



March 2019

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-3 (2018)

UNITED KINGDOM

This text may be subject to editorial revision.

The following chapter concerns the United Kingdom which ratified the 1961 Charter on 11 July 1962. The deadline for submitting the 37th report was 31 October 2017 and the United Kingdom submitted it on 21 December 2017.

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

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The United Kingdom has accepted all provisions from the above-mentioned group except Articles 2§1, 4§3 and Articles 2 and 3 of the Additional Protocol.

The reference period was 1 January 2013 to 31 December 2016.

The conclusions relating to the United Kingdom concern 13 situations and are as follows:

- 3 conclusions of conformity: Articles 2§3, 6§1 and 6§3 ;
- 10 conclusions of non-conformity: Articles 2§2, 2§4, 2§5, 4§1, 4§2, 4§4, 4§5, 5, 6§2 and 6§4.

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

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for submitting that report was 31 October 2018.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

The Committee previously concluded that the situation in the United Kingdom was not in conformity with Article 2§2 of the 1961 Charter on the ground that the right of all workers to public holidays with pay was not guaranteed (Conclusions XX-3 (2014)). The report repeats the information provided previously. Therefore, the Committee reiterates its previous finding of non-conformity.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§2 of the 1961 Charter on the ground that the right of all workers to public holidays with pay is not guaranteed.

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

The Committee previously found the situation to be in conformity with the 1961 Charter. The Working Time Regulations were amended in 2007 and, as a result, annual paid leave entitlement was extended to 28 days. The Committee notes from the information contained in the report that there has been no change to the situation.

Conclusion

The Committee concludes that the situation in the United Kingdom is in conformity with Article 2§3 of the 1961 Charter.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

Measures in response to residual risks

The Committee concluded previously that the situation was not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual occupational health risks, despite the existing risk elimination policy, are not entitled to appropriate compensatory measures (Conclusions XX-3 (2014)).

The report states that the Government continues to disagree with the Committee's conclusions on Article 2§4. The approach taken by the United Kingdom is explicitly focused on reducing exposure to occupational health risks in line with a set of principles enshrined in legislation. In the Government's view, the approach adopted by the United Kingdom presents the potential for higher levels of risk control than simply focusing on reducing the time of exposure to the risk or by providing additional leave once the workers have been exposed to risks to their safety or health at work.

The Committee again recalls that Article 2§4 requires States Parties to ensure some form of compensation for workers exposed to residual risks that cannot be or have not yet been eliminated or sufficiently reduced either in spite of the effective application of the preventive measures referred to above or because they have not yet been applied (Conclusions 2005, Statement of Interpretation on Article 2§4). Article 2§4 mentions two forms of compensation: reduced working hours and additional paid holidays. In view of the emphasis in this provision on health and safety objectives, however, other measures of reducing exposure time may also ensure conformity with the Charter. The relevance and adequacy of such measures are assessed on a case by case basis (Conclusions XX-3 (2014), Germany).

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§4 of the 1961 Charter on the ground that workers exposed to residual occupational health risks, despite the existing risk elimination policy, are not entitled to appropriate compensatory measures.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

The Committee concluded previously that the situation was not in conformity with Article 2§5 of the 1961 Charter, on the ground that there were inadequate safeguards to prevent workers from working more than twelve consecutive days without a rest period. The report states that the situation remains largely unchanged. It highlights that the situation where a person might work more than 12 days between rest periods is where a special case under Regulation 21 of the UK Working Time Regulations applies, e.g. there is a need for business continuity, unusual or unforeseen circumstances etc. In such cases compensatory rest is due under Regulation 24. These cases are in keeping with Article 17 of the EU Working Time Directive. The Working Time Regulations are quite clear that workers should not normally work for more than 12 consecutive days. Workers are usually entitled to one whole day off a week.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 2§5 of the 1961 Charter, on the ground that there are inadequate safeguards to prevent workers from working for more than twelve consecutive days without a rest period.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

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

The Committee recalls that it previously found that the situation in the United Kingdom was not in conformity with Article 4§1 of the 1961 Charter on the ground that the minimum wage applicable to workers in the private sector does not secure a decent standard of living.

In 2014 the National Minimum Wage (NMW) for adult workers (over 21 years of age) was £6.50 and £5.13 for a young worker (aged between 18-20 years). **In 2015** the respective figures were £6.70 and £5.30.

The National Living Wage (NLW) was introduced in 2016 and is now the statutory minimum wage for workers aged 25 and over. The UK Government has an established policy to set the NLW rate such that it reaches 60% of median earnings by 2020. The NLW was introduced at £7.20. The Low Pay Commission estimates that the NLW was equivalent to 56.4% of median earnings in April 2016. The Committee notes that this **represents** an important improvement in the situation, and notes that the rate of the minimum wage has increased significantly in recent years, much faster than average weekly earnings and consumer price index.

