abiding by commonly accepted customs but this does not ameliorate the responsibility of the authorities. (stakeholders and parties to individual work relations), Member States are not excused in cases of the non-fulfillment of the obligations resulting from the ratified provisions of the Charter, even when the specific nature of the domestic labor law regulations excludes the interference of state authorities in issues left for the regulation of stakeholders. The Nordic countries may serve as a good example as the issue of workers' remuneration is regulated by collective work agreements, whereby stakeholders draft the provisions. Authorities of these countries evade responsibility for not abiding regulations of the Charter concerning remunerating workers and deducting wages, arguing that the above sphere was passed onto stakeholders and are regulated by social dialogue. As stakeholders are

[45] Conclusions XIV-2, p. 682.

not international entities of labor law, social security law or social policy, the whole responsibility for not abiding by the regulations and standards set by the Council of Europe must be seen as a Member State's responsibility, i.e. a party to the Charter.

4.4. Appropriate means of rewarding extra work

Article 4 §2 of the Charter recognizes the right of workers employed in extra time to an 'increased rate of remuneration'. The above provision does not compile any guidelines as to the rates of remuneration and how they may be regarded as 'increased'. The basis for comparison is based on a standard rate of remuneration, which is paid to a worker by an employer for work in regular working hours, namely for work according to the commonly accepted daily and weekly standards of work time. From the textual interpretation of this provision it can be concluded that any rate surpassing the standard rate paid to workers employed according to daily and weekly standards meets the requirements of Article 4 §2 of the Charter and should be regarded as 'increased'. As it has been mentioned several times before, the Committee does not create models, which should be implemented into provisions of domestic labor law by Member States. The Committee only evaluates domestic regulations in terms of their conformity with the standards set by the Charter. This is why analyzing the obligation of increased remuneration for workers employed in extra time, is sensible. Rulings of the Committee state domestic regulations, according to which workers employed above the daily and weekly standards of work time, obtain remuneration increased by 25%, 50% or 100% stand in line with the requirements of Article 4 §2 of the Charter.[46] The Committee accepted a legal solution in Belgium where additional remuneration for civil service clerks working in extra time was 6.8% higher than the standard, on the basis of which it was calculated.[47] The employee may be provided with paid time off, to be taken in compensation for overtime, or to be added to their annual leave. But the rest time provided in place of overtime work must correspond to the duration of the overtime worked. Therefore, the Committee concluded as of 2014 that the situation in Armenia, Belgium, Estonia, the Czech Republic, Finland, Malta, the Netherlands, Poland, Russian Federation, the Slovak Republic, Spain and the United Kingdom was not in conformity with Article 4 §2 of the Charter, on the grounds that: (1) the legislation did not guarantee increased time off in lieu of remuneration of overtime;[48] (2)

46 Conclusions II, p. 18 (Germany). Neither increased remuneration nor a sufficient longer period in compensation for overtime is guaranteed in Member States listed by the Committee. Conclusions 2010, vol. 1, p. 88 (Armenia), p. 150 (Belgium), p. 176 (Bulgaria), p. 254 (France), p. 280 (Georgia), p. 318 (Italy), vol. 2, p. 526 (Romania). Conclusions XIX-3, p. 77 (Denmark), p. 170 (Poland), p. 190 (Slovakia), p. 215 (Spain), p. 254 (United Kingdom).

47 Conclusions XIV-2, p. 134.

48 Conclusions 2014 (Armenia, Czech Republic, Estonia, Malta, the Netherlands, Russian Federation, Spain).

in the public sector, the compensatory time off for overtime hours was not sufficient[49] or adequate;[50] (3) workers in both public and private sectors did not have a right to increased compensatory time off for overtime hours.[51] The same view was presented in 2018. The Committee concluded that ten Member States would not guarantee workers an additional, fair payment for overtime work.[52] The Committee noted from the country report that in Ireland the remuneration paid for overtime was not subject to statutory regulation, but was determined through negotiation and agreement between the parties at the same level at which basic pay and conditions of employment are normally settled. Most collective agreements contain provisions in relation to remuneration for overtime work. In its previous conclusion (2010), the Committee had asked the government to provide more detailed information about remuneration for overtime work being guaranteed to workers. The current report does not provide this information. Therefore, the Committee considers that it has not been established that the right to an increased remuneration for overtime work is guaranteed to all workers.[53]

Article 4 §2 does not mention anything about the rules of calculating the additional remuneration for work in terms of extra time. The abovementioned provision orders Member States to accept the workers' right to an increased rate of remuneration for work in extra time. Therefore, a rate of remuneration higher than the rate paid for work carried out according to daily and weekly standards of work time meets the requirements of Article 4 §2 of the Charter.