The NMW now denotes the statutory minimum wage that applies to workers aged 16 – 24 and those in the first year of an apprenticeship. The Committee notes that the levels of the NMW as applied to workers aged 18-20 years and 21-24 years are considerably lower than the NLW.

However the report provides no information on net values of minimum and average wages. According to EUROSTAT data for 2016, the gross NLW as a proportion of the gross average earnings was 44.0%.

It therefore repeats its request for information on the net values of both minimum and average wages and, where applicable, direct taxation, social security contributions, the costs of living and earnings-related benefits. The Committee recalls that, under Article 4§1 of the 1961 Charter, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. When the net minimum wage is between 50% and 60% of the net average wage, the State Party must show that the wage provides a decent standard of living .

The information available to the Committee indicates that the NLW is still below the minimum level of 60% of the net average wage (although the data available to the Committee relates to gross amounts).

It therefore considers that, in spite of the improvement in the situation of workers who are paid the NLW, **their** remuneration still does not ensure a decent standard of living within the meaning of Article 4§1 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§1 of the 1961 Charter on the ground that the minimum wage does not ensure a decent standard of living.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

In its previous conclusion (Conclusions XIX-3 (2010)) the Committee held that the situation was not in conformity with the 1961 Charter, as workers did not have adequate legal guarantees to ensure that they receive increased remuneration for overtime.

There has been no change to this situation accordingly the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§2 of the Charter on the ground that workers have no adequate legal guarantees to ensure them increased remuneration for overtime.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

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

In its previous conclusion (Conclusions 2014), the Committee held that the situation was not in conformity with Article 4§4 of the 1961 Charter, on the ground that notice periods were inadequate below three years of service.

Under the Employment Rights Act 1996, employees are entitled to receive at least a week's notice from their employer after one month's service, increasing to at least two weeks after two years' service. For each year of service over two years and up to twelve years an employee is entitled to an extra weeks' notice for each year of service, for example if they have 4 years of service their minimum notice shall be 4 weeks. For service of 12 or more years the minimum notice is 12 weeks. The Committee notes there has been no change to the situation that was previously found not to be in conformity with Article 4§4 of the Charter.

The report does not provide the requested information on notice periods and/or severance pay applicable to grounds for termination of employment other than dismissal (bankruptcy and employer's invalidity or death), nor does it provide information on notice periods and/or severance pay applicable to employees during probationary period; to early termination of fixed-term contracts and to civil servants. The Committee, therefore, reiterates its previous questions.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§4 of the 1961 Charter on the ground that notice periods are not reasonable for employees with less than three years of service.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to deduction from wages

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

The Committee concluded previously that the situation in the United Kingdom was not in conformity with Article 4§5 of the 1961 Charter, on the grounds that: the determination of deductions from wages higher than the National Minimum Wage is left at the disposal of the parties to the employment contract (Conclusions XX-3 (2014)) and on the ground that the absence of adequate limits on deductions from wages equivalent to the National Minimum Wage may result in depriving workers and their dependents of their means of subsistence (Conclusions XXI-1 (2016)).

According to the report there has been no change to this situation.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4§5 of the 1961 Charter on the ground that the absence of adequate limits on deductions from wages equivalent to the National Minimum Wage may result in depriving workers who are paid the lowest wage and their dependents of their means of subsistence.

Article 5 - Right to organise

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

It already examined the situation with regard to the right to organise (forming trade unions and employer associations, freedom to join or not to join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information.

Trade union activities

The Committee concluded previously that the situation in the United Kingdom was not in conformity with Article 5 of the 1961 Charter, on the ground that legislation which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and which severely restricts the grounds on which a trade union may lawfully discipline members, represents an unjustified incursion into the autonomy of trade unions.

The report states that there has been no change to the above mentioned situations. Therefore the Committee reiterates its previous conclusion of non-conformity.

The report refers to the Trade Union Act 2016, which is being implemented in a phased approach. It makes amendments to the right to strike and other forms of industrial action, and therefore the Committee will examine it in its conclusion under Article 6§4 of the Charter.

Personal scope

The Committee refers to its general question concerning the right of members of the armed forces to organise.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 5 of the 1961 Charter on the ground that legislation which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and which severely restricts the grounds on which a trade union may lawfully discipline members, represent an unjustified incursion into the autonomy of trade unions.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee previously found the situation to be in conformity with Article 6§1 of the 1961 Charter. The report indicates that there has been no change to this situation.