4.5. A different increased rate of remuneration for work

The Committee requires that the national report contain the requested details on remuneration as agreed in collective agreements covering a significant part of the labor market.[54] Analyzing the jurisdiction of the Committee so far, there has not been a case of the obligations formulated in Article 4 §2 of the Charter not being fulfilled by any Member State. Even minimal increases in the rate of remuneration for additional work have been regarded, at least up to now, as meeting the requirements formulated in the Charter. The Committee claims that the increased rate of remuneration mentioned in Article 4 §2 of the Charter also encompasses cases of granting time free from work in exchange for additional work of overtime. It is important to ensure time free from work granted in exchange

49 Conclusions 2014 (Belgium, Slovak Republic). 52Armenia, Czech Republic, Estonia, the Netherlands, North Macedonia, Poland, Slovak Republic, Spain, Turkey, United Kingdom. In: Activity report, 2018. 35.

50 Ibid.

51 Conclusions 2014 (United Kingdom); Conclusions 2014 (Poland).

52 Armenia, Czech Republic, Estonia, the Netherlands, North Macedonia, Poland, Slovak Republic, Spain, Turkey, United Kingdom. In: Activity report. 2018. 35.

53 Conclusions 2014 (Ireland).

54 Therefore, the Committee concludes that the situation in Ireland is not in conformity with Art. 4 §2 of the Charter on the ground that it has not been established that the right to increased remuneration for overtime work is guaranteed to all workers. Conclusions 2016 (Ireland), p. 30.

for additional work is longer than the nominal standard of work in extra time. For this reason France and Belgium were regarded as states not abiding by the obligations stipulated under Article 4 §2 of the Charter, because France did not determine a conversion rate between time free from work and additional work[55] and Belgium's civil service clerks employed in extra time obtained in exchange the amount of time free from work equal to the amount of time they had worked.[56]

5. The Right of Men and Women to Equal Remuneration for Work of Equal Value

5.1. The principle of equal pay

Article 4 §3 of the Charter orders Member States to recognize the right of men and women to equal remuneration for work of equal value. As regards statistics for equal pay, the Committee notes that in 2009, across all economic activities, the average wages of women amounted to 58.6% of that of men, and 46.2% of that of men in 2012.[57] The Committee considers that the unadjusted pay gap is manifestly too high and finds the situation not to be in conformity with the Charter. As regards statistics for equal pay in Estonia, the Committee notes that across all economic activities, the average pay gap amounted to 24.6% in 2012. The Committee further notes from EUROSTAT that the unadjusted pay gap stood at 30% in 2012 and 27.3% in 2011. The wage gap between men and women performing identical or comparable work is growing. In 2018, the Committee concluded that the gender gap is larger, to the disadvantage of female workers, and it is over 25%.[58] The above observation proves the ineffectiveness of the provision of Article 4 §3 of both Charters ('old' and 'new') of Social Rights.[59] The Committee notes that this indicator is substantially higher than the EU 27 average and is the highest of all EU countries. Therefore, the Committee considers that, despite the measures taken to narrow the gap, the unjust pay gap remains manifestly high, and the situation is therefore not in conformity with the Charter.[60] From the first supervisory cycle, the Committee emphasized that the execution of this rule needs to be determined by Member States' objective criteria for determining the work carried out by men and women, and the respecting of these criteria by employers while making decisions about remunerationrates.[61] According to the Committee, determining Member States' adherence to the above rule depends on the pursuit of systematic studies analyzing different

55 Conclusions X-2, p. 62.

56 Conclusions XIV, p. 134.

57 Conclusions 2014 (Azerbaijan).

58 Armenia, Azerbaijan, Estonia. In: Activity Report. 2018. 36.

59 Ibid.

60 Conclusions (Estonia).

61 Conclusions I, p. 9.

factors that can have a legal and practical impact on the work carried out by men and women.[62] When examining work-evaluation techniques and remuneration paid to men and women for work of equal value, the Committee pays attention to the equality of wages regardless of sex, as well as to the conduct of Member State authorities in cases violating this rule, which is supposed to bring about an ongoing convergence of domestic regulations and practices with the requirements of Article 4 § 3 of the Charter.[63] The rule of the equal remuneration of men and women for work of equal value can be put into force differently in different Member States. Implementation of this rule may be passed by Member State authorities onto stakeholders, employers or left for the judiciary. According to the Committee, however, the only subject responsible for implementing this rule is the state.[64] The rule of equal remuneration for men and women is one of the few regulations of labor law which, according to the Committee, requires the involvement of Member States,[65] possibly at the legislative, and definitely in the supervisory phase. The Committee emphasizes the necessity of applying this rule *de jure* and *de facto*.[66] The right of men and women to 'equal pay for work of equal value' must be expressly provided for in legislation.[67] As of 2014, the Committee observes that in Georgian legislation there is no express statutory guarantee of the right of men and women to equal pay for work of equal value. Therefore, it considers that the situation is not in conformity with the Charter.[68]

5.2. Work of equal value

During a session on the methods used by Member States in the process of work estimation, the Committee reflected upon introducing a uniform technique allowing all states to make estimations regardless of the sector of the economy in which workers are employed and whose work was to be estimated. It concluded it is impossible to find such a universal technique which could be used for estimating different types of work. As of 2014, the Committee concludes that the situation in Norway is not in conformity with Article 4 §3 of the Charter, on the grounds that in equal pay litigation cases, pay comparison cannot be made with companies other than the company directly concerned.[69] The Committee took a similar position in 2018 in the Moldova case. The regulations in force in this country do not allow the comparison of remuneration for work performed in the private sector in different

62 Conclusions II, p. 19.

63 Conclusions III, p. 26.

64 Conclusions I, p. 28.

65 Conclusions V, p. 31; Conclusions VII, p. XVI.

66 Conclusions II, p. 19; Conclusions III, p. xiii; Conclusions VI, p. xv; Conclusions VIII, pp. 67 et seq.; Conclusions X-1, pp. 60–61; Conclusions XI-2, pp. 69 et seq.; Conclusions XIII-2, p. 262 (Germany); Conclusions XIII-4, p. 351; Conclusions XIII-4, p. 350 (Belgium); Addendum to Conclusions XIII-3, p. 32 (Luxembourg).

67 Conclusions XV-2 2001 (Slovak Republic).

68 Conclusions 2014 (Georgia),

69 Conclusions 2014.

workplaces, even those that are part of the same holding company.[70] During the first six supervisory cycles (monitoring whether the obligations of Article 4 § 3 of the Charter were being met by the Member States), the Committee became convinced that none of the Member States had determined objective criteria of work evaluation, which resulted in a ruling stating that none of the Member States followed the regulations under Article 4 § 3 of the Charter. It was until the seventh supervisory cycle that the Committee noted a significant improvement in these issues within Member States. Changes were seen due to legislating regulations guaranteeing equal remuneration for men and women based on objective indicators of work estimation, remuneration rates as well as due to the broadening of competences of the national supervisory systems controlling employers and stakeholders in terms of following the above rules of remuneration.[71]

6. The Right of All Workers to Decent Wages During a Reasonable Period of Notice for Termination of Employment

6.1. The aim of the article – guaranteeing employees a fair remuneration during the period of notice

The goal of Article 4 §4 of the Charter is therefore to guarantee workers a right to remuneration during the period of notice. The remuneration paid to a worker during the period of notice should also be paid to the worker during the period preceding the period of notice being given by the employer. Article 4 §4 of the Charter is applicable to all work agreements, regardless of whether they are standard or non-standard contracts.[72] A 'reasonable' period of notice, a term used in Article 4 §4 of the Charter is neither a universal understanding nor an abstract one. It should be interpreted according to concrete cases analyzed in the following supervisory cycles. The Committee never attempted to judge whether an introduced labor law regulation of a notice period, by a Member State is considered to be reasonable. Referring to earlier arguments disallowing the establishing models of legal institutions by the Committee, during subsequent supervisory cycles monitoring whether obligations under the Charter are being met, the Committee pointed to cases where periods of notice were regulated by a state, which could not be regarded as reasonable according to the understanding of Article 4 §4 of the Charter. The Committee analyzed whether the basis for differentiating periods of giving notice according to national labor law, form objective criteria. It is generally accepted that the objective criteria for establishing a period of giving notice are the number of years worked, either generally or in that particular employment.[73] Already by the 4th supervisory cycle the Committee came to the conclusion