Conclusion

The Committee concludes that the United Kingdom is in conformity with Article 6§1 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The Committee previously concluded that the situation in the United Kingdom was not in conformity with Article 6§2 of the 1961 Charter on the ground that workers and trade unions do not have the right to bring legal proceedings in the event that employers offer financial incentives to induce workers to exclude themselves from collective bargaining (Conclusions XX-3, (2015)).

The Committee recalls that following the judgment of the European Court of Human Rights in the Case of Wilson & the National Union of Journalists (and Others) v. the United Kingdom, Application nos. 30668/96, 30671/96 and 30678/96 of 2 July 2002, the Employment Relations Act (ERA 2004) made it unlawful for employers to offer financial incentives to induce workers to exclude themselves from the scope of collective bargaining. However the ERA 2004 does not provide workers who did not receive such an offer with the right to complain about the making of offers to co-workers. Additionally, the Act also does not create a free-standing right for a trade union to complain about infringement of its own right to collective bargaining.

According to the report there has been no change to this situation.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 6§2 of the 1961 Charter on the ground that workers and trade unions do not have the right to bring legal proceedings in the event that employers offer financial incentives to induce workers to exclude themselves from collective bargaining.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

However the report states that during the reference period there have been a number of changes: an “early conciliation” service was introduced in April 2014. Potential claimants must notify the Advisory, Conciliation and Arbitration Service (Acas) and consider early conciliation before they can make a claim to an employment tribunal. The aim is to encourage parties to try to reach a settlement (it could be a paid settlement) without the need to progress to an employment tribunal. Whilst employees are required to contact Acas before making a tribunal claim, they only need to take part in discussing the matter and attempt to resolve it if they want to, and they or their employer can stop the process at any time. The employer is also asked if they are willing to participate in early conciliation. Acas has one calendar month in which to try to achieve a settlement. This time limit can be extended by an extra two weeks if there is a reasonable possibility of a settlement, providing both parties agree.

During 2016/17, Acas received 744 requests for assistance in collective conciliation and were able to resolve matters or help the parties move towards resolution in nine out of ten cases. Th. During the same period, Acas received 17 cases that were referred to collective arbitration, which over recent years has become less common as the basis for resolving disputes. More than half of these cases related to pay and conditions of employment.

Conclusion

The Committee concludes that the United Kingdom is in conformity with Article 6§3 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

Collective action: definition and permitted objectives

In its previous conclusions (most recently Conclusions XX-3 (2015)) the Committee found that lawful collective action was limited to disputes between workers and their employer, thus preventing a union from taking action against the de facto employer if this was not the immediate employer (Section 244 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA)). It furthermore noted that the courts excluded collective action concerning a future employer and future terms and conditions of employment in the context of a transfer of part of a business (University College London NHS Trust v UNISON). The Committee therefore considered that the scope for workers to defend their interests through lawful collective action was excessively circumscribed in the United Kingdom. Given that there have been no changes to the situation, the Committee reiterates its finding that the situation is not in conformity with Article 6§4 of the Charter in this respect.

Specific restrictions to the right to strike and procedural requirements

The Committee considered in its previous conclusions (most recently Conclusions XX-3 (2015)) that the requirement **to give notice to an employer of a ballot** on industrial action, in addition to the strike notice that must be issued before taking action, is excessive. As there have been no changes to the situation, the Committee reiterates its finding that the situation is not in conformity with Article 6§4 of the Charter in this respect.

The Committee notes that during the reference period the Trade Union Act 2016 amended provisions of the Trade Union and Labour Relations (Consolidation) Act 1992. It inter alia, introduced two thresholds in relation **to strike ballots**. In order for a strike to be lawful, a union will still be required to obtain a majority in favour of strike action out of those who have voted and, in addition at least 50 per cent of those entitled to vote in a ballot must have voted in all cases. Where those involved in the dispute work in an 'important public service' there is a requirement that 40 per cent of those entitled to vote in the ballot have voted 'yes' to strike action.

The Committee notes that the above mentioned provisions only entered into force in March 2017, outside the reference period. The Committee will examine their conformity, along with other changes introduced by the Act, with the Charter during the next cycle of supervision.

Consequences of a strike

Pursuant to the Employment Rights Act 2004, workers participating in lawful industrial action are protected against dismissal for twelve weeks. The Committee previously held the period of twelve weeks beyond which those concerned lost their employment protection to be arbitrary. The situation has not changed in this respect and therefore the Committee reiterates its conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 6§4 of the Charter on the following grounds:

- the scope for workers to defend their interests through lawful collective action is excessively circumscribed; lawful collective action is limited to disputes between workers and their employer, thus preventing a union from taking action against a de facto employer if this was not the immediate employer;

- the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive;
- the protection of workers against dismissal when taking industrial action is insufficient.