70 Activity Report 2018. 35.

71 L. Samuel: *Fundamental Social Rights – Case law of the European Social Charter.* Strasbourg, 2002. 93.

72 Conclusions XIII-1, p. 124 (Iceland), p. 126 (United Kingdom).

73 Conclusions IV, p. 35.

that the term 'reasonable' used in Article 4 § 4 of the Charter referring to the period of giving notice is indicative of its dynamic nature and places on Member States an obligation of extending the period of giving notice according to the amount of time worked by the employee by a specified employer.[74] Giving Article 4 §4 of the Charter a specific character means the Committee must step away from principles used during the supervisory process, which monitors whether Member States are following the obligations under the Charter, according to which determining the conformity of conduct within the previous supervisory cycles automatically gives the same conclusion in subsequent cycles, in cases where the situation had not changed. The period of giving notice regarded as reasonable in the earlier supervisory cycles, could be regarded as 'unreasonable' in the subsequent cycles if the period did not lengthen along with the time of carried out employment for the same employer. The Committee regarded that the legal mechanism for lengthening the giving of notice period, whereby two weeks for a worker having worked two years for the same employer are given, by an additional one week for every year worked up to a maximum of period of notice of 12 weeks, reflects the progressive nature of the obligations under Article 4 §4 of the Charter[75]. The fulfillment of obligations by Member States under Article 4 §4 of the Charter also has an influence on the labor market. The increase in unemployment and the decrease in opportunities of attaining a job should be taken into consideration by Member States when establishing the period of giving notice, which should be lengthened.[76] As of 2014, the Committee has also used the term 'insufficient notice'. It is concluded that general notice periods are either insufficient or unreasonable, being inadequate after more than[77]or below [78] three years of service.[79]

6.2. Termination of the employment contract without notice and the employee's right to fair remuneration

Article 4 §4 of the Charter does not prohibit employers from terminating work agreements without respecting the notice period. In the appendix to the Charter it is explicitly stated that the obligation of introducing sensible periods on notice can be by no means interpreted as a standard prohibiting employers to terminate work agreements without respecting the period of notice, if the reason for the immediate termination of employment is a serious violation. The appendix to the Charter does not contain a 'serious violation' definition, which gives reasons for the termination of a work relation

74 As above. Conclusions XIII-2, pp. 263–264 (Belgium); Conclusions XIII-3, p. 267 (Malta).

75 Conclusions XI-1, p. 107 (United Kingdom).

76 Ibid.

77 Conclusions 2014 (Estonia).

78 Conclusions 2014 (United Kingdom).

79 Neither of the terms 'general notice' or 'inadequate notice' is explained in the conclusions cited.

without a period of notice. The Committee examines individual cases deciding upon whether there were reasons for the termination of a work relation without a period of notice[80] The Committee concludes that the situation in the Member State is not in conformity with Article 4 §4 of the Charter when it finds out that the notice period may be left to the discretion of the parties to an employment contract.[81] It also declares non-compliance with the Charter when no notice period is provided for in the following cases: (1) termination of employment for enforcement of a prison sentence; (2) disqualification from the category or academic diploma required by the employment contract; (3) being struck off the list of a professional association; (4) existing incompatibilities of functions identified in the labor code; (5) proven conflict of interest within the meaning of the conflict-of-interest legislation;[82] (6) dismissal for professional incompetence or lack of qualifications; (7) termination of employment in the event of a change of ownership of the undertaking or after military service; (8) termination of employment on account of the withdrawal of the worker's driving license or a ban on performing certain duties or activities; (9) termination of employment in the event of a disability recorded in a judicial decision;[83] (10) dismissal during a probationary period.[84]

7. Deductions from wages

7.1. The right of the employee to receive all the wages earned

The Charter guarantees workers the right to obtain the earned remuneration in full. Neither the Charter, nor the Committee determine the allowable field of deductions. The above responsibility is given to Member State authorities or may be passed on by the authorities to the stakeholders. The Committee never analyzed the grounds or the scope of permissible deductions from wages. It presented the view that social collections (taxes, social security premiums), workers' financial obligation in relation to their trade union membership (trade union fees), civil obligations (alimonies), deposits paid by employers to workers as well as employers' amounts due to damages committed by workers can be classified to a category that is regulated by domestic labor law. Additionally, the Committee stated that in regulating the rules and the field of deductions from wages, Member State authorities or stakeholders should take into consideration the protection of remuneration, which according to Article 4 §1 of the Charter

80 Conclusions XIII-2, p. 264, p. 513 (Malta).

81 Conclusions XX-3 (Spain). Conclusions 2014 (Russia). In Russia, notice periods applicable to self-employed persons or religious organizations or to home workers are left to the discretion of the parties to the employment contract.

82 Conclusions 2014 (Bulgaria),

83 Conclusions 2014 (Azerbaijan, Slovenia in case of expiry of work permits).

84 Conclusions 2014 (Ukraine, Turkey, Slovenia, Slovak Republic, the Netherlands, Romania, Georgia, Andorra).

should ensure workers and their families decent standards of living.[85] More recently, the Committee concluded that in practice the wages paid after any deductions ought to be still sufficient for workers to provide for themselves and their dependants.[86]

In 2010 the Committee accepted a new formula. It concludes negatively on the grounds that it has not been established that deductions from wages will not deprive workers or their dependents of their very means of subsistence.[87] As of 2014, the Committee has come to a negative conclusion, on the grounds that after all authorized deductions, the wages of workers with the lowest pay do not allow them to provide for themselves and their dependants.[88]

7.2. Scope of employee protection against wage deductions

Article 4 §5 of the Charter is commonly applied, encompassing workers employed by both public and private sectors, being parties to typical and atypical work relations. The analyzed protection standard is not applied to persons running their own business (self-employed). According to this regulation Member State authorities meet requirements set by Article 4 § 5 of the Charter when domestic labor law regulations ensure protection for wage deductions for the majority of workers. The clause listed in the appendix gave the same effect as applying the clauses listed in Article 33 §2 ESC and Article 1§2 RESC. As far as protection against unauthorized deductions from wages by domestic labor law regulations are concerned, workers seem to be the interested party. Therefore, it is sensible to use the same rules of interpretation while interpreting the content of Article 4 §5 of the Charter as the one used to analyze Article 33 §2 ESC and Article 1 §2 RESC. This means that in the light of Article 4 of the Charter a 'significant majority' of workers occurs when there are 80% of persons in work relations in a given country. The above basis for the calculation of the category of workers used by the appendix to the Charter should be deducted from persons whose legal situation is not defined by national labor law regulations, collective work agreements, or the courts' arbitrary decisions. In the appendix to the Charter, in the part containing an explanation of the content of Article 4 §5 of the Charter the notion 'persons' was used for describing a group of subjects (workers), out of which the significant majority should be protected against deductions from wages made by employers.

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85 Conclusions XII-1, pp. 108–109 (Greece); Conclusions XII-1, pp. 127–128 (Norway); Conclusions XIII-3, p. 270 (Turkey); Addendum to Conclusions XIII-3, pp. 33–34 (Luxembourg); Conclusions XIV-2, p. 230 (Finland); XIV-2, p. 399 (Ireland); XIV-2, pp. 481–482 (Luxembourg); XIV-2, pp. 514–515 (Malta); XIV-2, pp. 594–595 (Norway); XIV-2, p. 743 (Norway); XIX-2, pp. 774–775 (United Kingdom).

86 Conclusions 2007, vol. 2, p. 605 (Ireland), p. 688 (Italy), p. 818 (Lithuania), p. 885 (Moldova), p. 966 (Romania). Conclusions XX-3 (Iceland, Poland).

87 Conclusions 2010, vol. 1, p. 30 (Albania), p.90 (Armenia), p. 320 (Italy), vol. 2, pp. 354–355 (Lithuania), p. 388 (Malta), p. 528 (Romania), p. 600 (Turkey). Conclusions XIX-3, p. 173 (Poland), p. 192 (Slovakia).

88 Conclusions 2014 (Armenia, Azerbaijan, Bulgaria, Estonia, Russian Federation, Finland, Ireland, Italy, Lithuania, Republic of Moldova, Romania, Ukraine).

8. Final note

The question posed in the introductory part of this article, persons interested in introducing fair pay for all employees into their national labor law systems must answer for themselves whether the discussed measures in the countries recommended and controlled by the Council of Europe are able to guarantee all persons in the 21st century professionally active, dreaming of decent and fair remuneration for work, pay for additional working hours, equal rights for employees in employment and labor relations, payments in the last periods immediately preceding decisions made by employers to terminate employment or employment, and effective legal protection against dishonest deductions from wages for work performed. I am not able to answer the question that I am asking myself, despite the fact that throughout my mature life, from graduating from law studies to the present day, I have been dealing with legal regulations governing labor and employment relations. I am unable to give an unambiguous, convincing answer to the question I am asking myself, despite the fact that throughout my mature life, from graduating from law studies to the present day, I have been dealing with legal regulations governing labor and employment relations. Certain of my former colleagues[89], members of the European Committee of Social Rights of the Council of Europe, are some more optimistic than I am about the widespread and effective exercise by workers and other employees of the right to fair pay for all work done. They say 'Charter is intended to achieve'. Although 'The European Social Charter does not impose a single informal social model upon all member states of the Council of Europe consider that 'Charter is intended to achieve'. The Charter process is designed to ensure that there is adequate protection even in far-changing economic and social context for the core social rights that every European sta acknowledges as fundamental to individual and national well-being"[90].

89 C. O'Cinneide: Social rights and the European Social Charter – new challenges and fresh opportunities. In: O. De Schutter (ed.):*The European Social Charter: A social constitution for Europe*. Bruxelles, Bruylant, 2010. 168 et seq.

90 Ibid. 183.